

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SYLVESTER TURNER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2812386

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 11, 2010, to consider sworn complaint SC-2812386. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.032, 253.035(h), 254.031, and 254.0612 of the Election Code and sections 20.29(a), 20.59, 20.61, 20.62, and 20.63 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent incorrectly disclosed total political contributions maintained as of the last day of the reporting period, accepted political contributions from corporations or labor organizations, failed to disclose information related to contributions from out-of-state political committees, failed to disclose the principal occupation or job title and the full name of the employer for certain contributors, failed to include travel information for political expenditures, improperly reported political expenditures as reimbursements including political expenditures made from personal funds, failed to properly report political expenditures made by credit card, and converted political contributions to personal use.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondent is the state representative for District 139 and was an unopposed candidate in the March 2008 primary election and the November 2008 general election.
2. The allegations are based on the respondent's January 2007, July 2007, January 2008, and July 2008 semiannual campaign finance reports.

3. The respondent's January 2007 semiannual report disclosed the following:
 - \$125 in total political contributions of \$50 or less
 - \$173,975 in total political contributions
 - \$83.20 in total political expenditures of \$50 or less
 - \$58,067.31 in total political expenditures
 - \$198,650 in total political contributions maintained as of the last day of the reporting period (corrected to \$198,357.03)
 - \$0 in outstanding loans
4. The respondent's July 2007 semiannual report disclosed the following:
 - \$0 in total political contributions of \$50 or less
 - \$0 in total political contributions
 - \$282 in total political expenditures of \$50 or less
 - \$48,614.13 in total political expenditures
 - \$0 in total political contributions maintained as of the last day of the reporting period (corrected to \$131,542.90)
 - \$0 in outstanding loans
5. The respondent's January 2008 semiannual report disclosed the following:
 - \$50 in total political contributions of \$50 or less
 - \$140,900 in total political contributions
 - \$191.23 in total political expenditures of \$50 or less
 - \$109,310.42 in total political expenditures
 - \$163,582.48 in total political contributions maintained as of the last day of the reporting period
 - \$0 in outstanding loans
6. The respondent's July 2008 semiannual report disclosed the following:
 - \$0 in total political contributions of \$50 or less
 - \$90,250 in total political contributions
 - \$91 in total political expenditures of \$50 or less
 - \$101,793.06 in total political expenditures (corrected to \$101,917.55)
 - \$178,286.66 in total political contributions maintained as of the last day of the reporting period (corrected to \$149,410.45)
 - \$0 in outstanding loans

Total Political Contributions Maintained

7. The allegations related to political contributions maintained were based on a calculation that is made by taking the amount of the total political contributions maintained disclosed in the immediately preceding report, adding the total amount of monetary political contributions disclosed in the report at issue, and subtracting the total amount of political expenditures disclosed in the report at issue. This calculation results in a higher amount of total political contributions maintained than the respondent actually disclosed on each of the reports at issue. Thus, the complaint alleged that the respondent must have incorrectly disclosed the total political contributions maintained at the end of the reporting period in each report at issue. The complaint also alleged that the respondent did not include interest earned on the contribution balance.
8. In the January 2007 semiannual report, the respondent disclosed \$198,650 in total political contributions maintained as of the last day of the reporting period. The complaint alleged that the total amount of political contributions maintained should be at least \$213,907.69.
9. On January 14, 2009, the respondent corrected the January 2007 semiannual report to disclose the total political contributions maintained amount to be \$198,357.03, and swore in his correction affidavit that the correction was due to a clerical error. In response to the allegation, the respondent swore, "This balance reflects the balance of the balance of the bank account as reflected by the accounting software on December 31, 2006."
10. In the July 2007 semiannual report, the respondent omitted the total political contributions maintained as of the last day of the reporting period. The complaint alleged that the total amount of political contributions maintained should be at least \$165,293.56.
11. On January 14, 2009, the respondent corrected the July 2007 semiannual report to disclose the total political contributions maintained amount to be \$131,542.90, and swore in his correction affidavit that the omission was due to a clerical error. In response to the allegation, the respondent swore, "This balance reflects the balance of the balance of the bank account as reflected by the accounting software on June 30, 2007."
12. In the January 2008 semiannual report, the respondent disclosed \$163,582.48 in total political contributions maintained as of the last day of the reporting period. The complaint alleged that the total amount of political contributions maintained should be at least \$196,883.14.
13. In response to the allegation, the respondent swore, "The amount of political contributions maintained that was originally reported is the correct amount of political contributions maintained on the last day of the reporting period. There is only one bank account that is not interest bearing."

14. In the July 2008 semiannual report, the respondent disclosed \$178,286.66 in total political contributions maintained as of the last day of the reporting period. The complaint alleged that the total amount of political contributions maintained should be at least \$185,340.08.
15. On January 14, 2009, the respondent corrected the July 2008 semiannual report to disclose the total political contributions maintained amount to be \$149,410.45, and swore in his correction affidavit that the correction was due to a clerical error. In response to the allegation, the respondent swore, "The correct amount has been reported in a correction and the corrected amount reflects the balance of the accounting software used on the last day of the reporting period."

Political Contributions from Corporations

16. The complaint alleged that the respondent accepted political contributions from corporations or labor organizations based on disclosures in the respondent's January 2007, January 2008, and July 2008 semiannual reports.

January 2007 Semiannual Report

17. Out of 190 total political contributions itemized in the January 2007 semiannual report, the complaint alleged that eight political contributions totaling \$5,000 were contributed by corporations.
18. In response to the allegations, the respondent swore that "no corporate contributions were accepted by the campaign." The respondent submitted copies of the contribution checks as supporting evidence. On January 14, 2009, the respondent corrected the contributions at issue and responded to the allegations as follows:
 - \$500 from Briar Development on December 12, 2006 (corrected contributor name to Leroy Hermes).
 - The respondent swore that this was a personal contribution from the sole proprietor of Briar Development, Leroy Hermes. The check provided by the respondent shows the following name and address: Briar Development with "(a sole proprietorship)" handwritten beside the entity name, 7915 Westglen Dr., Houston, TX 77063. The check was signed by Leroy Hermes.
 - \$500 from CareMark RX Inc. on December 12, 2006 (corrected contributor name to add the word "PAC" and to disclose the out-of-state FEC PAC ID number).

- The respondent swore that the contribution was from the CAREMARK RX INC EMPLOYEE'S PAC, registered with the Federal Election Commission (FEC ID #C00384818). The check provided by the respondent lists the following entity name and address: Caremark Rx Inc., Employee's Political Action Committee, 2211 Sanders Road, Northbrook, IL 60062.
- \$1,000 from MaXXAM INC. on December 12, 2006 (corrected contributor name to add the words "Texas PAC").
 - The respondent swore that the contribution was from the Maxxam Inc. Texas PAC, registered with the commission as a general-purpose committee (TEC ID #00052508). The check provided by the respondent lists the following entity name and address: Maxxam Inc., Texas Political Action Committee, 5847 San Felipe, Suite 2600, Houston, TX 77057.
- \$500 from Texas Beverage Alliance of the Texas Package Stores Assoc. on December 12, 2006 (corrected contributor name to add the word "PAC").
 - The respondent swore that the contribution was from the Texas Beverage Alliance of the Texas Package Stores Assoc. PAC, registered with the commission as a general-purpose committee (TEC ID #00016036). The check provided by the respondent lists the following entity name and address: Texas Beverage Alliance of the Texas Package Stores Assoc., 1122 Colorado St., Ste. 311, Austin, TX 78701.
- \$500 from Texas Credit Union League on October 19, 2006 (corrected contributor name to add the word "PAC").
 - The respondent swore that the contribution was from the Texas Credit Union League Political Action Committee, registered with the commission as a general-purpose committee (TEC ID #00017318). The check provided by the respondent lists the following entity name and address: Texas Credit Union League, Political Action Committee, P.O. Box 655147, Dallas, TX 75265-5147.
- \$500 from Texas Farm Bureau on December 12, 2006 (corrected contributor name to add the word "PAC").

- The respondent swore that the contribution was from the Texas Farm Bureau AgFund Inc. PAC, registered with the commission as a general-purpose committee (TEC ID #00016623). The check provided by the respondent lists the following entity name and address: Texas Farm Bureau AgFund, Inc., Committee Under FEC Rules, PO Box 869, Conroe, TX 77305.
- \$1,000 from Texas Manufactured Housing Assoc. Inc. on October 19, 2006 (corrected contributor name to add the word “PAC”).
 - The respondent swore that the contribution was from the Texas Manufactured Housing Assoc. Inc. PAC, registered with the commission as a general-purpose committee (TEC ID #00015528). The check provided by the respondent lists the following entity name and address: Texas Manufactured Housing Assoc., Inc., TMHA PAC General Purpose, 816 Congress Ave. #940, Austin, TX 78701.
- \$500 from Zachry Construction Corp. on October 19, 2006 (corrected contributor name to add the word “PAC”).
 - The respondent swore that the contribution was from the Zachry Construction Corp. PAC, registered with the commission as a general-purpose committee (TEC ID #00017353). The check provided by the respondent lists the following entity name and address: Zachry Construction Corp., Political Action Committee (ZACOPAC), San Antonio, TX 78224.

January 2008 Semiannual Report

19. Out of 120 total political contributions itemized in the January 2008 semiannual report, the complaint alleged that six political contributions totaling \$7,500 were contributed by corporations or labor organizations.
20. In response to the allegations, the respondent swore that “no corporate contributions were accepted by the campaign.” The respondent submitted copies of the contribution checks as supporting evidence. On January 14, 2009, the respondent corrected the contributions at issue and responded to the allegations as follows:
 - \$1,000 from American Electric Power Company on December 10, 2007 (corrected contributor name to add the word “PAC”).

- The respondent swore that the contribution was from “The American Electric Power Company – Texas Committee for Responsible Government,” registered with the commission as a general-purpose committee (TEC ID #00054331). The check provided by the respondent lists the following entity name and no address: The American Electric Power Company – Texas – Committee for Responsible Government.
- \$500 from Briar Development on October 2, 2007 (corrected contributor name to Leroy Hermes, an individual).
 - The respondent swore that this was a personal contribution from the sole proprietor of Briar Development, Leroy Hermes. The check provided by the respondent shows the following name and address: Briar Development with “(a sole proprietorship)” handwritten beside the entity name, 7915 Westglen Dr., Houston, TX 77063. The respondent also provided a copy of a fundraiser form listing the name of the contributor as Leroy Hermes.
- \$2,500 from Drayton McLane dba RDM Enterprises on September 6, 2007 (corrected contributor name to Drayton McLane, an individual).
 - The respondent swore that this was a personal contribution from the sole proprietor of RDM Enterprises, Drayton McLane, Jr. The check provided by the respondent shows the following name and address: Drayton McLane, Jr., DBA RDM Enterprises, P.O. Box 549, Temple, TX 76503-0549. The respondent also provided a copy of a fundraiser form listing the name of the contributor as Drayton McLane.
- \$500 from Houston Federation of Teachers on September 6, 2007 (corrected contributor name to add the word “COPE”).
 - The respondent swore that the contribution was from the “Houston Federation of Teachers COPE Fund,” registered with the commission as a general-purpose committee (TEC ID #00015909). The check provided by the respondent lists the following entity name and address: Houston Federation of Teachers, COPE Account, 3100 Wesleyan St., Suite No. 255, Houston, TX 77027-5727.

- \$500 from Legislation Action Council For LTC on October 3, 2007 (corrected contributor name to add the word “PAC”).
 - The respondent swore that the contribution was from the “Legislation Action Council For LTC PAC,” registered with the commission as a general-purpose committee (TEC ID #00057483). The respondent provided no additional information.
- \$2,500 from MaXXAM INC. on October 3, 2007 (corrected contributor name to add the words “Texas PAC”).
 - The respondent swore that the contribution was from the “Maxxam Inc. Texas PAC,” registered with the commission as a general-purpose committee (TEC ID #00052508). The check provided by the respondent lists the following entity name and address: Maxxam Inc., Texas Political Action Committee, 1330 Post Oak Blvd., Suite 2000, Houston, TX 77056.

July 2008 Semiannual Report

21. Out of 82 total political contributions itemized in the July 2008 semiannual report, the complaint alleged that two political contributions totaling \$1,000 were contributed by corporations.
22. In response to the allegations, the respondent swore that “no corporate contributions were accepted by the campaign.” The respondent submitted copies of the contribution checks as supporting evidence. On January 14, 2009, the respondent corrected the contributions at issue and responded to the allegations as follows:
 - \$500 from CarMARK RX INC. on January 3, 2008 (corrected contributor name to add the word “PAC” and to disclose the out-of-state PAC ID number).
 - The respondent swore that the contribution was from the CAREMARK RX INC Employee’s PAC, registered with the Federal Election Commission (FEC ID #C00384818). The respondent provided no additional information.
 - \$500 from Halff Associates on June 24, 2008 (corrected contributor name to add the words “State PAC”).

- The respondent swore that the contribution was from Halff Associates State PAC, registered with the commission as a general-purpose committee (TEC ID #00016254). The check provided by the respondent lists the following entity name and address: Halff Associates State PAC, 1201 North Bowser Rd., Richardson, TX 75081.

Campaign Finance Records

23. Texas Ethics Commission records and Federal Election Commission records disclose contributions by the political committees at issue.

Political Contributions from Out-of-State Political Committees

24. The complaint alleged that the respondent failed to disclose information related to political contributions from out-of-state political committees in the January 2007 and July 2008 semiannual reports.

January 2007 Semiannual Report

25. Out of 190 total political contributions itemized in the January 2007 semiannual report, the complaint alleged that eight political contributions totaling \$8,500 were contributed by out-of-state committees and did not include the identification numbers that the Federal Election Commission (FEC) has assigned to registered political committees or any additional information regarding the committees.
26. In response to the allegation, the respondent swore, “The FEC ID numbers were inadvertently omitted from the original report. All the necessary statements of organization are on file and all PAC ID numbers for out-of-state committees have been filed in an amendment.”
27. On January 14, 2009, the respondent corrected the political contributions at issue to disclose the out-of-state FEC PAC ID numbers.

July 2008 Semiannual Report

28. Out of 82 total political contributions itemized in the July 2008 semiannual report, the complaint alleged that two political contributions totaling \$2,500 were contributed by out-of-state committees and did not include the identification numbers that the Federal Election Commission (FEC) has assigned to registered political committees or any additional information regarding the committees.

29. In response to the allegation, the respondent swore, “The FEC ID number for the AZ PAC was inadvertently omitted from the original report. The correct paperwork is on file and the FEC ID number has been included in a correction.” On January 14, 2009, the respondent corrected the political contribution at issue to disclose the out-of-state FEC PAC ID number.
30. The respondent also swore, “The Chickasaw Nation contribution was accurately reported on the original report.”
31. According to the FEC website, the Chickasaw Nation is an independent expenditure person or group and not a committee.

Principal Occupation or Job Title and Name of Employer

32. The complaint alleged that the respondent failed to disclose the principal occupation or job title and the full name of the employer for political contributions of \$500 or more in the January 2007, January 2008, and July 2008 semiannual campaign finance reports.
33. During the reporting periods at issue, the respondent had an active campaign treasurer appointment on file.

January 2007 Semiannual Report

34. Out of 190 total political contributions itemized in the January 2007 semiannual report, the complaint alleged that the respondent failed to disclose the principal occupation or job title and the full name of the employer for political contributions of \$500 or more in “45 places” on the report.
35. The report disclosed 45 political contributions totaling \$65,500, for which both the contributors’ principal occupation or job title and employer are omitted and the amount of the contribution is \$500 or more.
36. On January 14, 2009, the respondent corrected the report to disclose the principal occupation or job title and employer for each of the political contributions at issue. In response to the allegation, the respondent swore, “The principal occupation and employer of each donor who contributes \$500 or more in a reporting period were inadvertently omitted from the original report. The omissions have been corrected in a subsequent filing.”

January 2008 Semiannual Report

37. Out of 120 total political contributions itemized in the January 2008 semiannual report, the complaint alleged that the respondent failed to disclose the principal occupation or job title and the full name of the employer for political contributions of \$500 or more in “36 places” on the report.

38. The report disclosed 37 political contributions totaling \$74,500, for which both the contributors' principal occupation or job title and employer are omitted and the amount of the contribution is \$500 or more.
39. On January 14, 2009, the respondent corrected the report to disclose the principal occupation or job title and employer for each of the political contributions at issue. In response to the allegation, the respondent swore, "The principal occupation and employer of each donor who contributes \$500 or more in a reporting period were inadvertently omitted from the original report. The omissions have been corrected in a subsequent filing."

July 2008 Semiannual Report

40. Out of 82 total political contributions itemized in the July 2008 semiannual report, the complaint alleged that the respondent failed to disclose the principal occupation or job title and the full name of the employer for political contributions of \$500 or more in "20 places" on the report.
41. The report disclosed 23 political contributions totaling \$28,000, for which both the contributors' principal occupation or job title and employer are omitted and the amount of the contribution is \$500 or more.
42. On January 14, 2009, the respondent corrected the report to disclose the principal occupation or job title and employer for each of the political contributions at issue. In response to the allegation, the respondent swore, "The principal occupation and employer of each donor who contributes \$500 or more in a reporting period were inadvertently omitted from the original report. The omissions have been corrected in a subsequent filing."
43. The total amount of political contributions at issue for all reports is approximately \$168,000.

Political Expenditure Made by Credit Card for Out-of-State Travel

44. Out of 86 total political expenditures itemized in the January 2008 semiannual report, the complaint alleged that one \$900 political expenditure failed to properly report travel information on Schedule T (used to disclose information on travel outside of Texas).
45. On January 14, 2009, the respondent corrected the expenditure at issue to change the purpose description for the expenditure and added Schedule T to disclose travel information regarding a flight from Houston, Texas to South Africa on November 4 – 15, 2007, for "Texas Delegation to South Africa."
46. The respondent swore, "This expenditure was paid directly to American Express to pay for charges for an economic development trip to South Africa for a flight on Continental Airlines. The total cost of the trip cost in excess of \$5,000 which was paid personally. The out-of-state travel information has been included in an amendment."

Other Political Expenditures Made by Credit Card

47. The complaint alleged that the respondent failed to properly report political expenditures made by credit card in the January 2007, July 2007, January 2008, and July 2008 semiannual reports. Although the actual payees were not disclosed in the payee space on the report, the respondent generally provided sufficient detail to allow as person viewing the report to know the actual purpose of the expenditures.

January 2007 Semiannual Report

48. Out of 77 total political expenditures itemized in the January 2007 semiannual report on Schedule F (used to disclose political expenditures from political contributions), the respondent disclosed two political expenditures to a credit card company totaling approximately \$1,040.
49. On January 14, 2009, the respondent corrected the expenditures at issue to disclose the name and address of the vendor who received the payment under the purpose description for each expenditure.

July 2007 Semiannual Report

50. Out of 117 total political expenditures itemized in the July 2007 semiannual report on Schedule F (used to disclose political expenditures from political contributions), the respondent disclosed eight political expenditures to credit card companies totaling approximately \$3,220.
51. On January 14, 2009, the respondent corrected the expenditures at issue to disclose the name and address of the vendor who received the payment under the purpose description for each expenditure.

January 2008 Semiannual Report

52. Out of 86 total political expenditures itemized in the January 2008 semiannual report on Schedule F (used to disclose political expenditures from political contributions), the respondent disclosed five political expenditures to credit card companies totaling approximately \$2,360.
53. On January 14, 2009, the respondent corrected the report to remove a \$1,168.43 expenditure that disclosed the credit card company as the payee and to add four itemized expenditures disclosing the actual vendors of the goods or services as the payees and the payment dates. The respondent corrected the other expenditures at issue to disclose the name and address of the vendor who received the payment under the purpose description for each expenditure.

July 2008 Semiannual Report

54. Out of 94 total political expenditures itemized in the July 2008 semiannual report on Schedule F (used to disclose political expenditures from political contributions), the respondent disclosed five political expenditures to credit card companies totaling approximately \$3,510.
55. On January 14, 2009, the respondent corrected the political expenditures at issue to remove the expenditures that disclosed the credit card companies as the payees and to add itemized expenditures to disclose the vendors of the goods or services as the payees, as well as the category of goods or services, and the payment dates.
56. The total amount of political expenditures at issue for all reports is approximately \$10,130.

Payees of Political Expenditures

57. The complaint alleged that the respondent failed to disclose the payees, dates, purposes, and amounts of political expenditures “when reimbursing expenses” in the January 2007, July 2007, January 2008, and July 2008 semiannual reports.

January 2007 Semiannual Report

58. Out of 77 total political expenditures itemized in the January 2007 semiannual report, the complaint alleged that the respondent failed to disclose the payees, dates, purposes, and amounts of political expenditures “when reimbursing expenses” for 23 political expenditures totaling approximately \$33,780. The complaint included a list of political expenditures that were disclosed in the respondent’s report.
59. In response to the allegation, the respondent swore, “All reimbursements of expenses have been corrected and itemized in a subsequent correction.” On January 14, 2009, the respondent corrected the report to provide more description for the purpose of the political expenditures at issue.

July 2007 Semiannual Report

60. Out of 117 total political expenditures itemized in the July 2007 semiannual report, the complaint alleged that the respondent failed to disclose the payees, dates, purposes, and amounts of political expenditures “when reimbursing expenses” for 27 political expenditures totaling approximately \$9,710. The complaint included a list of political expenditures that were disclosed in the respondent’s report.

61. In response to the allegation, the respondent swore, "All reimbursements of expenses have been corrected and itemized in a subsequent correction." On January 14, 2009, the respondent corrected the report to provide more description for the purpose of the political expenditures at issue.

January 2008 Semiannual Report

62. Out of 86 total political expenditures itemized in the January 2008 semiannual report, the complaint alleged that the respondent failed to disclose the payees, dates, purposes, and amounts of political expenditures "when reimbursing expenses" for 30 political expenditures totaling \$63,090. The complaint included a list of political expenditures that were disclosed in the respondent's report.
63. In response to the allegation, the respondent swore, "All reimbursements of expenses have been corrected and itemized in a subsequent correction." On January 14, 2009, the respondent corrected the report to provide more description for the purpose of the political expenditures at issue.

July 2008 Semiannual Report

64. Out of 94 total political expenditures itemized in the July 2008 semiannual report, the complaint alleged that the respondent failed to disclose the payees, dates, purposes, and amounts of political expenditures "when reimbursing expenses" for 29 political expenditures totaling approximately \$44,150. The complaint included a list of political expenditures that were disclosed in the respondent's report.
65. In response to the allegation, the respondent also swore, "All reimbursements of expenses have been corrected and itemized in a subsequent correction." On January 14, 2009, the respondent corrected the report to provide more description for the purpose of the political expenditures at issue.
66. The complaint alleged that the report disclosed a \$1,700 political expenditure to a person on January 29, 2008. The report does not disclose such an expenditure. In response to the allegation, the respondent swore, "This item was not in the original report and was never made by the campaign."

Political Expenditures from Personal Funds

67. The complaint alleged that the respondent failed to disclose the payees, dates, purposes, and amounts of political expenditures "when reimbursing expenses" to himself in the January 2007, July 2007, January 2008, and July 2008 semiannual reports.

January 2007 Semiannual Report

68. Out of 77 total political expenditures itemized in the January 2007 semiannual report, three political expenditures totaling \$575 on Schedule F (used to disclose political expenditures from political contributions) disclosed the respondent as the payee and the purpose description as reimbursements. The expenditures at issue were not disclosed on Schedule G (used to disclose political expenditures made from personal funds) during this or a prior reporting period and did not indicate that reimbursement was intended.
69. In response to the allegation, the respondent swore, "All reimbursements of expenses have been corrected and itemized in a subsequent correction." The respondent also swore, "I intended to reimburse myself from political funds, but it was not reported correctly." On January 14, 2009, the respondent corrected the report to provide more description for the purpose of the political expenditures at issue.

July 2007 Semiannual Report

70. Out of 117 total political expenditures itemized in the July 2007 semiannual report, one \$400 political expenditure on Schedule F disclosed the respondent as the payee and the purpose description as a reimbursement. The expenditure at issue was not disclosed on Schedule G during this or a prior reporting period and did not indicate that reimbursement was intended.
71. In response to the allegation, the respondent swore, "All reimbursements of expenses have been corrected and itemized in a subsequent correction." The respondent also swore, "I intended to reimburse myself from political funds, but it was not reported correctly." On January 14, 2009, the respondent corrected the report to provide more description for the purpose of the political expenditure at issue.

January 2008 Semiannual Report

72. Out of 86 total political expenditures itemized in the January 2008 semiannual report, two political expenditures on Schedule F totaling \$1,500 disclosed the respondent as the payee and the purpose description as reimbursements. The expenditures at issue were not disclosed on Schedule G during this or a prior reporting period and did not indicate that reimbursement was intended.
73. In response to the allegation, the respondent swore, "All reimbursements of expenses have been corrected and itemized in a subsequent correction." The respondent also swore, "I intended to reimburse myself from political funds, but it was not reported correctly." On January 14, 2009, the respondent corrected the report to provide more description for the purpose of the political expenditures at issue.

July 2008 Semiannual Report

74. Out of 94 total political expenditures itemized in the July 2008 semiannual report, five political expenditures on Schedule F totaling \$6,556 disclosed the respondent as the payee and the purpose description as reimbursements. The expenditures at issue were not disclosed on Schedule G during this or a prior reporting period and did not indicate that reimbursement was intended.
75. In response to the allegation, the respondent swore, "All reimbursements of expenses have been corrected and itemized in a subsequent correction." The respondent also swore, "I intended to reimburse myself from political funds, but it was not reported correctly." On January 14, 2009, the respondent corrected the report to provide more description for the purpose of the political expenditures at issue.

Personal Use of Political Contributions

76. The complaint alleged that the respondent converted political contributions to personal use by using political contributions for personal car purchase payments. The allegation is based on six political expenditures totaling approximately \$4,420 disclosed on Schedule F in the July 2007 semiannual report. Each political expenditure at issue disclosed a payment of approximately \$736 to Ford Motor Credit for "Car Rental in Austin."
77. The respondent corrected the report on January 14, 2009, to change the purpose description for each expenditure to "Campaign Car Rental in Austin." The respondent swore that the payments were for a vehicle used in Austin during the legislative session.

IV. Findings and Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

Total Political Contributions Maintained

1. A campaign finance report must include, as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
2. The complaint alleged that the respondent did not correctly disclose the total political contributions maintained as of the last day of the reporting period on the January 2007, July 2007, January 2008, and July 2008 semiannual reports because the amount disclosed in each report is less than it should be, according to a calculation performed by the complainant. However, the amount of total political contributions maintained is not determined by performing such a calculation. Rather, the appropriate method of determining the total

political contributions maintained is by determining the balance of any and all accounts in which political contributions are maintained as of the last day of the reporting period. Furthermore, considering that the campaign finance reporting system is not an accounting system, and that contributions and expenditures may be properly disclosed in a report without correlating to an actual movement of money, there is no reliably accurate method of determining the amount of total political contributions maintained without referring to a bank balance. Thus, the fact that the respondent's amounts of total political contributions maintained do not equal the amounts that result from the complainant's calculation is not credible evidence in and of itself that the amounts of political contributions disclosed in the reports at issue are incorrect.

3. The amount of total political contributions maintained was incorrect on the January 2007 semiannual report and was corrected by the respondent to decrease the total by approximately \$290.
4. The amount of total political contributions maintained was omitted on the July 2007 semiannual report and was corrected by the respondent to disclose approximately \$131,540.
5. The respondent swore that the amount of total political contributions maintained on the January 2008 semiannual report was correct and the evidence did not refute that assertion.
6. The amount of total political contributions maintained was incorrect on the July 2008 semiannual report and was corrected by the respondent to decrease the total by approximately \$28,880.
7. The amounts of total political contributions maintained were not properly disclosed when the respondent's January 2007, July 2007, and July 2008, semiannual reports were originally filed. Therefore, there is credible evidence that the respondent violated section 254.031(a)(8) of the Election Code.

Political Contributions from Corporations

8. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003.
9. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094.
10. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.

11. In order to show a violation of section 253.003 of the Election Code, the evidence must show that the contributor was a corporation, that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.
12. The contributions at issue were not made by a corporation or labor organization. Therefore, there is credible evidence that the respondent did not violate section 253.003 of the Election Code by accepting a political contribution that is illegal under section 253.094 of the Election Code in connection with the contributions.

Political Contributions from Out-of-State Political Committees

13. A candidate or officeholder who accepts a political contribution from an out-of-state committee must include certain information about the committee as part of the candidate or officeholder's campaign finance report. A candidate or officeholder who accepts a political contribution from an out-of-state committee that files with the Federal Election Commission (FEC) must include as a part of candidate or officeholder's campaign finance report a copy of the committee's statement of organization that is filed with the FEC. ELEC. CODE § 253.032(d) and (e).
14. A person who files a report with the commission by electronic transfer and who accepts political contributions from an out-of-state political committee required to file its statement of organization with the Federal Election Commission shall either enter the out-of-state committee's federal PAC identification number in the appropriate place on the report or timely file a certified copy of the out-of-state committee's statement of organization that is filed with the Federal Election Commission. Ethics Commission Rules § 20.29(a).
15. "Out-of-state political committee" means a political committee that makes political expenditures outside this state and in the 12 months immediately preceding the making of a political expenditure by the committee inside this state (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder), makes 80 percent or more of the committee's total political expenditures in any combination of elections outside this state and federal offices not voted on in this state. ELEC. CODE § 251.001(15).
16. The \$2,500 political contribution from The Chickasaw Nation was not made by a political committee. Therefore, there is credible evidence of no violation of section 253.032 of the Election Code and section 20.29(a) of the Ethics Commission Rules in connection with the contribution.
17. The respondent accepted eight political contributions totaling \$8,500 from out-of-state political committees during the period covered by his January 2007 semiannual report. The respondent also accepted a political contribution of \$500 from one out-of-state political

committee during the period covered by his July 2008 semiannual report. The total amount of political contributions at issue is \$9,000.

18. The respondent filed corrections to the two semiannual reports at issue to disclose FEC PAC ID numbers for each contributor. The original reports did not include the committees' statements of organization or FEC ID numbers. Therefore, there is credible evidence that the respondent violated section 253.032 of the Election Code and section 20.29(a) of the Ethics Commission Rules in connection with the contributions.

Principal Occupation or Job Title and Name of Employer

19. The respondent had an active campaign treasurer appointment on file during the periods at issue. Thus, the respondent was a candidate for title 15 of the Election Code filing purposes. Each report by a candidate for a legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 and that are accepted during the reporting period the individual's principal occupation or job title and the full name of the individual's employer. ELEC. CODE § 254.0612.
20. In the original January 2007 semiannual report 45 (out of 190) political contributions totaling approximately \$65,500 did not disclose the principal occupation or job title and employer of the contributors. In the original January 2008 semiannual report 37 (out of 120) political contributions totaling approximately \$74,500 did not fully disclose the principal occupation or job title and employer of the contributors. In the original July 2008 semiannual report 23 (out of 82) political contributions totaling approximately \$28,000 did not fully disclose the principal occupation or job title and employer of the contributors. Therefore, there is credible evidence that the respondent violated section 254.0612 of the Election Code in connection with the contributions.

Political Expenditure Made by Credit Card for Out-of-State Travel

21. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
22. A report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company. Ethics Commission Rules § 20.59.
23. The description of a political expenditure for travel outside of the state of Texas must provide the following: the name of the person or persons traveling on whose behalf the expenditure was made; the means of transportation; the name of the departure city or the name of each departure location; the name of the destination city or the name of each destination location; the dates on which the travel occurred; and the campaign or

- officeholder purpose of the travel, including the name of a conference, seminar, or other event. Ethics Commission Rules § 20.61(b).
24. The respondent disclosed a credit card company as the payee instead of the vendor who actually received payment for the \$900 political expenditure at issue in the January 2008 semiannual report. The respondent disclosed that the purpose of the expenditure was for travel outside of Texas.
 25. The respondent corrected the expenditure at issue to disclose on Schedule T (used to disclose information on travel outside of Texas) the name of the person traveling on whose behalf the expenditure was made, the means of transportation, the name of the departure city, the name of the destination city, the dates on which the travel occurred, and the campaign or officeholder purpose of the travel.
 26. The information disclosing the credit card company as the payee for the political expenditure at issue remained unchanged in the corrected report and the travel information was not properly disclosed when the report was due. Therefore, there is credible evidence of violations of section 254.031 of the Election Code and sections 20.59 and 20.61(b) of the Ethics Commission Rules in connection with the expenditure.

Other Political Expenditures Made by Credit Card

27. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
28. A report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company. Ethics Commission Rules § 20.59.
29. The reports at issue disclosed the credit card company but not the name of the actual vendor for political expenditures totaling approximately \$10,130.
30. Although the actual payees were not disclosed, the respondent generally provided sufficient detail to allow a person viewing the report to know the actual purpose of the expenditures. The respondent corrected the reports at issue to disclose in the purpose of expenditure sections of the reports the vendor's name and address. Nevertheless, the information was not properly disclosed when the report was due. Therefore, there is credible evidence of violations of section 254.031 of the Election Code and section 20.59 of the Ethics Commission Rules in connection with the expenditures.

Payees of Political Expenditures

31. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
32. A political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made: (1) the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made and the dates and purposes of the expenditures; and (2) included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. Except as provided by subsection (a) of this section, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows: (1) the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, candidate, or political committee; (2) the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and (3) the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee. Ethics Commission Rules § 20.62.
33. For the January 2007 semiannual report, Ethics Advisory Opinion No. 450 (2003), describes the proper way to report staff reimbursement. The commission determined that a political expenditure made to reimburse a staff member may be reported in one of two ways: (1) reporting it as a loan to the candidate from the staff member and then as an expenditure by the candidate to repay the staff member; or (2) if the expenditure and reimbursement occur during the same reporting period, report a single expenditure by listing the name of the individual or entity paid by the campaign worker as the payee, showing the date of the expenditure as the date the staff member made the expenditure, and explaining in the “purpose” section that a staff member made the expenditure from personal funds and that the candidate subsequently reimbursed the staff member.

January 2007 Semiannual Report

34. For the January 2007 semiannual report, the allegation related to 23 political expenditures totaling approximately \$33,780.

35. The respondent corrected the report to disclose additional information under the purpose description about the vendor who received each expenditure at issue.
36. Seven of the expenditures at issue totaling approximately \$28,870 were not properly disclosed when the report was originally filed.
37. Five of the expenditures at issue totaling approximately \$470 were improperly disclosed reimbursements to staff members.
38. The other expenditures at issue were either disclosed correctly when the report was originally filed or did not meet exceed the \$50 threshold for itemization.
39. Therefore, there is credible evidence of violations of section 254.031 of the Election Code in connection with approximately \$28,870 in expenditures, and there is credible evidence of violations of section 254.031 of the Election Code and section 20.62 of the Ethics Commission Rules in connection with approximately \$470 in expenditures in the January 2007 semiannual report.

July 2007 Semiannual Report

40. For the July 2007 semiannual report, the allegation related to 27 political expenditures totaling approximately \$9,710.
41. The respondent corrected the report to disclose additional information under the purpose description about the vendor who received each expenditure at issue.
42. Seven of the expenditures at issue totaling approximately \$2,390 were not properly disclosed when the report was originally filed.
43. Nine of the expenditures at issue totaling approximately \$1,950 were improperly disclosed reimbursements to staff members.
44. The other expenditures at issue were either disclosed correctly when the report was originally filed or did not meet exceed the \$50 threshold for itemization.
45. Therefore, there is credible evidence of violations of section 254.031 of the Election Code in connection with approximately \$2,390 in expenditures, and there is credible evidence of violations of section 254.031 of the Election Code and section 20.62 of the Ethics Commission Rules in connection with approximately \$1,950 in expenditures in the July 2007 semiannual report.

January 2008 Semiannual Report

46. For the January 2008 semiannual report, the allegation related to 30 political expenditures totaling \$63,090.
47. The respondent corrected the report to disclose additional information under the purpose description about the vendor who received each expenditure at issue.
48. Twenty-one of the expenditures at issue totaling \$34,800 were not properly disclosed when the report was originally filed.
49. One \$500 expenditure at issue was an improperly disclosed reimbursement to a staff member.
50. The other expenditures at issue were either disclosed correctly when the report was originally filed or did not meet exceed the \$50 threshold for itemization.
51. Therefore, there is credible evidence of violations of section 254.031 of the Election Code in connection with \$34,800 in expenditures, and there is credible evidence of violations of section 254.031 of the Election Code and section 20.62 of the Ethics Commission Rules in connection with \$500 in expenditures in the January 2008 semiannual report.

July 2008 Semiannual Report

52. For the July 2008 semiannual report, the allegation related to 29 political expenditures totaling approximately \$44,150.
53. The complaint alleged that the respondent disclosed a \$1,700 political expenditure to a person on January 29, 2008. The report does not disclose such an expenditure. The respondent swore that such an expenditure was never made by the campaign and there is no evidence to refute that statement.
54. The respondent corrected the report to disclose additional information under the purpose description about the vendor who received each expenditure at issue.
55. Nine of the expenditures at issue totaling \$3,630 were not properly disclosed when the report was originally filed.
56. A \$201.38 expenditure was an improperly disclosed reimbursement to a staff member.
57. The other expenditures at issue were either disclosed correctly when the report was originally filed or did not meet exceed the \$50 threshold for itemization.

58. Therefore, there is credible evidence of violations of section 254.031 of the Election Code in connection with \$3,630 in expenditures, and there is credible evidence of violations of section 254.031 of the Election Code and section 20.62 of the Ethics Commission Rules in connection with approximately \$200 in expenditures in the July 2008 semiannual report.

Political Expenditures from Personal Funds

59. A candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report that covers the period during which the expenditures from personal funds were made and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. ELEC. CODE § 253.035(h); Ethics Commission Rules § 20.63(d).
60. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
61. The respondent disclosed a total of 11 political expenditures totaling approximately \$9,000 in the January 2007, July 2007, January 2008, and July 2008 semiannual reports, each of which improperly disclosed the political expenditures as reimbursements to the respondent for expenditures made from personal funds.
62. The expenditures at issue were not reported as political expenditures made from personal funds at the time they were initially expended, and the respondent made no indication at that time that reimbursement was intended.
63. The respondent corrected the political expenditures at issue to disclose information about the vendor who received the payment under the purpose description for each expenditure. The information disclosing the respondent as the payee remained unchanged in the corrected report for each of these expenditures at issue.
64. Although the respondent corrected the expenditures at issue to disclose the vendor names and addresses of the actual payees and to clarify the purpose descriptions of the expenditures, the respondent did not properly disclose the expenditures at issue and request reimbursement when the reports were originally due. Therefore, there is credible evidence that the respondent violated sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63(d) of the Ethics Commission Rules.

Personal Use of Political Contributions

65. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a). The prohibitions include the personal use of an asset purchased with the contribution and the personal use of any interest and other income earned on the contribution. *Id.* § 253.035(c).
66. “Personal use” means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. *Id.* § 253.035(d). Personal use does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of rent, utility, and other reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County, but excluding payments prohibited under section 253.038 of the Election Code. *Id.* § 253.035(d)(1).
67. In Ethics Advisory Opinion No. 116, the commission stated that a candidate may not convert assets purchased with political contributions to personal use. An item is not converted to personal use if the candidate reimburses his political funds on the basis of the reasonable value of any personal use. *See* Ethics Advisory Opinion No. 116 (1993).
68. In Ethics Advisory Opinion No. 430, the commission stated that a candidate or officeholder may use political contributions to make expenditures to purchase, operate, and maintain an asset with a combination of political contributions and personal funds, but political contributions may not be used to pay any costs attributable to personal use of the asset. *See* Ethics Advisory Opinion No. 430 (2000).
69. The complaint alleged that the respondent used political contributions for personal car purchase payments based on six political expenditures totaling approximately \$4,420 disclosed in the July 2007 semiannual report.
70. The respondent swore that the expenditures at issue were payments for a vehicle used for officeholder purposes during the legislative session. There is no evidence to dispute this statement. The available evidence is insufficient to show that the expenditures at issue constituted a conversion of political contributions to personal use. Therefore, there is insufficient evidence of a violation of section 253.035 of the Election Code.

V. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. The respondent acknowledges that a report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company. The respondent also acknowledges that the description of a political expenditure for travel outside of the state of Texas must provide the name of the person or persons traveling on whose behalf the expenditure was made, the means of transportation, the name of the departure city or the name of each departure location, the name of the destination city or the name of each destination location, the dates on which the travel occurred, and the campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event. The respondent also acknowledges that the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules. The respondent further acknowledges that a candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report that covers the period during which the expenditures from personal funds were made and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. The respondent acknowledges that a campaign finance report must include, as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. The respondent also acknowledges that a person who files a report with the commission by electronic transfer and who accepts political contributions from an out-of-state political committee required to file its statement of organization with the Federal Election Commission shall either enter the out-of-state committee's federal PAC identification number in the appropriate place on the report or timely file a certified copy of the out-of-state committee's statement of organization that is filed with the Federal Election Commission. The respondent further acknowledges that each report by a candidate for a legislative office must include, for each individual from whom the person filing the report

has accepted political contributions that in the aggregate equal or exceed \$500 and that are accepted during the reporting period the individual's principal occupation or job title and the full name of the individual's employer. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the commission has determined are neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$4,500 civil penalty.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-2812386.

AGREED to by the respondent on this _____ day of _____, 20__.

Sylvester Turner, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director