

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
GARNET COLEMAN,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-2908194

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on October 21, 2010, to consider sworn complaint SC-2908194. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.032, 254.031, and 254.0612 of the Election Code, and section 20.62 of the Ethics Commission Rules, as well as credible evidence of technical or *de minimis* violations of sections 253.035(h) and 254.031 of the Election Code, and section 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: 1) accepted contributions from a corporation or labor organization, 2) failed to include documentation relating to political contributions from out-of-state committees, 3) made expenditures that constituted a conversion of political contributions to a personal use, 4) failed to disclose the full name of contributors and payees on campaign finance reports, 5) incorrectly reported total political contributions maintained on campaign finance reports, 6) improperly reported reimbursements to staff and political expenditures from personal funds, and 7) failed to include the principal occupation or job title and the full name of employer of contributors.

### III. Facts Supported by Credible Evidence

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

1. The respondent is State Representative, District 136.

2. The complaint alleged that the respondent:

- Accepted 19 corporate or labor organization contributions totaling approximately \$18,820, that were disclosed on the respondent's January 2008, July 2008, and January 2009 semiannual reports, 30-day and 8-day pre-election reports in connection with the March 2008 primary election, and 8-day pre-election report filed in connection with the November 2008 general election.
- Failed to include documentation relating to political contributions from 10 out-of-state committees totaling approximately \$6,060, that were disclosed on the respondent's January 2008, July 2008, and January 2009 semiannual reports and 8-day pre-election report filed in connection with the November 2008 general election.
- Made 80 expenditures totaling approximately \$24,130 that constituted a conversion of political contributions to a personal use. The expenditures were disclosed on the respondent's January 2008, July 2008, and January 2009 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the March 2008 primary and the November 2008 general elections.
- Failed to disclose the full name of 33 contributors on his January 2008, July 2008, and January 2009 semiannual reports, 8-day pre-election report filed in connection with the March 2008 primary, and 30-day pre-election report in connection with the November 2008 general elections.
- Failed to disclose the name of eight payees on his January 2008 and July 2008 semiannual reports, 8-day pre-election report filed in connection with the March 2008 primary election and 30-day pre-election report filed in connection with the November 2008 general election.
- Incorrectly reported total political contributions maintained on his January 2008, July 2008, and January 2009 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the March 2008 primary and the November 2008 general elections.
- Improperly reported 30 reimbursements to staff totaling approximately \$27,035 on his January 2008, July 2008, and January 2009 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the March 2008 primary and the November 2008 general elections.
- Improperly reported two reimbursements for political expenditures from personal funds totaling approximately \$1,280 on his January 2008 and July 2008 semiannual reports.
- Failed to include the principal occupation of 52 persons from whom political contributions that in the aggregate exceeded \$500 were accepted during the reporting period, on his January 2008, July 2008, and January 2009 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the March 2008 primary election and 8-day pre-election report filed in connection with the November 2008 general election.

3. Of the reports at issue, only the January and July 2008 semiannual reports disclosed entries that did not include occupation and employer information, disclosing two political contributions that in the aggregate exceeded \$500 during the reporting periods at issue, totaling \$1,000.

### **Corporate Contributions**

4. The complaint alleged that the respondent accepted 19 corporate contributions totaling approximately \$18,820.
5. Fourteen contributions at issue, totaling approximately \$16,320, were made by political committees or entities that were not organized under the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, the Texas for Profit Corporation Law, or the Texas Non-Profit Corporation Law, and did not have a member or partner organized under those laws.
6. Regarding the remaining contributions at issue the evidence either did not establish that the contributor was a corporation or labor organization, or that the respondent knew that the contributor was an incorporated entity or labor organization.

### **Documentation for Out-of-State Committees**

7. The complaint alleged that the respondent did not include a Federal Election Commission identification number (FEC ID) for 10 contributions totaling approximately \$6,060, disclosed on the respondent's January 2008, July 2008, and January 2009 semiannual reports, and 8-day pre-election report for the November 2008 election.
8. Nine of the contributors at issue were political committees that file with the Federal Elections Commission (FEC). The respondent did not provide documentation or include a FEC identification number for the contributions on the reports at issue. One contributor was not a political committee.
9. In a response to this complaint, the respondent admitted to "an inadvertent error by omitting the out-of-state PAC identification numbers" for the contributions at issue. The respondent then filed corrections to each of the reports at issue, disclosing FEC PAC ID numbers for each of the contributions.

### **Personal Use of Political Contributions**

10. In a response to this complaint, the respondent stated that, "All expenditures were made in connection with the performance of [the respondent's] duties or activities as a candidate for,

or holder of, a public office.” He stated that the expenditures at issue were made for “the campaign’s mobile telephone service, campaign vehicle, maintenance of a residence in Austin and meetings with staff, constituents, or contributors.”

11. The complaint did not provide any evidence that those expenditures primarily furthered an individual or family purpose not connected with the performance of duties or activities as a candidate or officeholder.

### **Staff Reimbursement**

12. The complaint alleged that the respondent improperly reported 30 political expenditures to individuals and to “American Express” totaling approximately \$27,030 on his January 2008, July 2008, and January 2009 semiannual reports and on his 30-day and 8-day pre-election reports filed in connection with the March 2008 primary election and November 2008 general election (\$807.50 of which was to payee American Express). The purposes disclosed for these expenditures included: “scholarship donation,” “Austin rented residence,” “summer fellowship donation,” “reimbursement for donation Holman St Baptist Church Healthcare event,” “reimbursement water cooler & coffee maker district office,” “Adjusted membership fee,” “finance charges,” “2008 holiday ornaments,” and “in kind donation . . . Campaign recording radio ad.”
13. Eighteen expenditures totaling approximately \$23,120 disclosed as “Austin rented residence” were made to an individual that Travis County Central Appraisal District records indicate is the owner of a residential property in Austin.
14. The respondent stated that the expenditures to American Express were properly disclosed, and “were for finance charges and membership fees.” The respondent stated that all remaining expenditures disclosed the actual vendor payee, except for expenditures to two staff members, a \$200 expenditure for the purpose of, “Reimbursement for Donation Homan St Baptist Church Healthcare event” disclosed on the respondent’s July 2008 semiannual report, and a \$231.96 expenditure for the purpose of “Reimbursement water cooler & coffee maker district office,” disclosed on the respondent’s 30-day pre-election report filed in connection with the November 2008 election, totaling approximately \$430, which he admits were incorrectly reported as reimbursements. The respondent filed corrections to the July 2008 semiannual report disclosing the payee of the \$200 expenditure as “Holman St Baptist Church.”

**Political Expenditures from Personal Funds**

15. The complaint alleged that the respondent improperly reported two reimbursements for political expenditures from personal funds totaling approximately \$1,280 on his January 2008 and July 2008 semiannual reports.
16. The respondent disclosed the following expenditures disclosing himself as payee:
  - an expenditure totaling \$775.08 on his January 2008 semiannual report, for the purpose of “Reimbursement,” (in the memo field of this report the respondent disclosed, “I paid the minimum amount on my American Express bill . . . out of personal funds for which I was reimbursed on the same day. Since that amount does not correspond to any actual expenditure I made I have listed the payment to American Express on Schedule G and my reimbursement \ non (sic) Schedule F. Every single expenditure made on my American Express card during this reporting period\nis (sic) itemized in Schedule F.”)
  - an expenditure totaling \$503.98 on his July 2008 semiannual report, for the purpose of “Paid charges on JPMorgan chase credit card bill.”
17. In his response, the respondent explained that the \$775.08 expenditure disclosing himself as payee was a properly reported reimbursement for a payment made on the minimum balance on his American Express card, and that this purpose was explained in the memo field and that all expenditures made on the American Express card were disclosed on the report. The respondent indicated that the other expenditure at issue was also a reimbursement for “political expenditures” reported on Schedule G. The reports on file disclose this information.

**Required Information on Campaign Finance Reports**

18. The complaint alleged that the respondent failed to disclose the names of 33 contributors totaling approximately \$32, 930 and eight payees, totaling \$4,075, on his January 2008, July 2008, and January 2009 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the March 2008 primary and November 2008 general elections. The complaint also alleged that the respondent failed to properly disclose political contributions maintained on each of the reports at issue.
19. For 30 contributions totaling approximately \$31,120, the respondent disclosed a contributor name that was not the contributor’s full name or disclosed a name including an acronym that was not part of the committee’s name.

Contributions

20. For three contributions at issue, totaling approximately \$1,800, the respondent disclosed the name or acronym that is included in the name of the contributor.
21. Seven of the expenditures at issue, totaling approximately \$3,075, did not disclose the full name or acronym that is included in the name of the payees. One expenditure, to “Senatorial District 6” (Senate District 6 PAC) was substantially correct.

Expenditures

22. The complaint also alleged that the respondent incorrectly reported total political contributions maintained on his January 2008, July 2008, and January 2009 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the March 2008 primary and the November 2008 general elections. The allegations appear to be based on a calculation using totals disclosed on the face of the reports. The complaint included no additional evidence to support the allegations, and the respondent swore that the amount disclosed reflected the amount in the campaign account as of the last day of the reporting period. The respondent stated that “The treasurer obtains this figure by either (1) calling the bank and requesting the balance as of the last day of the reporting period, or (2) examining the account statement for the appropriate month.”

**Principal Occupation or Job Title and Employer of Contributors**

23. The complaint alleged that the respondent failed to disclose the principal occupation or job title and employer for 52 contributors on his January 2008, July 2008, and January 2009 semiannual reports, and 30-day and 8-day pre-election reports filed in connection with the March 2008 primary election and 8-day pre-election report filed in connection with the November 2008 election.
24. Of the reports at issue, only the January 2008 and July 2008 semiannual reports disclosed contributions from individuals who contributed \$500 or more during the periods at issue and that disclosed no occupation or employer information. There are two contributions at issue, a \$500 contribution disclosing no principal occupation or job title, but disclosing an employer, disclosed on the January 2008 semiannual report, and a \$500 contribution disclosing no principal occupation or job title, and no employer information, disclosed on the July 2008 semiannual report.
25. In response to the complaint, the respondent admitted to an “inadvertent error” by not disclosing employer and occupation information for the contribution disclosed on the July 2008 semiannual report, and filed a correction to that report, disclosing this information for the contribution.

#### IV. Findings and Conclusions of Law

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

##### Corporate Contributions

1. 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. That subchapter does not authorize corporations to make political contributions to a candidate.
2. 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(b).
3. 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.
4. Regarding 14 contributions (totaling approximately \$16,320), there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code.
5. As to the two remaining contributions there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code.

##### Documentation for Out-of-State Committees

6. A candidate, officeholder, that files campaign finance reports with the commission and accepts a political contribution from a political committee that files with the Federal Election Commission (FEC) must include the FEC statement of organization or FEC identification number as a part of the report filed under chapter 254 for the reporting period in which the contribution was accepted. ELEC. CODE § 253.032; Ethics Commission Rules § 20.29.
7. “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 of this state and federal offices not voted on in this state. ELEC. CODE § 251.001(15).

8. The respondent was required to include out-of-state committee information for nine political contributions totaling approximately \$4,050 on the report at issue. Although the respondent filed corrections disclosing the required information, the respondent did not include the information on his original report. Therefore, there is credible evidence of a violation of section 253.032 of the Election Code.

### **Personal Use of Political Contributions**

9. 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). Personal use is a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate or officeholder. *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 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. *Id.* § 253.035(d)(1).
10. The complaint alleged that the respondent's expenditures were a conversion of political contributions to a personal use. The respondent swore that each of these expenditures was for a campaign or officeholder related purpose, including a cell phone, campaign vehicle, cable or internet for his capitol office and Austin residence. Absent any evidence that the expenditures were primarily for an individual or family purpose not connected to his candidate or officeholder activities or duties, there is insufficient evidence of a violation of section 253.035(a) of the Election Code.

### **Staff Reimbursement**

11. 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).
12. Each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. *Id.* § 254.031(a)(5).

13. Ethics Commission Rule § 20.62 states that political expenditures made out of personal funds by a staff member of a candidate with the intent to seek reimbursement from the candidate that in the aggregate do not exceed \$5,000 (\$500 until October 2007) 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.
14. The respondent failed to disclose the actual vendor payee for approximately \$430 in expenditures. Although the respondent corrected one of the reports at issue to disclose the actual payee, these political expenditures were not properly reported when the reports were originally due. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.
15. As to the remaining approximately \$26,600 in expenditures, approximately \$23,120 disclosed the payee as an individual with a purpose of rent payments, and those expenditures were properly disclosed. The evidence does not show that the respondent improperly disclosed the remaining expenditures, and does not refute the respondent's statement that he disclosed the expenditures as required by statute. Therefore, as to these expenditures, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

### **Political Expenditures from Personal Funds**

16. A candidate who makes political expenditures from the candidate's 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 required to be filed under this title that covers the period in 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. A candidate's failure to comply with this requirement may not be cured by filing a corrected report after the report deadline has passed. Ethics Commission Rules § 20.63(e).

17. In the alternative, a candidate who makes political expenditures from the candidate's personal funds may report the amount expended as a loan and may reimburse those personal funds from political contributions in the amount of the reported loan. ELEC. CODE § 253.0351.
18. The respondent swore that the two expenditures were reimbursements to the respondent for expenditures reported on Schedule F. The respondent did not disclose the original expenditures as loans, or on Schedule G indicating an intent to seek reimbursement, but did include an explanation in the report's memo field stating the expenditures were itemized on Schedule F. Therefore, there is credible evidence of technical or *de minimis* violations of sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules.

### **Required Information on Campaign Finance Reports**

19. Each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
20. 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).
21. Each campaign finance report must also 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).
22. The respondent disclosed contributor names for 30 contributions, that totaled approximately \$31,120, that the respondent stated were political committees, but whose name or acronym was not the name or acronym of a committee filing with the commission. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code with regard to those contributions.
23. As to the remaining three contributions totaling \$1,800, it appears that the respondent disclosed the names or recognized acronyms that were included in the names of political committees that file with the commission. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code with regard to those expenditures.

24. Only one of the payee entries at issue properly disclosed the name or acronym of a committee that files with the commission. Therefore, with regard to the expenditure to Senate District 6 PAC, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code. With regard to the remaining seven expenditures, totaling approximately \$3,075, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.
25. Regarding total political contributions maintained, there is insufficient evidence of a violation of section 254.031(a)(8) of the Election Code.

### **Principal Occupation or Job Title and Employer of Contributors**

26. Each report by a candidate for statewide office in the executive branch or 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 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.
27. The respondent disclosed two contributions totaling \$1,000 for which he failed to disclose the principal occupation or job title and employer. Therefore, there is credible evidence of violations of section 254.0612 of the Election Code with regard to these contributions.

### **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 contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. The respondent also 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 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 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 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 an \$800 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-2908194.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Garnet Coleman, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director