

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CHRISTOPHER RAY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2909208

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 23, 2011, to consider sworn complaint SC-2909208. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.032, 254.031, and 254.154 of the Election Code and section 20.62 of the Ethics Commission Rules, and technical or *de minimis* violations of section 254.151 of the Election Code, 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) did not disclose required information for three political contributions from out-of-state political committees, 2) incorrectly reported total political expenditures, 3) incorrectly reported total political contributions maintained, 4) did not disclose the actual payee for political expenditures, 5) did not disclose candidates supported or opposed or officeholders assisted, and 6) did not timely file an 8-day pre-election report filed in connection with the March 2008 primary election.

III. Facts Supported by Credible Evidence

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

1. The respondent is the campaign treasurer for Gay and Lesbian Victory Fund (GLVF), a general-purpose committee.

Documentation for Out-of-State Committees

2. GLVF's 8-day pre-election reports filed in connection with the November 2007 general election disclosed:
 - a \$2,800 contribution on October 25, 2007, from Gay and Lesbian Victory Fund (Maryland PAC), disclosing an address of, "Washington D.C. 20005," and
 - a \$3,754.88 contribution on October 25, 2007, from People for Progress, disclosing an address of, "Washington D.C. 20005."
3. GLVF's 8-day pre-election report filed in connection with the November 2008 general election disclosed a \$5,000 political contribution from Gay and Lesbian Victory Fund PAC-North Carolina on October 13, 2008, disclosing an address of, "Washington D.C., 20005."
4. None of these contributions disclosed an out-of-state committee identification number and the reports did not include any other out-of-state committee information.
5. In response to the complaint, the respondent stated through his attorney that two of the contributions were from GLVF's Maryland and North Carolina political committees. The respondent stated that he believed that accepting a contribution from an out-of-state committee was acceptable as long as GLVF obtained a copy of the out-of-state committee's statement of organization, and that a copy of that committee's campaign finance report disclosing the contribution was provided to the committee. The respondent swore that the third contributor, People for Progress, was a Texas SPAC filing with the Dallas County Clerk. Dallas County Elections has no record of a committee by that name, nor does the Federal Election Commission (FEC).
6. FEC records returned a record for the "Gay and Lesbian Victory Fund," a qualified non-party committee with an address of 1133 15th Street NW #350, 5th Floor, Washington, DC 20005. However, that committee did not appear to be active during the period at issue.
7. A search of North Carolina State Board of Elections records disclosed a "Gay and Lesbian Victory Fund PAC" filer. That committee disclosed two expenditures totaling \$5,000 to "Gay and Lesbian Victory Fund- Texas PAC" during the period at issue.
8. A search of Maryland State Board of Elections records disclosed a "Gay and Lesbian Victory Fund PAC" filer. That committee disclosed a \$2,800 expenditure on October 25, 2007, to payee "Gay and Lesbian Victory Fund (Texas PAC) (Washington, DC, 20005)" with a note in the "Remarks" section, "Electronic Funds Transfer to out-of-state political committee account."

9. On October 13, 2009, the respondent's attorney submitted a copy of a North Carolina political committee report and statement of organization, "to accompany GLVF's 8-day pre-election report, filed October 27, 2008. . . ." The attached report for Gay and Lesbian Victory Fund, with a mailing address of 1133 15th St. NW #350, Washington, DC 20005, covered a period beginning July 1, 2008, through October 18, 2008, and disclosed two expenditures totaling \$5,000 to payee Gay and Lesbian Victory Fund- Texas PAC on October 13 and 17, 2008.
10. On October 19, 2009, the commission received a copy of the statement of organization for a political committee Gay and Lesbian Victory Fund, with a letter from the committee's chief financial officer indicating that the statement of organization was for the North Carolina committee.

Reporting Political Contributions Maintained and Political Expenditures

11. The complaint alleged that the respondent incorrectly reported total political expenditures on GLVF's 8-day pre-election report filed in connection with the March 2008 primary election, 30-day and 8-day pre-election report filed in connection with the November 2008 general election, and July 2008 and January 2009 semiannual reports. The complaint also alleged that the respondent incorrectly reported total political contributions maintained on all of the reports at issue.
12. In response, the respondent stated that with the exception of one of the reports at issue, total political expenditures and contributions maintained were correct as originally reported and reflected the committee's bank balance at the end of each reporting period.
13. The respondent stated through his attorney that all expenditures were correct as originally reported and that the expenditures disclosed on Schedules I on the reports at issue were for "administrative expenses" and "for activities unrelated to Texas elections." The respondent disclosed the following totals on the reports at issue.
14. GLVF's 8-day pre-election report filed in connection with the March 2008 primary election disclosed:
 - \$0 in total political expenditures of \$50 or less;
 - \$61,200 in total political expenditures;
 - \$61,200 in expenditures disclosed on Schedule F (the schedule to disclose political expenditures from political contributions); and
 - \$5,000 in expenditures disclosed on Schedule I (the schedule to disclose non-political expenditures from political contributions.)

15. GLVF's July 2008 semiannual report disclosed:
 - \$0 in total political expenditures of \$50 or less;
 - \$600 in total political expenditures;
 - \$600 in expenditures disclosed on Schedule F; and
 - \$10,000 in expenditures disclosed on Schedule I.

16. GLVF's 30-day pre-election report filed in connection with the November 2008 general election disclosed:
 - \$0 in total political expenditures of \$50 or less;
 - \$0 in total political expenditures;
 - \$0 in expenditures disclosed on Schedule F; and
 - \$20,000 in expenditures disclosed on Schedule I.

17. GLVF's 8-day pre-election report filed in connection with the November 2008 general election disclosed:
 - \$18.54 in total political expenditures of \$50 or less;
 - \$15,818.54 in total political expenditures;
 - \$15,800 in expenditures disclosed on Schedule F; and
 - \$10,500 in expenditures disclosed on Schedule I.

18. GLVF's January 2009 semiannual report disclosed:
 - \$0 in total political expenditures of \$50 or less;
 - \$5,000 in total political expenditures;
 - \$5,000 in expenditures disclosed on Schedule F; and
 - \$45,074 in expenditures disclosed on Schedule I.

19. The respondent admitted that the 8-day pre-election report filed in connection with the November 2007 general election disclosed an incorrect balance in the space provided to disclose total political contributions maintained. The original report disclosed \$18.39, the respondent filed a correction to this report, disclosing \$333.39, explaining, "a deposit of \$315 made on October 25, 2007 was accounted for as an unitemized contribution but was not included in the bank balance at the end of the reporting period."

20. With regard to the expenditures disclosed on the reports at issue on Schedules I, in a supplemental response the attorney for the respondent explained that GLVF:

[D]oes not have staff dedicated to work in one particular state, nor do they have any offices in the state of Texas or any other assets solely devoted to influencing elections in Texas. All decisions about expenditures in any state are made by a group of employees of the parent 527, and it may be only five or ten minutes of a staffer's time a month, or every six months, to decide to make a contribution to a Texas candidate. Thus, it is difficult, if not impossible, to accurately determine the extent of the overhead expenses each month that are dedicated to Texas political activity. In any event, such expenses would be de minimis.

Reporting Reimbursements to Staff

21. The complaint alleged that the respondent failed to disclose the actual payee for 11 political expenditures totaling \$100,700 on GLVF's 8-day pre-election report filed in connection with the March 2008 primary election, July 2008 semiannual report, 30-day and 8-day pre-election reports filed in connection with the November 2008 general election, and January 2009 semiannual report.
22. Of the total amount at issue (\$100,700), \$90,500 consists of seven expenditures to payee Gay & Lesbian Victory Fund- Operational Fund disclosed by the respondent as non-political expenditures on Schedule I (the schedule provided to disclose non-political expenditures made from political contributions) on the committee's 8-day pre-election reports filed in connection with the March 2008 primary and November 2008 general elections, 30-day pre-election report filed in connection with the November 2008 general election, and the committee's July 2008 and January 2009 semiannual reports. The purposes disclosed for these expenditures included, "Gay & Lesbian Victory Fund- Operational Fund," and "Operational Fund." As to the remaining \$10,200 in expenditures disclosed on Schedule F of the respondent's 8-day pre-election reports filed in connection with the November 2008 general election and January 2009 semiannual report, the respondent disclosed the following payees and purposes:
 - a \$600 expenditure to Houston GLBT Caucus for, "In-kind mail piece for Andres Pereira for Judge;"
 - a \$600 expenditure to Houston GLBT Caucus for, "In-kind mail piece for Judge Steve Kirkland;"
 - a \$4,000 expenditure to Pineda Consulting for, "In-kind contribution for Sheriff Lupe Valdez;" and
 - a \$5,000 expenditure to MSHC Partners for, "In-kind mail pieces for Sheriff Lupe Valdez."

23. In response, the respondent explained that the expenditures to the Gay & Lesbian Victory Fund Operational Fund were non-political administrative expenditures by the committee for “administrative expenses” and “for activities unrelated to Texas elections.”
24. The attorney for the respondent explained that GLVF:
- [C]arr[ies] out [its] activities through multiple bank accounts that allows them to influence elections at the state and local levels, depending on a particular state's laws. These bank accounts are registered in one or more states and operate as independent state PACs, although they are really just a subsidiary bank account of the parent 527. These separate PAC accounts do not have an independent staff, or offices, or even their own EIN number. GLVF has a separate bank account that is registered as a Texas GPAC, although its operations are funded out of a separate operating account that is not registered in Texas. Occasionally, GLVF will deposit donor funds directly into the Texas account, but will transfer those funds to the operating account if necessary to cover salaries and overhead of the organization as a whole.
25. As to the remaining four expenditures, the respondent stated that these expenditures were correct as originally disclosed.

Candidates Supported or Opposed and Officeholders Assisted

26. The complaint alleged that the respondent failed to disclose candidates supported or officeholders assisted on GLVF’s 8-day pre-election reports filed in connection with the March 2008 primary and runoff elections, 8-day pre-election report filed in connection with the May 2008 general election, July 2008 semiannual report, 8-day pre-election report filed in connection with the November 2008 general election, 30-day and 8-day pre-election reports filed in connection with the May 2009 general election, and January and July 2009 semiannual reports.
27. In response to the complaint, the respondent acknowledged his failure to identify each of the names of candidates or officeholders supported, opposed or assisted on the cover sheets of the reports at issue. The political expenditures to support candidates or officeholders were disclosed on Schedule F of the reports at issue, but not in the “Committee Activity” section of the report’s cover pages. The respondent filed corrections to the reports at issue.

Timely Filing of Report

28. The complaint alleged that the respondent failed to timely file GLVF's 8-day pre-election report filed in connection with the March 2008 primary election. The report was filed March 7, 2008. The 8-day pre-election report for the March 2008 primary election was due on February 25, 2008.

IV. Findings and Conclusions of Law

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

Documentation for Out-of-State Committees

1. A candidate, officeholder, or political committee that accepts political contributions totaling \$500 or less from an out-of-state political committee shall include as part of the report filed under chapter 254 of the Election Code that covers the reporting period in which the contribution is accepted the same information for the out-of-state political committee required for general-purpose committees by sections 252.002 and 252.003 of the Election Code (pertaining to the contents of a campaign treasurer appointment), or a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee. ELEC. CODE § 253.032(e).
2. "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).
3. The respondent was required to include a certified copy of the out-of-state committees' statements of organization for the contributions from GLVF's Maryland and North Carolina Committees. The respondent did not include that information on GLVF's original reports for the contributions at issue. Therefore, with regard to the contributions from the GLVF's Maryland and North Carolina contributions there is credible evidence of violations of section 253.032 of the Election Code. With regard to the contribution from People for Progress, there is insufficient evidence of a violation of section 253.032 of the Election Code.

Reporting Political Contributions Maintained and Political Expenditures

4. Each campaign finance report must also include the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
5. 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). A *de minimis* error in calculating or reporting a cash balance under subsection 254.031(a)(8) of the Election Code is not a violation. ELEC. CODE § 254.031(a-1).
6. The commission stated in Ethics Advisory Opinion No. 132 (EAO 132) that expenditures for the administrative expenses of a general-purpose committee are political expenditures. Ethics Advisory Opinion No. 132 (1993).
7. General-purpose political committees are not required to report political expenditures made in connection with out-of-state campaigns, officeholders, or measures on reports filed under chapter 254 of the Texas Election Code. Ethics Advisory Opinion No. 208 (1994).
8. The respondent stated that all total expenditures were correct as originally reported. Although the respondent stated that the expenditures at issue were for “administrative expenses” and “for activities unrelated to Texas elections” the evidence indicated that at least some portion of these amounts were paid to cover administrative expenses in Texas.
9. Because at least some portion of the administrative expenditures were incorrectly disclosed and no portion of that amount was included in the political expenditures totals on the reports at issue, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code.
10. The total political contributions maintained disclosed on the committee’s 8-day pre-election report filed in connection with the November 2007 general election was incorrect as originally reported, due to an accounting error. Thus, this report did not disclose the correct amount of total political contributions maintained. However, given the amount at issue, the error was, in context, *de minimis*. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code. With regard to the remaining reports, there is insufficient evidence of a violation of section 254.031(a)(8) of the Election Code.

Reporting Reimbursements to Staff

11. A campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
12. Political expenditures 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: 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 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 above, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows: 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; the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and 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.
13. The commission stated in Ethics Advisory Opinion No. 132 (EAO 132) that expenditures on the administrative expenses of a general-purpose committee are political expenditures. Ethics Advisory Opinion No. 132 (1993).
14. General-purpose political committees are not required to report political expenditures made in connection with out-of-state campaigns, officeholders, or measures on reports filed under chapter 254 of the Texas Election Code. Ethics Advisory Opinion No. 208 (1994).
15. The respondent stated that the \$90,500 in expenditures to payee “Gay & Lesbian Victory Fund- Operational Fund” were correct as originally reported. For the most part, these expenditures appear to be funds used for expenditures outside of Texas, and as such, were not required to be reported. However, a small part of this total amount was paid to cover administrative expenditures in connection with Texas activity and should have been disclosed. Although the respondent has not corrected the reports to detail those political expenditures, based on the available evidence, they appear to be small amounts. Nevertheless, 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 with regard to these expenditures.

16. With regard to the remaining expenditures, the reports disclosed that the expenditures were made to the payees as in-kind contributions for consulting and mail pieces for candidates. Therefore, with regard to these four 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.

Candidates Supported or Opposed and Officeholders Assisted

17. Each report by a campaign treasurer of a general-purpose committee must include the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, measure, or classification by party of candidates, the name of each identified officeholder or classification by party of officeholders assisted by the committee during the reporting period. ELEC. CODE § 254.151(4) and (5).
18. Although the committee's reports disclosed political expenditures to candidates and officeholders on Schedule F, the reports did not disclose the information in the "Committee Activity" section of the reports' cover pages. However, the information was readily apparent to anyone who may have viewed the reports. Therefore, there is credible evidence of technical or *de minimis* violations of sections 254.151(4) and 254.151(5) of the Election Code.

Timely Filing of Report

19. In addition to other required reports, for each election in which a general-purpose committee is involved, the committee's campaign treasurer shall file two reports. ELEC. CODE § 254.154(a). The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day and covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.154(c).
20. The report was filed late. The commission previously considered the late report in the administrative process and imposed a \$1,500 administrative penalty, which was timely paid by the committee. Therefore, there is credible evidence of a violation of section 254.154(c) 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 a campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. The respondent also acknowledges that the proper way to report staff reimbursement is set out in section 20.62 of the Ethics Commission Rules. The respondent further acknowledges that each campaign finance report must include the total amount of all political expenditures made during the reporting period. The respondent acknowledges that if a political committee accepts political contributions totaling more than \$500 in a reporting period from an out-of-state political committee, the campaign treasurer shall include as part of its report that covers the reporting period in which the contributions are accepted the information required by section 253.032 of the Election Code. The respondent acknowledges that each campaign finance report filed by the campaign treasurer of a general-purpose committee must include the name of each identified candidate supported or opposed by the committee, and officeholder assisted by the committee, indicating whether the committee supports or opposes each listed candidate. The respondent also acknowledges that in addition to other required reports, for each election in which a general-purpose committee supports or opposes a candidate or measure, the committee's campaign treasurer shall file two reports. The second report must be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. 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 \$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-2909208.

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

Christopher Ray, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director