

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RAFAEL ANCHIA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2910264

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 7, 2010, to consider sworn complaint SC-2910264. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.032, 253.035(a), 254.031, 254.035, and 254.0612 of the Election Code and section 20.29 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) failed to properly disclose the total amount of political contributions maintained in semiannual reports filed from January 2008 through July 2009, as well as in the 30-day and 8-day pre-election reports for the November 2008 election,¹ 2) failed to disclose in semiannual reports filed from January 2008 through July 2009, as well as in the 8-day pre-election report for the November 2008 election, the full name of persons that made political contributions, 3) failed to disclose in semiannual reports filed from January 2008 through July 2009, as well as in the 8-day pre-election report for the November 2008 election, the full name of persons to whom political expenditures were made, 4) improperly disclosed political expenditures as reimbursements in semiannual reports filed in January 2008, July 2008, and July 2009, 5) failed to include in the January 2008 semiannual report required information for political expenditures for travel outside of the state of Texas, 6) failed to include in semiannual reports filed in July 2008, January 2009, and July 2009 the principal occupation or job title and the full name of the employer for individuals who contributed \$500 or more during the reporting period, 7) failed to timely report, and disclosed improper dates for, political expenditures disclosed in the July 2008 semiannual report, 8) failed to include in the January 2009 semiannual report and the 30-day pre-election report for the November

¹ With regard to the allegations that the respondent failed to disclose the total amount of political contributions maintained, the sworn complaint based the allegations on a calculation wherein total political contributions are added to the previous contribution balance, and then total political expenditures and in-kind contributions are subtracted from that amount.

2008 election required information for contributions from out-of-state political committees, 9) failed to timely file the 30-day pre-election report for the November 2008 election, 10) accepted political contributions from corporations during the reporting periods for the January 2008, July 2008, January 2009, and July 2009 semiannual reports, 11) accepted from a contributor in the January 2008 semiannual reporting period political contributions in cash that in the aggregate exceeded \$100, and 12) converted political contributions to personal use.²

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 103.
2. On January 15, 2008, the respondent filed the semiannual report that disclosed:
 - \$105,548.12 in total political contributions,
 - \$69,568.86 in total political expenditures,
 - \$62,999.42 in total political contributions maintained,
 - Political contributions from three persons totaling \$3,000, for which the complaint alleged the respondent failed to disclose the full name of the contributors,³
 - Political expenditures to four individuals totaling approximately \$6,910, which the complaint alleged were improperly disclosed as reimbursements,⁴
 - Five expenditures totaling approximately \$2,020, for which the complaint alleged that the respondent failed to disclose the full name of the payees,⁵

² With regard to the allegations that the respondent converted political contributions to personal use, the political expenditures at issue in the sworn complaint disclosed as a purpose personal meals and a locker rental.

³ The respondent disclosed the full name of the contributor, or a portion of the contributor's name that substantially complies with the reporting requirements, for two political contributions at issue. The respondent disclosed "IBAT PAC" for Independent Bankers Association of Texas Political Action Committee. "IBAT PAC" is not the full name of and does not appear in the political committee name for the contributor at issue.

⁴ Schedule F (used for reporting political expenditures) disclosed a political expenditure of \$6,032.71 to an individual for the purpose of "Anchia Holiday Card and postage." The individual's Internet website indicates that he is a photographer in Dallas, Texas. The other three political expenditures at issue did not exceed the \$5,000 threshold for itemization as a loan under section 20.62 of the Ethics Commission Rules. The disclosed purposes of these three political expenditures were "Sponsorship for 2 students to participate in Primary States for Obama Campaign (\$300/student)," "Donation for Casa Guanajuato," and "Kessler Chrstmas [sic] Hayride donation." Schedule E (used for reporting loans) did not disclose any loans.

⁵ Schedule I (used for disclosing nonpolitical expenditures made from political contributions) disclosed four expenditures totaling approximately \$1,990 to "TDCJ," as well as a political expenditure of \$30 to "TASB." Based on the disclosed addresses in the reports at issue, the payees are the Texas Department of Criminal Justice and the Texas Association of School Boards. The Texas Association of School Boards is a domestic non-profit corporation that has filed with the Texas Secretary of State (SOS) an assumed name certificate for "TASB."

- A political expenditure of \$28 to Mears Transportation in Orlando, Florida, for “Airport transportation while in attendance at NALEO Annual Conference and Board Meeting,”
- A political expenditure of \$118.30 to Southwest Airlines Co. for airfare for “Travel from NHCSL meeting in Miami for Rep. Anchia.” The respondent disclosed the expenditure on Schedule F and Schedule T (used for reporting in-kind contributions or political expenditures for travel outside of Texas), and disclosed Fort Lauderdale as the departure city and Dallas as the destination city,
- An expenditure of \$12 on Schedule I to Hess in Orlando, Florida, for “fuel charge while in attendance at NALEO Annual Conference and Board Meeting,”⁶
- A political contribution of \$50 from Jim Arnold & Associates, which the complaint alleged was a prohibited corporate contribution,⁷ and
- A political contribution of \$1,077 from “Cash Donations Rec’d On-Site at December 6th Fundraiser.”

3. On July 14, 2008, the respondent filed the semiannual report that disclosed:

- \$26,562.50 in total political contributions,
- \$28,852.48 in total political expenditures,
- \$58,781.29 in total political contributions maintained,
- A political contribution of \$500 from an individual that did not include the principal occupation or job title and the full name of the employer for the contributor,
- Political contributions from three persons totaling \$1,800, for which the complaint alleged the respondent failed to disclose the full name of the contributors,⁸
- Political expenditures to two individuals totaling approximately \$500, which the complaint alleged were improperly disclosed as reimbursements,⁹

⁶ The complaint included additional allegations that the respondent failed to disclose required information for travel outside of the state of Texas for political expenditures that disclosed a payee address in Louisiana and Minnesota. However, the complaint did not include evidence to support the allegations.

⁷ SOS records do not disclose an entity by the listed name. Based on the address information included in the report at issue, the contributor appears to be Arnold Public Affairs; however, SOS records do not disclose an entity by that name.

⁸ The respondent disclosed the full name for Q PAC. The respondent disclosed “RAMPAC” for Southwestern Research & Medical PAC. “RAMPAC” is not the full name of and does not appear in the political committee name for the contributor at issue. The respondent also disclosed a political contribution from “TAIFAPAC.” The disclosed address for the contribution matches the address for the Texas Association of Insurance and Financial Advisors Political Action Committee.

⁹ Schedule F disclosed a political expenditure of \$85 to the respondent’s spouse for the purpose of “Reimbursement for half (\$85) of the P.O. Box rental fee (\$170) paid with personal fund 6/11/2008,” and a political expenditure of \$412.16 to an individual for the purpose of “Precinct 3000 Expenses regarding GOTV and Early Vote messages for Primary.” Schedule G (used for reporting political expenditures from personal funds) disclosed a political expenditure of \$85 to the United States Postal Service for “Payment of P.O. Box Rental; \$85 (half cost) will be reimbursed,” and indicated that the expenditure was subject to reimbursement. The respondent’s attorney stated that the respondent paid his wife for half the cost of her personal post office box, which he used for candidate/officeholder purposes during the period at issue.

- Four political expenditures totaling approximately \$2,050, which the complaint alleged were not timely disclosed,¹⁰
 - Four political expenditures totaling approximately \$4,260, for which the complaint alleged the respondent failed to disclose the full name of the payee,¹¹
 - A political contribution of \$250 from North Texas Commission - Tarrant Regional Transportation Coalition, which the complaint alleged was a prohibited corporate contribution, and
 - A political expenditure of \$5.66 to McDonald's for "lunch for Rep. Anchia," which the complaint alleged was a conversion by the respondent of political contributions to personal use.
4. On October 7, 2008, the respondent filed a 30 day pre-election report for the November 2008 election that disclosed:
- \$10,864.13 in total political contributions,
 - \$34,069.12 in total political expenditures,
 - \$22,568.33 in total political contributions maintained, and
 - A political contribution of \$264.13 from "ACTBLUE," for which the complaint alleged the respondent was required to include out-of-state political committee information.¹²
5. Texas Ethics Commission records indicate that the 30-day pre-election report for the November 2008 election was filed at midnight on the report's due date.

¹⁰ The respondent disclosed a \$250 political expenditure on March 26, 2008, for "Payment of Inv. 2007-36A/12/17/2007 regarding Photography Services for December 6 2007 Event," a \$500 political expenditure on January 18, 2008, for "Final payment for food for December 6 2007 Event," and a \$250 political expenditure on June 30, 2008, for "Invoices 2575 and 2571 regarding voter education calls for May elections." The respondent also disclosed a \$1,050 political expenditure on April 4, 2008, for "Replacement payment for Checks 9939961007 abd [sic] 1010 regarding October and December Events." The respondent previously disclosed in his January 2008 semiannual report political expenditures totaling approximately \$1,050 to the same payee for October and December 2007 events.

¹¹ For two political expenditures with a purpose of "Contribution," the respondent disclosed "TEXVAC" for Texas Values in Action Coalition, a general-purpose political committee. "TEXVAC" is not the full name of and does not appear in the political committee name for the payee at issue. SOS records disclose that TEXVAC: The Texas Values in Action Coalition was a domestic nonprofit corporation that filed articles of incorporation in February 2005 and that forfeited its registration in February 2008. The respondent also disclosed two expenditures on Schedule I to "TDCJ."

¹² ActBlue Texas is a general-purpose committee that has a campaign treasurer appointment on file with the commission. The respondent did not disclose a Federal Election Commission (FEC) identification number for the political contribution.

6. On October 26, 2008, the respondent filed an 8-day pre-election report for the November 2008 election that disclosed:
- \$11,825.00 in total political contributions,
 - \$4,856.92 in total political expenditures,
 - \$28,493.15 in total political contributions maintained,
 - A political contribution of \$750 from “TNLA PAC,” for which the complaint alleged the respondent failed to disclose the full name of the contributor,¹³ and
 - A political expenditures of \$200 to “KNU,” for which the complaint alleged the respondent failed to disclose the full name of the payee.¹⁴
7. On January 15, 2009, the respondent filed the semiannual report that disclosed:
- \$117,345.18 in total political contributions,
 - \$56,028.69 in total political expenditures,
 - \$94,681.57 in total political contributions maintained,
 - Three political contributions totaling approximately \$2,750, for which the complaint alleged the respondent was required to include out-of-state political committee information,¹⁵
 - A political contribution of \$1,000 from two individuals, which disclosed “Unknown” for the principal occupation or job title,¹⁶
 - Political contributions from 13 persons totaling approximately \$9,250, for which the complaint alleged the respondent failed to disclose the full name of the contributors,¹⁷

¹³ Texas Nursery and Landscape Association Political Action Committee (TNLA-PAC) is a general-purpose political committee on file with the commission. The respondent included a recognized portion of the political committee’s name that substantially complies with the reporting requirements.

¹⁴ Based on the payee address information disclosed by the respondent, the payee appears to be Kessler Neighbors United, which the respondent’s attorney confirmed. Records of the SOS do not show that Kessler Neighbors United has registered an assumed name.

¹⁵ The respondent disclosed political contributions from “Bank of America Corporation PAC,” “Merck PAC,” and “Sprint Nextel Political Action Committee.” The three political committees at issue file with the FEC and do not have a campaign treasurer appointment on file with the commission. The respondent did not disclose an FEC identification number for the contributions, and did not otherwise include the information required by section 253.032 of the Election Code and section 20.29 of the Ethics Commission Rules.

¹⁶ The respondent disclosed two individuals in the same contributor entry and disclosed employer information for the entry.

¹⁷ The respondent disclosed the full name of the contributor, or a portion of the contributor’s name that substantially complies with the reporting requirements, for five political contributions at issue, one of which filed with the FEC. The respondent disclosed “BCBSTX PAC” for Blue Cross and Blue Shield of Texas, a Division of Health Care Service Corporation, State Political Action Committee, “NAIFA - Texas PAC Political Fund” for National Association of Insurance and Financial Advisors - Texas PAC, “RAMPAC” for Southwestern Research & Medical PAC, “TAPTP

- A political expenditure of \$200 to “KNU” and a political expenditure of \$547.72 to “TDCJ,” for which the complaint alleged the respondent failed to disclose the full name of the payee, and
 - A political contribution of \$250 from Living Earth, which the complaint alleged was a prohibited corporate contribution.¹⁸
8. On October 29, 2010, after receiving notice of the sworn complaint allegations, the respondent filed a corrected January 2009 semiannual report that added the FEC identification number for the three out-of-state political committee contributions at issue.
9. On July 15, 2009, the respondent filed the semiannual report that disclosed:
- \$11,905.26 in total political contributions,
 - \$43,787.11 in total political expenditures,
 - \$57,926.42 in total political contributions maintained,
 - A political contribution of \$1,000 from an individual, which disclosed “unknown” for the employer,¹⁹
 - Political contributions from three persons totaling approximately \$2,000, for which the complaint alleged the respondent failed to disclose the full name of the contributors,²⁰
 - A political expenditure of \$25 to an individual for the purpose of “Thank you gift for [an individual],” which the complaint alleged was improperly disclosed as a reimbursement,
 - A political expenditure of \$1,250 to “TEXVAC,” for which the complaint alleged the respondent failed to disclose the full name of the payee,
 - A political contribution of \$500 from Eric Wright & Associates, which the complaint alleged was a prohibited corporate contribution,²¹ and

PAC” for Texas Association of Property Tax Professionals PAC, “TBA Bank PAC - State” for Texas Bankers Association Bankers Political Action Committee, “TFSA PAC” for Texas Financial Services Association PAC, “TSA-PAC” for Texas Society Of Anesthesiologists Political Action Committee, and “UPSPAC” for United Parcel Service Inc. PAC. For these eight political contributions at issue, the respondent did not disclose the full name of the contributor, or a portion of the contributor’s name that substantially complies with the reporting requirements.

¹⁸ Based on the disclosed contributor name and address, the contribution at issue appears to be from Living Earth Technology Company. SOS records show that The LETCO Group, LLC is a foreign limited liability company that filed an assumed named certificate for Living Earth Technology Company. SOS records disclose that the entity’s sole governing person is a Delaware limited liability company.

¹⁹ The respondent disclosed principal occupation or job title information for the political contribution.

²⁰ The respondent disclosed the full political committee name for Good PAC. The respondent disclosed “IBAT PAC” for Independent Bankers Association of Texas Political Action Committee and “NAIFA - Texas PAC Political Fund” for National Association of Insurance and Financial Advisors - Texas PAC. “IBAT PAC” and “NAIFA” are not the full name of and do not appear in the political committee names for the contributors at issue.

- The following political expenditures, which the complaint alleged were conversions by the respondent of political contributions to personal use:
 - \$3.84 to 7-Eleven for “Rafael Anchia meal,”
 - \$14.87 to Austin-Bergstrom International Airport for “Dinner for Rafael Anchia,”
 - \$8.35 to Capitol Grill for “Rafael Anchia meal,”
 - \$2.58 to Capitol Grill for “Rafael Anchia meal,”
 - \$8.35 to Capitol Grill for “Rafael Anchia lunch,”
 - \$15.49 to Cissi’s Market for “Rafael Anchia meal,”
 - \$15.65 to Cuatro’s for “Rafael Anchia lunch,”
 - \$3.73 to Starbucks Coffee Company for “Rafael Anchia breakfast,”
 - \$11.45 to Starbucks Coffee Company for “Rafael Anchia breakfast,” and
 - \$108 to UT Recreational Sports for “Locker rental - 2009 Session.”
10. In response to the sworn complaint, the respondent submitted an affidavit in which he denied the allegations that he failed to disclose the total amount of political contributions maintained in the reports at issue and swore that the contribution balances were correctly reported as the balance in the campaign bank account. The respondent denied the allegations that he failed to properly disclose the full name of persons that made political contributions in the reports at issue. The respondent denied the allegations that in semiannual reports filed from July 2008 through July 2009 he failed to disclose the full name of persons to whom political expenditures were made. The respondent denied the allegations that he improperly disclosed political expenditures as reimbursements in the reports at issue and swore that each of the political expenditures was properly disclosed. The respondent denied the allegations that he failed to include required information for political expenditures for travel outside of the state of Texas in the January 2008 semiannual report and swore that all expenditures for actual travel were properly reported. The respondent admitted that his July 2008 semiannual report failed to include the full name of the employer for a contribution at issue, and that his July 2009 semiannual report failed to include the principal occupation or job title for a contribution at issue. The respondent denied the allegations that he failed to timely report, and disclosed improper dates for, political expenditures disclosed in his July 2008 semiannual report. The respondent swore that it was the campaign’s belief that “Act Blue is both a federal and a state PAC.” The respondent swore that it was the campaign’s understanding that the Bank of America Corporation PAC, Merck PAC, and Sprint and Nextel Political Action Committee PAC “were both federal and state PACs and therefore, the out-of-state ID number did not need to be reported.”²²

²¹ SOS records show that Eric Wright & Associates, LLC was formed July 1, 2010, as a limited liability company with no corporate members.

²² After submitting his affidavit responding to the sworn complaint allegations, the respondent filed a corrected January 2009 semiannual report that added the FEC identification number for the three political contributions at issue.

11. With regard to the allegations that the respondent accepted political contributions from corporations, the respondent swore that “It is [his] understanding that Jim Arnold & Associates [sic] is an entity permitted to give contributions under Texas law.”²³ The respondent swore that his July 2008 semiannual report “mistranscribed” a political contribution from an individual as a political contribution from North Texas Commission - Tarrant Regional Transportation Coalition, and that the report would be corrected to list the individual as the donor.²⁴ With regard to the political contribution from Living Earth, the respondent swore that, “When accepting the check, it was believed that it was from a PAC relating to Living Earth. However, the campaign has been unable to verify this fact and has therefore returned the check.”²⁵ The respondent swore that, “The campaign is informed that Eric Wright and Associates is an entity that can legally give political contributions under Texas law.”
12. With regard to the allegation that the respondent accepted from a contributor in the January 2008 semiannual reporting period political contributions in cash that in the aggregate exceeded \$100, the respondent denied the allegation and swore that, “All cash was raised in increments well below \$50.00 as the event was intended to provide an opportunity for small level donors to participate in the campaign and no individual contribution was accepted in cash over the amount of \$50.00.” The respondent also provided a supplemental affidavit, in which he swore:
- All guests to the small donor events were informed that cash contributions could not exceed and [sic] aggregate of \$100.00 and no individual donation exceeded \$50.00 in cash. Furthermore, there was not more than one small donor cash event per cycle in which the same guests were invited. After reviewing the donor lists for all cash event donations, I am not, nor is my campaign, aware of any individual contribution that, in aggregate, exceeded \$100.00 in cash within a single reporting period.
13. With regard to the allegations that the respondent converted political contributions to personal use by purchasing meals, the respondent denied the allegation and swore that all of the expenditures at issue were in connection with “political activities or with my officeholder duties.”

²³ The respondent’s January 2008 semiannual report disclosed a political contribution from Jim Arnold & *Associations* (emphasis added).

²⁴ To date, the respondent has not filed a corrected July 2008 semiannual report.

²⁵ The respondent’s January 2010 semiannual report disclosed a political expenditure of \$250 to Living Earth for “Return of funds from undetermined contribution received 12/26/2008.”

14. With regard to the allegation that the respondent converted political contributions to personal use by making an expenditure for a locker rental, the respondent denied the allegation and swore that, "This was a permissible expenditure related to officeholder activities for a locker rental at a gym used during the legislative session, which would not have otherwise been necessary but for my service in the legislature."

IV. Findings and Conclusions of Law

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

Disclosure of Political Contributions and Political Expenditures

1. 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).
2. 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. *Id.* § 254.031(a)(3).
3. Each 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. *Id.* § 254.031(a)(8).
4. The complaint alleged that the respondent failed to disclose the full contributor name for 23 political contributions. For 10 political contributions at issue totaling approximately \$7,000 the respondent disclosed the full name of the person making the political contribution, or a portion of the contributor's name that substantially complies with section 254.031 of the Election Code. Therefore, as to 10 political contributions at issue, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code. For 13 political contributions at issue totaling approximately \$9,800 the respondent failed to disclose the full contributor name, or a portion of the contributor's name that substantially complies with the reporting requirements. Therefore, as to 13 political contributions at issue, there is credible evidence of violations of section 254.031(a)(1) of the Election Code.
5. The complaint alleged that the respondent failed to disclose the full payee name for 13 political expenditures. For seven political expenditures totaling approximately \$4,300 to the Texas Department of Criminal Justice, three political expenditures totaling approximately \$3,750 to Texas Values in Action Coalition, and a \$30 political expenditure to the Texas

Association of School Boards, the respondent disclosed payee information that complies with the reporting requirements in section 254.031 of the Election Code. Therefore, as to 11 political expenditures at issue, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code. For two political expenditures totaling approximately \$400, for which the respondent disclosed “KNU” as the payee, the respondent failed to disclose the full payee name. Therefore, as to two political expenditures at issue, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.

6. The respondent denied the allegations that he failed to disclose the total amount of political contributions maintained in the reports at issue and swore that the contribution balances were correctly reported as the balance in the campaign bank account. There is insufficient evidence of a violation as to section 254.031(a)(8) of the Election Code.

Reporting Political Expenditures as Reimbursements

7. Political expenditures made out of personal funds by a staff member of a candidate, officeholder, or political committee with the intent to seek reimbursement from the candidate, officeholder, 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.

Ethics Commission Rules § 20.62(a).

8. 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(b).

9. The complaint alleged that the respondent improperly disclosed seven political expenditures at issue as reimbursements to staff members. The respondent swore that each political expenditure at issue was properly disclosed and the evidence is insufficient to show that any of the political expenditures at issue were reimbursements rather than political expenditures to the disclosed payees. As to the expenditure to the respondent's spouse, the evidence indicates the payment was properly disclosed on Schedule F as a payment to his spouse. Therefore, with regard to six political expenditures at issue, there is insufficient evidence of a violation of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules. With regard to the payment to the respondent's spouse, 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 for Travel Outside of the State of Texas

10. The description of a political expenditure for travel outside of the state of Texas must provide the following:
 - (1) The name of the person or persons traveling on whose behalf the expenditure was made;
 - (2) The means of transportation;
 - (3) The name of the departure city or the name of each departure location;
 - (4) The name of the destination city or the name of each destination location;
 - (5) The dates on which the travel occurred; and
 - (6) The campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event.

Ethics Commission Rules § 20.61(b).

11. The respondent's January 2008 semiannual report disclosed on Schedule F and Schedule T a political expenditure of \$118.30 for airfare for travel from Fort Lauderdale to Dallas and included the information required by section 254.031(a)(3) of the Election Code and section 20.61(b) of the Ethics Commission Rules. The respondent also disclosed on Schedule F two political expenditures totaling approximately \$40 for airport transportation and a fuel charge related to attendance at a conference in Orlando. The airport transportation and fuel charge are not travel outside of the state of Texas for purposes of section 20.61(b) of the Ethics Commission Rules. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.61(b) of the Ethics Commission Rules with regard to travel outside of the state of Texas.

Principal Occupation or Job Title and Employer Information for Contributors

12. In addition to the contents required by sections 254.031 and 254.061 of the Election Code, each report by a candidate for a statewide office in the executive branch or 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. (The complaint alleged a violation of section 254.0912 of the Election Code, which applies to officeholders, but the respondent was a candidate during the period at issue, so section 254.0612 of the Election Code is the appropriate provision).
13. The respondent failed to include in his July 2008 semiannual report the principal occupation or job title and the full name of the employer for a \$500 political contribution from an individual. The respondent failed to include in his January 2008 semiannual report the principal occupation or job title for a \$1,000 political contribution from two individuals. The respondent failed to include in his July 2008 semiannual report the full name of the employer for a \$1,000 political contribution from an individual. Therefore, there is credible evidence of violations of section 254.0612 of the Election Code.

Timeliness of the 30-Day Pre-Election Report

14. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. *Id.* § 254.064(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day and covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b). 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.* § 254.064(c).
15. The deadline for filing a report electronically with the commission as required by this chapter is midnight on the last day for filing the report. *Id.* § 254.037(b).
16. The respondent filed his 30-day pre-election report for the November 2008 election at midnight on the last day for filing the report. Therefore, there is credible evidence of no violation of section 254.064(b) of the Election Code.

Timeliness of Reporting, and Disclosure of Proper Dates for Political Expenditures

17. For purposes of reporting under this chapter, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure, except as provided by subsection (b). *Id.* § 254.035(a).
18. If the character of an expenditure is such that under normal business practice the amount is not disclosed until receipt of a periodic bill, the expenditure is not considered made until the date the bill is received. *Id.* § 254.035(b).
19. The complaint alleged that the respondent failed to timely report, and disclosed improper dates for, four political expenditures disclosed in the respondent's July 2008 semiannual report. The respondent disclosed a political expenditure of \$250 on March 26, 2008, for payment of an invoice regarding photography services for a December 6, 2007, event, as well as a political expenditure of \$500 on January 18, 2008, for a final payment for food for a December 6, 2007, event. Based on the respondent's disclosure and normal business practices, the evidence indicates that the respondent could have determined the amount of these political expenditures at the time of contracting for the services, or, otherwise, prior to the end of the January 2008 semiannual reporting period. Therefore, there is credible evidence of violations of sections 254.031(a)(3) and 254.035 of the Election Code with regard to these political expenditures.
20. The respondent disclosed a political expenditure of \$250 on June 30, 2008, for invoices relating to "voter education calls for May elections." The respondent denied the allegation that the expenditure was improperly disclosed and the evidence is inconclusive as to the date that the amount of the political expenditure was readily determinable. There is insufficient evidence of a violation of sections 254.031(a)(3) and 254.035 of the Election Code with regard to the expenditure.
21. The respondent disclosed in his July 2008 semiannual report a \$1,050 political expenditure on April 4, 2008, for the purpose of replacing checks previously issued to the payee for expenses related to October and December 2007 events. The respondent previously disclosed on his January 2008 semiannual report political expenditures totaling approximately \$1,050 to the payee for October and December 2007 events. The respondent denied the allegation that the expenditure was improperly disclosed and the evidence does not indicate that the respondent disclosed an improper date for the payment. Therefore, there is credible evidence of no violation of sections 254.031(a)(3) and 254.035 of the Election Code with regard to the expenditure.

Out-of-State Political Committee Information

22. 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. *Id.* § 251.001(15).
23. If an out-of-state committee decides to file a campaign treasurer appointment under chapter 252, at the time the appointment is filed the committee becomes subject to this title to the same extent as a political committee that is not an out-of-state committee. *Id.* § 251.005(b).
 24. In a reporting period, a candidate, officeholder, or political committee may not knowingly accept political contributions totaling more than \$500 from an out-of-state political committee unless, before accepting a contribution that would cause the total to exceed \$500, the candidate, officeholder, or political committee, as applicable, receives from the out-of-state committee a written statement, certified by an officer of the out-of-state committee, listing the full name and address of each person who contributed more than \$100 to the out-of-state committee during the 12 months immediately preceding the date of the contribution, or a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission (FEC) and certified by an officer of the out-of-state committee. *Id.* § 253.032(a). A candidate, officeholder, or political committee shall include the statement or copy required by subsection (a) as a part of the report filed under chapter 254 that covers the reporting period to which subsection (a) applies. *Id.* § 253.032(d).
 25. 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 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, or a copy of the out-of-state committee's statement of organization filed as required by law with the FEC and certified by an officer of the out-of-state committee. *Id.* § 253.032(e).
 26. 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 FEC 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 FEC. Ethics Commission Rules § 20.29(a).
 27. The respondent accepted a political contribution of \$264.13 from ActBlue Texas. ActBlue Texas had a campaign treasurer appointment on file with the commission at the time of the political contribution. Therefore, the respondent was not required to disclose the information required by section 252.032 of the Election Code and section 20.29 of the Ethics Commission Rules. There is credible evidence of no violation of section 252.032 of the Election Code and section 20.29 of the Ethics Commission Rules with regard to this political contribution.

28. The respondent accepted three political contributions totaling approximately \$2,750 from out-of-state political committees and failed to include in his original January 2009 semiannual report the information required by section 252.032 of the Election Code and section 20.29 of the Ethics Commission Rules. Although the respondent corrected the report to disclose the FEC identification numbers for the out-of-state political committees, the information was not disclosed when the report was originally due. Therefore, with regard to the three political contributions at issue, there is credible evidence of violations of section 252.032 of the Election Code and section 20.29 of the Ethics Commission Rules.

Political Contributions from Corporations

29. A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by subchapter D of title 15 of the Election Code. ELEC. CODE § 253.094(a). This subchapter applies only to corporations that are organized under the Texas Business Corporation Act, the Texas Non-Profit 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.
30. A person may not knowingly accept a political contribution the person knows to have been made in violation of this chapter. *Id.* § 253.003(b).
31. In order to show a violation of section 253.003(b) 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.
32. A limited liability company owned in whole or in part by a corporation is subject to the restrictions in Election Code chapter 253, subchapter D. Ethics Advisory Opinion No. 383 (1997).
33. The respondent's July 2008 semiannual report disclosed a political contribution of \$250 from North Texas Commission - Tarrant Regional Transportation Coalition. The respondent admitted that the political contribution was actually from an individual, but was "mistranscribed" on the report. Therefore, there is credible evidence of no violation of sections 253.003(b) and 253.094 of the Election Code. There is credible evidence of a violation of section 254.031(a)(1) of the Election Code as to the political contribution for disclosing the wrong contributor name.
34. The respondent's January 2009 semiannual report disclosed a political contribution of \$250 from Living Earth. The respondent swore that he believed the check was from a political committee related to Living Earth at the time he accepted the political contribution. The respondent swore that he has been unable to verify the source of the political contribution and has returned the contribution. SOS records do not show that Living Earth Technology Company, a foreign limited liability company, was owned in whole or in part by an entity

prohibited from making political contributions in Texas. Therefore, with regard to the political contribution at issue, there is insufficient evidence of a violation of sections 253.003(b) and 253.094 of the Election Code.

35. The respondent disclosed a political contribution of \$50 from Jim Arnold & Associates on his January 2008 semiannual report and a political contribution of \$500 from Eric Wright & Associates on his July 2009 semiannual report. The respondent swore that it is his understanding that both entities are legally allowed to make political contributions under Texas law. There is no evidence to refute the respondent's assertion as to his understanding. The evidence is inconclusive as to the source of the disclosed political contribution from Jim Arnold & Associates. Therefore, with regard to the political contribution from Jim Arnold & Associates, there is insufficient evidence of a violation of sections 253.003(b) and 253.094 of the Election Code. Eric Wright & Associates is a limited liability company with no corporate partners, and was not incorporated at the time of the political contribution at issue. Therefore, with regard to the political contribution from Eric Wright & Associates, there is credible evidence of no violation of sections 253.003(b) and 253.094 of the Election Code.

Cash Political Contributions

36. A candidate, officeholder, or specific-purpose committee may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. *Id.* § 253.033.
37. The respondent's January 2008 semiannual report disclosed that the respondent accepted \$1,077 in cash political contributions at a fundraising event. The respondent swore that donors were informed that cash contributions could not in the aggregate exceed \$100 and that "no individual donation exceeded \$50.00 in cash." The respondent also swore that there was not more than one "small donor cash event per cycle in which the same guests were invited," and that, after reviewing the donor lists, he is not aware of any individual contribution that, in the aggregate, exceeded \$100 in a reporting period. There is insufficient evidence of a violation of section 253.033 of the Election Code.

Personal Use of Political Contributions

38. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. 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(a). 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).

39. The commission stated in Ethics Advisory Opinion No. 241 that it is permissible for a legislator to use political contributions to pay for “meals for state business not reimbursed by the state.” Ethics Advisory Opinion No. 241 (1995) (EAO 241). For meals that do not take place in connection with the conduct of state business, the commission stated that it did not interpret the “reasonable housing or household expenses” exception to extend to the cost of meals in Austin in general. *Id.*
40. The complaint alleged that the respondent converted political contributions to personal use when he made payments totaling approximately \$90 for meals and \$108 for a gym locker rental. The respondent swore that all of the expenditures at issue for meals were in connection with “political activities or with my officeholder duties.” The complaint did not include additional evidence to support the allegation that the respondent converted political contributions to personal use when he purchased meals. Therefore, with regard to the political expenditures at issue for meals, there is insufficient evidence of a violation of section 253.035(a) of the Election Code.
41. The respondent made a political expenditure of \$108 for a gym locker rental during the legislative session. The use of campaign or officeholder contributions to rent a gym locker furthers an individual purpose not connected with the performance of duties or activities of a candidate for or holder of a public office. Therefore, as to the payment for renting a gym locker, there is credible evidence of a violation of section 253.035(a) 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 candidate or officeholder that accepts political contributions from an out-of-state political committee shall include in each campaign finance report the information required by section 253.032 of the Election Code, as applicable. The respondent 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 FEC 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 FEC. The respondent acknowledges that a person who accepts a political

contribution as a candidate or officeholder may not convert the contribution to personal use. 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 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 political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. The respondent acknowledges that each report by a candidate for a statewide office in the executive branch or 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 a \$600 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-2910264.

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

Rafael Anchia, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director