

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JOHN F. HERNANDEZ,
CAMPAIGN TREASURER,
FRIENDS OF ACC,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31011396 AND SC-31012426

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) held a preliminary review hearing on February 8, 2012, to consider sworn complaints SC-31011396 and SC-31012426. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.121, 254.123, and 254.124 of the Election Code and sections 20.309, 20.311, and 20.62 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaints alleged that the respondent, as campaign treasurer of a political committee: 1) did not properly disclose the committee's purpose in reports, 2) did not timely file campaign finance reports, and 3) did not properly disclose political contributions and political expenditures in reports.

III. Facts Supported by Credible Evidence

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

1. The respondent was appointed as the campaign treasurer of "Friends of ACC," a specific-purpose committee that filed with the Austin Community College District (ACCD). The complaints alleged that the committee supported a measure in the November 2, 2010, election that would have annexed the San Marcos Consolidated Independent School District (SMCISD) into the ACCD and that the respondent failed to amend the committee's campaign treasurer appointment to disclose that purpose. The complaints also alleged that the respondent failed to disclose the committee's purpose in campaign finance reports or the election for which the reports were filed, and filed reports that were late and that did not disclose all of the committee's political contributions and political expenditures.

2. A campaign treasurer appointment filed with the ACCD indicated that the committee's address was in Austin, Texas and that the respondent was the campaign treasurer with the same Austin address. The appointment also appeared to have been signed by the respondent and indicated that the purpose of the committee was to support an identified measure described as, "To support ACC tax rate increase of two cents in 2004, one cent increases in 2005 and 2006 and one cent for general obligation bond for facilities" in an election on May 3, 2003. The appointment was not dated or stamped as received by the ACCD.
3. The committee's January 2009 semiannual report was stamped as received by the ACCD on July 14, 2010. The report covered the period from July 1, 2008, to December 31, 2008, and indicated that the respondent was the campaign treasurer for the committee and disclosed:
 - \$0 in total political contributions of \$50 or less
 - \$0 in total political contributions
 - \$0 in total political expenditure of \$50 or less
 - \$0 in total political expenditures
 - \$4,741.36 in total political contributions maintained
 - \$0 in total principal amount of outstanding loans
4. The committee's July 2009 semiannual report indicated that it was received by the ACCD, but the date stamp on the report was illegible. The affidavit on the cover page of the report indicated that it was notarized on July 14, 2010. The report covered the period from January 1, 2009, to June 30, 2009, and disclosed:
 - \$0 in total political contributions of \$50 or less
 - \$0 in total political contributions
 - \$0 in total political expenditure of \$50 or less
 - \$0 in total political expenditures
 - \$4,741.36 in total political contributions maintained
 - \$0 in total principal amount of outstanding loans
5. The committee's January 2010 semiannual report indicated that it was received by the ACCD on July 14, 2010. The report covered the period from July 1, 2009, to December 31, 2009, and disclosed that the committee accepted political contributions on September 3, 2009, and December 10, 2009. The report also disclosed:
 - \$0 in total political contributions of \$50 or less
 - \$11,100 in total political contributions
 - \$8.85 in total political expenditure of \$50 or less
 - \$8.85 in total political expenditures
 - \$15,832.51 in total political contributions maintained
 - Total principal amount of outstanding loans was blank (corrected to \$0)

6. The committee's July 2010 semiannual report indicated that it was received by the ACCD on July 14, 2010. The report covered the period from January 1, 2010, to June 30, 2010, and disclosed:
 - Total political contributions of \$50 or less was blank (corrected to \$0)
 - \$1,000 in total political contributions
 - Total political expenditures of \$50 or less was blank (corrected to \$0)
 - \$5,474.74 in total political expenditures
 - \$11,357.77 in total political contributions maintained
 - Total principal amount of outstanding loans was blank (corrected to \$0)
7. The committee's 30-day pre-election report for the November 2, 2010, election indicated that it was received by the ACCD on October 7, 2010. The report covered the period from July 1, 2010, to October 4, 2010, and disclosed:
 - Total political contributions of \$50 or less was blank (corrected to \$0)
 - Total political contributions was blank (corrected to \$0)
 - Total political expenditures of \$50 or less was blank (corrected to \$0)
 - Total political expenditures was blank (corrected to \$193.39)
 - \$11,357.77 in total political contributions maintained (corrected to \$11,164.38)
 - Total principal amount of outstanding loans was blank (corrected to \$0)
8. The committee's 8-day pre-election report for the November 2, 2010, election indicated that it was received by the ACCD on October 28, 2010. The report covered the period from October 5, 2010, to October 25, 2010, and disclosed:
 - Total political contributions of \$50 or less was blank (corrected to \$0)
 - \$15,950 in total political contributions
 - Total political expenditures of \$50 or less was blank (corrected to \$0)
 - \$15,000 in total political expenditures
 - \$12,114.38 in total political contributions maintained
 - Total principal amount of outstanding loans was blank (corrected to \$0)
9. The committee's January 2011 semiannual report that was due after the complaints were filed indicated that it was received by the ACCD on June 20, 2011, and covered the period from October 26, 2010, to December 31, 2010, and disclosed:
 - \$0 in total political contributions of \$50 or less
 - \$2,500 in total political contributions
 - \$0 in total political expenditures of \$50 or less

- \$3,405.58 in total political expenditures
- \$11,208.80 in total political contributions maintained
- \$0 in total principal amount of outstanding loans

10. In response to the complaints, the respondent swore, in pertinent part:

I, John F. Hernandez, have been Treasurer of the Friends of ACC PAC (FOACC) since it was founded in 2002. FOACC has as its specific purpose expansion of local access to affordable higher education at Austin Community College (ACC) by increasing the tax support which ACC uses to provide services within its legislatively-defined service area, thus enabling low tuition for students residing in the ACC taxing district. FOACC has never participated in candidate elections or non-ACC elections. I have thus regularly filed specific-purpose campaign finance reports with ACC over this period, using exactly the same approach as for the reports to which this complaint refers. While I have occasionally received (and promptly met) requests from ACC elections officials to amend some aspect of such reports (most recently in August 2010 to provide more detail for an item), they have never expressed concern about any of the report-content issues raised in this complaint.

FOACC is a small all-volunteer group whose main function is to provide advice and support for leaders of adjoining communities who wish to give their voters a chance to expand local higher-education accessibility. Much of FOACC expenditures are for targeted signature-solicitation mailings during the petition-drive phase, prior to any election actually being called (and thus not political expenditures, strictly speaking, although I have always included them in my reports). The rest are either general-use materials (such as the "Don't Forget ACC" signs for polling places) or contributions to the local campaigns, which are typically used for advertisements or mailings over which FOACC has no control. I report the general-use materials as FOACC expenditures since there is no way of knowing for which specific campaign they will be used (some are recycled through multiple campaigns). I list the contributions to local campaigns as block expenditures to those campaigns since FOACC does not determine (or usually even know) how they are spent.

If TEC has a different view than ACC of how I should be reporting, I will of course be glad to follow their directions. And I acknowledge that any lapses in meeting filing dates are my responsibility. But I strongly feel that the reports I filed fully and fairly revealed FOACC campaign activities, and that this complaint is aimed at intimidating and punishing people for holding opposing views rather than at enhancing public access to campaign information.

Disclosure of Reimbursements

11. The July 2010 semiannual report disclosed political expenditures of \$2,530.21 on February 25, 2010, and \$2,944.53 on May 14, 2010, to an individual for “mail-out reimbursement.” A correction affidavit for the July 2010 semiannual report was filed with the ACCD on August 24, 2010, and stated that the correction was for “further explanation of expenditures on schedule F.” The correction included a Schedule F that disclosed the purpose of the \$2,530.21 expenditure as “printing & mailer BIST pet. drive” and disclosed the purpose of the \$2,944.53 expenditure as “printing & mailing – SMCISD pet dr 1546.53 / HCISD 1398.00.”
12. The committee’s corrected July 2010 semiannual report appeared to correct the expenditures at issue. The respondent corrected the purpose of the \$2,530.21 expenditure by adding the category as “other: mail-out expenses, see attachment 1” and changing the purpose of the expenditure to “printing, postage, fees.” The corrected report included an attachment that provided dates, amounts, payee names, and purposes for approximately \$2,530 in expenditures. The dates of the expenditures ranged from April 29, 2009, to January 28, 2010. The individual expenditures were required to be disclosed because either the payees were paid more than \$50 in the respective reporting period or the amounts were not disclosed in the section for political expenditures of \$50 or less. The attachment did not include payee addresses.
13. The correction to the July 2010 semiannual report also changed the purpose of the \$2,944.53 expenditure by adding the category as “other: mail-out expenses, see attachment 2” and by changing the purpose of the expenditure to “printing, postage, fees.” The corrected report included an attachment that provided dates, amounts, payee names, and purposes for approximately \$2,940 in expenditures. The dates of the expenditures ranged from February 9, 2010, to March 30, 2010. The individual expenditures were required to be disclosed because either the payees were paid more than \$50 in the respective reporting period or the amounts were not disclosed in the section for political expenditures of \$50 or less. The attachment did not include payee addresses.
14. The committee’s January 2011 semiannual report disclosed a political expenditure of \$1,905.58 to an individual on November 23, 2010, with the category of “Other: Mail-out Expense, See Attachment 1” and the purpose of “Printing, postage, signs.” The report included a copy of an e-mail message sent from the individual to the respondent on October 22, 2010, with the subject of “FOACC expenditures.” The e-mail listed approximately \$1,910 in expenditures.
15. According to the attachments included with the reports, the individual made approximately \$260 in expenditures for the committee during the period covered by the July 2009 semiannual report, approximately \$440 in expenditures during the period covered by the January 2010 semiannual report, approximately \$4,880 in expenditures during the period

covered by the July 2010 semiannual report, approximately \$1,100 in expenditures during the period covered by the 30-day pre-election report, and approximately \$700 in expenditures during the period covered by the 8-day pre-election report.

Disclosure of Expenditures for Advertising

16. Sworn complaint SC-31011396 alleged that the respondent failed to properly disclose all of the committee's political expenditures for advertising in support of the SMCISD measure. The complaint included a flyer titled "San Marcos ACCess" that supported the gathering of signatures for a "petition to call for an election in November for San Marcos to join the ACC district." The flyer also stated, "Pd. Pol. Ad., Friends of ACC PAC" in Austin, Texas. The complaint alleged that the flyer was faxed to the complainant on April 23, 2010, by a resident of the SMCISD.
17. Sworn complaint SC-31011396 included letters from the "San Marcos ACCess committee" in support of a petition to place a measure on the ballot to annex SMCISD into the ACCD. The letters stated, "Pd. Pol. Ad., Friends of ACC PAC" in Austin. The complaint included two envelopes for the letters with a return address for "San Marcos ACCess" and postmark dates of April 29 and April 30, 2010.
18. Sworn complaint SC-31011396 included photographs of a flyer supporting the petition that stated, "Pd. Pol. Ad, Friends of ACC PAC" in Austin. The complaint stated that the photographs were taken on May 1, 2010, at the San Marcos Public Library. The complaint also included photographs of two outdoor signs that included a political advertising disclosure statement from the committee. One sign stated, "Don't Forget ACC At the end of the ballot." The other sign stated:

Don't Forget ACC!

Vote FOR

Local ACC Campus
Lower ACC Tuition

Austin Community College
The Efficient & Accessible Path To Success

19. The complaint stated that the photographs of the outdoor signs were taken on October 28, 2010.
20. The committee's 8-day pre-election report disclosed four political expenditures of \$2,500 and one political expenditure of \$5,000, all of which were described for the purpose of "Advertising & mailing" in October 2010. Two of the \$2,500 expenditures were made to "San Marcos – Access" in San Marcos; one \$2,500 expenditure was to "Bastrop Co. Friends

of Higher Ed.” in Bastrop; and one \$2,500 expenditure was to “North Hays County Steering Co.” in Buda, Texas. The \$5,000 expenditure was made to “Bastrop Friends of Higher Education” in Bastrop, Texas.

21. The respondent also disclosed in the January 2011 semiannual report that an individual made expenditures of \$1,056.18 for “Yard signs” on September 8, 2010, and \$606.08 for “Polling-place signs” on October 12, 2010. The committee reimbursed the individual for the expenditures on November 23, 2011.

Disclosure of Political Contributions Made to Another Political Committee

22. Sworn complaint SC-31011396 alleged that the respondent improperly disclosed a \$2,500 political expenditure to another political committee. The respondent’s committee’s 8-day pre-election report disclosed two political expenditures of \$2,500 to the committee on October 12, 2010, and October 21, 2010. The complaint alleged that the respondent’s committee only made one political expenditure of \$2,500 to the recipient committee. The report also disclosed two additional political expenditures of \$2,500 and a \$5,000 political expenditure to other political committees in October 2010.
23. The recipient committee filed an 8-day pre-election report on or about October 25, 2010, that disclosed only one political contribution of \$2,500 from “John Hernandez Friends of ACC.” The recipient committee’s report covered the period from September 24, 2010, to October 23, 2010, and did not disclose a date for the contribution.
24. The respondent submitted what he stated were “Bank Statements for the period 7/1/2009 through 12/31/2010 for the Friends of ACC.” The statements were addressed to the respondent’s name and “DBA FRIENDS OF ACC” in Austin. The statement covering the month of October 2010 indicated that six checks of \$2,500 were drawn on the account from October 19 to October 26, 2010. The respondent also submitted copies of two \$2,500 checks drawn on the account that were payable to the recipient committee and dated October 12, 2010, and October 21, 2010.

Disclosure of Political Contributions Accepted

25. Sworn complaint SC-31012426 alleged that the respondent improperly disclosed \$600 in political contributions in the committee’s January 2010 semiannual report. The report disclosed \$11,100 as the total amount of political contributions, disclosed \$0 as the total amount of political contributions of \$50 or less, and itemized a total of approximately \$10,500 in political contributions. The allegation was based on the difference between the \$11,100 in total political contributions and the approximate \$10,500 in itemized contributions. The report also itemized a political contribution from an individual on December 10, 2009, but did not include the amount of the contribution. After the complaint was filed, the respondent corrected the amount of the contribution at issue to \$100 and added an additional \$500 contribution from a separate contributor.

26. The complaint also alleged that the respondent did not disclose approximately \$4,250 in political contributions in the 8-day pre-election report. The report disclosed \$15,950 as the total amount of political contributions, left the total amount of political contributions of \$50 or less blank, and itemized approximately \$11,700 in political contributions. The allegation was based on the difference between the \$15,950 in total political contributions and the approximate \$11,700 in itemized contributions. After the complaint was filed, the respondent corrected the report and itemized an additional approximate \$4,250 in political contributions, all of which were over \$50.

Political Contributions Maintained

27. Sworn complaint SC-31012426 alleged that the respondent improperly disclosed the total amount of political contributions maintained in the committee's January and July 2010 semiannual reports and the 8-day pre-election report. The allegations were based on calculations in which the complainant obtained the total amount of cash on hand disclosed in a report, added the total amount of political contributions disclosed in the subsequent report, and subtracted the total amount of political expenditures disclosed in the subsequent report. The respondent's January 2010 and July 2010 semiannual reports, and 8-day pre-election report disclosed a total amount of political contributions maintained of, respectively, \$15,832.51, \$11,357.77, and \$12,114.38.
28. The respondent submitted bank statements that indicated that the balance on the committee's bank account was \$15,832.51 on December 31, 2009; \$11,357.77 on June 30, 2010; and \$22,114.38 on October 23, 2010. The statements also indicated that the bank balance on October 26, 2010, was \$12,114.38, after four check payments (apparently dated October 21, 2010) totaling \$10,000 were processed and deducted from the account from October 25 to October 26.

Disclosure of Purposes of Committee in Campaign Treasurer Appointment

29. The complaints alleged that the respondent failed to disclose in a campaign treasurer appointment that the committee supported the SMCISD annexation measure. The only campaign treasurer appointment filed for the committee appeared to have been filed before a May 3, 2003, election. The appointment indicated that the committee supported ACC tax rate increases in 2004, 2005, and 2006. There was no evidence of any other campaign treasurer appointments filed with the ACCD.

Disclosure of Purposes of Committee in Reports

30. The complaints alleged that the respondent failed to disclose in campaign finance reports that the committee supported the SMCISD annexation measure. The reports at issue included the July 2010 semiannual report and the 30-day and 8-day pre-election reports for the November 2, 2010, election. Sworn complaint SC-31012426 also alleged violations regarding the January 2009, July 2009, and January 2010 semiannual reports. None of the reports disclosed a purpose for the committee when they were originally filed. Sworn complaint SC-31012426 also alleged that the reports did not include the identity and date of the election for which the reports were filed. None of the reports disclosed the election for which they were filed.
31. The respondent corrected the January 2010 semiannual report and all of the subsequent reports on June 20, 2011, and disclosed that the committee's purpose was to support a measure in the November 2, 2010, election that was described either as "petition drive to place on ballot annexation" or "ACC annexation election."

Timely Filing of Reports

32. The complaints alleged that the respondent failed to timely file 30-day and 8-day pre-election reports for the November 2, 2010, election. The committee's 30-day pre-election report was received by the ACCD on October 7, 2010, and the committee's 8-day pre-election report was received by the ACCD on October 28, 2010. The reports were due October 4, 2010, and October 25, 2010, respectively.
33. Sworn complaint SC-31012426 also alleged that the respondent failed to timely file January 2009, July 2009, and January 2010 semiannual reports.

IV. Findings and Conclusions of Law

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

Disclosure of Reimbursements

1. Each report must include, in pertinent part, 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).
2. Each report must also include, in pertinent part, the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address,

principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. *Id.* § 254.031(a)(2).

3. 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.
4. Each report must also include, in pertinent part, the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
5. According to the committee's reports, an individual made approximately \$7,380 in political expenditures on behalf of the committee to various payees with the intent to be reimbursed by the committee. The expenditures were required to be disclosed in Schedule F of a report as expenditures to the actual vendors who were paid by the individual. The respondent did not disclose the expenditures to the actual vendors, but only disclosed the three reimbursements to the individual. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules in connection with approximately \$7,380 in expenditures.

Disclosure of Expenditure Totals

6. The respondent was also required to disclose the approximate \$7,380 in expenditures in the total amounts of political expenditures in the cover page totals of the committee's reports. Of the expenditures at issue, approximately \$260 in expenditures were made during the July 2009 semiannual reporting period and approximately \$440 in expenditures were made during the January 2010 semiannual reporting period. The respondent was therefore required to disclose the expenditures in the cover page totals of the applicable reports. The respondent did not disclose the expenditures in cover page totals until he filed the July 2010 semiannual

report on July 14, 2010. Therefore, there is credible evidence that the respondent violated section 254.031(a)(6) of the Election Code in connection with approximately \$700 in expenditures.

7. The committee also made approximately \$4,880 in expenditures during the July 2010 semiannual reporting period and was therefore required to disclose the expenditures in the cover page totals of the report. The respondent disclosed the total amount of political expenditures during the period as \$5,474.74, which appeared to have included the reimbursements made to the individual for approximately \$4,770 in expenditures made during the July 2010 semiannual reporting period and approximately \$700 in expenditures made during the two prior semiannual periods. An expenditure of \$110.42 on April 25, 2010, was not disclosed until the committee made a reimbursement during the January 2011 semiannual reporting period. Therefore, there is credible evidence that the respondent violated section 254.031(a)(6) of the Election Code in connection with the \$110.42 expenditure. There is credible evidence that the respondent did not violate section 254.031(a)(6) of the Election Code in connection with the remaining approximate \$4,770 in expenditures made during the July 2010 semiannual reporting period.
8. The committee also made approximately \$1,800 in political expenditures during the 30-day and 8-day pre-election reporting periods for the November 2, 2010, election and the respondent did not disclose the expenditures until he filed the January 2011 semiannual report on June 20, 2011. Therefore, there is credible evidence that the respondent violated section 254.031(a)(6) of the Election Code in connection with approximately \$1,800 in political expenditures.

Disclosure of Loans

9. The respondent was also required to disclose approximately \$2,600 in loans from the individual who made expenditures for the committee from personal funds because the individual was not reimbursed for the expenditures until a subsequent reporting period. No loans were disclosed. Therefore, there is credible evidence that the respondent violated section 254.031(a)(2) of the Election Code and section 20.62 of the Ethics Commission Rules in connection with approximately \$2,600 in loans.

Disclosure of Political Contributions Made to Another Political Committee

10. The committee disclosed two separate political expenditures of \$2,500 to another political committee. Sworn complaint SC-31011396 alleged that one of the \$2,500 expenditures was incorrectly disclosed because the committee never made the expenditure. However, the evidence indicated that the committee made both expenditures and that they were properly disclosed. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code in connection with the \$2,500 expenditure.

Disclosure of Political Contributions Accepted

11. 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).
12. The committee accepted two political contributions totaling approximately \$600 that the respondent did not properly itemize in the January 2010 semiannual report. The committee also accepted approximately \$4,250 in political contributions that the respondent did not properly itemize in the 8-day pre-election report. Therefore, there is credible evidence that the respondent violated section 254.031(a)(1) of the Election Code in connection with approximately \$4,850 in political contributions.

Political Contributions Maintained

13. 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. ELEC. CODE § 254.031(a)(8).
14. The correct amount of political contributions maintained in the committee's bank account was reflected in the January 2010 and July 2010 semiannual reports filed by the respondent. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(8) of the Election Code in connection with the reports. Regarding the 8-day pre-election report, the respondent underreported the amount of political contributions maintained by \$10,000. However, it appears that the respondent deducted from the total \$10,000 in checks that were written two days before the report's ending date. There is credible evidence that the respondent committed a technical violation of section 254.031(a)(8) of the Election Code in connection with the 8-day pre-election report.

Disclosure of Purposes of Committee in Campaign Treasurer Appointment

15. Each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. ELEC. CODE § 252.001.
16. A campaign treasurer appointment for a specific-purpose committee shall include, for each measure supported or opposed by the specific-purpose committee, a description of the measure and an indication whether the specific-purpose committee supports or opposes the measure. Ethics Commission Rules § 20.309(7).

17. If there is a change in any information that is required to be reported in a specific-purpose committee's campaign treasurer appointment, the campaign treasurer must notify the filing authority of the change no later than the 10th day after the date on which the change occurs. *Id.* § 20.311(a).
18. "Measure" means a question or proposal submitted in an election for an expression of the voters' will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will. ELEC. CODE § 251.001(19).
19. The committee supported a measure in the November 2, 2010, election to annex SMCISD into the ACCD and accepted political contributions to support the measure beginning in September 2009. The committee also began making political expenditures to support the measure beginning in February 2010 with the circulation of petitions to gather signatures necessary to place the measure on the ballot. The committee had filed a campaign treasurer appointment with the ACCD in calendar year 2002 that indicated that the committee supported measures to increase tax rates in the ACCD. After the expenditures to support the SMCISD measures were made, the committee did not file any amendment to the campaign treasurer appointment to indicate that the committee supported the measure. As the campaign treasurer for the committee, the respondent was required to notify the ACCD that the purposes of the committee had changed and that the committee supported the measure. The respondent did not notify the ACCD by amending the campaign treasurer appointment. Therefore, there is credible evidence that the respondent violated sections 20.309(7) and 20.311(a) of the Ethics Commission Rules.

Disclosure of Purposes of Committee in Reports

20. Each report by a campaign treasurer of a specific-purpose committee must include, in pertinent part, the identity and date of the election for which the report is filed, if applicable. ELEC. CODE § 254.121(3). A report must also include the name of each candidate and each measure supported or opposed by the committee, indicating for each whether the committee supports or opposes. *Id.* § 254.121(4).
21. The committee supported the SMCISD annexation measure from September 2009 to late October 2010. The respondent's reports filed for the committee covering that period of time did not disclose that the committee supported the measure. Therefore, there is credible evidence that the respondent violated section 254.121(4) of the Election Code in connection with the reports. The reports were also filed for the November 2, 2010, election and the reports did not disclose that they were filed for that election. Therefore, there is credible evidence that the respondent violated section 254.121(3) of the Election Code in connection with the reports. Regarding the January and July 2009 semiannual reports, there is insufficient evidence that the committee supported or opposed any measure during any period covered by the reports or that the reports were filed for an election. Therefore, there is insufficient evidence that the respondent violated sections 254.121(3) or 254.121(4) of the Election Code in connection with the reports.

Timely Filing of Reports

22. The campaign treasurer of a specific-purpose committee shall file two reports for each year as provided by this section. ELEC. CODE § 254.123(a). The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the committee's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30. *Id.* § 254.123(b). The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the committee's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31. *Id.* § 254.123(c).
23. For each election in which a specific-purpose committee supports or opposes a measure, the committee's campaign treasurer shall file two reports. *Id.* § 254.124(a).
24. 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. The report covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day. *Id.* § 254.124(b).
25. 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. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.124(c).
26. The respondent was required to file a January 2009, July 2009, and January 2010 semiannual reports no later than, respectively, January 15, 2009; July 15, 2009; and January 15, 2010. The January 2009 and January 2010 semiannual reports were filed on July 14, 2010, and the July 2009 semiannual report was filed on or after July 14, 2010. Therefore, there is credible evidence that the respondent violated sections 254.123(b) and 254.123(c) of the Election Code.
27. The committee supported the SMCISD annexation measure and made political expenditures to support the measure from September 2009 to October 2010. Thus, the respondent was required to file 30-day and 8-day pre-election reports for the election and ensure that they be received by the ACCD no later than, respectively, October 4, 2010, and October 25, 2010. The 30-day and 8-day pre-election reports were received by the ACCD on, respectively, October 7, 2010, and October 28, 2010. Therefore, there is credible evidence that the respondent violated sections 254.124(b) and 254.124(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 these sworn complaints.
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: 1) 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, the full name and address of the person making the contributions, and the dates of the contributions; 2) the amount of political expenditures that in the aggregate exceed \$100 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; 3) the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period; 4) the total amount of all political expenditures made during the reporting period; and 5) as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period.

The respondent also acknowledges that political expenditures made out of personal funds by a staff member of a political committee with the intent to seek reimbursement from the 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. However, a political expenditure made out of personal funds by a staff member of a political committee with the intent to seek reimbursement from the 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 political committee; the expenditure made by the

staff member is reported as a political expenditure by the political committee; and the reimbursement to the staff member to repay the loan is reported as a political expenditure by the political committee.

The respondent also acknowledges that each report by a campaign treasurer of a specific-purpose committee must include, in pertinent part, the identity and date of the election for which the report is filed, if applicable, and must also include the name of each candidate and each measure supported or opposed by the committee, indicating for each whether the committee supports or opposes.

The respondent also acknowledges that each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code, and that a campaign treasurer appointment for a specific-purpose committee shall include, for each measure supported or opposed by the specific-purpose committee, a description of the measure and an indication whether the specific-purpose committee supports or opposes the measure. The respondent also acknowledges that if there is a change in any information that is required to be reported in a specific-purpose committee's campaign treasurer appointment, the campaign treasurer must notify the filing authority of the change no later than the 10th day after the date on which the change occurs.

The respondent also acknowledges that the campaign treasurer of a specific-purpose committee shall file two reports for each year. The first report shall be filed not later than July 15. The second report shall be filed not later than January 15. The respondent also acknowledges that, for each election in which a specific-purpose committee supports or opposes a measure, the committee's campaign treasurer shall file two reports. 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. 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.

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 \$2,000 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-31011396 and SC-31012426.

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

John F. Hernandez, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director