

TEXAS ETHICS COMMISSION

IN THE MATTER OF

DAVID L. FINCHER,
CAMPAIGN TREASURER,
NATIONAL CHILD CARE COALITION
POLITICAL ACTION COMMITTEE,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31108177

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on March 27, 2013, to consider sworn complaint SC-31108177. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.151, 254.153, and 254.154 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent: 1) did not properly disclose political contributions, 2) did not include on the committee's reports the name of each identified candidate supported or opposed by the committee, or officeholder assisted or supported by the committee, 3) did not disclose the principal occupation of each person from whom political contributions that in the aggregate exceeded \$50 were accepted during a reporting period, 4) did not file an 8-day pre-election report, and 5) did not timely file a January 2011 semiannual report.

III. Facts Supported by Credible Evidence

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

1. The respondent is the campaign treasurer for National Child Care Coalition Political Action Committee (NCCC).
2. At issue in the complaint are NCCC's semiannual reports for January and July 2010 and July 2011.

Total Political Contributions Maintained

3. The complaint alleged that the respondent did not disclose the proper amount of total political contributions maintained on each of the reports at issue.

January 2010 Semiannual Report

4. On January 14, 2010, the respondent filed NCCC's January 2010 semiannual report. The report disclosed \$57.45 in total political contributions maintained. The complaint alleged that the correct amount of total political contributions maintained should be \$2,476.
5. On February 4 and 6, 2013, the respondent filed corrected January 2010 semiannual reports for NCCC. The corrected reports disclosed \$57.45 in total political contributions maintained. However, the corrected reports also added four itemized political expenditures totaling approximately \$2,420 that were not disclosed on the originally filed report. The corrected reports also itemized a \$12.70 non-political expenditure that was not disclosed on the originally filed report.
6. Bank records provided by the respondent disclosed the bank account maintained by NCCC had a balance of \$57.45 on December 31, 2009.

July 2010 Semiannual Report

7. On July 11, 2010, the respondent filed NCCC's July 2010 semiannual report. The report disclosed \$6,477.45 in total political contributions maintained. The complaint alleged that the correct amount of total political contributions maintained should be \$4,620.
8. On February 4 and 6, 2013, the respondent filed corrected July 2010 semiannual reports for NCCC. The corrected reports disclosed \$6,477.45 in total political contributions maintained. However, the corrected reports added 15 itemized political contributions totaling approximately \$5,480. The corrected reports also itemized a \$33 non-political expenditure that was not disclosed on the originally filed report. The report also removed a \$100 political contribution that was itemized on the originally filed report.
9. Bank records provided by the respondent disclosed the bank account maintained by NCCC had a balance of \$6,477.45 on June 30, 2010.

January 2011 Semiannual Report

10. On February 14, 2011, the respondent filed NCCC's January 2011 semiannual report. The report disclosed \$27.45 in total political contributions maintained. The complaint alleged that the correct amount of total political contributions maintained was \$220.

11. On February 4 and 6, 2013, the respondent filed corrected January 2011 semiannual reports for NCCC. The corrected reports disclosed \$27.45 in total political contributions maintained. However, the corrected reports added two itemized political expenditures totaling approximately \$2,000.
12. Bank records provided by the respondent disclosed the bank account maintained by NCCC had a balance of \$527.45 on December 31, 2010.

July 2011 Semiannual Report

13. On July 4, 2011, the respondent filed NCCC's July 2011 semiannual report. The report disclosed \$27.45 in total political contributions maintained. The complaint alleged that the correct amount of total political contributions maintained was \$220.
14. Bank records provided by the respondent disclosed the bank account maintained by NCCC had a balance of \$27.45 on June 30, 2011.

Names of Candidates Supported and Officeholders Assisted by the Committee

15. The complaint alleged that the respondent did not identify each candidate supported or opposed by the committee, and each officeholder assisted by the committee on NCCC's July 2010 and January 2011 semiannual reports.
16. The "Committee Activity" section of the July 2010 semiannual report's cover sheet did not disclose that the committee supported or opposed any specific candidates, or assisted any specific officeholders. The report disclosed total political expenditures of \$4,500. All political expenditures were itemized on the report, each described as a "campaign contribution." Each of the payees was a different individual.
17. Corrections made to the respondent's July 2010 semiannual report did not add any political expenditures or information to the "Committee Activity" section of the report.
18. The "Committee Activity" section of the January 2011 semiannual report's cover sheet did not disclose that the committee supported or opposed any specific candidates, or assisted any specific officeholders. The report disclosed total political expenditures of \$4,500. All political expenditures were itemized on the report, each described as a "campaign contribution." Each of the payees was a different individual.
19. Corrections made to the committee's January 2011 semiannual report itemized two additional expenditures totaling approximately \$2,000 that were not included on the originally filed report. The additional expenditures were each described as a "campaign contribution." One of the expenditures was to a payee that was not disclosed on NCCC's originally filed report.

Principal Occupation

20. The complaint alleged that the respondent did not disclose the principal occupation for 42 political contributions totaling approximately \$6,640 on NCCC's July 2010 semiannual report. The report left blank spaces for the principal occupation for all 42 political contributions itemized on the report.
21. On February 4 and 6, 2013, the respondent filed corrected July 2010 semiannual reports for NCCC. The corrected reports added principal occupations for 40 of the political contributions at issue. The report also added 15 itemized political contributions totaling approximately \$5,480. Each newly disclosed political contribution disclosed a principal occupation for the contributor. The report also removed a \$100 political contribution that was itemized on the originally filed report.

Disclosure of Full Names of Contributors

22. The complaint alleged that the respondent did not disclose the full name for three political contributions totaling approximately \$460 disclosed on NCCC's July 2010 semiannual report. Each contributor name was disclosed using an initial and last name.
23. On February 4 and 6, 2013, the respondent filed corrected July 2010 semiannual reports for NCCC. The corrected report added full contributor names for two of the contributions at issue. One contribution at issue appears to have been removed from the report.

Pre-Election Reports

24. The complaint alleged that the respondent was required to, but did not file, an 8-day pre-election report in connection with the November 2010 general election.
25. The January 2011 report for NCCC showed activity supporting candidates in a November 2010 election during the period covered by the 8-day pre-election report.
26. As a result of this complaint the respondent corrected NCCC's January 2011 semiannual report to disclose that NCCC made a political contribution to support a candidate involved in the November 2010 election as early as July 1, 2010.
27. A 30-day pre-election report that was required for the November 2010 general election, would have covered from July 1, 2010, through September 23, 2010. If a 30-day pre-election report was filed, the 8-day pre-election report would have covered from September 23, 2010, through October 23, 2010.

Timely Filing of a January 2011 Semiannual Report

28. The complaint alleged that the respondent did not timely file NCCC's January 2011 semiannual report.
29. The January 2011 semiannual report was due on January 18, 2011. The respondent filed NCCC's January 2011 semiannual report on February 14, 2011. The respondent was fined \$500 through the administrative process.

IV. Findings and Conclusions of Law

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

Total Political Contributions Maintained

1. 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).
2. A *de minimis* error in calculating or reporting a cash balance under Subsection (a)(8) is not a violation of section 254.031. ELEC. CODE § 254.031(a-1).
3. Bank records provided by the respondent showing the last day of each reporting period match the amount of political contributions maintained disclosed on the respondent's January 2010, July 2010, and July 2011 semiannual reports. Therefore, there is credible evidence of no violations of section 254.031(a)(8) of the Election Code with respect to those reports.
4. NCCC's January 2011 semiannual report disclosed \$27.45 in total political contributions maintained. However, bank records provided by the respondent disclosed the bank account maintained by NCCC had a balance of \$527.45 on December 31, 2010, the last day covered by the January 2011 semiannual report. Thus the amount reported was incorrect. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code with regard to NCCC's January 2011 semiannual report.
5. Each campaign finance report must also include as of the last day of a reporting period for which the person is required to file a report, the 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).

6. Each campaign finance report must also include as of the last day of a reporting period for which the person is required to file a report, the amount of political expenditures that in the aggregate exceed \$100¹ 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).
7. Each campaign finance report must also include as of the last day of a reporting period for which the person is required to file a report, the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
8. In response to the sworn complaint the respondent filed corrections to the reports at issue. The corrected reports disclosed approximately \$2,420 in additional itemized political expenditures on NCCC's January 2010 semiannual report, approximately \$5,480 in additional itemized political contributions on NCCC's July 2010 semiannual report, and \$2,000 in additional itemized political expenditures on NCCC's January 2011 semiannual report. The totals pages of the reports at issue were also changed to reflect the additional political expenditures. The new political contributions and expenditures were not disclosed on the NCCC's originally filed reports. Therefore, there is credible evidence of violations of sections 254.031(a)(1), 254.031(a)(3), and 254.031(a)(6) of the Election Code with regard to those reports.

Names of Candidates Supported and Officeholders Assisted by the Committee

9. Each campaign finance report by a campaign treasurer of a general-purpose committee must include the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, measure, or classification by party of candidates. ELEC. CODE § 254.151(4). The report must also include the name of each identified officeholder or classification by party of officeholders assisted by the committee. ELEC. CODE § 254.151(5).
10. Since each of the expenditures at issue were described as "campaign" contributions, the activity at issue for which a violation may be found appears to be candidate, not officeholder, related. It is clear that based on its July 2010 semiannual report NCCC supported multiple candidates by giving them approximately \$4,500 in campaign contributions. The committee activity section of the report was not complete. However, information showing which candidate the committee supported was readily apparent to anyone who may have viewed Schedule F of the report. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.151(4) of the Election Code with regards to the July 2010 semiannual report.

¹ \$50 during the time at issue in this sworn complaint.

11. NCCC's originally filed January 2011 semiannual report disclosed that the committee supported multiple candidates by giving them approximately \$4,500 in campaign contributions. The committee activity section of the report was not complete. Corrections filed by the respondent as a result of this complaint show an additional two political expenditures totaling approximately \$2,000 by NCCC that were in the form of political contributions to candidates. One of the new political expenditures was a political contribution to a candidate that was not shown on NCCC's previously filed report. By not disclosing that political expenditure on NCCC's originally filed report, it was not readily apparent that NCCC supported that candidate during the period at issue. The failure to include that information substantially affected disclosure of the candidates supported by NCCC. Therefore, there is credible evidence of a violation of section 254.151(4) of the Election Code with regard to the January 2011 semiannual report.

Principal Occupation

12. Each report by a campaign treasurer of a general-purpose committee must include the principal occupation of each person from whom political contributions that in the aggregate exceed \$50 are accepted during the reporting period. ELEC. CODE § 254.151(6).
13. The complaint alleged that the respondent did not disclose the principal occupation for 42 political contributions totaling approximately \$6,640 on NCCC's July 2010 semiannual report. The respondent did not include that information on NCCC's originally filed report. Therefore, there is credible evidence of violations of section 254.151(6) of the Election Code.

Disclosure of Full Names of Contributors

14. A 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, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
15. The complaint alleged that the respondent did not disclose the full name for three political contributions totaling approximately \$460 disclosed on NCCC's July 2010 semiannual report. It is clear from the face of the report that the respondent did not include the full names of the contributors at issue on NCCC's July 2010 semiannual report. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code.

Pre-Election Reports

16. In addition to other required reports, for each election in which a general-purpose committee is involved, the committee's campaign treasurer shall file two reports. 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. ELEC. CODE § 254.154(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. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. ELEC. CODE § 254.154(c).

17. The period covered by the 30-day pre-election report for the November 2010 general election was July 1, 2010, through September 23, 2010. The respondent's corrections to NCCC's January 2011 semiannual report show that NCCC made a political contribution to support a candidate involved in the November 2010 election as early as July 1, 2010. Thus, NCCC was clearly involved in the November 2010 election at that point. The January 2011 report that the respondent filed also showed activity during the period covered by the 8-day pre-election report. Therefore, NCCC was required to file both a 30-day and 8-day pre-election report for the November 2010 election. The respondent did not do so. Therefore, there is credible evidence of violations of sections 254.154(b) and 254.154(c) of the Election Code.

Timely Filing of a January 2011 Semiannual Report

18. The campaign treasurer of a general-purpose committee shall file two reports for each year. 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, as applicable, and continuing through June 30. ELEC. CODE § 254.153(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, as applicable, and continuing through December 31. ELEC. CODE § 254.153(c).
19. The complaint alleged that the respondent did not timely file NCCC's January 2011 semiannual report. The respondent did not timely file the report at issue. Therefore, there is credible evidence of a violation of section 254.153(c) of the Election Code.

V. Representations and Agreement by Respondent

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

1. The respondent neither admits nor denies the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.

2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that: 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, the full name and address of the person making the contributions, and the dates of the contributions; 2) each report must also include the amount of political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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) each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period; 4) each report must also include as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period; 5) each campaign finance report filed by a campaign treasurer of a general-purpose committee must include the name of each identified candidate or measure or classification by party of candidates supported or opposed by the committee, indicating whether the committee supports or opposes each listed candidate, measure, or classification by party of candidates; 6) each report must also include the principal occupation of each person from whom political contributions that in the aggregate exceed \$50 are accepted during the reporting period; 7) the campaign treasurer of a general-purpose committee shall file two reports for each year. 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. 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; and 8) in addition to other required reports, for each election in which a general-purpose committee is involved, the committee's campaign treasurer shall file two reports. 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. 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.

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 nature, circumstances, and consequences of the violations described under Sections III and IV, and 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-31108177.

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

David L. Fincher, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director