

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BENJAMIN EURESTI, JR.,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3120106

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 3, 2014, to consider sworn complaint SC-3120106. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.1611, 254.031, and 254.0611 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 on multiple campaign finance reports political contributions and political expenditures; 2) did not include on a campaign finance report for each individual from whom he accepted political contributions that in the aggregate exceeded \$50 during the reporting period, the principal occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual is a member; 3) converted political contributions to personal use; 4) used political contributions to knowingly make political contributions that in the aggregate exceeded \$100 in a calendar year to a candidate or officeholder; 5) used political contributions to knowingly make political contributions to a political committee in connection with a primary election; and 6) did not include on a campaign finance report a specific listing of each asset valued at \$500 or more that was purchased with political contributions and was on hand as of the last day of the reporting period.

III. Facts Supported by Credible Evidence

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

1. The respondent is the judge for the 107th Judicial District.
2. The respondent had a campaign treasurer appointment in effect during the time at issue.

3. Records of the Texas Secretary of State's Office indicate the respondent has not had an opponent on the ballot in any election since at least 1994.
4. The reports at issue in the complaint are the respondent's January and July 2010 and January and July 2011 semiannual reports.

Total Political Expenditures

5. The complaint alleged that the respondent reported an incorrect balance for total political expenditures on each of the reports at issue. On the reports at issue, the respondent disclosed on Schedule I (used for non-political expenditures) expenditures that were made from political contributions. The respondent did not include those expenditures when calculating the amount of total political expenditures. The complaint alleged that 177 expenditures reported by the respondent as non-political expenditures totaling approximately \$24,340 were actually political expenditures, and that they should have been included in the total political expenditures balance.
6. On the January 2010 semiannual report, the respondent improperly categorized 33 political expenditures totaling approximately \$6,180 as non-political expenditures.
7. On the July 2010 semiannual report, the respondent improperly categorized 45 political expenditures totaling approximately \$4,440 as non-political expenditures.
8. On the January 2011 semiannual report, the respondent improperly categorized 31 political expenditures totaling approximately \$4,210 as non-political expenditures.
9. On the July 2011 semiannual report, the evidence is clear that the respondent improperly categorized 47 political expenditures totaling approximately \$9,510 as non-political expenditures.
10. The respondent underreported the total political expenditures amounts on the four reports at issue by approximately \$24,340, an average of \$6,080 per report. The respondent corrected the errors.

Contributions Maintained

11. The complaint alleged that the respondent reported an incorrect balance of political contributions maintained on each of the reports at issue or, in the alternative, that the respondent did not report additional contributions or expenditures. The respondent provided copies of his political account bank statements. The original disclosures along with the account balances shown on the bank statements are as follows:

- January 2010 Semiannual Report – disclosed \$60,053.18; bank statement showed \$55,263.69; difference is \$5,789.49.
- July 2010 Semiannual Report – disclosed \$57,757.24; bank statement showed \$48,976.82; difference is \$8,780.42.
- January 2011 Semiannual Report – disclosed \$39,288.05; bank statement showed \$39,744.85; difference is \$456.80.
- July 2011 Semiannual Report – disclosed \$30,871.14; bank statement showed \$30,871.14; difference is \$0.

12. The respondent corrected the errors.

Names of Contributors

13. The complaint alleged that the respondent did not properly disclose the names of 26 contributors who contributed a total of approximately \$21,350, disclosed on the January 2010 semiannual report. The report disclosed that each of the contributors was a law firm. However, the report disclosed “attorney” or “attorneys” in the boxes for the contributor’s principal occupation and contributor’s job title and in the box for contributor’s employer/law firm, the report disclosed “Self.” The respondent swore that the contributions were from the law firms.

Names of Payees of Political Expenditures

14. The complaint alleged that the respondent did not fully disclose the names of payees of political expenditures that were disclosed in each of the reports at issue.
15. The respondent disclosed the acronym VICC as the name of a payee. VICC is a commonly recognized acronym for the Valley International Country Club in Brownsville, Texas. The payee address was disclosed correctly.
16. The respondent disclosed the name/acronym Food Bank RGV as the name of a payee. Food Bank RGV is a commonly recognized name/acronym for the Food Bank of the Rio Grande Valley, Inc. in Pharr, Texas. The payee address was disclosed correctly.

Names of Persons Receiving Things of Value Purchased with Political Contributions

17. The complaint alleged that the respondent did not fully disclose the names of persons receiving things of value purchased with political contributions on the July 2010 semiannual report.

18. The respondent disclosed the names of vendors as the payees of the expenditures at issue, which included expenditures for gifts, awards, food and beverages, prizes, meals, and donated supplies.

Actual Payees of Political Expenditures

19. The complaint alleged that the respondent did not disclose the actual vendor payee, address, date, and amount pertaining to the stated purpose of political expenditures disclosed on the July 2011 semiannual report.
20. The report disclosed approximately \$300 in expenditures to individuals for donations. The payees appear to be the actual payees.

Principal Occupation, Job Title, and Employer/Law Firm of Contributors

21. The complaint alleged that the respondent did not disclose the principal occupation, job title, and employer/law firm of 62 individual contributors disclosed on Schedule A (used for political contributions) of the January 2010 semiannual report totaling approximately \$35,140.
22. For 32 contributors the evidence indicated that the contributors were sole proprietors. The contributors were identified as self-employed.
23. For 21 contributors the evidence indicated that the contributors were owners of law firms operated as a partnership, professional limited liability company, or as a professional corporation and that the contributors' names were included in the names of the law firms. The contributors were identified as self-employed. The respondent did not list the names of the law firms or businesses.
24. For four contributors there is no evidence to show that the disclosure of the full name of the employer/law firm was not correct. For two contributors there is insufficient evidence to show that the disclosure of the full name of the employer/law firm was not correct.
25. For four contributions totaling approximately \$3,990, the report disclosed that the contributors were self-employed, but the contributors were employed by entities that they did not own. The respondent corrected the errors.

Personal Use of Political Contributions

26. The complaint alleged that the respondent converted political contributions to personal use. The allegations were based on expenditures disclosed on each of the reports at issue, which were disclosed primarily to restaurants for "campaign meeting" and "meal at judicial conference" and for telephone services.

27. The respondent swore that the expenditures were for campaign purposes.

Reporting an Asset of \$500 or More

28. The complaint alleged that the respondent did not file Schedule M (used for assets valued at \$500 or more) on the July 2011 semiannual report. The report disclosed a \$681.96 political expenditure on Schedule I for a single asset. The respondent corrected the error.

Contributions Exceeding \$100 to a Candidate or Officeholder

29. The complaint alleged that, based on disclosures in the respondent's January and July 2010 semiannual reports, the respondent used a political contribution to knowingly make political contributions that in the aggregate exceeded \$100 in a calendar year to a candidate or officeholder.

30. The January 2010 semiannual report disclosed the following expenditures on Schedule F:

12/08/2009	\$150.00	Friends of Joe Rivera / (address) / Donation
09/10/2009	\$1,000.00	Tony Yzaguirre Campaign / (address) / Campaign Meeting

31. The July 2010 semiannual report disclosed the following expenditures on Schedule F:

03/11/2010	\$100.00	Martin Arambula Campaign / (address) / C: Contributions ... ; D: Donation
04/29/2010	\$100.00	Martin Arambula Campaign / (address) / C: Contributions ... ; D: Donation
02/08/2010	\$250.00	Ruben Pena Campaign / (address) / C: Contributions ... ; D: Donation
01/07/2010	\$200.00	Victor Alvarez Campaign / (address) / C: Contributions ... ; D: Donation

32. The evidence indicated that the expenditures were political contributions to candidates.

Contributions to Political Committees

33. The complaint alleged that the respondent, based on disclosures in the respondent's January and July 2010 semiannual reports, used a political contribution to knowingly make political contributions to a political committee in connection with a March 2, 2010, primary election, in which the respondent was an unopposed incumbent candidate for district judge.

34. The January 2010 semiannual report disclosed the following expenditures on Schedule F:
- | | | |
|------------|------------|---|
| 12/08/2009 | \$150.00 | Friends of Joe Rivera / (address) /
Donation |
| 07/14/2009 | \$100.00 | Solomon Ortiz for Congress / (address)
/ Donation |
| 09/10/2009 | \$1,000.00 | Tony Yzaguirre Campaign / (address) /
Campaign Meeting |
35. The evidence indicated that the expenditures of \$150 and \$1,000 were political contributions to candidates, not political committees.
36. Ortiz For Congress Committee is the name of a federal political committee that supports Solomon Ortiz as a candidate for U. S. Representative District 27. Solomon Ortiz was an unopposed candidate for U. S. Representative District 27 in the 2010 Democratic Party Primary Election.
37. The July 2010 semiannual report disclosed the following expenditures on Schedule F:
- | | | |
|------------|----------|---|
| 02/08/2010 | \$250.00 | Ruben Pena Campaign / (address) / C:
Contributions ... ; D: Donation |
| 01/07/2010 | \$200.00 | Victor Alvarez Campaign / (address) /
C: Contributions ... ; D: Donation |
38. The evidence indicated that the expenditures were political contributions to candidates, not political committees.

IV. Findings and Conclusions of Law

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

Total Political Expenditures

1. A campaign finance report must include 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).
2. An expenditure means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).
3. A political expenditure means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).

4. Campaign expenditure means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7).
5. Officeholder expenditure means an expenditure made by any person to defray expenses that are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001(9).
6. The respondent was required to include campaign expenditures and officeholder expenditures when calculating the total amount of political expenditures. Based on Schedule I of the reports at issue, the respondent was improperly categorizing political expenditures as non-political expenditures. Accordingly, the amount of total political expenditures was understated in the four reports at issue because the expenditures disclosed on Schedule I were not included in the calculations.
7. Although the respondent disclosed the expenditures on Schedule I of the reports, someone viewing the expenditure totals section of the reports would not have been able to ascertain the true amount of total political expenditures. There is credible evidence that the respondent violated section 254.031(a)(6) of the Election Code with respect to each report by improperly categorizing 177 political expenditures totaling approximately \$24,340 as non-political expenditures. The respondent also corrected the same errors in the four semiannual reports that were due after the reports at issue were filed. The four additional reports were corrected to move approximately \$15,070 from the nonpolitical expenditures schedules to the political expenditures schedules and added, in total, the same amount to the total political expenditures figures (approximately \$3,770 in each report). Therefore, there is credible evidence of violations of section 254.031(a)(6) of the Election Code regarding each report.

Contributions Maintained

8. A campaign finance report must include as of the last day of the reporting period, 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).
9. A *de minimis* error in calculating or reporting a cash balance under subsection (a)(8) is not a violation. *Id.* § 254.031(a-1).
10. The total amount of political contributions maintained in one or more accounts includes balance on deposit in banks, savings and loan institutions and other depository institutions, and the present value of any investments that can be readily converted to cash, such as

certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc. Ethics Commission Rules § 20.50(a).

11. Regarding the July 2011 semiannual report, the evidence indicates that the respondent properly reported the total political contributions maintained balance. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code.
12. Regarding the January 2011 semiannual report, the commission has previously determined that there is no violation of section 254.031(a)(8) of the Election Code if the difference between the amount of political contributions maintained as originally disclosed and the correct amount does not exceed the lesser of 10% of the amount originally disclosed or \$2,500. The amount disclosed on the January 2011 semiannual report is within that threshold. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code with respect to that report.
13. Regarding the January 2010 and July 2010 semiannual reports, the evidence indicates that the respondent did not properly report the total political contributions maintained balance. The respondent over-reported the total political contributions maintained balance on the January 2010 semiannual report by approximately \$5,790 and over reported the total political contributions maintained balance on the July 2010 semiannual report by approximately \$8,780. Therefore, there is credible evidence of violations of section 254.031(a)(8) of the Election Code.

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, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
15. A campaign finance report by a candidate for a judicial office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period, the principal occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual or the individual's spouse is a member, if any. ELEC. CODE § 254.0611(a)(2)(A).
16. The evidence indicates that the contributions were from law firms and that the respondent disclosed the contributor's principal occupation, job title, and employer/law firm, as applicable to the law firm contributors. However, those questions are only applicable to individual contributors. The respondent confirmed that the contributions were from the law firms. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code with respect to those contributors.

Names of Payees of Political Expenditures

17. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 (\$100 as of 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. ELEC. CODE § 254.031(a)(3).
18. The respondent disclosed two political expenditures to payees whose names were disclosed with an acronym. The acronyms were a commonly recognized acronym for the payees, and thus the respondent properly disclosed the names of the payees. There is credible evidence of no violation of section 254.031(a)(3) of the Election Code as to the names of those payees.

Names of Persons Receiving Things of Value Purchased with Political Contributions

19. The respondent disclosed the names of the vendors to which the expenditures at issue were made. The respondent was not required to disclose the name of the persons that received the items that were purchased. There is credible evidence of no violation of section 254.031(a)(3) of the Election Code.

Actual Payees of Political Expenditures

20. 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: (1) 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; and (2) included with the total amount or a specific listing of the political expenditures of \$100 or less made during the reporting period. Ethics Commission Rules § 20.62(a).
21. 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).

22. The payees disclosed by the respondent appear to be the actual payees. There is no evidence that these individuals were being reimbursed for expenditures that they made. There is credible evidence of no violation of section 254.031(a)(3) of the Election Code or section 20.62(a) of the Ethics Commission Rules as to these expenditures.

Principal Occupation, Job Title, and Employer/Law Firm of Contributors

23. The respondent had an active campaign treasurer appointment on file during the period at issue. Thus, the respondent was a candidate for title 15 filing purposes.
24. A campaign finance report by a candidate for a judicial office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period, the principal occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual or the individual's spouse is a member, if any. ELEC. CODE § 254.0611(a)(2)(A).
25. Black's law Dictionary defines "employer" as "a person who controls and directs a worker under an express or implied contract of hire and who pays the worker's salary or wages." Black's Law Dictionary 565 (8th ed. 2004).
26. The commission has previously determined that there is no violation of section 254.0611(a)(2)(A) of the Election Code for listing a contributor as self-employed as long as the contributor is an officer or principal of an entity that bears the contributor's name, or if the contributor is otherwise self-employed.
27. For 32 contributors the evidence indicated that the contributors were sole proprietors. The contributors were identified as self-employed. The respondent properly disclosed the employer/law firm information for these contributors. Therefore, there is credible evidence of no violation of section 254.0611(a)(2)(A) of the Election Code.
28. For 21 contributors the evidence indicated that the contributors were owners of law firms operated as a partnership, a limited liability company, a professional limited liability company, or as a professional corporation and that the contributors' names were included in the names of the law firms. The contributors were identified as self-employed. The respondent did not list the names of the law firms or businesses.

The commission has previously determined that there is no violation of section 254.0611(a)(2)(A) of the Election Code for listing a contributor as self-employed as long as the contributor is an officer or principal of an entity that bears the contributor's name. Credible evidence indicated that the contributors at issue were officers or principals of entities, and that the contributors' names were included in the names of each respective

- entity. Therefore, there is credible evidence of no violation of section 254.0611(a)(2)(A) of the Election Code.
29. For four contributors there is no evidence to show that the disclosure of the full name of the employer/law firm was not correct. In the absence of evidence to the contrary, the report facially complied with section 254.0611(a)(2)(A) of the Election Code regarding those contributions. Therefore, there is credible evidence of no violation of that provision.
 30. For two contributors there is insufficient evidence to show that the disclosure of the full name of the employer/law firm was not correct. Therefore, there is insufficient evidence of a violation of section 254.0611(a)(2)(A) of the Election Code.
 31. For four contributions totaling approximately \$3,990, the report disclosed that the contributors were self-employed, but the evidence indicated that the contributors were employed by entities that they did not own. Therefore, there is credible evidence of violations of section 254.0611(a)(2)(A) of the Election Code.

Personal Use of Political Contributions

32. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a). Personal use is a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate or officeholder. *Id.* § 253.035(d). Personal use does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County. *Id.* § 253.035(d)(1).
33. There is insufficient evidence of a violation of section 253.035(a) of the Election Code.

Reporting an Asset of \$500 or More

34. Each report by a candidate for judicial office must include a specific listing of each asset valued at \$500 or more that was purchased with political contributions and on hand as of the last day of the reporting period. ELEC. CODE § 254.0611(a)(3).
35. Credible evidence indicated that the respondent purchased with political contributions a single asset valued at \$500 or more and had the asset on hand as of the last day of the reporting period covered by the July 2011 semiannual report. The respondent was required to disclose the asset on Schedule M of the report. The respondent did not disclose the asset on Schedule M of the July 2011 semiannual report. Therefore, there is credible evidence of a violation of section 254.0611(a)(3) of the Election Code. The respondent corrected the error.

Contributions Exceeding \$100 to a Candidate or Officeholder

36. A judicial candidate or officeholder or a specific-purpose committee for supporting or opposing a judicial candidate or assisting a judicial officeholder may not use a political contribution to knowingly make political contributions that in the aggregate exceed \$100 in a calendar year to a candidate or officeholder. ELEC. CODE § 253.1611(a).
37. There is credible evidence that the respondent used political contributions to knowingly make six political contributions totaling \$1,800 to candidates that in the aggregate exceeded \$100 in a calendar year. The total of the contribution amounts that exceeded \$100 per candidate was \$1,300. Therefore, there is credible evidence of violations of section 253.1611(a) of the Election Code.

Contributions to Political Committees

38. A judicial candidate or a specific-purpose committee for supporting or opposing a judicial candidate may not use a political contribution to knowingly make political contributions to a political committee in connection with a primary election. ELEC. CODE § 253.1611(b).
39. A judicial officeholder or a specific-purpose committee for assisting a judicial officeholder may not, in any calendar year in which the office held is not on the ballot, use a political contribution to knowingly make a political contribution to a political committee that, when aggregated with each other political contribution to a political committee in that calendar year, exceeds \$250. *Id.* § 253.1611(d).
40. “In connection with an election” means, with regard to a contribution that is designated in writing for a particular election, the election designated or, with regard to a contribution that is not designated in writing for a particular election or that is designated as an officeholder contribution, the next election for that office occurring after the contribution is made. *Id.* § 253.152(2).
41. The respondent used his political contributions to make a \$100 political contribution to a federal political committee. The respondent was an officeholder in 2009. Thus section 253.1611(d) of the Election Code applied. The contribution was under the \$250 limit. Therefore, there is credible evidence of no violation of section 253.1611(d) of the Election Code with respect to that political contribution. There is also credible evidence of no violation of section 253.1611(b) of the Election Code with respect to this political contribution because that section did not apply to the contribution.
42. The remaining contributions at issue were made to candidates. There is credible evidence of no violation of section 253.1611(d) of the Election Code with respect to those political contributions.

V. Representations and Agreement by Respondent

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

1. The respondent neither admits nor denies the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that: 1) a campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period; 2) a campaign finance report must include as of the last day of the reporting period, 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; 3) a campaign finance report by a candidate for a judicial office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period, the principal occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual or the individual's spouse is a member, if any; 4) each report by a candidate for judicial office must include a specific listing of each asset valued at \$500 or more that was purchased with political contributions and on hand as of the last day of the reporting period; and 5) a judicial candidate or officeholder may not use a political contribution to knowingly make political contributions that in the aggregate exceed \$100 in a calendar year to a candidate or officeholder. 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 an \$800 civil penalty.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-3120106.

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

Benjamin Euresti, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Executive Director