

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
MICHAEL ‘MIKE’ ENGELHART,	§	TEXAS ETHICS COMMISSION
RESPONDENT	§	SC-3140252

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on June 1, 2016, to consider sworn complaint SC-3140252. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of section 253.1611 of the Election Code, a law 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) made a political contribution to a political committee in connection with a primary election in excess of the limits prescribed by the Judicial Campaign Fairness Act (JCFA); and 2) made political contributions to a political committee exceeding \$500 in connection with a general election and in excess of the JCFA limits.

III. Facts Supported by Credible Evidence

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

1. The respondent was elected as judge of the 151st Judicial District on November 4, 2008. The respondent currently holds that office and is up for re-election in the November 2016 general election. The complaint is in connection with the 2012 election cycle, where the respondent was an unopposed candidate for district judge in the May 29, 2012, primary election, and was a successful opposed candidate in the November 6, 2012, general election.

Political Contribution to a Political Committee in Connection With a Primary Election

2. The complaint alleged that the respondent made an unlawful political contribution to the Harris County Democratic Party (HCDP) in connection with the May 29, 2012, primary election. The complaint allegation was based on an expenditure that was disclosed on the respondent’s July 2012 semiannual report as follows:

- February 10, 2012, \$7,000 to Harris County Democratic Party, under the category of “Contributions/Donations Made By Candidate/Officeholder/Political Committee” with a description of “Proportional Share of Operating Expenses.”
3. HCDP is a county executive committee that files campaign finance reports semiannually with the Commission. In response to the complaint, the respondent stated that the contribution was for his pro rata share of HCDP’s normal overhead and operating costs in accordance with section 253.1611(e)(2) of the Election Code. The respondent provided a sworn affidavit from the chairman of HCDP. In the affidavit, the chairman swore that for the 2012 election cycle HCDP’s administrative costs conservatively totaled \$1,375,990, and that the party provided goods and services to 82 countywide candidates. The chairman of HCDP also provided spreadsheets detailing all of the committee’s expenditures during the period at issue.

Political Contributions to a Political Committee Exceeding \$500 in Connection With General Election

4. The complaint alleged that, based on disclosures in the respondent’s 30-day and 8-day pre-election reports for the November 2012 general election, the respondent made political contributions to HCDP in excess of \$500 in connection with the November 2012 general election. The contributions at issue were disclosed on the respondent’s 30-day and 8-day pre-election reports for the November 2012 general election as follows:
- July 9, 2012, \$25,000 to Harris County Democratic Party 2012 Coalition Fund, under the category of “Contributions/Donations Made By Candidate/Officeholder/Political Committee” with a description of “Requested contribution for pro-rata share of expenses per Sec. 253.1611.”
 - August 21, 2012, \$25,000 to Harris County Democratic Party 2012 Coalition Fund, under the category of “Contributions/Donations Made By Candidate/Officeholder/Political Committee” with a description of “Requested contribution for pro-rata share of expenses per Sec. 253.1611.”
 - October 24, 2012, \$2,500 to Harris County Democratic Party, under the category of “Contributions/Donations Made By Candidate/Officeholder/Political Committee” with a description of “Requested contribution for pro-rata share of expenses per Sec. 253.1611.”
5. All of the expenditures at issue were disclosed in HCDP’s campaign finance reports as political contributions. In response to the complaint, the respondent stated that the contributions at issue were made in return for goods or services, the value of which substantially equaled or exceeded the amount of the contributions, per the exception under section 253.1611(e)(1) of the Election Code. The respondent provided a sworn affidavit from the chairman of HCDP. The chairman swore that the contributions went towards generic Get Out the Vote (GOTV) straight ticket voting efforts that involved paid staff knocking on doors, calling voters, attending community events throughout

Harris County, and targeted straight ticket mail pieces. The chairman swore that the collective 2012 straight ticket GOTV effort supported 82 countywide candidates and required the use of approximately \$457,958.71. The chairman also provided a spreadsheet detailing HCDP's 2012 GOTV expenditures.

IV. Findings and Conclusions of Law

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

Political Contribution to a Political Committee in Connection With a Primary Election

1. 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).
2. This section does not apply to a political contribution made to the principal political committee of the state executive committee or a county executive committee of a political party that is (1) made in return for goods or services, including political advertising or a campaign communication, the value of which substantially equals or exceeds the amount of the contribution, or (2) in an amount that is not more than the candidate's or officeholder's pro rata share of the committee's normal overhead and administrative or operating costs. *Id.* § 253.1611(e)(1), (2).
3. For purposes of Subsection (e)(2), a candidate's or officeholder's pro rata share of a political committee's normal overhead and administrative or operating costs is computed by dividing the committee's estimated total expenses for a period by the number of candidates and officeholders to whom the committee reasonably expects to provide goods or services during that period. *Id.* § 253.1611(f).
4. According to a sample ballot from the Harris County Elections website in 2012, the Democratic Party had approximately 82 candidates on the primary and general election ballots in Harris County. Credible evidence indicates that the respondent's pro rata share of HCDP's normal overhead and administrative or operating costs for the 2012 election cycle was approximately \$16,780. Accordingly, the \$7,000 expenditure at issue was made in accordance with section 253.1611(e)(2) of the Election Code because it did not exceed the respondent's pro rata share of HCDP's normal overhead and administrative or operating costs. Therefore, there is credible evidence of no violation of section 253.1611(b) of the Election Code.

Political Contributions to a Political Committee Exceeding \$500 in Connection With General Election

5. A judicial candidate or a specific-purpose committee for supporting or opposing a judicial candidate may not 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 connection with a general election, exceeds \$500. ELEC. CODE § 253.1611(c).
6. This section does not apply to a political contribution made to the principal political committee of the state executive committee or a county executive committee of a political party that is (1) made in return for goods or services, including political advertising or a campaign communication, the value of which substantially equals or exceeds the amount of the contribution, or (2) in an amount that is not more than the candidate's or officeholder's pro rata share of the committee's normal overhead and administrative or operating costs. *Id.* § 253.1611(e)(1), (2).
 7. For purposes of Subsection (e)(2), a candidate's or officeholder's pro rata share of a political committee's normal overhead and administrative or operating costs is computed by dividing the committee's estimated total expenses for a period by the number of candidates and officeholders to whom the committee reasonably expects to provide goods or services during that period. *Id.* § 253.1611(f).
 8. Section 20.51(c) of the Ethics Commission Rules states that if political advertising supporting or opposing two or more candidates is an in-kind contribution, each person benefitting from the contribution shall report the amount determined by dividing the full value of the political advertising by the number of persons benefitted by the political advertising. Ethics Commission Rules § 20.51(c).
 9. "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. ELEC. CODE § 253.152(2).
 10. In our opinion, the exception in section 253.1611(e) allows a judicial candidate to make a contribution to a party political committee *only for goods and services that benefit the donor candidate*, not for goods and services that benefit any other candidate or officeholder. Otherwise, donations to political party committees could be used to circumvent the other restrictions in section 253.1611. Ethics Advisory Opinion No. 444, 2 n.3 (2002).
 11. According to a sample ballot from the Harris County Elections website in 2012, the Democratic Party had approximately 82 candidates on the primary and general election ballots in Harris County. Based on the statements provided by the chairman of HCDP, the party spent approximately \$457,960 in connection with the 2012 GOTV effort. If each candidate received equal value, then it can be said that the respondent received an approximate value of \$5,585 in goods and services from HCDP.
 12. The method of computing in-kind contribution value as stated in section 20.51 of the Ethics Commission Rules is a reasonable method of determining the value received by each candidate. Based on that method, the evidence indicates that the respondent

received an approximate value of \$5,585 in goods and services from HCDP in return for his contributions totaling \$52,500. Therefore, the respondent's contributions exceeded the amount of goods or services he received by approximately \$46,915. There is credible evidence of a violation of section 253.1611(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) 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; 2) a judicial candidate or a specific-purpose committee for supporting or opposing a judicial candidate may not 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 connection with a general election, exceeds \$500; and 3) the exception in section 253.1611(e) of the Election Code allows a judicial candidate to make a contribution to a party political committee only for goods and services that benefit the donor candidate, not for goods and services that benefit any other 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 after considering the sanction necessary to deter future violations, the Commission imposes a \$1,000 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-3140252.

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

Michael 'Mike' Engelhart, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director