

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOSE ERNESTO LUGO JR.,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31409189CI

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on April 20, 2014, and by its own motion initiated sworn complaint SC-31409189CI. The Commission met on August 7, 2015, to consider sworn complaint SC-31409189CI. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.031, 254.036(h), 253.003(b), and 253.094(a) of the Election Code and sections 20.61 and 20.62 of the Ethics Commission Rules, laws administered and enforced by the Commission.

The Commission notes that disclosure is the foundation upon which the campaign finance regulatory regime administered by the Commission rests. When a candidate does not disclose fully his or her sources of campaign contributions and the recipients of his or her campaign expenditures, the candidate deprives the public of vital information. Circumventing the disclosure requirements can topple the entire purpose of the regulatory structure. This structure is essential in providing the electorate with information and in maintaining the public's trust in its government.

In this case, the evidence indicates that the respondent, who ran in the 2012 Donna Independent School District (Donna ISD) school board election with a slate of candidates that included Nick Castillo, Dr. Mike Flores, and Alfredo Lugo, substantially defeated the purpose of disclosure by not including the actual payees of political expenditures. By not adequately tracking and disclosing the actual payees of political expenditures, the respondent contributed to an environment in which illegal activity occurred.

The evidence indicates that the slate of candidates employed Francisco "Frankie" Garcia to help coordinate "block walking." On December 1, 2014, a federal grand jury handed down an indictment alleging Francisco Garcia engaged in election fraud and a conspiracy to commit election fraud by paying voters to vote for four candidates for the Donna ISD school board in the November 2012 election. Sealed Indictment, *United States v. Garcia*, No. 7:14-cr-01472 (S.D. Tex. Sept. 16, 2014). Garcia pleaded guilty to one count of election fraud and one count of conspiracy to commit election

fraud on March 2, 2015. A U.S. district court judge sentenced Garcia to 18 months in prison. Judgment, *Garcia*, No. 7:14-cr-01472 (S.D. Tex. March 2, 2015).

Regardless of whether the respondent and his fellow slate members knowingly authorized, encouraged, or participated in a vote-buying scheme, such illicit activity was symptomatic of a lack of diligent record keeping, oversight, and a failure to adhere to campaign finance reporting requirements.

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 campaign finance reports political expenditures and political contributions, as required by section 254.031 of the Election Code and section 20.61 of the Ethics Commission Rules; 2) did not identify the actual payees of political expenditures, as required by section 254.031 of the Election Code and section 20.62 of the Ethics Commission Rules, or, in the alternative, converted political funds to personal use, which is prohibited by section 253.035 of the Election Code; 3) did not properly execute an affidavit on campaign finance reports, as required by section 254.036(h) of the Election Code; and 4) knowingly accepted political contributions from corporations, which is prohibited by sections 253.003(b) and 253.094(a) of the Election Code.

III. Facts Supported by Credible Evidence

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

1. During all times relevant to this complaint, the respondent was an officeholder of and candidate for the Donna ISD Board of Trustees.
2. The complaint alleged the respondent did not properly report political contributions accepted, political expenditures made, accepted corporate contributions, and did not properly execute an affidavit on the 30-day and 8-day pre-election reports filed in advance of the 2012 Donna ISD school board election, and the final report filed after the election.
3. The respondent ran as a part of a slate of candidates in the November 2012 Donna ISD school board election with Nick Castillo, Alfredo Lugo, and Dr. Michael Flores. In response to written questions, the respondent swore that each candidate in the slate received an equal and proportional share of all contributions and an equal and proportional share of all expenditures. He stated that, “[t]he fundraising decisions were discussed and approve [sic]

- by the slate. This would include the event, the event size, the food menu, the amount to spend on entertainment if any and an estimate of the costs and amount of the contributions the event would generate. All the event and the political contributions were always apportioned equally. The non-event political contributions were in most cases solicited and accepted by the individual slate members. Those contributions were apportioned equally. The records of political contributions were maintained by keeping copies of the contributor's check."
4. The respondent further stated: "All the members made decisions to some degree regarding spending decisions for the slate. Alfredo Lugo, Michael Flores, Nicolas Castillo, and myself made spending decisions. Sometimes a slate member would incur expense and then request reimbursement of payment for the expense. This would be a spending decision which only one slate member would make. It would never a major spending decision; but nevertheless an expenditure on which a decision was made by an individual slate member. We would meet as a group especially for fund raising events or we talked on the phone. It was a very informal process."
 5. The respondent provided detailed bank records of a Frost Bank account in the name of all slate members and swore that all slate members had signing authority on the account. He stated that each member having signing authority over the joint account proved too difficult to track and control so the slate decided to close the Frost Bank account and transfer the funds to a bank account over which only their campaign treasurer, Cynthia Balli, would have control. The slate members transferred their political funds to a Wells Fargo account opened under the name "CYNTHIA BALLI DBA D.I.S.D. SCHOOL BOARD CAMPAIGN." The bank records include checks issued directly to the respondent, to other members of the slate individually, and to all members of the slate.
 6. According to bank records and the corrected campaign finance reports submitted by the respondent, each slate member's proportional share of political contributions accepted in the 30-day pre-election reporting period was approximately \$19,887. Each member's proportional share of expenditures during that reporting period was \$17,620. With respect to the 8-day pre-election reporting period, bank records and the respondent's corrected report each show that slate members' proportional share of campaign contributions accepted during the reporting period was approximately \$4,025, and approximately \$5,035 in political expenditures.
 7. Regarding payments to Francisco Garcia, fellow slate member Nick Castillo, in a sworn statement, stated that Garcia worked for the slate as a "campaign worker/manager." The respondent stated that Garcia worked with other campaign workers and helped set up events. However, he denied paying Garcia to pay voters to vote for him or the slate.

8. The respondent submitted detailed reports and corrections to the campaign finance reports at issue, which included payments to “Frank Garcia” for “block walking.” Those corrections are corroborated by detailed financial records and affidavits sworn to by the respondent or Cynthia Balli.
9. In addition, the respondent stated that Francisco Garcia performed various tasks for the benefit of the entire slate of candidates: “Part of the tasks as the event coordinator were to inform the public, secure the event site, inquire as to costs of fundraising event centers, purchase the food and beverages for these events. He also would coordinate block walking, where he, along with other individuals, would walk the streets passing out campaign literature.”

Report Affidavits

10. The first 30-day pre-election report submitted to Donna ISD on the respondent’s behalf contains a notarized signature of Cynthia Balli, the respondent’s campaign treasurer. The report does not have a legible date stamp to indicate the date of filing, but it is signed on October 9, 2012 (30-day pre-election report #1). The respondent also appears to have filed an additional, unsigned 30-day pre-election report (30-day pre-election report #2) covering the same reporting period as the 30-day pre-election report #1.
11. The 8-day pre-election report submitted to Donna ISD on the respondent’s behalf is signed by Cynthia Balli and is date stamped by Donna ISD on October 30, 2012. It does not contain the signature of a notary.
12. The respondent filed with Donna ISD a final report that he signed and had notarized on October 23, 2013. There is no visible date stamp from Donna ISD on the report.

Properly Disclosing Contributions

13. In the 30-day pre-election report #1, the respondent disclosed accepting \$3,000 in total political contributions and \$0 in unitemized political contributions. The 30-day pre-election report #1 consisted of only the cover sheets and therefore did not contain itemized political contributions.
14. In the 30-day pre-election report #2, the respondent disclosed accepting \$21,212.50 in total political contributions and \$0 in unitemized political contributions. The 30-day pre-election report #2 did contain Schedule A (used to disclose political contributions), on which the names of campaign contributors were itemized. However, Schedule A did not include the street address of any of the contributors.

15. The 8-day pre-election report submitted to Donna ISD on behalf of the respondent disclosed \$4,400 in total political contributions. It disclosed a total of \$0 in unitemized political contributions and a total of \$0 in unitemized expenditures.
16. The 8-day pre-election report did contain Schedule A, on which the names of campaign contributors were itemized. However, Schedule A did not include the street address for five of the contributors.
17. The final report disclosed \$4,917.50 in total political contributions accepted and \$0 in unitemized political contributions.
18. The final report did contain Schedule A, on which the names of campaign contributors were itemized. However, Schedule A did not include the street address of any of the contributors.
19. The respondent filed corrected reports to include the full names and addresses of contributors for the reports at issue.

Properly Disclosing Expenditures

20. In the 30-day pre-election report #1, the respondent disclosed making \$3,000 in total political expenditures and \$0 in unitemized expenditures. The 30-day pre-election report #1 consisted of only the cover sheets and therefore did not contain itemized political expenditures.
21. In the 30-day pre-election report #2, the respondent disclosed making \$20,478.35 in total political expenditures.
22. The respondent did not include the full names of the payees of multiple expenditures in the 30-day pre-election report #2. Specifically, the report disclosed names of payees as follows:
 - “G.J.” from whom the respondent disclosed accepting a \$1,250 contribution on April 27, 2012;
 - “Edu” from whom the respondent disclosed accepting a \$500 contribution on May 2, 2012; and
 - “Guerra and Farah” from whom the respondent disclosed accepting a \$1,250 contribution on August 31, 2012.
23. In the 30-day pre-election report #2, the respondent also disclosed political expenditures to fellow slate members that appear to be reimbursements based on the categories of the expenditures (e.g., supplies and printing). The respondent did not disclose the actual payees.

24. In the 30-day pre-election report #2, the respondent disclosed the payees of multiple political expenditures as “cash” instead of the actual payees. The respondent also disclosed himself as the payee of multiple expenditures instead of the actual payees.
25. The respondent included a category but not a description for all campaign expenditures itemized on the 30-day pre-election report #2.
26. The 8-day pre-election report submitted to Donna ISD on behalf of the respondent discloses \$5,035.23 in total political expenditures and \$0 in unitemized political expenditures.
27. None of the political expenditures itemized on Schedule F (used to disclose political expenditures) of the 8-day pre-election report contain full street addresses for the payees.
28. The 8-day pre-election report disclosed Cynthia Balli as the payee of five political expenditures that were described as a “food-beverage-transp[ortation]-and consultants” related expense.
29. The final report disclosed \$7,024.12 in total political expenditures and \$0 in unitemized political expenditures.
30. None of the political expenditures itemized on Schedule F of the final report contain full street addresses for the payees.
31. On the final report, the respondent disclosed “cash” as the payee of political expenditures itemized on Schedule F, rather than the actual payee.
32. In response to the allegations, the respondent filed corrected reports to the reports at issue that included the actual payees of political expenditures instead of listing “cash” or the staffers who were reimbursed. The corrected reports include descriptions for all expenditures and full names and addresses for all payees.

Corporate Contributions

33. In the 30-day pre-election report, the respondent disclosed accepting a \$150 contribution from Johnson Controls, Inc. on April 27, 2012. Johnson Controls, Inc. is a domestic for-profit corporation, according to Texas Secretary of State (SOS) records. The respondent stated that he mistakenly disclosed Johnson Controls, Inc. as a contributor when the contribution was in fact from an individual. The respondent provided bank records to corroborate that fact.

34. In the 30-day pre-election report, the respondent disclosed accepting a \$500 contribution from Edu-Source Corporation on May 2, 2012. The Edu-Source Corporation is a domestic for-profit corporation, according to SOS records.
35. In the 30-day pre-election report, the respondent disclosed accepting a \$450 political contribution from Texas Health Care Mobile on May 2, 2012. Texas Health Care Mobile Imaging, LLC is a domestic limited liability company. It has as a member, Radiology Centers of America, Inc., which is a domestic for-profit corporation, according to SOS records.
36. In the 8-day pre-election report, the respondent disclosed accepting a \$250 political contribution from Edu-Source Corporation on May 2, 2012. Edu-Source Corporation is a domestic for-profit corporation, according to SOS records.
37. In the 8-day pre-election report, the respondent disclosed accepting a \$125 political contribution from National Education Systems, Inc. on October 22, 2012. National Education Systems, Inc. is a domestic for-profit corporation, according to SOS records.
38. In the final report, the respondent disclosed accepting on February 26, 2013, a \$125 political contribution from Nicho Produce Co., Inc. (Nicho Produce). Nicho Produce is organized as a domestic for-profit corporation, according to SOS records.
39. The respondent refunded contributions he accepted from the Edu-Source Corporation, Texas Health Care Mobile, National Educational Systems, Inc., and Nicho Produce. The respondent included copies of certified checks to those corporations as proof of refund.
40. The respondent also refunded a \$375 contribution to CS Advantage USAA, Inc. Although the complaint did not include an allegation relating to that contribution, the respondent stated “in reviewing all the source documents, I came across this corporate contribution and I refunded this amount.” In addition, the respondent refunded a \$1,750 loan to New Life Home Health and provided a certified check to corroborate that fact. Although the complaint did not include an allegation relating to that loan, the respondent swore “this amount had been listed on my reports as a loan. New Life Home Health is a corporation. Furthermore, according to the loan rules, a corporation who is not in the business of making loans cannot legally loan money to a campaign. This money has been refunded.”

IV. Findings and Conclusions of Law

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

Report Affidavits

1. Each campaign finance report that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: "I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code." ELEC. CODE § 254.036(h).
2. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. *Id.* § 254.064. The respondent was the person whose name was to appear on the ballot, therefore he was *the person* required to file the two pre-election reports at issue. *See id.*
3. The Election Code does not specifically define "affidavit," but the generally accepted definition includes the requirement that the facts being sworn to be done so before an officer qualified to administer an oath. The respondent's campaign treasurer signed the report, which contained an affidavit executed by the respondent's campaign treasurer. The respondent did not sign the affidavit accompanying his 30-day pre-election report. The respondent's campaign treasurer, not the respondent, also signed the 8-day pre-election report at issue. This report was not accompanied by a notary stamp or seal, did not contain a signature of an officer administering an oath, and did not contain the signature of the respondent.
4. The respondent cannot shield himself from responsibility for the content of the reports by delegating the reporting duties to a campaign treasurer or other members of his slate, as section 254.064 of the Election Code requires the respondent to file pre-election reports, and section 254.036(h) of the Election Code requires the respondent to sign the reports and also provides that a campaign finance report is considered to be under oath even if the affidavit is defective.
5. With regard to the respondent's 30-day and 8-day pre-election campaign finance reports, there is credible evidence of a violation of section 254.036(h) of the Election Code.

Properly Disclosing Contributions

6. Each 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. *Id.* § 254.031(a)(1).

7. In the respondent's 30-day pre-election, 8-day pre-election, and final campaign finance reports, the respondent did not include a street addresses for nearly every contributor. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code.

Properly Disclosing Expenditures

8. Each report must include 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. *Id.* § 254.031(a)(3).
9. The evidence indicates that the respondent did not disclose the address of payees on Schedule F for nearly all expenditures in all reports at issue. The respondent also disclosed contributions to "cash" rather than the person or vendor who received the payment. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.
10. The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.61.
11. The evidence also indicates that the respondent disclosed numerous political expenditures on all campaign finance reports at issue that included a category but no description of the expenditures. Therefore, there is credible evidence of violations of section 20.61 of the Ethics Commission Rules.
12. Section 20.62 of the Ethics Commission Rules states that political expenditures made out of personal funds by a staff member of an officeholder or candidate, with the intent to seek reimbursement from the officeholder or candidate that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made: (1) the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made and the dates and purposes of the expenditures; and (2) included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period.
13. The respondent reported, on all reports at issue, several political expenditures to campaign staff members including Cynthia Balli and Francisco Garcia. The respondent corrected the reports to reflect the actual payees and admitted he did not disclose the actual payees. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

Corporate Contributions

14. A candidate may not knowingly accept a political contribution that the candidate knows was made in violation of Chapter 253, Election Code. ELEC. CODE § 253.003(b).
15. A corporation may not make a political contribution to a candidate or officeholder. *Id.* § 253.094. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. *Id.* § 253.091. In addition, a limited liability company owned in whole or in part by a corporation is subject to the restrictions in Election Code chapter 253, subchapter D. Ethics Advisory Opinion No. 383 (1997) (EAO 383).
16. The respondent signed a campaign treasurer appointment on December 7, 2011, and certified that he was aware of the restrictions in title 15 of the Election Code on contributions from corporations and labor organizations.
17. The respondent disclosed accepting contributions from the following corporations: The Edu-Source Corporation, Texas Health Care Mobile Imaging, LLC, National Educational Systems, Inc., and Nicho Produce Co., Inc.
18. With the exception of Texas Health Care Mobile Imaging, LLC, the corporate identity of all the corporations from which the respondent accepted the contributions is apparent. Therefore, there is credible evidence of violations of sections 253.003 and 253.094 of the Election Code, with respect to the corporate contributions the respondent accepted from Edu-Source Corporation, National Educational Systems, Inc., and Nicho Produce, Co., Inc.

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 in the recitals under Section I and 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 each campaign finance report that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: "I swear, or affirm, under penalty

- of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code.” ELEC. CODE § 254.036(h).
4. The respondent further acknowledges that each 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. *Id.* § 254.031(a)(1).
 5. The respondent further acknowledges that each report must include 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. *Id.* § 254.031(a)(3).
 6. The respondent further acknowledges that the report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.61.
 7. The respondent further acknowledges that section 20.62 of the Ethics Commission Rules states that political expenditures made out of personal funds by a staff member of an officeholder or candidate, with the intent to seek reimbursement from the officeholder or candidate that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made: (1) the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made and the dates and purposes of the expenditures; and (2) included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period.
 8. The respondent further acknowledges that a candidate may not knowingly accept a political contribution that the candidate knows was made in violation of Chapter 253, Election Code. ELEC. CODE § 253.003(b). A corporation may not make a political contribution to a candidate or officeholder. *Id.* § 253.094. The respondent acknowledges the prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. *Id.* § 253.091. In addition, a limited liability company owned in whole or in part by a corporation is subject to the restrictions in Election Code chapter 253, subchapter D. EAO 383.
 9. 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 \$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-31409189CI.

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

Jose Ernesto Lugo Jr., Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director