

**TEXAS ETHICS COMMISSION  
BIENNIAL REPORT  
2021-2022**

**A REPORT TO THE OFFICE OF THE GOVERNOR  
AND THE 88<sup>TH</sup> LEGISLATURE  
PURSUANT TO TEX. GOV'T CODE § 571.073**

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**DECEMBER 2022**

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**TEXAS ETHICS COMMISSION  
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**I. ADVISORY OPINIONS**

The Texas Ethics Commission issued 11 advisory opinions in 2021 and 15 advisory opinions in 2022. The Ethics Advisory Opinion (“EAO”) number, issue(s), and summary are listed below. The full opinions are found at Appendix 1.

<b>EAO #</b>	<b>Issue</b>	<b>Summary</b>
<b>559</b>	Whether certain written communications, created by a political subdivision and related to the political subdivision’s upcoming elections, constitute political advertisements for purposes of the Election Code’s prohibition against using public funds for political advertising. Tex. Elec. Code § 255.003(a).	<p>When asked to consider whether a specific written communication constitutes political advertising for purposes of the Election Code, we view the communication as a whole. A significant factor in determining whether a particular communication is a political advertisement is whether it provides information without promoting a public officer or measure.</p> <p>The mere fact that a communication includes an express disclaimer of support or opposition is not determinative. However, the specific communications considered in this opinion are not political advertisements for purposes of section 255.003 of the Election Code because they are entirely informational and do not include any advocacy.</p>
<b>560</b>	Whether an officer of a political subdivision may use public funds to print and affix graphic designs to bicycle-sharing stations, hats, t-shirts, and water bottles that identify the public official by name, office, and include the following statement: “Funding for this Station Provided by [the requestor].”	<p>When asked to consider whether a specific written communication constitutes political advertising for purposes of the Election Code, we view the communication as a whole. The mere fact that the name of a public officer appears in a written communication does not determine whether the communication constitutes political advertising, but the context and frequency with which it appears are relevant to making that determination.</p> <p>The written communications considered in this opinion constitute political advertisements because they identify a public officer as such, include his name in a conspicuous manner, and promote the officer by crediting him with funding a public resource that is paid for by the political subdivision. Rather than being primarily informational, the primary purpose of the communications appears to be to support the incumbent official.</p>

<p><b>561</b></p>	<p>May a judicial officer create—or coordinate the creation of—photographs of his courtroom for use in political advertisements? Does it make a difference if the photographs are taken from the gallery, the area in front of the bench, or behind the bench?</p> <p>May a judicial officer use, for political advertisements, photographs that are created without his cooperation or coordination, even if they show the officer behind the bench?</p>	<p>Section 255.003(a) of the Texas Election Code does not apply to district judges because they are not officers or employees of political subdivisions.</p> <p>Section 39.02(a)(2) of the Penal Code prohibits judges from using their courtrooms to create political advertisements, but not from repurposing material that is created lawfully.</p>
<p><b>562</b></p>	<p>Whether section 305.006(c) of the Texas Government Code requires registered lobbyists to disclose expenditures on social media advertising.</p> <p>Whether a mass media communication can, for purposes of Section 305.006(c)(2), “support or oppose pending legislation” even if it does not expressly state “support/oppose this legislation.”</p>	<p>Communications published on social media websites are “mass media communications” for purposes of Section 305.006(c) of the Texas Government Code. Consequently, lobbyists registered under Chapter 305 of the Texas Government Code must report their expenditures for advertisements on social media (sometimes called social media “boosts”) if the communications support or oppose or encourage another to support or oppose pending legislation or administrative action.</p> <p>A mass media communication can support or oppose pending legislation even if it does not include the phrase “support/oppose this legislation” or similar words or phrases such as “vote for,” “vote against,” “defeat,” or “reject.” A communication supports or opposes pending legislation if, when viewed as a whole, it would lead one to reasonably believe that its purpose was to support or oppose the pending legislation.</p>
<p><b>563</b></p>	<p>Whether an officer or employee of a political subdivision may use public funds to advertise and produce an event that uses the officer’s title, such as “Mayor’s Fun Run” or “Mayor’s Unity Walk.”</p> <p>Whether an officer of a political subdivision may announce, at a public meeting of the political subdivision that is recorded and broadcast on an Internet website, that the officer will have a booth at the event where he or she will</p>	<p>Section 255.003(a) does not broadly prohibit political subdivisions from producing or advertising an event that uses an official’s title in its name. However, such an event that otherwise entails the use of public funds to support or oppose a candidate or measure would violate section 255.003(a).</p> <p>Section 255.003(a) does not prohibit discussion of matters pending before a governmental body. However, it does prohibit one or more members of a governmental body from arranging a discussion of a matter not pending before the governmental body in the hopes that broadcasts of the discussion would influence the outcome of an election.</p>

	<p>distribute merchandise purchased with personal funds.</p> <p>Whether an officer or employee of a political subdivision may spend public funds—including the use of paid staff time—to set up tents and provide tables, chairs, and traffic control for a food distribution event at which public officials from other governmental entities are present and distributing personal campaign items purchased with their campaign funds.</p>	<p>An officer or employee of a political subdivision may not spend public funds to produce an event for the purposes of providing a place for public officials to distribute campaign items.</p>
<b>564</b>	<p>Whether a written communication, created by a political subdivision and related to the political subdivision’s special election, constitutes political advertising for purposes of the Election Code’s prohibition against using public funds for political advertising. Tex. Elec. Code § 255.003(a).</p>	<p>The specific communication considered in this opinion is not political advertising for purposes of Section 255.003 of the Election Code because it is entirely informational and does not include any advocacy.</p>
<b>565</b>	<p>Whether section 255.003(a) of the Election Code prohibits officers and employees of a special purpose district from spending public funds to create and distribute certain written communications.</p>	<p>While section 255.003(a) applies to the requestor, a special purpose district, it does not prohibit the district’s officers and employees from spending public funds to create and distribute the specific communications considered in this request because they are entirely informational and do not include any advocacy.</p>
<b>566</b>	<p>Whether a judge may use political contributions for consulting and travel expenses to seek an appointment to a federal judicial office.</p>	<p>A judge may use political contributions for consulting and travel expenses to seek an appointment to a federal judicial office.</p>
<b>567</b>	<p>Whether a judge may use political contributions to pay expenses related to home security systems and equipment.</p>	<p>A judge may use political contributions to pay ordinary and necessary expenses incurred in connection with ensuring their home security.</p>
<b>568</b>	<p>Whether Section 572.069 of the Texas Government Code would prohibit a former employee of a state agency from providing certain services to a company that bid on procurements from the agency.</p>	<p>Section 572.069 of the Texas Government Code would not prohibit a former state employee from accepting employment to provide the described services to a company that bid on procurements from the agency because he did not participate in the procurements. The former state employee may obtain employment with the company before the second anniversary of the date</p>

		on which the employee’s service or employment with the state agency ceased.
<b>569</b>	<p>Whether a candidate or officeholder may use her existing political contributions to establish a general-purpose political committee (GPAC), which she will control.</p> <p>Whether a candidate or officeholder may receive a salary from a GPAC that the candidate or officeholder established or controls.</p>	<p>A candidate or officeholder may use her own political contributions to establish a GPAC and may control such a GPAC.</p> <p>Political contributions “accepted” by a candidate-established or controlled GPAC are accepted by a person as a candidate or officeholder and therefore may not be converted to personal use by the controlling candidate or officeholder and may not be used to pay the controlling candidate or officeholder a salary.</p> <p>Personal use restrictions notwithstanding, the Penal Code gift and honorarium restrictions would allow such employment under only a narrow set of facts, and such employment may violate the standards of conduct for a public servant.</p>
<b>570</b>	Whether the revolving door provision in Government Code section 572.054(b) prohibits a former employee of a regulatory agency who participated in canceling a request for proposal (“RFP”) during her state service from receiving compensation for assisting with a response to a subsequent RFP for the same service or product	<p>Like separate contracts, separate RFPs leading to separate contracts are separate “matters” for purposes of the revolving door provision in Government Code section 572.054(b). However, the conclusion that a specific work activity constitutes “participation in” one matter does not necessarily preclude the conclusion that the same work also constitutes “participation in” another matter. Tex. Ethics Comm’n Op. No. 397 (1998).</p> <p>When an officer or employee of an agency participates in the decision to cancel or rescind an RFP, and the agency subsequently issues another RFP for the same service or product, the employee may have participated in both the rescinded RFP and the reissued RFP for purposes of section 572.054(b), even if the RFP is not reissued until after the employee’s state service has concluded. Whether the former officer or employee participated in the reissued RFP depends on, among other things, whether the agency reviews or analyzes the former officer’s or employee’s work in connection with reissuing the RFP.</p> <p>Here, the requestor has asked the Commission to rely on facts that would demonstrate her lack of participation in the subsequent RFP, so this opinion concludes that she is not precluded from working on a response. However, we caution agency officers and employees against using their authority to cancel a procurement for essential state services with an intent to profit from their</p>

		knowledge of the agency’s inevitable search for a new provider.
<b>571</b>	Whether Chapter 572 of the Government Code prohibits a former employee of a regulatory agency from accepting certain employment pertaining to Medicaid applications	None of the revolving door provisions in Chapter 572 of the Government Code prohibit the requestor from accepting the prospective employment. The requestor is not a member of the governing body or the executive head of a regulatory agency, so section 572.054(a) does not apply. Section 572.054(b) would prohibit the requestor from working on any specific Medicaid application on which she participated during her state service, but would not prohibit her from working on all Medicaid applications generally. And section 572.069 does not prohibit the requestor from accepting the employment because Medicaid applications are not procurements or contract negotiations.
<b>572</b>	Whether section 572.069 of the Government Code prohibits a former employee of a regulatory agency from accepting employment from an affiliate of a person that was involved in procurements or contract negotiations in which the employee participated during her state service.	No. Affiliates are different persons for purposes of Chapter 572 of the Government Code. Therefore, we conclude that section 572.069 of the Government Code does not prohibit a former employee of a regulatory agency from accepting employment from an affiliate of a person that was involved in procurements or contract negotiations in which the employee participated during her state service.
<b>573</b>	Whether the laws under the Commission’s jurisdiction prohibit a former employee of a state agency from accepting employment at another state agency.	Nothing in Chapter 572 of the Government Code prohibits the requestor from accepting the employment with another state agency. All three revolving door provisions prohibit former state officers and employees from representing, accepting employment, or receiving compensation from certain “person[s].” As defined by Chapter 572, a state agency is not a “person,” so none of the revolving door provisions restrict former state officers and employees from accepting employment with another state agency.  Provisions of chapter 39 of the Penal Code prohibit public servants from misusing government property, services, personnel, and information to obtain a personal benefit. However, the requestor has not presented any facts that would indicate the requisite intent to find a violation.
<b>574</b>	Whether a corporation may coordinate with candidates or political committees on the content, timing, and distribution of advertisements that criticize or praise candidates—including	No. Texas law prohibits corporations from making campaign contributions, which includes making an expenditure for advertisements coordinated with a candidate or political committee that criticize or praise a candidate or the candidate’s opponent. Such advertisements are campaign contributions

	those with whom the corporation coordinates and their opponents—for opposing or supporting certain legislative policies.	because they constitute things of value given with the intent that they be used in connection with a campaign for elected office and with the prior consent or approval of the candidate or committee on whose behalf the expenditure is made.
575	Whether a specific-purpose committee’s contributions and expenditures trigger section 253.007’s restrictions on the lobbying activity of candidates and officeholders.	Yes, if the candidate or officeholder has the authority to control the contributions accepted and expenditures made by the specific-purpose committee. Contributions accepted by a political committee controlled by a candidate or officeholder are accepted “as a candidate or officeholder.” Tex. Elec. Code § 253.007(b). Furthermore, expenditures made by a political committee controlled by a candidate or officeholder are knowingly made or authorized by the candidate or officeholder. Id.
576	Whether candidates for party precinct chair are subject to the campaign treasurer and campaign finance filing requirements of Title 15 of the Texas Election Code.	No. Title 15 of the Texas Election Code requires candidates for public office and certain candidates for state and county party offices to designate campaign treasurers and file campaign finance reports. It does not require candidates for precinct offices of political parties to designate campaign treasurers or file campaign finance reports.
577	Whether an employee of a university system participates in a procurement or contract negotiation for the purposes of Section 572.069 of the Government Code when the employee informally recommends an attorney to provide outside legal services to the university system decision makers, but has no involvement in the formal selection process or negotiating the terms of the contract.	An employee of a university system does not “participate” in a procurement or contract negotiation by informally recommending a lawyer for outside legal services and would not be prohibited from accepting employment from the lawyer’s law firm before the second anniversary of the date the employee’s outside counsel contract was signed.
578	Whether a government employee’s direct communications with a potential contracting partner over the terms of a prospective deal constitutes participating in a procurement or contract negotiation under Section 572.069 of the Government Code.  Whether Section 572.069 of the Government Code prohibits a former employee of a state agency from accepting employment from an affiliate of a person that was involved in procurements or	Direct communications with a potential contracting partner over the terms of a prospective deal constitutes participating in a procurement or contract negotiation.  Affiliates are different persons for purposes of Chapter 572 of the Government Code. Therefore, Section 572.069 of the Government Code does not prohibit a former employee of a state agency from accepting employment from an affiliate of a person that was involved in procurements or contract negotiations in which the employee participated during his state service.



	contract negotiations in which the employee participated during his state service.	
<b>579</b>	Whether any of the State’s revolving door provisions prohibit a former state employee from accepting certain employment.	The requestor may accept the position. First, he is not a member of his agency’s governing body nor is he the agency’s executive head, so Section 572.054(a) does not apply. Second, as long as the position does not require him to work on any “particular matter” in which he participated as a state employee, Section 572.054(b) does not prohibit him from accepting the position. Finally, because he did not participate in any procurement or contract negotiation involving the potential employer during his state service, Section 572.069 does not prohibit him from accepting the position.
<b>580</b>	Whether a corporation subject to section 253.094 of the Texas Election Code may provide pro bono legal services to candidates or political committees in Texas for the purpose of challenging in court the interpretation or constitutionality of a Texas law or regulation subject to the jurisdiction of the Texas Ethics Commission.	No. Section 253.094 of the Texas Election Code prohibits corporations from making political contributions to candidates and political committees. Legal services provided without charge to candidates or political committees are in-kind contributions. When those services are given with the intent that they be used in connection with a campaign, they are in-kind campaign contributions. The described legal services would be used in connection with a campaign because the requestor’s standing to pursue such a challenge would depend on its client’s status as a candidate or political committee subject to the laws administered and enforced by the Commission.
<b>581</b>	Whether a political committee may accept political contributions through a web portal shared with an incorporated association that established and administers the political committee.	Yes. A political committee may accept political contributions that have been processed by a web portal shared with an incorporated association, provided the general-purpose committee complies with applicable recordkeeping and reporting provisions.
<b>582</b>	Whether a written communication, created by a political subdivision and related to a measure, constitutes political advertising for purposes of the Election Code’s prohibition against using public funds for political advertising.	No. Assuming the factual statements in the communication are true, the communication provided by the requestor is entirely informational and does not include any advocacy.
<b>583</b>	Whether, under the Judicial Campaign Fairness Act (JCFA), a general-purpose committee may make a maximum “campaign contribution” (up to \$25,000) to a state-wide judicial candidate and a maximum “officeholder	No. The JCFA prescribes a \$25,000 per-election limit on “political contributions” from general-purpose committees to a judicial candidate or officeholder regardless of whether classified as a “campaign contribution” or “officeholder” contribution.

	contribution” (up to an additional \$25,000) before a general election.	
<b>584</b>	Whether expenditures made by a candidate to encourage donations to a local food bank are political expenditures when publicized by the candidate on a social media page that is also used for his campaign.	Yes. Expenditures incurred by a candidate in connection with charitable fundraising are political expenditures if the candidate promotes the activity on his campaign’s social media page.

## II. COMMISSION ACTIVITY SUMMARY

### A. Sworn Complaints

During 2021-2022, a total of 658 sworn complaints were filed with the Texas Ethics Commission. The following chart shows the number of sworn complaints processed according to the type of resolution as described in Section 571.073(2)(A)-(G), Government Code.

Type of Resolution	2021	2022
Number of sworn complaints filed with the Commission	279	379
Number of sworn complaints dismissed for noncompliance with statutory form requirements	98	113
Number of sworn complaints dismissed for lack of jurisdiction	66	100
Number of sworn complaints dismissed after a finding of no credible evidence of a violation	9	19
Number of sworn complaints dismissed after a finding of a lack of sufficient evidence to determine whether a violation within the jurisdiction of the Commission had occurred	0	0
Number of sworn complaints dismissed with no finding	2	1
Number of sworn complaints dismissed because report was corrected before jurisdiction was accepted <sup>1</sup>	4	4
Number of sworn complaints resolved by the Commission through an agreed order <sup>2</sup>	102	87
Number of sworn complaints resolved by the Commission through a Final Order	3	9

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<sup>1</sup> This includes complaints that are dismissed by operation of law under Section 571.1223 of the Government Code, which requires the Commission to dismiss a complaint to the extent it alleges a statement, registration, or report violates a law or rule if: (1) the respondent has filed a corrected or amended statement, registration, or report before the Commission accepts jurisdiction over the complaint; and (2) the corrected or amended statement, registration, or report remedies the alleged violation.

<sup>2</sup> For purposes of these calculations, an agreed order includes any resolution that requires a respondent's signature.

For those sworn complaints in which the Texas Ethics Commission issued an order finding a violation,<sup>3</sup> the following chart shows the amount of the resulting penalty.

<b>Penalty Amount</b>	<b>Sworn Complaint Orders FY 2021</b>	<b>Sworn Complaint Orders FY 2022</b>
\$50.00	1	
\$100.00	2	
\$150.00		
\$200.00		
\$250.00	1	1
\$300.00		
\$400.00		1
\$500.00	2	6
\$600.00		
\$750.00	3	
\$1,000.00	1	3
\$1,250.00		2
\$1,500.00	2	
\$2,000.00		
\$2,500.00	1	2
\$3,000.00		
\$5,000.00	1	2
\$5,500.00		1
\$6,000.00		1
\$7,500.00		1
\$30,000.00		1

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<sup>3</sup> For purposes of these calculations, “an order finding a violation” includes an agreed resolution requiring a respondent’s signature and a final order that does not require a respondent’s signature. This does not include complaints resolved with an Assurance of Voluntary Compliance (AVOC), because such resolutions do not constitute a finding of a violation. For cases in which multiple complaints against the same respondent are resolved through a single order, those orders and penalties are only counted once.

## **B. Civil Penalties for Failure to Timely File**

The attached spreadsheets show summary information for fiscal years 2021 and 2022 pertaining to civil penalties imposed by the Texas Ethics Commission for failure to timely file a statement or report. Specifically, the information is organized by the type of report required to be filed with the Commission and the filer categories required to file each type of report. For each filer category, the summary shows:

- The number and amount of civil penalties that were assessed for failure to timely file the report;
- The number and amount of civil penalties waived by operation of Tex. Elec. Code § 254.164;<sup>4</sup>
- The number and amount of civil penalties waived by the Commission;
- The number and amount of fines due that were not waived by the Commission;
- The number and amount of fines fully paid;
- The number and amount of fines partially paid; and
- The number and amount of fines which have not yet been paid.

The amount of a civil penalty for failure to timely file a report is set by statute. The late-filing penalty is \$500 for most reports. For a report due eight days before an election or for the first semiannual report due after a primary or general election, the late filing penalty is \$500 for the first day the report is late and \$100 a day for each day thereafter that the report is late.

If a filer accrues at least \$1,000 of unpaid civil penalties, the Commission refers the matter to the Office of the Attorney General (“OAG”) for collection. In fiscal year 2021, the Commission referred \$629,306.00 to the OAG, and the OAG collected \$61,908.04. In fiscal year 2022, the Commission referred \$229,400.00 to the OAG, and the OAG collected \$43,453.68. The OAG’s collections on behalf of the Commission are included in the attached spreadsheets.

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<sup>4</sup> Tex. Election Code § 254.164 (“HB89”) prohibits the Texas Ethics Commission from imposing a civil penalty on any general-purpose committee for a late-filed report if the report discloses that the committee did not accept political contributions totally \$3,000 or more, accept political contributions from a single person totaling \$1,000 or more, or make or authorize political expenditures totaling \$3,000.

**TEXAS ETHICS COMMISSION**  
**SUMMARY OF FINES FOR LATE FILINGS ASSESSED IN FISCAL YEAR 2021\***

REPORT TYPE	CIVIL PENALTIES		HB89 WAIVERS		FINES WAIVED		FINES DUE		PAID IN FULL		PAID - PARTIAL		NOT PAID	
	#	\$	#	\$	#	\$	#	\$	#	\$	#	\$	#	\$
<b>Personal Financial Statements</b>	138	\$69,000.00	0	\$0.00	77	\$36,350.00	75	\$32,650.00	27	\$9,850.00	0	\$0.00	48	\$22,800.00
<b>Semiannual Reports</b>														
Candidates/Officeholders	205	\$273,700.00	0	\$0.00	50	\$48,150.00	163	\$225,550.00	15	\$6,700.00	1	\$0.01	148	\$218,849.99
Specific-purpose Committees	18	\$10,200.00	0	\$0.00	5	\$3,700.00	13	\$6,500.00	3	\$1,500.00	0	\$0.00	10	\$5,000.00
Judicial Candidates/Officeholders	96	\$104,800.00	0	\$0.00	50	\$38,150.00	58	\$66,650.00	33	\$16,950.00	0	\$0.00	25	\$49,700.00
Judicial Specific-purpose Committees	3	\$1,500.00	0	\$0.00	1	\$250.00	3	\$1,250.00	1	\$250.00	0	\$0.00	2	\$1,000.00
General-purpose Committees	298	\$199,100.00	148	\$86,700.00	34	\$29,150.00	120	\$83,250.00	25	\$13,750.00	0	\$0.00	95	\$69,500.00
County Executive Committees	7	\$8,600.00	0	\$0.00	1	\$5,600.00	6	\$3,000.00	2	\$1,000.00	0	\$0.00	4	\$2,000.00
<b>Monthly Reports</b>														
General-purpose Committees	181	\$90,500.00	128	\$6,400.00	15	\$6,950.00	42	\$19,550.00	25	\$11,050.00	0	\$0.00	17	\$8,500.00
<b>30th Day Before Election Reports</b>														
Candidates/Officeholders	17	\$8,500.00	0	\$0.00	7	\$2,550.00	16	\$5,950.00	7	\$2,100.00	1	\$400.00	9	\$3,450.00
Specific-purpose Committees	1	\$500.00	0	\$0.00	0	\$0.00	1	\$500.00	1	\$500.00	0	\$0.00	0	\$0.00
Judicial Candidates/Officeholders	3	1500	0	\$0.00	3	650.00	3	\$850.00	1	300.00	0	\$0.00	2	\$550.00
Judicial Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
General-purpose Committees	26	\$13,000.00	7	\$3,500.00	5	\$1,900.00	16	\$7,600.00	8	\$3,600.00	1	\$100.00	8	\$3,900.00
County Executive Committees	3	\$1,500.00	0	\$0.00	2	\$1,000.00	1	\$500.00	1	\$500.00	0	\$0.00	0	\$0.00
<b>8th Day Before Election Reports</b>														
Candidates/Officeholders	25	\$57,900.00	0	\$0.00	11	\$21,150.00	12	\$36,750.00	4	\$1,950.00	2	\$13,110.84	8	\$21,689.16
Specific-purpose Committees	5	\$3,700.00	0	\$0.00	2	\$1,500.00	3	\$2,200.00	2	\$1,500.00	0	\$0.00	1	\$700.00
Judicial Candidates/Officeholders	7	\$4,400.00	0	\$0.00	6	\$2,950.00	5	\$1,450.00	2	\$300.00	0	\$0.00	3	\$1,150.00
Judicial Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
General-purpose Committees	102	\$104,300.00	11	\$37,100.00	22	\$29,150.00	48	\$38,050.00	27	\$13,950.00	1	\$500.00	21	\$23,600.00
County Executive Committees	4	\$15,100.00	0	\$0.00	3	\$11,750.00	3	\$3,350.00	3	\$3,350.00	0	\$0.00	0	\$0.00
<b>Daily Pre-election Reports</b>														
Candidates/Officeholders	1	\$500.00	0	\$0.00	1	\$500.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
GPAC & SPAC Contributions Reports	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
GPAC Expenditures Reports	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
<b>Special Session Reports</b>														
Candidates/Officeholders	0	\$0.00	0	\$0.00	0	\$0.00	10	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
<b>Totals</b>	<b>1,140</b>	<b>\$968,300.00</b>	<b>294</b>	<b>\$133,700.00</b>	<b>295</b>	<b>\$241,400.00</b>	<b>598</b>	<b>\$535,600.00</b>	<b>187</b>	<b>\$89,100.00</b>	<b>6</b>	<b>\$14,110.85</b>	<b>401</b>	<b>\$432,389.15</b>

\* This chart reflects the fines assessed and waivers granted as of December 12, 2022 for reports due in fiscal year 2021. Numbers subject to change as filers request waivers and the Commission considers such requests.

**TEXAS ETHICS COMMISSION**  
**SUMMARY OF FINES FOR LATE FILINGS ASSESSED IN FISCAL YEAR 2022\***

REPORT	CIVIL PENALTIES		HB89 WAIVERS		FINES WAIVED		FINES DUE		PAID IN FULL		PAID - PARTIAL		NOT PAID	
TYPE	#	\$	#	\$	#	\$	#	\$	#	\$	#	\$	#	\$
<b>Personal Financial Statements</b>	350	\$175,000.00	0	\$0.00	25	\$12,350.00	326	\$162,650.00	38	\$18,650.00	0	\$0.00	288	\$144,000.00
<b>Semiannual Reports</b>														
Candidates/Officeholders	342	\$684,400.00	0	\$0.00	4	\$2,000.00	338	\$682,400.00	7	\$4,000.00	1	\$321.71	331	\$678,078.29
Specific-purpose Committees	40	\$71,300.00	0	\$0.00	0	\$0.00	40	\$71,300.00	3	\$1,500.00	0	\$0.00	37	\$69,800.00
Judicial Candidates/Officeholders	97	\$170,400.00	0	\$0.00	2	\$1,000.00	95	\$169,400.00	18	\$9,400.00	0	\$0.00	7	\$160,000.00
Judicial Specific-purpose Committees	2	\$1,000.00	0	\$0.00	0	\$0.00	2	\$1,000.00	0	\$0.00	0	\$0.00	2	\$1,000.00
General-purpose Committees	322	\$236,900.00	116	\$72,300.00	4	\$1,650.00	204	\$171,950.00	16	\$7,550.00	0	\$0.00	188	\$164,400.00
County Executive Committees	7	\$3,500.00	1	\$500.00	0	\$0.00	6	\$3,000.00	0	\$0.00	0	\$0.00	6	\$3,000.00
<b>Monthly Reports</b>														
General-purpose Committees	181	\$93,500.00	100	\$50,000.00	2	\$1,000.00	79	\$42,500.00	18	\$9,000.00	0	\$0.00	61	\$33,500.00
<b>30th Day Before Election Reports</b>														
Candidates/Officeholders	74	\$37,000.00	0	\$0.00	0	\$0.00	74	\$37,000.00	10	\$5,000.00	0	\$0.00	64	\$32,000.00
Specific-purpose Committees	6	\$4,100.00	0	\$0.00	1	\$500.00	5	\$3,600.00	0	\$0.00	0	\$0.00	5	\$3,600.00
Judicial Candidates/Officeholders	28	14000	0	\$0.00	0	0.00	28	\$14,000.00	5	2,500.00	0	\$0.00	23	\$11,500.00
Judicial Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
General-purpose Committees	30	\$1,500.00	3	\$1,500.00	4	\$1,850.00	24	\$11,650.00	6	\$2,650.00	0	\$0.00	18	\$9,000.00
County Executive Committees	0	\$0.00	0	\$0.00	0	\$0.00	1	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
<b>8th Day Before Election Reports</b>														
Candidates/Officeholders	80	\$329,000.00	0	\$0.00	0	\$0.00	80	\$329,000.00	3	\$2,200.00	0	\$0.00	77	\$326,800.00
Specific-purpose Committees	10	\$40,800.00	0	\$0.00	0	\$0.00	10	\$40,800.00	0	\$0.00	0	\$0.00	10	\$40,800.00
Judicial Candidates/Officeholders	25	\$106,800.00	0	\$0.00	1	\$500.00	24	\$106,300.00	2	\$1,100.00	0	\$0.00	22	\$105,200.00
Judicial Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
General-purpose Committees	81	\$298,200.00	9	\$14,200.00	1	\$7,800.00	72	\$276,200.00	4	\$2,100.00	2	\$1,000.00	68	\$273,100.00
County Executive Committees	2	\$1,000.00	0	\$0.00	0	\$0.00	2	\$1,000.00	0	\$0.00	0	\$0.00	2	\$1,000.00
<b>Daily Pre-election Reports</b>														
Candidates/Officeholders	1	\$2,000.00	0	\$0.00	0	\$0.00	1	\$2,000.00	0	\$0.00	0	\$0.00	1	\$2,000.00
GPAC & SPAC Contributions Reports	0	0	0	\$0.00	0	0	0	\$0.00	0	0	0	0	0	\$0.00
GPAC Expenditures Reports	0	0	0	\$0.00	0	0	0	\$0.00	0	0	0	0	0	\$0.00
<b>Special Session Reports</b>														
Candidates/Officeholders	13	\$6,500.00	0	\$0.00	2	\$1,000.00	11	\$5,500.00	3	\$1,500.00	0	\$0.00	8	\$4,000.00
Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
<b>Totals</b>	<b>1,691</b>	<b>\$2,276,900.00</b>	<b>229</b>	<b>\$138,500.00</b>	<b>46</b>	<b>\$29,650.00</b>	<b>1,422</b>	<b>\$2,131,250.00</b>	<b>133</b>	<b>\$67,150.00</b>	<b>3</b>	<b>\$1,321.71</b>	<b>1,218</b>	<b>\$2,062,778.29</b>

\* This chart reflects the fines assessed and waivers granted as of December 12, 2022 for reports due in fiscal year 2022. Numbers subject to change as filers request waivers and the Commission considers such requests.

### III. RECOMMENDATIONS FOR STATUTORY CHANGES

At its December 14, 2022 meeting, the Texas Ethics Commission approved the following recommendations for statutory changes. Commission staff is available to provide background information and other assistance in connection with bills that would affect the laws under the Commission’s jurisdiction.

#### **Recommendation 1: Reconsider Reporting Threshold Adjustments**

Section 571.064(b) of the Government Code requires the TEC to use its rulemaking authority to adjust all reporting and registration thresholds on an annual basis pursuant to a formula set by statute. Specifically, the TEC must adjust thresholds “upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor.”

The formula results in complicated, hard-to-remember numbers (*e.g.* \$1,640 lobby registration threshold). And the difficulty is compounded by the requirement to adjust the thresholds every year.

The TEC recommends that the Legislature reconsider the current system of threshold adjustments. Options include, but are not limited to: (1) making modest changes to the adjustment formula and frequency of adjustments; or (2) repealing section 571.064(b) and, if necessary, amending each individual threshold by statutory change.

#### **Recommendation 2: Modernize Filing Requirements**

Section 254.036 of the Election Code needs minor changes to modernize the law. References to outdated technology (*i.e.*, filing by “diskette”) could result in delays in public disclosure. And unnecessary filing requirements (*i.e.*, filing by “black” but not blue ink) results in needless violations.

A draft amendment to Section 254.036 of the Election Code is attached as **Exhibit A**.

#### **Recommendation 3: Allow the TEC to Provide Notice by Email**

Section 251.033 of the Election Code permits the TEC to send notices to filers about future required reports “by electronic mail.” Email is less expensive, faster, and a more reliable way to notify filers of legal requirements. However, there are several laws under the TEC’s jurisdiction that still require the use of traditional mail. The TEC recommends permitting the agency to send all notices by electronic mail unless the law requires delivery by registered or certified mail.

- Section 571.032 of the Government Code—which addresses how the TEC must notify sworn complaint complainants and respondents—requires the TEC to send certain notices by registered or certified mail, and other notices to be sent by “regular mail.”



- Section 254.042(a) of the Election Code, Section 305.033(a) of the Government Code, and Section 572.033(a) of the Government Code—which address how the TEC must notify filers of late or missing reports—require the TEC to “immediately mail” a notice of the determination to the person required to file the report.
- Section 572.030 of the Government Code—which addresses how the TEC must notify personal financial statement filers of their obligations—requires the TEC to “mail” certain documents to each individual required to file.

Draft amendments to Sections 571.032, 305.0033(a), 572.033(a), and 572.030 of the Government Code, and Section 254.042(a) of the Election Code, is attached as **Exhibit B**.

#### **Recommendation 4: Resolve Statutory Conflicts**

The Legislature has passed different, conflicting versions of several laws over the past few biennia. The TEC recommends that the Legislature clarify these laws and resolve the conflicts, including:

- The 85<sup>th</sup> legislature passed two different versions of Section 572.032(a-1) of the Government Code. One version requires the TEC to redact home addresses, telephone numbers, and names of dependent children for all PFS filers. The other version requires the TEC to only redact the home address for judges and certain members of the Texas Civil Commitment Office. The TEC’s current practice is to redact home addresses, telephone numbers, and names of dependent children for all PFS filers.
- The 81<sup>st</sup> legislature passed two different versions of Section 571.122(b-1) of the Government Code. One version states that a person must be a resident of the state to file a sworn complaint, while the other grants standing to anyone who owns real property in Texas. The TEC’s current practice is to grant standing to anyone who either resides in Texas or owns real property in Texas.
- The 79<sup>th</sup> legislature passed two different versions of Section 305.024(a) of the Government Code. One version expressly includes the exception permitted under Section 305.0061(e-1) allowing gifts under \$50 to be sent by mail or contract carrier, and the other version does not include that exception. The TEC’s current practice is to recognize the exception.

Draft amendments to Sections 572.032 (a-1), 571.122, and 305.024 of the Government Code is attached as **Exhibit C**.

#### **Recommendation 5: Allow TEC Staff to Comply with Criminal Investigations**

Section 571.140 of the Government Code prohibits TEC staff from disclosing any information regarding a sworn complaint except in certain limited circumstances, including, for example, when such disclosure is necessary to investigate the complaint. Occasionally, criminal law enforcement authorities will request information from the TEC in connection with a criminal investigation. It is currently unclear whether TEC staff is permitted to comply with those

requests, even in response to a grand jury subpoena served on the TEC. The TEC recommends that the Legislature clarify that TEC staff may disclose information related to sworn complaints when it is requested by criminal law enforcement officials.

A draft amendment to Section 571.140 of the Government Code is attached as **Exhibit D**.

### **Recommendation 6: Address “Scam PACs”**

A “scam PAC” is a political committee that intentionally misleads a donor into thinking that their money will support a specific candidate when it will not. The scheme is usually pretty straightforward; a political committee that is unrelated to any candidate emails a solicitation to potential donors in which it mimics the official correspondence of the candidate’s own campaign. Often, it appears these scam PACs are created to enrich their creators.

There have been several recent news stories about scam PACs targeting would-be donors on both sides of the aisle.<sup>5</sup> No candidate or officeholder wants their supporters to be misled into giving their money to an unrelated third party. And all candidates and officeholders want intended contributions to benefit their campaigns, not someone else.

Several bills have been introduced in Congress that are designed to address scam PACs at the federal level.<sup>6</sup> Other legislative recommendations that have been proposed by the Federal Elections Commission include: (i) expanding personal-use provisions to cover all political committees; (ii) requiring disclosure of PAC’s overhead percentage on the home page and solicitation page of PACs; and (iii) requiring PAC websites to contain prominent, plain-English information about how the PAC is actually spending its money.

### **Recommendation 7: Address “Sham PACs”**

Similar to scam PACs, there are also “sham PACs,” where a fraudulent registration is made to make a group seem legitimate during the election. The TEC has seen several instances of fake names or unwitting people being appointed treasurer of fake political committees. One way to combat this is to make the person submitting the PAC registration form verify their identity. This could be done by requiring the person filing the form to include their Driver’s License number or some other form of identification.

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<sup>5</sup> See, e.g., <https://www.nytimes.com/2021/11/10/us/politics/pac-operator-charges.html> (scam PAC targeting Donald Trump supporters); <https://www.nytimes.com/2021/11/26/us/politics/email-political-fundraising-pitches.html> (scam PAC targeting Beto O’Rourke supporters).

<sup>6</sup> <https://www.congress.gov/bill/116th-congress/house-bill/6854/text?r=29&s=1>;  
<https://www.congress.gov/bill/117th-congress/house-bill/6494/text>

## EXHIBIT A

SECTION \_\_. Sections 254.036(a) and (b), Election Code, are amended to read as follows:

(a) Each report filed under this chapter with an authority other than the commission must be in a format prescribed by the commission. A report filed with the commission that is not required to be filed electronically [~~by computer diskette, modem, or other means of electronic transfer~~] must be on a form prescribed by the commission and typed or written in black or blue ink [~~or typed with black typewriter ribbon or, if the report is a computer printout, the printout must conform to the same format and paper size as the form prescribed by the commission~~].

(b) Except as provided by Subsection (c) or (e), each report filed under this chapter with the commission must be filed electronically [~~by computer diskette, modem, or other means of electronic transfer~~], using computer software provided by the commission or computer software that meets commission specifications for a standard file format.

## EXHIBIT B

SECTION \_\_. Section 571.032, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

a) Except as provided by Subsection (b) or (c), each written notice, decision, and report required to be sent under this chapter shall be sent by registered or certified mail, restricted delivery, return receipt requested.

c) Written notice under Section 571.123(c) that a sworn complaint does not comply with the form requirements or that the commission does not have jurisdiction over the violation alleged in the complaint may be sent by regular mail or electronic delivery.

SECTION \_\_. Section 254.042(a), Election Code, is amended to read as follows:

a) The commission shall determine from any available evidence whether a report required to be filed with the commission under this chapter is late. On making that determination, the commission shall immediately provide written notice by regular mail or electronic delivery of [~~mail a notice of~~] the determination to the person required to file the report.

SECTION \_\_. Section 305.033(a), Government Code, is amended to read as follows:

a) The commission shall determine from any available evidence whether a registration or report required to be filed with the commission under this chapter is late. A registration filed without the fee required by Section 305.005 is considered to be late. On making a determination that a required registration or report is late, the commission shall immediately provide written notice by regular mail or electronic delivery of [~~mail a notice of~~] the determination to the person responsible for the filing, to the commission, and to the appropriate attorney for the state.

SECTION \_\_. Section 572.033(a), Government Code, is amended to read as follows:

a) The commission shall determine from any available evidence whether a statement required to be filed under this chapter is late. On making a determination that the statement is late, the commission shall immediately provide written notice by regular mail or electronic delivery of [~~mail a notice of~~] the

determination to the individual responsible for filing the statement and to the appropriate attorney for the state.

SECTION \_\_. Sections 572.030(b) and (c), Government Code, are amended to read as follows:

b) The commission shall notify ~~[mail to]~~ each individual required to file under this subchapter of ~~[a notice that]~~:

(1) the requirement ~~[states]~~ that the individual ~~[is required to]~~ file a financial statement under this subchapter;

(2) ~~[identifies]~~ the filing dates for the financial statement as provided by Sections 572.026 and 572.027; and

(3) ~~[describes]~~ the manner in which the individual may electronically file the financial statement and access instructions for filing financial statements on ~~[obtain the financial statement forms and instructions from]~~ the commission's Internet website~~;~~

~~[(4) states that on request of the individual, the commission will mail to the individual a copy of the financial statement forms and instructions; and~~

~~[(5) states, if applicable, the fee for mailing the forms and instructions and the manner in which the individual may pay the fee].~~

(c) Except as provided by commission rule, the ~~[The]~~ notice required by Subsection (b) must be provided ~~[mailed]~~:

(1) before the 30th day before the deadline for filing the financial statement under Section 572.026(a) or (c), except as otherwise provided by this subsection;

(2) not later than the 15th day after the applicable deadline for filing an application for a place on the ballot or a declaration of write-in candidacy for candidates required to file under Section 572.027(a), (b), or (c);

(3) not later than the seventh day after the date of appointment for individuals required to file under Section 572.026(b), or if the legislature is in session, sooner if possible; and

(4) not later than the fifth day after the date the certificate of nomination is filed for candidates required to file under Section 572.027(d) ~~[574.027(d)]~~.

SECTION \_\_. Sections 572.030(d) and (e), Government Code, are repealed.

## EXHIBIT C

SECTION \_\_. Section 572.032(a-1), Government Code, as amended by Chapters 34 (S.B. 1576) and 983 (H.B. 776), Acts of the 85th Legislature, Regular Session, 2017, is reenacted and amended to read as follows:

(a-1) The commission shall remove an individual's ~~[the]~~ home address, an individual's ~~[the]~~ telephone number, and the names of an individual's ~~[the]~~ dependent children ~~[of an individual]~~ from a financial statement filed by the individual under this subchapter before:

- (1) permitting a member of the public to view the statement;
- (2) providing a copy of the statement to a member of the public; or
- (3) making the statement available to the public on the commission's Internet website~~[, if the commission makes statements filed under this subchapter available on its website]~~.

SECTION \_\_. Section 571.122(b-1), Government Code, as amended by Chapters 604 (H.B. 607) and 1166 (H.B. 3218), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(b-1) To be eligible to file a sworn complaint with the commission, an individual must be a resident of this state or must own real property in this state. A copy of one of the following documents must be attached to the complaint:

(1) the complainant's driver's license or personal identification certificate issued under Chapter 521, Transportation Code, or commercial driver's license issued under Chapter 522, Transportation Code; ~~[or]~~

(2) a utility bill, bank statement, government check, paycheck, or other government document that:

(A) shows the name and address of the complainant; and

(B) is dated not more than 30 days before the date on which the complaint is filed; or

(3) a property tax bill, notice of appraised value, or other government document that:

(A) shows the name of the complainant;

(B) shows the address of real property in this state; and

(C) identifies the complainant as the owner of the real property.

SECTION \_\_. Section 305.024(a), Government Code, as amended by Section 2, Chapter 92 (S.B. 1011), and Section 5, Chapter 206 (H.B. 1508), Acts of the 79th Legislature, Regular Session, 2005, is reenacted and amended to read as follows:

(a) Except as provided by Section 305.025, a person registered under Section 305.005 or a person on the registrant's behalf and with the registrant's consent or ratification may not offer, confer, or agree to confer:

(1) to an individual described by Section 305.0062(a) (1), (2), (3), (4), or (5):

(A) a loan, including the guarantee or endorsement of a loan; or

(B) a gift of cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code; or

(2) to an individual described by Section 305.0062(a) (1), (2), (3), (4), (5), (6), or (7):

(A) an expenditure for transportation and lodging;

(B) an expenditure or series of expenditures for entertainment that in the aggregate exceed \$500 in a calendar year;

(C) an expenditure or series of expenditures for gifts that in the aggregate exceed \$500 in a calendar year;

(D) an expenditure for an award or memento that exceeds \$500; or

(E) an expenditure described by Section 305.006(b) (1), (2), (3), or (6) unless:

(i) ~~(A)~~ the registrant is present at the event; or

(ii) ~~(B)~~ the expenditure is for a gift of food or beverages required to be reported under Section 305.006(b) (4) in accordance with Section 305.0061(e-1).

## EXHIBIT D

SECTION \_\_. Section 571.140(a), Government Code, is amended to read as follows:

(a) Except as provided by Subsection (b) or (b-1) or by Section 571.1401 or 571.171, proceedings at a preliminary review hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

SECTION \_\_. Subchapter E, Chapter 571, Government Code, is amended by adding Section 571.1401 to read as follows:

Sec. 571.1401. CERTAIN DISCLOSURE OF INFORMATION. (a) The commission may disclose to a law enforcement agency information that is confidential under Section 571.140(a) to the extent necessary for the recipient of the information to perform a duty or function that is separate from the commission's duties and functions.

(b) Information disclosed to a law enforcement agency under this section remains confidential, and the agency receiving the information shall take appropriate measures to prevent disclosure of the information.

(c) A person commits an offense if the person discloses confidential information obtained under this section. An offense under this subsection is a Class C misdemeanor.



**APPENDIX 1**

**TEXAS ETHICS COMMISSION**

**ADVISORY OPINIONS**  
**2021-2022**