

TEXAS ETHICS COMMISSION

IN THE MATTER OF

MICHAEL 'MIKE' ENGELHART,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-3120375

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 29, 2014, to consider sworn complaint SC-3120375. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.1611, 254.031, and 254.061 of the Election Code and section 20.62 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent: 1) did not include the election date and election type on a campaign finance report; 2) did not properly disclose total political contributions maintained on a campaign finance report; 3) did not properly disclose political expenditures on multiple campaign finance reports; 4) used political contributions to knowingly make political contributions that in the aggregate exceeded \$100 in a calendar year to a candidate or officeholder; and 5) in a calendar year in which the office held was not on the ballot, used political contributions to knowingly make political contributions that exceeded \$250 to a political committee.

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 Court on November 4, 2008.
2. The reports at issue in the complaint are the respondent's July 2010, January and July 2011, and January 2012 semiannual reports.

Type and Date of Election

3. The complaint alleged that the respondent did not include the election type and election date on his January 2012 semiannual report. The respondent was a candidate for re-election in the November 6, 2012, general election. In response to the complaint, the respondent corrected the report and disclosed the election type and date.

Disclosure of Total Political Contributions Maintained

4. The complaint alleged that the respondent did not properly disclose total political contributions maintained on his July 2011 semiannual report. In response to the complaint, the respondent swore that the amount of total political contributions maintained disclosed on his report reflected the amount he maintained as of the last day of the reporting period. The respondent also submitted a copy of his campaign account bank statement. The amount disclosed on the respondent's report was the amount reflected on the campaign account bank statement.

Disclosure of Full Name of Payee of Political Expenditure

5. The complaint alleged that the respondent did not disclose the full names of two persons receiving political expenditures in two campaign finance reports. The respondent disclosed the names of the payees receiving political expenditures as follows:

July 2011 Semiannual Report

March 9, 2011, \$280, HTLA Golf

January 2012 Semiannual Report

July 28, 2011, \$144, Victory Fund

6. With respect to the \$280 expenditure to HTLA Golf, the respondent swore that the expenditure was for a sponsorship and that HTLA Golf was the name of the golf tournament and the payee to whom he was instructed to make the check payable. The respondent filed a corrected report and clarified the expenditure description to "Houston Trial Lawyers Association Golf Tournament Sponsorship." With respect to the \$144 expenditure to Victory Fund, the respondent swore that Victory Fund is the abbreviated name of the Gay and Lesbian Victory Fund Federal PAC. The respondent filed a corrected report to disclose the full name of the payee.

Disclosure of Political Expenditures as Reimbursements

7. The complaint alleged that the respondent disclosed on four campaign finance reports five political expenditures as staff reimbursements without disclosing the actual vendors. The expenditures at issue totaled approximately \$330. In response to the complaint, the respondent acknowledged the error and filed corrected reports to disclose the actual vendor payee for each expenditure.

Political Contributions to a Candidate or Officeholder Exceeding \$100

8. The complaint alleged that the respondent made political contributions to a candidate or officeholder exceeding \$100 in a calendar year. On his January 2011 semiannual report, the respondent disclosed a \$200 expenditure to an officeholder with the category "Food/Beverage Expense" and the description "Judicial Reception." In response to the complaint, the respondent swore that the expenditure was made to the officeholder as part of a collection that the officeholder accepted from each judge to help pay for an annual judges' holiday reception. The respondent stated that he did not know the ultimate payee of the expenditure. The officeholder at issue did not disclose a contribution from the respondent on his campaign finance report. The respondent filed a corrected report and changed the description of the expenditure to "Donation to Collection by Judge Sandill for Annual Civil District Court Holiday Reception."

Political Contributions to a Political Committee Exceeding \$250 When Not on Ballot

9. The complaint alleged that, based on disclosures in four campaign finance reports, the respondent used political contributions to knowingly make political contributions to political committees in excess of \$250 in a calendar year in which his office held was not on the ballot. At issue in the complaint are 14 political contributions to three political committees. The contributions at issue were disclosed on the respondent's July 2010, and January and July 2011 semiannual reports as follows:

Harris County Democratic Party (HCDP)

- August 27, 2010, \$40, category: Contributions/Donations made by Candidate/Officeholder; description: Attendance at Sponsored Lunch (not disclosed in committee reports)
 - In response to the complaint, the respondent swore that the expenditure was for a ticket to a sponsored lunch.

- April 22, 2010, \$1,000, category: Contributions/Donations made by Candidate/Officeholder; description: Contribution to a coordinated campaign (disclosed as political contribution on committee report)
- June 11, 2010, \$500, category: Event Expense; description: Trailblazers Sponsorship (disclosed as political contribution on committee report)
- July 13, 2010, \$500, category: Contributions/Donations made by Candidate/Officeholder; description: Contribution to Democratic Party (disclosed as political contribution on committee report)
- August 10, 2010, \$3,000, category: Contributions/Donations made by Candidate/Officeholder; description: Contribution to Democratic Party (disclosed as political contribution on committee report)
- September 22, 2010, \$1,500, category: Contributions/Donations made by Candidate/Officeholder; description: JRR Dinner Sponsorship (not disclosed in committee reports)
- March 7, 2011, \$500, category: Contributions/Donations made by Candidate/Officeholder; description: Contribution (disclosed as political contribution on committee report)
- April 19, 2011, \$250, category: Contributions/Donations made by Candidate/Officeholder; description: Cinco de Mayo Committee Sponsorship (disclosed as political contribution on committee report)
 - With respect to these expenditures, the respondent swore that the HCDP requested that he make the contribution for the purpose of defraying his pro rata share of the HCDP's normal overhead and administrative and/or operating costs.

Commission records show that HCDP is a county executive committee that files campaign finance reports semiannually with the commission. Of the eight expenditures at issue totaling \$7,290, six expenditures totaling \$5,750 were disclosed as political contributions on HCDP's campaign finance reports.

In response to the complaint, the respondent provided a letter from the finance director of HCDP. The finance director stated that the total costs of overhead and administrative or operating costs from 2011-2012 totaled \$978,460.36, and that HCDP's calculation of pro rata share was based on providing goods or services to an estimated 14 candidates or officeholders.

Houston GLBT Political Caucus PAC (HGLBT PAC)

- July 6, 2011, \$125, category: Contributions/Donations made by Candidate/Officeholder; description: Event Ticket Purchase (not disclosed in committee reports)
 - In response to the complaint, the respondent swore that the payment was for tickets to attend an event.
- July 6, 2011, \$40, category: Fees; description: Membership Fee (not disclosed in committee reports)
 - In response to the complaint, the respondent swore that the expenditure was for his membership dues in the organization.
- July 26, 2011, \$500, category: Contributions/Donations made by Candidate/Officeholder; description: GLBT Political Caucus Sponsor Contribution (not disclosed in committee reports)
 - In response to the complaint, the respondent swore that the expenditure was to sponsor an event.

Commission records show that HGLBT PAC is a general-purpose committee that files campaign finance reports monthly with the commission. The expenditures at issue were not disclosed on any of the committee's reports.

Harris County Democratic Lawyers' Association (HCDLA)

- August 25, 2010, \$250, category: Contributions/Donations made by Candidate/Officeholder; description: Clarence Darrow Dinner Sponsorship (disclosed as political contribution on committee report)
- August 25, 2010, \$75, category: Contributions/Donations made by Candidate/Officeholder; description: Clarence Darrow Dinner Admission Ticket (disclosed as political contribution on committee report)
 - In response to the complaint, the respondent swore that he was unaware that the organization filed as a political committee, and that the expenditures were payment for his share of the cost of a reception honoring the Clarence Darrow Award recipient and for a ticket to the same event.

- August 23, 2011, \$500, category: Contributions/Donations made by Candidate/Officeholder; description: Harris County Democratic Lawyers Assn Clarence Darrow Award Sponsor Contribution (disclosed as political contribution on committee report)
 - In response to the complaint, the respondent swore that the payment was made for an event sponsorship.

Commission records show that HCDLA is a general-purpose committee that files campaign finance reports semiannually with the commission. The expenditures at issue were disclosed as political contributions on HCDLA's January 2011 and January 2012 semiannual reports.

IV. Findings and Conclusions of Law

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

Type and Date of Election

1. Each report by a candidate must include the candidate's full name and address, the office sought, and the identity and date of the election for which the report is filed. ELEC. CODE § 254.061.
2. The respondent filed a corrected January 2012 semiannual report to disclose the election type and election date for which the report was filed. In context, the errors were *de minimis*. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.061 of the Election Code.

Disclosure of Total Political Contributions Maintained

3. Each report must include as of the last day of the reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
4. The amount of total political contributions maintained originally disclosed on the report at issue was the same amount listed on the respondent's campaign account bank statement. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code.

Disclosure of Full Name of Payee of Political Expenditure

5. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
6. The respondent filed corrected reports to clarify and disclose the full names of the payees at issue. At the time the original reports were filed, the respondent did not disclose this information. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.

Disclosure of Political Expenditures as Reimbursements

7. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
8. Ethics Commission Rules § 20.62 was amended on November 1, 2011. The following version of that rule was in effect during the time relevant to the complaint:

Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made: (1) the amount of political expenditures that in the aggregate exceed \$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. Except as provided above, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows: the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, candidate, or political committee; the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee. Ethics Commission Rules § 20.62.

9. The respondent filed corrected reports to disclose the actual vendor payees of the expenditures at issue. However, at the time the original reports were filed, the respondent did not properly disclose the required information. 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.

Political Contributions to a Candidate or Officeholder Exceeding \$100

10. A judicial candidate or officeholder or a specific-purpose committee for supporting or opposing a judicial candidate or assisting a judicial officeholder may not use a political contribution to knowingly make political contributions that in the aggregate exceed \$100 in a calendar year to a candidate or officeholder. ELEC. CODE § 253.1611(a).
11. The evidence indicates that the expenditure at issue was not a political contribution to the officeholder in question but was a donation to pay for a portion of a judges' holiday reception. Therefore, there is credible evidence of no violation of section 253.1611(a) of the Election Code.

Political Contributions to a Political Committee Exceeding \$250 When Not on Ballot

12. 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).
13. A judicial officeholder or a specific-purpose committee for assisting a judicial officeholder may not, in any calendar year in which the office held is not on the ballot, use a political contribution to knowingly make a political contribution to a political committee that, when aggregated with each other political contribution to a political committee in that calendar year, exceeds \$250. *Id.* § 253.1611(d).
14. "In connection with an election" means, with regard to a contribution that is designated in writing for a particular election, the election designated or, with regard to a contribution that is not designated in writing for a particular election or that is designated as an officeholder contribution, the next election for that office occurring after the contribution is made. *Id.* § 253.152(2).
15. 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).

16. 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).
17. Ethics Commission Rules § 20.51(c) 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).
18. District judges in the state of Texas serve four-year terms. TEX. CONST. ART. V, § 7. Since the respondent was elected as district judge in November of 2008, he was not up for reelection until 2012. Therefore, the respondent's office of district judge was not on the ballot in 2010 and 2011, the calendar years when the political contributions at issue were made. Thus, the respondent could not use political contributions to make political contributions to a political committee that exceeded \$250 in calendar years 2010 and 2011, unless the exception under section 253.1611(e) of the Election Code was satisfied.

Harris County Democratic Party (HCDP)

19. Regarding the expenditures to HCDP totaling \$7,290, the respondent swore that HCDP requested that he make the contributions for the purposes of defraying his pro rata share of HCDP's normal overhead and administrative or operating costs. Since HCDP is a county executive committee, the payments would be permissible if they were made in accordance with section 253.1611(e) of the Election Code. HCDP's finance director stated that the contributions were made in return for campaign services valued at \$978,460.36.
20. According to a sample ballot from the Harris County Elections website, in 2012 the Democratic Party had approximately 83 candidates on the primary and general election ballot in Harris County. Based on the statements provided by HCDP's finance director, the party spent approximately \$978,460 in connection with the 2012 coordinated campaign. If each candidate received equal value, then it is reasonable to state that the respondent received an approximate value of \$11,800 in goods and services from HCDP.
21. The method of computing in-kind contribution value as stated in Ethics Commission Rules § 20.51 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

\$11,800 in goods and services from HCDP in return for his contributions totaling \$7,290. Therefore, the value of the goods or services the respondent received equaled or exceeded the amount of the contributions. There is credible evidence of no violation of section 253.1611(d) of the Election Code.

Houston GLBT Political Caucus PAC (HGLBT PAC)

22. Regarding the expenditures to HGLBT PAC totaling \$665, the respondent swore that he did not know the organization was a political committee. The respondent further swore that the expenditures were for tickets to attend an event, membership dues, and an event sponsorship. It is unclear whether the events at issue were fundraisers. Furthermore, HGLBT PAC did not disclose any contributions or expenditures during the period at issue. Therefore, there is insufficient evidence of a violation of section 253.1611(d) of the Election Code with respect to these expenditures.

Harris County Democratic Lawyers' Association (HCDLA)

23. Regarding the expenditures to HCDLA, the respondent swore that he did not know the organization was a political committee. The respondent also swore that the expenditures made to HCDLA in 2010, totaling \$325, were for the Clarence Darrow Dinner sponsorship and admission ticket. The respondent further swore that the expenditure made to HCDLA in 2011, totaling \$500, was for an event sponsorship (the report described the purpose as "Harris County Democratic Lawyers Assn Clarence Darrow Award Sponsor Contribution"). The respondent further swore that he did not know the expenditures would be considered political contributions. Considering that the purpose of the committee was to support Democratic candidates, that the payments were made in connection with committee fundraising events, and that the committee disclosed that it received political contributions from the respondent, the evidence indicates that the respondent made the payments to the committee with the intent that the committee use the funds for political purposes. Furthermore, under Ethics Advisory Opinion Nos. 131 and 132, the payments to the committee would have been political contributions unless they were earmarked for nonpolitical purposes. Ethics Advisory Opinion Nos. 131, 132 (1993). There is no evidence that the respondent earmarked the payments for nonpolitical purposes. Thus, the payments were political contributions to a political committee that exceeded \$250 during a calendar year in which the respondent's office held was not on the ballot. Therefore, there is credible evidence of violations of section 253.1611(d) 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 officeholder or a specific-purpose committee for assisting a judicial officeholder may not, in any calendar year in which the office held is not on the ballot, use a political contribution to knowingly make a political contribution to a political committee that, when aggregated with each other political contribution to a political committee in that calendar year, exceeds \$250; 2) a campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made and the dates and purposes of the expenditures; 3) each report by a candidate must include the candidate's full name and address, the office sought, and the identity and date of the election for which the report is filed; and 4) political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported in accordance with section 20.62 of the Ethics Commission Rules. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the commission has determined are neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the nature, circumstances, and consequences of the violations described under Sections III and IV, and the sanction necessary to deter future violations, the commission imposes a \$300 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-3120375.

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