

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
HAROLD DUTTON,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-3220136

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (Commission) met on September 27, 2023, to consider sworn complaint SC-3220136. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of Sections 254.031(a)(1), 254.031(a)(6), 254.061(3), 254.091(2), and 255.001 of the Election Code, and Section 20.59 of the Ethics Commission Rules, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

### II. Allegations

The complaint alleged, concerning the pre-election reports that the respondent filed for the March 3, 2020 primary election, July 14, 2020 primary runoff election, and November 3, 2020 general election, that the respondent: 1) failed to disclose political committees from which he had received notice under Section 254.161 of the Election Code, in violation of Section 254.061(3) or Section 254.091(2) of the Election Code; 2) failed to disclose in-kind contributions from political committees, in violation of Sections 254.031(a)(1) and 254.031(a)(6) of the Election Code; and 3) failed to disclose political expenditures made by credit card on the schedule of the campaign finance report form for credit card expenditures, in violation of Section 20.59 of the Ethics Commission Rules. The complaint further alleged that the respondent failed to include the political advertising disclosure statement on his campaign website, in violation of Section 255.001 of the Election Code.

### III. Findings of Fact and Conclusions of Law

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

1. The respondent was a successful incumbent candidate for the Texas House of Representatives in the 2020 elections. The respondent advanced from the March 3, 2020 primary election to a July 14, 2020 primary runoff election, which he won. The respondent subsequently won the November 3, 2020 general election.
2. Sworn complaint SC-3220136 was filed on January 31, 2022.

### **Failure to Disclose Political Contributions from Political Committees**

3. The sworn complaint alleged that the respondent failed to disclose in-kind contributions from political committees, in violation of Sections 254.031(a)(1) and 254.031(a)(6) of the Election Code.

#### *Texas Federation for Children PAC*

4. “Texas Federation for Children PAC” (TFC PAC) is a general-purpose political committee that files campaign finance reports with the Commission.
5. TFC PAC disclosed several in-kind contributions to the respondent on its campaign finance reports. These expenditures, which TFC PAC disclosed and described as “in kind,” and for which TFC PAC did not provide on its own reports the additional disclosures required for direct campaign expenditures, are as follows:

<b>Date of Expenditure</b>	<b>Amount of Expenditure</b>	<b>Category and Description</b>
6/19/2020	\$2,167.70	“Advertising Expense”/“In Kind-Direct Mail-Support Harold Dutton”
7/2/2020	\$2,167.70	“Printing Expense”/“In Kind-Direct Mail-Support Harold Dutton”
7/7/2020	\$92.08	“Advertising Expense”/“In Kind-Direct Mail-Support Harold Dutton”
7/9/2020	\$2,259.78	“Advertising Expense”/“In Kind-Direct Mail-Support Harold Dutton”
7/9/2020	\$1,015.34	“Advertising Expense”/“In Kind-Digital Ads-Support Harold Dutton”
7/20/2020	\$1,484.66	“Advertising Expense”/“In Kind-Digital Ads-Support Harold Dutton”

6. TFC PAC notified the respondent of the in-kind contributions dated June 19, 2020, and July 2, 2020, each in the amount of \$2,167.70, by letters dated July 2, 2020. TFC PAC further notified the respondent of the above-listed in-kind contributions of \$92.08, \$1,015.34, \$1,484.66, and \$2,259.78, by letters emailed to the respondent’s campaign email address on August 7, 2020. These letters clearly characterized the expenditures by TFC PAC as in-kind contributions, as compared to other letters from TFC PAC to the respondent that notified him of direct campaign expenditures. Further, documents obtained from TFC PAC indicate that on June 23, 2020, the respondent asked a representative of

TFC PAC to see their mailings in advance. A strategist with AFC (TFC's parent organization) replied: "If [the respondent] wants to see our mail in advance, we would have to in[-]kind it to him. Which is fine by me if it is OK with him."

7. Each campaign finance report must include the amount of political contributions, other than political contributions that are made electronically, from each person that in the aggregate exceed the reporting threshold and that are accepted during the reporting period by the person required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. Tex. Elec. Code § 254.031(a)(1). Each campaign finance report must further include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6). The reporting threshold for political contributions accepted during the 2020 calendar year was \$90. 44 Tex. Reg. 7879 (2019) (codified at 1 Tex. Admin. Code § 18.31) (Tex. Ethics Comm'n) (establishing inflation-adjusted reporting thresholds for the 2020 calendar year).
8. "In-kind contribution" means a contribution of goods, services, or any other thing of value that is not money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make the contribution. The term does not include a direct campaign expenditure. Tex. Elec. Code § 254.001(21).
9. All of the above-listed in-kind contributions exceeded the itemized reporting threshold for political contributions, and were therefore required to be disclosed and itemized on the respondent's campaign finance reports covering the pertinent dates. The respondent failed to disclose accepting any of the above-listed in-kind contributions on his campaign finance reports. There is therefore credible evidence that the respondent failed to disclose \$9,187.26 in in-kind contributions that he accepted from TFC PAC, in violation of Sections 254.031(a)(1) and 254.031(a)(6) of the Election Code.

*Texas REALTORS PAC/Texas Association of Realtors Political Action Committee*

10. During the time at issue, two general-purpose political committees associated with the Texas Association of Realtors filed campaign finance reports with the Commission. One of these political committees is still active, and has the Commission Filer ID number 00015487. This political committee was known as the Texas Association of Realtors PAC until mid-2020, around which time it was designated a "hybrid" political committee and renamed the Texas REALTORS Political Action Committee. *See* 1 Tex. Admin. Code § 20.1(22) (defining "hybrid committee"). The other political committee was named the Texas REALTORS PAC and served as a direct campaign expenditure-only political committee until it was dissolved in May 2020.
11. For purposes of clarity, this Order and Agreed Resolution will refer to these political committees as the 15487 political committee and the 70098 political committee.

12. The 15487 political committee disclosed four monetary contributions to the respondent, all of which the respondent disclosed on his pertinent campaign finance reports. However, the political committee also disclosed three in-kind contributions totaling \$323.75. Two in-kind contributions totaling \$273.75, the expenditures for which were dated February 6, 2020, and February 12, 2020, were required to be disclosed on the respondent's 8-day pre-election report due February 24, 2020, and a third in-kind contribution of \$50 was required to be disclosed on the respondent's 30-day pre-election report, due October 5, 2020. The respondent failed to disclose these in-kind contributions on these reports, either in itemized form, or, as the respondent disclosed no unitemized contributions on the reports at issue, in unitemized form.
13. Because the respondent failed to disclose two in-kind contributions totaling \$273.75 on his 8-day pre-election report due February 24, 2020, there is credible evidence of violations of Section 254.031(a)(1) of the Election Code. Further, because the respondent failed to disclose a further \$50 in-kind contribution on his 30-day pre-election report, either as an itemized contribution or as part of his total contributions, there is credible evidence of a violation of Section 254.031(a)(6) of the Election Code.
14. As a direct campaign expenditure-only political committee, the no-longer-extant 70098 political committee disclosed no in-kind contributions to the respondent.

*Texas State Teachers Association PAC*

15. "Texas State Teachers Association – PAC," or TSTA-PAC, is a general-purpose political committee that files campaign finance reports with the Commission.
16. The sworn complaint identified a \$3,558.82 expenditure by TSTA-PAC to a print shop for "printing and mailing postcards," dated June 29, 2020. According to TSTA-PAC's monthly campaign finance report filed August 5, 2020, the expenditure was made to support the respondent and one other candidate for state representative. The campaign finance report does not indicate what portion of the expenditure benefitted the respondent, nor does it clearly indicate that the expenditure was a direct campaign expenditure or an in-kind contribution.
17. In response to Commission staff's request for production of documents, TSTA-PAC produced a July 14, 2020 memorandum to the respondent reporting \$1,767.33 in in-kind contributions to him for a "flyer/mailed campaign." The memorandum clearly indicated that the expenditures were an in-kind contribution, and instructed the respondent to report the payment for mailers as an "in-kind contribution." Documents produced with the memorandum indicate that the \$1,767.33 in-kind contribution to the respondent was part of the \$3,558.82 mailer-buy identified by the sworn complaint.
18. \$1,767.33 of this expenditure was made to benefit the respondent. Further, the expenditure was an in-kind contribution with regard to the respondent. Therefore, the respondent was required to disclose this in-kind contribution on his pre-election report for the July 14, 2022

runoff election.<sup>1</sup> *See* Tex. Elec. Code §§ 254.031(a)(1), -(a)(6); 254.064(e) (requiring that runoff pre-election report cover period beginning the ninth day before the main election and ending the tenth day before election day).

19. The respondent did not disclose the in-kind contribution on his pre-election report for the July 14, 2022 runoff election, or on any of his other campaign finance reports. There is therefore credible evidence of a violation of Sections 254.031(a)(1) and 254.031(a)(6) of the Election Code for the respondent's failure to disclose the \$1,767.33 in-kind contribution from TSTA-PAC.

### **Failure to Disclose Support From Political Committees Despite Receiving Notice**

20. The sworn complaint alleged that the respondent failed to disclose the political committees from which he had received notice of support under Section 254.161 of the Election Code, in violation of Section 254.061(3) (applicable to candidates) or Section 254.091(2) (applicable to officeholders) of the Election Code.

#### *Texas Federation for Children PAC*

21. In addition to the in-kind contributions discussed above, TFC PAC disclosed several further expenditures to benefit the respondent. On the monthly campaign finance report it filed on March 5, 2020, TFC PAC disclosed two political expenditures totaling \$8,804.93. The report listed these expenditures as direct campaign expenditures to benefit the respondent, for "direct mail" and "digital ads." On the monthly report it filed on April 6, 2020, TFC PAC disclosed three further political expenditures totaling \$9,484.53, all of which were listed as direct campaign expenditures to benefit the respondent. Further, on the monthly report it filed on July 6, 2020, TFC PAC disclosed a \$1,148.19 direct campaign expenditure to support the respondent. All three of these reports listed the respondent as a candidate supported by the political committee. *See* Tex. Elec. Code § 254.151(4). As noted above, TFC PAC also disclosed several expenditures as in-kind contributions to the respondent.
22. On March 4, 2020, the Texas director of TFC PAC's parent organization, the American Federation for Children, emailed the respondent a letter from the TFC PAC's campaign treasurer. This letter notified the respondent "that a direct campaign expenditure was made by the Texas Federation for Children PAC, Inc." in support of the respondent's campaign. Further, in letters dated July 2, 2020, and in letters emailed on August 7, 2020, representatives of TFC PAC officially notified the respondent of expenditures totaling \$9,187.26 that constituted in-kind contributions to the respondent.

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<sup>1</sup> While the above-mentioned memorandum "report[ing]" the in-kind contribution to the respondent was dated July 14, 2020, an in-kind contribution is by definition made with the respondent's prior knowledge. *See* Tex. Elec. Code §§ 251.001(8) (providing that a campaign expenditure is not a contribution if made without the prior consent or approval of the candidate on whose behalf the expenditure is made); 251.001(21) (excluding from definition of "in-kind contribution" direct campaign expenditures).

23. The Texas Election Code provides that if a specific-purpose committee accepts political contributions or makes political expenditures for a candidate or officeholder, the committee's campaign treasurer shall deliver written notice of that fact to the affected candidate or officeholder not later than the end of the period covered by the report in which the reportable activity occurs. Tex. Elec. Code § 254.128. If a general-purpose committee other than the principal political committee of a political party or a political committee established by a political party's county executive committee accepts political contributions or makes political expenditures for a candidate or officeholder, notice of that fact shall be given to the affected candidate or officeholder as provided by Section 254.128 for a specific-purpose committee. *Id.* § 254.161.
24. In addition to the contents required to be included in all campaign finance reports, and additional information required to be disclosed by candidates and officeholders, each report by a candidate or officeholder must include, for each political committee from which the candidate or officeholder received notice under Section 254.128 or 254.161 of the Election Code, the committee's full name and address, an indication of whether the committee is a general-purpose committee or a specific-purpose committee, and the full name and address of the committee's campaign treasurer. *Id.* §§ 254.061(3); 254.091(2).
25. The respondent received notice that the TFC PAC made direct campaign expenditures supporting him via email on March 4, 2020, and subsequently received official notice of in-kind contributions by TFC PAC under Section 254.161 of the Election Code in June and early July of 2020. However, the respondent did not disclose this support on any of the reports he filed in 2020, either in the relevant section or elsewhere. There is therefore credible evidence that the respondent violated Sections 254.061(3) and 254.091(2) of the Election Code by failing to disclose receiving notice of TFC PAC's support on his reports. The respondent benefitted from \$19,437.65 in direct campaign expenditures from the TFC PAC during this time,<sup>2</sup> in addition to \$9,187.26 in in-kind contributions from the TFC PAC, but the public received no notice of this support from the respondent under Section 254.061(3) or 254.091(2) of the Election Code.

*Texas REALTORS PAC/Texas Association of Realtors Political Action Committee*

26. The 15487 political committee made several direct campaign expenditures to support the respondent. The political committee provided the following notices of direct campaign expenditures to the respondent, all by email to the respondent's campaign, except where otherwise indicated:

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<sup>2</sup> This figure only counts *once* a \$1,148.19 payment from the TFC PAC to the American Federation for Children national organization for consulting, despite the inclusion of this transaction on two of TFC PAC's reports, first as an unpaid incurred obligation and again as a political expenditure paid from political contributions.

Date of Notice	Purpose of Expenditure As Stated in Notice	Date and Amount of Related Expenditures Disclosed on Reports
2/20/2020	"Name included on the TexasRealtorsSupport.com website"	1/20/2020, \$25 to SGS Inc., "Candidate listed on TexasRealtorsSupport.com..."
3/6/2020	"Tweet supporting Harold Dutton Jr for HD 142"	2/19/2020, \$35 to Texas Association of REALTORS, "Tweet supporting Harold Dutton Jr for HD 142"
6/19/2020 <sup>3</sup>	[no description]	<p>6/15/2020, \$10,783.80 to ACCESS for "Mailers supporting Harold Dutton Jr HD 142"</p> <p>6/15/2020, \$167.70 to ACCESS for "GOTV/advocacy/robocalls supporting Harold Dutton Jr HD 142"</p> <p>6/15/2020, \$816.34 to ACCESS for "GOTV/advocacy text messages supporting Harold Dutton Jr HD 142"</p> <p>6/15/2020, \$6,736.25 to ACCESS for "Pre roll production supporting Harold Dutton Jr HD 142"</p> <p>6/15/2020, \$4,296.01 to ACCESS for "Online ads supporting Harold Dutton Jr HD 142"</p> <p>6/15/2020, \$200 to Real Strategies for "Strategy to support Harold Dutton Jr HD 142; NM item covered by reported monthly fees"</p>
6/25/2020	"Social Media Web Package in support of Harold Dutton Jr. for House District 142"	6/25/2020, \$100 to Texas Association of REALTORS, "Social media package supporting Harold Dutton Jr for HD 142"
7/6/2020	"Web advertising in support of Rep Harold Dutton for Texas House, District 142"	<p>6/26/2020, \$150 to Texas Association of REALTORS, "Consulting on digital ad campaign to support Rep. Harold Dutton Jr. for HD 142"</p> <p>6/30/2020, \$3,220.63 to SGS Inc., "Digital display ads for Harold Dutton Jr HD 142"</p>

<sup>3</sup> This notice appears to have been given by physical letter instead of email.

Date of Notice	Purpose of Expenditure As Stated in Notice	Date and Amount of Related Expenditures Disclosed on Reports
9/25/2020	“Social Media Web Package supporting Harold Dutton, Jr. for HD 142”	9/1/2020, \$32 to SGS Inc., “Candidate listed on TexasRealtorsSupport.com . . . .”

27. Furthermore, pursuant to Section 254.161 of the Election Code, the 15487 political committee notified the respondent of two in-kind contributions totaling \$273.75 by a March 3, 2020 email to the respondent’s campaign. These in-kind contributions were discussed in the above section concerning the respondent’s failure to disclose in-kind contributions.
  
28. As noted above, in each campaign finance report, a candidate or officeholder must identify each political committee from which it received notice of support pursuant to Section 254.128 or 254.161 of the Election Code. *See* Tex. Elec. Code §§ 254.061(3); 254.091(2). The respondent did not disclose that he received notice from the 15487 political committee on his 8-day pre-election report for the March 3, 2020 primary election, or his 30-day pre-election report for the November 3, 2020 general election, despite having received such notices of support during the pertinent reporting periods. There is therefore credible evidence of violations of Sections 254.061(3) and 254.091(2) of the Election Code as to these reports. The respondent also received notices of support from the 15487 committee during the reporting period for the July 14, 2020 runoff report. This support included the aforementioned \$273.75 in in-kind contributions. However, the respondent disclosed receiving support from the “Texas Realtors PAC” on that report. Therefore, there is insufficient evidence of a violation of Section 254.061(3) or 254.091(2) concerning the runoff report, during the campaign period for which the 15487 committee made most of its expenditures in support of the respondent.
  
29. The 70098 political committee reported accepting two political contributions and making four direct expenditures to benefit the respondent on February 21, 2020. The contributions totaled \$4,698.45 and the expenditures totaled \$41,400. However, when Commission staff requested that the political committee provide all notices given by the committee to the respondent pursuant to Section 254.161 of the Election Code, a representative of the committee claimed that they had no responsive material. There is therefore insufficient evidence to show a violation of Section 254.061(3) or 254.091(2) for failure to disclose notice of support from the 70098 political committee.

**Texas State Teachers Association PAC**

30. As noted above, the sworn complaint identified a \$3,558.82 expenditure by TSTA-PAC to a print shop for “printing and mailing postcards,” dated June 29, 2020. This expenditure was made to benefit the respondent and another candidate for state representative.



- 31. Further, as noted above, TSTA-PAC notified the respondent of this in-kind contribution – from TSTA-PAC’s standpoint, an expenditure for the respondent’s benefit – pursuant to Section 254.161 of the Election Code, by a memorandum dated July 14, 2020.
- 32. Because the respondent failed to disclose that he received notice of this expenditure, there is credible evidence of a violation of Sections 254.061(3) and 254.091(2) of the Election Code.

**Failure to Correctly Disclose Credit Card Expenditures**

- 33. The complaint alleged that the respondent failed to disclose political expenditures that he made by credit card on the schedule of the campaign finance report form for credit card expenditures.
- 34. Specifically, the sworn complaint identifies the following expenditures totaling \$4,334.51, which the respondent disclosed on Schedule F1 for ordinary political expenditures from political contributions but labeled as “credit card payment[s]”:

<b>Date</b>	<b>Amount</b>	<b>Payee</b>	<b>Category/Description</b>
1/22/2020	\$2,011.82	Harbor Beach Marriott	“Credit Card Payment”/“Attend Nat’l Caucus of Black State Legislators Conference”
3/6/2020	\$649.50	24Hour Wristbands	“Credit Card Payment”/“Masks and Sanitizers for District Constituents”
3/6/2020	\$240.09	Go Daddy Domain Names	“Credit Card Payment”/“Campaign Domain Name for Computer”
3/6/2020	\$441.65	Sheraton Hotel	“Credit Card Payment”/“Austin Hotel”
5/18/2020	\$991.45	Hertz Rent Car	“Credit Card Payment”/“Campaign Truck Rental”

- 35. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed the applicable itemized reporting threshold 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. Tex. Elec. Code § 254.031(a)(3). A report of an expenditure charged to a credit card must be disclosed on the Expenditures Made to Credit Card Schedule and identify the vendor who receives payment from the credit card company. 1 Tex. Admin. Code § 20.59(a).
- 36. For the 2020 calendar year, the itemized reporting threshold for political expenditures under Section 254.031(a)(3) of the Election Code was \$180. 44 Tex. Reg. 7879 (2019) (codified at 1 Tex. Admin. Code § 18.31) (Tex. Ethics Comm’n).
- 37. The category in which the above-listed expenditures were classified – “credit card payment” – clearly indicates that these expenditures were made to pay off prior amounts charged to a credit card. The sworn complaint observes, and Commission staff’s review of the respondent’s campaign finance reports confirms, that the respondent did not disclose the credit card charges that these expenditures paid off on his preceding reports.

38. The respondent's January 22, 2020 expenditure to pay for his hotel stay at the National Caucus of Black State Legislators Conference further confirms that these expenditures were made to pay off prior credit card charges, as the conference described occurred from December 3, 2019, through December 7, 2019, more than one month prior to the date of the associated expenditure disclosed by the respondent.
39. Because the respondent failed to report on the Expenditures Made by Credit Card schedule of his relevant campaign finance reports the initial charges underlying the above-listed credit card payments, there is credible evidence of violations of Section 20.59(a) of the Ethics Commission Rules.

### **Failure to Include Political Advertising Disclosure Statement on Website**

40. The complaint alleged that the respondent failed to include the required political advertising disclosure statement on his campaign website.
41. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. Tex. Elec. Code § 255.001(a). Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing campaign finance reports shall be deemed to contain express advocacy. *Id.* § 255.001(b).
42. A disclosure statement that is required by Section 255.001 of the Election Code must contain the words "political advertising" or any recognizable abbreviation thereof, and must appear on one line of text or on successive lines of text on the face of the political advertising, or be clearly spoken in the political advertising if the political advertising does not include written text. 1 Tex. Admin. Code § 26.1(a). A disclosure statement is not required on political advertising posted or re-posted by a person on an Internet website, provided the advertising is posted with a link to a publicly viewable Internet webpage that contains the disclosure statement, or is exempt from containing the disclosure statement on the ground that it is the Internet social media profile webpage of a candidate or officeholder that clearly and conspicuously displays the full name of the candidate or officeholder. *Id.* § 26.1(c). As relevant, an "Internet social media profile webpage" is an Internet webpage on a website where members of the public may, for no charge, connect electronically with other members of the public and share text, images, videos, and similar forms of communications. *Id.* § 26.1(d).
43. "Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that in return for consideration is published in a newspaper, magazine, or other periodical or is broadcast by radio or television, or appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication, or on an Internet website. *Id.* § 251.001(16).

44. The front page of the respondent's campaign website, as it existed during the respondent's 2020 campaign for state representative, displayed a photo of the respondent, with large-print text reading "Re-Elect Harold Dutton." Therefore, the website's front page constituted political advertising. *See id.* § 251.001(16). Neither the front page of the website nor any other page of the website displayed the political advertising disclosure statement, and no exception to the disclosure statement requirement applies. There is therefore credible evidence of a violation of Section 255.001 of the Election Code for the respondent's failure to include a political advertising disclosure statement on his campaign website.

#### **IV. 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 findings of fact and conclusions of law described under Section III, except as noted below, 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 for each political committee from which the candidate received notice of support under Section 254.128 or 254.161 of the Election Code, each report by a candidate or officeholder must include the committee's full name and address, an indication of whether the committee is a general-purpose committee or a specific-purpose committee, and the full name and address of the committee's campaign treasurer. The respondent further acknowledges that each campaign finance report must include: 1) the amount of political contributions, other than political contributions that are made electronically, from each person that in the aggregate exceed the applicable itemized reporting threshold and that are accepted during the reporting period by the person or committee required to file a campaign finance report, the full name and address of the person making the contributions, and the dates of the contributions; 2) the amount of political contributions from each person that are made electronically and that are accepted during the reporting period by the person or committee required to file a campaign finance report, the full name and address of the person making the contributions, and the dates of the contributions; and 3) the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. However, the respondent expressly admits to reporting all notices from political committees which were actually received by the respondent.
4. The respondent acknowledges that a report of an expenditure charged to a credit card must be disclosed on the Expenditures Made to Credit Card Schedule, presently known as Schedule F4, and identify the vendor who receives payment from the credit card company. The respondent further acknowledges that a report of a payment *to* a credit card company

must be disclosed on the appropriate disbursements schedule and identify the credit card company receiving the payment, typically the issuing bank.

5. Finally, the respondent acknowledges that a person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising, and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. The respondent acknowledges that a campaign website may constitute political advertising required to bear a political advertising disclosure statement. However, the respondent expressly denies authorizing the publishing, distributing, or broadcasting of political advertising containing express advocacy in any campaign website.
6. The respondent agrees to fully and strictly comply with the above requirements of the law.

## V. 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.

## VI. Sanction

1. The Commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the Commission, whichever amount is more, for a delay in complying with a Commission order or for violation of a law administered and enforced by the Commission. Tex. Gov't Code § 571.173.
2. The Commission shall consider the following factors in assessing a sanction: 1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation; 2) the history and extent of previous violations; 3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation; 4) the penalty necessary to deter future violations; and 5) any other matters that justice may require. *Id.* § 571.177.
3. The respondent's failure to disclose crucial support that he received from the Texas Federation for Children political committee, by omitting from his reports their in-kind contributions and their direct campaign expenditures, significantly impacted public disclosure. In total, during 2020, the respondent benefitted from \$19,437.65 in direct campaign expenditures and \$9,187.26 in in-kind contributions from the committee. None of the campaign finance reports that the respondent filed for 2020 contained any indication that he received any support from Texas Federation for Children or its affiliated political

committee. The respondent received notice of support from Texas Federation for Children well in advance of his closely-contested July 2020 runoff election. Further, per the very definition of in-kind contributions, the respondent would have known of Texas Federation for Children's in-kind contributions to his campaign. *See* Tex. Elec. Code §§ 251.001(21) (defining "in-kind contribution," specifically excluding from the definition direct campaign expenditures); 251.001(8) (defining "direct campaign expenditure," premising definition on lack of prior consent or approval by beneficiary candidate or officeholder). By failing to inform the public in his reports, the respondent stifled public notice of the political committee's support, thereby skirting potential political controversy.

4. The respondent further failed to disclose smaller amounts of support in the form of in-kind contributions and direct campaign expenditures from the Texas State Teachers' Association PAC and one of the political committees associated with the Texas Association of Realtors. The support from the Texas State Teachers' Association PAC consisted of a \$1,767.33 in-kind contribution, and the support from the political committee associated with the Texas Association of Realtors included \$273.75 in in-kind contributions and \$3,402.63 in direct campaign expenditures for which the respondent received notice.
5. While a violator's demonstrated good faith in response to the sworn complaint can justify a reduced penalty, the respondent's unresponsiveness has delayed the resolution of this complaint. Commission staff had to call the respondent several times concerning his responses to staff's written questions, which staff ultimately never received. After the respondent's sworn responses were damaged in transit, such that the Commission received only an empty envelope and not the enclosed responses, the respondent failed to resend the responses despite agreeing to do so in a telephone discussion with staff, and despite subsequent voicemail reminders from staff left at the same number at which staff had spoken with the respondent. Nor has the respondent filed corrected reports to disclose the missing activity.<sup>4</sup>
6. Section 571.177 of the Government Code further directs the Commission to consider the history and extent of the respondent's prior violations in determining a civil penalty. The respondent was the subject of a public Order and Agreed Resolution in two previous sworn complaints, SC-3100252 and SC-31803111. In both of these Orders, the Commission found reporting violations, imposing a \$1,300 civil penalty in SC-3100252 and then a \$2,500 civil penalty in SC-31803111. Further, in the five years preceding the filing of this sworn complaint, the respondent failed to timely file three reports.<sup>5</sup> According to the list

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<sup>4</sup> While the respondent filed a corrected pre-election report for the July 2020 runoff election the day after filing his original report, the purpose of the corrected report was to rectify a mathematical error on the cover sheet, and the corrections did not address any of the deficiencies identified in this Order and Agreed Resolution.

<sup>5</sup> This excludes three further late reports that were addressed in the Commission's Order and Agreed Resolution in sworn complaint SC-31803111.

of delinquent filers maintained by the Commission, the respondent presently owes \$5,989.16 in unpaid civil penalties.<sup>6</sup>

7. After considering the nature, circumstances, and consequences of the violations described under Section III, the respondent's prior violations, and the sanction necessary to deter future violations, the Commission imposes a \$3,000 civil penalty.

## VII. 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-3220136.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Harold Dutton, Respondent

EXECUTED by the Commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
J.R. Johnson, Executive Director

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<sup>6</sup> The Commission's list of delinquent candidate and officeholder filers may be found at <https://www.ethics.state.tx.us/search/delinquent/coh/>.