

TEXAS ETHICS COMMISSION  
P.O. Box 12070, Austin, Texas 78711-2070  
(512) 463-5800

Chad M. Craycraft, Chair  
Mary K. “Katie” Kennedy, Vice Chair  
Randall H. Erben  
Chris Flood

Patrick W. Mizell  
Richard S. Schmidt  
Joseph O. Slovacek  
Steven D. Wolens

## MEETING AGENDA

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Date and Time: 9:00 a.m., Thursday, June 17, 2021  
Location: Room E1.014, Capitol Extension, Austin, Texas

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1. Call to order; roll call.
2. **Executive session pursuant to Section 551.071, Government Code, Consultation with Attorneys, and Section 551.074, Government Code, Personnel Matters; Closed Meeting.**
  - A. Discussion of pending litigation to seek legal advice relating to the following:
    - i. Cause No. D-1-GN-17-001878: *Texas Ethics Commission v. Michael Quinn Sullivan*, in the 250<sup>th</sup> Judicial District Court in Travis County, Texas; Cause No. 03-17-00392-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas; and Cause No. 18-0580: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas.
    - ii. Cause No. D-1-GN-15-004455: *Texas Ethics Commission v. Empower Texans, Inc. and Michael Quinn Sullivan*, in the 345<sup>th</sup> Judicial District Court of Travis County, Texas; and related case, Cause No. 03-16-00872-CV: *Empower Texans, Inc., and Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.
  - B. Discussion of personnel matters.

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For more information, contact Anne Temple Peters, Executive Director, at (512) 463-5800.

- C. Reconvene in open session.
3. Election of Chair and Vice Chair of the Ethics Commission.
4. Discussion regarding dates for next quarterly Commission meeting.
5. Approve minutes for the following meetings:
  - o Public Meeting – March 12, 2021.

### **ADMINISTRATIVE APPEALS OF FINES**

6. Discussion and possible action on appeals of determinations made under Ethics Commission Rules §§ 18.25 and 18.26 relating to administrative waiver or reduction of a fine, for the following filers:
  1. Wayne S. Vaughn, Chair, Atascosa County Republican Party (00023668)
  2. Southlake Families PAC, treasurer Kristine Kemp (00084934)
  3. Cambio Texas PAC, treasurer Parthkumar Naik (00082985)
  4. Kimberly Newcomer-Fitzpatrick, incumbent candidate, Judicial District 342 (00082242)
  5. Rocio Gosewehr Hernandez, candidate, State Representative District 67 (00083919)
  6. High Plains Republican Women PAC, treasurer Angie Parker (00054835)
7. Discussion and possible action regarding the termination of a campaign treasurer appointment for the following inactive individuals and political committee:

#### **Individuals**

1. Matthew Taylor Flores (00082422)
2. Angela K. Hayes (00081544)
3. Van Q. Huynh (00083817)
4. Finnigan Jones (00082076)
5. Casey W. Littlejohn (00081865)
6. John Lujan III (00058435)
7. Larry McKinzie (00084539)
8. Dennis A. Miller II (00082191)
9. Deondre Moore (00084457)
10. James L. Murphy III (00084686)
11. Anna L. Nunez (00084010)
12. Osbert G. Rodriguez III (00080354)

13. Colin D. Ross (00084274)
14. Jason D. Rowe (00084443)
15. Sam N. Smith (00084293)
16. Aubrey R. Thoede (00041082)
17. Ruben Villarreal (00082278)
18. Joseph R. Willie II (00082407)

### **Political Committee**

19. Better Bond for Midland, Brandon W. Hodges, Treasurer (00084208)
20. Building Better Communities Political Action Committee, Eustacio Mireles, Treasurer (00083774)
21. Dark Money PAC, Philip A. Harris, Treasurer (00080815)
22. Empower PAC, Dallas S. Jones, Treasurer (00080264)
23. Harris County African-American Deputy's Union PAC, J.M. Phillips, Jr., Treasurer (00067346)
24. Pathfinders Republican Women's Club, Janice L. Burkholder, Treasurer (00017208)
25. Red Wave Texas – Galveston County, Phillip A. Webb, Jr., Treasurer (00084035)
26. Robin J. Anderson, Angela G. Johnson, Treasurer (83079)
27. Texas Combat Veterans, Joshua S. Finkenbinder, Treasurer (00080106)
28. Texas Industries, Inc. Political Action Committee, Amanda M. Miller, Treasurer (00034656)
29. Texas Liberty Law, Charles Blain, Treasurer (00082172)
30. The Texas PAC, Eric Knustrom, Treasurer (00080816)

### **ADVISORY OPINIONS**

8. Draft Advisory Opinion No. AOR-639: Regarding a judicial officeholder's use of his courtroom for political advertising.

This opinion construes Tex. Penal Code § 39.02 and Tex. Elec. Code § 255.003.

9. Draft Advisory Opinion No. AOR-645: Regarding registered lobbyists' expenditures on social media advertising.

This opinion construes Chapter 305 of the Government Code.

10. Draft Advisory Opinion No. AOR-646: Regarding a judicial officeholder's use of political contributions to seek a federal appointment.

This opinion construes Title 15 of the Election Code.

## RULEMAKING

### Rule Adoption

11. Discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to 1 Tex. Admin. Code §§18.23 through 18.26, regarding changes to administrative waiver rules.
12. Discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to 1 Tex. Admin. Code §20.1(11), regarding the definition of political advertising.

### Rule Publication

13. Discussion and possible action on the proposal and publication in the Texas Register of new 1 Tex. Admin. Code § 34.82, regarding modified reporting thresholds for lobbyists.
14. Discussion and possible action on the proposal and publication in the Texas Register of amended 1 Tex. Admin. Code § 18.17, regarding deceased or incapacitated filers.

## OTHER MATTERS

15. Briefing and discussion of ethics legislation in the 2021 legislative session, including status of Ethics Commission legislative recommendations.
16. **Formal hearing notice pursuant to Sections 551.002 and 571.139(b), Government Code, Open Meetings Requirement, and Section 12.117, Ethics Commission Rules.** Contested Case Proceeding; In the Matter of Robert L. "Bob" Hall, III, Respondent. Sworn Complaint No. SC-3180254 alleges violations of sections 254.031(a)(1) and (a)(6) of the Election Code.
17. **Formal hearing notice pursuant to Sections 551.002 and 571.139(b), Government Code, Open Meetings Requirement, and Section 12.117, Ethics Commission Rules.** Contested Case Proceeding; In the Matter of Stephen

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*For more information, contact Anne Temple Peters, Executive Director, at (512) 463-5800.*

Pennington, Respondent. Sworn Complaint No. SC-32008160 alleges a violation of section 254.063(b) of the Election Code.

18. Adjourn.

**CERTIFICATION:** I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements. Certifying Official & Agency Liaison: Anne Temple Peters, Executive Director.

**NOTICE:** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, the Texas Ethics Commission will provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, and large print or Braille documents. In determining the type of auxiliary aid or service, the Commission will give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify Margie Castellanos at (512) 463-5800 or RELAY Texas at (800) 735-2989 two days before this meeting so that appropriate arrangements can be made. Please also contact Ms. Castellanos if you need assistance in having English translated into Spanish.

The draft meeting minutes will be available on our website the day before the meeting, at <https://www.ethics.state.tx.us/DraftMinutes>.

If you would like a copy of the draft minutes, please provide your email address below, and return this sheet to Ethics Commission staff at the meeting.

Email address:

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ETHICS ADVISORY OPINION NO. \_\_\_\_

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[DATE]

ISSUES

*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?*

*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? (AOR-639)*

SUMMARY

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.

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.

FACTS

The requestor is a judicial officer who seeks clarification of Ethics Advisory Opinion (“EAO”) No. 550 as it applies to a judge’s use of photographs taken in his courtroom.

Specifically, the requestor asks whether he may use, for political purposes, photographs that are taken in different parts of the courtroom, such as the gallery, the area in front of the bench, or behind the bench. The requestor states that his courtroom is open anytime the building is open, but that he typically restricts the public to the gallery, permits attorneys into the area in front of the bench, and allows no one but himself behind his bench. Exceptions are made for ceremonies like weddings or adoptions, or for public tours of the courthouse, when the requestor allows the public into the area in front of the bench, and, if requested, even behind his bench.

Separately, the requestor asks whether he is permitted to use, for political purposes, photographs that are published in the public domain, even if they show him behind the bench. He specifically identifies multiple sources of public-domain photographs, including “local media outlets (print, TV, and Internet)” and “social media (from ZOOM hearings).”

## DRAFT

### ANALYSIS

Section 255.003(a) of the Election Code does not apply to the requestor because he is not an officer or employee of a political subdivision.

Unlike section 39.02(a)(2) of the Penal Code—which applies to all “public servant[s]”—section 255.003(a) of the Election Code applies only to officers and employees of “political subdivisions.” Tex. Elec. Code § 255.003(a). For the following reasons, the requestor is neither an officer nor employee of a political subdivision, and thus section 255.003(a) does not apply to his use of his courtroom.

The Texas Election Code defines "political subdivision" to mean a county, city, or school district or any other governmental entity that (1) embraces a geographic area with a defined boundary, (2) exists for the purpose of discharging functions of government, and (3) possesses authority for subordinate self-government through officers selected by it. Tex. Elec. Code § 1.005(13). The Texas Supreme Court has further defined “political subdivisions” as having “the power to assess and collect taxes ....” *Guaranty Petroleum Corp. v. Armstrong*, 609 S.W.2d 529, 531 (Tex. 1980).

The requestor in this case is a judge of a Texas judicial district, also known as a district court. District courts are created by the Texas Constitution, and they are the trial courts of general jurisdiction of the state of Texas. Tex. Const. art. V. §§ 7-8. Each county of Texas must be served by at least one district court, but in sparsely populated areas of the state, several counties may be served by a single district court. In other words, judicial districts satisfy the first two elements of the definition of political subdivision because they embrace a geographic area within a defined boundary, and they exist for the purpose of discharging functions of government.

But district courts neither possess the authority for subordinate self-government through officers selected by it, nor do they have the power to assess and collect taxes. Instead, they are part of the state government’s judicial branch. *See* Tex. Const. art. V. §§ 7-8. Consequently, district judges are not officers or employees of political subdivisions, they are officers of state government. *See* Tex. Elec. Code § 1.005(18-1) (defining “state judge” to include district court judges). Therefore, section 255.003(a) does not apply to the requestor, and no use of his courtroom would constitute a violation of that section.

The Penal Code prohibits judges from using their courtrooms to create political advertisements, but not from repurposing material that is created lawfully.

Ethics Advisory Opinion No. 550 concludes that a public officer’s “use of a government office, which is restricted to the custody or possession of that officer, for political advertising would confer a benefit to the individual public servant for private campaign purposes and would violate section 39.02(a)(2) of the Penal Code.” Tex. Ethics Comm’n Op. No. 550 (2019).<sup>1</sup> Conversely, a

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<sup>1</sup> Section 39.02(a)(2) of the Penal Code states that a public servant may not, with intent to obtain a benefit or harm or defraud another, intentionally or knowingly “misuse” government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant’s<sup>1</sup> custody or possession by virtue



## DRAFT

“public area of a government facility” that is “equally accessible” to everyone is not in the “custody or possession” of a public officer for purposes of the Penal Code, and thus may be used for political advertisements. *Id.*

Courtrooms are not “equally accessible” to judges and the general public. *See* Tex. Ethics Comm’n Op. No. 550 (2019). Judges may exclude the public from their courtrooms when no proceedings are taking place and even during certain official business.<sup>2</sup> The law requires judges to allow the public to access their courtrooms during other proceedings, but even then, it affords them significant discretion to control the behavior of visitors.<sup>3</sup> In short, a judge nearly always has more access to, and more rights within, his own courtroom than anyone else.

The requestor says that he invites the public to tour his courtroom when it is not in session and even occasionally allows members of the public to sit behind his bench. However, the fact that he has the authority to grant or deny that permission is evidence of his “custody or possession” of the courtroom. *See* Tex. Penal Code § 39.02(a)(2). To put it plainly, the requestor’s opponent would need permission to take a photograph from behind the requestor’s bench, but the requestor himself would not need anyone’s permission, much less his political opponent’s.

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of the public servant’s office or employment.” A public servant, as defined in the Penal Code, includes a public officer. Tex. Penal Code §1.07(a)(7).

<sup>2</sup> Under both state and federal law, criminal defendants have a constitutional right to a “public trial.” *Levine v. United States*, 362 U.S. 610, 616 (1960). However, the public’s right to access criminal trials is not absolute. *See Hernandez v. State*, 914 S.W.2d 219, 221-22 (Tex. App.—El Paso 1996), pet. ref’d (“[r]easonable limitations on public attendance may be imposed where they are necessary to protect a state interest that outweighs the defendant’s right to public scrutiny.”).

The public’s right to access civil proceedings is even more limited. In what is called the “open-courts” provision, the Texas Constitution states that “[a]ll courts shall be open, and every person for an injury done to him, in his lands, goods, person or reputation, shall have remedy by due course of law.” Tex. Const. art. 1 § 13. However, the Supreme Court of Texas has refused to construe the open-courts provision as guaranteeing the public a right to access court proceedings, and has permitted, for example, excluding the public to preserve the trade secrets of litigants. *In re M-I L.L.C.*, 505 S.W.3d 569, 577-78 (2016) (“To the extent the open-courts provision might confer a right of public access, this right clearly would not be absolute, but instead would be subject to reasonable limitations imposed to protect countervailing interests, such as the preservation of trade secrets.”).

State law also permits judges to conduct certain proceedings privately, at their discretion. For example, the Texas Family Code allows judges to exclude the public from certain hearings involving juveniles, and presumes that hearings involving a child under the age of 14 would be closed to the public unless the judge “finds that the interest of the child or the interests of the public would be better served by opening the hearing to the public.” Tex. Fam. Code § 54.08.

<sup>3</sup> *See, e.g., Garcia v. State*, 2005 Tex. App. LEXIS 5405, \*8 (Tex. App.—San Antonio 2005, pet. denied); *see also In re Bell*, 894 S.W.2d 119, 127-131 (Tex. 1995) (judges are given “wide latitude” to use their contempt powers to enforce order and decorum in the courtroom). This authority extends not only to attorneys appearing before the court, but to spectators as well. *See, e.g., Batiste v. State*, 2013 Tex. Crim. App. Unpub. LEXIS 657, \*29 (Tex. Crim. App. June 5, 2013) (not designated for publication). And a failure to comply with this authority can result in a finding of contempt and possible imprisonment. *See Ex. Parte Gonzalez*, 238 S.W. 635, 636 (Tex. 1922) (orig. proceeding) (the purpose of contempt is to “compel due decorum and respect in [the judge’s] presence”).

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The requestor also says that his personal policy is to keep his courtroom open to the public whenever the courthouse itself is open. However, he confirmed that there is nothing preventing him from changing that policy and using the key given to him as a judicial officeholder to lock his courtroom when it is not in use. Again, judge's authority to adopt a policy that determines when the public may enter their courtrooms when not in use demonstrates their custody or possession of the space. *See* Tex. Penal Code § 39.02(a)(2).

Consequently, and in response to the requestor's first question, if a judge were to personally create—or coordinate with a third party to create—a photograph anywhere in his courtroom for use in a political advertisement, then he or she would derive a private benefit from the use of a government resource that is in his or her custody or possession, in violation of Section 39.02(a)(2).

However, the Penal Code does not prohibit public servants from repurposing an image that is created for a separate, lawful purpose. For example, if a journalist attends an open court proceeding, sits in the gallery as a member of the general public, and takes a photograph that is published in a newspaper or periodical, a judge may repurpose that photograph for his campaign. Under these circumstances, the judge does not “misuse” the government property in his custody for private benefit. Tex. Penal Code § 39.02(a)(2). Rather, the judge uses his courtroom for its proper governmental purpose, and a journalist independently uses his rights as a member of the general public to take and publish a photograph from inside the room.

Whether a judge may play a part in the creation of the images himself is another matter, and the answer depends on the circumstances. For example, the requestor asks whether he may repurpose the official video of his court's proceedings—recorded and posted to the internet with government-owned equipment—for use in political advertisements. In our opinion, such use is permissible because the video's intended purpose is to fulfil a proper governmental function and would be recorded regardless of whether the judge later repurposes it for a political advertisement. In other words, the use is “incidental,” and “does not result in additional costs or damage to the state” or “impede agency functions.” *See* Tex. Ethics Comm'n Op. Nos. 134 (1993) (state employee's use of state telephones to place personal local calls), 372 (1997) (state employee's use of state cellular phones, email, and Internet); 395 (1998) (state employee's use of state telephones to place long-distance personal calls).

On the other hand, a judicial officer would violate section 39.02(a)(2) if he were to coordinate the creation of photographs or video in his courtroom that would not otherwise be taken for official purposes and use them for political advertising. *See* Tex. Ethics Comm'n Op. No. 550 (2019). Because courtrooms are government property placed in the custody or possession of judicial officers that are not “equally accessible” to the public, their use for political advertising constitutes a “misuse[]” for purposes of section 39.02(a)(2). *Id.*

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ETHICS ADVISORY OPINION NO. \_\_\_\_

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[DATE]

ISSUES

*Whether section 305.006(c) of the Texas Government Code requires registered lobbyists to disclose expenditures on social media advertising.*

*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.” (AOR-645)*

SUMMARY

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.

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.

FACTS

The requestor is an employee of an organization that also employs a person registered as a lobbyist under Chapter 305 of the Texas Government Code. The registered lobbyist files on behalf of both himself and the organization.

The requestor seeks answers to two questions regarding the application of Chapter 305. First, the requestor asks whether registered lobbyists must disclose how much they spend on advertising on social media, even if the communication is not directed at a lawmaker or elected official. Second, and assuming the first question is answered in the affirmative, the requestor asks whether expenditures for social media advertising would need to be disclosed by a registered lobbyist even if the communications did not explicitly say “support/oppose this legislation.”

## DRAFT

### ANALYSIS

Section 305.006 of the Texas Government Code requires registered lobbyists to file reports with the Texas Ethics Commission (“Commission”) and defines the required contents of those reports. Subsection (b) requires lobbyists to report their expenditures “made to communicate *directly* with a member of the legislative or executive branch to influence legislation or administrative action ....” Tex. Gov’t Code § 305.006(b) (emphasis added). In addition, Subsection (c) requires registered lobbyists to report expenditures for certain communications that are *not made directly* to members of the legislative or executive branch:

(c) The report must also list the total expenditures made by the registrant or by others on the registrant’s behalf and with the registrant’s consent or ratification for broadcast or print advertisements, direct mailings, and other mass media communications if:

- (1) the communications are made to a person other than a member, employee, or stockholder of an entity that reimburses, retains, or employs the registrant; and
- (2) the communications support or oppose or encourage another to support or oppose pending legislation or administrative action.

Tex. Gov’t Code § 305.006(c).

Chapter 305 expressly includes broadcast or print advertisements and direct mailings as types of “mass media communications.” *Id.* The question addressed by this opinion is whether communications published on social media websites are “mass media communications” for purposes of the lobby law. *See id.*

In our opinion, the answer is yes, posts to social media are mass media communications for purposes of the lobby law, and expenditures for such communications must be reported by registered lobbyists if the remaining conditions of Subsection 305.006(c) apply. In this context, the Commission sees no good reason to distinguish between communications that are published in print and those that are published on social media.

However, registered lobbyists are only required to report these expenditures if the other conditions of Section 305.006(c) apply. First, the communication must be “made to a person other than a member, employee, or stockholder of an entity that reimburses, retains, or employs the registrant”. Tex. Gov’t Code § 305.006(c)(1). For example, a public post on Twitter would satisfy this requirement because it is broadcast to the general public, but a private message to another employee of the lobbyist’s employer would not.

Second, the communication must “support or oppose or encourage another to support or oppose pending legislation or administrative action.” Tex. Gov’t Code § 305.006(c)(2). Chapter 305 does not define “support or oppose,” so we look to our prior opinions interpreting similar language from the Texas Election Code.

## DRAFT

Section 251.001(16) of the Texas Election Code defines “political advertising” as certain “communication[s] *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 ....” Tex. Elec. Code § 251.001(16) (emphasis added). Several of the Commission’s prior opinions have stated that, “[t]he critical issue in determining whether an advertisement is ‘political advertising’ is whether it is a communication supporting or opposing a candidate or a public officer.” Tex. Ethics Comm’n Op. No. 476 (2007) (citing Tex. Ethics Comm’n Op. No. 102 (1992)).

When the Commission is asked to consider whether a communication supports or opposes a candidate, public officer, or measure for purposes of the Texas Election Code, it views the communication “as a whole.” *See, e.g.* Tex. Ethics Comm’n Op. Nos. 559, 560 (2021). “Whether a particular communication supports or opposes a measure is a fact question.” Tex. Ethics Comm’n Op. No. 559 (2021) (citing Tex. Ethics Comm’n Op. No. 476 (2007)).

The Commission has opined that the inclusion of “express advocacy” as defined by Rule 20.1(18)—words or phrases such as “vote for,” “support,” “vote against,” “defeat,” or “reject”—would indicate that a communication supports or opposes a candidate, official, or measure for purposes of Section 255.003(a) of the Election Code. Tex. Ethics Comm’n Op. No. 559 (2021). However, the Commission has also determined that express advocacy is *not required* for a communication to support or oppose a candidate, official, or measure. *Id.*; *see also* Tex. Ethics Comm’n Op. Nos. 560 (2021) (concluding that a communication was political advertising despite not including any express advocacy). Instead, like other jurisdictions, the Commission views the communication as a whole and considers it within the broader context in which it is distributed. *See, e.g. Vargas v. City of Salinas*, 205 P.3d 207, 209 (Cal. 2009) (Rejecting an “express advocacy” standard and finding, “under some circumstances it may be necessary to examine the ‘style, tenor and timing’ of a communication in order to determine whether it should be characterized as permissible or impermissible.”).

A significant factor in determining whether a particular communication supports or opposes a measure is “whether the communication provides information” without promoting the measure. *Id.* (citing Tex. Ethics Comm’n Op. No. 476 (2007)). Even if the information would affect whether certain voters or elected officials would support or oppose a measure, a communication does not support or oppose a measure if it merely provides factual information. Tex. Ethics Comm’n Op. No. 559 (2021). “However, no matter how much factual information about the purposes of a measure election is included in a communication, *any amount* of advocacy” urging a person to take a particular action transforms the communication into one that supports or opposes. Tex. Ethics Comm’n Op. No. 559 (2021).

The Commission’s prior opinions interpreting the phrase “supporting or opposing” in the Texas Election Code inform our interpretation of the phrase “support or oppose” in the Texas Government Code. In short, a communication supports or opposes pending legislation if it “would lead one to reasonably believe that the purpose of the communication” was to advocate for or against the pending legislation. *See* Tex. Ethics Comm’n Op. No. 560 (2021) (internal quotation removed).

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ETHICS ADVISORY OPINION NO. \_\_\_\_

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[DATE]

ISSUE

*Whether a judge may use campaign contributions for consulting and travel expenses to seek an appointment to a federal judicial office. (AOR-646)*

SUMMARY

A judge may not use campaign contributions for consulting and travel expenses to seek an appointment to a federal judicial office where the purpose is not connected with the performance of duties or activities of the judge.

FACTS

The requestor is a state judge who is seeking an appointment to a federal judicial office. He wishes “to use political contributions received in connection with election to a state judicial office to pay expenses, such as consulting and travel expenses, incurred in connection with seeking a federal appointment to another judicial office[.]”

ANALYSIS

Title 15 of the Texas Election Code prohibits candidates and officeholders from converting political contributions to personal use. Tex. Elec. Code § 253.035(a). “Personal use” is defined as “a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office.” *Id.* § 253.035(d).

The requestor asserts that he is not prohibited by Section 253.035 from using campaign contributions for the proposed consulting and travel expenses because the use would be “in connection with” a federal judicial office. *See* Tex. Ethics Comm’n Op. No. 445 (2002) (a federal judge may use political contributions accepted as a Texas judicial candidate or officeholder to make expenditures in connection with the federal office).

However, compliance with Section 253.035 requires not just that the use of political contributions be connected with the federal judicial office, but rather that they be “connected with the performance of duties or activities as a *candidate for or holder of*” the federal office. *See* Tex. Elec. Code § 253.035(d) (emphasis added). Ethics Advisory Opinion No. 445 is distinguishable because the requestor is not currently a federal judicial officeholder.

## DRAFT

The judge is neither a “candidate for” election to the federal judicial office nor a “holder of” the federal judicial office to which he seeks an appointment. *Id.* Consequently, his use of political contributions for consulting and travel expenses could not be connected with the performance of duties or activities as a candidate for or holder of the federal judicial office. Furthermore, the judge does not state facts to show how this use of campaign contributions could instead be connected with his performance of duties or activities as a state judge.

The Commission has previously held that a judge’s use of political contributions to pay the expenses of maintaining a residence in the city in which the court sits or commuting between his home city and the city where the court sits would be a prohibited conversion of political contributions to personal use. Tex. Ethics Comm’n Op. No. 133 (1993).<sup>1</sup> Here, the judge’s similar expenses for travel, which could include lodging and/or transportation, would not be connected with his duties or activities as a current state judge, but would primarily benefit him as an individual who is seeking an appointment to become a federal judge.

In applying Section 253.035, the Commission has consistently expressed that using political contributions for purposes that primarily promote the private career or professional status of a candidate or officeholder would be a prohibited personal use. The Commission has found that Section 253.035 prohibited the use of political contributions to pay the expenses of defending lawsuits where “the lawsuits in question were brought against the legislator in his private professional status, not in his status as a legislator.” Tex. Ethics Comm’n Op. No. 363 (1997). The Commission later found that an engineering license “would be of value primarily for the mayor’s personal purposes” and clarified that “[a] candidate or officeholder may not use political contributions to pay a license fee unless the license is required for the office held or sought.” Tex. Ethics Comm’n Op. No. 432 (2001).

Here, the judge is seeking a federal appointment in his private professional capacity. His use of campaign contributions for consulting and travel expenses would primarily benefit his private career. Those expenses are not required to be incurred by a candidate for or holder of the judge’s office and are not otherwise connected with his duties or activities.

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<sup>1</sup> By contrast, we have found it would not be a conversion to personal use for a judicial candidate or officeholder to use political contributions for expenditures *only* where those expenditures were connected with the performance of duties or activities as a judicial candidate for or holder of a judicial office. *See* Tex. Ethics Comm’n Op. Nos. 555 (2020) (a judge may use political contributions to pay ordinary and necessary expenses incurred in connection with producing an educational podcast for practicing lawyers.), 546 (2018) (a judge may use political contributions to pay the costs associated with membership in an organization that helps its members develop leadership skills), 536 (2016) (a judicial officeholder may use political contributions to pay reasonable and necessary travel expenses to teach at a legal conference), 291 (1995) (a former judge sitting by assignment may use political contributions for continuing legal education courses), 279 (1995) (a senior judge may use political contributions for continuing legal education courses), 267 (1995) (a judge may use political contributions to attend a legal seminar), 247 (1995) (a judge may use political contributions to pay a person to assist the judge in preparation of a thesis required for a Masters of Law in the Judicial Process), 245 (1995) (judges and judicial candidates may use political contributions to pay state bar dues if the judicial office they hold or seek requires them to be licensed to practice law in Texas).

**DRAFT**

Therefore, this judge may not use campaign contributions for consulting and travel expenses to seek an appointment to a federal judicial office where his purpose is not connected with the performance of his duties or activities as a state judge.



EXHIBIT A

1 §18.23. Administrative Waiver of Statutory Civil Penalties~~[Fine]~~.

2 (a) A filer may request the executive director to waive a civil penalty determined by  
3 §§305.033(b) or 572.033(b) of the Government Code or §254.042(b) of the Election Code~~[late~~  
4 ~~fine]~~ by submitting an affidavit to the executive director.

5 (b) If, in the executive director's discretion, the affidavit establishes any of the following grounds  
6 for a waiver, the executive director shall waive the civil penalty, and the penalty waived is not a  
7 prior offense for purposes of §18.25 of this title (relating to Administrative Waiver or Reduction  
8 of Certain Statutory Civil Penalties) or §18.26 of this title (relating to Administrative Waiver or  
9 Reduction of Other Statutory Civil Penalties in Excess of \$500)~~:[that states facts that establish~~  
10 ~~that:]~~

11 (1) the report was filed late because of an unforeseen serious medical emergency or  
12 condition or a death that involved the filer, a family member or relative of the filer, a  
13 member of the filer's household, or a person whose usual job duties include preparation  
14 of the report;

15 (2) the report was filed late as a result of verifiable severe weather at the filer's location  
16 that prevented the filer from filing the report by the applicable deadline and the report  
17 was filed within a reasonable time after the deadline;

18 (3) the report was filed late because the filer was a first responder, as defined in §6.1 of  
19 this title (relating to Definitions), deployed to an emergency situation at the time of the  
20 filing deadline or a member of the military deployed on active duty at the time of the  
21 filing deadline and the report was filed within a reasonable time after the deadline;

22 (4) the filer filed a timely report but accidentally selected the incorrect filing year or  
23 filing period in the agency's electronic filing system, and:

24 (A) the filer filed a corrected report amending the filing year or filing period no  
25 later than 30 days after the individual was notified that the report appeared to be  
26 late; and

27 (B) the corrected report is substantively identical to the originally-filed report;

28 (5) the filer reasonably relied on incorrect information given to the filer by the agency; or

29 (6) the report was filed late because of other administrative error by the agency.

## EXHIBIT A

1 (c) If, in the executive director's discretion, the affidavit establishes any of the following grounds  
2 for a waiver, the executive director shall waive the civil penalty, but the penalty waived is a prior  
3 offense for purposes of §18.25 or §18.26:

4 (1[4]) the filer of the personal financial disclosure report is not an elected official, a  
5 candidate for election, or a salaried public servant, and the late report:

6 (A) was the first personal financial disclosure report filed late by the filer under  
7 Government Code chapter 572; and

8 (B) was filed no later than 30 days after the individual was notified that the report  
9 appeared to be late;

10 (2[5]) the filer of the personal financial disclosure report was an unopposed candidate in a  
11 primary election, and the late report:

12 (A) was the first personal financial disclosure report filed late by the filer under  
13 Government Code chapter 572; and

14 (B) was filed before the primary election.

15 (3[6]) the filer of the campaign finance report:

16 (A) had filed all previous reports by the applicable deadline;

17 (B) had no new contributions, expenditures, or loans to report during the filing  
18 period; and

19 (C) filed the report no later than 30 days after the filer first learned that the  
20 report was late;

21 ~~(7) the filer reasonably relied on incorrect information given to the filer by the agency; or~~

22 ~~(8) other administrative error by the agency.~~

23 ~~(b) If, in the executive director's discretion, the affidavit establishes grounds for a waiver under~~  
24 ~~this section, the executive director shall waive the fine.~~

25  
26 §18.24. General Guidelines for Other Administrative Waiver or Reduction of Statutory Civil  
27 Penalties[Fine].

28 (a) A filer who does not qualify for a waiver under §18.23 of this title (relating to Administrative  
29 Waiver of Statutory Civil Penalties[Fine]) may request the executive director to waive a civil  
30 penalty determined by §§305.033(b) and 572.033(b) of the Government Code or §254.042(b) of  
31 the Election Code[late fine] by submitting an affidavit to the executive director. The executive

## EXHIBIT A

1 director may waive or reduce a civil penalty [~~the late fine~~] if the filer meets the criteria and the  
2 late report meets the qualifications [~~under the guidelines~~] set out in §18.25 of this title (relating  
3 to Other Administrative Waiver or Reduction of Statutory Civil Penalties[~~Fine: Report Type I~~])  
4 and §18.26 of this title (relating to Administrative Waiver or Reduction of Other Statutory Civil  
5 Penalties in Excess of \$500[~~Fine: Report Type II~~]).

6 (b) ~~For purposes of determining a waiver or reduction of a late fine under §18.25 and §18.26 of~~  
7 ~~this title, a late report will be classified by report type, as follows:~~

8 (1) ~~Any report that is not a critical report as defined under paragraph (2) of this~~  
9 ~~subsection will be classified as Report Type I and considered under §18.25 of this title.~~

10 (2) ~~A critical report will be classified as Report Type II and considered under §18.26 of~~  
11 ~~this title. A "critical report" is:~~

12 (A) ~~a campaign finance pre-election report due 30 days before an election;~~

13 (B) ~~a campaign finance pre-election report due 8 days before an election;~~

14 (C) ~~a runoff report;~~

15 (D) ~~a daily special pre-election report required under §254.038 or §254.039,~~

16 ~~Election Code; or~~

17 (E) ~~a semiannual report subject to the higher statutory fine under §254.042, Election~~  
18 ~~Code.~~

19 ~~(be) For purposes of determining a waiver or reduction of a civil penalty[~~late fine~~] under §18.25~~  
20 ~~and §18.26 of this title, a filer requesting a waiver or reduction [~~of a late fine~~] will be categorized~~  
21 ~~[by filer type,] as follows:~~

22 (1) Category A includes candidates for and officeholders of the following offices and  
23 specific-purpose committees supporting candidates for and officeholders of the following  
24 offices:

25 (A) statewide office;

26 (B) legislative office;

27 (C) district judge;

28 (D) state appellate court justice;

29 (E) State Board of Education member; and

30 (F) Secretary of State.

## EXHIBIT A

1 (2) Category B includes all filers not categorized in Category A, as defined by paragraph  
2 (1) of this subsection, or Category C, as defined by paragraph (3) of  
3 this subsection. Examples of Category B filers include the following filer types:

4 (A) lobbyists;

5 (B) salaried non-elected officials;

6 (C) candidates for and officeholders of district attorney;

7 (D) candidates for and officeholders of political party chair;

8 (E) political committees with \$3,000 or more in annual activity in the calendar  
9 year in which the late report was due; and

10 (F) a legislative caucus.

11 (3) Category C includes:

12 (A) unsalaried appointed board members and officials; and

13 (B) political committees with less than \$3,000 in annual activity in the calendar  
14 year in which the late report was due.

15 (c[~~d~~]) For purposes of a reduction of a civil penalty~~[late fine]~~ under §[-]18.25 and §18.26 of this  
16 title, good cause includes, but is not limited to, the following:

17 (1) The report was filed no later than three days after the date it was due.

18 (2) The filer filed the report within five days after first learning the report was late from a  
19 late notice sent by the commission.

20 (3) The report was not a critical report and was prepared and placed in the mail on time  
21 but not postmarked by the deadline.

22 (4) The filer had technical difficulties after regular business hours, but the report was  
23 filed no later than the next business day after the commission's technical support  
24 staff fixed the technical difficulty.

25 (5) There are no funds in the filer's campaign or officeholder account and the filer is  
26 unemployed.

27 (6) A first-time filer that is required to file campaign finance reports with a county filing  
28 authority and personal financial statements with the commission, who mistakenly files  
29 the personal financial statement with the county on the filing deadline and then correctly  
30 files with the commission within seven days of realizing the mistake.

## EXHIBIT A

1 (d[~~e~~]) For purposes of determining whether a filer is eligible for a waiver or reduction of a civil  
2 penalty[~~late fine~~] under §[-]18.25 or §[-]18.26 of this title, a prior offense is any prior late report  
3 in which a civil [~~late-filing~~] penalty was assessed except:

4 (1) the civil[~~late-filing~~] penalty for that prior late report was waived under Sections  
5 18.23(b[~~a~~](1)–(3)] of this title; or

6 (2) no late notices were sent for that prior late report and the filer did not file a request  
7 that the civil[~~late-filing~~] penalty be waived or reduced for the prior late report.

8 (e[~~f~~]) A civil penalty[~~late fine~~] that is reduced under §18.25 or §18.26 of this title will revert to  
9 the full amount originally assessed if the reduced civil penalty[~~fine~~] is not paid within thirty (30)  
10 calendar days from the date of the letter informing the filer of the reduction.

11 (f[~~g~~]) A filer may appeal a determination made under §18.25 or §18.26 of this title by submitting  
12 a request in writing to the commission.

13 (1) The request for appeal should state the filer's reasons for requesting an appeal,  
14 provide any additional information needed to support the request, and state whether the  
15 filer would like the opportunity to appear before the commission and offer testimony  
16 regarding the appeal.

17 (2) The Executive Director may review the appeal and reconsider the determination made  
18 under §18.25 or § 18.26 of this title or set the appeal for a hearing before the  
19 commission.

20 (3) After hearing a request for appeal, the commission may affirm the determination  
21 made under §18.25 or §18.26 of this title or make a new determination based on facts  
22 presented in the appeal.

23 §18.25. Administrative Waiver or Reduction of Certain Statutory Civil Penalties[~~Fine: Report~~  
24 ~~Type I~~].

25 (a) The executive director shall apply [~~the guidelines set out in~~] this section to:[~~a late report~~  
26 ~~classified as Report Type I under §18.24(b) of this title (relating to General Guidelines for Other~~  
27 ~~Administrative Waiver or Reduction of Fine).~~]

28 (1) a late report subject to a statutory civil penalty of not more than \$500; or

29 (2) a late report that:

30 (A) is subject to a statutory civil penalty in excess of \$500; and

## EXHIBIT A

(B) discloses less than \$3,000 in total political contributions and less than \$3,000 in total political expenditures for the reporting period.

(b) In order to qualify for a waiver or reduction of a civil penalty~~[late fine]~~ under this section, a filer must meet all of the following criteria:

- (1) The filer has no more than two prior late offenses in the five (5) years preceding the filing deadline of the late report at issue;
- (2) The filer filed the report within thirty (30) days of learning the report was late;
- (3) The civil penalty ~~[filer has not had the late fine]~~ for the report at issue has not been increased by the commission at a public meeting pursuant to §254.042(b), Election Code, or §305.033(c) or §572.033(b), Government Code; and
- (4) The filer does not have an outstanding civil penalty for a prior late report~~[late fine]~~.

(c) The executive director shall use the following ~~[levels]~~ chart to determine the level of waiver or reduction of a civil penalty~~[late fine]~~ under this section:

**Report Type I Levels Chart**

**(For All Reports Other Than Critical Reports)**

LEVEL	# OF PRIORS IN LAST 5 YEARS	CATEGORY			EXPLANATORY NOTE
		A	B	C	
1	0	Waiver	Waiver	Waiver	
1.5	1	\$150	\$100	\$50	Level 2 violation with good cause shown*
2	1	\$300	\$200	\$100	
2.5	2	\$400	\$300	\$150	Level 3 violation with good cause shown*
3	2	\$500	\$500	\$250	

\*The categorization shifts one-half level (from Level 2 to 1.5; from Level 3 to 2.5) if the filer's explanation qualifies as good cause under section 18.24(c[d]) of this title.

§18.26. Administrative Waiver or Reduction of Other Statutory Civil Penalties in Excess of \$500~~[Fine: Report Type II]~~.

(a) The executive director shall apply ~~[the guidelines set out in]~~ this section to a late report that discloses more than \$3,000 in total political contributions or more than \$3,000 in total political

## EXHIBIT A

1 expenditures during the reporting period and that is subject to a civil penalty in  
 2 excess of \$500~~[classified as Report Type II under §18.24(b) of this title (relating to General~~  
 3 ~~Guidelines for Other Administrative Waiver of Reduction of Fine)]~~.

4 (b) In order to qualify for a waiver or reduction of a civil penalty~~[late fine]~~ under this section, a  
 5 filer must meet all of the following criteria:

6 (1) The filer has no more than two prior late offenses in the five (5) years preceding the filing  
 7 deadline of the late report at issue;

8 (2) The ~~[filer has not had the late fine]~~ civil penalty for the report at issue has not  
 9 been increased by the commission at a public meeting pursuant to §254.042(b), Election  
 10 Code, or §305.033(c) or §572.033(b), Government Code; and

11 (3) The filer does not have an outstanding civil penalty for a prior late report~~[late fine]~~.

12 ~~(c) The executive director shall use the following levels chart to determine the level of waiver or~~  
 13 ~~reduction of a late fine under this section if:~~

14 ~~(1) The late report at issue discloses less than \$3,000 in total contributions and less than \$3,000~~  
 15 ~~in expenditures for the reporting period;~~

16 ~~(2) The late report at issue was filed no more than thirty (30) days after the filer learned that the~~  
 17 ~~report was late; and~~

18 ~~(3) The filer has no prior late offenses or only one prior late offense in the five (5) years~~  
 19 ~~preceding the filing deadline of the late report at issue.~~

### 20 **Report Type II Levels Chart**

21 **(For Critical Reports under section 18.26(e))**

LEVEL	# OF PRIORS IN LAST 5 YEARS	CATEGORY A	CATEGORY B	CATEGORY C	EXPLANATORY NOTE
1.5	0	\$150	\$100	\$50	Level 2 violation with good cause shown*
2	0	\$300	\$200	\$100	
2.5	1	\$400	\$300	\$150	Level 3 violation with good cause shown*
3	1	\$500	\$500	\$250	

## EXHIBIT A

1 ~~\*The categorization shifts one-half level (from Level 2 to 1.5; from Level 3 to 2.5) if the filer's~~  
2 ~~explanation qualifies as good cause under section 18.24(d) of this title.~~

3 ~~(c[d]) The executive director shall use the following [formulas] chart to determine the level of~~  
4 ~~waiver or reduction of a civil penalty[late fine] under this section[-if]:~~

5 ~~(1) The late report at issue discloses either \$3,000 or more in total contributions or \$3,000 or~~  
6 ~~more in expenditures for the reporting period;~~

7 ~~(2) The late report at issue was filed over thirty (30) days after the filer learned that the report~~  
8 ~~was late; or~~

9 ~~(3) The filer has two (2) prior late offenses in the five (5) years preceding the filing deadline~~  
10 ~~of the late report at issue.~~

### 11 **Report Type II Formulas Chart**

12 ~~**(For Critical Reports under section 18.26(d))**~~

13



## EXHIBIT A

### 1 Category A

NO GOOD CAUSE	EXPLANATORY NOTES
Starting <u>Penalty</u> [ <u>Fine</u> ] = \$500	1st day late
+ \$100 a day, up to \$1,000	2nd – 11th days late
+ \$500 for every full 30 days thereafter, up to \$10,000	12th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
GOOD CAUSE SHOWN	EXPLANATORY NOTES
Starting <u>Penalty</u> [ <u>Fine</u> ] = \$150 (0 priors); or Starting <u>Penalty</u> [ <u>Fine</u> ] = \$400 (1 or 2 priors)	1st day late
+ \$100 a day, up to \$1,000	2nd – 11th days late
+ \$500 every full 30 days thereafter, up to \$10,000	12th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

### 2 Category B

NO GOOD CAUSE	EXPLANATORY NOTES
Starting <u>Penalty</u> [ <u>Fine</u> ] = \$500	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
GOOD CAUSE SHOWN	EXPLANATORY NOTES
Starting <u>Penalty</u> [ <u>Fine</u> ] = \$100 (0 priors); or Starting <u>Penalty</u> [ <u>Fine</u> ] = \$300 (1 or 2 priors)	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

3

4

## EXHIBIT A

1 **Category C**

NO GOOD CAUSE	EXPLANATORY NOTES
Starting <u>Penalty</u> [ <u>Fine</u> ]= \$500	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
GOOD CAUSE SHOWN	EXPLANATORY NOTES
Starting <u>Penalty</u> [ <u>Fine</u> ]= \$50 (0 priors); or Starting <u>Penalty</u> [ <u>Fine</u> ]= \$150 (1 or 2 priors)	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

2 ~~(e) Comments:~~

3 ~~Report Type II Formulas Chart Examples:~~

4 ~~(1) Candidate X seeking the office of State Representative (Category A filer type)~~

5 ~~Report: 30-day pre-election report due February 3, 2014 (Report Type II)~~

6 ~~Filed Date: February 4, 2014 (1-day late; good cause under section 18.24(d))~~

7 ~~Activity: contributions = \$10,000; expenditures = \$5,000 (use Formulas Chart)~~

8 ~~Prior offenses: none~~

9 ~~Penalty: \$500~~

10 ~~Determination: reduction to \$150~~

11 ~~Formula Calculation = \$150 (Category A, Good Cause, 0 Priors, 1st day late)~~

12 ~~(2) Large GPAC filing under the regular (semiannual) filing schedule (Category B filer type)~~

13 ~~Report: 30-day pre-election report due February 3, 2014 (Report Type II)~~

14 ~~Filed Date: February 4, 2014 (1-day late; good cause under section 18.24(d))~~

15 ~~Activity: contributions = \$10,000; expenditures = \$5,000 (use Formulas Chart)~~

16 ~~Prior offenses: two prior late reports in the last five years~~

17 ~~Penalty: \$500~~

18 ~~Determination: reduction to \$300~~



EXHIBIT A

**§20.1. Definitions.**  
**Text of Proposed Amended Rule**

The proposed new language is indicated by underlined text.

1     **Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES**

2                             **Subchapter A. GENERAL RULES**

3     **§20.1. Definitions.**

4         (1) – (10) – (No change.)

5         (11) Political advertising:

6             (A) A communication that supports or opposes a political party, a public officer, a  
7             measure, or a candidate for nomination or election to a public office or office of a political  
8             party, and:

9                 (i) is published in a newspaper, magazine, or other periodical in return for  
10                 consideration;

11                 (ii) is broadcast by radio or television in return for consideration;

12                 (iii) appears in a pamphlet, circular, flier, billboard, or other sign, bumper sticker, or  
13                 similar form of written communication; or

14                 (iv) appears on an Internet website.

15             (B) The term does not include an individual communication made by e-mail or text  
16             message but does include mass e-mails and text messages involving an expenditure of  
17             funds beyond the basic cost of hardware messaging software and bandwidth.

18         (12) – (23) – (No change.)

EXHIBIT A

**§34.82. Modified Reporting Threshold.  
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

1 **Chapter 34. REGULATION OF LOBBYISTS**

2 **Subchapter D. LOBBY ACTIVITY REPORTS**

3 **§34.82. Modified Reporting Threshold.**

4 For purposes of section 305.0063(d) of the Texas Government Code, expenditures shall include  
5 all expenditures reportable under section 305.006, including all expenditures that are required to  
6 be reported under subsections 305.006(b) and 305.006(c).

EXHIBIT A

**§18.17. Report Must be Filed.  
Text of Proposed Amended Rule**

The proposed new language is indicated by underlined text.

1                                   **Chapter 18. GENERAL RULES CONCERNING REPORTS**

2   **§18.17. Report Must be Filed.**

3   (a) The payment of a civil or criminal fine for failure to file a report, or for filing a report late,  
4   does not satisfy a filer's obligation to file the report. Late fines continue to accrue until the report  
5   is filed.

6   (b) A filer who dies or becomes incapacitated is considered to have filed the report on the date  
7   of the filer's death or the date the filer is determined to be incapacitated, as applicable, for  
8   purposes of this chapter. In this subsection, "incapacitated" means determined by a judgment of a  
9   court exercising probate jurisdiction to be either partially mentally incapacitated without the right  
10   to vote or totally mentally incapacitated.