

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

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

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

MEETING AGENDA

Date and Time: 1:45 p.m., Tuesday, December 13, 2022
Location: Room E1.014, Capitol Extension, Austin, Texas

**INFORMATION ON HOW TO VIEW AND/OR PARTICIPATE IN THE ONLINE
BROADCAST OF THIS MEETING WILL BE POSTED ON OUR WEBSITE ON THE
DAY OF THE MEETING HERE:**

https://www.ethics.state.tx.us/meetings/meetings_2020-2024.php#2022

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 250th 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; Cause No. 03-21-00033, *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 345th 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.
 - iii. Cause No. D-1-GN-21-003269, *Michael Quinn Sullivan v. Texas Ethics Commission*, in the 459th Judicial District Court in Travis County, Texas; and related case, Cause No. 03-22-00133-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.

For more information, contact J.R. Johnson, Executive Director, at (512) 463-5800.

- iv. Cause No. 22-CV-1130, *Matt Wiggins v. Texas Ethics Commission*, in the 122nd Judicial District of Galveston County, Texas.
 - v. Cause No. 1:22-cv-1166, *Robert Bruce, Bryan Slaton and Grayson County Conservatives PAC v. J.R. Johnson, et al.*, in the U.S District Court for the Western District of Texas, Austin Division.
- B. Discussion of contemplated litigation to seek legal advice relating to regarding the collection of imposed penalties.
 - C. Discussion of contemplated litigation to seek legal advice relating to the enforcement of Section 253.007 of the Election Code.
 - D. Discussion of personnel matters.
 - E. Reconvene in open session.
3. 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: J.R. Johnson, 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.

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MEETING AGENDA

Date and Time: 9:00 a.m., Wednesday, December 14, 2022
Location: Room E1.014, Capitol Extension, Austin, Texas

**INFORMATION ON HOW TO VIEW AND/OR PARTICIPATE IN THE ONLINE
BROADCAST OF THIS MEETING WILL BE POSTED ON OUR WEBSITE ON THE
DAY OF THE MEETING HERE:**

https://www.ethics.state.tx.us/meetings/meetings_2020-2024.php#2022

1. Call to order; roll call.
2. Discussion of, and possible action on, any unfinished business from the Executive Session or Public Meeting held on December 13, 2022.
3. Discussion regarding dates for next quarterly Commission meeting.
4. Approve minutes for the following meetings:
 - Executive Session – September 28, 2022; and
 - Public Meeting – September 29, 2022.

RULEMAKING

Rule Adoption

5. Discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to 1 Tex. Admin. Code § 22.37, regarding virtual currency contributions.
6. Discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to 1 Tex. Admin. Code § 50.1 (Legislative Per Diem) relating to the legislative per diem required to be set under Article III, Section 24a, of the Texas Constitution.

For more information, contact J.R. Johnson, Executive Director, at (512) 463-5800.

Rule Publication

7. Discussion and possible action regarding rules related to the administrative waiver or reduction of civil penalties for late filing, including the proposal and publication in the Texas Register of the repeal of 1 Tex. Admin. Code §18.23, and amendments to §§ 18.24 and 18.25.
8. Discussion and possible action on the proposal and publication in the Texas Register of an amendment to 1 Tex. Admin. Code § 40.3 regarding the definition of “home address” as it relates to personal financial disclosures.

ADVISORY OPINIONS

9. Draft Advisory Opinion No. AOR-660: Whether a corporation subject to section 253.094 of the Texas Election Code may provide pro bono legal services to candidates or political committees in Texas for the purpose of challenging in court the interpretation or constitutionality of a Texas law or regulation subject to the jurisdiction of the Texas Ethics Commission.

This opinion construes section 253.094 of the Election Code and section 20.66 of the Texas Ethics Commission Rules.

10. Draft Advisory Opinion No. AOR-671: Whether a political committee may accept political contributions through a web portal shared with an incorporated association that established and administers the political committee.

This opinion construes Title 15 of the Election Code.

11. Draft Advisory Opinion No. AOR-672: Whether a written communication, created by a political subdivision and related to a measure, constitutes political advertising for purposes of the Election Code’s prohibition against using public funds for political advertising.

This opinion construes section 255.003 of the Election Code.

12. Draft Advisory Opinion No. AOR-673: Whether, under the Judicial Campaign Fairness Act, a general-purpose committee may make a maximum “campaign contribution” (up to \$25,000) to a state-wide judicial candidate and a maximum “officeholder contribution” (up to an additional \$25,000) before a general election.

This opinion construes Subchapter F of Chapter 253 of the Election Code.

13. Draft Advisory Opinion No. AOR-677: Whether expenditures made by a candidate to encourage donations to a local food bank are campaign expenditures when publicized by the candidate on a social media page that is also used for his campaign.

This opinion construes Chapters 253 and 254 of the Election Code.

ADMINISTRATIVE WAIVER OF FINES

14. Discussion and possible action on appeals of determinations made under Ethics Commission Rules §§ 18.11, 18.25 and 18.26 relating to administrative waiver or reduction of a fine, for the following filers:
 1. Residents for Accountability and Transparency, Marshall W. Sprigg treasurer (00081705)
 2. San Antonio Chapter Associated General Contractors Political Action Committee, Doug McMurry treasurer (00024566)

OTHER MATTERS

15. Discussion and possible action regarding recommendations for statutory changes to the 88th Legislature as required by section 571.073 of the Government Code.

CTA TERMINATIONS

16. Discussion and possible action regarding the termination of a campaign treasurer appointment for the following inactive political committee:

The Committee to Elect Gena Slaughter and Dorothea Ocker, District Judge Gena N. Slaughter, Acting Treasurer (00069231)

17. 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: J.R. Johnson, Executive Director.

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For more information, contact J.R. Johnson, Executive Director, at (512) 463-5800.

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:

Text of Proposed New Rule

The proposed new language is indicated by underlined text.

1 **Chapter 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES**

2 **§22.37. Virtual Currency Contributions**

3 (a) Virtual currency contributions are considered “in-kind” contributions.

4 (b) A candidate, officeholder, or political committee must report a gain from the sale of virtual
5 currency contributions on the appropriate schedule if the gain exceeds the reporting threshold set
6 by Section 254.031(9) of the Election Code and amended by section 18.31 of this title (relating
7 to Adjustments to Reporting Thresholds).

8 (c) The value of a virtual currency contribution shall be reported as the fair market value of the
9 virtual currency upon receipt.

1 **Text of Proposed Amendments**

2

3 The proposed new language is indicated by underlined text.

4 The deleted text is indicated by [~~striketrough~~] text.

5

CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

6

§ 50.1. Legislative Per Diem

7

(a) The legislative per diem is \$204 [~~\$224~~]. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session.

8

9

10

(b) If necessary, this rule shall be applied retroactively to ensure payment of the \$204 [~~\$224~~] per diem for 2023 [~~2024~~].

11

1 **Text of Proposed Rule Repeal and Amendments**

2
3 The proposed new language is indicated by underlined text.

4 The deleted language is indicated by ~~[striketrough]~~ text.

5
6
7 **CHAPTER 18. GENERAL RULES CONCERNING REPORTS**

8 **§18.21. Jurisdiction to Consider Waiver Request.**

9 (a) A filer may ask the commission to waive or reduce a civil penalty determined by §§ 305.033(b)
10 or 572.033(b) of the Government Code, or §254.042(b) of the Election Code by submitting a
11 written request to the commission.~~A filer must file a complete report before the executive director~~
12 ~~or commission will consider a request to waive or reduce a fine assessed for failure to file a timely~~
13 ~~report.~~

14 (b) The commission will not consider a request under subsection (a) unless the filer, not later
15 than 60 days after the report or statement was due:

- 16
17 1) submits the request in the manner prescribed by subsection (a);
18 2) files all reports owed to the commission; and
19 3) pays all outstanding civil penalties owed to the commission that are not subject to a
20 pending request for waiver or appeal.~~A request to waive or reduce a fine assessed for~~
21 ~~failure to file a timely report or for filing a correction to a report will not be~~
22 ~~considered after an action to collect the fine is filed in court.~~

23
24 (c) Upon a showing of good cause, the executive director may extend the deadline in subsection
25 (b).

26
27 **~~§18.23. Administrative Waiver of Statutory Civil Penalties.~~**

28 (a) ~~—A filer may request the executive director to waive a civil penalty determined~~
29 ~~by §§305.033(b) or 572.033(b) of the Government Code or §254.042(b) of the Election Code by~~
30 ~~submitting an affidavit to the executive director.~~

31
32 (b) ~~— If, in the executive director’s discretion, the affidavit establishes any of the following~~
33 ~~grounds for a waiver, the executive director shall waive the civil penalty, and the penalty waived~~
34 ~~is not a prior offense for purposes of §18.25 of this title (relating to Administrative Waiver or~~
35 ~~Reduction of Certain Statutory Civil Penalties) or §18.26 of this title (relating to Administrative~~
36 ~~Waiver or Reduction of Other Statutory Civil Penalties in Excess of \$500):~~

- 37 (1) ~~the report was filed late because of an unforeseen serious medical emergency or~~
38 ~~condition or a death that involved the filer, a family member or relative of the filer, a~~
39 ~~member of the filer's household, or a person whose usual job duties include preparation~~
40 ~~of the report;~~

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

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

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

10 ~~(A) the filer filed a corrected report amending the filing year or filing period no~~
11 ~~later than 30 days after the individual was notified that the report appeared to be~~
12 ~~late; and—~~

13 ~~(B) the corrected report is substantively identical to the originally filed report;—~~

14 ~~(5) the filer reasonably relied on incorrect information given to the filer by the agency;~~
15 ~~or—~~

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

17 ~~(e) If, in the executive director's discretion, the affidavit establishes any of the following grounds~~
18 ~~for a waiver, the executive director shall waive the civil penalty, but the penalty waived is a prior~~
19 ~~offense for purposes of §18.25 or §18.26:—~~

20 ~~(1) the filer of the personal financial disclosure report is not an elected official, a~~
21 ~~candidate for election, or a salaried public servant, and the late report:~~

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

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

26 ~~(2) the filer of the personal financial disclosure report was an unopposed candidate in a~~
27 ~~primary election, and the late report:~~

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

30 ~~(B) was filed before the primary election.—~~

31 ~~(3) the filer of the campaign finance report:~~

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

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

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

5 **§18.24. General Guidelines for Other Administrative Waiver or Reduction of Statutory**
6 **Civil Penalties.**

7 (a) For purposes of determining whether a filer is eligible for a waiver or reduction of a civil
8 penalty under §18.25 of this title (relating to Administrative Waiver or Reduction
9 of Certain Statutory Civil Penalties) or §18.26 of this title (relating to Administrative Waiver or
10 Reduction of Other Statutory Civil Penalties in Excess of \$500) of this title, a “prior late offense”
11 is any report for which a civil penalty for late filing was assessed, regardless of whether the civil
12 penalty was waived or reduced. The term does not include:

13 (1) reports for which no late notices were sent and the filer did not file a request that the
14 civil penalty be waived or reduced for the prior late report; and

15 (2) reports determined by the executive director to be not required. A filer who does not
16 qualify for a waiver under §18.23 of this title (relating to Administrative Waiver of
17 Statutory Civil Penalties) may request the executive director to waive a civil
18 penalty determined by §§305.033(b) and 572.033(b) of the Government Code or
19 §254.042(b) of the Election Code by submitting an affidavit to the executive director.
20 The executive director may waive or reduce a civil penalty if the filer meets the criteria
21 and the late report meets the qualifications set out in §18.25 of this title (relating to
22 Administrative Waiver or Reduction of Certain Statutory Civil Penalties) and §18.26 of
23 this title (relating to Administrative Waiver or Reduction of Other Statutory Civil
24 Penalties in Excess of \$500).

25 (b) A civil penalty that is reduced under §§18.25 or 18.26 of this title will revert to the full
26 amount originally assessed if the reduced civil penalty is not paid within thirty (30) calendar
27 days from the date of the letter informing the filer of the reduction. For purposes of determining
28 a waiver or reduction of a civil penalty under §18.25 and §18.26 of this title, a filer requesting a
29 waiver or reduction will be categorized as follows:

30 (1) Category A includes candidates for and officeholders of the following offices and
31 specific purpose committees supporting candidates for and officeholders of the following
32 offices:

33 (A) statewide office;

34 (B) legislative office;

35 (C) district judge;

36 (D) state appellate court justice;

1 ~~(E) State Board of Education member; and~~

2 ~~(F) Secretary of State.~~

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

6 ~~(A) lobbyists;~~

7 ~~(B) salaried non-elected officials;~~

8 ~~(C) candidates for and officeholders of district attorney;~~

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

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

12 ~~(F) a legislative caucus.~~

13 ~~(3) Category C includes:~~

14 ~~(A) unsalaried appointed board members and officials; and~~

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

17 ~~(c) A filer may appeal a determination made under §§18.25 or 18.26 of this title by submitting a~~
18 ~~request for appeal in writing to the commission.~~

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

23 ~~(2) The executive director may review the appeal and reconsider the determination made~~
24 ~~under §§18.25 or 18.26 of this title or set the appeal for a hearing before the commission.~~

25 ~~(3) After hearing a request for appeal, the commission may affirm the determination~~
26 ~~made under §§18.25 or 18.26 of this title or make a new determination based on facts~~
27 ~~presented in the appeal.~~~~For purposes of a reduction of a civil penalty under §18.25 and~~
28 ~~§18.26 of this title, good cause includes, but is not limited to, the following:~~

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

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

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

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

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

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

12 (d) For purposes of determining a waiver or reduction of a civil penalty under §18.26 of this title,
13 a filer requesting a waiver or reduction will be categorized as follows:

14 (1) Category A includes candidates for and officeholders of the following offices and
15 specific-purpose committees supporting candidates for and officeholders of the following
16 offices:

17 (A) statewide office;

18 (B) legislative office;

19 (C) district judge;

20 (D) state appellate court justice;

21 (E) State Board of Education member; and

22 (F) Secretary of State.

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

26 (A) lobbyists;

27 (B) salaried non-elected officials;

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

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

30 (E) political committees with \$5,000 or more in annual activity in the calendar
31 year in which the late report was due; and

1 (F) a legislative caucus.

2 (3) Category C includes:

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

4 (B) political committees with less than \$5,000 in annual activity in the calendar
5 year in which the late report was due. For purposes of determining whether a filer
6 is eligible for a waiver or reduction of a civil penalty under §18.25 or §18.26 of
7 this title, a prior offense is any prior late report in which a civil penalty was
8 assessed except:

9 ~~(1) the civil penalty for that prior late report was waived under Sections 18.23(b) of this~~
10 ~~title; or~~

11 ~~(2) no late notices were sent for that prior late report and the filer did not file a request~~
12 ~~that the civil penalty be waived or reduced for the prior late report.~~

13 (e) For purposes of a reduction of a civil penalty under §18.26 of this title, good cause includes,
14 but is not limited to, the following:

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

16 (2) The filer filed the report within five days after first learning the report was late from a
17 late notice sent by the commission;

18 (3) The report was not a critical report and was prepared and placed in the mail on time
19 but not postmarked by the deadline;

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

23 (5) There are no funds in the filer's campaign or officeholder account and the filer is
24 unemployed; or

25 (6) A first-time filer that is required to file campaign finance reports with a county filing
26 authority and personal financial statements with the commission, who mistakenly
27 files the personal financial statement with the county on the filing deadline and then
28 correctly files with the commission within seven days of realizing the mistake. A civil
29 penalty that is reduced under §18.25 or §18.26 of this title will revert to the full
30 amount originally assessed if the reduced civil penalty is not paid within thirty (30)
31 calendar days from the date of the letter informing the filer of the reduction.

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

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

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

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

10 **§18.25. Administrative Waiver or Reduction of Certain Statutory Civil Penalties**

11 (a) The executive director shall apply this section to:

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

13 (2) a late report that:

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

15 (B) discloses less than ~~\$5,000~~\$3,000 in total political contributions and less than
16 ~~\$5,000~~\$3,000 in total political expenditures for the reporting period.

17 (b) The executive director shall use the following chart to determine the level of waiver or
18 reduction of a civil penalty under this section:

<u># OF PRIOR LATE OFFENSES IN LAST 5 YEARS</u>	<u>ADJUSTED FINE</u>
<u>0</u>	<u>Waiver</u>
<u>1</u>	<u>\$100</u>
<u>2</u>	<u>\$250</u>
<u>3 or more</u>	<u>No reduction or waiver</u>

19
20 In order to qualify for a waiver or reduction of a civil penalty under this section, a filer must
21 meet all of the following criteria:

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

3 (2) The filer filed the report within thirty (30) days of learning the report was late;

4 (3) The civil penalty for the report at issue has not been increased by the commission at a
5 public meeting pursuant to §254.042(b), Election Code, or §305.033(e) or §572.033(b),
6 Government Code; and

7 (4) The filer does not have an outstanding civil penalty for a prior late report.

8 (e) The executive director shall use the following chart to determine the level of waiver or
9 reduction of a civil penalty under this section:

LEVEL	# OF PRIORS IN LAST 5 YEARS	CATEGORY A	CATEGORY B	CATEGORY C	EXPLANATORY NOTE
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	

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

12 **§18.26. Administrative Waiver or Reduction of Other Statutory Civil Penalties in Excess of**
13 **\$500.**

14 (a) The executive director shall apply this section to a late report that discloses more than
15 ~~\$5,000~~\$3,000 in total political contributions or more than ~~\$5,000~~\$3,000 in total
16 political expenditures during the reporting period and that is subject to a civil penalty in
17 excess of \$500.

18 (b) In order to qualify for a waiver or reduction of a civil penalty under this section, a filer must
19 meet all of the following criteria:

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

1 (2) The civil penalty for the report at issue has not been increased by the commission at a
 2 public meeting pursuant to §254.042(b), Election Code, or §305.033(c) or §572.033(b),
 3 Government Code; and

4 (3) The filer does not have an outstanding civil penalty for a prior late report.

5 (c) The executive director shall use the following chart to determine the level of waiver or
 6 reduction of a civil penalty under this section:

7 **Category A**

NO GOOD CAUSE	EXPLANATORY NOTES
Starting Penalty = \$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 Penalty = \$150 (0 priors); or Starting Penalty = \$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

8

9 **Category B**

NO GOOD CAUSE	EXPLANATORY NOTES
Starting Penalty = \$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 Penalty = \$100 (0 priors); or Starting Penalty = \$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

1 **Category C**

NO GOOD CAUSE	EXPLANATORY NOTES
Starting Penalty = \$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 Penalty = \$50 (0 priors); or Starting Penalty = \$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

1
2 **Text of Proposed Rule Amendment**
3

4 The proposed new language is indicated by underlined text.
5

6 **CHAPTER 40. FINANCIAL DISCLOSURE FOR PUBLIC OFFICERS**
7

8 **§40.3. Redaction of Home Addresses.**
9

10 (a) To facilitate the redaction of home addresses under §572.032(a-1), Government Code, a filer
11 should indicate whether an address disclosed on the personal financial statement is the filer's
12 home address.
13

14 (b) A filer may have more than one home address.
15

16 (c) For the purposes of this section and §572.032(a-1) "home address" means a filer's primary
17 and usual residence and includes a fixed place of habitation where a person routinely lives,
18 whether permanently or temporarily, such as for periodic or weekend use, including a residence
19 in Travis County maintained by a member of the legislature, or other statewide officeholder, who
20 does not ordinarily reside in Travis County.
21

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether a corporation subject to section 253.094 of the Texas Election Code may provide pro bono legal services to candidates or political committees in Texas for the purpose of challenging in court the interpretation or constitutionality of a Texas law or regulation subject to the jurisdiction of the Texas Ethics Commission. (AOR-660)

SUMMARY

No. Section 253.094 of the Texas Election Code prohibits corporations from making political contributions to candidates and political committees. Legal services provided without charge to candidates or political committees are in-kind contributions. When those services are given with the intent that they be used in connection with a campaign, they are in-kind campaign contributions. The described legal services would be used in connection with a campaign because the requestor's standing to pursue such a challenge would depend on its client's status as a candidate or political committee subject to the laws administered and enforced by the Commission.

FACTS

The requestor, a nonprofit, tax-exempt corporation under Section 501(c)(3) of the Internal Revenue Code, requests an opinion regarding the application of Texas law to the provision of pro bono legal services to candidates or political committees in Texas for the purpose of challenging in court the interpretation or constitutionality of a Texas law or regulation subject to the jurisdiction of the Texas Ethics Commission (the "Commission"). Specifically, the requestor asks whether its proposed provision of pro bono legal services to candidates or political committees constitutes a "political contribution," "contribution," "campaign contribution," or "officeholder contribution" as those terms are defined by Texas law.

The requestor says that it represents "citizens, nonprofit organizations, and candidates in litigation around the country." It does not accept fees from its clients. However, it employs staff attorneys, pays other fees and costs in connection with the litigation, and often retains outside counsel on behalf of its clients.

ANALYSIS

Pro-bono legal services provided to a candidate or political committee are in-kind contributions.

The Election Code defines a “contribution” as any “transfer of money, goods, services, or any other thing of value.” Tex. Elec. Code § 251.001(2). Contributions need not be monetary; they can take the form of in-kind goods or services paid for by contributors. *Id.* at §§ 251.001(2); 251.001(21) (defining “in-kind contribution”).

The requestor contends that its pro bono legal services are not in-kind contributions because of Commission rule 20.66, which says that a “discount to a candidate, officeholder or political committee” is not an in-kind contribution if “the terms of the transaction reflect the usual and normal practice of the industry and are typical of the terms that are offered to political and non-political persons alike.” See 1 Tex. Admin. Code § 20.66. But the requestor arrives at that conclusion by too-narrowly defining the “industry” in which it operates to include only those legal service providers who do not charge their clients. In our opinion, the relevant industry here is the legal services industry, not the nonprofits-that-offer-pro-bono-legal-services-for-public-interest-litigation industry. The legal services provided by the requestor have a value, even if the requestor does not charge for them. The requestor’s staff attorneys are paid for their time, and the requestor says it often retains outside counsel and pays fees or other costs in connection with the litigation. These are in-kind contributions. *See Id.* at § 20.1(19).

Pro-bono legal services provided to a candidate or political committee are in-kind campaign contributions if they are given with the intent that they be used “in connection with” a campaign.

Texas does not prohibit corporations from making any contributions, only “political contributions,” which includes “campaign contributions.” Tex. Elec. Code § 253.094 (prohibiting corporations from making political contributions); *Id.* at § 251.001(5) (defining political contribution). A “campaign contribution” is any “contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure.” *Id.* § 251.001(3).

The Supreme Court of Texas has determined that the phrase “in connection with” is an expansive term that is satisfied even by “indirect, ‘tenuous,’ or ‘remote’ relationships.” *Cavin v. Abbott*, 545 S.W.3d 47, 70 (Tex. App.—Austin 2017, no pet.) (citing *ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895, 901 (Tex. 2017)), *but see* *Osterberg v. Peca*, 12 S.W.3d 31, 51 (Tex. 2000) (construing “in connection with a campaign” to mean only expenditures to fund express electoral advocacy in the context of direct campaign expenditures made by a non-candidate). The Commission has previously interpreted this phrase to encompass litigation costs not only for lawsuits that are directly related to campaign activity, but also lawsuits that have a more indirect relationship to a person’s status as a candidate. *See* Tex. Ethics Comm’n Op. No. 329 (1996) (pro bono legal services for lawsuit brought under section 253.131 of the Election Code); Tex. Ethics Comm’n Op. No. 533 (2015) (pro bono legal services for defending against a defamation lawsuit).

The requestor asserts that Commission rule 20.1(18) limits what “in connection with a campaign” means for purposes of the Election Code’s definition of campaign contribution. It

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does not. Rule 20.1(18) relates to campaign *expenditures*, not campaign contributions. *See* Tex. Ethics Comm'n Op. No. 574 (2022).

The Commission's prior opinions on the personal use of political contributions are relevant to this request.

This request does not ask us to interpret the Election Code's prohibition on the personal use of political contributions, but the Commission's prior opinions on that law are relevant here because, like the definition of campaign contribution, the definition of "personal use" depends on what is and is not "connected" to a campaign. Tex. Elec. Code § 253.0035(d) (defining "personal use" 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."). If legal services are "connected with the performance of duties or activities as a candidate for or holder of a public office," then a candidate or officeholder may properly use their political contributions to defray the costs of those services. In our opinion, if legal expenses are "connected with" a campaign for purposes of the personal-use restriction, then they must also be incurred "in connection with" a campaign for purposes of the prohibition on corporate contributions. *Compare* Tex. Elec. Code § 253.035 *with id.* at § 251.001(3). Put another way, if a candidate is permitted to use his campaign funds to pay for litigation, a third-party's payment of the same litigation costs must constitute campaign contributions.

In interpreting the personal-use restriction, the Commission has taken a broad view of the legal expenses that are connected with a campaign. *See* Tex. Ethics Comm'n Op. No. 105 (1992) (defending a lawsuit to collect on a campaign loan); Tex. Ethics Comm'n Op. No. 222 (1994) (responding to a grievance filed with the State Bar alleging violations in connection with campaign material); Tex. Ethics Comm'n Op. No. 433 (2001) (defense of charges brought by the Texas State Commission on Judicial Conduct); Tex. Ethics Comm'n Op. No. 498 (2011) (defamation lawsuit brought by former judge in his status as a candidate).

Most relevant to this request, the Commission found that an individual may use political contributions to pay the expenses of responding to a sworn complaint filed with the Texas Ethics Commission. Tex. Ethics Comm'n Op. No. 219 (1994). That would continue to be true even if a candidate or committee challenges the interpretation or constitutionality of the law in response to such a complaint. Such a challenge, when presented as a defense to an alleged violation of law, would be as connected to the campaign as the alleged violation itself.

Lawsuits that depend on a plaintiff's status as a candidate or political committee are connected to a campaign.

The requestor says it intends to provide pro bono legal services to candidates or political committees in Texas for the "sole purpose" of challenging in court the interpretation or constitutionality of a Texas law or regulation subject to the jurisdiction of the Texas Ethics Commission. However, courts have no jurisdiction to decide an "abstract question of law without binding the parties" and "remedying an actual or imminent harm." *Tex. Assn. of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993) (considering standing before evaluating the constitutionality of generally applicable laws); *see also, Valley Baptist Med. Ctr. v. Gonzalez*, 33 S.W.3d 821, 822 (Tex. 2000). A litigant must have standing to pursue a claim. *DaimlerChrysler*

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Corp. v. Inman, 252 S.W.3d 299, 304 (Tex. 2008) (“A court has no jurisdiction over a claim made by a plaintiff without standing to assert it.”). Standing “focuses on the question of who may bring an action.” *Patterson v. Planned Parenthood*, 971 S.W.2d 439, 442 (Tex. 1998). The general test for standing in Texas is whether there is a real controversy between the parties that will actually be determined by the judgment sought. *Tex. Ass’n of Bus.*, 852 S.W.2d at 446.

In our opinion, if a person’s standing to bring a lawsuit depends on his status as a candidate or political committee subject to the laws administered and enforced by the Commission, then the lawsuit is connected with a campaign. This is most obviously true when a candidate or committee presents such a legal challenge in response to the Commission’s enforcement of a law under its jurisdiction. *See* Tex. Ethics Comm’n Op. No. 219 (1994) (legal costs of responding to a sworn complaint filed with the Texas Ethics Commission are connected with a campaign). However, it would be equally true if a candidate or committee challenged a law under the Ethics Commission’s jurisdiction as a plaintiff under the Uniform Declaratory Judgments Act. *See* Tex. Civ. Prac. & Rem. Code § 37.001 *et. seq.*; *City of Dallas v. Albert*, 354 S.W.3d 368, 378 (Tex. 2011) (“The Declaratory Judgments Act does not enlarge a court’s jurisdiction; it is a procedural device for deciding cases already within a court’s jurisdiction.”); *Stop ‘N Go Markets, Inc. v. Exec. Sec. Sys., Inc.*, 556 S.W.2d 836, 837 (Tex. Civ. App.—Houston [14th Dist.] 1977, no writ) (recognizing “[a] justiciable controversy does not exist and an advisory opinion is being sought if a party requests a court to render a declaratory judgment premised upon the happening of a future, hypothetical event”).

In conclusion, a legal action that depends on a person’s status as a candidate is connected with a campaign, and pro bono legal services provided to a candidate in connection with such litigation constitute contributions for purposes of the Texas Election Code. Tex. Elec. Code § 251.001(3). Consequently, such pro bono legal services may not be provided to a candidate by a corporation. *Id.* at § 253.094.

This opinion does not prohibit candidates from filing any claim, including to challenge the laws under the TEC’s jurisdiction.

Nothing in this opinion should be construed to prevent candidates from challenging the Commission’s interpretation or constitutionality of any law. Instead, it merely applies Texas’s ban on corporate contributions and finds that when a person’s standing to sue is premised on his status as a candidate, the litigation is connected with that person’s campaign. *See* Tex. Elec. Code § 251.001(3).

The consequences of this finding are not as dramatic as some critics have suggested. Candidates may file lawsuits to challenge the law. They may accept pro bono representation to challenge the law. Alternatively, they may use their political contributions to pay for such litigation. *See* Tex. Ethics Comm’n Op. No. 219 (1994). They may even be represented by corporations, as long as they pay a fair market rate for the representation.

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether a political committee may accept political contributions through a web portal shared with an incorporated association that established and administers the political committee. (AOR-671.)

SUMMARY

Yes. A political committee may accept political contributions that have been processed by a web portal shared with an incorporated association, provided the general-purpose committee complies with applicable recordkeeping and reporting provisions

FACTS

The requestor (the “Parent Organization”) is an incorporated trade association that administers several other legal entities, including a general-purpose political committee. The Parent Organization and related entities receive payments through their respective websites.

The Parent Organization would like to have credit card payments flow to a single primary bank account through a single credit card web portal. The primary account where payments would initially be deposited would be owned by the Parent Organization. Payments for an entity other than the Parent Organization, such as contributions to the political committee, would then be transferred out of the primary account to the other entity’s account.

This means if the Parent Organization receives contributions to the political committee by credit card, the transaction would be processed by the Parent Organization’s single credit card web portal and deposited in the primary account. The Parent Organization would then transfer the cash to the political committee’s bank account on a monthly basis. The Parent Organization states it will keep records necessary for the political committee to comply with its reporting obligations. The Parent Organization’s payment processing system will allow it to identify which payments belong to each of its related entities, including the political committee.

The requestor asks if such a proposal is permissible under title 15 of the Election Code.

ANALYSIS

We believe the requestor's proposal would comply with Texas law, provided the general-purpose committee complies with the recordkeeping and reporting provisions of title 15 of the Election Code and commission rules.

The legal question raised is whether the requestor's proposal would involve a prohibited corporate contribution to the political committee. A corporation is permitted to finance the costs of establishing and administering a general-purpose committee, as well as the costs of soliciting contributions to the committee from the stockholders, employees, or members of the incorporated entity. Tex. Elec. Code §§ 253.094, 253.100; see also Tex. Ethics Comm'n Op. Nos. 163, 132 (1993). Consistent with past advisory opinions, we believe the use of the Parent Organization to process contributions to the general-purpose committee is a permissible administrative expense.¹

In Ethics Advisory Opinion No. 181 (1994), the Commission dealt with a lower-tech version of the same question.. In EAO 181, a corporation asked whether it may accept a single check with a portion earmarked by the contributor to the corporation and another portion earmarked to the corporation's political committee. The corporation would deposit the check in its corporate account and then write a check to the political committee for the amount the contributor earmarked for the committee. *Id.* We held "the fact that the contributions would flow through the incorporated association's general account before being deposited in the general-purpose committee's account would not violate the prohibition on corporate political activity." *Id.* The corporation was allowed to act as a conduit for its political committee provided it kept adequate records so the political committee could accurately report the contribution. *Id.*; see also Tex. Ethics Adv. Op. No. 108 (1992) (holding a political contribution does not become a prohibited corporate contribution just because a corporation acted as an intermediary in disbursing the funds to their ultimate recipient).

Here, the facts are essentially the same as EAO 181—only the technology has changed. Instead of using checks, the transfer of funds would occur electronically. The procedure suggested would not violate section 253.094 of the Election Code if the corporate Parent Organization's only role is to act as a conduit for contributions to the political committee. The Parent Organization must also provide to the political committee records sufficient for the political committee to properly disclose the contributions. See Tex. Elec. Code §§ 253.001(a) (prohibiting contributions in the name of another); 254.001 (prescribing record keeping requirements), 254.031 (prescribing general reporting requirements), and 254.151 (prescribing additional reporting requirements).

¹ We assume the political contributions that are the subject of this request are from the Parent Organization's "solicitable class" or were not made in response to a solicitation funded by the Parent Organization.

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether a written communication, created by a political subdivision and related to a measure, constitutes political advertising for purposes of the Election Code's prohibition against using public funds for political advertising. (AOR-672)

SUMMARY

No. Assuming the factual statements in the communication are true, the communication provided by the requestor is entirely informational and does not include any advocacy.

FACTS

The requestor, the superintendent of an independent school district, requests an opinion on whether a written communication constitutes political advertising for purposes of Section 255.003(a) of the Texas Election Code. The one-page communication provides information about an upcoming Voter Approved Tax Rate Election (“VATRE”).

The communication explains what a VATRE is generally, identifies the consequences of the specific VATRE presented to the district’s voters, and provides information about voting periods and locations. It states that the VATRE’s passage would increase revenue to be used for the district’s operations, including salaries, curriculum, and facility maintenance. It identifies the district’s tax rate for 2022 and compares it to what the rate would be in 2023 should the VATRE be adopted.

ANALYSIS

Officers and employees of political subdivisions are prohibited from “knowingly spend[ing] or authoriz[ing] the spending of public funds for political advertising.” Tex. Elec. Code § 255.003(a).

“Political advertising” means, in relevant part, a communication *supporting or opposing* a measure that appears in a pamphlet, circular, flier, billboard, or other sign, bumper sticker, or similar form of written communication. Tex. Elec. Code § 251.001(16) (emphasis added).

As in many of our prior opinions applying Section 255.003(a), the communication considered in this request contains factual information that may affect whether voters will support or oppose the passage of a measure. *See, e.g.* Tex. Ethics Comm’n Op. No. 565 (2021). However, “[t]he

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Election Code does not prohibit political subdivisions from spending public funds to enable voters to make informed decisions.” Tex. Ethics Comm’n Op. No. 559 (2021); *see also* Tex. Elec. Code § 255.003(b).

The communication does not include a “motivational slogan or call to action.” Tex. Ethics Op. No. 559 (2021). Nor does the communication include any “express advocacy” as defined by the Commission’s rules. *See id.* (citing 1 Tex. Admin Code § 20.1(18)). When viewed as a whole, the communication does not appear advocate for the passage or defeat of the measure.

Assuming the information contained within the communication is true,¹ the Commission concludes that it does not support or oppose the measure. Therefore, Sections 255.003(a) and 255.003(b-1) of the Election Code does not prohibit the district from spending public funds to create and distribute the communication.

¹ The Commission’s authority to issue advisory opinions does not permit factfinding, nor is there an opportunity for adverse parties to participate in the process. When a requestor asks whether a communication constitutes political advertising, we must assume that the information conveyed in the communication is true and accurate. We do not foreclose the possibility that *false* statements of fact—even without any accompanying express advocacy—may constitute political advertising for purposes of Section 255.003(a).

In addition, an officer or employee of a political subdivision is prohibited from spending or authorizing the spending of public funds for a communication describing a measure if the communication contains information that: (1) the officer or employee knows is false; and (2) is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure. Tex. Elec. Code § 255.003(b-1).

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether, under the Judicial Campaign Fairness Act (JCFA), a general-purpose committee may make a maximum “campaign contribution” (up to \$25,000) to a state-wide judicial candidate and a maximum “officeholder contribution” (up to an additional \$25,000) before a general election. (AOR 673)

SUMMARY

No. The JCFA prescribes a \$25,000 per-election limit on “political contributions” from general-purpose committees to a judicial candidate or officeholder regardless of whether classified as a “campaign contribution” or “officeholder” contribution.

FACTS

The requestor represents a general-purpose political committee. The requestor asks whether the general-purpose committee, which did not contribute to an incumbent state-wide judicial candidate in a primary election, may make a \$25,000 campaign contribution and a \$25,000 officeholder contribution after the primary election but before the general election.

ANALYSIS

The requestor asks whether a statewide judicial candidate may accept up to \$50,000 from a general-purpose committee in a general election if the contributions are classified as \$25,000 in campaign contributions and \$25,000 in officeholder contributions. The answer is no. The JCFA sets a limit on “political contributions” made by a general-purpose political committee to a statewide judicial candidate at \$25,000 per election. Tex. Elec. Code § 253.157(a-1)(1). This is true regardless of whether the political contributions are classified as campaign or officeholder contributions.

Under the JCFA, a statewide judicial candidate or officeholder “may not knowingly accept political contributions from a general-purpose committee that, in the aggregate, exceed . . . \$25,000” in connection with an election in which the judicial candidate’s name appears on the ballot. *Id.* (emphasis added).

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A “political contribution” is a “campaign contribution” or “officeholder contribution.” *Id.* § 251.001(5).¹ The plain text of the statute does not allow general-purpose committee to classify contributions made for a general election as both campaign and officeholder contributions to effectively double its contribution limit in a general election. *Id.* § 253.157(a-1)(1). This is true regardless of whether the general-purpose committee contributed in the primary election or not. Tex. Elec. Code §§ 253.1621(a) (classifying the primary and general elections as separate elections for the purposes of contribution limits); 253.152(2) (generally attributing a contribution to the next election after the contribution for the purpose of contribution limits).

The requestor also asks whether a general-purpose committee may make an officeholder contribution to defray officeholder costs already expended by the incumbent judicial candidate so that the contribution is attributable to a past election’s contribution limit.

The answer, again, is no. Although the JCFA allows for certain political contributions to be attributable to a past election for the purposes the limits on political contributions, the contributions must be made to defray past election debts—not officeholder expenses. *See id.* § 253.153(b).

Generally, a judicial candidate or officeholder may only accept political contributions during a campaign fundraising window, which ends the 120th day after the date of the election in which the candidate or officeholder last appeared on the ballot. Tex. Elec. Code § 253.153(a)(2). However, a judicial candidate or officeholder may accept a political contribution outside the fundraising window if the contribution is made and accepted with the intent that it be used to defray expenses incurred in connection with an election, including the repayment of any debt, that occurred between the date the application for a place on the ballot or for nomination by convention was required to be filed and election day. Elec. Code § 253.153(b). The contribution must be so designated in writing. *See id.* § 253.152(2).

The requestor seeks to rely on the exception allowing certain contributions to be attributed to a past election to make an “officeholder contribution” that would otherwise put the general-purpose committee over the contribution limit for the general election. That is not allowed. The exception allowing attribution to a past election applies only to contributions made to defray “expenses incurred in connection with an election.” *Id.* § 253.153(b). Officeholder contributions by definition do not apply to expenses incurred in connection with an election. *Id.* § 251.001(4). Therefore, a general-purpose committee may not effectively double its

¹ A “campaign contribution” is “a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure.” *Id.* § 251.001(3). Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution. *Id.* § 251.001(3).

An “officeholder contribution” is “a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that: (A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and (B) are not reimbursable with public money.” *Id.* § 251.001(4).

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contribution limit in a general election by classifying its contributions to an incumbent judicial candidate as both campaign and officeholder contributions.

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether expenditures made by a candidate to encourage donations to a local food bank are political expenditures when publicized by the candidate on a social media page that is also used for his campaign. (AOR 677)

SUMMARY

Yes. Expenditures incurred by a candidate in connection with charitable fundraising are political expenditures if the candidate promotes the activity on his campaign's social media page.

FACTS

The requestor, the mayor of a city in Texas, requests an advisory opinion on whether he may make certain expenditures without violating title 15 of the Election Code, and, if so, whether they must be reported as political expenditures. Specifically, he would like to make an offer on his campaign's Facebook account that involves giving lottery tickets to anyone that donates goods to the local foodbank.

If permitted, the requestor would pay for the lottery tickets out of personal funds, but he would use the same Facebook page he uses to campaign for office to publicize the offer. The Facebook page is not a part of any taxpayer or city system, and no public funds would be used to fund or promote the activity.

ANALYSIS

The requestor's threshold question is whether the described promotion is permitted under title 15. The answer is yes. Officers and employees of political subdivisions are prohibited from "knowingly spend[ing] or authoriz[ing] the spending of public funds for political advertising." Tex. Elec. Code § 255.003(a). But the requestor says no public funds will be spent on the promotion. His plan is to purchase the lottery tickets with personal funds and to publicize the promotion on a Facebook account that is neither controlled nor paid for by public funds. Assuming no city equipment or paid time is used, the activity is not prohibited by section 255.003(a). *See, e.g.* Tex. Ethics Comm'n Op. No. 550 (2019).

Having determined that the requestor may carry out his plan, we consider whether it would implicate any of title 15's reporting or disclosure requirements. Under title 15, candidates must report their political expenditures. *See* Tex. Elec. Code § 254.031(a)(3). Political expenditures

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include both campaign expenditures and officeholder expenditures. *Id.* at § 251.001(10). And campaign expenditures are any expenditure made by any person in connection with a campaign for elective office or on a measure. *Id.* at § 251.001(7).

Here, there appears to be no *direct* benefit to the requestor's campaign. The candidate is not soliciting donations to his campaign. Instead, he is spending money to solicit donations to a charity. However, the Supreme Court of Texas has determined that the phrase "in connection with" is an expansive term that is satisfied even by "indirect, 'tenuous,' or 'remote' relationships." *Cavin v. Abbott*, 545 S.W.3d 47, 70 (Tex. App.—Austin 2017, no pet.) (citing *ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895, 901 (Tex. 2017)); *but see Osterberg v. Peca*, 12 S.W.3d 31, 51 (Tex. 2000) (construing "in connection with a campaign" to mean only expenditures to fund express electoral advocacy in the context of direct campaign expenditures made by a non-candidate).

Furthermore, the Commission has found similar expenditures—which have the indirect benefit of raising the candidate's profile or standing in the community—are connected with a campaign, even where there is no direct financial benefit to the campaign. *See, e.g.* Tex. Ethics Comm'n Op. No. 102 (1992) (advertisement in third-party publication congratulating a sports team that identifies a candidate or public officer as such is political advertising). Here, the expenditure's connection to a campaign is even closer than in EAO 102 because the requestor is using his campaign social media to promote the activity. Because the candidate's expenditures for this promotion are campaign expenditures, they must be reported in accordance with the requirements of title 15.

The post on the candidate's Facebook page would not require a political advertising disclosure statement provided he does not pay to promote the post and his profile page clearly and conspicuously displays the full name of the candidate. *See* Tex. Elec. Code § 255.001; 1 Tex. Admin. Code § 26.1(c).

**Texas Ethics Commission
Recommendations for Statutory Changes
88th Legislative Session
(Adopted at December 14, 2022 Meeting)**

Recommendation 1: Reconsider Reporting Threshold Adjustments

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

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

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

Recommendation 2: Modernize Filing Requirements

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

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

Recommendation 3: Allow the TEC to Provide Notice by Email

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

- Section 571.032 of the Government Code—which addresses how the TEC must notify sworn complaint complainants and respondents—requires the TEC to send certain notices by registered or certified mail, and other notices to be sent by “regular mail.”
- Section 254.042(a) of the Election Code, Section 305.033(a) of the Government Code, and Section 572.033(a) of the Government Code—which address how the TEC must

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notify filers of late or missing reports—require the TEC to “immediately mail” a notice of the determination to the person required to file the report.

- Section 572.030 of the Government Code—which addresses how the TEC must notify personal financial statement filers of their obligations—requires the TEC to “mail” certain documents to each individual required to file.

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

Recommendation 4: Resolve Statutory Conflicts

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

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

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

Recommendation 5: Allow TEC Staff to Comply with Criminal Investigations

Section 571.140 of the Government Code prohibits TEC staff from disclosing any information regarding a sworn complaint except in certain limited circumstances, including, for example, when such disclosure is necessary to investigate the complaint. Occasionally, criminal law enforcement authorities will request information from the TEC in connection with a criminal investigation. It is currently unclear whether TEC staff is permitted to comply with those requests, even in response to a grand jury subpoena served on the TEC. The TEC recommends that the Legislature clarify that TEC staff may disclose information related to sworn complaints when it is requested by criminal law enforcement officials.

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

Recommendation 6: Address “Scam PACs”

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

There have been several recent news stories about scam PACs targeting would-be donors on both sides of the aisle.¹ No candidate or officeholder wants their supporters to be misled into giving their money to an unrelated third party. And all candidates and officeholders want intended contributions to benefit their campaigns, not someone else.

Several bills have been introduced in Congress that are designed to address scam PACs at the federal level.² Other legislative recommendations that have been proposed by the Federal Elections Commission include: (i) expanding personal-use provisions to cover all political committees; (ii) requiring disclosure of PAC’s overhead percentage on the home page and solicitation page of PACs; and (iii) requiring PAC websites to contain prominent, plain-English information about how the PAC is actually spending its money.

Recommendation 7: Address “Sham PACs”

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

¹ See, e.g., <https://www.nytimes.com/2021/11/10/us/politics/pac-operator-charges.html> (scam PAC targeting Donald Trump supporters); <https://www.nytimes.com/2021/11/26/us/politics/email-political-fundraising-pitches.html> (scam PAC targeting Beto O’Rourke supporters).

² <https://www.congress.gov/bill/116th-congress/house-bill/6854/text?r=29&s=1>;
<https://www.congress.gov/bill/117th-congress/house-bill/6494/text>

EXHIBIT A

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

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

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

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EXHIBIT B

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT C

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

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

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

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

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

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

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

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

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

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

(A) shows the name of the complainant;

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

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

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

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

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

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

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

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

(A) an expenditure for transportation and lodging;

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

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

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

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

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

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

EXHIBIT D

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

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

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

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

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

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