

# TEXAS ETHICS COMMISSION

<b>IN THE MATTER OF</b>	§	<b>BEFORE THE</b>
	§	
<b>GINA PARKER, IN HER CAPACITY AS</b>	§	
<b>CAMPAIGN TREASURER FOR THE</b>	§	<b>TEXAS ETHICS COMMISSION</b>
<b>TEXAS REPUBLICAN CAMPAIGN</b>	§	
<b>COMMITTEE,</b>	§	
	§	
<b>RESPONDENT</b>	§	<b>SC-990410</b>

## **ORDER and AGREED RESOLUTION**

### **I. Recitals**

The Texas Ethics Commission (the commission) met on May 14, 1999, and voted to accept jurisdiction of Sworn Complaint SC-990410 filed against Gina Parker, in her capacity as campaign treasurer for the Texas Republican Campaign Committee, Respondent. The commission met again on March 10, 2000, to consider Sworn Complaint SC-990410. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of violations of Sections 252.003 and 253.037(b), Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

### **II. Allegations**

The complainant alleges that a general-purpose committee of which the respondent is campaign treasurer made political contributions to another general-purpose committee whose name and address were not included in the contributor's campaign treasurer appointment.

### **III. Facts Supported by Credible Evidence**

Credible evidence available to the commission supports the following findings of fact:

1. The respondent is the campaign treasurer of a general-purpose committee, which is also the principal political committee of a political party.
2. In 1998 the respondent's committee made four political contributions totaling \$120,000 to Conservative Republicans of Harris County PAC, a general-purpose committee: \$40,000 on September 30, 1998; \$40,000 on October 12, 1998; \$35,500 on October 27, 1998; and \$5,000 on December 2, 1998. Three of the contributions preceded, and one of them

followed, the November 3, 1998, general election. Both of the committees were involved in the general election and both timely disclosed the contributions in their campaign finance reports.

3. The \$40,000 contribution made on September 30, 1998, and the \$40,000 contribution made on October 12, 1998, were timely disclosed in the respondent's 8-day before election report filed on October 26, 1998, and received on October 28, 1998. Those contributions were also timely disclosed in the 8-day before election report filed by Conservative Republicans of Harris County PAC on October 26, 1998, and received on October 28, 1998.
4. The \$35,500 contribution made on October 27, 1998, and the \$5,000 contribution made on December 2, 1998, were timely disclosed in the respondent's January semiannual report filed on January 15, 1999, and received on January 19, 1999. Those contributions were also timely disclosed in the January semiannual report filed by Conservative Republicans of Harris County PAC on January 13, 1999, and received on January 21, 1999.
5. Conservative Republicans of Harris County PAC was not listed in the campaign treasurer appointment of the respondent's committee when each of the contributions was made.

#### **IV. Findings and Conclusions of Law**

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

1. The campaign treasurer appointment of a general-purpose committee must include the full name and address of each general-purpose committee to whom the committee intends to make political contributions. Section 252.003, Election Code.
2. A general-purpose committee may not knowingly make a political contribution to another general-purpose committee unless the recipient committee is listed in the campaign treasurer appointment of the contributor committee. Section 253.037(b), Election Code.
3. The respondent, through her attorney, admits that her committee made four contributions to another general-purpose committee whose name and address were not included in the respondent's campaign treasurer appointment.
4. The respondent argues, however, that Sections 252.003 and 253.037(b), Election Code, are unconstitutionally vague because Section 253.037(b) requires a general-purpose committee to amend its campaign treasurer appointment before making a contribution to another general-purpose committee, but Section 252.003 "allows for thirty days after the contribution to file such an amendment."
5. Section 252.003, Election Code and the Ethics Commission rules require the campaign treasurer of a general-purpose committee to file an amended campaign treasurer appointment with the commission not later than the 30th day after the date a change of information

- required to be included in the treasurer appointment occurs, excluding changes in the campaign treasurer's address. Section 252.003, Election Code; Section 20.413(b), Ethics Commission Rules. The 30-day period does not apply, however, if the general-purpose committee wishes to contribute to another general-purpose committee that is not listed in the campaign treasurer appointment of the contributor committee. In that case, the campaign treasurer appointment of the contributor committee must be amended before the time the contribution is made. *See* Ethics Advisory Opinion No. 65 (1992).
6. The vagueness doctrine is a component of the United States Constitution's due process guarantee. A vague statute offends due process in two ways: First, it fails to give fair notice of what conduct may be punished, forcing people to guess at the statute's meaning. Second, it invites arbitrary and discriminatory enforcement by failing to establish guidelines for those enforcing the law, allowing policemen, prosecutors, and juries to pursue their personal predilections. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *Smith v. Goguen*, 415 U.S. 566, 575 (1974).
  7. To survive a vagueness challenge, a statute need not spell out with perfect precision what conduct it forbids. Due process is satisfied if the prohibition is set out in terms that the ordinary person exercising common sense can sufficiently understand and comply with. *United States Civil Serv. Comm'n v. National Ass'n of Letter Carriers*, 413 U.S. 538, 579 (1979); *Commission for Lawyer Discipline v. Benton*, 980 S.W.2d 425, 437 (Tex. 1998). The ordinary general-purpose committee, with the benefit of guidance provided by the commission, could understand and comply with Sections 252.003 and 253.037(b) as interpreted and applied by the commission.
  8. The respondent argues that Section 253.037, Election Code, unconstitutionally infringes on her committee's right to associate and participate in political activities guaranteed by the First Amendment to the United States Constitution because it burdens core political speech and is not narrowly tailored to serve an overriding state interest. According to the respondent, Subsection (a) of Section 253.037 is unconstitutional on its face because it "restricts the ability [of a general-purpose committee] to give a political expenditure unless the general purpose committee had filed a campaign treasurer appointment sixty (60) days prior to the expenditure," and Subsection (b) of Section 253.037 is unconstitutional because it cannot be given effect without Subsection (a). (Emphasis in original.)
  9. Subsection (a) of Section 253.037, Election Code, is not at issue in this complaint because the respondent's committee had its campaign treasurer appointment on file with the commission for many years prior to the contributions in question. Subsection (b) of Section 253.037, Election Code, is a reporting and disclosure requirement and not a limitation on contributions and expenditures. As such, Subsection (b) of Section 253.037 does not infringe on First Amendment rights if there is a "relevant correlation" or "substantial relation" between the government interest and the information required to be disclosed. *Buckley v. Valeo*, 424 U.S. 1, 64 (1975).

10. The Supreme Court has recognized that the government's interest in disclosing to the electorate the interests to which a candidate is most likely to be responsive is sufficiently important to outweigh the possibility of infringement on a contributor's First Amendment rights. *Buckley v. Valeo*, 424 U.S. 1, 67–68 (1975).
11. Disclosure is especially important when money that is ultimately given to candidates is transferred from one committee to another on the eve of an election because the source of the money is difficult for the electorate to identify. Thus, by requiring a contributor committee to list its intended recipient committees in the contributor's campaign treasurer appointment, Section 253.037(b) provides for disclosing to the electorate the names and addresses of intended recipient committees before the money is actually transferred.
12. Though campaign finance reports disclose contribution and expenditure information, the finance reports disclose only those expenditures made and contributions accepted in the reporting periods they cover, and the reports are not filed until after the close of those periods. Therefore, the information contained in the reports is not always disclosed to the electorate during the campaign period when public interest in the source and destination of campaign funds is likely to be at its peak. Consequently, Subsection (b) of Section 253.037 fills an important gap in campaign finance disclosure.
13. The respondent argues that Subsection (a) of Section 253.037, Election Code, is not binding on the respondent because the respondent's committee is a general-purpose committee that accepts contributions from an FEC-registered multi-candidate political committee as defined by the Federal Election Campaign Act and the respondent's committee has complied with the requirements for accepting and reporting contributions from the FEC committee. Section 253.037(c), Election Code.
14. According to the respondent, Subsection (b) of Section 253.037 "is a subsidiary requirement" to Subsection (a); therefore, Subsection (b) is not binding on the respondent's committee because the committee is not bound by Subsection (a). The language of the statute, however, is clear and unambiguous: The exemption from Subsection (a) is not also an exemption from Subsection (b).
15. Finally, the respondent argues that assuming the respondent has violated Section 253.037(b), the violation is at best technical or *de minimis* because (a) there was no intent to deceive or to deprive the voters of information concerning the contributions, (b) the contributions were disclosed in her committee's campaign finance reports, and (c) it has been the practice of general-purpose committees "not to amend their respective campaign treasurer appointments to list contributions to [other] general-purpose committees, or to not even file appointment forms at all while giving contributions to other general-purpose committees." (Emphasis in original.)

16. The respondent, through her attorney, named several specific examples but added that the investigation involved a search of only a limited number of general-purpose committees that have filed campaign finance reports with the commission.
17. A violation of Section 253.037(b) does not require a finding of an intention to deceive. It is clear that the disclosure required by Section 253.037(b) is in addition to the requirement to file campaign finance reports and that a violation of Section 253.037(b) by one general-purpose committee does not justify or excuse a violation by another.
18. There is credible evidence that the respondent violated Sections 252.003 and 253.037(b), Election Code.

### **V. Representations and Agreement by Respondent**

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III and the commission's findings and conclusions of law described under Section IV, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge and agrees that this Order shall be a final and complete resolution of Sworn Complaint SC-990410.
3. The respondent disagrees with the legal conclusions set forth above. The respondent does not concede the constitutionality of Section 253.037(b), which it considers as an unconstitutional prior restraint, and does not waive the right to challenge the constitutionality of Section 252.003 and/or 253.037(b) or to otherwise contest the applicability of the foregoing sections to the respondent in any future proceeding, litigation, or administrative action by any state or federal governmental department or agency. See Osterberg v. Peca, 1999 WL 547849, at 23–26 (Gonzales, J., concurring). However, as part of the settlement of this complaint, the respondent agrees not to raise any constitutional or other type of challenge in the future only with respect to this complaint, SC-990410. Further, the respondent does not concede either the constitutionality or applicability of the Election Code provisions or the legal conclusions set forth in Section IV, Paragraphs 1, 2, 5, 7, and 12. The respondent does not waive any rights to challenge the constitutionality or applicability of the Texas Election Code provisions or the legal conclusions set forth in Section IV, Paragraphs 1, 2, 5, 7, and 12, in any future proceeding, litigation, or administrative action.

4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violation described under Section IV, Paragraph 18, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

#### **VI. Confidentiality**

This ORDER and AGREED RESOLUTION is not confidential under Section 571.140, Government Code, and may be disclosed by members and staff of the commission.

#### **VII. Sanction**

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violation, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$3,000 civil penalty for the violation described under Section IV, Paragraph 18.

#### **VIII. Order**

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-990410;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$3,000 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 29, 2001; and
4. that the executive director shall promptly refer SC-990410 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-990410 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Gina Parker, Respondent  
Campaign Treasurer for Texas Republican  
Campaign Committee

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Tom Harrison, Executive Director