

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JOHN HARRISON AS CAMPAIGN
TREASURER FOR WE'RE VOTERS
UNITED, TOO,
RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-231289

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 7, 2004, to consider Sworn Complaint SC-231289. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 252.002 of the Election Code, a law 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 the respondent:

- 1) made a political contribution or political expenditure before the 60-day waiting period expired;
- 2) made a political expenditure before accepting contributions from at least 10 persons;
- 3) used a committee name that was deceptively similar to Voters United to Preserve Flower Mound;
- 4) failed to identify the name of the person making the appointment of the campaign treasurer for We're Voters United, Too;
- 5) failed to file campaign finance reports;
- 6) failed to report certain political contributions and expenditures;
- 7) failed to identify each candidate and officeholder who benefited from direct expenditures made by We're Voters United, Too;
- 8) failed to include a disclosure statement on political advertising, and
- 9) misrepresented the true source of campaign communications.

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 for a political committee named "We're Voters United, Too."

2. On May 8, 1997, an appointment of a campaign treasurer for a general-purpose committee was filed with the Texas Ethics Commission for a group named Voters United to Preserve Flower Mound. The committee is still active. The respondent was not named as the campaign treasurer. The respondent's name did not appear on the appointment of a campaign treasurer form.
3. The respondent swears that We're Voters United, Too, was formed when a "major split developed in Voters United to Preserve Flower Mound over which candidates to support" in the city council election.
4. On March 26, 2003, an appointment of a campaign treasurer for a *general-purpose committee* was filed with the Texas Ethics Commission for a group named We're Voters United, Too. The respondent was named as the campaign treasurer. The section of the form for "person appointing treasurer" was blank. The "contribution decision makers" section of the form contained only the respondent's name.
5. On April 8, 2003, an appointment of a campaign treasurer for a *specific-purpose committee* was filed with the Denton County Elections Administrator for a group called We're Voters United, Too. The respondent was named as the campaign treasurer. The section of the form for "person appointing the treasurer" contained the respondent's name. On the same day, the specific-purpose committee exceeded \$500 in contributions and expenditures.
6. On April 25, 2003, the respondent filed an 8-day pre-election report for the specific-purpose committee. The report showed that the committee supported two identified candidates for Flower Mound Town City Council in the May 3, 2003, election. According to that report and a correction filed on May 5, 2003, the committee accepted contributions totaling \$4,706.15 and made expenditures totaling \$4,669.80 during the period covered by the 8-day report.
7. On May 5, 2003, the respondent filed a dissolution report for the specific-purpose committee reporting contributions totaling \$1,644.63 and expenditures totaling \$1,680.98. The report showed that the committee supported the same two candidates that were listed on the 8-day pre-election report. On the same day, the respondent filed a dissolution report for the general-purpose committee. The report showed that there was no reportable activity.
8. The specific-purpose committee reports showed that the committee made expenditures for printing, mailing, a website, and a website name.
9. At issue in allegation Number 8 is the website for the respondent's committee. The website is not currently available online. The complainant submitted two pages that are purportedly pages from the respondent's committee website and that do not contain political advertising disclosure statements. The website clearly supports two candidates for city council. The complainant also submitted evidence to show that the website was created on March 29, 2003.

10. At issue in allegation Number 9 are communications produced by the respondent's committee that clearly purport to emanate from We're Voters United, Too.
11. In response to the complaint the respondent submitted a sworn statement in which he swears to the following:

Our first concern in creating our committee was to make sure we fully complied with ethics rules. We made many calls to the attorneys at the Texas Ethics Commission to explain our situation and to seek advice on the proper legal procedures. Our name, We're Voters United, Too, was chosen by us to ensure that there was no confusion on anyone's part as to exactly who we were. While we believed that we had the right to use Voters United to Preserve Flower Mound because many of our members were founding members of VUPFM, we were concerned about the problems a fight over the name would create. The name, We're Voters United, Too, was approved by the Texas Ethics Commission for our use on March 26, 2003, when we filed for a General-Purpose Committee with the Texas Ethics Commission. After some thought and discussion with the attorneys at the Texas Ethics Commission, we decided that for our immediate purposes, a Specific-Purpose Committee was more appropriate, and we filed a Specific-Purpose Committee with the Denton County Elections Administrator on April 8, 2003. All required forms were filed on time . . .

On all of our mailings and on our web site, we made it absolutely clear that we were members of Voters United to Preserve Flower Mound who disagreed with the Mayor's choice of candidates for town council. There was never an attempt to confuse the voters as to who we were. In fact, the opposite is true. We made every effort to point out our differences with VUPFM [Voters United to Preserve Flower Mound].

12. The respondent also submitted two pages that are purportedly pages from the respondent's committee website and that contain a political advertisement disclosure statement. The two pages submitted by the respondent are virtually identical to the two pages submitted by the complainant. The only difference is that the pages submitted by the respondent include the following disclosure statement: "Pol. Adv. We're Voters United, Too P.O. Box 271385 Flower Mound, TX 75027 John Harrison, Treasurer."

IV. Findings and Conclusions of Law

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

1. The time period during which a campaign treasurer appointment was on file for We're Voters United, Too, as a general-purpose committee overlapped with the time period during which a campaign treasurer appointment was on file for We're Voters United, Too, as a specific-purpose political committee. The evidence shows that We're Voters United, Too, is

one group that initially thought that it was a general-purpose committee but later correctly realized that it was a specific-purpose committee.

Allegations 1 and 2 - Sixty-day waiting period and contributions from at least 10 persons:

2. A general-purpose committee may not make or authorize political expenditures totaling more than \$500 unless the committee has (1) filed its campaign treasurer appointment not later than the 60th day before the date the expenditure is made that causes the total expenditures to exceed \$500, and (2) accepted political contributions from at least 10 persons. ELEC. CODE §§ 253.031(b) and 253.037(a).
3. A specific-purpose committee is also required to have a campaign treasurer appointment on file before it crosses the \$500 contribution or expenditure threshold. However, a specific-purpose committee is not subject to the 60-day waiting period or the requirement to accept contributions from at least 10 persons.
4. The evidence shows that We're Voters United, Too, was operating as a specific-purpose political committee and not a general-purpose committee. Because a specific-purpose committee is not subject to the 60-day waiting period or the requirement to accept contributions from at least 10 persons, the respondent could not have violated sections 253.031(b) and 253.037(a) of the Election Code.

Allegation 3 - Committee Name:

5. The name of a general-purpose committee may not be the same as or deceptively similar to the name of any other general-purpose committee whose campaign treasurer appointment is filed with the commission. ELEC. CODE § 252.003(c).
6. The complainant alleges that the name of the general-purpose committee We're Voters United, Too, is deceptively similar to the name of the general-purpose committee Voters United to Preserve Flower Mound. The names are not deceptively similar. For that reason and because the evidence shows that We're Voters United, Too, was not a general-purpose political committee, there is credible evidence that the respondent did not violate section 252.003(c) of the Election Code.

Allegation 4 - Person making the appointment:

7. A campaign treasurer appointment must include the name of the person making the appointment. ELEC. CODE § 252.002(a)(4).
8. The campaign treasurer appointment form for a general-purpose committee filed by We're Voters United, Too, did not include the name of the person making the appointment.
9. The respondent swears that he was the person making the appointment. He swears that this section was inadvertently left blank. Therefore, there is credible evidence that the respondent violated section 252.002(a)(4) of the Election Code.

Allegation 5 - Campaign finance reports:

10. The campaign treasurer for a general-purpose committee must file campaign finance reports 30 and 8 days before each election in which the committee is involved. ELEC. CODE § 254.154. A committee is involved in an election when the committee makes expenditures supporting or opposing an opposed candidate, or accepts contributions specifically for the purpose of supporting or opposing an opposed candidate, in a pre-election reporting period for that election.
11. We're Voters United, Too, filed a campaign treasurer appointment as a general-purpose committee on March 26, 2003. We're Voters United, Too, filed a campaign treasurer appointment as a specific-purpose political committee on April 8, 2003. The last day covered by the 30-day pre-election report due before the May 3, 2003, election was March 24, 2003. We're Voters United, Too, was operating as a specific-purpose committee and not a general-purpose committee. There is no evidence that the group made an expenditure on or before March 24, 2003, in connection with the May 3, 2003, election. Therefore, there is no evidence that the respondent was required to file a 30-day pre-election report.
12. The last day covered by the 8-day pre-election report due before the May 3, 2003, election was April 23, 2003. The report was due on April 25, 2003. The respondent swears that We're Voters United, Too, was operating as a specific-purpose committee and not as a general-purpose committee. The evidence shows that on April 25, 2003, the respondent filed an 8-day pre-election report for the specific-purpose committee We're Voters United, Too.
13. There is credible evidence that the respondent did not violate section 254.154 of the Election Code in connection with the 30-day and 8-day pre-election reports due before the May 3, 2003, election.

Allegations 6 and 7 – Reporting certain political contributions and political expenditures:

14. The campaign treasurer for a political committee must include in the committee's campaign finance reports information about political contributions accepted and political expenditures made by the committee, and the name of each candidate or officeholder who benefits from a direct campaign expenditure made by the committee. ELEC. CODE § 254.031.
15. We're Voters United, Too, was operating as a specific-purpose committee and not as a general-purpose committee. The respondent filed reports for a specific-purpose committee. The reports included expenditures for printing and mailing. The reports also listed the name of the candidates supported by the committee. There is no evidence that the respondent failed to disclose contributions or expenditures in violation of section 254.031 of the Election Code.

Allegation 8 - Failed to include a disclosure statement:

16. The complainant alleges that the respondent's committee website did not include the disclosure statement required by section 255.001 of the Election Code. The Court of Criminal Appeals held that the applicable version of section 255.001 of the Election Code

(the version in effect before September 1, 2003) was unconstitutional. Therefore, the commission cannot find a violation of section 255.001 of the Election Code.

Allegation 9 – Misrepresentation of true source:

17. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person enters into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source. ELEC. CODE § 255.004.
18. Additionally, a person commits an offense if, with the intent to injure a candidate or influence the outcome of the election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source. *Id.*
19. The complainant contends that We're Voters United, Too, misled voters to believe that the advertisements were from Voters United to Preserve Flower Mound. The advertisements clearly purport to emanate from We're Voters United, Too, and not from Voters United to Preserve Flower Mound. The advertisements make it clear that We're Voters United, Too, is the source of the advertisements at issue. Therefore, there is credible evidence that the respondent did not violate section 255.004 of the Election Code.

V. Representations and Agreement by Respondent

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

1. The respondent neither admits nor denies the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The respondent consents to the entry of this ORDER and AGREED RESOLUTION 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 further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that a campaign treasurer appointment must include the name of the person making the appointment.
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 violations described under Section IV, 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 describes a violation that the commission has determined is neither technical nor *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under section 571.140 of the Government Code, and may be disclosed by members and staff of the commission.

VII. No Sanction

The commission does not impose a civil penalty for the violation described under Section IV.

VIII. Order

The commission hereby ORDERS that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-231289.

AGREED to by the respondent on this _____ day of _____, 20__.

John Harrison, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director