

# TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
TEXANS FOR GOOD LEADERS PAC,	§	TEXAS ETHICS COMMISSION
RESPONDENT	§	SC-3120380

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on March 27, 2013, to consider sworn complaint SC-3120380. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 253.163 of the Election Code, a law administered and enforced by the commission. To resolve and settle this complaint as to the respondent without further proceedings, the commission proposed this resolution to the respondent.

### II. Allegation

The complaint alleged the respondent exceeded the third-party expenditure limit of the Judicial Campaign Fairness Act at a time when a notice of intent to exceed the limit had not been filed.

### III. Facts Supported by Credible Evidence

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

1. The respondent is a general-purpose committee in Houston, Texas. The complaint alleged that the respondent exceeded the third-party expenditure limit under the Judicial Campaign Fairness Act by making approximately \$28,000 in expenditures to support a candidate for district judge when a written declaration of intent to exceed the limits had not been filed with the commission.
2. The respondent's January 2012 semiannual campaign finance report disclosed two political expenditures of \$5,000 and \$23,000 to a candidate for district judge (the candidate) that were dated November 18, 2011, and December 15, 2011, respectively. The expenditures were disclosed with the category of "Contributions/Donations Made By Candidate/Officeholder/Political Committee" and for the purpose of "JD215." The candidate

was an opposed candidate for judge of the 215th District Court (Harris County) in the May 29, 2012, primary election and the November 6, 2012, general election.

3. The respondent's corrected 30-day pre-election report for the 2012 primary election also disclosed a \$12,000 political expenditure on January 18, 2012, to the candidate with the category of "Contributions/Donations Made By Candidate/Officeholder/Political Committee" and for the purpose of "JD215." The report also disclosed that the respondent received \$12,000 from the candidate on April 16, 2012, that was described as a "Returned excess contribution."
4. The candidate disclosed political contributions from the respondent of \$5,000 on November 21, 2011, and \$23,000 on December 15, 2011. The candidate also disclosed a \$12,000 political expenditure to the respondent on April 16, 2012, that was described as "Returned Political Contribution."
5. In response to the allegations, an individual submitted an affidavit on behalf of the respondent and swore, in pertinent part:

Prior to making the contributions [at issue in the complaint], attorneys at [a law firm] and I reviewed the Judicial Campaign Fairness Act. We concluded that, unlike the general prohibition on the size of contributions, section 253.155 did not impose a limit on contributions by general-purpose committees such as Texans for Good Leaders. We did recognize that there was a \$52,500 aggregate limit imposed by section 253.160 on general-purpose committee contributions and expenditures.

Our reading of the statute did not suggest that section 253.163, which relates to expenditures, applied to contributions by the committee.

Upon learning of the complaint and of the fact that there was an interpretation of the statute that would restrict contributions in excess of \$5,000 in the absence of filing a notice of intent, the Committee acted to ensure that the Committee complied with even the most conservative interpretation of the statute. Specifically, we asked the campaign not to accept and to return a contribution of \$12,000 that had been made after the end of the 2011 semi-annual reporting date but before both the filing of the complaint and the next required report. That contribution was returned. The Committee made no additional contributions to the campaign.

At all times, the Committee acted in compliance with the statute as it understood it.

6. The respondent submitted copies of two checks drawn on the respondent's account and payable to the candidate. The checks were in the amounts of \$5,000 and \$23,000 and were dated November 18, 2011, and December 15, 2011, respectively. Each check stated "political contribution" in the memo.
7. A declaration of intent for the respondent to exceed the third-party limit regarding the primary election was not filed. A declaration of intent for the respondent to exceed the third-party limit regarding the general election was filed on June 12, 2012.

#### IV. Findings and Conclusions of Law

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

1. A person other than a candidate, officeholder, or the principal political committee of the state executive committee or a county executive committee of a political party may not make political expenditures that in the aggregate exceed \$5,000 for the purpose of supporting or opposing a candidate for a judicial office other than a statewide judicial office or assisting such a candidate as an officeholder unless the person files a written declaration of the person's intent to make expenditures that exceed the limit. ELEC. CODE § 253.163(a).
2. A declaration must be filed not later than the earlier of the date the person makes the political expenditure that causes the person to exceed the limit, or the 60th day before the date of the election in connection with which the political expenditures are intended to be made. *Id.* § 253.063(c).
3. "Political expenditure" means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).
4. "Campaign expenditure" means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7).
5. "Officeholder expenditure" means an expenditure made by any person to defray expenses that are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001(9).
6. "Expenditure" means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).

7. “Political contribution” means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
8. “Campaign contribution” means, in pertinent part, a contribution to a candidate that is offered or given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3).
9. “Officeholder contribution” means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001(4).
10. “Contribution” means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. *Id.* § 251.001(2).
11. With the exception of the campaign treasurer appointment, the individual named as a committee’s campaign treasurer is legally responsible for filing all reports of the general-purpose committee. Ethics Commission Rules § 20.405(c). “Report” is defined as any document required to be filed by this title, including an appointment of campaign treasurer, any type of report of contributions and expenditures, and any notice. *Id.* § 20.1(16).
12. The complaint alleged that the respondent made political expenditures to support a candidate for district judge in excess of \$5,000 at a time when a notice of intent to exceed the \$5,000 expenditure limit had not been filed. According to the respondent’s reports and copies of checks, the respondent made political expenditures of \$5,000 and \$23,000 to a candidate for district judge on November 18, 2011, and December 15, 2011, respectively. The expenditures were intended as political contributions to the candidate.
13. The respondent exceeded \$5,000 in political expenditures to support the candidate when it made its second expenditure of \$23,000 on December 15, 2011.<sup>1</sup> Thus, a notice of intent

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<sup>1</sup> The respondents’ attorney argued that the expenditure limits only apply to political expenditures that are not made in the form of political contributions to a candidate. However, a payment of money made to a candidate with the intent that it be used in connection with a campaign constitutes both a political expenditure and a political contribution by the contributor, according to how those terms are defined. Title 15 of the Election Code uses the term “direct campaign expenditure” to refer to those political expenditures that are not also political contributions. Elec. Code § 254.261, Ethics Commission Rules § 20.1(5). The JCFA also distinguishes between *contributions* made to a judicial candidate and *direct campaign expenditures* made on behalf of a candidate with respect to a separate expenditure limit that is not at issue in this complaint. *See* Elec. Code § 253.171(a). The third-party expenditure limit at issue in this complaint does not contain such a distinction, and there is no indication from the statutory language that the legislature intended the third-party limit to apply only to direct campaign expenditures. At the time of the expenditures at issue, the commission’s campaign finance guide for judicial candidates also stated that the third-party limits applied to a person’s total expenditures for supporting a candidate and *included actual contributions* to the candidate. *But see* Ethics Advisory Opinion No. 281 (1995) (stating generally that a transfer of funds from a specific-purpose committee to a judicial

was required to be filed by that date. A notice of intent for the primary election was not filed. Therefore, there is credible evidence that the respondent violated section 253.163(a) of the Election Code by exceeding the expenditure limit at a time when a required declaration of intent had not been filed.

### **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 this sworn complaint as to the respondent Texans For Good Leaders PAC.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that: 1) a person other than a candidate, officeholder, or the principal political committee of the state executive committee or a county executive committee of a political party may not make political expenditures that in the aggregate exceed \$5,000 for the purpose of supporting or opposing a candidate for a judicial office other than a statewide judicial office or assisting such a candidate as an officeholder unless the person files a written declaration of the person's intent to make expenditures that exceed the limit; and 2) a declaration must be filed not later than the earlier of the date the person makes the political expenditure that causes the person to exceed the limit, or the 60th day before the date of the election in connection with which the political expenditures are intended to be made. The respondent agrees to comply with these requirements of the law.

### **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.

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candidate is both an expenditure by the committee and a contribution to the candidate, but that such a transfer is not subject to contribution limits under the JCFA).

**VII. Sanction**

After considering the nature, circumstances, and consequences of the violation described under Sections III and IV, and after considering the sanction necessary to deter future violations, the commission imposes a \$1,200 civil penalty.

**VIII. Order**

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-3120380 as to the respondent.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Texans For Good Leaders PAC, Respondent

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

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director