

# TEXAS ETHICS COMMISSION

<b>IN THE MATTER OF</b>	§	<b>BEFORE THE</b>
	§	
<b>JENNIFER BROWN,</b>	§	
<b>CAMPAIGN TREASURER,</b>	§	<b>TEXAS ETHICS COMMISSION</b>
<b>BATTLEGROUND TEXAS,</b>	§	
	§	
<b>RESPONDENT</b>	§	<b>SC-3140131</b>

## **ORDER and AGREED RESOLUTION**

### **I. Recitals**

The Texas Ethics Commission (Commission) met on March 27, 2018, to consider sworn complaint SC-3140131. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of section 254.031 of the Election Code, a law administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission proposed this resolution to the respondent.

The respondent contends Battleground Texas has not violated any provision of the Election Code and at all times properly reported all of its activities in a manner that is transparent and open to the public. However, for the sake of resolving this matter, without further proceedings, the respondent accepts the Commission's proposal of resolution without any admission of wrongdoing of any kind.

### **II. Allegation**

The complaint alleged the respondent, as campaign treasurer of Battleground Texas did not properly report political contributions, pledges, or credits on the January 2014 semiannual report.

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

The Commission believes that the following available credible evidence supports the following findings of fact:

1. Battleground Texas (Battleground), a general-purpose committee, Wendy Davis (Davis), and the specific-purpose committee that Davis established and controlled, Wendy R. Davis for Governor Inc., (Davis PAC), agreed to hold joint fundraisers to raise money for the November 2014 general election.
2. In order to carry out joint-fundraising activity, Davis, Davis PAC, and Battleground agreed to form a political committee that would allow Davis (through her campaign and specific-purpose committee) and Battleground to share equally the expenses for and

contributions raised from their joint-fundraising efforts. They named the general-purpose political committee they formed to handle the joint-fundraising efforts, "Texas Victory Committee – A Joint Project of Wendy Davis for Governor Inc. and Battleground Texas" (TVC).

3. Aimee Boone (Boone) acted as treasurer of TVC and the respondent (who was also the campaign treasurer of Battleground) as TVC's assistant campaign treasurer. Davis, the respondent, and another individual were the decision makers for TVC regarding the acceptance or rejection of political contributions and the making of political expenditures.
4. Battleground, Davis PAC, and TVC verbally agreed that Battleground and Davis PAC would each pay 50 percent of the fundraising expenditures incurred by TVC and would each receive 50 percent of the political contributions collected by TVC on behalf of the two political committees at the fundraisers.
5. During the January 2014 semiannual reporting period, Davis and Battleground hosted at least eight joint fundraisers. Invitations to the joint fundraisers instructed the contributor to make checks payable to TVC; however, the invitations also indicated that each contribution would be "split equally between Wendy R. Davis for Governor, Inc. and Battleground Texas," and "[a]ny contributor may designate their contribution for a particular participant" by sending an email. Boone, Davis, and the respondent indicated that they are not aware of anyone making a contribution that was not intended to be equally divided between Battleground and Davis PAC.
6. TVC reported on its own campaign finance report all the political contributions it received at fundraisers during the January 2014 semiannual reporting period.
7. The respondent stated that because the time period at issue in this complaint was at the early stages of the campaign, TVC did not have any money. Battleground and Davis PAC covered all of the upfront joint-fundraising expenses by directly paying vendors and staff. Battleground and Davis PAC reported the actual payees of joint-fundraising expenditures on their respective January 2014 semiannual campaign finance reports. TVC reported expenditures to Davis PAC and Battleground to represent that TVC had incurred the obligation to make future reimbursements to Davis PAC and Battleground.
8. TVC reported making the following expenditures to Battleground on Schedule F (used to report political expenditures from political funds) of its January 2014 semiannual report. These expenditures represent the unpaid incurred obligations to Battleground by TVC. (The Commission had not yet created Schedule F2, used for unpaid incurred obligations).

<b>Payee:</b>	<b>Date</b>	<b>Amount</b>	<b>Description</b>
Battleground Texas	12/31/2013	\$97.00	Telephone services, expenditures incurred, payment pending
Battleground Texas	12/31/2013	\$910.31	staff travel for fundraising, expenditure incurred, payment pending
Battleground Texas	12/31/2013	\$43.29	Invitation printing for fundraising event, expenditure incurred, payment pending
Battleground	12/31/2013	\$1,308.28	Fundraising staff salaries, expenditure incurred,

Texas			payment pending
Battleground Texas	12/31/2013	\$34,451.50	Fundraising consultant, expenditure incurred, payment pending
<b>Total</b>		<b>\$36,810.38</b>	

9. TVC reported making the following expenditures to "Wendy Davis" on Schedule F of its January 2014 semiannual report. These expenditures represent the unpaid incurred obligations to Davis PAC from TVC.

<b>Payee:</b>	<b>Date</b>	<b>Amount</b>	<b>Description</b>
Wendy Davis	12/31/2013	\$21,440.38	Candidate and staff travel for fundraising events, expense incurred, payment pending
Wendy Davis	12/31/2013	\$3,156.50	Database software for reporting and fundraising events, expense incurred, payment pending
Wendy Davis	12/31/2013	\$6,447.65	Event venues, equipment rental for fundraising events, expenditure incurred, payment pending
Wendy Davis	12/31/2013	\$848.57	Food and beverage for fundraising events, expense incurred, payment pending
Wendy Davis	12/31/2013	\$102.96	Office supplies and copies, expense incurred, payment pending
Wendy Davis	12/31/2013	\$79,357.79	Salaries and contractor payments for fundraising, staff expense incurred, payment pending
<b>Total</b>		<b>\$111,353.85</b>	

10. The respondent stated that "it would violate the donors' intent for some portion of their contributions to remain with TVC to be used to cover fundraising expenses" and "[h]aving both Committees pay TVC for their share of the fundraising expenses solves this problem and ensures that a donor's entire contribution is transferred to the Committees." TVC transferred the political contributions to Davis PAC and Battleground in March of 2014. Upon making this transfer, TVC provided Battleground and Davis PAC a list of contributors in order for Battleground and Davis PAC to include the name, address, and amount of contribution for each of the actual contributors when Battleground and Davis PAC filed their campaign finance reports. TVC reported all of the contributors when it received their contributions, and when those funds were transferred to Battleground and Davis PAC, they then reported receiving them, also noting which contributors were the underlying source of the funds.
11. Battleground and Davis PAC reported receiving a reimbursement from TVC for the exact amount of the reported expenditures on schedule K (used to report reimbursement, refunds, and credits) on their July 2014 semiannual reports.
12. Upon receiving the transfer from TVC on March 7, 2014, Davis PAC and Battleground reported receiving half the contributions on their respective July 2014 semiannual reports. The July 2014 semiannual reports by Davis PAC and Battleground disclosed contributions from the individuals initially reported by TVC in the January 2014 semiannual report.

13. For example, if John Doe gave \$500 to the TVC in the January 2014 semiannual reporting period, John Doe would appear in three places:
  - 1) on TVC's January 2014 semiannual report as a \$500 political contribution from John Doe;
  - 2) on Davis PAC's July 2014 semiannual report as a \$250 political contribution from John Doe; and
  - 3) on Battleground's July 2014 semiannual report as a \$250 political contribution from John Doe.
14. While it might appear to some that John Doe contributed \$1,000 to the Davis/Battleground campaign, when, in fact, he only contributed a total of \$500, Davis PAC and Battleground noted on their reports that the contributors' funds were transferred from TVC and wanted to include the contributors' names so that there was no question regarding their transparency.
15. The respondent stated in response to the complaint that all activity was reported in full compliance with the law.

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

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

1. A campaign contribution is defined, in relevant part, as a contribution to a candidate or political committee that is offered or given *with the intent* that it be used for elective office. ELEC. CODE § 251.001(3) (emphasis added).
2. It is a violation of section 253.001 of the Election Code for a person to make a political contribution in the name of or on behalf of another unless the person discloses in writing to the intended recipient the name and address of the person actually making the contribution in order for the recipient to make the proper disclosure. *Id.* § 253.001(a).
3. A person must decide to reject a contribution by the last day of the reporting period in which it is received, otherwise it is deemed accepted. *Id.* § 254.034.
4. Each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. *Id.* § 254.031(a)(1).
5. Each campaign finance report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6).

6. Here, there is no dispute that the contributors who gave money to TVC intended for their contributions to be shared equally between Davis PAC and Battleground. TVC was explicit in its solicitations that it was collecting contributions to give to Battleground and Davis PAC. As contemplated by section 253.001 of the Election Code, TVC provided Battleground and Davis PAC the information about the contributors for Battleground and Davis PAC to include on their reports. The respondent even stated in response that it would violate donors' intent for any portion of the contributions initially received by TVC to remain with TVC. Battleground and Davis PAC ultimately reported the actual contributors on their July 2014 semiannual reports upon receiving the transfer of contributions from TVC.
7. The point of contention is whether Battleground and Davis PAC timely reported political contributions received by TVC during the January 2014 semiannual reporting period. The evidence shows TVC was acting as an agent of Davis PAC and Battleground for joint-fundraising purposes. Battleground and Davis PAC controlled TVC and it acted for their exclusive benefit. The effective control over TVC and the donor's intent support the finding that Battleground and Davis PAC constructively accepted the funds when received by TVC.<sup>1</sup>
8. For the foregoing reasons, and while it is not explicitly addressed by Texas law, Davis PAC and Battleground were entitled to about \$1.7 million each in political contributions during the January 2014 semiannual reporting period, but did not report the acceptance of these contributions until the contributions were actually transferred to them from TVC in a subsequent reporting period. Therefore, it is the view of the Commission that there is credible evidence of violations of section 254.031 of the Election Code.
9. However, the reports filed by the respondent evinced a good-faith attempt by the respondent to comply with Texas disclosure laws for a somewhat complicated and novel fundraising operation not explicitly contemplated by Texas law. It was clear from TVC's name and fundraising solicitations, which expressly stated it was a joint-fundraising operation, that TVC was raising money on behalf of Davis PAC and Battleground. TVC disclosed in a timely manner the money it collected for Davis PAC and Battleground. Davis PAC and Battleground eventually showed their share of the contributions collected by TVC by disclosing the actual contributors once TVC transferred the money. These facts all serve to mitigate the violation of section 254.031 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

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<sup>1</sup> In 1994 the Commission sought to avoid the issues that arise with double reporting of contributions from joint-fundraising activity by amending the definition of a "political committee" to expressly exclude "a group composed exclusively of two or more individual filers or political committees required to file reports under Election Code, Title 15 . . . who make reportable expenditures for a joint-activity such as a fundraiser or an advertisement." Ethics Commission Rules § 20.1(14).

to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.

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 each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of the contributions. The respondent agrees to comply with this requirement of the law.

#### **VI. Confidentiality**

This order and agreed resolution describes violations that the Commission has determined are 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. Sanction**

After considering the nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$3,000 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-3140131.

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

\_\_\_\_\_  
Jennifer Brown, Respondent

EXECUTED by the Commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Seana Willing, Executive Director