

TEXAS ETHICS COMMISSION

IN THE MATTER OF
DYRAL L. THOMAS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-32210378

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on June 27, 2023, to consider sworn complaint SC-32210378. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of Sections 254.031, 254.061(1), 254.063, and 254.064 of the Election Code and Section 20.219(3) of the Ethics Commission Rules, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaint's allegations concern the respondent's candidacy for county commissioner in Caldwell County. The complaint alleged that the respondent failed to file a campaign treasurer appointment, in violation of Section 252.001 of the Election Code, and that the respondent knowingly accepted campaign contributions or made or authorized campaign expenditures at a time when he had no campaign treasurer appointment in effect, in violation of Section 253.031(a) of the Election Code.

Concerning the campaign treasurer reports the respondent filed before the sworn complaint was filed, namely his January 2022 semiannual report, his 8-day pre-election report for the March 1, 2022 primary election, and the report he characterized as a 15th-day-after-campaign-treasurer-appointment report, the sworn complaint alleges that the respondent: 1) failed to properly report pledges of contributions that he accepted, in violation of Section 254.031(a)(1) and –(a)(6) of the Election Code and Section 20.54 of the Ethics Commission Rules; 2) failed to report contributions that he accepted, in violation of Sections 254.031(a)(1) and –(a)(6) of the Election Code; and 3) failed to cover the correct dates on the campaign finance reports, in violation of Sections 254.063 and –.064 of the Election Code.

The sworn complaint further alleges that the respondent failed to properly disclose the office he sought on his 8-day pre-election report for the March 1, 2022 primary election, in violation of Section 254.061(1) of the Election Code and Section 20.219(3) of the Ethics Commission Rules.

Finally, the sworn complaint alleges that the respondent failed to file his 30-day pre-election report for the March 1, 2022 primary election, his semiannual report due July 15, 2022, and his 30-day pre-election report for the November 8, 2022 general election, in violation of Sections 254.063(b) and 254.064(b) of the Election Code.

III. Findings of Fact and Conclusions of Law

Credible evidence available to the Commission supports the following findings of fact and conclusions of law:

1. The respondent was a successful non-incumbent candidate for Caldwell County Commissioner, Precinct 4, in the 2022 election cycle. The respondent prevailed in the March 1, 2022 primary election and the November 8, 2022 general election.

Failure to Timely File Reports

2. The sworn complaint alleged that the respondent failed to file his 30-day pre-election report for the March 1, 2022 primary election, his semiannual report due July 15, 2022, and his 30-day pre-election report for the November 8, 2022 general election.
3. The respondent filed his campaign treasurer appointment on December 10, 2021.
4. Before the sworn complaint was filed on October 17, 2022, the respondent had filed three campaign finance reports: a January 2022 semiannual report, an 8-day pre-election report for the March 1, 2022 primary election, and a report purporting to be the report owed 15 days after a campaign treasurer is appointed, pursuant to Section 254.094 of the Election Code.¹ The respondent had filed no other reports at the time the complaint was filed.
5. A candidate shall file two reports for each year. Tex. Elec. Code § 254.063(a). The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through June 30. *Id.* § 254.063(b). The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through December 31. *Id.* § 254.063(c).
6. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. Tex. Elec. Code § 254.064(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning the day the candidate's campaign treasurer appointment

¹ Section 254.094 only requires officeholders to file this report. Therefore, the respondent was not required to file the report.

- is filed or the first day after the period covered by the last report required to be filed, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b).
7. If the deadline for a report other than a special pre-election report falls on a Saturday, Sunday, or a legal state or national holiday, the report is due on the next regular business day. 1 Tex. Admin. Code § 20.21.
 8. The respondent had an opponent whose name was on the ballot in the March 1, 2022 primary election. The 30th day before election day was a Sunday, January 30, 2022. Therefore, the respondent's 30-day pre-election report for the March 1, 2022 primary election was due by the following day, Monday, January 31, 2022. *See id.*
 9. The respondent also had an opponent whose name was on the ballot in the November 8, 2022 general election. For this election, the 30th day before election day was also a Sunday, October 9, 2022. Further, the following day, Monday, October 10, 2022, was a holiday, Columbus Day. Thus, the respondent's 30-day pre-election report for the November 8, 2022 general election was due by Tuesday, October 11, 2022. *See id.*
 10. The respondent filed both his original 30-day report for the March 1, 2022 primary election and his original 30-day report for the November 8, 2022 general election on October 30, 2022. There is therefore credible evidence that the respondent failed to timely file both reports, in violation of Section 254.064 of the Election Code.
 11. Further, because the respondent filed his campaign treasurer appointment on December 10, 2021, and did not file a final report during the relevant time period, he was required to file semiannual campaign finance reports for January 2022, July 2022, and January 2023. The respondent timely filed his semiannual report due January 18, 2022.² However, the respondent's July 2022 semiannual report was due by July 15, 2022, and the respondent's January 2023 semiannual report was due by January 17, 2023. *See* Tex. Elec. Code § 254.063; 1 Tex. Admin. Code § 20.21 (extending deadlines for reports due on Saturday, Sunday, or legal state or national holiday). The respondent did not file his July 2022 semiannual report until October 30, 2022, and did not file his January 2023 semiannual report until February 2, 2023.³ There is therefore credible evidence of violations of Section 254.063 for the respondent's failure to timely file his July 2022 and January 2023 semiannual reports.

Failure to Properly Disclose Pledges, Contributions, and Expenditures

12. The sworn complaint alleged that the respondent failed to properly report pledges of contributions that he accepted, and that the respondent failed to report contributions that

² The deadline for the report was extended from Saturday, January 15, 2022, to Tuesday, January 18, 2022 due to the weekend and the Martin Luther King, Jr. Day holiday. *See* 1 Tex. Admin. Code § 20.21.

³ Shortly after filing the late January 2023 semiannual report, the respondent filed a July 2023 semiannual report that he designated a final report, thereby terminating his campaign treasurer appointment and ending his filing obligations. *See* Tex. Elec. Code § 254.065.

he accepted. Specifically, the complaint noted that the respondent disclosed accepting \$300 in pledges on the schedule subtotals, cover sheet page 3, of his original January 2022 semiannual report, but did not disclose the pledges individually on Schedule B as required by Section 20.54 of the Ethics Commission Rules. The complaint further observed that despite disclosing political expenditures from political contributions on his campaign finance reports, the respondent disclosed accepting no political contributions, but only pledges of contributions. The complaint surmised that the respondent must have accepted contributions that were not disclosed on his reports, or inadvertently disclosed contributions as pledges instead.

13. For campaign finance reports filed in 2022, each campaign finance report must include the amount of political contributions, other than political contributions that are made electronically, from each person that in the aggregate exceed \$90 and that are accepted during the reporting period by the person or committee required to file a campaign finance report, the full name and address of the person making the contributions, and the dates of the contributions. Tex. Elec. Code § 254.031(a)(1); 46 Tex. Reg. 9233 (2021) (codified at 1 Tex. Admin. Code § 18.31) (Tex. Ethics Comm'n). For reports filed in 2022, each campaign finance report must also include the amount of political expenditures that in the aggregate exceed \$190 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. Tex. Elec. Code § 254.031(a)(3); 46 Tex. Reg. 9233 (2021). Each campaign finance report must include the total amount of all political contributions accepted during the reporting period and the total amount of all political expenditures made during the reporting period. Tex. Elec. Code § 254.031(a)(6). Further, for reports filed in 2022, each campaign finance report must include the total amount or a specific listing of the political contributions of \$90 or less accepted and the total amount or a specific listing of the political expenditures of \$190 or less made during the reporting period. Tex. Elec. Code § 254.031(a)(5); 1 Tex. Admin. Code § 20.219(24)(B); 46 Tex. Reg. 9233 (2021).
14. A pledge is a contribution in the form of an unfulfilled promise or unfulfilled agreement, whether enforceable or not, to provide a specified amount of money or specific goods or services. The term does not include a contribution actually made in the form of a check. 1 Tex. Admin. Code § 20.1(1). A pledge of a contribution shall be reported on the appropriate pledge schedule for the reporting period in which the pledge was accepted and shall be reported on the appropriate receipts schedule for the reporting period in which the pledge is received. *Id.* § 20.54(b). A pledge of a contribution that is actually received in the reporting period in which the pledge was accepted, shall be reported on the contribution schedule or the loan schedule, as applicable, not on the schedule for pledges. *Id.* § 20.54(c).
15. Each campaign finance report filed with an authority other than the Commission must be in a format prescribed by the Commission. Tex. Elec. Code § 254.036(a). The form prescribed by the Commission for campaign finance reports includes a page upon which the filer is required to disclose the subtotal amount of financial activity disclosed on each individual schedule of the form, including the schedule provided for disclosure of pledges.

16. While the dates covered by the January semiannual report and the 30-day pre-election report for a subsequent March 1 primary election would not normally overlap, the respondent's original January 2022 semiannual report covered through January 15, 2022, instead of covering only the period through December 31, 2021. *See* Tex. Elec. Code § 254.063(c) (providing that the period covered by the January semiannual report ends on December 31). The period covered by the respondent's late-filed 30-day report begins on January 1, 2022, consistent with the statutory requirements. *See id.* §§ 254.063(c); 254.064(b). Therefore, the periods covered by the two reports overlap from January 1, 2022 through January 15, 2022.
17. On his original January 2022 semiannual report, the respondent disclosed accepting \$300 in pledged contributions on the portion of the schedule subtotal cover sheet for pledged contributions, but did not actually include the schedule for pledged contributions. On the respondent's 30-day pre-election report, which he did not file until after this sworn complaint was filed, he disclosed no pledged contributions, but instead disclosed accepting \$300 in unitemized contributions. The respondent confirmed to Commission staff that he had accepted no pledged contributions, and that he mistakenly disclosed the \$300 that he later disclosed as unitemized contributions on his late 30-day report as pledged contributions on his original January 2022 semiannual report.
18. The respondent mistakenly disclosed \$300 in pledged contributions that he did not accept, and failed to disclose \$300 in contributions that he actually received. There is therefore credible evidence of violations of Sections 254.031(a)(5) and 254.031(a)(6) of the Election Code and Section 20.54 of the Ethics Commission Rules concerning these funds.
19. On the respondent's corrected January 2022 semiannual report, and his late 30-day pre-election report and corrected 8-day pre-election report for the March 1, 2022 primary election, the respondent disclosed \$2,300 in itemized political contributions (Schedule A1) and a further \$250.38 in unitemized political contributions. The respondent had previously disclosed \$1,750 of the itemized political contributions as pledged contributions on his original 8-day pre-election report, but had not disclosed the other \$550 in itemized contributions, which were from the respondent's personal funds and from his business.⁴ The respondent had also disclosed \$175 of the \$250.38 in unitemized political contributions on the original 8-day report. The respondent's late-filed July 2022 semiannual report includes a further previously-undisclosed contribution of \$500 dated February 15, 2022, which was required to be disclosed on the respondent's 8-day report for the March 1, 2022 primary election. *See* Tex. Elec. Code § 254.064(c) (prescribing that 8-day pre-election report "covers the period . . . continuing through the 10th day before election day"). To the extent that these political contributions were not properly disclosed on the respondent's original reports, there is credible evidence of violations of Sections 254.031(a)(1) and –(a)(6) of the Election Code.

⁴ Records on file with the Secretary of State indicate that the respondent's business was not a corporation at the time the business made the contribution to the respondent's campaign.

20. The respondent disclosed on his corrected 8-day pre-election report for the March 1, 2022 primary election two expenditures that did not appear on his original campaign finance reports: a \$60 expenditure to the online writing utility Grammarly, and a \$32.50 expenditure to First Lockhart National Bank for “[f]ees.” The respondent also filed a corrected 8-day pre-election report for the November 8, 2022 general election, on which he disclosed expenditures totaling \$338.41 to Sam’s Club and a Mexican restaurant, which he had not disclosed on the original report. There is therefore credible evidence of violations of Sections 254.031(a)(3) and –(a)(6) of the Election Code for the respondent’s failure to disclose these expenditures on his original campaign finance reports.
21. Because there is no indication that the respondent accepted any pledges of contributions, there is no credible evidence that the respondent failed to properly report accepting pledges of contributions.

Failure to Cover Correct Dates on Campaign Finance Reports

22. The sworn complaint alleged that the respondent failed to cover the correct dates on his campaign finance reports.
23. Before the sworn complaint was filed on October 17, 2022, the respondent filed three reports. First, the respondent filed a 15th-day-after-treasurer appointment report on December 20, 2021, which covered the dates December 10, 2021, through December 20, 2021. Second, the respondent filed a January 2022 semiannual report on January 17, 2022, which covered the dates December 20, 2021, through January 15, 2022. Finally, the respondent filed an 8-day pre-election report on February 22, 2022, which covered the dates January 16, 2022, through February 21, 2022. The respondent filed no further reports until after the sworn complaint was filed on October 17, 2022.
24. As noted above, in addition to other reports, the Election Code requires candidates to file two reports for each year. *See* Tex. Elec. Code § 254.063. The second report, the January semiannual report, shall be filed not later than January 15. The report covers the period beginning July 1, the day the candidate’s campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through December 31. *Id.* § 254.063(c).
25. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. *Id.* § 254.064(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning the day the candidate’s campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b). The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.064(c).

26. Further, an officeholder who appoints a campaign treasurer shall file an additional report. *Id.* § 254.094(a). The report covers the period beginning the first day after the period covered by the last report required to be filed or the day the officeholder takes office, as applicable, and continuing through the day before the date the officeholder's campaign treasurer is appointed. *Id.* § 254.094(b). The report shall be filed not later than the 15th day after the date the officeholder's campaign treasurer is appointed. *Id.* § 254.094(c).
27. As a non-incumbent candidate for county commissioner, who did not hold any other elected office at the time he ran, the respondent was not an officeholder at the time he filed these reports. Therefore, the respondent was not required to file the fifteenth-day-after-treasurer-appointment report that officeholders must file after appointing a campaign treasurer. *See* Tex. Elec. Code § 254.094(a).
28. The respondent was instead required to file a January 2022 semiannual report and 30-day and 8-day pre-election reports for the March 1, 2022 primary election. The respondent's January 2022 semiannual report was required to cover the period beginning the day the respondent filed his campaign treasurer appointment – December 10, 2021 – through December 31, 2021. *See id.* § 254.063(c). The respondent's 30-day pre-election report was required to cover the period beginning January 1, 2022 through the 40th day before election day, January 20, 2022. *See id.* § 254.064(b). The respondent's 8-day pre-election report was required to cover the period beginning the 39th day before election day, January 21, 2022, through the 10th day before election day, February 19, 2022. *See id.* § 254.064(c).
29. The respondent's original reports did not cover these dates. There is therefore credible evidence of violations of Sections 254.063 and 254.064 of the Election Code for the respondent's failure to cover the correct dates on the reports.
30. The respondent's corrected January 2022 semiannual report and his late-filed 30-day report and corrected 8-day report for the March 1, 2022 primary election cover the correct dates.

Failure to Correctly Specify Office Sought on 8-Day Pre-Election Report

31. The sworn complaint alleged that the respondent failed to properly disclose the office sought on his original 8-day pre-election report for the March 1, 2022 primary election. On this report, the respondent stated the office he sought as "County Commissioner Pct[.] 1." The respondent actually sought election as the commissioner for precinct four.
32. In addition to other contents, each campaign finance report by a candidate must include the candidate's full name and address, the office sought, and the identity and date of the election for which the report is filed. Tex. Elec. Code § 254.061(1); 1 Tex. Admin. Code § 20.219(3).
33. Because the respondent listed the wrong office in the pertinent field on his original 8-day pre-election report, there is credible evidence of a violation of Section 254.061(1) of the Election Code and Section 20.219(3) of the Ethics Commission Rules.

34. The respondent's corrected 8-day pre-election report for the March 1, 2022 primary election correctly named the office sought by the respondent.

Alleged Failure to File Campaign Treasurer Appointment

35. The sworn complaint alleged that the respondent failed to file a campaign treasurer appointment, and that the respondent knowingly accepted campaign contributions or made or authorized campaign expenditures at a time when he had no campaign treasurer appointment in effect.
36. Each candidate and each political committee shall appoint a campaign treasurer. Tex. Elec. Code § 252.001. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. *Id.* § 253.031(a).
37. At the time the sworn complaint was filed, no campaign treasurer appointment for the respondent was posted on the Caldwell County Election Commission's Internet portal. However, the respondent's campaign treasurer appointment appeared on the portal after the sworn complaint was filed. This treasurer appointment was dated December 10, 2021, and was marked filed as of December 10, 2021, by a person with the filing authority.
38. The respondent's campaign finance reports disclose no activity before December 10, 2021.
39. Because the facts indicate that the respondent filed his campaign treasurer appointment before he accepted any contributions or expenditures or undertook any other campaign activity, there is credible evidence of no violation of Sections 252.001 or 253.031(a) of the Election Code.

IV. 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 findings of fact and conclusions of law described under Section III, and consents 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 a candidate shall file two reports for each year. The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through June 30. The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the candidate's campaign treasurer appointment

is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through December 31.

4. The respondent acknowledges that, in addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed, as applicable, and continuing through the 40th day before election day. The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day.
5. The respondent further acknowledges that each campaign finance report must include: 1) the amount of political contributions, other than political contributions that are made electronically, from each person that in the aggregate exceed the applicable itemized reporting threshold and that are accepted during the reporting period by the person required to file a campaign finance report, the full name and address of the person making the contributions, and the dates of the contributions; 2) the amount of political expenditures that in the aggregate exceed the applicable itemized reporting threshold and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures; 3) the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period; 4) the total amount or a specific listing of the political contributions of less than the itemized reporting threshold accepted and the total amount or a specific listing of the political expenditures of less than the itemized reporting threshold made during the reporting period; and 5) the candidate's office sought.
6. Finally, the respondent acknowledges that a pledge is a contribution in the form of an unfulfilled promise or unfulfilled agreement, whether enforceable or not, to provide a specified amount of money or specific goods or services. The respondent acknowledges that a contribution both promised and received during the same reporting period shall not be included on the schedule of the campaign finance report form for pledges, but instead on the schedule for contributions or loans, as applicable.
7. The respondent agrees to fully and strictly comply with the above requirements of law.

V. 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.

VI. Sanction

The Commission shall consider the following factors in assessing a sanction: 1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation; 2) the history and extent of previous violations; 3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation; 4) the penalty necessary to deter future violations; and 5) any other matters that justice may require. Tex. Gov't Code § 571.177.

In total, excluding those contributions that the respondent disclosed as pledged contributions, the respondent failed to disclose \$1,125.38 in contributions accepted and \$92.50 in expenditures made before the March 1, 2022 primary election. The respondent also failed to disclose \$338.41 in political expenditures on his original 8-day report for the November 8, 2022 general election. The respondent did not correct these deficiencies until after the sworn complaint was filed, after the November general election. The respondent further disclosed \$2,098 in contributions accepted and \$1,235.69 in expenditures made on his July 2022 semiannual report and his 30-day pre-election report for the November 8, 2022 general election, which he did not file until October 30, 2022, only nine days before the election.

The respondent has no previous violations, and has voluntarily cooperated in Commission staff's investigation. Further, there is no reason to believe that the respondent deliberately concealed or obscured activity. However, the violations caused meaningful harm to disclosure, which justifies imposition of a civil penalty. After considering the nature, circumstances, and consequences of the violations described under Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$400 civil penalty.

VII. 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-32210378.

AGREED to by the respondent on this _____ day of _____, 2023.

Dyral L. Thomas, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
J.R. Johnson, Executive Director