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TEXAS ETHICS COMMISSION

IN THE MATTER OF

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BEFORE THE

WARREN S. "SCOTT" BEARD,

TEXAS ETHICS COMMISSION

RESPONDENT

SC-32304109, SC-32304144,
SC-32306193, and SC-32307217



ORDER and AGREED RESOLUTION

I. RECITALS

The Texas Ethics Commission (TEC) met on June 18, 2024, to consider sworn complaints SC-32304109, SC-32304144, SC-32306193, and SC-32307217. A quorum of the TEC was present. The TEC determined that there is credible evidence of violations of Sections 253.003, 253.0351, 253.094, 254.031, 254.036, and 255.006 of the Election Code and Sections 12.61 and 20.61 of the TEC Rules, laws administered and enforced by the TEC. To resolve and settle this complaint without further proceedings, the TEC adopted this resolution.

II. ALLEGATIONS

Sworn complaint SC-32304109 alleged that: 1) as president and director of FountainGate Fellowship, a non-profit corporation, the respondent made in-kind political contributions to his campaign for Abilene City Council, in violation of Sections 253.003(a), 253.094(a), and 253.095 of the Election Code; 2) as candidate for Abilene City Council, the respondent knowingly accepted in-kind contributions from FountainGate Fellowship, a non-profit corporation, in violation of Sections 253.003(b) and 253.094 of the Election Code; and 3) as a candidate for Abilene City Council, the respondent failed to report in-kind contributions from FountainGate Fellowship, in violation of Sections 254.031(a)(1) and -(a)(6) of the Election Code.

Concerning the respondent's semiannual report filed on January 13, 2023, his 30-day pre-election report for the May 6, 2023 election, or both reports, sworn complaint SC-32304144 alleged that the respondent: 1) failed to state the total contributions maintained as of the last day of the reporting periods, in violation of Section 254.031(a)(8) of the Election Code; 2) failed to sign the reports where indicated by the jurat language swearing that the reports are true and correct and acknowledging potential criminal penalties for perjury, in violation of Section 254.036(h) of the Election Code; 3) failed to report contributions accepted and expenditures made on the appropriate schedules of the campaign finance report form, in violation of Section 254.036(a) of the Election Code; 4) disclosed the deposit of personal funds in an account or accounts in which political contributions are held as a political contribution rather than as a loan, in violation of Section 253.0351 of the Election Code and Section 20.63 of the TEC Rules; and 5) failed to properly

disclose the purpose of political expenditures, in violation of Section 254.031(a)(3) of the Election Code and Section 20.61 of the TEC Rules.

Concerning only the respondent’s semiannual report filed on January 13, 2023, sworn complaint SC-32304144 alleged that the respondent failed to disclose the correct date for an expenditure to “Moose Mountain,” in violation of Sections 254.031(a)(3) and 254.035 of the Election Code.

Concerning only the respondent’s 30-day pre-election report for the May 6, 2023 election, sworn complaint SC-32304144 alleged that the respondent: 1) failed to disclose the addresses for two political contributions, in violation of Section 254.031(a)(3) of the Election Code; 2) failed to properly disclose the addresses of political expenditure payees, in violation of Section 254.031(a)(3) of the Election Code; 3) failed to properly disclose an expenditure for “printing expense[s],” which the respondent disclosed as a payment to a certain Mike Stephens, in violation of Section 254.031(a)(3) of the Election Code; and 4) failed to disclose the correct date for a political expenditure to “10:9 Designs,” in violation of Section 254.031(a)(3) of the Election Code.

Sworn complaint SC-32304144 further alleged that the respondent failed to include the word “for” to clarify that he was not a member of the city council of Abilene in his billboards, yard signs, mailers, hats, or other political advertising or campaign communications, in violation of Section 255.006 of the Election Code.

Sworn complaint SC-32306193 alleged, concerning a fundraising dinner to benefit his campaign for Abilene’s city council, that the respondent knowingly accepted monetary and in-kind political contributions from corporations, in violation of Section 253.003(b) of the Election Code.

Sworn complaint SC-32307217 alleged, concerning the respondent’s campaign finance reports, that the respondent: 1) failed to properly disclose political contributions from the Abilene Fire Fighters Association Political Action Committee, in violation of Sections 254.031(a)(1), –(a)(1-a), and –(a)(6) of the Election Code; and 2) failed to disclose receiving notice of support from the Abilene Fire Fighters Association Political Action Committee under Section 254.161 of the Election Code, in violation of Section 254.061(3) of the Election Code.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Introductory Facts

1. At all times relevant to the complaints, the respondent was the senior pastor at FountainGate Fellowship, a church in Abilene, Texas (“FountainGate”). The respondent was also president and director of FountainGate. The respondent was an unsuccessful non-incumbent candidate for Abilene’s city council in the May 6, 2023 election.

B. Corporate Contribution Allegations

2. Sworn complaint SC-32304109 identifies a number of apparent in-kind contributions from FountainGate to the respondent’s campaign. Many of these relate to the respondent’s use of FountainGate premises for campaign activities. These activities included storing, distributing, and displaying the respondent’s campaign signs, filming campaign videos, and conducting an interview with a local media outlet. The complaint alleges that these

were unlawful corporate contributions, that the respondent violated the law in his role with FountainGate by making corporate political contributions, and that the respondent violated the law in his role as a candidate by accepting the contributions.

3. Sworn complaint SC-32304109 further alleges that the respondent failed to disclose the identified in-kind contributions on his campaign finance reports, in violation of Section 254.031 of the Election Code.
4. Sworn complaint SC-32306193 identifies apparent monetary and in-kind contributions in connection with a fundraising dinner that the respondent held for his campaign. This complaint alleges that the respondent unlawfully accepted the contributions in his role as candidate. Unlike with sworn complaint SC-32304109, this complaint does not allege that the respondent failed to disclose the identified contributions on his campaign finance reports.
5. TEC staff's investigation confirms that the respondent accepted corporate contributions from FountainGate as a candidate for Abilene's city council. The respondent made many of these corporate contributions to his own campaign in his role as president, director, and senior pastor of FountainGate. Finally, the available evidence indicates that as a candidate, the respondent accepted political contributions from other incorporated churches.

i. Nature of Contributions from FountainGate

6. FountainGate was incorporated under the Texas Non-Profit Corporation Act under another name in 1975, and assumed its current official name, FountainGate Fellowship, by a 2003 amendment to its articles of incorporation. The respondent signed the 2003 amendment in his capacity as president of the corporation.
7. A corporation or labor organization may not make a political contribution that is not authorized by Subchapter D of Title 15 of the Election Code. Tex. Elec. Code § 253.094(a). This prohibition applies to corporations that are organized under, among other legal authorities, the Texas Non-Profit Corporation Act and Texas Nonprofit Corporation Law. *Id.* § 253.091.¹
8. Further, a person may not knowingly make a political contribution in violation of Chapter 253 of the Election Code, which includes Section 253.094(a)'s prohibition of corporate contributions. Tex. Elec. Code § 253.003(a). Nor may a person knowingly accept a political contribution the person knows to have been made in violation of Chapter 253 of the Election Code. *Id.* § 253.003(b).
9. "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. Tex. Elec. Code § 251.001(2). "Campaign contribution" means a contribution to a candidate or political committee that is offered or

¹ The Texas Nonprofit Corporation Law replaced the Texas Non-Profit Corporation Act following Texas's codification of its business organizations law into the Texas Business Organizations Code. See HB 1156, 78th R.S. (2003).

given with the intent that it be used in connection with a campaign for elective office or a measure. *Id.* § 251.001(3). “Political contribution” means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5). “In-kind contribution” means a contribution of goods, services, or any other thing of value that is not money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make the contribution. *Id.* § 251.001(21).

10. As a corporation incorporated under the Texas Non-Profit Corporation Act, FountainGate is subject to Section 253.094(a)’s prohibition on corporate contributions. As the leader of FountainGate, the respondent was prohibited from making political contributions in violation of this prohibition. *See* Tex. Elec. Code § 253.003(a). As a candidate for city council, the respondent could not knowingly accept a political contribution that he knew to have been made in violation of the corporate contribution prohibition. *Id.* § 253.003(b). These restrictions were not only applicable to monetary contributions, but apply to a contribution of goods, services, or any other thing of value that is not money. *Id.* § 251.001(21).
11. Further, on November 1, 2022, before the events at issue in the sworn complaints, the respondent filed his campaign treasurer appointment. In his campaign treasurer appointment, the respondent acknowledged that he was “aware of the restrictions in Title 15 of the Election Code on contributions from corporations and labor organizations.” As signer of the 2003 amendment that renamed the corporation FountainGate, the respondent would also have known of FountainGate’s corporate status.

ii. Distribution and Display of Signs on Corporate Premises

12. FountainGate calls the building at which it holds worship services the “worship center.” FountainGate also operates a small office in a freestanding building a short distance from the worship center (the “church office”). The worship center and the church office are located on separate parcels, at opposite ends of a long residential block.
13. As discussed above, individuals may not knowingly make corporate contributions, nor may candidates accept prohibited campaign contributions. Tex. Elec. Code §§ 253.003, 253.094.
14. Further, 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 the applicable itemized reporting threshold 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). The itemized disclosure threshold for contributions accepted was \$90 for 2022 and \$100 for 2023. 46 Tex. Reg. 9233 (2021) (codified at 1 Tex. Admin. Code § 18.31) (Tex. Ethics Comm’n) (establishing inflation-adjusted reporting thresholds for the 2022 calendar year); 47 Tex. Reg. 6821 (2022) (establishing reporting thresholds for 2023 calendar year). Each campaign finance report must also include the amount of political contributions that are made electronically 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-a).

a. Distribution of Signs

15. In a video that he posted to Facebook on February 7, 2023, the respondent asked viewers to pick up his campaign signs at an address that he later confirmed to be FountainGate's office (the church office). Further, in replies to their Facebook comments, the respondent encouraged supporters to pick up his campaign signs, or to buy campaign hats, at this address.
16. In a Sunday, March 12, 2023 video, at the end of a sermon he delivered at FountainGate's worship center, the respondent asked attendees to collect his campaign signs in the foyer of the worship center, urging them to "put [a sign] in your yard." The video appeared on FountainGate's YouTube channel, and in response to TEC staff's written questions, the respondent confirmed that it was uploaded as part of FountainGate's regular practice of posting sermons.
17. According to the Election Code, any transfer of a thing of value that is offered or given with the intent that it be used in connection with a campaign for elective office is a campaign contribution. *See* Tex. Elec. Code § 251.001. As documented in the February 7, 2023, and March 12, 2023 videos, and in his Facebook comments, the respondent used the worship center and the church office to distribute his campaign signs and hats. In Ethics Advisory Opinion No. 336, the requestor asked the TEC whether by allowing a candidate to distribute their campaign materials to their employees, a corporation would make a prohibited corporate contribution. Tex. Ethics Comm'n Op. No. 336 (1996) (superseded on other grounds by statutory amendment). The TEC opined that by doing this without extending an equal opportunity to other candidates, "the corporation would unquestionably be making a prohibited campaign contribution." *Id.* While the respondent distributed campaign materials to congregants rather than employees, he used corporate-owned facilities for the same prohibited purpose. Thus, as FountainGate's president, director, and senior pastor, the respondent made a corporate contribution by allowing the use of the church's facilities for campaign purposes. *See also In re Williams*, SC-32008159 (December 1, 2020) (finding a violation for corporate in-kind contribution based on use of facilities). There is, therefore, credible evidence that the respondent violated Sections 253.003(a) and 253.094 of the Election Code.
18. Further, as the involved candidate, the respondent accepted these prohibited corporate contributions. The respondent knew that the signs were campaign signs, and that FountainGate was a corporation. Having signed a campaign treasurer appointment in which he acknowledged the corporate contribution ban, the respondent also knew that the contributions were illegal. Therefore, the respondent knowingly accepted political contributions that he knew were made in violation of the corporate contribution ban, in violation of Section 253.003(b) of the Election Code.

b. Posting of Signs

19. The complainant also included with the sworn complaint photographs of the respondent's campaign signs posted at both the worship center and the church office. The complaint alleged that by placing the signs or allowing them to be placed on corporate property, the respondent violated the corporate contribution prohibitions.
20. The complaint included one photo of a sign posted at the worship center, and one photo of a sign posted at the church office.² According to Google street view photographs, the photograph of the worship center shows the building from Willis Street, which forms the parcel's western boundary, facing in a northeastern direction from the southern end of the parcel's western edge. The photograph shows the sign in a grass lawn between the sidewalk and the parking lot, along the parcel's western side. The photograph of the church office shows a partial view of the building from Willis Street, facing southeast, in which the respondent's sign is displayed on a grass lawn between the sidewalk and a carport attached to the building, along the parcel's western edge.
21. The respondent, in a video dated March 29, 2023, observed that his sign was not the only sign "that's up at FountainGate." The respondent followed this with the observation that the church "has not been approached by any other candidate to add their signs." The respondent then invited all other candidates to post their signs on their property, subject to the condition that signs must be no less than ten feet away from the roadway. First, each of the respondent's signs was posted within a few feet of the roadway, contrary to the condition that the respondent imposed on the other candidates' signs. Further, the respondent has not suggested that he extended this invitation to other candidates before his March 29, 2023 announcement. The complainant has confirmed that he saw no other candidates' signs on FountainGate's premises between March 9, 2023, the date he first saw the signs, and March 29, 2023. The complainant indicated that while another individual took the photos that were attached to the complaint, the photos accurately reflect the worship center and church office as they appeared on these dates. The complainant included further photographs that he himself took on March 9, 2023, which show the respondent's signs identified by the complaint (and yet more of the respondent's signs) but no signs promoting other candidates.
22. In his initial response to the complaint and his responses to TEC staff's written questions, the respondent denied that the signs were displayed to promote his campaign, and claimed that because the signs were placed in the public right-of-way, they were not on FountainGate's property. However, TEC staff's examination of public property records, which include licensed surveys of both the worship center and church office properties, revealed that no easements, public or private, exist in the locations where the signs were located.
23. The property records include a 2003 declaration of easements executed by the grantor who had subdivided the worship center property. The worship center occupies a former Food

² The sworn complaint included a third photograph of a sign that the respondent had posted on his Facebook page. However, this photograph covers too narrow a view to clearly identify where it was taken.

Lion grocery store. In the declaration of easements, the grantor carved out much of the former Food Lion's parking lot into a separate parcel, to be sold to Walgreens for the construction of a drug store. The declaration of easements created access easements for the benefit of both resulting parcels. According to an included map, an access easement connects the Walgreens parcel to a parking lot entrance that is within a few yards of the political sign photographed by the complainant. This access easement extends precisely to the edge of the sidewalk, which is labeled on the map with the words "existing sidewalk." The property line of the neighboring parcel to the south lines up precisely with the edge of the sidewalk and the limit of the access easement. While the map identifies both pre-existing easements and easements created by the declaration, no easement covers the grassy area in which the respondent placed his campaign sign, which is within the property line suggested by: 1) the end of the access easement, which would be worthless if it did not connect with the public road; 2) the edge of the sidewalk, and 3) the edge of the adjacent property, which lines up ruler-straight with the end of the easement and the edge of the sidewalk.

24. The property records for the church office include both the plat from the original 1953 subdivision of the area and a 1993 replat. Both plats were drawn up by licensed surveyors, and neither discloses the existence of any public easement where the sign identified in the sworn complaint was located. Power lines and hardware identified by the respondent as being in a public easement appear to actually be located in a back alley that was dedicated to the public at the time of the neighborhood's original subdivision. On the street-facing side of the property where the respondent posted a campaign sign, all public infrastructure is on or above the sidewalk, which appears to belong to the public. The campaign sign was posted on the grass, on which no utilities hardware or public conveniences encroach.
25. Therefore, public property records contradict the respondent's assertion that he placed the signs within a public easement not belonging to FountainGate.
26. However, even if the signs were in a public easement, they would still be on FountainGate's corporate property, in violation of the law. Property subject to an easement still belongs to the owner of the servient estate. As the relevant case law notes, "[a]n 'easement' is a right of use over *another's* property." *Green v. Richard D. Davis, L.L.P.*, 593 S.W.3d 842, 848-49 (Tex. App.—Houston [14th Dist.] 2019, pet. denied) (emphasis added); *accord Cecola v. Ruley*, 12 S.W.3d 848, 852 (Tex. App.—Texarkana 2000, no pet.). Therefore, real property of FountainGate that is subject to a public easement still belongs to FountainGate.
27. Further, the respondent has no legal right to place campaign signs in a roadside easement. The Transportation Code prohibits the placement of signs in the right-of-way of a public road unless specifically authorized by other state law. Tex. Transp. Code § 393.002. Concerning city-maintained roads, the Transportation Code prohibits the placement of signs in the right-of-way unless the placement is authorized by a municipality. *Id.* § 393.0025. Abilene's city code does not authorize the placement of any encroachment in a street, sidewalk, or other public way without a permit. *See* Abilene, Tex., Code of Ordinances § 29-91.

28. Because the respondent placed the campaign signs on FountainGate's property not subject to a public easement, and because even if an easement existed, only FountainGate's ownership of the property could provide a legal basis for the respondent's use of land, the respondent's placement of his campaign signs at the worship center and at the church office was an in-kind contribution of corporate resources to his campaign. The respondent placed the signs acting both as the head of FountainGate and as a candidate for public office. Therefore, concerning the respondent's display of the signs on FountainGate's property, there is credible evidence of violations for making corporate campaign contributions, in violation of Sections 253.003(a) and 253.094 of the Election Code, and for accepting corporate campaign contributions, in violation of Section 253.003(b) of the Election Code.

iii. Video Filming and Production with Corporate Resources

29. Sworn complaint SC-32304109 alleges that the respondent used FountainGate's physical facilities, employee time, and technical resources to produce his campaign videos. The complaint identifies five different campaign-related videos that were filmed on FountainGate's premises: one at the worship center, and four at the church office. Further, the complaint notes that one of the videos was uploaded to FountainGate's YouTube channel.
30. In his responses to TEC staff's written questions, the respondent does not deny that the five videos were filmed on FountainGate's premises.
31. FountainGate maintains a YouTube channel, to which it posts video recordings of church services and sermons. These videos are professionally shot and edited, with stage lighting and multiple camera angles. FountainGate's website lists one Vince Nigro as the corporation's "creative and media pastor." Vince Nigro appears in at least one of the respondent's campaign Facebook pictures (modeling the respondent's campaign hats), and called the TEC with a campaign finance inquiry on the respondent's behalf.³
32. The video at the worship center was part of a recording of one of the respondent's sermons. FountainGate uploads each of these videos to its website. In the sermon video, the respondent asks congregants to pick up his campaign signs in the worship center's lobby, and to put them in their yards. In his response to TEC staff's written questions, the respondent confirms that this video was uploaded as part of this regular FountainGate practice. Because the respondent, acting both as corporate head and candidate, used FountainGate's corporate resources, including the worship center facility, employee time, and video production resources, to prepare this video and upload it to FountainGate's YouTube channel, there is credible evidence of violations of Sections 253.003(a), 253.003(b), and 253.094 of the Election Code. *See* Tex. Ethics Comm'n Op. No. 503 (2012) (observing that video production services may constitute an in-kind contribution).
33. Three of the other videos were campaign videos recorded on the church office premises, either in the respondent's office or just outside the building. In one video, the respondent urges supporters to pick up his campaign signs at the church office. In the two other videos,

³ For further discussion of Mr. Nigro's inquiry, see Part VI below.

the respondent addresses campaign controversies. All three videos contain express advocacy in support of the respondent's candidacy. Two of the three videos contain a political advertising disclosure statement pursuant to Section 255.001 of the Election Code, and two of the three videos contain the respondent's campaign logo (on a hat and on a large sign). The three videos merely depict the respondent speaking to the camera, and unlike the sermon video are not obviously professionally produced. However, because the respondent used the church office premises to record the videos, premises to which he had access because of his role with the church and which he used in his capacity as a candidate, there is credible evidence of violations of Sections 253.003(a), 253.003(b), and 253.094 of the Election Code as to these three videos.

34. The other video included with the complaint was a television news segment concerning the respondent's campaign controversies, in which the respondent took a reporter's interview at the church office. As with the other four videos, the respondent used FountainGate's premises for this interview. In his response to TEC staff's written questions, the respondent claimed that the journalist requested that the interview take place at the church office. However, the respondent consented to this request. Therefore, there is credible evidence of violations of Sections 253.003(a), 253.003(b), and 253.094 of the Election Code as to this video as well.

iv. Fundraising Dinner

35. The respondent held a fundraising dinner for his campaign on April 2, 2023. Sworn complaint SC-32306193 identified four monetary contributions and one in-kind contribution related to the fundraising dinner on the respondent's 8-day pre-election report.
36. The complaint included a flyer promoting the April 2, 2023 fundraising dinner.

a. Contributions from Other Incorporated Churches

37. Three of the monetary contributions were from other churches: \$200 from Fountain Gate Merkel, \$400 from Remnant Church, and \$200 from "Hope Chapel Foursquare Abilene." According to the flyer promoting the dinner, the respondent priced tickets to the fundraising dinner at \$50 per ticket or \$400 to reserve a table. In response to TEC staff's written questions, the respondent confirmed that the churches had made these contributions to reserve seats or tables at the dinner.
38. Fountain Gate Merkel is a church in Merkel, Texas. It is a Texas nonprofit corporation, and is separate from FountainGate Fellowship in Abilene.
39. Remnant Church is located in Abilene, Texas, and is also a Texas nonprofit corporation.
40. The church identified as "Hope Chapel Foursquare Abilene" on the respondent's report operates as Hope 4 Life Church in Abilene, Texas. According to its website, it was formerly known as Abilene Hope Chapel. According to records on file with the Texas Secretary of State, Abilene Hope Chapel is an assumed name of the International Church of the Foursquare Gospel, a California nonprofit corporation.

41. As noted above, a corporation or labor organization may not make a political contribution that is not authorized by Subchapter D of Title 15 of the Election Code. Tex. Elec. Code § 253.094(a). This prohibition applies to corporations that are organized under, among other legal authorities, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, or the law of another state or nation. *Id.* § 253.091.
42. In his response to the sworn complaint, the respondent claimed that when he became aware that these were potentially corporate contributions, he returned the money. The respondent asserted that he made a determination that the contributions should be refused on April 25, 2023, before the end of the reporting period. The respondent attached copies of the checks by which he returned the contributions.
43. Section 254.034(a) of the Election Code requires a candidate to make a determination to accept or refuse a contribution before the end of the reporting period, and provides that if no determination is made before the end of the reporting period, the contribution is deemed accepted by operation of law. However, in response to TEC staff's written questions, the respondent admitted that he deposited the three checks in late March and early April 2023, weeks before he allegedly rejected the contributions. Further, the respondent filed his 8-day pre-election report, on which he disclosed accepting the contributions, on April 28, 2023, three days after his alleged determination to reject the contributions. *See* Tex. Elec. Code § 254.031(a)(1) (requiring that each campaign finance report include the amount of political contributions that are accepted during the reporting period by the person or committee required to file the report). That the respondent deposited the checks and disclosed accepting the contributions on his campaign finance report is evidence that he accepted the corporate contributions from the other churches. *See In re Trevino*, SC-3140134 (Jan. 30, 2018) (concluding that "the fact that [the respondent] deposited the money in his campaign account and reported it on his campaign finance report is evidence of acceptance").
44. As discussed above, except where specifically authorized by Subchapter D of Chapter 253 of Title 15 of the Election Code, a corporation or labor organization may not make a political contribution. Tex. Elec. Code § 253.094. Further, a person may not knowingly accept a political contribution the person knows to have been made in violation of Chapter 253 of the Election Code. *Id.* § 253.003(b). The respondent accepted \$800 in monetary campaign contributions from churches with a corporate form of ownership. There is therefore credible evidence that the respondent violated Section 253.003(b) by accepting the contributions.

b. Alleged Contributions from The French Gourmet

45. The complaint also alleges that the respondent accepted monetary and in-kind contributions from The French Gourmet, a restaurant in San Diego, California.
46. On his 8-day pre-election report, the respondent disclosed accepting two contributions from The French Gourmet: an \$895 monetary contribution, and a \$2,625 in-kind contribution that the respondent described on his report as "cooking at [a] fundraiser." The flyer promoting the respondent's fundraising dinner states that the "exclusive fundraiser

will feature a dinner prepared by chef Michel Malicot [sic] of The French Gourmet from San Diego, California.”

47. TEC staff’s investigation revealed a personal connection between the respondent and The French Gourmet: the son of the restaurant owner is married to the respondent’s daughter.
48. In his initial response to the complaint, the respondent stated that the \$895 monetary contribution that he had attributed to The French Gourmet was actually made by Christian Malécot, who is the respondent’s son-in-law and the son of the French Gourmet’s owner, Michel Malécot. The respondent noted that Christian Malécot is also an employee of The French Gourmet.
49. The respondent attached to his initial response the statement for a credit card belonging to Christian Malécot’s wife (who is also the respondent’s daughter). The \$895 monetary contribution appears on the statement as a charge to “SCOTT BEARD CAMPAINWWW.SCOTTBEARTX.” The other charges shown on the statement appear personal in nature, and corroborate the respondent’s claim that the payment was a contribution from Christian Malécot’s personal funds. Because the available evidence suggests that the \$895 monetary contribution was not from The French Gourmet’s corporate funds, there is credible evidence of no violation as to that contribution.
50. The \$2,625 in-kind contribution was for cooking at the April 2, 2023 fundraising dinner discussed above. In his initial response to the complaint, the respondent claimed that this was actually a personal contribution from Michel Malécot, owner of The French Gourmet. The respondent included one statement for a credit card in Michel Malécot’s name.
51. Malécot supplemented the statement with the preceding and following statements for the account. Malécot explained that he made the trip from San Diego to Abilene for two purposes: to cook for the respondent’s fundraiser and to work on properties that he (Michel Malécot) owned in Abilene. With one exception, the charges on the credit card statement were made in Abilene, and were plausibly for either home improvement work or to prepare a dinner for an event. Malécot confirmed that he was the only employee of The French Gourmet who helped with the respondent’s fundraiser. TEC staff independently verified from public property records that Malécot owns rental properties in Abilene, and that he owns these properties personally, not through The French Gourmet or any other business entity.
52. The only charge to Malécot’s card that was associated with The French Gourmet was a \$428.71 charge to an auto shop in San Diego. Malécot admitted that this charge was for repairs to a vehicle associated with the restaurant. Malécot explained that he sometimes charges expenses for the French Gourmet to the card, when card rewards programs make it advantageous to do so, and that he later reimburses himself for the charges.
53. Malécot’s responses do not entirely make clear the corporate or non-corporate character of the funds with which he bought materials for the banquet, or paid for his flight or accommodations. But the affidavits and bank statements are largely consistent with the respondent’s characterization of Malécot’s catering help as a personal contribution rather

than a corporate contribution from Malécot's restaurant. Therefore, there is no credible evidence that the respondent accepted a corporate in-kind contribution of catering services from The French Gourmet.

54. After the sworn complaint was filed, the respondent voluntarily filed a corrected report that properly identified Michel and Christian Malécot as the individuals who made the political contributions previously attributed to the French Gourmet.

C. Additional Reporting Allegations

55. Sworn complaints SC-32304144 and SC-32307217 allege additional reporting violations. Specifically, sworn complaint SC-32304144 alleges reporting violations concerning expenditures to Moose Mountain Coffee (a coffee shop in Abilene), 10:9 Design (a vendor of customized promotional merchandise), and Mike Stevens (a political consultant and printer based in Lubbock, Texas). Sworn complaint SC-32307217 alleges reporting violations concerning alleged political contributions or direct campaign expenditures from the Abilene Fire Fighters Association Political Action Committee. Sworn complaint SC-32304144 further alleges miscellaneous form violations.

i. Expenditures to Mike Stevens

56. Sworn complaint SC-32304144 alleges that the respondent failed to properly disclose an expenditure for "printing expense[s]," which he disclosed as a payment to Mike Stevens, the Lubbock political consultant and printer.⁴
57. On his 30-day pre-election campaign finance report, which he filed on April 5, 2023, the respondent disclosed a single \$5,500 expenditure to one "Mike Stephens," which he placed under the descriptive heading "Printing Expense." The sworn complaint identifies a news story in which the respondent referred to Mike Stevens as his "campaign director," which the sworn complaint interpreted to mean that the respondent was not paying Stevens/Stephens for printing services.
58. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed the applicable itemized reporting threshold (\$200 for 2023) 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); 47 Tex. Reg. 6821 (2022) (establishing reporting thresholds for 2023 calendar year). To properly disclose the purpose of an expenditure, a filer must include a description of the category of goods, services, or other thing of value for which an expenditure is made, and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. 1 Tex. Admin. Code § 20.61(a). Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure. *Id.*

⁴ In his report, the respondent spelled Mike Stevens' surname "Stephens."

59. An expenditure other than a reimbursement to a person, including a vendor, for more than one type of good or service must be reported by the filer as separate expenditures for each type of good or service provided by the person in accordance with the requirements of the TEC Rules. *See* 1 Tex. Admin. Code § 12.61(b).
60. In response to TEC staff's written questions, the respondent clarified that he paid the \$5,500 to Mike Stevens for the following purposes:

\$2,100	Web Hosting, building out additional pages to web site with photos and vote for Scott campaign information.
\$1,950	Social Media building and developing campaign post to be used in the campaign, Social Media page management.
\$200	Up load of the Abilene city voters file to target messages to voters.
\$925	Palm cards 3000 qty for walking door and community engagement.
\$325	Art work Design and writing of the palm card

61. The above-listed purposes are quoted verbatim from the respondent's response to the written questions. The respondent appears to have quoted them himself from an invoice or some other communication from Stevens. As the respondent's description indicates, he made payment to Stevens for web development and hosting, social media development and page management, designing and printing palm cards, and some variety of computer service for uploading the city voters' file. Section 12.61(b) of the TEC Rules requires that expenditures for more than one type of good or service must be reported as separate expenditures, so that they may be described separately. *See* 1 Tex. Admin. Code § 12.61(b). Because the respondent did not comply with this requirement by separating his expenditure to Stevens by the type of good or service paid for and disclosing the distinct purposes of the different underlying expenditures, there is credible evidence of a violation for failure to disclose the expenditure to Stevens correctly. *See* Tex. Elec. Code § 254.031(a)(3); 1 Tex. Admin. Code § 12.61.
62. In his first corrected 8-day report, the respondent changed the description of his expenditure to Stevens to read "[d]esign of web, social and palm cards," but did not separate the expenditures as required by law.

ii. Involvement with the Abilene Fire Fighters Association PAC

63. Sworn complaint SC-32307217 alleges that the respondent failed to properly disclose political contributions from the Abilene Fire Fighters Association Political Action Committee, and failed to disclose receiving notice of support from the Abilene Fire Fighters Association Political Action Committee.
64. The Abilene Fire Fighters Association Political Action Committee (FFA PAC) is a general-purpose political committee that files monthly with the TEC.

65. FFA PAC reported a \$158.24 direct campaign expenditure to benefit the respondent on December 12, 2022. On March 20, 2023, FFA PAC endorsed the respondent. FFA PAC subsequently reported an \$11,500 direct campaign expenditure to benefit the respondent, dated March 30, 2023. The payee of the expenditure was Mike Stevens, the Abilene printer who served as the respondent's political consultant. FFA PAC described this expenditure on its report as "General Endorsement for Scott Beard."
66. On April 13, 2023, the respondent's campaign Facebook account posted an image of a campaign sign paid for by FFA PAC, which trumpeted FFA PAC's endorsement of the respondent.
67. Each campaign finance report must include the amount of political contributions, other than political contributions made electronically, from each person that in the aggregate exceed the applicable itemized reporting threshold (\$100 for 2023) and that are accepted during the reporting period by the person or committee required to file a report. Tex. Elec. Code § 254.031(a)(1). Each 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).
68. Further, each campaign finance report by a candidate must include for each political committee from which the candidate received notice of a direct campaign expenditure under Section 254.128 or 254.161 of the Election Code the committee's full name and address, an indication of whether the committee is a general-purpose committee or a specific-purpose committee, and the full name and address of the committee's campaign treasurer. Tex. Elec. Code § 254.061(3). Section 254.128 of the Election Code requires specific-purpose political committees who accept contributions or make expenditures for a candidate to deliver written notice to the affected candidate not later than the end of the reporting period during which the reportable activity occurs. *Id.* § 254.128. Section 254.161 requires general-purpose political committees to provide the same written notice. *Id.* § 254.161.
69. In his discovery responses, the respondent clarified that the \$158.24 expenditure by FFA PAC was not a direct campaign expenditure for his benefit. The respondent explained that FFA convened a lunch meeting of its membership to interview him as a candidate and determine whether or not to support him. No other candidates were present. The expenditure covered lunch for the respondent and the eleven other individuals present; the respondent estimated that his lunch cost no more than ten or fifteen dollars. FFA PAC filed a corrected report reclassifying the expenditure as a non-political expenditure.
70. Concerning FFA PAC's subsequent \$11,500 expenditure to benefit him, the respondent denied having any advance knowledge of FFA PAC's endorsement. The respondent further denied that he discussed FFA PAC's actual or anticipated efforts with Mike Stevens before he learned of FFA PAC's planned expenditures on or about April 11, 2023 (about three weeks after FFA PAC made the printing expenditure to benefit the respondent). The respondent swore that he did not receive written notice of FFA PAC's expenditure until July 21, 2023, after the sworn complaint was filed.

71. A contribution is 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. Tex. Elec. Code § 251.001(2). The Election Code defines the term “campaign contribution” as a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. *Id.* § 251.001(3). FFA PAC invited the respondent to lunch in December 12, 2022, so that its members could speak with the respondent and evaluate him as a candidate, paying for his lunch as a courtesy. The purpose of the lunch was not to promote the respondent’s campaign, but instead to evaluate the respondent for potential endorsement. There is no credible evidence that the lunch was a campaign contribution to the respondent, and therefore there is no credible evidence that the respondent violated Section 254.031(a)(1) or –(a)(6) by failing to report the lunch as a contribution.
72. Further, while FFA PAC made the \$11,500 expenditure to Mike Stevens to benefit the respondent, the available evidence suggests that they did so without the respondent’s knowledge. A campaign expenditure does not constitute a contribution by the person making the expenditure to a candidate or officeholder if the expenditure is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure is made. Tex. Elec. Code § 251.001(8). Therefore, it appears that FFA PAC’s expenditure was a direct campaign expenditure, and that FFA PAC did not provide written notice of the expenditure to the respondent until July 21, 2023. Therefore, concerning FFA PAC’s \$11,500 expenditure, there is no credible evidence that the respondent violated Section 254.031(a)(1) or –(a)(6) by failing to disclose the expenditure as an in-kind contribution, or that he violated Section 254.061(3) by failing to disclose that he received notice of support from FFA PAC.

iii. Moose Mountain and 10:9 Designs Allegations

73. Sworn complaint SC-32304144 alleges that the respondent failed to disclose the correct date for an expenditure to Moose Mountain Coffee on his January 2023 semiannual report, in violation of Sections 254.031(a)(3) and 254.035 of the Election Code, and that the respondent failed to disclose the correct date for a political expenditure to 10:9 Designs on his 30-day pre-election report for the May 6, 2023 election, in violation of Section 254.031(a)(3) of the Election Code.

a. Expenditure to Moose Mountain

74. As noted above, Moose Mountain Coffee is an independent coffee shop in Abilene.
75. Concerning the respondent’s \$200 expenditure to Moose Mountain, the complaint notes that while the respondent rented the Moose Mountain coffee shop to announce his candidacy on November 18, 2022, he dated the expenditure to rent the coffee shop November 21, 2022, on his January 2023 semiannual campaign finance report.
76. In his response to TEC staff’s written questions, the respondent stated that he arranged to rent the Moose Mountain coffee shop on November 16, 2022. TEC staff inquired how the

respondent determined the dates disclosed for his expenditures on his campaign finance report. The respondent replied that for some expenditures, he disclosed the date that the check was sent or handed to the payee, but for other expenditures, he disclosed the date that the payment was debited from his campaign account.

77. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed the applicable reporting threshold (\$190 for 2022 and \$200 for 2023) 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); 47 Tex. Reg. 6821 (2022).
78. The date of a political expenditure is the date the amount is readily determinable by the person making the expenditure. 1 Tex. Admin. Code § 20.57(a). The amount of the respondent's expenditure to Moose Mountain coffee shop was readily determinable on November 16, 2022, the date that he arranged to rent the coffee shop. Therefore, the respondent should have listed the date of the expenditure as November 16, 2022, on his campaign finance report. *See id.*
79. As mentioned above, the respondent dated the expenditure November 21, 2022, not November 16, 2022. The amount of the expenditure exceeded the then-applicable \$190 threshold. There is, therefore, credible evidence of a violation of Section 254.031(a)(3) of the Election Code for the respondent's failure to properly disclose the date of the expenditure. However, because the erroneous date is not misleading and did not substantially affect disclosure, and because the respondent had no violations prior to the filing of the sworn complaints addressed in this Order and Agreed Resolution, the violation is de minimis. *See* 1 Tex. Admin. Code § 12.81(a)(1).

b. Expenditure to 10:9 Designs

80. As noted above, "10:9 Designs" (actually 10:9 Design LLC) is a vendor of customized promotional merchandise. The respondent ordered custom campaign hats from 10:9 Design LLC, for which he disclosed a \$261 political expenditure on his 30-day pre-election report.
81. The sworn complaint notes that while the respondent dated his expenditure to 10:9 Design LLC March 16, 2023, he posted on his campaign Facebook page an image indicating that the hats were delivered on the preceding day, March 15, 2023.
82. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed the applicable reporting threshold (\$200 for 2023). *See* Tex. Elec. Code § 254.031(a)(3); 47 Tex. Reg. 6821 (2022). Further, as discussed above, the date of a political expenditure is the date the amount is readily determinable by the person making the expenditure. 1 Tex. Admin. Code § 20.57(a).
83. In his response to TEC staff's written questions, the respondent swore that he did not know the date. He explained that someone named Dillon Mathis (who is a FountainGate

employee) placed the order. According to the respondent, Mathis does not remember the exact date that he placed the order.

84. It is unlikely that 10:9 Design LLC delivered the hats a day before they and the respondent decided on a price for the hats. The respondent swore in his responses to the written questions that he based the expenditure dates on his reports on either the date that he sent a check or the date that payment cleared. Given that 10:9 Design LLC delivered the hats on March 15 and the respondent dated the expenditure March 16, it is probable that the respondent paid on March 16, and that Mathis placed the order on the respondent's behalf sometime before then. There is, therefore, credible evidence of a violation of Section 254.031(a)(3) of the Election Code for the respondent's failure to properly disclose the date of this expenditure. However, because the erroneous date is not misleading and did not substantially affect disclosure, and because the respondent had no violations prior to the filing of the sworn complaints addressed in this Order and Agreed Resolution, the violation is *de minimis*. See 1 Tex. Admin. Code § 12.81(a)(1).

iv. Form Defects

85. Concerning the respondent's January 2023 semiannual report, sworn complaint SC-32304144 further alleges that the respondent: 1) failed to disclose the addresses for two political contributions, in violation of Section 254.031(a)(1) of the Election Code;⁵ and 2) failed to properly disclose the addresses of political expenditure payees, in violation of Section 254.031(a)(3) of the Election Code.
86. Concerning both the respondent's January 2023 semiannual report and his 30-day pre-election report for the May 6, 2023 election, sworn complaint SC-32304144 further alleges that the respondent: 1) failed to state the total contributions maintained as of the last day of the reporting periods, in violation of Section 254.031(a)(8) of the Election Code; 2) failed to sign the reports where indicated by the jurat language swearing that the reports are true and correct and acknowledging potential criminal penalties for perjury, in violation of Section 254.036(h) of the Election Code; 3) failed to report contributions accepted and expenditures made on the appropriate schedules of the campaign finance report form, in violation of Section 254.036(a) of the Election Code; 4) disclosed the deposit of personal funds in an account or accounts in which political contributions are held as a political contribution rather than as a loan, in violation of Section 253.0351 of the Election Code and Section 20.63 of the TEC Rules; and 5) failed to properly disclose the purpose of political expenditures, in violation of Section 254.031(a)(3) of the Election Code and Section 20.61 of the TEC Rules.

a. Failure to Use Correct Schedules and Include Required Information

87. Sworn complaint SC-32304144 alleges that the respondent failed to report the contributions that he accepted and the expenditures that he made on the schedules provided for this purpose on the campaign finance report form, that the respondent failed to properly disclose the purpose of political expenditures, failed to properly disclose (or disclose at all)

⁵ The notice of complaint letter erroneously refers to this allegation as stating a violation of Section 254.031(a)(3) of the Election Code.

addresses for contributors and for expenditure payees, and failed to report the amount of political contributions maintained in his campaign account as of the end of each reporting period.

88. Each campaign finance report filed with an authority other than the TEC must be in a format prescribed by the TEC. Tex. Elec. Code § 254.036. The TEC prescribes a form upon which local filers are required to file their campaign finance reports. This form provides fields for the required information, including fields for the description of each in-kind contribution accepted and for the category and description of each expenditure made.
89. For each contribution accepted above the itemized disclosure threshold, a filer must disclose the amount of the contribution, the full name and address of the contributor, and the date of the contribution. *See* Tex. Elec. Code § 254.031(a)(1). A candidate who reports an in-kind contribution that exceeds the itemization threshold must also include a description of the contribution. *See* 1 Tex. Admin. Code § 20.219(10).
90. For each expenditure made that exceeds the itemized disclosure threshold, a filer must disclose the amount of the expenditure, the full name and address of the payee, the date of the expenditure, and the purpose of the expenditure. *See* Tex. Elec. Code § 254.031(a)(3). The filer must include for the purpose of each expenditure a description of the category of goods, services or other thing of value for which the expenditure was made, and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. 1 Tex. Admin. Code § 20.61(a). The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. *Id.* Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure. *Id.*
91. The respondent was a local filer, who filed his campaign finance reports with Abilene's city secretary. For his reports, the respondent did not use the contribution and expenditure schedules included with the campaign finance report form for local filers. Instead, the respondent attached tables exported from an accounting program. While these tables include basic information such as the contributor or payee, the date, the amount, and the address, the expenditure tables do not properly disclose the purpose of each expenditure. Rather, the expenditure tables separate the expenditures by expenditure category (for example, "event expense" or "food/beverage expense"), and do not individually describe the expenditures.
92. While Section 20.61(a) of the TEC Rules requires that the description of each expenditure include a brief statement or description of the candidate activity that is conducted by making the expenditure, the expenditure disclosures in the respondent's reports omit this information. As the TEC Rules note, merely listing a category is insufficient. *See* 1 Tex. Admin. Code § 20.61(a)(2). There is therefore credible evidence that the respondent failed to file these schedules in the format prescribed by the TEC, in violation of Section 254.036 of the Election Code, and that he failed to include a proper description of each expenditure,

in violation of Section 254.031(a)(3) of the Election Code and Section 20.61(a) of the TEC Rules.

93. Concerning the addresses that the respondent disclosed for political contributors and expenditure payees, the sworn complaint identified two contributions and one expenditure for which no (or partial) addresses were given, and one further expenditure to “VistaPrint” for which the respondent reportedly gave the address for “VistaFlags” instead.
94. The two contributor addresses were for the respondent’s own contributions to his campaign, disclosed on his January 2023 semiannual report. The street number and street name were redacted from these addresses in the copy of the report attached to the sworn complaint. The respondent admitted these violations and filed a corrected report disclosing the addresses. However, while the copy of the corrected report provided by the respondent includes his full address, in the version posted on the City of Abilene’s website, the address is partially redacted just as in the original report. Other reports on file with the City of Abilene bear similar redactions. Because the city’s redaction practices place in doubt whether the respondent omitted this information when he filed his original January 2023 semiannual report, there is no credible evidence of a violation of Section 254.031(a)(1) concerning the redacted contribution addresses.
95. The missing expenditure address was for an expenditure to the Abilene Republican Women on the respondent’s 30-day pre-election report. For this disclosure, the respondent repeated the name of the payee where he should have provided the payee’s address. The respondent admitted this violation and filed a corrected report in which he included the address. Therefore, there is credible evidence of a violation as to this allegation. *See* Tex. Elec. Code § 254.031(a)(3). However, because the omission of the address information is not misleading and did not substantially affect disclosure, and because the respondent had no violations prior to the filing of the sworn complaints addressed in this Order and Agreed Resolution, the violation is *de minimis*. *See* 1 Tex. Admin. Code § 12.81(a)(1).
96. As for the incorrect expenditure address for the expenditure to “VistaPrint,” the respondent’s original 30-day pre-election report disclosed two expenditures to “VistaPrint” and two expenditures to “Vista Flags.” VistaPrint and Vista Flags are different printing businesses in Abilene. The respondent’s original 30-day pre-election report includes two expenditures to VistaPrint and two expenditures to Vista Flags. The address given with one of the expenditures to VistaPrint matches not the address in the other VistaPrint expenditure, but rather the address given with the expenditures to Vista Flags. The respondent denied this allegation. In his corrected report, he changed the payee field of the offending expenditure to read “VistaPrint.” It therefore appears that the respondent did not give the wrong address, but instead identified the wrong payee. That the one expenditure to VistaPrint was for white envelopes but the three expenditures to Vista Flags were for custom printing work corroborates this account. Therefore, concerning this expenditure, there is no credible evidence of a violation of Section 254.031(a)(3) for failure to disclose the correct address.
97. The respondent also failed to disclose on the cover sheet of both reports the total amount of contributions maintained as of the end of each reporting period. Each campaign finance

report must include the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. Tex. Elec. Code § 254.031(a)(8). The respondent admitted the violations and included the total amount of contributions maintained as of the last day of the reporting period on his corrected January 2023 semiannual report and 30-day pre-election report.

b. Failure to Treat Contributions from Personal Funds as Loans

98. Concerning both the respondent's January 2023 semiannual report and his 30-day pre-election report, the sworn complaint alleges that the respondent disclosed his own contributions to his campaign from his personal funds on the schedule for political contributions accepted, rather than the schedule for loans, as required by law.
99. A candidate who deposits personal funds in an account in which political contributions are held shall report the amount of personal funds deposited as a loan. Tex. Elec. Code § 253.0351.
100. The respondent admitted the violations. In his corrected reports, he moved the contributions from his personal funds to the schedule for loans. Therefore, there is credible evidence of violations of Section 253.0351 of the Election Code concerning the respondent's contributions to his own campaign. However, because the mischaracterization of the contributions is not misleading and did not substantially affect disclosure, and because the respondent had no violations prior to the filing of the sworn complaints addressed in this Order and Agreed Resolution, the violation is *de minimis*. See 1 Tex. Admin. Code § 12.81(a)(1).

c. Failure to Properly Execute Jurats

101. The sworn complaint also alleges that on both his January 2023 semiannual report and his 30-day pre-election report, the respondent failed to properly execute the jurat on the second page of the report form.
102. The second page of the campaign finance report form for local filers contains near the top of the signature block standard jurat language by which the filer represents that the report is true and correct under penalty of perjury, and a signature line. Beneath this line, the filer is offered the option of completing one of two sections. The first of these is labeled "affidavit" and is to execute the sworn campaign finance report before a notary. The second is to be used if the filer prefers to make an unsworn declaration, without using a notary. This second portion contains blank spaces for the additional identifying information required by the unsworn declaration statute. See Tex. Civ. Prac. & Rem. Code § 132.001(d). The respondent filled out and signed the unsworn declaration portion, but did not sign the upper portion, which contains the crucial jurat language required by the statute. See *id.*
103. Each campaign finance report that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to sign the report. Tex. Elec. Code § 254.036(h). The affidavit must contain the statement: "I swear, or affirm, under penalty

of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code.” *Id.* The filer of a campaign finance report may execute an unsworn declaration in place of an affidavit. Tex. Civ. Prac. & Rem. Code § 132.001(d) (providing that an unsworn declaration is acceptable where a statute would require an affidavit).

104. Further, local campaign finance report filers such as the respondent must file on a form prescribed by the TEC. Tex. Elec. Code § 254.036(a). As discussed above, the TEC form requires that the filer sign next to the jurat language to acknowledge that the report is filed under penalty of perjury.⁶
105. The respondent admitted the violations. There is therefore credible evidence of violations of Section 254.036 for the respondent’s failure to correctly execute the jurat on the reports. The unsworn declarations are correctly executed on the respondent’s corrected reports.

D. Campaign Sign Allegations

106. Finally, sworn complaint SC-32304144 alleges that the respondent failed to include the word “for” to clarify that he was not a member of the city council of Abilene in his billboards, yard signs, mailers, hats, or other political advertising or campaign communications, in violation of Section 255.006 of the Election Code.
107. The complaint included images of the respondent’s signs, hats, mailers, and Internet social media posts. All of these included a promotional graphic that read as follows:

Vote for
SCOTT
BEARD
CITY COUNCIL – PLACE 4
www.scottbeard.org

108. In his response to the complaint, the respondent denied the allegation.
109. First, the respondent challenged the TEC’s jurisdiction based on his assessment that Section 255.006 of the Election Code is a criminal statute. Section 571.061 of the Government Code confers on the TEC jurisdiction to “administer and enforce” Title 15 of the Election Code, of which Section 255.006 is a portion. Section 571.173 of the Government Code permits the TEC to impose a civil penalty of not more than \$5,000 or triple the amount at issue under any law administered and enforced by the TEC, whichever amount is more, for a violation of a law administered and enforced by the TEC. Therefore, the TEC has the authority to impose civil penalties for violations of Section 255.006 of the Election Code.

⁶ By comparison, unless an exception applies, TEC filers must file by “electronic transfer.” Tex. Elec. Code § 254.036(a). Each campaign finance report that is filed by electronic transfer, such as through the portal that the TEC maintains for TEC filers, must contain, in compliance with TEC specifications, the digitized signature of the person required to file the report. *Id.* § 254.036(h).

110. Beyond his jurisdictional objection, the respondent denied that he violated Section 255.006 of the Election Code. The respondent reasoned that he and his opponent were running for an open seat on the city council in a highly publicized race, that no “ordinary and prudent person” would believe that he was the incumbent, and that he did not enter into any contract for advertising with the intent to represent that he held a public office.
111. 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. Tex. Elec. Code § 255.006(a). Further, a person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. *Id.* § 255.006(b).
112. For purposes of Section 255.006 of the Election Code, a person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks, and the political advertising or campaign communication states the public office sought but does not include the word “for” in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. Tex. Elec. Code § 255.006(c).
113. “Political advertising” means, as relevant, a communication supporting or opposing a candidate for nomination or election to a public office that appears: 1) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or 2) on an Internet website. Tex. Elec. Code § 251.001(16). Section 255.001(d) of the Election Code specifically excepts from the requirement that political advertising bear a disclosure statement “campaign buttons, pins, hats, or similar campaign materials,” indicating by implication that hats or other apparel bearing slogans supporting or opposing a candidate constitute political advertising. *See id.* § 255.001(d)(2).
114. The signs, hats, mailers, and Internet social media posts identified by the complaint constitute political advertising. They contain the word “for” in only one location, at the top, as part of the phrase “vote for.” They do not contain the word “for” in a position in which it would meaningfully clarify that the respondent is not an incumbent, between the respondent’s name and the name of the office sought. In the sworn complaint *In re Griffin*, the TEC held that the inclusion of the word “for” as part of the phrase “vote for” did not satisfy Section 255.006(c)’s requirement that the political advertising or campaign communication include the word “for” to clarify that the respondent does not hold the office. *In re Griffin*, SC-3180109 (June 26, 2018); *see also, e.g., In re Davila*, SC-2809330 (Aug. 6, 2009). There is therefore credible evidence of violations of Section 255.006 for the respondent’s failure to properly include the word “for” in his political advertising to indicate that he did not hold the office.

IV. REPRESENTATIONS AND AGREEMENT BY RESPONDENT

By signing this Order and Agreed Resolution and returning it to the TEC:

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 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 consents to Commission staff presenting this Order and Agreed Resolution to the Commission outside of the respondent's presence. The respondent further waives any right to a post-hearing procedure established or provided by law. The Commission and respondent agree that the entry of this Order and Agreed Resolution will be a full and complete resolution of the sworn complaints identified in this Order and Agreed Resolution.
3. The respondent acknowledges that a corporation or labor organization may not make a political contribution that is not specifically authorized by Subchapter D of Chapter 253 of Title 15 of the Election Code. The respondent further acknowledges that nonprofit corporations are subject to this restriction, and that FountainGate is a nonprofit corporation.
4. The respondent acknowledges that a person may not knowingly accept a political contribution the person knows to have been made in violation of Title 15's restrictions on contributions and expenditures. The respondent acknowledges that political contributions from a nonprofit corporation such as FountainGate violate Title 15's restrictions on corporate contributions, and that knowingly accepting such a contribution is an independent violation of the law.
5. The respondent acknowledges that each campaign finance report filed with an authority other than the TEC must be in a format prescribed by the TEC.
6. The respondent acknowledges that the term "expenditure" includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment, and that an expenditure is considered to have been made when the amount of the expenditure is readily determinable.
7. The respondent acknowledges that a person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office sought, and the political advertising or campaign communication states the office sought but does not include the word "for" in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. The respondent further acknowledges that including the word "for" as part of the phrase "vote for" does not satisfy this requirement.

8. The respondent further agrees to correct his campaign finance reports to disclose all in-kind contributions that he accepted from FountainGate, and to separate his expenditures to Mike Stevens by purpose.

V. CONFIDENTIALITY

This order and agreed resolution describes a violation that the TEC 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 TEC.

VI. SANCTION

Section 571.177 of the Government Code directs the TEC to 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. While the TEC cannot prosecute violations criminally, Title 15 classifies knowingly making or accepting a corporate contribution as a third-degree felony. *See* Tex. Elec. Code § 253.003(e). Therefore, such violations are serious.

As FountainGate's head, the respondent made extensive contributions from corporate resources to his own campaign. The respondent posted and distributed his campaign signs on FountainGate's premises, and filmed campaign videos at FountainGate's church office and worship center. The respondent also accepted corporate contributions from the church employers of attendees at his campaign fundraising dinner.

The TEC considers the demonstrated good faith of a respondent in determining what sanction is appropriate. On March 20, 2023, FountainGate employee Vince Nigro contacted the TEC's filer helpline on the respondent's behalf. The TEC's helpline attorney returned Nigro's call. Nigro asked whether the respondent could hand out campaign signs or post them on FountainGate's property. The TEC attorney cautioned that candidates may not accept any corporate contribution, whether in-kind or monetary. Nigro pressed back against the TEC attorney's refusal to sanction the posting of the signs, making what the helpline attorney characterizes as "wild assertions" about campaign finance law.

The respondent did not then remove his own signs, but instead posted the above-mentioned March 29 video, in which he invites other candidates to post signs at FountainGate's worship center, subject to conditions with which his own signs did not comply. At no point did the respondent offer to distribute his opponents' signs from FountainGate's premises as he had distributed his own. Finally, in a further video posted on April 6, 2023, more than two weeks after the helpline call, the respondent stated that he had removed all signs from FountainGate's property. In this video, the respondent falsely claimed that the TEC had approved the placement of his campaign signs. The respondent immediately followed this claim by soliciting campaign volunteers for door-to-door canvassing. Like the respondent's other videos, this video was filmed in the church office.

The respondent treated FountainGate's resources as his own campaign resources, and continued to do so despite being cautioned by the TEC's helpline staff. The respondent also accepted

corporate contributions from other contributors. Because the respondent committed extensive corporate contribution violations in defiance of the applicable law, a substantial penalty is required.

Therefore, after considering the nature, circumstances, and consequences of the violations described under Section III, the respondent's lack of good faith, and the need to deter similar violations, the TEC imposes a \$3,500 civil penalty. The respondent must pay the \$3,500 civil penalty by the date of this order and agreed resolution. If the respondent does not pay the \$3,500 civil penalty by the date of the order and agreed resolution, the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

VII. ORDER

The TEC hereby orders that if the respondent consents to the proposed resolution, makes the agreed-upon corrections, and pays the \$3,500 civil penalty, this Order and Agreed Resolution is a final and complete resolution of SC-32304109, SC-32304144, SC-32306193, and SC-32307217.

AGREED to by the respondent on this 22nd day of May, 2024.



Warren S. "Scott" Beard, Respondent

EXECUTED by the TEC on: June 20, 2024.

Texas Ethics Commission

By: J.R. Johnson

J.R. Johnson, Executive Director