

TEXAS ETHICS COMMISSION  
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Chad M. Craycraft, Chair  
Mary K. "Katie" Kennedy, Vice Chair  
Randall H. Erben  
Chris Flood

Patrick W. Mizell  
Richard S. Schmidt  
Joseph O. Slovacek  
Steven D. Wolens

## MEETING AGENDA

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Date and Time: 9:00 a.m., Friday, March 12, 2021  
Via online broadcast

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**INFORMATION ON HOW TO VIEW AND/OR PARTICIPATE IN THE ONLINE BROADCAST OF THIS MEETING WILL BE POSTED ON OUR WEBSITE ON THE DAY OF THE MEETING HERE:**

[https://www.ethics.state.tx.us/meetings/meetings\\_2020-2024.php#2020](https://www.ethics.state.tx.us/meetings/meetings_2020-2024.php#2020)

1. Call to order; roll call.
2. **Executive session pursuant to Section 551.071, Government Code, Consultation with Attorneys, and Section 551.074, Government Code, Personnel Matters; Closed Meeting.**
  - A. Discussion of pending litigation to seek legal advice relating to the following:
    - i. Cause No. D-1-GN-17-001878: *Texas Ethics Commission v. Michael Quinn Sullivan*, in the 250<sup>th</sup> Judicial District Court in Travis County, Texas; Cause No. 03-17-00392-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas; and Cause No. 18-0580: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas.
    - ii. Cause No. D-1-GN-15-004455: *Texas Ethics Commission v. Empower Texans, Inc. and Michael Quinn Sullivan*, in the 345<sup>th</sup> Judicial District Court of Travis County, Texas; and related case, Cause No. 03-16-00872-CV: *Empower Texans, Inc., and Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.
  - B. Discussion of personnel matters.

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*For more information, contact Anne Temple Peters, Executive Director, at (512) 463-5800.*

- C. Reconvene in open session.
- 3. Discussion regarding dates for next quarterly Commission meeting.
- 4. Approve minutes for the following meetings:
  - o Public Meeting – December 2, 2020; and
  - o Public Meeting – December 18, 2020.

### **ADMINISTRATIVE APPEALS OF FINES**

- 5. Discussion and possible action on appeals of determinations made under Ethics Commission Rules §§ 18.25 and 18.26 relating to administrative waiver or reduction of a fine, for the following filers:
  - 1. Thomas Adair, candidate (00083917)
  - 2. Danny E. Wood, Jr., candidate (00083816)
  - 3. Jim Sharp, candidate (00054854)

### **ADVISORY OPINIONS**

- 6. Draft Advisory Opinion No. AOR-638: Whether an officer of a political subdivision may use public funds to print and affix graphic designs to bicycle-sharing stations, hats, t-shirts, and water bottles that identify the public official by name, office, and include the following statement: “Funding for this Station Provided by [the requestor].”

This opinion construes Tex. Elec. Code § 255.003.

- 7. Draft Advisory Opinion No. AOR-641: Whether certain written communications, created by a political subdivision and related to the political subdivision’s upcoming elections, constitute political advertisements for purposes of the Election Code’s prohibition against using public funds for political advertising.

This opinion construes Tex. Elec. Code § 255.003(a).

8. Draft Advisory Opinion No. AOR-640-CI: Whether an officer or employee of a political subdivision may display a political advertisement—for example, by wearing a facemask or other visible article of clothing with a campaign logo or slogan printed on it—during a public meeting that is streamed or posted on the Internet.

This opinion construes Tex. Elec. Code § 255.003.

9. Draft Advisory Opinion No. AOR-639: May a judicial officer take—or coordinate the taking of—photographs of his courtroom for use in political advertisements? Does it make a difference if the photographs are taken from the gallery, the area in front of the bench, or behind the bench? May a judicial officer use, for political advertisements, photographs that are created without his cooperation or coordination and published in the public domain, even if they show the judge behind the bench?

This opinion construes Tex. Penal Code § 39.02 and Tex. Elec. Code § 255.003.

## **RULEMAKING**

### **Rule Adoption**

10. Discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to 1 Tex. Admin. Code §§ 20.434 (Alternate Reporting Requirements for General-Purpose Committees) to correct errors in cross-references to other rules.
11. Discussion and possible action on the adoption or proposal and publication in the Texas Register of amendments to 1 Tex. Admin. Code § 18.15 (Additional Fine), regarding procedures for increasing fines.

### **Rule Publication**

12. Discussion and possible action on the proposal and publication in the Texas Register of amendments to 1 Tex. Admin. Code §§ 18.23 through 18.26, regarding changes to administrative waiver rules.

### Rule Proposals

13. Discussion on possible rule amendment addressing whether certain text messages are considered political advertising.

### OTHER POLICY MATTERS

14. Briefing and discussion of ethics legislation in the 2021 legislative session, including status of Ethics Commission legislative recommendations.
15. Discussion and possible appointment of a Nominating Committee of Commissioners for the positions of Chair and Vice Chair of the Texas Ethics Commission.
16. Adjourn.

**CERTIFICATION:** I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements. Certifying Official & Agency Liaison: Anne Temple Peters, Executive Director.

**NOTICE:** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, the Texas Ethics Commission will provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, and large print or Braille documents. In determining the type of auxiliary aid or service, the Commission will give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify Margie Castellanos at (512) 463-5800 or RELAY Texas at (800) 735-2989 two days before this meeting so that appropriate arrangements can be made. Please also contact Ms. Castellanos if you need assistance in having English translated into Spanish.

The draft meeting minutes will be available on our website the day before the meeting, at <https://www.ethics.state.tx.us/DraftMinutes>.

If you would like a copy of the draft minutes, please provide your email address below, and return this sheet to Ethics Commission staff at the meeting.

Email address:

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**ETHICS ADVISORY OPINION NO. \_\_\_\_**

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*[DATE]*

**ISSUES**

*Whether an officer of a political subdivision may use public funds to print and affix graphic designs to bicycle-sharing stations, hats, t-shirts, and water bottles that identify the public official by name, office, and include the following statement: “Funding for this Station Provided by [the requestor].”*

**SUMMARY**

When asked to consider whether a specific written communication constitutes political advertising for purposes of the Election Code, we view the communication as a whole. The mere fact that the name of a public officer appears in a written communication does not determine whether the communication constitutes political advertising, but the context and frequency with which it appears are relevant to making that determination.

The written communications considered in this opinion constitute political advertisements because they identify a public officer as such, include his name in a conspicuous manner, and promote the officer by crediting him with funding a public resource that is paid for by the political subdivision. Rather than being primarily informational, the primary purpose of the communications appears to be to support the incumbent official.

**FACTS**

The requestor is an elected officer of a political subdivision. His request asks the commission whether he may use the political subdivision’s funds to print certain graphic designs and affix them to bicycle-sharing stations, hats, t-shirts, and water bottles in connection with a bicycle-sharing program that is also funded by the political subdivision. Each design includes the name of the bicycle-sharing program and the name of the office held by the requestor. Also included on each design—in smaller print, but set apart from any other text—is the following statement: “Funding for this Station Provided by [the requestor].” The statement includes both the requestor’s name and identifies the office he holds.

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## ANALYSIS

### Legal Standard:

Under section 255.003(a) of the Election Code, an officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. Tex. Elec. Code § 255.003(a). “Political advertising” means, in relevant part, a communication *supporting or opposing* a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication. *Id.* at § 251.001(16) (emphasis added).

“The critical issue in determining whether an advertisement is ‘political advertising’ is whether it is a communication supporting or opposing a candidate or a public officer.” Tex. Ethics Comm’n Op. No. 476 (2007) (citing Tex. Ethics Comm’n Op. No. 102 (1992)). Whether a particular communication supports or opposes a candidate or a public officer is a fact question. *Id.*

“The mere fact that the name of a public officer or the picture of a public officer appears in a [written communication] would not determine whether the communication constitutes political advertising.” *Id.* However, the context and frequency with which the name or picture appears are relevant to making that determination. *Id.* For example, we have cautioned against “the use of personally phrased references, such as the use of the public officer’s name, in particular when those references are set apart from other text.” *Id.* However, including a public official’s name or office may not be political advertising if “the communication provides information and a discussion of official activities without promotion of the public officer.” *Id.*

We have applied this standard in several prior opinions. For example, in Ethics Advisory Opinion No. 476, we considered a four-page newsletter that included several photographs of a public officer and his printed name in a type face that was “bolded or larger than the main text.” We concluded that, “when viewed as a whole,” the newsletter constituted support of a public officer for purposes of the Election Code’s definition of “political advertising.” *Id.* (citing Tex. Elec. Code § 251.001(16)).

In Ethics Advisory Opinion No. 506, we considered a refrigerator magnet that prominently displayed an individual photograph of a public officer standing in front of a representation of a city seal, the name of the public officer in a print size that was larger than any other text on the magnet, the name of the office the public officer held, and the text “DEDICATION to (1) Timely Constituent Response! (2) Responsible City Spending! (3) Standing up for residents, businesses, and for what is right and just! Our #1 Priority.” Tex. Ethics Comm’n Op. No. 506 (2012). We concluded that the magnet constituted “self-promotion of a public officer because the name and photograph of the public officer appear in an unduly conspicuous way and the three-item list promotes the public officer’s priorities.” *Id.*

Conversely, in Ethics Advisory Opinion No. 211, we concluded that a brochure that described the duties of a justice of the peace court and only contained the name of the incumbent in the letterhead and not in an unduly conspicuous way did not constitute support and thus was not “political advertising” for purposes of section 251.001(16) of the Election Code. Tex. Ethics Comm’n Op. No. 211 (1994).

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### The Graphic Designs Include Support for a Public Official, and as such are Political Advertisements:

We conclude that the designs constitute political advertisements for purposes of section 255.003 of the Election Code. They identify a public officer as such, include his name in a conspicuous manner, and promote the officer by crediting him with funding the stations. The included statement, which identifies the requestor by name and office and credits him with funding the bicycle-sharing stations, appears in a smaller print size than the rest of the design. However, it is “set apart from other text” and is prominent because there is very little competing text. *See* Tex. Ethics Comm’n Op. No. 476 (2007).

Furthermore, the designs are self-promotional rather than informational. *See* Tex. Ethics Comm’n Op. No. 211 (1994); *see also* 1 Tex. Admin. Code § 26.2(3)(A). They do not include any information about how to use the bicycle-sharing program; nor do they include any information about the duties of the requestor’s office. In fact, the only information included on the designs is the purported source of funding for the bicycle-sharing program, namely, the requestor. In short, the designs would lead one to reasonably believe “that the purpose of the communication was to support the incumbent.” Tex. Ethics Comm’n Op. No. 211 (1994).

For these reasons, the designs constitute political advertisements. Tex. Elec. Code § 251.001(16). Consequently, the political subdivision may not use public funds to affix them to bicycle-sharing stations, hats, t-shirts, or water bottles. Tex. Elec. Code § 255.003(a).

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**ETHICS ADVISORY OPINION NO. \_\_\_\_**

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*[DATE]*

**ISSUES**

*Whether certain written communications, created by a political subdivision and related to the political subdivision's upcoming elections, constitute political advertisements for purposes of the Election Code's prohibition against using public funds for political advertising. Tex. Elec. Code § 255.003(a).*

**SUMMARY**

When asked to consider whether a specific written communication constitutes political advertising for purposes of the Election Code, we view the communication as a whole. A significant factor in determining whether a particular communication is a political advertisement is whether it provides information without promoting a public officer or measure.

The mere fact that a communication includes an express disclaimer of support or opposition is not determinative. However, the specific communications considered in this opinion are not political advertisements for purposes of section 255.003 of the Election Code because they are entirely informational and do not include any advocacy.

**FACTS**

The requestor, an officer of a political subdivision, has asked the commission to consider a collection of proposed written communications related to the subdivision's general and special elections, including: (1) a 16-page brochure, (2) three posters, and (3) three social-media posts. The question presented to the commission is whether any of the written communications constitute "political advertising" for purposes of the Election Code. *See* Tex. Elec. Code §§ 251.001(16); 255.003(a).

**ANALYSIS**

Legal Standard:

Under section 255.003(a) of the Election Code, an officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. Tex. Elec. Code § 255.003(a). "Political advertising" means, in relevant part, a communication *supporting or opposing* a candidate for nomination or election to a public office or office of a

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political party, a political party, a public officer, or a measure that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication. *Id.* at § 251.001(16) (emphasis added).

“The critical issue in determining whether an advertisement is ‘political advertising’ is whether it is a communication supporting or opposing a candidate or a public officer [or a measure].” Tex. Ethics Comm’n Op. No. 476 (2007) (citing Tex. Ethics Comm’n Op. No. 102 (1992)). Whether a particular communication supports or opposes a measure is a fact question. *Id.*

A significant factor “in determining whether a particular communication supports or opposes a public officer [or measure] is whether the communication provides information ... without promotion of the public officer [or measure].” Tex. Ethics Comm’n Op. No. 476 (2007). For example, in Ethics Advisory Opinion No. 211, we concluded that an informational brochure was not a political advertisement—despite identifying the incumbent in the letterhead—because it “merely describe[d] the duties” of the public office and did not reference the incumbent “in a way that would lead one to believe that the purpose of the brochure was to support the incumbent.” Tex. Ethics Comm’n Op. No. 211 (1994).

Some of the materials include an express disclaimer of support or opposition, but that is not determinative:

As an initial matter, both the brochure and the posters include the following statement: “[t]his document is to be used for informational purposes and is not intended to advocate passage or failure of any issue on the ballot.” With respect to the brochure, this statement is included on multiple pages, printed in a larger typeface than the other text, and conspicuously placed.

However, the mere fact that a written communication contains an express disclaimer of support or opposition does not determine whether the communication constitutes political advertising. Instead, we view the communication as a whole. Tex. Ethics Comm’n Op. No. 476 (2007) (“We stress that whether a particular communication supports or opposes a candidate or a public officer is a fact question that can be answered only when the communication is viewed as a whole.”). *Id.*

When viewed in their entirety, the materials are informational and do not support or oppose any candidate or measure:

Each of the documents, even the social media posts, include at least some factual information about the ballot measures, including but not limited to the date of the election. The brochure in particular includes pages of information about the election, including the ballot language and a detailed description of the purpose of each ballot item. For example, in describing one of the proposed bond measures, the brochure describes: (1) the amount of the proposed bond, (2) what the money would be used for, and (3) the process by which the political subdivision determined how to use the money. The brochure also describes the potential tax implications of approving general obligation bonds.

At least some of this factual information would undoubtedly affect whether certain voters will support or oppose the measures. After reading the materials, a voter may not think the bonds are necessary or that the potential tax consequences outweigh the proposed benefits. But there is a

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difference between advocacy and education. The Election Code does not prohibit political subdivisions from spending public funds to enable voters to make informed decisions.

However, no matter how much factual information about the purposes of a measure election is included in a communication, *any amount* of advocacy is impermissible. Violations sometimes occur when a factual explanation is accompanied by a motivational slogan or a call to action. Common examples include, “it pays to invest in the future;” “it’s time to move ahead;” “let’s build a better city;” and “show that you care about our future.” See TEC guide “A Short Guide to the Prohibition Against Using Political Subdivision Resources for Political Advertising in Connection with an Election,” at [https://www.ethics.state.tx.us/resources/advertising/Bsub\\_adv.php](https://www.ethics.state.tx.us/resources/advertising/Bsub_adv.php).

In a similar context, we have said that a communication includes “express advocacy” if it uses words or phrases such as “vote for,” “support,” “vote against,” “defeat,” “reject,” or “cast your ballot for.” See 1 Tex. Admin. Code § 20.1(18). In our opinion, the inclusion of these or any similar words or phrases would also tend to indicate that a communication contains support or opposition for purposes of section 251.001(16) of the Texas Election Code.

Importantly, the materials considered in this opinion do not include any motivational slogan or call to action; they merely describe the purposes and potential consequences of each measure. Nor do they include any of the words or phrases included in Ethics Commission Rule 20.1(18). In fact, they say exactly the opposite. For example, when the brochure includes the ballot language on page one, it states for each measure, “VOTE FOR OR AGAINST.” Viewed within the context of the document, this is not a statement of support or opposition, but rather a factual description of the options voters will be presented with.

In conclusion, the written communications considered in this request do not constitute political advertisements. Consequently, section 255.003(a) of the Election Code does not prohibit the political subdivision from using public funds to create and distribute them.

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**ETHICS ADVISORY OPINION NO. \_\_\_\_**

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[DATE]

**ISSUES**

*Whether an officer or employee of a political subdivision may display a political advertisement—for example, by wearing a facemask or other visible article of clothing with a campaign logo or slogan printed on it—during a public meeting that is streamed or posted on the Internet.*

**SUMMARY**

If an officer or employee of a political subdivision has greater access to a meeting and greater access to appearing in its public broadcast—by, for example, sitting behind the dais when the public may not—then he or she would violate section 255.003(a) by wearing an article of clothing that contains a political advertisement and is visible on the broadcast.

**ANALYSIS**

Section 255.003(a) of the Texas Election Code prohibits an officer or employee of a political subdivision from knowingly spending or authorizing the spending of public funds for political advertising. Tex. Elec. Code § 255.003(a). “Political advertising” includes any communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that appears “on an Internet website.” Tex. Elec. Code § 251.001(16)(B)(ii).

Many of our prior opinions interpreting 255.003(a) of the Election Code focus their attention on whether specific written communications constitute support or opposition for a candidate, official, or measure for purposes of section 251.001(16). *See, e.g.* Tex. Ethics Comm’n Op. Nos. 211, 476, and 506. However, because this is a commission-initiated opinion, there is no specific communication to consider.

Instead, for the purposes of this opinion, we assume the existence of a visible article of clothing that contains a message clearly supporting or opposing a candidate, public officer, or measure. One hypothetical example is a facemask that includes a visible campaign logo or slogan, or a phrase that expressly advocates the election or defeat of a clearly identified candidate. Such a mask, if seen during a recorded public meeting that appears on the Internet, would meet the definition of political advertising. Tex. Elec. Code § 251.001(16)(B)(ii); *see also* Tex. Ethics Comm’n Op. No. 457, fn. 2 (2004).

Consequently, the remaining question is whether an officer or employee of a political subdivision “spend[s]” public funds if he or she wears such a mask during a public meeting of the political subdivision that is recorded and posted on the Internet.

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The term “spending of public funds” includes the use of a political subdivision’s resources, including facilities, equipment, and staff work time. Tex. Ethics Comm’n Op. No. 443 (2002) (placement of campaign flyers in a school district teachers’ lounge would involve the spending of public funds where school district employees were required to transport the flyers to an area of the school not accessible to the public); *see also* Tex. Ethics Comm’n Op No. 45 (1992) (spending of public funds includes the use of school district employees’ work time as well as the use of existing school district equipment).

However, in Ethics Advisory Opinion No. 550 (2019), we concluded that public officers may permissibly use government facilities for political advertising if the facility used in the advertising is equally accessible to the general public. Therefore, when public facilities are used for political advertising, the relevant question is whether the public’s access to that facility was equal to that of the public official.

Consequently, whether or not a violation occurs depends on the context in which the officer or employee wears or otherwise displays the advertisement. If an officer or employee of the political subdivision has greater access to a meeting and greater access to appearing in its public broadcast—by, for example, sitting behind the dais when the public may not—then he or she would violate section 255.003(a) by displaying a political advertisement that appears on the Internet broadcast of the meeting. On the other hand, there would be no violation if the officer or employee wears the mask at a time and place at which he has no greater access to appearing in the public broadcast.

Importantly, a public official may have greater access to a public facility at some times, and at other times may appear in that same facility on the same footing as a member of the public. For example, a city councilmember would violate section 255.003(a) if he appears behind the dais with a political advertisement in a recording, posted on the Internet, of a public meeting of the city council. However, it may not be a violation for that same councilmember to display an identical advertisement while he provides public comment to a governmental body of which he is not a member (*e.g.* the city’s planning commission), even if it takes place in the same room as the city council meeting.

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**ETHICS ADVISORY OPINION NO. \_\_\_\_**

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*[DATE]*

**ISSUES**

*May a judicial officer take—or coordinate the taking of—photographs of his courtroom for use in political advertisements? Does it make a difference if the photographs are taken from the gallery, the area in front of the bench, or behind the bench?*

*May a judicial officer use, for political advertisements, photographs that are created without his cooperation or coordination and published in the public domain, even if they show the judge behind the bench?*

**SUMMARY**

A public official may not use a public facility for political advertising if he, by virtue of his position, has greater access to the facility than the general public. Whether or not a public official has greater access to a facility can depend on how the facility is being used, so we decline to say that it is always impermissible for a judge to use his courtroom for political advertising. However, judges nearly always have greater access to, and more rights within, their courtrooms than the public.

In our opinion, a judge who uses his greater access to the courtroom—including the power to control who enters their courtroom or where they may go and what they may do while inside—to create a photograph for use in a political advertisement violates Section 39.02(a)(2) of the Penal Code and, if he is an officer of a political subdivision, Section 255.003(a) of the Election Code. This is true regardless of where within the courtroom (*e.g.* the gallery or behind the bench) the photograph is taken. However, a photograph that is created without any coordination or cooperation from the judge—for example, by a journalist attending an open hearing—may be repurposed by the judge for a political advertisement.

**FACTS**

The requestor is a judicial officer who seeks clarification of Ethics Advisory Opinion (“EAO”) No. 550 as it applies to a judge’s use of photographs of his courtroom.

Specifically, the requestor asks whether he may use, for political purposes, photographs of himself taken in different parts of his courtroom, such as the gallery, the area in front of the bench, or behind the bench. The requestor states that his courtroom is open anytime the building is open, but that he typically restricts the public to the gallery, permits attorneys into the area in

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front of the bench, and allows no one but himself behind his bench. Exceptions are made for ceremonies like weddings or adoptions, or for public tours of the courthouse, when the requestor allows the public into the area in front of the bench, and, if requested, even behind his bench.

Separately, the requestor asks whether he is permitted to use photographs that are published in the public domain for political purposes, even if they show him behind the bench. He specifically identifies multiple sources of public-domain photographs, including “local media outlets (print, TV, and Internet)” and “social media (from ZOOM hearings).”

## ANALYSIS

The tests for section 39.02(a)(2) of the Penal Code and section 255.003(a) of the Election Code are similar. A public officer’s “use of a government office, which is restricted to the custody or possession of that officer, for political advertising would confer a benefit to the individual public servant for private campaign purposes and would violate section 39.02(a)(2) of the Penal Code.” Tex. Ethics Comm’n Op. No. 550.<sup>1</sup> Similarly, the “spending” of public funds for purposes of section 255.003(a) of the Election Code includes the use of equipment or facilities that are in the custody or possession of the subdivision and not publicly accessible. Tex. Ethics Comm’n Op. No. 446.<sup>2</sup>

Conversely, a “public area of a government facility” that is “equally accessible” to everyone is not in the “custody or possession” of a public officer for purposes of the Penal Code, and thus may be used for political advertisements. Tex. Ethics Comm’n Op. No. 550. Likewise, for purposes of the Election Code, officers and employees of political subdivisions may permissibly use government facilities for political advertising if the facility is equally accessible to the general public. *Id.*

We decline to say that a courtroom is never equally available to both its judge and the general public. However, as we explain below, judges typically have significant control over who may enter their courtrooms and what they may do while inside. We therefore repeat our advice that “the best practices for public officers are to remove themselves from government facilities and decline to use other government resources, of which they have custody or possession, for campaign activity, including political advertising.” *Id.*

Certain judicial proceedings are open to the public, but judges have significantly greater access to their courtrooms.

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<sup>1</sup> Section 39.02(a)(2) of the Penal Code states that a public servant may not, with intent to obtain a benefit or harm or defraud another, intentionally or knowingly “misuse” government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant’s<sup>1</sup> custody or possession by virtue of the public servant’s office or employment.” A public servant, as defined in the Penal Code, includes a public officer. Tex. Penal Code §1.07(a)(7).

<sup>2</sup> Section 255.003(a) of the Election Code states, in pertinent part, that an officer of a political subdivision may not knowingly “spend or authorize the spending of public funds for political advertising.”

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Whether a courtroom is a government resource that is “restricted to the custody or possession” of its judge or a “public area of a government facility” that is “equally accessible” to everyone is a complicated question not only because there are different rules governing the public’s access to different parts of a courtroom, but also because the public’s access to courtrooms greatly depends on what is happening inside them.

Certain judicial proceedings must be open to the public, but the public’s right to access is never absolute, and may be limited by the judge.<sup>3</sup> Other judicial proceedings may be entirely closed to the public, at the judge’s discretion.<sup>4</sup> Even when members of the public are permitted to enter a courtroom, their rights within are never equal to that of the judge. Judges have the “inherent authority” to enforce order and decorum during proceedings, and have used that authority to, for example, tell lawyers when they must stand, prohibit them from approaching either the bench or a witness, and restrict what they may say in the presence of the jury.<sup>5</sup>

The requestor asks whether he may use photographs from the area between the gallery and the bench, where typically only lawyers are permitted. *See, e.g. Walker v. Hartman*, 516 S.W.3d 71, 75 (Tex. App.—Beaumont 2017, pet. denied). While it is true that any political challenger would necessarily be a licensed attorney, no portion of a courtroom is “equally accessible” to its judge and anyone else when proceedings are taking place, even an attorney. A judge’s access to the

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<sup>3</sup> Under both state and federal law, criminal defendants have a constitutional right to a “public trial.” *Levine v. United States*, 362 U.S. 610, 616 (1960) (“the right to a ‘public trial’ is explicitly granted by the Sixth Amendment only for ‘criminal prosecutions’”). However, the public’s right to access criminal trials is not absolute. *See Hernandez v. State*, 914 S.W.2d 218, 221-22 (Tex. App.—El Paso 1996, pet. ref’d) (“[r]easonable limitations on public attendance may be imposed where they are necessary to protect a state interest that outweighs the defendant’s right to public scrutiny.”) (citing *Addy v. State*, 849 S.W.2d 425, 429 (Tex. App.—Houston [1st Dist.] 1993, no pet.); *Mosby v. State*, 703 S.W.2d 714, 716 (Tex. App.—Corpus Christi 1985, no pet.)).

The public’s right to access civil proceedings is even more limited. In what is called the “open-courts” provision, the Texas Constitution states that “[a]ll courts shall be open, and every person for an injury done to him, in his lands, goods, person or reputation, shall have remedy by due course of law.” Tex. Const. art. 1 § 13. However, the Supreme Court of Texas has refused to construe the open-courts provision as guaranteeing the public a right to access court proceedings, and has permitted, for example, excluding the public to preserve the trade secrets of litigants. *In re M-I L.L.C.*, 505 S.W.3d 569, 577-78 (2016) (“To the extent the open-courts provision might confer a right of public access, this right clearly would not be absolute, but instead would be subject to reasonable limitations imposed to protect countervailing interests, such as the preservation of trade secrets.”).

<sup>4</sup> State law permits judges to conduct certain proceedings privately, at their discretion. For example, the Texas Family Code allows judges to exclude the public from certain hearings involving juveniles. Tex. Fam. Code § 54.08(a) (“Except as provided by this section, the court shall open hearings under this title to the public unless the court, for good cause shown, determines that the public should be excluded.”). And it presumes that hearings involving a child under the age of 14 will be closed to the public unless the judge “finds that the interest of the child or the interests of the public would be better served by opening the hearing to the public.” *Id.* at § 54.08(c).

<sup>5</sup> *See, e.g., Garcia v. State*, 2005 Tex. App. LEXIS 5405, \*8 (Tex. App.—San Antonio 2005, pet. denied); *see also In re Bell*, 894 S.W.2d 119, 127-131 (Tex. 1995) (judges are given “wide latitude” to use their contempt powers to enforce order and decorum in the courtroom). This authority extends not only to attorneys appearing before the court, but to spectators as well. *See, e.g., Batiste v. State*, 2013 Tex. Crim App. Unpub. LEXIS 657, \*29 (Tex. Crim App. June 5, 2013) (not designated for publication). And a failure to comply with this authority can result a finding of contempt and possible imprisonment. *See Ex parte Gonzalez*, 238 S.W. 635, 636 (Tex. 1922) (orig. proceeding) (the purpose of contempt is to “compel due decorum and respect in [the judge’s] presence”).

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area in front of “the bar” is less restricted than an attorney’s, both in terms of when it is accessible *and* how it may be used.

And when no proceedings are taking place, the public usually has no right to enter a courtroom at all. Judges can, and often do, lock the doors to their courtrooms when they are not in session. The requestor says that he invites the public to tour his courtroom when it is not in session and even occasionally allows members of the public to sit behind his bench. However, the fact that he has the authority to grant or deny that permission is evidence of his “custody or possession” of the courtroom. *See* Tex. Penal Code § 39.02(a)(2). To put it plainly, the requestor’s opponent would need permission to take a photograph from behind the requestor’s bench, but the requestor himself would not need anyone’s permission, much less his political opponent’s.

The requestor also says that his personal policy is to keep his courtroom open to the public whenever the courthouse itself is open. However, he confirmed that there is nothing preventing him from changing that policy and using the key given to him as a judicial officeholder to lock his courtroom when it is not in use. Again, judges’ authority to adopt a policy that determines when the public may enter their courtrooms when not in use demonstrates their custody or possession of the space.

In short, a courtroom is neither a private office nor a public park. The public is sometimes, but not always, guaranteed access to a courtroom, but even when visitors are permitted to enter, the judge has significant authority over where they may go and what they may do. The law requires judges to allow the public to access their courtrooms while certain official business is being conducted, but it affords them significant discretion to control the behavior of visitors while court is in session. And the law also permits judges to exclude the public entirely, at their discretion, during other official business or when no business is being conducted. We do not foreclose the possibility that a judge could appear in his courtroom as a member of the public. But in our opinion, that is never the case when a judge has power to control either who enters his courtroom or where they may go and what they may do while inside.

Consequently, in response to the requestor’s first question, if a judge were to personally create—or coordinate with a third party to create—a photograph anywhere in his courtroom for use in a political advertisement, then he or she would likely derive a private benefit from the use of a government resource that is in his or her custody or possession, in violation of Section 39.02(a) of the Penal Code. And if the judge is an officer of a political subdivision, then his use of the courtroom for political advertising would also violate Section 255.003(a) of the Election Code.

Judges may repurpose public-domain photographs, but only if they are created without the judge’s cooperation or coordination.

Separately, the requestor asks whether it is permissible for a judge to repurpose a public-domain photograph for political advertising, even if it depicts the judge behind his bench. But in answering this question, it is essential to first distinguish photographs created using the judge’s unique custody or possession of his courtroom from photographs created without any coordination or cooperation from the judge.

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For example, if a journalist attends an open court proceeding, sits in the gallery as a member of the general public, and takes a photograph that is published in a newspaper or periodical, a judge may repurpose that photograph for his campaign. Under these circumstances, the judge does not “misuse” the government property in his custody for private benefit. Tex. Penal Code § 39.02(a)(2). Rather, the judge uses his courtroom for its proper governmental purpose, and a journalist independently uses his rights as a member of the general public to take and publish a photograph from inside the room. For these same reasons, the creation of such a photograph does not entail the spending of “public funds *for political advertising*” for purposes of the Election Code. Tex. Elec. Code § 255.003(a) (emphasis added).

However, if a judge uses his custody or possession of his courtroom to help create the photograph—by for example, granting a journalist exclusive access to his courtroom when it is otherwise closed to the public—then he may not repurpose the photograph for campaign purposes, even if it has entered the public domain. *See* EAO 550 (“We conclude that section 39.02(a)(2) would prohibit the public officer from using the public officer’s government office to create any communication for political advertising, such as an interview for a campaign video.”).

**DRAFT 1****EXHIBIT A****Text of Proposed Amendments**

The proposed new language is indicated by underlined text.

The deleted language is indicated by [~~strike through~~] text.

1       **Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES**

2               **Subchapter F. REPORTING REQUIREMENTS FOR A GENERAL-PURPOSE**  
3                               **COMMITTEE**

4       **§20.434. Alternate Reporting Requirements for General-Purpose Committees**

5       (a) This section and Election Code § 254.1541 apply only to a general-purpose committee with  
6       less than \$20,000 in one or more accounts maintained by the committee in which political  
7       contributions are deposited, as of the last day of the preceding reporting period for which the  
8       committee was required to file a report.

9       (b) The alternative reporting requirement in Election Code §254.1541 applies only to  
10       contributions.

11       (c) A report by a campaign treasurer of a general-purpose committee to which this section and  
12       Election Code §254.154 apply shall include the information required by §20.433 of this title  
13       (Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures)  
14       except that the campaign treasurer may choose a threshold reporting amount for political  
15       contributions of \$100 instead of the threshold reporting amount of \$50 set out in §20.433(11) and  
16       (25)(B)[§20.433(a)(11) and (a)(20)(B)] of this title.

17       (d) A monthly report by a campaign treasurer of a general-purpose committee to which this  
18       section and Election Code §254.154 apply shall include the information required by §20.433 of  
19       this title (Contents of General-Purpose Committee Sworn Report of Contributions and  
20       Expenditures), except that the campaign treasurer may choose a threshold reporting amount for  
21       political contributions of \$20 instead of the threshold reporting amount of \$10 set out in in  
22       §20.433(11) and (25)(B)[§20.433(a)(11) and (a)(20)(B)] of this title.

**§18.15. Additional Fine.  
Text of Proposed Amendment**

The proposed new language is indicated by underlined text.  
The deleted text is indicated by [~~striketrough~~] text.

**Chapter 18. GENERAL RULES CONCERNING REPORTS**

**§18.15. Additional Fine.**

In addition to any other fine assessed under this chapter, the commission may vote to impose a fine of \$2,500 against a filer whose report is more than 30 days late and [~~or~~] who has not paid the penalty related to that report [~~an assessed fine~~] within 10 days after receiving the commission notice of lateness[~~, subject to the statutory limit~~].

1 §18.23. Administrative Waiver of Statutory Civil Penalties~~[Fine]~~.

2 (a) A filer may request the executive director to waive a civil penalty determined by  
3 §§305.033(b) or 572.033(b) of the Government Code or §254.042(b) of the Election Code~~[late~~  
4 ~~fine]~~ by submitting an affidavit to the executive director.

5 (b) If, in the executive director's discretion, the affidavit establishes any of the following grounds  
6 for a waiver, the executive director shall waive the civil penalty, and the penalty waived is not a  
7 prior offense for purposes of §18.25 of this title (relating to Administrative Waiver or Reduction  
8 of Certain Statutory Civil Penalties) or §18.26 of this title (relating to Administrative Waiver or  
9 Reduction of Other Statutory Civil Penalties in Excess of \$500)~~:[that states facts that establish~~  
10 ~~that:]~~

11 (1) the report was filed late because of an unforeseen serious medical emergency or  
12 condition or a death that involved the filer, a family member or relative of the filer, a  
13 member of the filer's household, or a person whose usual job duties include preparation  
14 of the report;

15 (2) the report was filed late as a result of verifiable severe weather at the filer's location  
16 that prevented the filer from filing the report by the applicable deadline and the report  
17 was filed within a reasonable time after the deadline;

18 (3) the report was filed late because the filer was a first responder, as defined in §6.1 of  
19 this title (relating to Definitions), deployed to an emergency situation at the time of the  
20 filing deadline or a member of the military deployed on active duty at the time of the  
21 filing deadline and the report was filed within a reasonable time after the deadline;

22 (4) the filer filed a timely report but accidentally selected the incorrect filing year or  
23 filing period in the agency's electronic filing system, and:

24 (A) the filer filed a corrected report amending the filing year or filing period no  
25 later than 30 days after the individual was notified that the report appeared to be  
26 late; and

27 (B) the corrected report is substantively identical to the originally-filled report;

28 (5) the filer reasonably relied on incorrect information given to the filer by the agency; or

29 (6) the report was filed late because of other administrative error by the agency.

1 (c) If, in the executive director’s discretion, the affidavit establishes any of the following grounds  
2 for a waiver, the executive director shall waive the civil penalty, but the penalty waived is a prior  
3 offense for purposes of §18.25 or §18.26:

4 (1[4]) the filer of the personal financial disclosure report is not an elected official, a  
5 candidate for election, or a salaried public servant, and the late report:

6 (A) was the first personal financial disclosure report filed late by the filer under  
7 Government Code chapter 572; and

8 (B) was filed no later than 30 days after the individual was notified that the report  
9 appeared to be late;

10 (2[5]) the filer of the personal financial disclosure report was an unopposed candidate in a  
11 primary election, and the late report:

12 (A) was the first personal financial disclosure report filed late by the filer under  
13 Government Code chapter 572; and

14 (B) was filed before the primary election.

15 (3[6]) the filer of the campaign finance report:

16 (A) had filed all previous reports by the applicable deadline;

17 (B) had no new contributions, expenditures, or loans to report during the filing  
18 period; and

19 (C) filed the report no later than 30 days after the filer first learned that the  
20 report was late;

21 ~~(7) the filer reasonably relied on incorrect information given to the filer by the agency; or~~

22 ~~(8) other administrative error by the agency.~~

23 ~~(b) If, in the executive director's discretion, the affidavit establishes grounds for a waiver under~~  
24 ~~this section, the executive director shall waive the fine.~~

25  
26 §18.24. General Guidelines for Other Administrative Waiver or Reduction of Statutory Civil  
27 Penalties[Fine].

28 (a) A filer who does not qualify for a waiver under §18.23 of this title (relating to Administrative  
29 Waiver of Statutory Civil Penalties[Fine]) may request the executive director to waive a civil  
30 penalty determined by §§305.033(b) and 572.033(b) of the Government Code or §254.042(b) of  
31 the Election Code[late fine] by submitting an affidavit to the executive director. The executive

1 director may waive or reduce a civil penalty [~~the late fine~~] if the filer meets the criteria and the  
2 late report meets the qualifications [~~under the guidelines~~] set out in §18.25 of this title (relating  
3 to Other Administrative Waiver or Reduction of Statutory Civil Penalties[~~Fine: Report Type I~~])  
4 and §18.26 of this title (relating to Administrative Waiver or Reduction of Other Statutory Civil  
5 Penalties in Excess of \$500[~~Fine: Report Type II~~]).

6 (b) ~~For purposes of determining a waiver or reduction of a late fine under §18.25 and §18.26 of~~  
7 ~~this title, a late report will be classified by report type, as follows:~~

8 (1) ~~Any report that is not a critical report as defined under paragraph (2) of this~~  
9 ~~subsection will be classified as Report Type I and considered under §18.25 of this title.~~

10 (2) ~~A critical report will be classified as Report Type II and considered under §18.26 of~~  
11 ~~this title. A "critical report" is:~~

12 (A) ~~a campaign finance pre-election report due 30 days before an election;~~

13 (B) ~~a campaign finance pre-election report due 8 days before an election;~~

14 (C) ~~a runoff report;~~

15 (D) ~~a daily special pre-election report required under §254.038 or §254.039,~~

16 ~~Election Code; or~~

17 (E) ~~a semiannual report subject to the higher statutory fine under §254.042, Election~~

18 ~~Code.~~

19 ~~(be) For purposes of determining a waiver or reduction of a civil penalty[~~late fine~~] under §18.25~~  
20 ~~and §18.26 of this title, a filer requesting a waiver or reduction [~~of a late fine~~] will be categorized~~  
21 ~~[by filer type,] as follows:~~

22 (1) Category A includes candidates for and officeholders of the following offices and  
23 specific-purpose committees supporting candidates for and officeholders of the following  
24 offices:

25 (A) statewide office;

26 (B) legislative office;

27 (C) district judge;

28 (D) state appellate court justice;

29 (E) State Board of Education member; and

30 (F) Secretary of State.

1 (2) Category B includes all filers not categorized in Category A, as defined by paragraph  
2 (1) of this subsection, or Category C, as defined by paragraph (3) of  
3 this subsection. Examples of Category B filers include the following filer types:

4 (A) lobbyists;

5 (B) salaried non-elected officials;

6 (C) candidates for and officeholders of district attorney;

7 (D) candidates for and officeholders of political party chair;

8 (E) political committees with \$3,000 or more in annual activity in the calendar  
9 year in which the late report was due; and

10 (F) a legislative caucus.

11 (3) Category C includes:

12 (A) unsalaried appointed board members and officials; and

13 (B) political committees with less than \$3,000 in annual activity in the calendar  
14 year in which the late report was due.

15 (c[4]) For purposes of a reduction of a civil penalty~~[late fine]~~ under §[-]18.25 and §18.26 of this  
16 title, good cause includes, but is not limited to, the following:

17 (1) The report was filed no later than three days after the date it was due.

18 (2) The filer filed the report within five days after first learning the report was late from a  
19 late notice sent by the commission.

20 (3) The report was not a critical report and was prepared and placed in the mail on time  
21 but not postmarked by the deadline.

22 (4) The filer had technical difficulties after regular business hours, but the report was  
23 filed no later than the next business day after the commission's technical support  
24 staff fixed the technical difficulty.

25 (5) There are no funds in the filer's campaign or officeholder account and the filer is  
26 unemployed.

27 (6) A first-time filer that is required to file campaign finance reports with a county filing  
28 authority and personal financial statements with the commission, who mistakenly files  
29 the personal financial statement with the county on the filing deadline and then correctly  
30 files with the commission within seven days of realizing the mistake.

1 (d[e]) For purposes of determining whether a filer is eligible for a waiver or reduction of a civil  
2 penalty~~[late fine]~~ under §[-]18.25 or §[-]18.26 of this title, a prior offense is any prior late report  
3 in which a civil ~~[late filing]~~ penalty was assessed except:

4 (1) the civil~~[late filing]~~ penalty for that prior late report was waived under Sections  
5 18.23(b[a](1)–(3)) of this title; or

6 (2) no late notices were sent for that prior late report and the filer did not file a request  
7 that the civil~~[late filing]~~ penalty be waived or reduced for the prior late report.

8 (e[f]) A civil penalty~~[late fine]~~ that is reduced under §18.25 or §18.26 of this title will revert to  
9 the full amount originally assessed if the reduced civil penalty~~[fine]~~ is not paid within thirty (30)  
10 calendar days from the date of the letter informing the filer of the reduction.

11 (f[g]) A filer may appeal a determination made under §18.25 or §18.26 of this title by submitting  
12 a request in writing to the commission.

13 (1) The request for appeal should state the filer's reasons for requesting an appeal,  
14 provide any additional information needed to support the request, and state whether the  
15 filer would like the opportunity to appear before the commission and offer testimony  
16 regarding the appeal.

17 (2) The Executive Director may review the appeal and reconsider the determination made  
18 under §18.25 or § 18.26 of this title or set the appeal for a hearing before the  
19 commission.

20 (3) After hearing a request for appeal, the commission may affirm the determination  
21 made under §18.25 or §18.26 of this title or make a new determination based on facts  
22 presented in the appeal.

23 §18.25. Administrative Waiver or Reduction of Certain Statutory Civil Penalties~~[Fine: Report~~  
24 Type I].

25 (a) The executive director shall apply ~~[the guidelines set out in]~~ this section to:~~[a late report~~  
26 classified as Report Type I under §18.24(b) of this title (relating to General Guidelines for Other  
27 Administrative Waiver or Reduction of Fine).

28 (1) a late report subject to a statutory civil penalty of not more than \$500; or

29 (2) a late report that:

30 (A) is subject to a statutory civil penalty in excess of \$500; and

(B) discloses less than \$3,000 in total political contributions and less than \$3,000 in total political expenditures for the reporting period.

(b) In order to qualify for a waiver or reduction of a civil penalty~~[late fine]~~ under this section, a filer must meet all of the following criteria:

- (1) The filer has no more than two prior late offenses in the five (5) years preceding the filing deadline of the late report at issue;
- (2) The filer filed the report within thirty (30) days of learning the report was late;
- (3) The civil penalty ~~[filer has not had the late fine]~~ for the report at issue has not been increased by the commission at a public meeting pursuant to §254.042(b), Election Code, or §305.033(c) or §572.033(b), Government Code; and
- (4) The filer does not have an outstanding civil penalty for a prior late report~~[late fine]~~.

(c) The executive director shall use the following ~~[levels]~~ chart to determine the level of waiver or reduction of a civil penalty ~~[late fine]~~ under this section:

**Report Type I Levels Chart**

**(For All Reports Other Than Critical Reports)**

LEVEL	# OF PRIORS IN LAST 5 YEARS	CATEGORY A	CATEGORY B	CATEGORY C	EXPLANATORY NOTE
1	0	Waiver	Waiver	Waiver	
1.5	1	\$150	\$100	\$50	Level 2 violation with good cause shown*
2	1	\$300	\$200	\$100	
2.5	2	\$400	\$300	\$150	Level 3 violation with good cause shown*
3	2	\$500	\$500	\$250	

\*The categorization shifts one-half level (from Level 2 to 1.5; from Level 3 to 2.5) if the filer's explanation qualifies as good cause under section 18.24(c[d]) of this title.

§18.26. Administrative Waiver or Reduction of Other Statutory Civil Penalties in Excess of \$500~~[Fine: Report Type II]~~.

(a) The executive director shall apply ~~[the guidelines set out in]~~ this section to a late report that discloses more than \$3,000 in total political contributions or more than \$3,000 in total political

1 expenditures during the reporting period and that is subject to a civil penalty in  
 2 excess of \$500~~[classified as Report Type II under §18.24(b) of this title (relating to General~~  
 3 ~~Guidelines for Other Administrative Waiver of Reduction of Fine)]~~.

4 (b) In order to qualify for a waiver or reduction of a civil penalty~~[late fine]~~ under this section, a  
 5 filer must meet all of the following criteria:

6 (1) The filer has no more than two prior late offenses in the five (5) years preceding the filing  
 7 deadline of the late report at issue;

8 (2) The civil penalty ~~[filer has not had the late fine]~~ civil penalty for the report at issue has  
 9 not

10 been increased by the commission at a public meeting pursuant to §254.042(b), Election  
 11 Code, or §305.033(c) or §572.033(b), Government Code; and

(3) The filer does not have an outstanding civil penalty for a prior late report ~~[late fine]~~.

12 ~~(c) The executive director shall use the following levels chart to determine the level of waiver or~~  
 13 ~~reduction of a late fine under this section if:~~

14 ~~(1) The late report at issue discloses less than \$3,000 in total contributions and less than \$3,000~~  
 15 ~~in expenditures for the reporting period;~~

16 ~~(2) The late report at issue was filed no more than thirty (30) days after the filer learned that the~~  
 17 ~~report was late; and~~

18 ~~(3) The filer has no prior late offenses or only one prior late offense in the five (5) years~~  
 19 ~~preceding the filing deadline of the late report at issue.~~

20 **Report Type II Levels Chart**

21 **(For Critical Reports under section 18.26(c))**

LEVEL	# OF PRIORS IN LAST 5 YEARS	CATEGORY A	CATEGORY B	CATEGORY C	EXPLANATORY NOTE
1.5	0	\$150	\$100	\$50	Level 2 violation with good cause shown*
2	0	\$300	\$200	\$100	
2.5	1	\$400	\$300	\$150	Level 3 violation with good cause shown*
3	1	\$500	\$500	\$250	

1 ~~\*The categorization shifts one-half level (from Level 2 to 1.5; from Level 3 to 2.5) if the filer's~~  
2 ~~explanation qualifies as good cause under section 18.24(d) of this title.~~

3 ~~(c[d]) The executive director shall use the following [formulas] chart to determine the level of~~  
4 ~~waiver or reduction of a civil penalty[late fine] under this section[-if]:~~

5 ~~(1) The late report at issue discloses either \$3,000 or more in total contributions or \$3,000 or~~  
6 ~~more in expenditures for the reporting period;~~

7 ~~(2) The late report at issue was filed over thirty (30) days after the filer learned that the report~~  
8 ~~was late; or~~

9 ~~(3) The filer has two (2) prior late offenses in the five (5) years preceding the filing deadline~~  
10 ~~of the late report at issue.~~

11 **Report Type II Formulas Chart**

12 **~~(For Critical Reports under section 18.26(d))~~**

1 **Category A**

<b>NO GOOD CAUSE</b>	<b>EXPLANATORY NOTES</b>
Starting <u>Penalty</u> [ <u>Fine</u> ] = \$500	1st day late
+ \$100 a day, up to \$1,000	2nd – 11th days late
+ \$500 for every full 30 days thereafter, up to \$10,000	12th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
<b>GOOD CAUSE SHOWN</b>	<b>EXPLANATORY NOTES</b>
Starting <u>Penalty</u> [ <u>Fine</u> ] = \$150 (0 priors); or Starting <u>Penalty</u> [ <u>Fine</u> ] = \$400 (1 or 2 priors)	1st day late
+ \$100 a day, up to \$1,000	2nd – 11th days late
+ \$500 every full 30 days thereafter, up to \$10,000	12th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

2 **Category B**

<b>NO GOOD CAUSE</b>	<b>EXPLANATORY NOTES</b>
Starting <u>Penalty</u> [ <u>Fine</u> ] = \$500	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
<b>GOOD CAUSE SHOWN</b>	<b>EXPLANATORY NOTES</b>
Starting <u>Penalty</u> [ <u>Fine</u> ] = \$100 (0 priors); or Starting <u>Penalty</u> [ <u>Fine</u> ] = \$300 (1 or 2 priors)	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

3

4

1 **Category C**

<b>NO GOOD CAUSE</b>	<b>EXPLANATORY NOTES</b>
Starting <del>Penalty</del> [ <del>Fine</del> ]= \$500	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
<b>GOOD CAUSE SHOWN</b>	<b>EXPLANATORY NOTES</b>
Starting <del>Penalty</del> [ <del>Fine</del> ]= \$50 (0 priors); or Starting <del>Penalty</del> [ <del>Fine</del> ]= \$150 (1 or 2 priors)	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

2 ~~(e) Comments:~~

3 ~~Report Type II Formulas Chart Examples:~~

4 ~~(1) Candidate X seeking the office of State Representative (Category A filer type)~~

5 ~~Report: 30-day pre-election report due February 3, 2014 (Report Type II)~~

6 ~~Filed Date: February 4, 2014 (1-day late; good cause under section 18.24(d))~~

7 ~~Activity: contributions = \$10,000; expenditures = \$5,000 (use Formulas Chart)~~

8 ~~Prior offenses: none~~

9 ~~Penalty: \$500~~

10 ~~Determination: reduction to \$150~~

11 ~~Formula Calculation = \$150 (Category A, Good Cause, 0 Priors, 1st day late)~~

12 ~~(2) Large GPAC filing under the regular (semiannual) filing schedule (Category B filer type)~~

13 ~~Report: 30-day pre-election report due February 3, 2014 (Report Type II)~~

14 ~~Filed Date: February 4, 2014 (1-day late; good cause under section 18.24(d))~~

15 ~~Activity: contributions = \$10,000; expenditures = \$5,000 (use Formulas Chart)~~

16 ~~Prior offenses: two prior late reports in the last five years~~

17 ~~Penalty: \$500~~

18 ~~Determination: reduction to \$300~~

