

TEXAS ETHICS COMMISSION
P.O. Box 12070, Austin, Texas 78711-2070
(512) 463-5800

Chase Untermeyer, Chair
Tom Harrison, Vice Chair
Hugh C. Akin
Jim Clancy

Wilhelmina Delco
Paul W. Hobby
Bob Long
Tom Ramsay

AGENDA

Date and Time: 8:30 a.m., Monday, August 15, 2016
Location: Room E1.014, Capitol Extension, Austin, Texas

1. Call to order; roll call.
2. **Executive session pursuant to Section 551.071, Government Code, Consultation with Attorneys; Closed Meeting.** Discussion of pending litigation to seek legal advice relating to the following:
 - A. Cause No. 14-06508-16; *Texas Ethics Commission v. Michael Quinn Sullivan*; in the 158th District Court of Denton County, Texas; and related cases, Cause No. 02-15-00103-CV, *Texas Ethics Commission v. Michael Quinn Sullivan*, in the Second Court of Appeals, Fort Worth, Texas; and Cause No. 15-09170, *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas.
 - B. Cause No. D-1-GN-14-002665; *Michael Quinn Sullivan v. Jim Clancy, Paul W. Hobby, Hugh C. Akin, Wilhelmina Delco, Tom Harrison, Bob Long, Tom Ramsay, and Chase Untermeyer, in their official capacities as Commissioners of the Texas Ethics Commission, and the Texas Ethics Commission, by and through its Executive Director, Natalia Luna Ashley, in her official capacity*; in the 345th Judicial District Court of Travis County, Texas.
 - C. Cause No. D-1-GN-14-001252; *Empower Texans, Inc. and Michael Quinn Sullivan v. The State of Texas Ethics Commission, Natalia Luna Ashley, in her capacity as Executive Director of the Texas Ethics Commission, Tom Ramsay, individually and in his capacity as Commissioner, Paul Hobby, individually and in his capacity as Commissioner, Hugh C. Akin, individually and in his capacity as Commissioner, James T. Clancy, individually and in his capacity as Commissioner, Wilhelmina R. Delco, individually and in her capacity as Commissioner, Warren T. Harrison, individually and in his capacity as Commissioner, Robert K. Long, individually and in his capacity as Commissioner, and Charles G. Untermeyer, individually and in his capacity as Commissioner*; in the 53rd Judicial District Court of Travis County, Texas; and related case, Cause

For more information, contact Natalia Luna Ashley, Executive Director, at (512) 463-5800.

No. 03-16-00019-CV; *Empower Texans, Inc. and Michael Quinn Sullivan v. The State of Texas Ethics Commission, Natalia Luna Ashley, in her capacity as Executive Director of the Texas Ethics Commission, Tom Ramsay, individually and in his capacity as Commissioner, Paul Hobby, individually and in his capacity as Commissioner, Hugh C. Akin, individually and in his capacity as Commissioner, James T. Clancy, individually and in his capacity as Commissioner, Wilhelmina R. Delco, individually and in her capacity as Commissioner, Warren T. Harrison, individually and in his capacity as Commissioner, Robert K. Long, individually and in his capacity as Commissioner, and Charles G. Untermeyer, individually and in his capacity as Commissioner*, in the Third Court of Appeals, Austin, Texas.

- D. Cause No. D-1-GN-15-004455; *Texas Ethics Commission v. Empower Texans and Michael Quinn Sullivan*; in the 345th Judicial District Court of Travis County, Texas.
- E. Civil Action No. 5:14-cv-00133-C; *Texas Home School Coalition Association, Inc. v. Matthew D. Powell, in his official capacity as District Attorney of Lubbock County, et al.*; in the United States District Court for the Northern District of Texas, Lubbock Division.
- F. Cause No. D-1-GN-16-000149, *Texas Home School Coalition Association, Inc. v. Texas Ethics Commission*; in the 261st Judicial District Court of Travis County, Texas; and related case, Cause No. 03-16-00139-CV, *Texas Home School Coalition Association, Inc. v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.
- G. Civil Action No. 1:13-cv-00916; *Mike Barnes v. Texas Ethics Commission*; in the United States District Court for the Western District of Texas, Austin Division; and related case, Cause No. D-1-GN-15-003454; *Mike Barnes v. Texas Ethics Commission*, in the 201st Judicial District Court of Travis County, Texas.
- H. Cause No. 2016-27417; *Briscoe Cain v. Charles G. Untermeyer, in his Official Capacity as Chairman and Commissioner of the Texas Ethics Commission and Natalia Luna Ashley, in her Official Capacity as Executive Director of the Texas Ethics Commission*; in the 270th Judicial District Court of Harris County, Texas.

3. Reconvene in open session.

4. 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: Natalia Luna Ashley, 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.

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AGENDA

Date and Time:	10:15 a.m., Monday, August 15, 2016
Location:	Room E1.014, Capitol Extension, Austin, Texas

1. Call to order; roll call.
2. Communication to the Commission from the public.
3. Comments by the Executive Director.
4. Comments by the Commissioners.
5. Approve minutes for the following meetings:
 - o Executive Session (discussion of pending litigation) – June 1, 2016; and
 - o Public Meeting – June 1, 2016.

ADVISORY OPINION

6. Discussion of Advisory Opinion Request No. 613: Whether a political advertising disclosure statement is required to be included in political advertising broadcast by radio.

This opinion request construes § 255.001 of the Election Code and Ethics Commission Rules § 26.1.

RULEMAKING

7. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 26.1 (Disclosure Statement), to clarify how a political advertising disclosure statement must be included in political advertising in audio form, including broadcasts by radio.
8. Public discussion and possible action on the proposal and publication in the Texas Register of a new Ethics Commission Rules § 20.60 (Reporting Political

For more information, contact Natalia Luna Ashley, Executive Director, at (512) 463-5800.

Expenditures for Processing Fees), regarding the disclosure of multiple payments in a reporting period to a single person for fees to process political contributions.

9. Public discussion and possible action on the proposal and publication in the Texas Register of a new Ethics Commission Rules § 20.56 (Expenditures Involving Consultants) and an amendment to Ethics Commission Rules § 20.61 (Purpose of Expenditure), regarding the disclosure of political expenditures made to consultants.
10. Public discussion and possible action on the requirement that a campaign finance report include the total amount of political contributions maintained at the end of the reporting period under § 254.031(a)(8) of the Election Code and Ethics Commission Rules § 20.50.
11. Public discussion and possible action on the proposal and publication in the Texas Register of the repeal of Ethics Commission Rules § 34.43(b) (Compensation and Reimbursement Threshold), regarding an exception to the lobby registration requirement for compensation if no more than 5% of a person's compensated time during a calendar quarter is spent engaging in lobby activity.
12. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of a new Ethics Commission Rules § 40.11 (Publicly Traded Corporation as Source of Income over \$500), regarding the identification on a personal financial statement of a publicly traded corporation from which income in excess of \$500 is derived.

OTHER POLICY MATTERS

13. Briefing, discussion, and possible action to waive or reduce certain penalties assessed for campaign finance reports and personal financial statements filed late due to issues with the new electronic filing application for the following individuals and political committee.

Campaign Finance Reports

Adolfo D. Lopez (00080091)

William R. Bates, Jr. (00066504)

Philip M. Gommels (00080199)

J.M. 'Chuy' Alvarez (00051932)

Frank J. Corte, Jr. (00020036)

Glenn A. Johnson, Treasurer, PGISD Better Education (00080531)

Andrea G. Martin Edmondson (00069228)
Eric D. Mahroum (00069162)

Personal Financial Statements

Lance N. Christian (00080484)
Kelli Johnson (00080581)
Edward Pollard (00080307)
Jeffrey A. 'Jeff' Lane (00080152)
Wesley Lloyd (00064047)
Rodolfo G. Ramos, Jr. (00065625)
Michael Louis Vickers (00059909)
Julie Oakley (00066853)
James Oakley (00066593)
Scott A. McDonald (00067414)
George F. Francis, IV (00067524)

14. Briefing, 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 individuals:

Sergio Muñoz, Jr. (00065967)
Patrick O. Eronini, Sr. (00080390)

15. Briefing, discussion, and possible action to waive or reduce the late-filing penalty in connection with a corrected report or to determine whether the corrected report as originally filed substantially complied with the applicable law for the following political committee:

Shane Smith, Treasurer, Citizens for Cooper (00080854)

16. Discussion and possible action regarding the termination of a campaign treasurer appointment for the following inactive individuals and political committees:

Individuals

Marilynn S. Mayse (00080059)
Richard J. Phillips (00057527)

Political Committees

Del Rio Police Officers' Association Political Action Committee (00063507)
Texas Card Players Association Political Action Committee (00065814)
Geo-PAC (00068242)
Second Chance Democrats (00070398)
Black Firefighters United PAC (00080045)

17. Reports more than 30 days late: Discussion and possible action regarding the imposition of an additional fine on the following filers:

Candidates/Officeholders

Veronica Aleman (00080612)
Dane A.N. Eyerly (00080231)

Political Committees

Lamonry Lott, Sr., Treasurer, Black Firefighters United PAC (00080045)
Sean M. McDonald, Treasurer, Second Chance Democrats (PAC) (00070398)

Personal Financial Statement

Hope L. Knight (00070580)

Lobbyists

Tony Hernandez (00068843)
Brett R. Kerr (00061161)

18. Discussion on the Texas Ethics Commission Legislative Appropriation Request for Fiscal Years 2018 and 2019.
19. Report by subcommittee of Commissioners regarding recommendations for statutory changes to the 85th Legislature as required by section 571.073 of the Government Code and discussion about other recommendations Commissioners may want to consider.
20. 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: Natalia Luna Ashley,
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:

ETHICS ADVISORY OPINION NO. ____

August 15, 2016

Whether a political advertising disclosure statement is required to be included in political advertising broadcast by radio. (AOR-613)

The Texas Ethics Commission (“commission”) has been asked whether a political advertising disclosure statement is required to be included in a particular communication broadcast by radio.

According to the facts presented by the requestor of this opinion, a non-profit corporation seeks to contract, in return for valuable consideration, for the broadcast of advertisements by radio in certain legislative districts to influence the outcome of elections in Texas. The advertisements would be intended to inform voters of positions taken by certain members of the Texas House of Representatives. The advertisements would state in pertinent part “Don’t trust _____ to protect you if you’re sick,” and “Protect your loved ones and vote for _____.” The advertisements would also state the date of the election and the dates for early voting.

Title 15 of the Election Code includes certain disclosure requirements for political advertising. Section 251.001 states:

“Political advertising” means 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:

(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is *broadcast by radio* or television; or

(B) appears:

(i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or

(ii) on an Internet website.

DRAFT

Id. § 251.001(16) (emphasis added).

The disclosure requirement applicable to political advertising under section 255.001 of the Election Code states, in relevant part:

(a) A person may not knowingly cause to be published, distributed, or *broadcast* political advertising containing express advocacy that does not indicate in the advertising:

(1) that it is political advertising; and

(2) the full name of:

(A) the person who paid for the political advertising;

(B) the political committee authorizing the political advertising; or

(C) the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate.

(b) Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy.

...

(d) This section does not apply to:

(1) tickets or invitations to political fund-raising events;

(2) campaign buttons, pins, hats, or similar campaign materials; or

(3) circulars or flyers that cost in the aggregate less than \$500 to publish and distribute.

(e) A person who violates this section is liable to the state for a civil penalty in an amount determined by the commission not to exceed \$4,000.

DRAFT

Elec. Code § 255.001 (emphasis added).

In determining whether a particular communication must include a disclosure statement, the first issue is whether the communication meets the definition of “political advertising.” The proposed communication is a statement that supports and opposes candidates for election to a public office. Additionally, the communication would be broadcast by radio in return for consideration. Thus, the communication would constitute political advertising.

The second issue is whether the communication contains express advocacy. The communication expressly advocates a “vote for” an identified candidate in an election for public office.¹ Thus, the communication would constitute political advertising containing express advocacy, and there is no exception provided by section 255.001 of the Election Code that would otherwise apply. Therefore, the plain language of section 255.001 of the Election Code would require the communication to include a disclosure statement.

However, section 26.1(a) of the commission’s rules states:

The disclosure statement required by Section 255.001, Election Code, must contain the words “political advertising” or any recognizable abbreviation, and *must appear on one line of text or on successive lines of text on the face of the political advertising.*

1 T.A.C. § 26.1(a) (emphasis added). A circular, sign, or Internet website, or a television broadcast containing visual images, can generally be understood as having a “face” on which “lines of text” can appear. Thus, the requirement for a disclosure statement on such political advertising is met by including the statement as provided by rule 26.1. However, a radio broadcast does not have a “face” on which “lines of text” can appear, and it thus appears impossible for a radio broadcast to comply with the disclosure requirement as expressed by the plain language of the rule. Consequently, a reasonable interpretation of the rule is that a disclosure statement is not required for political advertising in the form of a radio broadcast. We therefore cannot, at this time, require political advertising that is broadcast by radio to include a disclosure statement. *See* Ethics Advisory Opinion No. 202 (1994) (a person reasonably relying upon a commission rule is entitled to the same defense as reasonable reliance upon an advisory opinion). Such a result is an unintended consequence of the rule, as it is clear that the legislature intended for the disclosure requirements to apply to political advertising that is broadcast by radio. We will amend rule 26.1 to clarify the manner in which a disclosure statement, when required by section

¹ *See* Ethics Advisory Opinion No. 198 (1994) (providing examples of express advocacy).

DRAFT

255.001 of the Election Code, must appear in political advertising that is broadcast by radio.²

SUMMARY

Based on section 26.1 of the Texas Ethics Commission's rules, political advertising that is broadcast by radio is not required to include a disclosure statement. Such a result is an unintended consequence of the rule, and the commission will amend rule 26.1 to clarify the manner in which a disclosure statement, when required by section 255.001 of the Election Code, must appear in political advertising that is broadcast by radio.

² The requestor of this opinion has also suggested that section 255.001 is no longer enforceable, based on a 2003 opinion in which the Texas Court of Criminal Appeals held that a precursor to the current statute was facially unconstitutional under the First Amendment. *Doe v. State*, 112 S.W.3d 532 (Tex. Crim. App. 2003). The statute at issue in *Doe* required a disclosure statement that: (1) included the statement that it is political advertising; (2) the name of the individual who personally entered into the contract or agreement with the printer, publisher, or broadcaster or the person that individual represents; and (3) in the case of printed or published political advertising, the address of either the individual who personally entered into the agreement with the printer or publisher or the person that individual represents. *Id.* at 533. An offense was a Class A misdemeanor. *Id.* The Court relied heavily on the United States Supreme Court's decision of *McIntyre v. Ohio Elections Commission*, which found unconstitutional a disclosure requirement as applied to an individual who spent her own money to distribute anonymous leaflets regarding a local school tax measure. *McIntyre v. Ohio*, 514 U.S. 334 (1995). In response to the *Doe* opinion, the Texas legislature amended the statute in the 2003 regular legislative session to bring the law into compliance with the First Amendment and implemented several significant changes: (1) it applies only to political advertising that contains express advocacy; (2) it requires only the name of the person who paid for it or the candidate or political committee that authorized it; (3) it does not apply to circulars or flyers that cost less than \$500 to publish and distribute; and (4) there is no criminal penalty. We must presume that the present statute is constitutional. Gov't Code § 311.021(1) (in enacting a statute, it is presumed that compliance with the constitutions of this state and the United States is intended).

EXHIBIT A

Text of Proposed Rule

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

Chapter 26. POLITICAL AND LEGISLATIVE ADVERTISING

§ 26.1. Disclosure Statement

(a) A [~~The~~] disclosure statement that is required by Section 255.001, Election Code, must contain the words "political advertising" or any recognizable abbreviation, and must:

(1) appear on one line of text or on successive lines of text on the face of the political advertising; or

(2) be clearly spoken in the political advertising if the political advertising cannot include written text.

(b) A disclosure statement is not required on political advertising printed on letterhead stationery if the letterhead contains the full name of one of the following:

(1) the person who paid for the political advertising;

(2) the political committee authorizing the political advertising; or

(3) the candidate authorizing the political advertising.

(c) A disclosure statement is not required on campaign buttons, pins, or hats, or on objects whose size makes printing the disclosure impractical.

EXHIBIT A

Text of Proposed Rule

The proposed new language is indicated by underlined text.

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

Subchapter B. GENERAL REPORTING RULES

§ 20.60. Reporting Political Expenditures for Processing Fees

(a) Multiple political expenditures made to a single person during a reporting period for fees to process political contributions may be itemized as a single expenditure, in an amount equal to the combined total amount of the expenditures, if all the expenditures are made to a single person for the same purpose.

(b) The purpose of an expenditure reported under subsection (a) of this section must include the dates of the first and last of the multiple expenditures made to a single person during the reporting period.

(c) For reporting purposes, the date of an expenditure reported under subsection (a) of this section is the date of the first expenditure made to the person during the reporting period, as provided by section 20.57 (Time of Making Expenditure) of this title.

EXHIBIT A

Text of Proposed Rules

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

Substantive changes are **highlighted in yellow**.

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

Subchapter B. GENERAL REPORTING RULES

§ 20.56. Expenditures Involving Consultants

(a) Beginning on January 1, 2017, an expenditure made by a consultant on behalf of and at the direction of a candidate, officeholder, political committee, or other filer must be reported as if the filer made the expenditure. An expenditure is made at the direction of a filer only if the filer instructs, requests, or gives prior approval, whether express or implied, that the consultant make the expenditure to a particular person.

(b) The payee of an expenditure to which subsection (a) applies is the particular person who receives payment from the consultant. The expenditure must be disclosed as if the filer made the expenditure directly to the particular person.

(c) The payee of an expenditure for consulting services made by a filer to a consultant is the consultant if:

(1) the expenditure is compensation for consulting services; or

(2) the expenditure is a payment to the consultant as a retainer, advance, or reimbursement for one or more expenditures made or to be made by the consultant on behalf of, but not at the direction of, the filer.

(d) "Consultant" means a person who performs consulting services in a professional capacity. "Consulting services" means services provided outside the traditional relationship of employer and employee to assist in a campaign for elective office or on a measure or to assist in performing a duty or engaging in an activity in connection with an elective office, including fundraising activities, voter outreach, creation and distribution of political advertising, and providing advice and strategy in conducting a campaign, but not including legal services.

§ 20.61. Purpose of Expenditure

(a) For reporting required under Section 254.031 of the Election Code, the purpose of an expenditure means:

(1) A description of the category of goods, services, or other thing of value for which an expenditure is made. Examples of acceptable categories include:

(A) advertising expense;

(B) accounting/banking;

(C) consulting services compensation (as provided by subsection (e) of this section) [expense];

(D) consulting services – no expenditure directed (as provided by subsection (e) of this section;

(E) [(D)] contributions/donations made by candidate/officeholder/political committee;

(F) [(E)] event expense;

(G) [(F)] fees;

(H) [(G)] food/beverage expense;

(I) [(H)] gifts/awards/memorials expense;

(J) [(I)] legal services;

(K) [(J)] loan repayment/reimbursement;

(L) [(K)] office overhead/rental expense;

(M) [(L)] polling expense;

(N) [(M)] printing expense;

(O) [(N)] salaries/wages/contract labor;

(P) [(O)] solicitation/fundraising expense;

(Q) [~~(P)~~] transportation equipment and related expense;

(R) [~~(Q)~~] travel in district;

(S) [~~(R)~~] travel out of district;

(T) [~~(S)~~] other political expenditures; and

(2) A brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure and an additional indication if the expenditure is an officeholder expenditure for living in Austin, Texas. 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. 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.

(b) The description of a political expenditure for travel outside of the state of Texas must provide the following:

(1) The name of the person or persons traveling on whose behalf the expenditure was made;

(2) The means of transportation;

(3) The name of the departure city or the name of each departure location;

(4) The name of the destination city or the name of each destination location;

(5) The dates on which the travel occurred; and

(6) The campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event.

(c) Except as provided by subsections [subsection] (d) and (e) of this section, this rule applies to expenditures made on or after July 1, 2010.

(d) The requirement to include an additional indication if an expenditure is an officeholder expenditure for living in Austin, Texas, applies to an expenditure made on or after July 1, 2014.

(e) Any expenditure made to a consultant under section 20.56(c) on or after January 1, 2017, must be disclosed, as applicable:

(1) with the category “consulting services compensation” and a description of “campaign consulting services,” or other appropriate description, if the expenditure is made solely as compensation for consulting services; or

(2) with the category “consulting services – no expenditure directed” and a more specific description, if the expenditure is made for any other purpose.

(f) [(e) Comments:

The purpose of an expenditure must include both a description of the category of goods or services received in exchange for the expenditure and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. A description of an expenditure that merely states the item or service purchased is not adequate because doing so does not allow a person reading the report to know the allowable activity for which an expenditure was made.

The following is a list of examples that describe how the purpose of an expenditure may be reported under section 20.61. This list is for illustrative purposes only. It is intended to provide helpful information and to assist filers in reporting the purpose of an expenditure under this rule. However, it is not, and is not intended to be, an exhaustive or an exclusive list of how a filer may permissibly report the purpose of an expenditure under this rule. The rule does not require the candidate or officeholder to identify by name or affiliation an individual or group with whom the candidate or officeholder meets.

(1) Example: Candidate X is seeking the office of State Representative, District 2000. She purchases an airline ticket from ABC Airlines to attend a campaign rally within District 2000. The acceptable category for this expenditure is “travel in district.” The candidate activity that is accomplished by making the expenditure is to attend a campaign rally. An acceptable brief statement is “airline ticket to attend campaign event.”

(2) Example: Candidate X purchases an airline ticket to attend a campaign event outside of District 2000 but within Texas, the acceptable category is “travel out of district.” The candidate activity that is accomplished by making the expenditure is to attend a campaign event. An acceptable brief statement is “airline ticket to attend campaign or officeholder event.”

(3) Example: Candidate X purchases an airline ticket to attend an officeholder related seminar outside of Texas. The acceptable method for the purpose of this expenditure is by selecting the “travel out of district” category and completing the “Schedule T” (used to report travel outside of Texas).

(4) Example: Candidate X contracts with an individual to do various campaign related tasks such as work on a campaign phone bank, sign distribution, and staffing the office. The acceptable category is "salaries/wages/contract labor." The candidate activity that is accomplished by making the expenditure is to compensate an individual working on the campaign. An acceptable brief statement is "contract labor for campaign services."

(5) Example: Officeholder X is seeking re-election and makes an expenditure to purchase a vehicle to use for campaign purposes and permissible officeholder purposes. The acceptable category is "transportation equipment and related expenses" and an acceptable brief description is "purchase of campaign/officeholder vehicle."

(6) Example: Candidate X makes an expenditure to repair a flat tire on a campaign vehicle purchased with political funds. The acceptable category is "transportation equipment and related expenses" and an acceptable brief description is "campaign vehicle repairs."

(7) Example: Officeholder X purchases flowers for a constituent. The acceptable category is "gifts/awards/memorials expense" and an acceptable brief description is "flowers for constituent."

(8) Example: Political Committee XYZ makes a political contribution to Candidate X. The acceptable category is "contributions/donations made by candidate/officeholder/political committee" and an acceptable brief description is "campaign contribution."

(9) Example: Candidate X makes an expenditure for a filing fee to get his name on the ballot. The acceptable category is "fees" and an acceptable brief description is "candidate filing fee."

(10) Example: Officeholder X makes an expenditure to attend a seminar related to performing a duty or engaging in an activity in connection with the office. The acceptable category is "fees" and an acceptable brief description is "attend officeholder seminar."

(11) Example: Candidate X makes an expenditure for political advertising to be broadcast by radio. The acceptable category is "advertising expense" and an acceptable brief description is "political advertising." Similarly, Candidate X makes an expenditure for political advertising to appear in a newspaper. The acceptable category is "advertising expense" and an acceptable brief description is "political advertising."

(12) Example: Officeholder X makes expenditures for printing and postage to mail a letter to all of her constituents, thanking them for their participation during the legislative session. Acceptable categories are “advertising expense” OR “printing expense” and an acceptable brief description is “letter to constituents.”

(13) Example: Officeholder X makes an expenditure to pay the campaign office electric bill. The acceptable category is “office overhead/rental expense” and an acceptable brief description is “campaign office electric bill.”

(14) Example: Officeholder X makes an expenditure to purchase paper, postage, and other supplies for the campaign office. The acceptable category is “office overhead/rental expense” and an acceptable brief description is “campaign office supplies.”

(15) Example: Officeholder X makes an expenditure to pay the campaign office monthly rent. The acceptable category is “office overhead/rental expense” and an acceptable brief description is “campaign office rent.”

(16) Example: Candidate X hires a consultant for campaign consulting [fundraising] services, such as advice on matters of campaign strategy. The acceptable category is “consulting services compensation” [expense²] and an acceptable brief description is “campaign strategy services.”

(17) Example: Candidate X hires an independent consultant to provide consulting services by helping to produce and purchase political advertising to be broadcast on television. The candidate gives the consultant \$100,000 and directs the consultant to broadcast the advertising on all three major broadcasting stations in the candidate’s district.

(i) Of that amount, the candidate pays \$5,000 as compensation for consulting services to produce the advertising. The candidate must disclose a \$5,000 expenditure to the consultant as the payee, the acceptable category is “consulting services compensation,” and an acceptable brief description is “political advertising.”

(ii) \$15,000 is used to cover production costs without the candidate directing the consultant to make any additional expenditures. The candidate must disclose a \$15,000 expenditure to the consultant as the payee, the acceptable category is “consulting services – no expenditure directed,” and an acceptable brief description is “political advertising.”

(iii) The remaining \$80,000 is used to purchase broadcast airtime on the three major broadcasting stations. The candidate directed the consultant to

broadcast the advertising at the three stations and must disclose the \$80,000 in expenditures by disclosing the amount paid to each station. The acceptable category of each expenditure is “advertising expenses” and an acceptable brief description is “political advertising.”

(18) [(17)] Example: Candidate/Officeholder X pays his attorney for legal fees related to either campaign matters or officeholder matters. The acceptable category is “legal services” and an acceptable brief description is “legal fees for campaign” or “for officeholder matters.”

(19) [(18)] Example: Candidate/Officeholder X makes food and beverage expenditures for a meeting with her constituents. The acceptable category is “food/beverage expense” and an acceptable brief statement is “meeting with constituents.”

(20) [(19)] Example: Candidate X makes food and beverage expenditures for a meeting to discuss candidate issues. The acceptable category is “food/beverage expense” and an acceptable brief statement is “meeting to discuss campaign issues.”

(21) [(20)] Example: Officeholder X makes food and beverage expenditures for a meeting to discuss officeholder issues. The acceptable category is “food/beverage expense” and an acceptable brief statement is “meeting to discuss officeholder issues.”

(22) [(21)] Example: Candidate/Officeholder X makes food and beverage expenditures for a meeting to discuss campaign and officeholder issues. The acceptable category is “food/beverage expense” and an acceptable brief statement is “meeting to discuss campaign/officeholder issues.”

EXHIBIT A

Text of Rule and Relevant Statutes

Ethics Commission Rules: § 20.50. Total Political Contributions Maintained

(a) For purposes of Election Code §§ 254.031(a)(8) and 254.0611(a)(1), the total amount of political contributions maintained in one or more accounts includes the following:

- (1) Balance on deposit in banks, savings and loan institutions and other depository institutions; and
- (2) The present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc.

(b) For purposes of Election Code §§ 254.031(a)(8) and 254.0611(a)(1), the total amount of political contributions maintained includes personal funds that the filer intends to use for political expenditures only if the funds have been deposited in an account in which political contributions are held as permitted by Election Code §253.0351(c).

Election Code: § 254.031. General Contents of Reports.

(a) Except as otherwise provided by this chapter, each report filed under this chapter must include:

...

- (8) as of the last day of a reporting period for which the person is required to file a report, 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.

Election Code: § 254.0611. Additional Contents of Reports by Certain Judicial Candidates.

(a) In addition to the contents required by Sections 254.031 and 254.061, each report by a candidate for a judicial office covered by Subchapter F, Chapter 253, must include:

- (1) the total amount of political contributions, including interest or other income, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period....

EXHIBIT A

Text of Proposed Rule

The deleted language is indicated by ~~text~~ text.

Chapter 34. REGULATION OF LOBBYISTS

Subchapter B. REGISTRATION REQUIRED

§ 34.43. Compensation and Reimbursement Threshold

(a) A person must register under Government Code, §305.003(a)(2), if the person receives, or is entitled to receive under an agreement under which the person is retained or employed, more than \$1000 in a calendar quarter in compensation and reimbursement, not including reimbursement for the person's own travel, food, lodging, or membership dues, from one or more other persons to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

~~[(b) For purposes of Government Code, §305.003(a)(2), and this chapter, a person is not required to register if no more than 5.0% of the person's compensated time during a calendar quarter is time spent engaging in lobby activity.]~~

~~[(e)]~~ (b) For purposes of Government Code, §305.003(a)(2), and this chapter, a person shall make a reasonable allocation of compensation between compensation for lobby activity and compensation for other activities.

EXHIBIT A

Text of Proposed Rule

The proposed new language is indicated by underlined text.

Chapter 40. FINANCIAL DISCLOSURE FOR PUBLIC OFFICERS

§ 40.11. Publicly Traded Corporation as Source of Income over \$500

For purposes of section 572.023(b)(4), Government Code, a publicly traded corporation is identified as a source of income by disclosing its full name in addition to the category of the amount of income.

TEXAS ETHICS COMMISSION
MEMORANDUM

TO: Commissioners, Texas Ethics Commission
FROM: Amy S. Barden, Senior Legal Assistant
DATE: August 8, 2016
SUBJECT: Waiver Requests related to Transition to the New Electronic Filing System
 Meeting Date: August 15, 2016

CAMPAIGN FINANCE REPORTS

As you are aware, campaign finance filers began using the new electronic filing application to file campaign finance reports on April 28, 2015. The following campaign finance reports were filed late due to issues related to the new filing application.

Staff Recommendation – Waiver (Items 1-8): Staff recommends waiver based on the fact that the reports were filed as soon after the filing deadline as possible and the filers worked with Commission technical support staff to resolve the issues. In each case, it was the filer's first time to file a report using the new filing application.

1. Adolfo D. Lopez (80091)
Candidate, State Representative

Report: semiannual report due January 15, 2016
 File date: January 16, 2016
 Activity: contributions = \$40,951.00; expenditures = \$9,123.52;
 contributions maintained = \$2,923.25
 Penalty: \$500

Mr. Lopez stated that when using the new online filing application for the first time he believed he had timely filed the report but did not complete all the steps due to technical issues. He filed the report the next day as soon as he realized it had not been filed.

2. William R. Bates, Jr. (66504)
Candidate, State Representative

Report: semiannual report due January 15, 2016
 File date: January 19, 2016
 Activity: contributions = \$20,225.00; expenditures = \$20,755.90;
 contributions maintained = \$42,692.33
 Penalty: \$500

Mr. Bates stated that he had trouble using the new online filing application for the first time. He stated that he spoke with the Commission's technical support staff on the next business day and received assistance with filing the report.

3. Philip M. Gommels (80199)
Candidate, District Judge

Report: semiannual report due January 15, 2016
File date: January 20, 2016
Activity: contributions = \$5,350.00; expenditures = \$9,862.47;
contributions maintained = \$3,462.53
Penalty: \$500

Mr. Gommels stated that he was unaware he was required to file electronically and filed the report in paper format postmarked on the filing deadline. He stated that he spoke with the Commission's technical support staff shortly afterwards and received assistance with setting up his password and filing the report electronically two business days after the deadline.

4. J.M. 'Chuy' Alvarez (51932)
Candidate, District Attorney

Report: semiannual report due January 15, 2016
File date: January 26, 2016
Activity: contributions = \$500.00; expenditures = \$22,523.00;
contributions maintained = 2,977.00
Penalty: \$500

Mr. Alvarez stated that he had trouble using the new online filing application for the first time. He stated that he spoke with the Commission's technical support staff who helped him set up his password and successfully file the report.

5. Frank J. Corte, Jr. (20036)
Former State Representative

Report: annual report of unexpended contributions due January 15, 2016
File date: February 2, 2016
Activity: none
Penalty: \$500

Mr. Corte stated that he had trouble using the new online filing application for the first time to file his annual report. He stated that he spoke with the Commission's technical support staff who helped him resolve the issue and successfully file the report.

6. Glenn A. Johnson (80531)
Treasurer, PGISD Better Education

Report: semiannual report due January 15, 2016
File date: July 14, 2016
Activity: contributions = -0-; expenditures = -0-;
contributions maintained = 54.74
Penalty: \$500

Mr. Johnson stated that when using the new online filing application for the first time he believed he had timely filed the report but did not complete all the steps due to his unfamiliarity with the system. He stated that it was not until he logged into the system to file the next report due July 15, 2016, that he realized the report had not been filed. He immediately contacted the Commission's technical support staff who helped him successfully file the report.

7. Andrea G. Martin Edmondson (69228)
District Judge

Report: semiannual report due July 15, 2015
File date: January 15, 2016
Activity: contributions = -0-; expenditures = \$3,500.00;
contributions maintained = \$6,898.01
Penalty: \$500

Judge Edmondson ran for office in 2014 and was not on the ballot in 2016. Judge Edmondson stated that when using the new online filing application for the first time she believed she had timely filed the report but did not complete all the steps due to her unfamiliarity with the system. She stated that it was not until she logged into the system to file the next report due January 15, 2016, that she realized the report had not been filed. She immediately contacted the Commission's technical support staff who helped her successfully file the report.

8. Eric D. Mahroum (69162)
Candidate, State Board of Education

Report: semiannual report due July 15, 2015
File date: June 23, 2016
Activity: none
Penalty: \$500

Mr. Mahroum ran for office in 2014 and is not on the ballot in 2016. He stated that when using the new online filing application for the first time he believed he had timely filed the report but did not complete all the steps due to his unfamiliarity with the system. Mr. Mahroum stated that it was not until he contacted the Commission's technical support staff on June 23, 2016, for assistance with filing his final report, that he realized the report at issue had not been filed. The Commission's technical support staff helped him successfully file the report.

PERSONAL FINANCIAL STATEMENTS

Candidates and state officers began using the new electronic filing application to file personal financial statements (PFS) on September 14, 2015. The following PFS reports were filed late due to issues related to the new filing application.

Staff Recommendation – Waiver (Items 9-19): Staff recommends waiver based on the fact that the PFS reports were filed as soon after the filing deadline as possible and the filers worked with Commission technical support staff to resolve the issues. In each case, it was the filer's first time to file a report using the new filing application.

**9. Lance N. Christian (80484)
Candidate, Railroad Commissioner**

Report: personal financial statement due February 12, 2016
File date: February 16, 2016
Penalty: \$500

Mr. Christian stated he was unaware that he needed a PFS password, separate from his campaign finance filings, in order to file the PFS electronically. He contacted the Commission's technical support staff on the next business day and received assistance with setting his PFS password and filing the report.

**10. Kelli Johnson (80581)
Candidate, District Judge**

Report: personal financial statement due February 12, 2016
File date: February 16, 2016
Penalty: \$500

Ms. Johnson stated that when using the new online filing application for the first time she believed she had timely filed the PFS but did not complete the task due to her unfamiliarity with the system. She stated that it was not until she contacted the Commission's technical support staff on February 16, 2016, that she realized the report had not been filed. The Commission's technical support staff helped her successfully file the report.

**11. Edward Pollard (80307)
Candidate, State Representative**

Report: personal financial statement due February 12, 2016
File date: March 29, 2016
Penalty: \$500

Mr. Pollard stated that he was unaware that he needed a PFS password, separate from his campaign finance filings, in order to file the PFS electronically. He stated that he subsequently contacted the Commission's technical support staff and received assistance with setting his PFS password and filing the report.

12. Jeffrey A. 'Jeff' Lane (80152)
Candidate, State Representative

Report: personal financial statement due February 12, 2016
File date: May 9, 2016
Penalty: \$500

Mr. Lane stated that he is a first-time candidate and did not realize he was required to file a PFS. He stated that when he received the first late notice dated March 10, 2016, he was confused and thought it was related to unrequired pre-election campaign finance reports. He stated that he was also unaware that he needed a PFS password, separate from his campaign finance filings, in order to file the PFS electronically. After receiving the second late notice dated May 2, 2016, he contacted the Commission's staff and received assistance with setting his PFS password and filing the report.

13. Wesley Lloyd (64047)
Member, Board for Lease of Texas Parks and Wildlife Lands

Report: personal financial statement due May 2, 2016
File date: May 3, 2016
Penalty: \$500

Mr. Lloyd stated that he attempted to file the PFS after 5:00 p.m. on the filing deadline but was unaware that he needed to submit the security form to receive a PFS password before filing the PFS electronically. He contacted the Commission's technical support staff on the next business day and received assistance with setting his PFS password and filing the report.

14. Rodolfo G. Ramos, Jr. (65625)
Member, Texas State Board of Dental Examiners

Report: personal financial statement due May 2, 2016
File date: May 3, 2016
Penalty: \$500

Dr. Ramos stated that he attempted to file the PFS after 5:00 p.m. on the filing deadline but was unaware that he needed to submit the security form to receive a PFS password before filing the PFS electronically. He contacted the Commission's technical support staff on the next business day and received assistance with setting his PFS password and filing the report.

15. Michael Louis Vickers (59909)
Member, Texas Animal Health Commission

Report: personal financial statement due May 2, 2016
File date: May 3, 2016
Penalty: \$500

Dr. Vickers stated that when using the new online filing application for the first time he believed he had timely filed the PFS but did not complete the task due to his unfamiliarity with the system. He stated that it was not until he received an e-mail reminder on the filing deadline, that he realized the report had not been filed. He contacted the Commission's technical support staff on the next business day and received assistance with setting his PFS password and filing the report.

16. Julie Oakley (66853)
Trustee, Texas Municipal Retirement System

Report: personal financial statement due May 2, 2016
File date: May 4, 2016
Penalty: \$500

Ms. Oakley stated she attempted to file the PFS after 5:00 p.m. on the filing deadline but did not have her PFS password. She contacted the Commission's technical support staff on the next business day and received assistance with setting her PFS password and filing the report.

17. James Oakley (66593)
Member, Texas Commission on Law Enforcement

Report: personal financial statement due May 2, 2016
File date: May 5, 2016
Penalty: \$500

Mr. Oakley stated he had trouble using the new online filing application for the first time. He contacted the Commission's technical support staff on the next business day and made an appointment to come to the Commission's office and receive assistance with setting his PFS password and filing the report.

18. Scott A. McDonald (67414)
Member, Texas Industrialized Building Code Council

Report: personal financial statement due May 2, 2016
File date: May 5, 2016
Penalty: \$500

Mr. McDonald stated that he had trouble using the new online filing application for the first time. He contacted the Commission's technical support staff and received assistance with setting his PFS password and filing the report.

19. George F. Francis, IV (67524)
Member, Texas State Board of Examiners of Marriage and Family Therapists

Report: personal financial statement due May 2, 2016
File date: May 5, 2016
Penalty: \$500

Mr. Francis stated that on May 2, 2016, he attempted to submit a request for an extension of the filing deadline but it was after business hours. He stated that he was unaware he needed to submit the security form to receive a PFS password before being able to access the new online filing application. He contacted the Commission's technical support staff and received assistance with setting his PFS password and filing the report.

TEXAS ETHICS COMMISSION
MEMORANDUM

TO: Commissioners, Texas Ethics Commission
FROM: Amy S. Barden, Senior Legal Assistant
DATE: August 8, 2016
SUBJECT: Late Reports Memo – Appeals under Ethics Commission Rule 18.24(g)
Meeting Date: August 15, 2016

The following filers submitted requests to the Commission for an appeal regarding a determination previously made under section 18.25 or 18.26 of the Ethics Commission Rules (relating to Administrative Waiver or Reduction of Fine). The Commission may vote to affirm the determinations made under the Ethics Commission Rules or make a new determination based on facts presented in an appeal. *Note:* Staff makes no recommendation regarding the appeal, unless specifically noted in **bold** under the penalty.

REPORT TYPE II: CRITICAL REPORTS

TEC Rules Determination: II-A – Levels Chart - Level 2.5 – Reduction to \$400 (Item 1):

1. **Sergio Muñoz, Jr. (65967)**
State Representative

Report: personal financial statement due February 12, 2016
 File date: February 16, 2016 (4 days late)
 Prior offenses: as a COH – July 2013 semiannual report (\$500 fine waived by the Commission under I-A, Lev. 1)
 Penalty: \$500 – reduction to \$400

Basis: Critical report; Category A filer; one prior late-filing offense in the last five years; good cause shown.

On April 6, 2016, the Commission sent a determination letter to Representative Muñoz informing him that he is eligible for a reduction of the \$500 late-filing penalty to \$400 under the Ethics Commission Rules. The letter informed Representative Muñoz that the reduced fine would revert to the original amount assessed if he did not remit the payment by May 6, 2016, or submit a request for appeal.

Request for Appeal: On May 6, 2016, the Commission received the appeal. In the appeal, Representative Muñoz stated, "At this time, I would like to respectfully request an appeal regarding late-filing of my Personal Finance Statement due February 12, 2016. Thank you for your consideration."

Note: This item was postponed at the June meeting at the filer's request.

TEC Rules Determination: II-B – Formulas Chart (Item 2):

**2. Patrick O. Eronini, Sr. (80390)
Candidate, County Party Chair**

Report: 8-day pre-election report due February 22, 2016
File date: April 6, 2016 (44 days late)
Activity: contributions = \$10,773.15; expenditures = \$5,303.44;
contributions maintained = -0-
Prior offenses: none
Penalty: \$4,800 – reduction to \$850

Basis: Critical report; Category B filer; total contributions and expenditures are both over \$3,000 for the reporting period; no prior late-filing offense in the last five years; good cause shown.

Formula: The fine is calculated at \$100 (good cause, 0 priors, 1st day late) + \$500 (next 5 days late @ \$100 per day) + \$250 (30-day segment @ \$250 per segment) + \$0 (remaining 8 days late do not add up to a full 30-day segment) = \$850.

On May 6, 2016, the Commission sent a determination letter to Mr. Eronini informing him that he is eligible for a reduction of the \$4,800 late-filing penalty to \$850 under the Ethics Commission Rules. The letter informed Mr. Eronini that the reduced fine would revert to the original amount assessed if he did not remit the payment by June 6, 2016, or submit a request for appeal.

Request for Appeal: On June 9, 2016, the Commission received the appeal. In the appeal letter, Mr. Eronini stated, "I attempted to file a report on February 21, 2016 but your system showed that there was no report due." Mr. Eronini included sworn affidavits from two of his campaign volunteers that were present when he attempted to file the report on February 21, 2016. Both sworn statements attest to the following:

That on February 21, 2016, we attempted to file a campaign finance report and the Texas Ethics Commission website showed that there was no report due.

That as of the date February 21, 2016, all necessary materials needed for the said 8 day Pre-election Report that was due February 22, 2016, were ready.

That the sole reason for failure to file the late report was based on the website of the commission.

Mr. Eronini further stated in his appeal letter:

I am appealing your fine because I followed the instructions given by your website and as a political novice, there was no other way that I would have known at that time, that your computer system was wrong. A fine will not only be unfair and unjust but a discouragement from public service.

As additional background, Commission records show that Mr. Eronini was an opposed candidate for county party chair on the March 2016 primary election ballot and was therefore required to file the 30-day and 8-day pre-election reports. On January 27, 2016, Mr. Eronini was sent an e-mail notice regarding his filing requirements as an opposed primary candidate, including the requirement to file the 8-day report due February 22, 2016. On January 31, 2016, Mr. Eronini electronically filed his required 30-day report due February 1, 2016. On February 17, 2016, Mr. Eronini was sent another e-mail notice specifically regarding his requirement to file the 8-day report due February 22, 2016. There is no evidence that any of the e-mail notices were bounced back to our server as undeliverable.

Commission records further show that the ballot information and the "requirement to file" codes for the pre-election reports were entered into the filing system database in early January 2016, ensuring that Mr. Eronini would receive the correct notices and prompts in the filing application regarding upcoming filing deadlines. If Mr. Eronini logged into the filing application on February 21, 2016, prior to the 8-day report deadline, and clicked "Start a Report," Commission technical staff is confident that the application would have used the information in the database (opposed candidate on the primary ballot) to display a message stating that the next required report was the 8-day report due February 22, 2016, and giving him the option to start that report. Commission staff has no records of the application returning a message of "no report is due" for this type of filer given this specific data set.

TEXAS ETHICS COMMISSION
MEMORANDUM

TO: Commissioners, Texas Ethics Commission
FROM: Amy S. Barden, Senior Legal Assistant
DATE: August 8, 2016
SUBJECT: Corrected Reports Memo
 Meeting Date: August 15, 2016

Reduction (Item 1)

1. Shane Smith (80854)
Treasurer, Citizens for Cooper

Report: 8-day pre-election report due April 29, 2016
 Correction date: May 9, 2016 (2 days after election date)
 Activity report #1: contributions = \$8,400.00; expenditures = -0-;
 contributions maintained = \$8,400.00
 Activity report #2: contributions = \$10,400.00; expenditures = \$10,400.00;
 contributions maintained = -0-
 Prior corrections: none
 Penalty: \$1,400

This specific-purpose committee supporting a measure in a school bond election filed a campaign treasurer appointment on April 19, 2016. The report at issue was the first and only report required to be filed for the committee. The election was held on May 7, 2016. The committee was dissolved on May 24, 2016.

Both the original and corrected reports were filed in paper format with the affidavit of exemption from electronic filing attached. The original report was timely filed on April 28, 2016. On April 29, 2016, the committee filed an incomplete corrected report by fax, consisting of only report schedules without a cover sheet or correction affidavit. The additional schedules itemized two monetary contributions totaling \$2,000 on Schedule C1 (used for monetary contributions from a corporation or labor organization) and four political expenditures totaling \$10,400 on Schedule F1 (used for political expenditures made from political contributions). Commission staff contacted Mr. Smith to explain that the filing was incomplete and that the committee must file a complete corrected report including all the required information.

On May 9, 2016, Ms. Rita McDaniel, secretary to the treasurer, filed a complete correction to the original report to move five monetary contributions totaling \$6,800 from Schedule A1 (used for monetary political contributions) to Schedule C1 and to decrease the total contributions maintained to zero. The corrected report also included the two monetary contributions totaling \$2,000 on Schedule C1 and four political expenditures totaling \$10,400 on Schedule F1, which were disclosed in the earlier incomplete filing. Ms. McDaniel stated that any mistakes or timing errors were her fault. She stated that they were a new committee and simply did not understand the filing process. Although the fully compiled corrected report was not received until May 9, 2016, the committee made a good-faith effort to disclose all the activity before the election. Based on the circumstances, staff recommends waiver in this case. **Recommendation Based on Commission Guidelines: waiver.**

Texas Ethics Commission
MEMORANDUM

TO: Commissioners, Texas Ethics Commission
FROM: Natalia Luna Ashley, Executive Director
DATE: August 8, 2016
SUBJECT: Termination of Campaign Treasurer Appointments

CANDIDATES

1. Marilyn S. Mayse (00080059)

Last report filed: Report has never been filed
Treasurer appointment filed: June 27, 2015
Office sought: Criminal District Court Judge, Dallas County

2. Richard J. Phillips (00057527)

Last report filed: March 17, 2015
Treasurer appointment filed: June 29, 2005
Office sought: State Representative

POLITICAL COMMITTEES

**1. Del Rio Police Officers' Association Political Action Committee (00063507)
Mark Anthony Guerra, Treasurer**

Last report filed: April 7, 2015
Treasurer appointment filed: January 13, 2014

**2. Texas Card Players Association Political Action Committee (00065814)
William Elliott, Treasurer**

Last report filed: July 15, 2014
Treasurer appointment filed: July 1, 2009

3. Geo-PAC (00068242)
Robbin K. Voight, Treasurer

Last report filed: January 15, 2015
Treasurer appointment filed: February 24, 2012

4. Second Chance Democrats (00070398)
Sean M. McDonald, Treasurer

Last report filed: January 15, 2015
Treasurer appointment filed: October 2, 2014

5. Black Firefighters United PAC (00080045)
Lamonry Lott, Treasurer

Last report filed: Report has never been filed
Treasurer appointment filed: June 6, 2015

Texas Ethics Commission
MEMORANDUM

TO: Commissioners, Texas Ethics Commission

FROM: Natalia Luna Ashley

DATE: August 8, 2016

SUBJECT: Agenda Item: Reports More Than 30 Days Late; Imposition of Additional Fine
Meeting Date: August 15, 2016

Listed below are filers whose reports are more than 30 days late. These filers have been issued a warning of liability by registered mail, as required by either section 254.042, Election Code (campaign finance), section 572.33(b), Government Code (personal financial statement), or section 305.033(c), Government Code (lobby). At this meeting you may vote to increase the penalty to an amount not to exceed \$10,000, as set out by the applicable statute noted above. Staff recommendation is to increase the penalty in each case by \$1,000, for a total penalty of \$1,500.

Campaign Finance Reports

Candidates/Officeholders

1. Veronica Aleman (00080612)

Candidate for State Senator, District 21

Semiannual Report due 1/15/2016 – Report not filed; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

Previous violations: None

2. Dane A.N. Eyerly (00080231)

Candidate for State Representative, District 101

Semiannual Report due 1/15/2016 – Report not filed; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

Previous violations: None

Political Committees

**3. Lamonty Lott, Sr., Treasurer
Black Firefighters United PAC (00080045)**

Semiannual Report due 1/15/2016 – Report not filed; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

Previous violations:

- Semiannual Report due 7/15/2015 - Report not filed; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

**4. Sean M. McDonald, Treasurer
Second Chance Democrats (PAC) (00070398)**

Semiannual Report due 7/15/2015 – Report not filed; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

Previous violations: None

Personal Financial Statement

**5. Hope L. Knight (00070580)
District Attorney, 369th Judicial District**

Personal Financial Statement due 2/12/2016 - Report not filed; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

Previous violations:

- Personal Financial Statement due 4/30/2015 - Report not filed; Fine increased to \$1,500 and penalty paid.

Lobbyists

6. Tony Hernandez (00068843)

Monthly Lobby Activities Report due 01/11/2016 - Report not filed; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

Previous violations: None

7. Brett R. Kerr (00061161)

Monthly Lobby Activities Report due 10/13/2015 - Report not filed; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

Previous violations:

- Monthly Lobby Activities Report due 4/10/2015 - Report not filed; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

EXHIBIT A

**Possible Recommendations for Statutory Changes
To the 85th Legislature**

New Recommendations

1. Personal Financial Statement (PFS) Clean-Up
 - a. Increase effectiveness and value of PFS disclosures by simplifying the reporting requirements and focusing on substantive disclosure.
 - b. The PFS should require sources of occupational income beyond lists of “employers” and the nature of the filer’s occupation.
 - i. If a filer receives a W-2 or 1099-MISC, the source of the income should be disclosed.
 - ii. Other possibilities for sources of income required to be disclosed in an individual’s tax return (e.g., Form 1040).
 - c. Eliminate the requirement to report the sale and the net gain or net loss through sale of shares of publicly traded corporations.
 - i. Holding shares in a publicly traded corporation would be disclosed by listing the stock symbol used for the stock without the number of shares.
 - d. Require records related to the information disclosed in a PFS to be maintained for two years from the due date of the report.
2. Require all campaign finance reports to be filed with the Commission, including those for filers who are currently required to file with a local filing authority. The filing requirements for “local” filers would be enforced through the Commission’s sworn complaint process, not the administrative late process that applies to current Commission filers. The Commission would need additional resources to implement the new requirement.

3. Amendments to Section 2252.908, Government Code (House Bill 1295)
 - a. Amend the disclosure requirement to apply to a contract of a governmental entity or state agency that is enforceable, not simply to a signed, written contract.
 - b. Amend the law to require the disclosure to be filed after the contract is binding.
 - c. Amend the law to apply to:
 - i. (1) a contract with a value of at least \$1 million, and
 - ii. (2) a contract that requires an action or vote by the governing body of the governmental entity or state agency before the contract may be signed if the value of the contract is over a certain amount.
4. Add a prohibition on a person using public funds to make a political contribution or political expenditure
 - a. This could be added as a new section in the Election Code (e.g., 255.0032).
 - b. The law may also specify what constitutes “public funds,” particularly in circumstances in which the funds are given by a governmental body to a non-profit organization to fulfill a public purpose.
5. Amend the law to allow the Commission to use funds to purchase meals at training events
 - a. Authorize the Commission to use its funds to purchase meals for attendees at Commission seminars.
 - b. In the alternative, authorize the Commission to use the amount charged attendees at seminars to pay for training expenses, including meals for attendees.

Carried over From Recommendations Made to the 84th Legislature

6. Standards of Judicial Review: Unlike many state agencies with enforcement authority, a respondent to a complaint filed with the Commission may appeal to court under a trial *de novo* standard after the Commission issues a final order or after choosing to bypass the Commission’s hearings process on the complaint. This approach essentially throws out the Commission’s work and record, which

often represents significant skilled legal work by Commission Staff as well as meaningful insight and sustained effort by Commissioners. The Commission recommends providing for judicial review of Commission decisions in a manner that respects the record of the Commission's decisions.

Under this recommendation, an appeal of a final order by the Commission would still proceed as a trial *de novo* and without the substantial evidence rule, which would not change from current law. However, the record of a Commission hearing would be admissible in the trial in district court consistent with the court's discretion under the Texas Rules of Evidence. In addition, the trial would be limited to the issues decided by the Commission in its enforcement proceedings and on which judicial review is sought. In a trial without a jury, the district court would be permitted, when rendering judgment on an issue under appeal, to consider the decisions made by the Commission in its enforcement proceedings and the evidence upon which the decisions were based.

7. Enforcement of Discovery: Authorize the Commission to enforce legitimate discovery in enforcement proceedings through civil fines or other civil sanctions for the failure to comply.
8. Confidentiality of Sworn Complaints: Amend Section 571.140 of the Government Code to clearly allow a respondent or a respondent's counsel to waive confidentiality regarding a sworn complaint filed against the respondent. This would clearly allow a respondent or respondent's counsel to publicly discuss the sworn complaint, including the substance and allegations made in the complaint and the processing and resolution of the complaint.
9. Disclosure to Law Enforcement Agencies: To protect the interest of the public and to promote efficient and economical administration of governmental duties, authorize the Commission to disclose to law enforcement agencies information relating to a sworn complaint.
10. Slate Mailers: To ensure that voters are fully informed, slate mailers should be required to include a disclosure statement. Slate mailers that meet the definition of political advertising are already required to include a disclosure statement as required by Section 255.001 of the Election Code. Some slate mailer organizations sell advertising space to candidates and include a political advertising disclosure statement as required by Section 255.001 of the Election Code on each of the spaces. These slate mailers should also include an additional

disclosure identifying the name of the person(s) with final decision making authority as to which candidates are supported or opposed in the slate mailer.

11. Notices to Filers: Authorize the Commission to adopt rules prescribing how to send notices of filing requirements, not including notices of referral to the Office of the Attorney General or sworn complaint notices.

12. Post-Litigation Clean-Up

- a. In light of the October 2013 United States Court of Appeals for the Fifth Circuit opinion in the case of *Texans for Free Enterprise v. Texas Ethics Commission*, amend Chapter 253 of the Election Code to permit a corporation or labor organization to make a political contribution to a political committee that intends to act exclusively as a “direct campaign expenditure only committee.”
- b. In light of the August 2014 United States Court of Appeals for the Fifth Circuit opinion in the case of *Catholic Leadership Coalition of Texas v. Reisman*, repeal Section 253.037(a) of the Election Code, relating to the 60-day and 10-contributor requirements applicable to general-purpose committees. In addition, repeal Section 253.037(c) of the Election Code, which merely provides an exception to Section 253.037(a).
- c. In light of the October 2008 order issued by the United States District Court in the Western District of Texas, Austin Division, in the case of *Free Market Foundation v. Reisman*, repeal Sections 302.017 and 302.019 of the Government Code, relating to contribution and expenditure restrictions for speaker elections.