

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

Chase Untermeyer, Chair  
Steven D. Wolens, Vice Chair  
Hugh C. Akin  
Jim Clancy

Chad M. Craycraft  
Wilhelmina Delco  
Mary K. "Katie" Kennedy  
Tom Ramsay

## AGENDA

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Date and Time:	11:00 a.m., Wednesday, February 15, 2017
Location:	Conference Room 244, Texas Workforce Commission 101 E. 15 <sup>th</sup> Street, Austin, Texas

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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 158<sup>th</sup> 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 345<sup>th</sup> Judicial District Court of Travis County, Texas.
  
  - C. Cause No. D-1-GN-14-001252; *Empower Texans, Inc. and Michael Quinn Sullivan v. 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

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*For more information, contact Ian M. Steusloff, Interim Executive Director, at (512) 463-5800.*

the 53<sup>rd</sup> Judicial District Court of Travis County, Texas; and related case, Cause 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; Steven P. Wolens, 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; Mary K. Kennedy, individually and in her capacity as Commissioner; Chad M. Craycraft, 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, 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*, in the Third Court of Appeals, Austin, 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 261<sup>st</sup> Judicial District Court of Travis County, 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 201<sup>st</sup> 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 270<sup>th</sup> Judicial District Court of Harris County, Texas.
- I. Sworn Complaint No. SC-31404103, Contested Case Proceeding; In the Matter of Todd M. Smith, Lobbyist, Respondent.

3. Reconvene in open session.

4. Adjourn.

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*For more information, contact Ian M. Steusloff, Interim Executive Director, at (512) 463-5800.*

**CERTIFICATION:** I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements. Certifying Official & Agency Liaison: Ian M. Steusloff, Interim 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

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Date and Time:	1:00 p.m., Wednesday, February 15, 2017
Location:	Conference Room 244, Texas Workforce Commission 101 E. 15 <sup>th</sup> Street, Austin, Texas

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1. Call to order; roll call.
2. Comments by the Executive Director.
3. Comments by the Commissioners.
4. Approve minutes for the following meetings:
  - o Executive Session (personnel) – December 7, 2016;
  - o Executive Session (personnel)– December 8, 2016;
  - o Executive Session (discussion of pending litigation) – December 8, 2016;
  - o Public Meeting – December 8, 2016; and
  - o Executive Session (personnel) – December 20, 2016
5. Briefing and discussion of ethics legislation in the 2017 legislative session, including status of Ethics Commission legislative recommendations.
6. Discussion and possible action on the Commission's authority to conduct random facial compliance reviews and full audits.

### RULEMAKING

7. Public discussion and possible action on the adoption or 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.

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8. Public discussion and possible action on the authority of Ethics Commission staff to negotiate the resolution of a sworn complaint, including Ethics Commission Rules § 12.81 (Technical, Clerical, or De Minimis Violations), relating to the procedures for investigating and resolving technical and clerical violations of laws within the Commission's jurisdiction as provided by section 571.0631 of the Government Code.

### ADVISORY OPINIONS

9. Discussion of Advisory Opinion Request No. 618: Application of section 255.003 of the Election Code to the use of political subdivision facilities for a debate forum and for distributing campaign materials.

This opinion request construes section 255.003 of the Election Code.

10. Discussion of Advisory Opinion Request No. 619: Whether a gift card to an online retailer is considered to be cash or a negotiable instrument for purposes of section 36.10(a)(6) of the Penal Code, and related questions.

This opinion request construes 36.10 of the Penal Code.

### OTHER POLICY MATTERS

11. 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:

Martha K. Landwehr (00069447)

Manufacturing Caucus (00068983)

Sherrie Welfel, Treasurer, 'WCRW' Wilson County Republican Women (00055452)

Glenda Clausell (00080860)

James D. Morrison (00080120)

Amy B. Easley, Treasurer, Vote FOR Our Kids PAC (00080801)

Milton I. Fagin (00041564)

James R. Dickey, Sr. (00069834)

12. 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 individuals and political committees:

Blake G. Powell, Treasurer, Texas Parent PAC (00057682)

Angelica I. Jimenez (80056)

Ray A. Nelson, Treasurer, Jefferson County Democratic Party (CEC) (00069482)

Jonathan S. Stickland (67904)

Dana F. 'Rick' Miller (62278)

Daryl L. Moore (69631)

Juan Jose Pena, Jr., Treasurer, New Identity Political Action Committee (00080977)

Norma Gonzales (00065728)

David Mason, Treasurer, Houston Pilots PAC Fund (00016106)

Micheline Hutson, Treasurer, 'CFRW' Cy-Fair Republican Women PAC (00058757)

Robert G. Button, Treasurer, 'DPCC' Democratic Party of Collin County (CEC)(00054753)

Dawn C. Buckingham (00069001)

Justin A. Holland (00080066)

Jack Kirfman, Treasurer, 'VOTE PAC' Volunteers Organized To Promote Equity (00080247)

Cindy G. Burkett (00065930)

Jesus 'Jesse' Contreras (00062099)

Leann K. Rafferty (00080287)

Gary W. Gates, Jr. (00051418)

13. Discussion and possible action regarding the termination of a campaign treasurer appointment for the following inactive individual and political committee:

**Individual**

Louie Minor, Jr. (00080024)

**Political Committees**

Adam Pacheco, Treasurer, Associated General Contractors of El Paso PAC (00041885)

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

**Candidates/Officeholders**

Marisela Saldana (00058570)

**Political Committees**

John R. Wennerstrom, Jr., Treasurer, Friends of ACC Bond (00080859)

**Lobbyists**

Jeffrey Brooks (00070573)

Robin Chandler (00070814)

Kristine Donatello (00064024)

Geoffrey M. Gay (00053659)

Matthew Haertner (00070567)

Julie Marie Nahrgang (00070736)

15. Discussion and possible action on the approval of a format for electronic filing of campaign finance reports, as proposed by Denton County.
16. Communication to the Commission from the public.
17. 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: Ian M. Steusloff, Interim Executive Director.

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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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**Facial Compliance Reviews**

- A. The Texas Ethics Commission (Commission) is required by section 571.069 of the Government Code to review for facial compliance randomly selected statements and reports filed with the Commission. In addition to these facial compliance reviews (FCRs), this section authorizes the Commission to initiate a complete audit of a statement or report by a vote of at least six members of the Commission, if the report or statement is not corrected within the required timeframe.
- B. A total of **200 FCRs** have been conducted as of January 31, 2017:

<b>Filer Type:</b>	<b>2016</b>	<b>2017</b>	<b>Total</b>
<b>Personal Financial Statements (PFS)</b>	20		20
<b>Lobbyist (LOBB)</b>	31	20	51
<b>County Executive Committee (CEC)</b>	20		20
<b>Monthly General-Purpose Committee (GPAC)</b>	40		40
<b>General-Purpose Committee (GPAC)</b>	20		20
<b>Candidate/Officeholder (Non-judicial) (COH)</b>	29		29
<b>Judicial Candidate/Officeholder (JCOH)</b>	20		20
<b>Total</b>	<b>180</b>	<b>20</b>	<b>200</b>

- C. Status of the **200 FCRs**:

<b>Filer Type:</b>	<b># of FCRs</b>	<b># Closed</b>	<b>In Progress</b>	<b>Awaiting Corrective Action</b>
<b>Personal Financial Statements (PFS)</b>	20	19		1
<b>Lobbyist (LOBB)</b>	51	30	20	1
<b>County Executive Committee (CEC)</b>	20	17		3
<b>Monthly General Purpose Committee (GPAC)</b>	40	39		1
<b>General Purpose Committee (GPAC)</b>	20	18		2
<b>Candidate/Officeholder (Non-judicial) (COH)</b>	29	29		
<b>Judicial Candidate/Officeholder (JCOH)</b>	20	20		
<b>Total</b>	<b>200</b>	<b>172</b>	<b>20</b>	<b>8</b>

D. FCR Results for Calendar Year 2016:

- 115 reports (64%) did not have any issues.
- 11 reports (6%) had minor errors and were issued an educational or observation letter with no corrective action required.
- 54 (30%) reports had deficiencies and required corrective action. A deficiency is an apparent inaccuracy, error, or omission in the report.
  - Of those 54 reports with deficiencies, 30 (56%) had Contributions Maintained ("Cash on Hand") issues.
    - Of those 30 reports with Contributions Maintained issues, 24 (80%) required corrections by the filer.
  - Of those 54 reports with deficiencies, 24 (44%) had deficiencies such as:
    - Employer and occupation missing on contributions
    - Contribution(s) in excess of the Judicial Campaign Fairness Act limits
    - Full description of expenditures missing
    - Contribution not properly disclosed
    - Political expenditure not properly disclosed
    - Non-political expenditure not properly disclosed
    - Issues regarding the correct source of contributions
    - Insufficient in-kind description
    - Lobby registration Parts 3(a) and 3(b) (client information) missing data
    - Lobby registration Part 3(b) (corporate client information) missing data
    - PFS: Disclosure of personal notes and lease agreements

E. In January 2017, FCRs were performed on 20 registered, randomly selected lobbyists. Both registrations (REGs) and lobby activities reports (LAs) were reviewed. Results of the 20 FCRs:

- 11 REGs and LAs (55%) did not have any issues.
- 9 REGs (45%) had deficiencies, such as:
  - Registrant's Normal Business was not disclosed
  - Names of persons who determine lobby policy were not disclosed
  - Client/employer organization information appears inaccurate
  - Client/employer information was not disclosed

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# Texas Ethics Commission



## Compliance Reviews Manual

Revised February 2, 2017

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# **Texas Ethics Commission Compliance Reviews Manual**

### **Mission**

The mission of the Texas Ethics Commission (Commission) is to promote public confidence in government. The Commission will conduct business in an efficient, accurate, and courteous manner according to the highest ethical standards. The Commission will be accountable, responsible and open in its endeavors and dedicated to the people it serves.

### **Policy**

Section 571.069 of the Government Code requires the Commission to review for facial compliance randomly selected statements and reports filed with the Commission. In addition to these facial compliance reviews, this section authorizes the Commission to initiate a complete audit of a statement or report by a vote of at least six members of the Commission. (See Exhibit A.)

### **Purpose**

The purpose of this manual is to guide the Commission in conducting the required compliance reviews in accordance with section 571.069 of the Government Code to ensure compliance with the disclosure requirements set out in the following applicable laws administered and enforced by the Commission:

- 1) Title 15, Election Code, concerning political contributions and expenditures, and political advertising;
- 2) Chapter 302, Government Code, concerning the election of the Speaker of the Texas House of Representatives;
- 3) Chapter 303, Government Code, concerning the governor for a day and speaker's reunion day ceremonies;
- 4) Chapter 305, Government Code, concerning lobbyist registration, reports, and activities;
- 5) Chapter 572, Government Code, concerning personal financial disclosure of state officers and conduct of state officers and employees;
- 6) Chapter 2004, Government Code, concerning representation before state agencies; and
- 7) Chapter 159, Local Government Code, concerning judges of statutory county courts or statutory probate courts who elect to file a financial statement with the Commission.

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### **Definitions**

- A. Compliance Review – A facial compliance review or a complete audit review.
- B. Facial Compliance Review – A review of the information disclosed on randomly selected reports or statements filed with the Commission for facial completeness, accuracy, and reliability and compliance with applicable laws.
- C. Complete Audit Review – An in-depth review as authorized by the Commission of information disclosed on randomly selected reports or statements filed with the Commission by comparing the information with supporting documentation obtained from the filer, contacting third parties, or other investigation.
- D. Commission – Texas Ethics Commission.
- E. Commissioners – The eight (8) members of the Commission.
- F. Filer ID – A unique number assigned to a filer for administrative purposes.
- G. Filers – Persons required by law to file reports and/or statements with the Commission, such as candidates, officeholders, political committees, persons who make direct campaign expenditures, lobbyists, state officers, and state agencies.
- H. Auditor – Commission staff conducting the compliance reviews.
- I. CSD – The Computer Services Division of the Commission.
- J. Database – A large amount of information gathered and organized together in one location. The Commission's database includes information from reports and statements filed with the Commission.
- K. Tool – An instrument used to test data for completeness and accuracy and used as working papers.
- L. Query – Parameters chosen from the database to generate reports for facial compliance reviews.
- M. Population – Disclosure reports and statements required to be filed with the Commission.
- N. Deficiency – An apparent inaccuracy, error, or omission in the report.

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### **Types of Compliance Reviews**

The compliance reviews may consist of facial compliance reviews or complete audit reviews.

- A. Facial Compliance Review – A review on its face for completeness, accuracy, and reliability of the information disclosed on randomly selected reports or statements filed with the Commission (potential deficiencies).
- B. Complete Audit Review – An in-depth review as authorized by the Commissioners of information disclosed on randomly selected reports or statements filed with the Commission by comparing the information with supporting documentation obtained from the filer, contacting third parties, or other investigation.
  - Pursuant to section 571.069(b) of the Government Code, the Commission may by a vote of at least six Commission members direct the auditor to perform a full and complete audit of a statement or report if:
    - Before the 31st day after the date the statement or report was originally due, the executive director does not obtain information from the person responsible for filing the statement or report that permits the executive director to determine that the statement or report complies with law;
    - The statement or report was the subject of a facial compliance review that found errors or omissions and the corrected statement or report filed in response to the findings notice was not resubmitted within seven business days of receiving the notice; or
    - The statement or report was the subject of a facial compliance review that found errors or omissions and, on an affirmative vote of at least six Commission members, the Commission determined that the resubmitted corrected statement or report, together with any additional documentation, does not, in the opinion of the Commission, comply with the law requiring the statement or report.

### **Compliance Review Procedures (See Exhibit B - Procedures Flowchart)**

- A. Planning – The auditor, in consultation with management, will determine the selection of required facial compliance reviews.
- B. Population – All reports filed with the Commission that will be included in the random selection process. The population will be all reports of a given type (e.g. C/OH, PFS) filed for a given reporting deadline.
  - 1) The auditor will request from CSD a list of Filer IDs that filed a report with the Commission via electronic or paper format by reporting period and type of report.

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- 2) Once the Filer ID spreadsheet is provided by CSD (see sample below), the auditor conducts the following steps to randomly select the Filer IDs for review:

	A
1	00012345
2	00067890
3	00123435
4	00178980
5	00234525
6	00290070
7	00345615
8	00401160
9	00456705
10	00512250
11	00567795
12	00623340
13	00678885
14	00734430
15	00789975
16	00845520
17	00901065
18	00956610
19	01012155
20	01067700
21	01123245
22	01178790
23	01234335
24	01289880
25	01345425
26	01400970
27	01456515
28	01512060
29	01567605
30	01623150
31	01678695
32	01734240

	A
292	16175940
293	16231485
294	16287030
295	16342575
296	16398120
297	16453665
298	16509210
299	16564755
300	16620300
301	16675845
302	16731390
303	16786935
304	16842480
305	16898025
306	16953570
307	17009115
308	17064660
309	17120205
310	17175750
311	17231295
312	17286840
313	17342385
314	17397930
315	17453475
316	17509020
317	17564565
318	17620110
319	17675655
320	17731200
321	17786745
322	17842290
323	17897835

- a) The URL displayed below is used to conduct the random number generator:  
[http://www.mathgoodies.com/calculators/random\\_no\\_custom.html](http://www.mathgoodies.com/calculators/random_no_custom.html).
- b) Based on the number of rows included on the filer id spreadsheet, enter 1 as the “lower limit” and enter the 323 as “upper limit”, then click on ENTER, and the random number will be displayed.
- c) Once the random number is displayed, find that row in the Filer ID spreadsheet, and select the **Filer ID** located on Column A of that row for review.
- d) The auditor will keep records by taking screen captures of the selection process to verify the selection was done randomly.



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### **Custom Random Number Generator**

This program will generate a random number between two numbers of your choice. Just enter a lower limit and an upper limit and click ENTER.

Enter a lower limit:	<input type="text" value="1"/>
Enter an upper limit:	<input type="text" value="323"/>
<input type="button" value="ENTER"/>	<input type="button" value="CLEAR"/>
Random Number:	<input type="text"/>

[Other Calculators](#)

- C. Facial Compliance Review Selection – Once the random selection is completed, the auditor will print and/or save filer reports by filer name in O:\Compliance Reviews\Facials Reviews.
- D. Assessment – The auditor will assess the randomly selected reports or statements and determine if the report is required to be reviewed.
- 1) A compliance review is not required, if any of the following factors are met:
    - a) A facial compliance review of the report was already conducted;
    - b) The report is part of an active sworn complaint at the time of the review;
    - c) The report was not required under the applicable law; or
    - d) The report is the same type of report filed by a Filer ID that has been the subject of a FCR within a one-year period.
  - 2) Document the file.
    - a) If a facial compliance review is not required, the auditor will document the results of the assessment as “No review required” and document the results as listed on subsection A. The auditor will then select the next assigned report on the random selection listing for an assessment.
    - b) If an assignment does not meet the factors listed in subsection A, a review is required and the auditor will document the results of the assessment. The report is now ready for review.
- E. Compliance Review – The auditor will begin by conducting a facial review of the randomly selected report or statement to ensure the disclosure requirements are met.
1. Facial Compliance Review:
    - a) The auditor will complete the designated testing tool to review the reports for completeness, accuracy and reliability of the disclosed information.

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b) The auditor will identify and make note of any non-compliance issues found during review as deficiencies found in the report using the testing tool. See examples of possible deficiencies listed in the "Deficiencies" section of this manual.

### 2. Complete Audit Review (if necessary):

a) The Commission may by a vote of at least six (6) Commission members direct the auditor to perform a complete audit of a statement or report.

b) The auditor will prepare a notification letter to notify the filer in writing of the recommended audit review along with the confidentiality provisions.

c) The auditor will include a "Limited Confidentiality Waiver" form to be completed and returned to the Commission, if the filer chooses to do so.

d) A representation letter is required if the filer will be represented by an attorney.

e) The auditor must request supporting disclosure documentation used to compile the report such as, but not limited to:

- i. Bank statements;
- ii. Cancelled checks;
- iii. Receipts;
- iv. Credit card statements;
- v. Invoices;
- vi. Log of contributions and expenditures.

### F. Results

A. Results and conclusions are determined based on the reviews.

B. Results and conclusions are subject to peer review and/or managerial review and approval.

C. The auditor must identify any deficiencies noted during the reviews.

D. The auditor will document the results of the review for the file.

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### **Deficiencies**

- A. No Deficiencies – If no deficiencies are identified during the facial compliance review, no action is required and the review is considered **CLOSED**.
- B. Deficiencies – If non-compliance issues are identified during the review, a deficiency letter will be prepared and sent to the filer. Possible deficiencies considered to be apparent non-compliance with the applicable disclosure laws will include issues such as: (*subject to change*)
- 1) Any errors found in the calculation, reconciliation, or missing data;
  - 2) Missing schedules and information required to be disclosed in the report under the applicable laws;
  - 3) A political contribution accepted from a corporation or labor organization. Political contributions from labor organizations and from most corporations are prohibited. Elec. Code § 253.091, *et seq.* Partnerships that include one or more corporate partners are subject to the prohibition.
  - 4) The required documentation is missing for a political contribution from an out-of-state political committee. Certain documentation must be obtained in order to accept contributions from an out-of-state political committee. Elec. Code § 253.032.
  - 5) A political contribution of cash from a single contributor in an amount that exceeds \$100 in the reporting period. Cash contributions of more than \$100 in the aggregate from one contributor in a reporting period are prohibited. (Here "cash" means coins and currency, not checks.) Elec. Code § 253.033.
  - 6) A political expenditure to purchase real property. The use of political contributions to purchase real property is prohibited. There is also a restriction on the use of political funds to rent or purchase real property from a person related to the candidate or officeholder within the second degree of consanguinity or affinity or from a business in which the candidate or officeholder or such a relative has a participating interest of more than 10 percent, holds a position on the governing body, or serves as an officer. Elec. Code § 253.038.
  - 7) The full name of the contributor of a political contribution is not disclosed. Texas law does not allow anonymous contributions. Reports must also disclose the actual source of a contribution, not an intermediary. Elec. Code § 253.001.
  - 8) A political expenditure for personal purposes, such as a family trip or gift. Personal use of political contributions is prohibited. Elec. Code § 253.035.
  - 9) A political expenditure to pay for the personal services of the candidate or officeholder or the personal services of the candidate's or officeholder's spouse or

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dependent child. A candidate or officeholder or specific-purpose committee may not use political contributions to pay for personal services rendered by the candidate or officeholder or by the spouse or dependent children of the candidate or officeholder. There are also restrictions on a candidate's, officeholder's, or specific-purpose committee's use of political contributions to make payments to a business in which the candidate or officeholder holds a participating interest of more than 10 percent, a position on the governing body of the business, or a position as an officer of the business. *See* Ethics Advisory Opinion No. 35 (1992) (regarding the combined effect of this prohibition and the prohibition on corporate contributions). Elec. Code § 253.041.

- 10) The candidate or officeholder makes a political expenditure to reimburse personal funds without properly disclosing the expenditure made from personal funds and the candidate's or officeholder's intention to seek reimbursement. There are restrictions on the use of political contributions to reimburse personal funds for political expenditures from personal funds. Elec. Code §§ 253.035(h), 253.0351.
- 11) A candidate or officeholder for an applicable office makes a political expenditure to reimburse personal funds over the allowed amount. There are caps on the amounts for which certain candidates and officeholders may reimburse personal funds from political contributions. Elec. Code §§ 253.042, 253.162.

### **Reporting of Results**

(See Exhibit C – Reporting Flowchart)

- I. Deficiency Report – The auditor will prepare and send a deficiency letter to the filer with any identified deficiencies noted during the review and request the report or statement be resubmitted with any necessary corrections. The filer must then resubmit the report or statement within seven (7) business days of the filer's receipt of the deficiency letter. The deficiency letter deadlines and resubmission reports will be tracked and followed up by the auditor.
  - A. Partial Response – If the Commission receives a partial response, correcting some but not all of the deficiencies, the auditor can send a second notice letter requiring the remainder of the corrections due within seven (7) business days. The second notice will include the possible sanctions that may result if no response is received. The sanctions initiated by the Commission may result in a preliminary review or a complete audit of the report(s) resulting in possible civil penalties.
  - B. No Response – If no corrective action is received within seven (7) business days from the date of the filer's receipt of the deficiency letter, the auditor will send a second notice letter by registered mail with delivery confirmation requested including the possible sanctions that may result if no response is received. The sanctions initiated by the Commission may result in a preliminary review or a complete audit of the report(s) resulting in possible civil penalties.

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- II. Referral to Enforcement – If the resubmission report is not received at all or does not fully comply with the applicable law, the auditor will refer the review to management for action. Management may refer any facial compliance reviews to the Commission based on the number of deficiencies and serious violation(s) to initiate a complete audit or a preliminary review.
- III. Issues Resolved – If all issue(s) are resolved, a closeout letter is prepared and sent to the filer and the review is closed.

### **Enforcement**

The Commission may, on a motion adopted by an affirmative vote of at least six Commissioners, initiate enforcement actions in accordance with section 571.171 of the Government Code. (See Exhibit A.)

### **Tracking/Peer Review**

The reviews will be peer reviewed by designated Commission staff and will be logged for tracking purposes on an Excel spreadsheet or Access database by the auditor.

### **Retention of Facial Compliance Reviews**

The Commission will retain working papers and support documentation of the reviews for a minimum of four (4) years after the closed date.

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**EXHIBIT A**

**Ch. 571, Government Code**

**Sec. 571.069. Review of Statements and Reports; Audits**

(a) The commission shall review for facial compliance randomly selected statements and reports filed with the commission and may review any available documents. The commission shall return for resubmission with corrections or additional documentation a statement or report that does not, in the opinion of the commission, comply with the law requiring the statement or report. A statement or report returned for resubmission is considered to have been filed on the date the statement or report was originally filed if:

- (1) the statement or report is resubmitted to the commission not later than the seventh business day after the date the person filing the statement or report receives the returned statement or report; and
- (2) the resubmitted statement or report complies with law.

(b) The commission may by a vote of at least six commission members initiate a preliminary review as provided by Section 571.124 or perform a complete audit of a statement or report:

- (1) if, before the 31st day after the date the statement or report was originally due, the executive director does not obtain from the person information that permits the executive director to determine that the statement or report complies with law;
- (2) if a statement or report returned for resubmission is not resubmitted within the time prescribed by Subsection (a); or
- (3) on an affirmative vote of at least six commission members that a statement or report resubmitted under Subsection (a), together with any corrections or additional documentation, does not, in the opinion of the commission, comply with the law requiring the statement or report.

(c) Any audited statement, report, document, or other material is confidential and may not be disclosed unless the statement, report, document, or other material:

- (1) was previously public information; or
- (2) is entered into the record of a formal hearing or a judicial proceeding.

(d) The party who is the subject of the audit may waive confidentiality by sending written notice to the commission.

(e) The commission may not audit a statement or report filed before January 1, 1992, under a law administered and enforced before that date by the secretary of state.

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(f) This section may not be construed as limiting or affecting the commission's authority to, on the filing of a motion or receipt of a sworn complaint, review or investigate the sufficiency of a statement or report.

**Sec. 571.124. Preliminary Review: Initiation**

(a) The commission staff shall promptly conduct a preliminary review on receipt of a written complaint that is in compliance with the form requirements of Section 571.122.

(b) On a motion adopted by an affirmative vote of at least six commission members, the commission, without a sworn complaint, may initiate a preliminary review of the matter that is the subject of the motion.

**Sec. 571.171. Initiation and Referral**

(a) On a motion adopted by an affirmative vote of at least six commission members, the commission may initiate civil enforcement actions and refer matters to the appropriate prosecuting attorney for criminal prosecution.

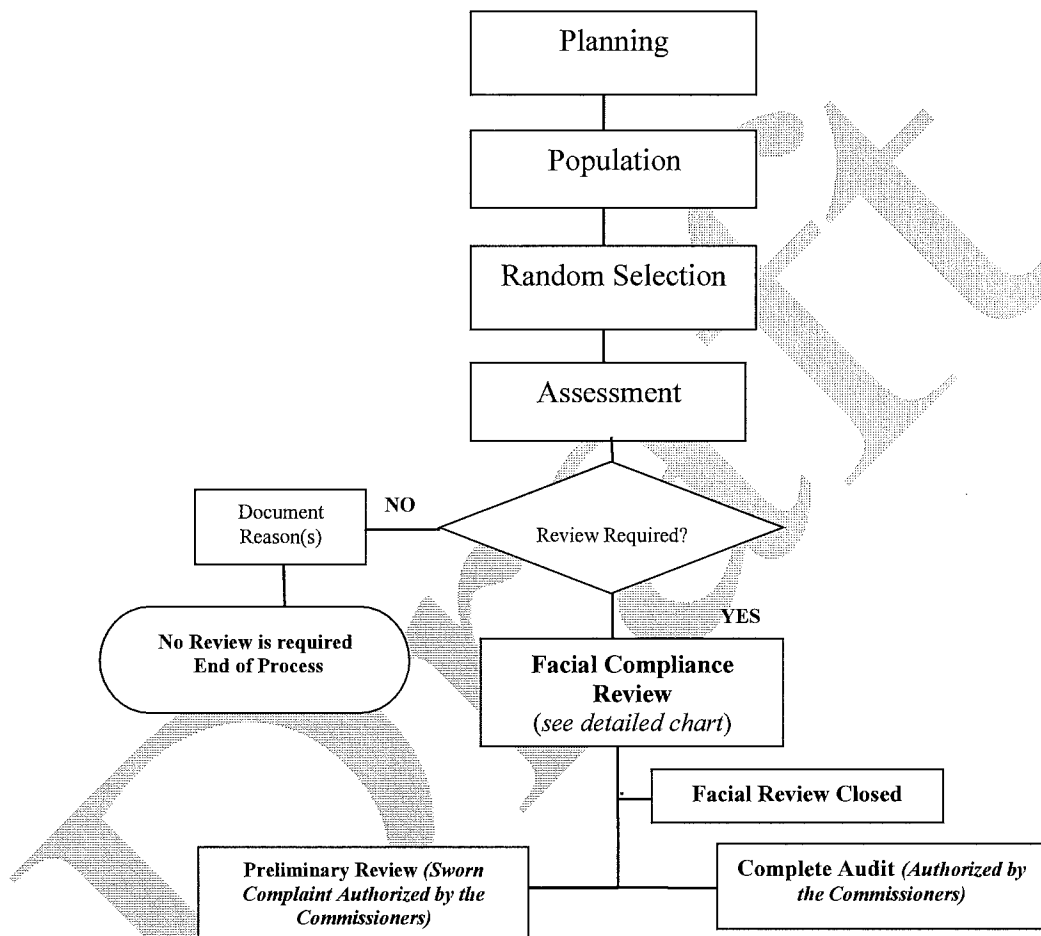
(b) On receipt of a sworn complaint, if the executive director reasonably believes that the person who is the subject of the complaint has violated Chapter 36 or 39, Penal Code, the executive director may refer the matter to the appropriate prosecuting attorney for criminal prosecution.

(c) In making a referral to a prosecuting attorney under this section, the commission or executive director may disclose confidential information.

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**EXHIBIT B**

**Facial Compliance Procedures Flowchart**

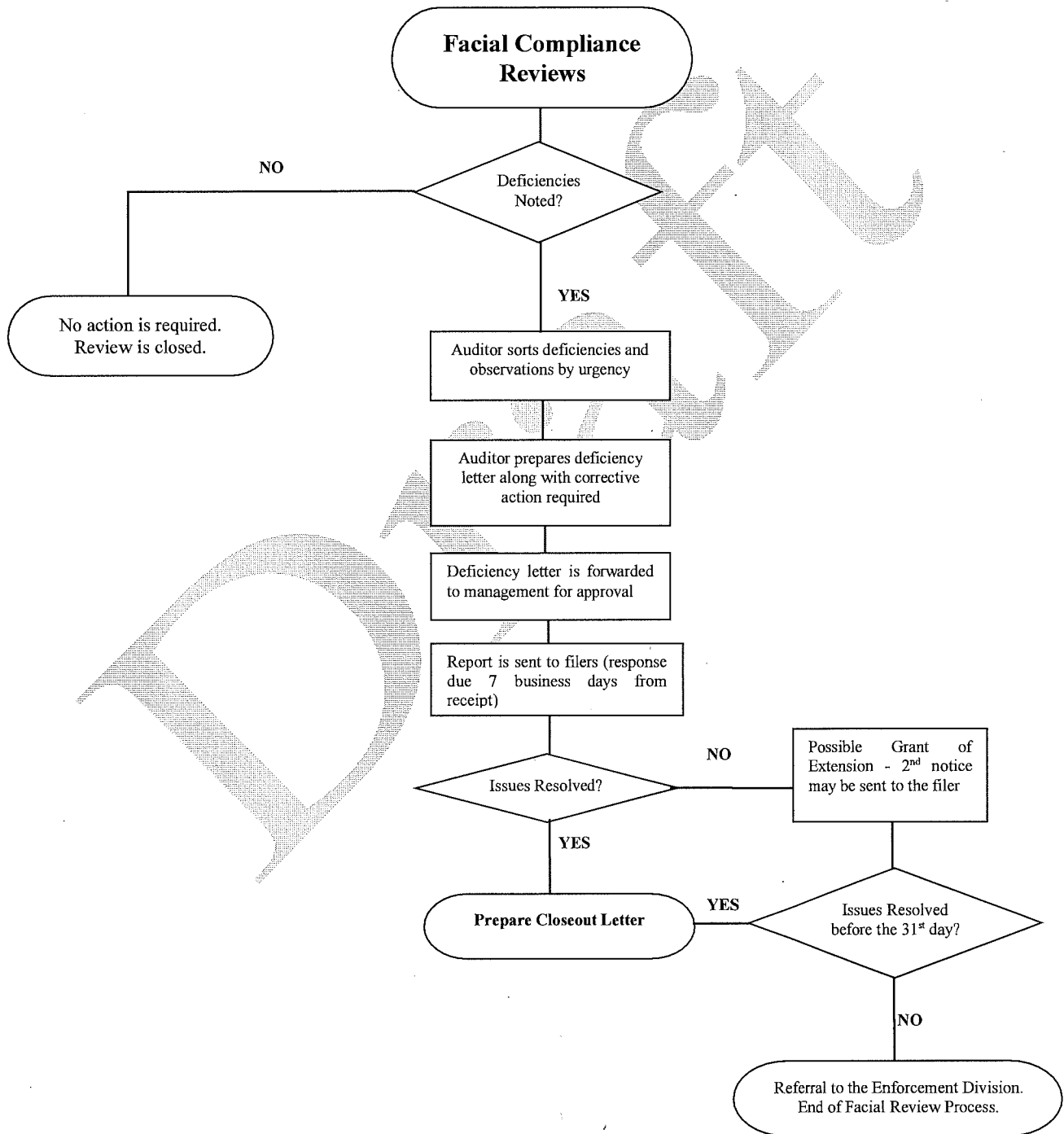




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**EXHIBIT C**

**Facial Compliance Reporting Flowchart**



## **Exhibit C**

### **Section 571.069 of the Government Code. Review of Statements and Reports; Audits**

(a) The commission shall review for facial compliance randomly selected statements and reports filed with the commission and may review any available documents. The commission shall return for resubmission with corrections or additional documentation a statement or report that does not, in the opinion of the commission, comply with the law requiring the statement or report. A statement or report returned for resubmission is considered to have been filed on the date the statement or report was originally filed if:

(1) the statement or report is resubmitted to the commission not later than the seventh business day after the date the person filing the statement or report receives the returned statement or report; and

(2) the resubmitted statement or report complies with law.

(b) The commission may by a vote of at least six commission members initiate a preliminary review as provided by Section 571.124 or perform a complete audit of a statement or report:

(1) if, before the 31st day after the date the statement or report was originally due, the executive director does not obtain from the person information that permits the executive director to determine that the statement or report complies with law;

(2) if a statement or report returned for resubmission is not resubmitted within the time prescribed by Subsection (a); or

(3) on an affirmative vote of at least six commission members that a statement or report resubmitted under Subsection (a), together with any corrections or additional documentation, does not, in the opinion of the commission, comply with the law requiring the statement or report.

(c) Any audited statement, report, document, or other material is confidential and may not be disclosed unless the statement, report, document, or other material:

(1) was previously public information; or

(2) is entered into the record of a formal hearing or a judicial proceeding.

(d) The party who is the subject of the audit may waive confidentiality by sending written notice to the commission.

(e) The commission may not audit a statement or report filed before January 1, 1992, under a law administered and enforced before that date by the secretary of state.

(f) This section may not be construed as limiting or affecting the commission's authority to, on the filing of a motion or receipt of a sworn complaint, review or investigate the sufficiency of a statement or report.

**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 a candidate, officeholder, political committee, or other filer which falls within the categories required by Texas Election Code §254.031 must be reported as if the filer made the expenditure.

(b) The payee of an expenditure to which subsection (a) of this section 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 §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” [“expense”] 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.

(A) 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.”

(B) The remaining \$95,000 is used to purchase broadcast airtime on the three major broadcasting stations. 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.”



**CHAPTER 12. SWORN COMPLAINTS****Subchapter C. INVESTIGATION AND PRELIMINARY REVIEW****§ 12.81. Technical, Clerical, or *De Minimis* Violations**

(a) A technical, clerical, or *de minimis* violation for purposes of section 571.0631 of the Government Code may include a first-time allegation against a respondent for:

(1) Typographical or incomplete information on a campaign finance report that is not misleading or does not substantially affect disclosure;

(2) Failure to include a disclosure statement on political advertising;

(3) Failure of a non-incumbent to use the word “for” in a campaign communication, where the communication is not otherwise misleading;

(4) Failure to include the highway right-of-way notice on political advertising;

(5) Filing a late campaign finance report if the total amount of political contributions does not exceed \$2,500, the total amount of political expenditures does not exceed \$2,500, and the report is not a report due 30 or 8 days before an election, or a special pre-election report;

(6) Filing an incomplete or corrected campaign finance report that is not a report due 30 or 8 days before an election or a special pre-election report if:

(A) the total amount of incomplete or incorrectly reported political contributions does not exceed the lesser of 10% of the total amount of political contributions on the corrected report, or \$5,000; or

(B) the total amount of incomplete or incorrectly reported political expenditures does not exceed the lesser of 10% of the total amount of political expenditures on the corrected report, or \$5,000; or

(C) the total amount of incomplete or incorrectly reported political contributions or political expenditures does not exceed the amount of the filing fee for a place on the ballot for the office sought or held by the respondent during the period covered by the report at issue, or, if there is not a set filing fee, \$500; or

(7) Failure to timely file a campaign treasurer appointment if, before filing the campaign treasurer appointment, the total amount of political contributions accepted does not exceed \$2,500 and the total amount of political expenditures made or authorized does not exceed \$2,500.

(b) A technical, clerical, or *de minimis* violation for purposes of section 571.0631 of the Government Code may include allegations against a respondent for:

(1) Typographical or incomplete information on a campaign finance report that is not misleading or does not substantially affect disclosure;

**Texas Ethics Commission Rules**

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(2) Filing an incomplete or corrected campaign finance report if:

(A) the total amount of incomplete or incorrectly reported political contributions does not exceed the lesser of 5% of the total amount of political contributions on the corrected report, or \$2,500; or

(B) the total amount of incomplete or incorrectly reported political expenditures does not exceed the lesser of 5% of the total amount of political expenditures on the corrected report, or \$2,500.

(c) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government Code, if the executive director determines that all the alleged violations are technical, clerical, or *de minimis* under subsection (a) of this section, the executive director may enter into an assurance of voluntary compliance with the respondent. Before entering into an assurance of voluntary compliance, the executive director may require a respondent to correct the violations.

(d) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government Code, if the executive director determines that all the alleged violations are technical, clerical, or *de minimis* under subsection (b) of this section, the executive director may enter into an agreed resolution with the respondent. Before entering into an agreed resolution, the executive director may require a respondent to correct the violations.

(e) An assurance of voluntary compliance or an agreed resolution entered into under this section are confidential under section 571.140 of the Government Code.

(f) An assurance of voluntary compliance or an agreed resolution entered into under this section may include a penalty not to exceed \$500.

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

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*February 15, 2017*

*Application of section 255.003 of the Election Code to the use of political subdivision facilities for a debate forum and for distributing campaign materials. (AOR-618)*

The Texas Ethics Commission (“commission”) has been asked several general questions by the board members of a special purpose district regarding the application of section 255.003 of the Election Code.

**Facts**

The relevant facts presented by the requestor of this opinion are that the district’s board members are interested in allowing a third party, in exchange for paying a fee, to use the district’s facilities to hold a political debate forum for candidates for public office or for individuals with varying viewpoints regarding a ballot measure. The requestor proposes that a third party would provide to the district a written assurance that all candidates or viewpoints regarding a ballot measure, as applicable, would be given an opportunity to speak at the forum, and that the third party would be informed that the distribution of political advertising is prohibited. The requestor states that, in such circumstances, district officers and employees would be unlikely to have actual knowledge of whether the third party’s invitations to the debate forum included all candidates or viewpoints, and the members are concerned that a violation would occur if the third party fails to equally invite and allow all candidates or viewpoints to appear and speak at the debate forum. The requestor is also concerned about the distribution of campaign materials in the district’s facilities or adjacent premises during business hours, including facilities that are designated as a public forum.

**Applicable Law**

Section 255.003 of the Election Code provides, in relevant part, as follows:

- (a) An officer or employee of a political subdivision<sup>1</sup> may not knowingly spend or authorize the spending of public funds for political advertising.

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<sup>1</sup> The requestors of this opinion state that the district is a political subdivision. Additionally, the law governing the district defines the district as a political subdivision; defines its boundaries; and provides for self-governance and numerous powers to further various public purposes, including the assessment and collection of taxes. Thus, we agree with the requestors that the district is a political subdivision for purposes of this section. *See* Elec. Code § 1.005(13) (defining “political subdivision” to include a governmental entity that embraces a geographical area with a defined boundary, exists for the purpose of discharging functions of government, and possesses authority for subordinate self-government through officers selected by it).

(b) Subsection (a) does not apply to a communication that factually describes the purposes of a measure<sup>2</sup> if the communication does not advocate passage or defeat of the measure.

(b-1) An officer or employee of a political subdivision may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that:

- (1) the officer or employee knows is false; and
- (2) is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.

(c) A person who violates Subsection (a) or (b-1) commits an offense. An offense under this section is a Class A misdemeanor.

Elec. Code § 255.003.

For purposes of section 255.003(a), a political subdivision's public funds would be "spent" for political advertising if its resources, including employees' work time, equipment, or facilities, are used to disseminate political advertising. Ethics Advisory Opinion Nos. 532 (2015) (use of city staff and equipment to create and distribute political advertising on city letterhead), 443 (2002) ("EAO 443") (use of school district facilities to post political advertising in a restricted area of a school on work time), 45 (1992) (use of school district employees' work time and internal mail system equipment to distribute political advertising). Section 255.003(a) also applies broadly to any use of a political subdivision's resources for political advertising, regardless of whether the political subdivision shows a preference for political advertising from a particular source. EAO 443. Thus, a district officer or employee could not use or authorize the use of the district's resources, including staff, equipment, or facilities, for political advertising.

Also relevant to section 255.003(a) is the definition of "political advertising," which is as follows:

"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:

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<sup>2</sup> A "measure" is a question or proposal submitted in an election for an expression of the voters' will. *Id.* § 251.001(19).

(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.

Elec. Code § 251.001(16). Whether a particular communication supports or opposes a candidate, political party, public officer, or measure depends upon its specific content. *See Ethics Advisory Opinion No. 476 (2007).*

### **Debate Forum**

The statutory definition of political advertising does not include a purely verbal communication unless it is broadcast for consideration by radio or television or appears on an Internet website. The requestor's facts do not indicate whether any debate would be broadcast or appear on an Internet website. If a debate forum is not broadcast for consideration and does not appear on an Internet website, then it would not constitute political advertising and section 255.003(a) would not apply. However, if the debate forum would be broadcast for consideration by radio or television, or appear on an Internet website, the following analysis applies.<sup>3</sup>

#### Single-Party Political Debate Forum

The first general question is whether a "single-party political debate" would be considered political advertising if only candidates seeking the nomination of one political party are invited to the debate. We have previously considered whether section 255.003(a) would prohibit a city from holding a forum for candidates for city office, for which candidates do not seek the nomination of a political party. Ethics Advisory Opinion No. 343 (1996). The forum considered in that opinion would be broadcast for consideration on the city's public access cable television channel. We held that a forum at which all candidates in an election are provided the same opportunity to appear and speak is not a forum in support or opposition to any individual candidate and thus would not be political advertising. However, we also stated:

Excluding candidates from such a forum ... makes the forum itself a communication in support of those included because the exclusion of

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<sup>3</sup> Although not under the commission's jurisdiction, Federal Communication Commission regulations may also apply to such a broadcast.

certain candidates lends the sponsor's tacit support to those included as the candidates worthy of consideration by the audience.

*Id.*

In the question before us, only candidates in a primary election who seek the nomination of a single political party would be invited. Other candidates in a primary election who seek the nomination of another political party would be excluded. In our opinion, such a debate forum would constitute a communication that supports the political party whose nomination is sought by the invited candidates and therefore would be political advertising. In those circumstances, an officer or employee of a political subdivision would violate section 255.003(a) of the Election Code by spending or authorizing the spending of public funds for such a debate forum.

### Public Forum

The requestor of this opinion has generally asked about the application of section 255.003 of the Election Code to a "public forum." Our conclusion that the use of public funds for a single-party candidate debate forum would violate that section is not intended to address a situation in which the debate forum itself would be considered speech made in a "public forum." See generally *Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666 (1998) (analyzing whether a state-owned public television station constituted a public forum, such that a political candidate debate broadcast on the station would be considered speech made in a public forum).

Courts have recognized three types of fora, the first of which is the traditional public forum that is defined by certain objective characteristics of the property, such as whether "by long tradition or by government fiat, the property has been 'devoted to assembly and debate.'"<sup>4</sup> A state can exclude a speaker from such a forum "only when the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest."<sup>5</sup> However, the government may impose "[r]easonable time, place, and manner regulations..., and a content-based prohibition must be narrowly drawn to effectuate a compelling state interest."<sup>6</sup>

The second forum is the designated public forum, created by purposeful governmental action by "intentionally opening a nontraditional public forum for public discourse."<sup>7</sup> "If

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<sup>4</sup> *Forbes*, 523 U.S. at 677 (quoting *Perry Ed. Assn v. Perry Local Educators' Assn*, 460 U.S. 37, 45 (1983)).

<sup>5</sup> *Forbes*, 523 U.S. at 677 (quoting *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985)).

<sup>6</sup> *Perry*, 460 U.S. at 46.

<sup>7</sup> *Forbes*, 523 U.S. at 677 (quoting *International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992)). Courts look to the "policy and practice of the government" to determine whether a place is designated as a public forum. *Forbes*, 523 U.S. at 677 (quoting *Cornelius*, 473 U.S. at 802).

the government excludes a speaker who falls within the class to which a designated public forum is made generally available, its action is subject to strict scrutiny.”<sup>8</sup> Additionally, the government may create a designated forum that is “limited to use by certain groups or dedicated solely to the discussion of certain subjects.”<sup>9</sup> In a limited forum, the government “may impose restrictions on speech that are reasonable and viewpoint-neutral.”<sup>10</sup> A public forum can include forms other than a physical space, such as a mail delivery system<sup>11</sup> or a charitable contribution program.<sup>12</sup>

The third forum is a nonpublic forum, to which the government can restrict access “as long as the restrictions are reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.”<sup>13</sup>

The requestor of this opinion does not provide detailed facts to consider this issue, and we cannot determine whether any of the district’s resources, including the district’s facilities, would qualify as a public forum. However, we note that section 255.003(a) of the Election Code could not prohibit the use of public funds or resources for the debate forum if, under the particular circumstances, the prohibition would unconstitutionally restrict speech.<sup>14</sup> Therefore, the district would not be able to restrict a third party from using a public forum unless the restriction is constitutionally permissible. If the district provided the use of a public forum to a third party, denying the use of the public forum to another party based on the party’s identity or the content of the party’s speech would generally be unconstitutional.<sup>15</sup>

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<sup>8</sup> *Id.* As long as a state retains the open character of a designated forum, “it is bound by the same standards as apply in a traditional public forum.” *Perry*, 460 U.S. at 46.

<sup>9</sup> *Pleasant Grove City v. Sumnum*, 555 U.S. 460, 470 (2009) (citing *Perry*, 460 U.S. at 46, n.7).

<sup>10</sup> *Sumnum*, 555 U.S. at 470 (2009).

<sup>11</sup> *Perry*, 460 U.S. at 46-47.

<sup>12</sup> *Cornelius*, 473 U.S. at 801.

<sup>13</sup> *Forbes*, 523 U.S. at 677-78 (quoting *Cornelius*, 473 U.S. at 800). In public property that is not a forum for public communication, a state may reserve the forum for its intended purposes “as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.” *Perry*, 460 U.S. at 46.

<sup>14</sup> Whether section 255.003(a) is an unconstitutional restriction in any particular case depends on the specific facts, including the nature of the restriction, its justification, and other circumstances. Such broad questions are beyond the scope of this opinion and are for the judiciary to resolve. However, we note that the United States Supreme Court has considered circumstances in which a candidate may be excluded from a debate forum. *See, e.g., Forbes*, 523 U.S. at 682-83 (1998) (where a congressional candidate debate was a *nonpublic* forum broadcast by state-owned public television, the state could permissibly exclude a candidate based on “a reasonable, viewpoint-neutral exercise of journalistic discretion”).

<sup>15</sup> *See, e.g., Lee*, 505 U.S. at 706.

## Distribution of Campaign Materials

The requestor also asks a general question about the application of section 255.003(a) of the Election Code, as interpreted by EAO 443, to the distribution of campaign materials in the district's facilities or adjacent premises during business hours, including facilities that are designated as a public forum.

In EAO 443, we considered how that section applied to a school district allowing district employees, during work time, to distribute a candidate's campaign flyers in a teachers' lounge that is not accessible to the public. EAO 443. We noted that, in those circumstances, the use of school district resources would be a prohibited use of public funds "for" political advertising. The school district had argued that the restriction should not apply when any candidate has the same opportunity to make use of school district resources for the dissemination of political advertising. However, based on the broad statutory language that prohibits the spending of public funds "for political advertising," we concluded that the prohibition applies to any use of a political subdivision's resources for political advertising, regardless of whether the school district showed a preference for political advertising from a particular source.<sup>16</sup> We further noted that the opinion was not intended to address the use of facilities that function as a public forum.

EAO 443 did not specifically address a public officer or employee allowing a member of the public to distribute campaign flyers in a public forum because the facility at issue was a teachers' lounge that was not open to the public and thus was clearly not a public forum. However, as noted, section 255.003(a) cannot prohibit the distribution of political advertising in a public forum if such a prohibition would be an unconstitutional restriction on speech, and there is no basis to distinguish from a traditional or designated public forum in this regard.<sup>17</sup> Thus, if the facility is a traditional or designated public forum, then section 255.003(a) of the Election Code would not prohibit the use of public funds for political advertising if, under the particular circumstances, the prohibition would unconstitutionally restrict speech. An additional question is whether section 255.003(a) applies only to a designated public forum consisting of an exterior or interior space. In determining whether a particular area is designated as a public forum, we are aware of no bright-line distinction between exterior or interior spaces.<sup>18</sup>

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<sup>16</sup> As noted in the opinion, the distribution of campaign flyers is clearly different from a broadcast candidate forum. In each case, the issue is whether the communication, as a whole, supports or opposes a candidate, officeholder, political party, or measure. *See id.* at n.1. In the case of the flyers, the prohibition applied because there was no question that the flyers were political advertising. However, in the case of a candidate forum, if all candidates are provided the same opportunity to appear and speak at the forum, then the forum itself does not support or oppose a candidate.

<sup>17</sup> 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).

<sup>18</sup> The United States Supreme Court has stated that in order to create a designated public forum, the government "must intend to make the property 'generally available' to a class of speakers." *Forbes*, 523 U.S. at 679. Courts may also consider "the nature of the property and its compatibility with expressive activity to discern the government's intent." *Cornelius*, 473 U.S. at 802-03.



The requestor asks whether a district policy requiring a third party to pay for the use of its facilities, presumably for the distribution of campaign flyers, would violate section 255.003(a). In our opinion, based upon the broad statutory language that we recognized in EAO 443, the prohibition would apply to an officer or employee who authorizes the spending of public funds for the distribution of political advertising in district facilities that are not a public forum, including in circumstances in which a person pays the district for the use of the facilities.

### **Knowingly Spending Public Funds**

The requestor also generally asks about the meaning of “knowingly” for purposes of section 255.003(a) of the Election Code. The requestor proposes that a prospective third party that wishes to hold a non-partisan debate forum would provide to the district a written assurance that all candidates or viewpoints regarding a measure, as applicable, would be given an opportunity to speak at the forum, and that the third party would be informed that the distribution of political advertising is prohibited. The requestor states that, in such circumstances, district officers and employees would be unlikely to have actual knowledge of whether the third party’s invitations to the debate forum included all candidates or viewpoints. The requestor asks whether a violation would occur if the third party fails to equally invite and allow all candidates or viewpoints to appear and speak. A related question is whether a violation would occur when an officer or employee has “actual knowledge” or merely “should have known” that public funds would be spent or authorized to be spent for political advertising.

At the outset, we do not think that section 255.003(a) applies only to circumstances in which an officer or employee spends or authorizes the spending of public funds for what the person *knows* to meet the legal definition of political advertising.<sup>19</sup> However, in 2009, the legislature amended the statute by adding the term “knowingly” to state that an officer or employee of a political subdivision may not “knowingly spend or authorize the spending of public funds for political advertising.”<sup>20</sup> The issue is what an officer or employee must “know” in order to commit a violation.

Legislative history surrounding the 2009 statutory amendment does not clearly resolve this issue.<sup>21</sup> However, the legislature has previously adopted laws under Title 15 of the

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<sup>19</sup> In our opinion, such a narrow interpretation would decrease the incentive for political subdivisions to carefully prepare the information they provide to the public regarding candidates, officeholders, and ballot measures and would be contrary to the purposes of other statutory provisions that allow an officer or employee of a political subdivision to request an advisory opinion regarding whether a communication is political advertising. *See id.* § 255.003(d), (e). *See also infra*, n.7.

<sup>20</sup> Two bills adopted during the regular session of the 81st Legislature contained identical amendments to subsection 255.003(a). Act of May 31, 2009, 81st Leg., R.S., ch. 843, § 1, eff. Sept. 1, 2009; Act of June 3, 2009, 81st Leg., R.S., ch. 644, § 1, eff. Sept 1, 2009.

<sup>21</sup> The analysis for the introduced version of one bill stated “the bill provides protection for officers or employees of a political subdivision who rely on a third party whose actions are found to have violated the statute, if the officer/employee had no prior knowledge of the intent to violate the statute.” Sen. Comm. on State Affairs, Bill Analysis, Tex. S.B. 2085, 81st Leg., R.S. (Apr. 29, 2009). Subsequent legislative analysis did not directly address

Election Code that specifically require a person to know that their conduct is illegal in order to commit a violation.<sup>22</sup> In a related provision, the legislature has prohibited an officer or employee of a political subdivision from spending or authorizing the spending of public funds for a communication describing a measure if the communication contains information that the officer or employee “knows is false” and is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure. Elec. Code § 255.003(b-1).

The Election Code does not define the term “knowingly.” However, the Penal Code definitions of culpable mental states generally apply to offenses set out in civil statutes.<sup>23</sup> Moreover, Penal Code definitions are generally applicable to the civil enforcement of statutes that also contain a criminal sanction.<sup>24</sup>

The Penal Code defines “knowingly” as follows:

A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to *circumstances surrounding his conduct* when he is aware of the nature of his conduct or *that the circumstances exist*. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

Penal Code § 6.03(b) (emphasis added).

In the case of spending public funds or authorizing the spending of public funds for political advertising, it is the circumstances surrounding the act (i.e., spending or authorizing the spending of public funds for political advertising) that make the conduct illegal. Thus, section 255.003(a) is best classified as a “circumstances offense.”<sup>25</sup>

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the issue. See Sen. Comm. on State Affairs, Bill Analysis, Tex. C.S.S.B. 2085, 81st Leg., R.S. (May 5, 2009); House Comm. on Elections, Bill Analysis, Tex. S.B. 2085, 81st Leg., R.S. (unamended); Sen. Comm. on State Affairs, Bill Analysis, Tex. S.B. 2085, 81st Leg., R.S. (Aug. 4, 2009).

<sup>22</sup> See, e.g., section 253.003(b) (a person may not knowingly accept a political contribution the person knows to have been made in violation of chapter 253 of the Election Code); 253.005(a) (a person may not knowingly make or authorize a political expenditure wholly or partly from a political contribution the person knows to have been made in violation of chapter 253 of the Election Code). See also, *Osterberg v. Peca*, 12 S.W.3d 31, 39 (Tex. 2000) (holding that a statute prohibiting a person from “knowingly” making or accepting a campaign contribution or making a campaign expenditure in violation of chapter 253 of the Election Code applies only to whether a person is making a campaign contribution or campaign expenditure).

<sup>23</sup> See *Goss v. State*, 582 S.W.2d 782, 784 (Tex. Crim. App. 1979).

<sup>24</sup> See *Texas Alcoholic Beverage Comm'n v. J. Square Enterprises*, 650 S.W.2d 531, 532 (Tex. App.—Dallas 1983, no writ) (applying Penal Code definition of “knowingly” to the civil enforcement of a statute making it an offense to “knowingly permit” a minor to consume alcohol on the premises).

<sup>25</sup> Cf. *McQueen v. State*, 781 S.W.2d 600, 603 (Tex. Crim. App. 1989) (“where otherwise innocent behavior becomes criminal because of the circumstances under which it is done, a culpable mental state is required as to those surrounding circumstances”). This principle was applied in the civil enforcement of a “circumstances offense” in the *J. Square* case. See *supra*, n. 24. In *J. Square*, the Texas Alcoholic Beverage Commission (“TABC”) brought administrative proceedings against J. Square Enterprises for violating section 106.13 of the Alcoholic Beverage

Therefore, in our opinion, an officer or employee of a political subdivision must be aware of the circumstances surrounding the communication at issue to violate section 255.003(a).

Regarding the requestor's particular scenario, if a district officer or employee knows only that a third party has affirmed by written agreement that all candidates or viewpoints regarding a measure, as applicable, would be provided the same opportunity to appear and speak at the debate forum, and that the third party has been informed that political advertising may not be distributed at the debate forum, then the officer or employee would not violate section 255.003(a) of the Election Code. However, if the officer or employee has knowledge of circumstances indicating that the debate forum would be used for political advertising, then section 255.003(a) would prohibit the officer or employee from spending or authorizing the spending of public funds for that debate forum.<sup>26</sup>

### SUMMARY

An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. If only candidates who are seeking the nomination of a single political party in a primary election are provided the opportunity to appear and speak at the debate forum described in this opinion, then the forum would support the political party. If the debate forum is broadcast for consideration by radio or television or appears on an Internet website, then the forum would be political advertising.

Section 255.003(a) of the Election Code would not prohibit the use of public funds for political advertising if, under the particular circumstances, the prohibition would unconstitutionally restrict speech.

To violate section 255.003(a) of the Election Code, an officer or employee of a political subdivision must be aware of the circumstances surrounding the communication at issue.

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Code, which made it an offense to knowingly sell an alcoholic beverage to a minor or to knowingly permit a minor to consume alcohol on the premises. *Id.* at 531. The Fifth Court of Appeals affirmed the district court's order dismissing the administrative sanction because TABC only proved that the defendant *should have known* that the person to whom he sold alcohol was underage, but did not *actually know* that he was underage. *Id.* at 532. In other words, TABC did not prove that J. Square *actually knew* the circumstances that made serving alcohol illegal.

<sup>26</sup> We note that public funds must be used for public purposes and whether any particular use of public funds furthers a public purpose depends upon the specific facts. Ethics Advisory Opinion No. 522 (2014). State law also prohibits certain misuses of government property by public servants. Penal Code § 39.02(a) (prohibiting a public servant from, with the intent to obtain a benefit or harm or defraud another, intentionally or knowingly misusing government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment).

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

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*February 15, 2017*

*Whether a gift card to an online retailer is considered to be cash or a negotiable instrument for purposes of section 36.10(a)(6) of the Penal Code, and related questions. (AOR-619)*

The Texas Ethics Commission has been asked whether a gift card to an online retail store is considered cash or a negotiable instrument for purposes of section 36.10(a)(6) of the Penal Code, and other related questions.

**Background**

The requestor of this opinion is an employee of a state agency that contracted with an information technology company ("IT company") to provide paperless filing software to the agency. The IT company also provided to agency employees a training program for the filing software, and employees participated in the training during agency work hours. The requestor states that the IT company would like to give each agency employee who completed the training program a gift card to an online retailer with a value ranging from \$20 to \$60. The gift card could be used to purchase goods or services from the retailer in an amount equal to its value. The requestor asks us to assume that the IT company is not required to register as a lobbyist under Chapter 305 of the Government Code and is not regulated by the agency, and that the only law at issue in this opinion is section 36.10(a)(6) of the Penal Code.

**Penal Code Restrictions**

Section 36.08 of the Penal Code, in relevant part, prohibits a state employee who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government from accepting any benefit from a person the state employee knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his or her discretion. Penal Code § 36.08(d).<sup>1</sup> Under the requestor's facts, the gift card would be offered to agency employees by the IT company that is interested in a contract with the agency. Therefore, we assume that the employees exercise discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government and that

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<sup>1</sup> See also § 36.09, Penal Code (a person may not offer a benefit to a public servant who he knows is prohibited by law from accepting it).

section 36.08(d) of the Penal Code prohibits the employees from accepting a benefit from the IT company.<sup>2</sup>

A “benefit” includes “anything reasonably regarded as pecuniary gain or pecuniary advantage.” *Id.* § 36.01(3). The gift card to an online retailer is a benefit. *See* Ethics Advisory Opinion Nos. 97 (1992) (an engraved clock worth \$50 is a benefit), 60 (1992) (a \$60 restaurant meal is a benefit). However, there is an exception to the prohibitions in section 36.08 of the Penal Code for “an item with a value of less than \$50, *excluding cash* or a negotiable instrument as described by Section 3.104, Business & Commerce Code.” *Id.* § 36.10(a)(6) (emphasis added).<sup>3</sup> The issue in this opinion is whether the gift cards are “cash” for purposes of that exception. If the gift cards are considered “cash,” then the exception would not permit the agency employees to accept the gift cards.

### **Meaning of “Cash” in Section 36.10 of the Penal Code**

The Penal Code does not define the term “cash,” and we are not aware of another Texas statute defining the term. However, in *Hardy v. State*, the Supreme Court of Texas examined the meaning of “cash” when considering whether a gift certificate to a retailer valued at five dollars was a “noncash merchandise prize” under section 47.01(4)(B) of the Penal Code.<sup>4</sup> *Hardy v. State*, 102 S.W.3d 123 (Tex. 2003). In *Hardy*, the court defined “cash” as either “ready money (as coin, specie, paper money, an instrument, token, or anything else being used as a medium of exchange)” or “money or its equivalent paid immediately or promptly after purchasing.” 102 S.W.3d at 131 (quoting Webster’s Third New Int’l Dictionary 346 (1961)) (internal quotations omitted). The court stated that the gift certificates were “an equivalent of money” redeemable for merchandise that “may be used in precisely the same manner as five-dollar bills.” *Id.* The court reasoned that the gift certificates did not qualify as “noncash merchandise prizes” because they operated “in the same manner as legal tender in a retail establishment.” *Id.* at 132. Thus, the court held that the gift certificates were rewards of “‘cash’ or its equivalent.” *Id.* *See also* Tex. Att’y Gen. Op. No. GA-0812 (2010) (concluding gift certificates redeemable only at bingo establishments are not noncash prizes because they are redeemable for merchandise that would otherwise cost money); Tex. Att’y Gen. Op. No. GA-0527 (2007) (concluding that a stored-value card is a money equivalent because the amount of value stored on the card equates to an amount or value that can be exchanged for merchandise).

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<sup>2</sup> The facts presented by the requestor do not implicate either the bribery or honoraria provisions in chapter 36 of the Penal Code. Penal Code §§ 36.02(a), 36.07. Thus, we consider only the application of the gift prohibitions in section 36.08 of the Penal Code to the requestor’s circumstances.

<sup>3</sup> Section 36.10 of the Penal Code includes several additional exceptions to the benefit prohibitions in section 36.08. However, the requestor limits this opinion to section 36.10(a)(6), and we therefore do not address the possible application of other exceptions.

<sup>4</sup> Section 47.01(4)(b) of the Penal Code provides an exception to the definition of a gambling device for certain machines that reward players “exclusively with noncash merchandise prizes, toys, or novelties.” Penal Code § 47.01(4)(B).

Regarding the gift cards to the online retailer, the question is whether the gift cards are considered “cash” for purposes of section 36.10(a)(6) of the Penal Code. We note that the legislature did not define the term “cash,” but we think it is reasonable to interpret it in a manner consistent with the *Hardy* opinion. Accordingly, we think the term “cash” includes a gift card that operates in the same manner as legal tender in a retail establishment, including an online retailer, and that equates to an amount or value that can be exchanged for merchandise or services of an equivalent value that otherwise would have cost money. Thus, in our opinion, a gift card is considered to be cash for purposes of section 36.10(a)(6) of the Penal Code.<sup>5</sup> Therefore, the state employees may not accept the gift cards offered by the IT company under that exception.

The requestor also asks whether a prepaid debit card is cash for purposes of section 36.10(a)(6) of the Penal Code. We do not see any material distinction between a prepaid debit card that can be used at a variety of retail establishments and a gift card that is limited to a specific retail establishment. Thus, a prepaid debit card is also cash for purposes of section 36.10(a)(6) of the Penal Code.<sup>6</sup>

#### SUMMARY

A prepaid debit card or gift card is considered to be cash for purposes of section 36.10(a)(6) of the Penal Code. Therefore, a public servant who is prohibited from accepting a benefit in the form of a prepaid debit card or gift card from a person under section 36.08 of the Penal Code may not accept such a benefit from that person unless another exception in section 36.10 of the Penal Code applies.

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<sup>5</sup> Because we conclude that a gift card is “cash” for purposes of section 36.10(a)(6) of the Penal Code, we do not address whether a gift card is a “negotiable instrument as described by Section 3.104, Business & Commerce Code.” *Id.* § 36.10(a)(6).

<sup>6</sup> We conclude that a prepaid debit card or gift card is considered to be cash for purposes of section 36.10(a)(6) of the Penal Code, and we therefore do not need to address the requestor’s remaining questions.

***TEXAS ETHICS COMMISSION***  
**MEMORANDUM**

**TO: Commissioners, Texas Ethics Commission**  
**FROM: Amy S. Barden, Senior Legal Assistant**  
**DATE: February 2, 2017**  
**SUBJECT: Late Reports Memo – Appeals under Ethics Commission Rule 18.24(g)**  
**Meeting Date: February 15, 2017**

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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 determination made under the Ethics Commission Rules or make a new determination based on facts presented in an appeal. *Note:* Staff makes no recommendation regarding an appeal, unless specifically noted in **bold** under the penalty section.

**REPORT TYPE I: NON-CRITICAL REPORTS**

**TEC Rules Determination: I-B – Levels Chart - Level 1.5 – Reduction to \$100 (Item 1):**

**1. Martha K. Landwehr (69447)**  
**Lobbyist**

Report: monthly lobby activities report due April 11, 2016  
 File date: April 15, 2016 (4 days late)  
 Activity: expenditures = \$284.39  
 Prior offenses: October 2014 monthly lobby activities report (\$500 fine waived because no prior offenses and no activity to report)  
 Penalty: \$500 – reduction to \$100; reverted to \$500 due to lack of response  
                   – **reduction back to \$100 (based on additional information)**

Basis: Not a critical report; Category B filer; one prior late-filing offense in the last five years; good cause shown.

On September 28, 2016, the Commission sent a determination letter to Ms. Landwehr informing her that she is eligible for a reduction of the late-filing penalty to \$100 under the Ethics Commission Rules. The letter informed Ms. Landwehr that the reduced fine would revert to the original amount assessed if she did not remit the payment by October 28, 2016, or submit a request for appeal. The Commission received no response, so the fine reverted to \$500 and was referred to the Attorney General for collection.

Request for Appeal: On December 5, 2016, the Commission received the appeal. In her appeal, Ms. Landwehr stated that she never received the determination letter and therefore was unaware of the reduced penalty. She stated that if she had received the letter she would have immediately submitted the \$100 payment. Since Ms. Landwehr did not receive the previous reduction letter, staff recommends reducing the fine to \$100 once again to allow her to pay the reduced amount for which she is eligible under the Ethics Commission Rules.

**TEC Rules Determination: I-B – Levels Chart - Level 2.5 – Reduction to \$300 (Item 2):**

**2. Manufacturing Caucus (68983)  
Legislative Caucus**

- 1) Report: semiannual legislative caucus report due July 15, 2015  
File date: August 2, 2016 (384 days late but within 30 days of late notice)  
Activity: none  
Penalty: \$500 – reduction to \$300
- 2) Report: semiannual legislative caucus report due January 15, 2016  
File date: August 2, 2016 (215 days late but within 30 days of late notice)  
Activity: none  
Penalty: \$500 – reduction to \$300
- 3) Report: semiannual legislative caucus report due July 15, 2016  
File date: August 2, 2016 (18 days late)  
Activity: none  
Penalty: \$500 – reduction to \$300

Prior offenses: July 2013 semiannual caucus report (\$500 fine waived because no prior offenses and no activity to report); and July 2014 semiannual caucus report (\$500 fine reduced to \$100 under Report Type I-B, Lev. 1.5; paid)

Total penalties: \$1,500 – reduced to \$900 total

Basis: Not a critical report; Category B filer; two prior late-filing offenses in the last five years; good cause shown.

On November 2, 2016, the Commission sent a determination letter to the caucus chair, Representative Jim Murphy, informing him that the caucus is eligible for a reduction of the late-filing penalties to \$900 total (\$300 for each report) under the Ethics Commission Rules. The letter requested that the caucus remit the payment by December 2, 2016, or submit a request for appeal.

Request for Appeal: On December 2, 2016, the Commission received the appeal. In the appeal, Representative Murphy stated that the only "notices to file" sent by the Commission prior to the deadlines were sent by e-mail, and neither his office nor the Commission can confirm that these e-mails were actually delivered. He further stated that his office underwent a complete staff turnover in 2015, potentially creating a situation where e-mail notifications were being sent to an invalid and/or inactive e-mail address. Representative Murphy also stated that his staff has now provided updated contact information to the Commission to prevent this issue from occurring in the future. Representative Murphy stated that he believes the non-delivery of these "notices to file" constitute an administrative error sufficient to allow for waiver of the fines.

*Note:* As background, the Commission sent at least two e-mail notices leading up to each filing deadline to Representative Murphy's House e-mail address, which was the only e-mail address on file for the caucus at the time. None of the e-mail notices bounced back to the Commission's server as undeliverable.



**TEC Rules Determination: Report Type I Criteria Not Met – No Waiver (Items 3-4):**

**3. Sherrie Welfel (55452)  
Treasurer, 'WCRW' Wilson County Republican Women**

Report: semiannual report due July 15, 2016  
File date: August 8, 2016 (24 days late)  
Activity: contributions = \$3,543.83; expenditures = \$1,025.00; contributions maintained = -0-  
Prior offenses: 30-day pre-election report due February 3, 2014; semiannual report due July 15, 2014; and 8-day pre-election report due October 27, 2014 (fines waived under HB 89)  
Penalty: \$500 – no waiver

Basis: Not a critical report; did not meet the criteria for a waiver or reduction because the filer has more than two prior late-filing offenses in the last five years.

On October 31, 2016, the Commission sent a determination letter to Mrs. Welfel informing her that she is not eligible for a waiver of the \$500 late-filing penalty under the Ethics Commission Rules. The letter requested that Mrs. Welfel remit the payment by November 30, 2016, or submit a request for appeal.

Request for Appeal: On November 28, 2016, the Commission received the appeal. In her appeal, Mrs. Welfel stated that she understands the previous violations but is concerned about the amount of the penalty. She stated that the committee is a small organization that operates on very little funding and a \$500 penalty would consume over 20% of their current balance. Mrs. Welfel stated, "I would appreciate your reconsideration in the amount of the penalty fee to at least half."

**4. Glenda Clausell (80860)  
Member, Texas Board of Physical Therapy Examiners**

Report: personal financial statement due July 1, 2016  
File date: August 23, 2016 (53 days late)  
Prior offenses: none  
Penalty: \$500 – no waiver

Basis: Not a critical report; did not meet the criteria for a waiver or reduction because the report was filed over 30 days after the filer learned that the report was late.

On October 26, 2016, the Commission sent a determination letter to Ms. Clausell informing her that she is not eligible for a waiver of the \$500 late-filing penalty under the Ethics Commission Rules. The letter requested that Ms. Clausell remit the payment by November 28, 2016, or submit a request for appeal.

Request for Appeal: On November 23, 2016, the Commission received the appeal. In her appeal, Ms. Clausell stated that an annual out-of-state family excursion, personal responsibilities, and other business obligations dominated her attention and she overlooked the report. She stated that the late filing was not intentional but an oversight for someone new to the process. Ms. Clausell stated, "I am requesting leniency and waiver of the fine due to these circumstances which will no longer hinder my reporting for so long as I have the appointment."

## REPORT TYPE II: CRITICAL REPORTS

### TEC Rules Determination: II-A – Levels Chart - Level 1.5 – Reduction to \$150 (Item 5):

5. **James D. Morrison (80120)**  
**Candidate, State Representative**

Report: 30-day pre-election report due February 1, 2016  
File date: February 2, 2016 (1 day late)  
Activity: contributions = \$47.30; expenditures = \$1,176.49;  
contributions maintained = \$9,446.56  
Prior offenses: none  
Penalty: \$500 – reduction to \$150; reverted to \$500 due to lack of response  
– **reduction back to \$150 (based on additional information)**

Basis: Critical report; Category A filer; no prior late-filing offenses in the last five years; good cause shown.

On March 3, 2016, the Commission sent a determination letter to Mr. Morrison informing him that he is eligible for a reduction of the late-filing penalty to \$150 under the Ethics Commission Rules. The letter informed Mr. Morrison that the reduced fine would revert to the original amount assessed if he did not remit the payment by April 4, 2016, or submit a request for appeal. The Commission received no response, so the fine reverted to \$500 and was referred to the Attorney General for collection.

Request for Appeal: On December 8, 2016, the Commission received the appeal. In his appeal, Mr. Morrison stated that to his knowledge he never received the determination letter and therefore was unaware of the reduced penalty. He stated that if he had received the letter he would have immediately submitted the \$150 payment. Since Mr. Morrison did not receive the previous reduction letter, staff recommends reducing the fine to \$150 once again to allow him to pay the reduced amount for which he is eligible under the Ethics Commission Rules.

**TEC Rules Determination: II-B – Levels Chart - Level 2 – Reduction to \$200 (Item 6):**

**6. Amy B. Easley (80801)  
Treasurer, Vote FOR Our Kids PAC**

- 1) Report: 30-day pre-election report due April 7, 2016  
File date: October 4, 2016 (180 days late)  
Activity: contributions = \$1,250.00; expenditures = -0-;  
contributions maintained = -0-  
Penalty: \$500 – reduction to \$200
- 2) Report: 8-day pre-election report due April 29, 2016  
File date: October 4, 2016 (158 days late)  
Activity: contributions = \$1,639.74; expenditures = -0-;  
contributions maintained = \$1,259.74  
Penalty: \$10,000 – reduction to \$200

Prior offenses: none

Total penalties: \$10,500 – reduced to \$400 total

Basis: Critical report; Category B filer; no prior late-filing offenses in the last five years; good cause shown.

On December 16, 2016, the Commission sent a determination letter to Mrs. Easley informing her that she is eligible for a reduction of the late-filing penalties to \$400 total (\$200 for each report) under the Ethics Commission Rules. The letter requested that Mrs. Easley remit the payment by January 17, 2017, or submit a request for appeal.

Request for Appeal: On January 12, 2017, the Commission received the appeal. In her appeal, Mrs. Easley stated that she sincerely appreciates reduction in fines, however she would like to have all fines waived as the PAC has been dissolved and there are no funds remaining to pay even the \$400. She stated that the total amount raised was used entirely for raising support during a school bond election. Mrs. Easley stated that she was new to the process and did not fully understand the filing requirements.

**TEC Rules Determination: II-A – Formulas Chart (Item 7):**

**7. Milton I. Fagin (41564)  
Candidate, District Judge**

Report: semiannual report due July 15, 2016  
File date: July 18, 2016 (3 days late)  
Activity: contributions = -0-; expenditures = \$15,379.64;  
contributions maintained = \$354.31  
Prior offenses: personal financial statement due April 18, 2012 (\$500 fine waived by the  
Commission)  
Penalty: \$700 – reduction to \$600

Basis: Critical report; Category A filer; total expenditures are over \$3,000 for the reporting period; one prior late-filing offense in the last five years; good cause shown.

Formula: The fine is calculated at \$400 (good cause, 1 prior, 1st day late) + \$200 (next 2 days late @ \$100 per day) = \$600.

On November 2, 2016, the Commission sent a determination letter to Mr. Fagin informing him that he is eligible for a reduction of the late-filing penalty to \$600 under the Ethics Commission Rules. The letter requested that Mr. Fagin remit the payment by December 2, 2016, or submit a request for appeal.

Request for Appeal: On November 29, 2016, the Commission received the appeal. In his appeal, Mr. Fagin stated that on or about July 15, 2016, he attempted to file his report late in the evening because he had been ill that day, but unfortunately his internet service was not working. He stated that when his internet service was operable in the early morning hours of July 16, 2016, he had trouble with his password and locked himself out of his account. Mr. Fagin stated that there was nothing else he could do until Monday morning, July 18, 2016, when he called the Commission's technical support staff and received assistance re-setting his password and filing the report. Mr. Fagin further listed the following reasons he believes all penalties should be waived: 1) He made a bona fide attempt to timely file his report; 2) He filed the report before any notice of late filing was sent by the Commission; 3) He has been a candidate for many election cycles and has an established record of timely filing; 4) He has always called the Commission for assistance with issues and filing questions; 5) This filing was only the third time that he has used the new system and he believes he was trying to use his old password; 6) He has now changed his password; and 7) He completed the January 2017 report early and filed it on January 1st. Mr. Fagin respectfully requested that any penalties be waived.

**TEC Rules Determination: II-B – Formulas Chart (Item 8):**

**8. James R. Dickey, Sr. (69834)  
Candidate, County Party Chair**

Report: semiannual report due July 15, 2016  
File date: July 16, 2016 (1 day late)  
Activity: contributions = \$820.00; expenditures = \$7,046.93;  
contributions maintained = \$383.08  
Prior offenses: January 2016 semiannual report (\$500 fine waived because no prior offenses  
and no activity to report) and 8-day pre-election report due February 22, 2016  
(\$500 fine appealed at the October 2016 meeting; waived by the Commission)  
Penalty: \$500 – reduction to \$300

Basis: Critical report; Category B filer; total expenditures are over \$3,000 for the reporting period; two prior late-filing offenses in the last five years; good cause shown.

Formula: The fine is calculated at \$300 (good cause, 2 priors, 1 day late) = \$300.

On November 29, 2016, the Commission sent a determination letter to Mr. Dickey informing him that he is eligible for a reduction of the late-filing penalty to \$300 under the Ethics Commission Rules. The letter requested that Mr. Dickey remit the payment by December 29, 2016, or submit a request for appeal.

Request for Appeal: On December 29, 2016, the Commission received the appeal. In the appeal letter, Mr. Dickey stated, "Even though I faced technical issues with the web site that delayed the filing, it was completed and submitted within 47 seconds after midnight, so there was no possible damage to public awareness of my campaign's financial details meriting a penalty."

Mr. Dickey requested an opportunity to appear before the Commission and offer testimony.

**TEXAS ETHICS COMMISSION**  
**MEMORANDUM**

**TO:** Commissioners, Texas Ethics Commission  
**FROM:** Amy S. Barden, Senior Legal Assistant  
**DATE:** February 2, 2017  
**SUBJECT:** Corrected Reports Memo  
Meeting Date: February 15, 2017

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**Substantial Compliance (Items 1-14)**

**1. Blake G. Powell (57682)**  
**Treasurer, Texas Parent PAC**

Report: 8-day pre-election report due February 22, 2016  
Correction date: August 18, 2016  
Activity report #1: contributions = \$29,537.02; expenditures = \$64,687.26;  
contributions maintained = \$18,111.15  
Activity report #2: contributions = \$28,660.00; expenditures = \$65,564.28;  
contributions maintained = \$18,111.15  
Prior corrections: none  
Penalty: \$10,000

Mr. Powell corrected the original report because he mistakenly disclosed in-kind contributions that the PAC made to candidates as incoming contributions to the PAC. He removed 10 in-kind contributions totaling \$877.02 from Schedule A2 (used for in-kind political contributions) and added 10 expenditures totaling \$877.02 on Schedule F1 (used for political expenditures from political contributions). The change in the amount of total contributions and total expenditures does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

**2. Angelica I. Jimenez (80056)**  
**District Judge**

Report: 8-day pre-election report due October 31, 2016  
Correction date: November 1, 2016  
Activity report #1: contributions = \$21,724.00; expenditures = \$14,716.67;  
contributions maintained = \$24,432.53  
Activity report #2: contributions = \$21,883.33; expenditures = \$14,716.67;  
contributions maintained = \$24,432.53  
Prior corrections: none  
Penalty: \$500

Judge Jimenez corrected the original report to add two in-kind contributions totaling \$159.33. The change in the amount of total contributions does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

## Corrected Reports Memo

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### 3. Ray A. Nelson (69482) Treasurer, Jefferson County Democratic Party (CEC)

Report: 8-day pre-election report due October 31, 2016  
Correction date: November 1, 2016  
Activity report #1: contributions = \$64,463.45; expenditures = \$43,069.62;  
contributions maintained = \$26,859.17  
Activity report #2: contributions = \$64,463.45; expenditures = \$43,069.62;  
contributions maintained = \$26,859.37  
Prior corrections: none  
Penalty: \$500

Mr. Nelson corrected the original report to increase the amount of total contributions maintained by \$0.20. The change in the amount of total contributions maintained does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

### 4. Jonathan S. Stickland (67904) State Representative

Report: 8-day pre-election report due October 31, 2016  
Correction date: November 1, 2016  
Activity: contributions = \$300,460.15; expenditures = \$28,162.23;  
contributions maintained = \$311,171.72 (on both reports)  
Prior corrections: none  
Penalty: \$500

Representative Stickland corrected the original report to change the contributor type indicator from "individual" to "entity" and to add the word "PAC" to the name of a contributor of a \$100 contribution. There was no change to the monetary amounts disclosed in the report. The amount of the incorrectly reported contribution does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

## Corrected Reports Memo

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### 5. Dana F. 'Rick' Miller (62278) State Representative

Report: 8-day pre-election report due October 31, 2016  
Correction date: November 1, 2016; and November 3, 2016 (two corrections)  
Activity report #1: contributions = \$56,688.16; expenditures = \$27,526.23;  
contributions maintained = \$80,501.92  
Activity report #2: contributions = \$56,691.61; expenditures = \$27,526.23;  
contributions maintained = \$80,501.92  
Activity report #3: contributions = \$56,698.51; expenditures = \$27,526.23;  
contributions maintained = \$80,501.92  
Prior corrections: 8-day pre-election report due May 21, 2012 (fine reduced to \$1,000 by the Commission;  
paid) and 8-day pre-election report due October 29, 2012 (in substantial compliance)  
Penalty: \$700

On November 1, 2016, Representative Miller corrected the original report to add a \$3.45 in-kind contribution. On November 3, 2016, he corrected the report to add two in-kind contributions totaling \$6.90. For each corrected report, the change in the amount of total contributions does not exceed \$2,000.

**Recommendation Based on Commission Guidelines: substantial compliance.**

### 6. Daryl L. Moore (69631) District Judge

Report: 8-day pre-election report due October 31, 2016  
Correction date: November 4, 2016  
Activity: contributions = \$14,720.00; expenditures = \$14,851.47;  
contributions maintained = \$10,643.50 (on both reports)  
Prior corrections: none  
Penalty: \$800

Judge Moore corrected the original report to change the contributor name from an entity to an individual and add the contributor's employer and occupation information for a \$1,125 in-kind contribution. He also corrected the spelling of the payee's name for a \$530 political expenditure. There was no change to the monetary amounts disclosed in the report. The amount of the incorrectly reported contribution does not exceed \$2,000 and the amount of the incorrectly reported expenditure does not exceed \$2,000.

**Recommendation Based on Commission Guidelines: substantial compliance.**



**Corrected Reports Memo**

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**7. Juan Jose Pena, Jr. (80977)  
Treasurer, New Identity Political Action Committee**

Report: 8-day pre-election report due October 31, 2016  
Correction date: November 11, 2016  
Activity: contributions = \$10,800.00; expenditures = \$6,659.69;  
contributions maintained = \$5,638.16 (on both reports)  
Prior corrections: none  
Penalty: \$1,500

Mr. Pena corrected the original report to change the contributor's name, address, and employer and occupation information for a \$600 political contribution. There was no change to the monetary amounts disclosed in the report. The amount of the incorrectly reported contribution does not exceed \$2,000.

**Recommendation Based on Commission Guidelines: substantial compliance.**

**8. Norma Gonzales (65728)  
District Judge**

Report: 8-day pre-election report due October 31, 2016  
Correction date: November 1, 2016; and November 14, 2016 (two corrections)  
Activity report #1: contributions = \$19,592.00; expenditures = \$26,859.50;  
contributions maintained = \$40,545.43  
Activity report #2: contributions = \$19,751.33; expenditures = \$26,859.50;  
contributions maintained = \$40,545.43  
Activity report #3: contributions = \$19,910.66; expenditures = \$26,859.50;  
contributions maintained = \$40,545.43  
Prior corrections: none  
Penalty: \$1,800

On November 1, 2016, Judge Gonzales corrected the original report to add a \$159.33 in-kind contribution. On November 14, 2016, she corrected the report to add another \$159.33 in-kind contribution and change the contributor's name and address for a \$150 monetary contribution. For each corrected report, the change in the amount of total contributions does not exceed \$2,000.

**Recommendation Based on Commission Guidelines: substantial compliance.**

**Corrected Reports Memo**

**Page 5**

**9. David Mason (16106)  
Treasurer, Houston Pilots PAC Fund**

Report: 8-day pre-election report due October 31, 2016  
Correction date: November 16, 2016  
Activity report #1: contributions = \$3,390.00; expenditures = -0-;  
contributions maintained = \$108,736.12  
Activity report #2: contributions = \$3,390.00; expenditures = -0-;  
contributions maintained = \$109,236.12  
Prior corrections: 8-day pre-election report due February 22, 2016 (#16 on this memo)  
Penalty: \$2,000

Mr. Mason (also discussed in #16) corrected the original report to increase the amount of total contributions maintained by \$500. The change in the amount of total contributions maintained does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

**10. Micheline Hutson (58757)  
Treasurer, 'CFRW' Cy-Fair Republican Women PAC**

Report: 8-day pre-election report due October 31, 2016  
Correction date: November 5, 2016; November 11, 2016;  
November 13, 2016; and November 17, 2016 (four corrections)  
Activity report #1: contributions = \$641.27; expenditures = \$966.54;  
contributions maintained = -0-  
Activity report #2: contributions = \$641.27; expenditures = \$1,046.70;  
contributions maintained = -0-  
Activity report #3: contributions = \$641.27; expenditures = \$1,076.77;  
contributions maintained = -0-  
Activity report #4: contributions = \$641.27; expenditures = \$1,316.76;  
contributions maintained = -0-  
Activity report #5: contributions = \$641.27; expenditures = \$1,361.76;  
contributions maintained = -0-  
Prior corrections: none  
Penalty: \$2,100

On November 5, 2016, Ms. Hutson corrected the original report to add a \$80.16 unpaid incurred obligation. On November 11, 2016, she corrected the report to add a \$30.07 unpaid incurred obligation. On November 13, 2016, she corrected the report to add a \$239.99 expenditure. On November 17, 2016, she corrected the report to add a \$45 unpaid incurred obligation. Each time, Ms. Hutson stated that she did not learn of the expenditure until after the filing deadline and immediately corrected the report. For each corrected report, the change in the amount of total expenditures does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

## Corrected Reports Memo

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### 11. Robert G. Button (54753)

Treasurer, 'DPCC' Democratic Party of Collin County (CEC)

Report: 8-day pre-election report due October 31, 2016  
Correction date: November 23, 2016  
Activity report #1: contributions = \$9,840.23; expenditures = \$10,643.62;  
contributions maintained = \$14,550.61  
Activity report #2: contributions = \$9,840.23; expenditures = \$10,668.05;  
contributions maintained = \$14,550.61  
Prior corrections: 8-day pre-election report due October 27, 2014 (two corrections in substantial compliance)  
Penalty: \$2,700

Mr. Button corrected the original report to add a \$24.43 expenditure and to add a \$24.43 loan from a PAC member. The change in the amount of total expenditures does not exceed \$2,000 and the amount of the unreported loan does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

### 12. Dawn C. Buckingham (69001)

State Senator

Report: 8-day pre-election report due October 31, 2016  
Correction date: November 28, 2016  
Activity report #1: contributions = \$177,759.84; expenditures = \$104,345.75;  
contributions maintained = \$243,824.77  
Activity report #2: contributions = \$180,759.84; expenditures = \$104,345.75;  
contributions maintained = \$243,824.77  
Prior corrections: none  
Penalty: \$3,200

Senator Buckingham corrected the original report to add five contributions totaling \$3,000. She explained that the bank statement was reconciled and she discovered that the contributions had not been entered into the accounting system. The change in the amount of total contributions does not exceed 10% of the total and does not exceed \$10,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

## Corrected Reports Memo

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### 13. Justin A. Holland (80066) State Representative

Report: 8-day pre-election report due October 31, 2016  
Correction date: December 19, 2016  
Activity report #1: contributions = \$58,115.00; expenditures = \$12,636.21;  
contributions maintained = \$61,381.72  
Activity report #2: contributions = \$58,115.00; expenditures = \$12,636.21;  
contributions maintained = \$61,881.72  
Prior corrections: 8-day pre-election report due February 22, 2016 (#20 on this memo)  
Penalty: \$5,300

Representative Holland (also discussed in #20) corrected the report to increase the amount of total contributions maintained by \$500. He also clarified the PAC names of seven contributors to reflect the official names on record with the Commission. The amount of the change to the total contributions maintained does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

### 14. Jack Kirfman (80247) Treasurer, 'VOTE PAC' Volunteers Organized To promote Equity

Report: 8-day pre-election report due October 31, 2016  
Correction date: November 14, 2016, and January 17, 2017 (two corrections)  
Activity reports #1-2: contributions = \$5,517.80; expenditures = \$800.00;  
contributions maintained = \$10,926.20 (on both reports)  
Activity report #3: contributions = \$4,195.00; expenditures = \$800.00;  
contributions maintained = \$10,926.20  
Prior corrections: none  
Penalty: \$8,200

On November 14, 2016, Mr. Kirfman corrected the original report to move five contributions from individuals totaling \$200 from Schedule C1 (used for monetary contributions from a corporation or labor organization) to Schedule A1 (used for monetary political contributions). On January 17, 2017, Mr. Kirfman corrected the report to move the contributions totaling \$5,317.80 from Schedule C1 and to accurately disclose them as monetary contributions, where they were added as a lump sum total of \$4,045 in contributions of \$50 or less. Mr. Kirfman explained that the contributions were not from the labor organization but rather payroll deductions from individuals, all of which were under the itemization threshold. The net result of the correction is a decrease of \$1,322.88 in total contributions. For each corrected report, the change in the amount of total contributions does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

**Waiver (Item 15)**

**15. Cindy G. Burkett (65930)  
State Representative**

Report: 8-day pre-election report due October 31, 2016  
Correction date: November 29, 2016  
Activity report #1: contributions = \$217,309.41; expenditures = \$125,677.89;  
contributions maintained = \$90,673.40  
Activity report #2: contributions = \$239,584.41; expenditures = \$125,677.89;  
contributions maintained = \$90,673.40  
Prior corrections: daily special pre-election report due October 31, 2014 (fine waived by the Commission)  
Penalty: \$3,300

Representative Burkett corrected the original report to add two monetary contributions totaling \$275 and two in-kind contributions totaling \$22,000. She explained that the contributions were received electronically during a time when there was a family crisis and a family medical situation, and therefore they were inadvertently overlooked. **Recommendation Based on Commission Guidelines: waiver.**

**Reductions (Items 16-18)**

**16. David Mason (16106)  
Treasurer, Houston Pilots PAC Fund**

Report: 8-day pre-election report due February 22, 2016  
Correction date: March 4, 2016 (3 days after election date)  
Activity report #1: contributions = \$3,420.00; expenditures = -0-;  
contributions maintained = \$144,756.12  
Activity report #2: contributions = \$3,420.00; expenditures = \$10,500.00;  
contributions maintained = \$134,256.12  
Prior corrections: none  
Penalty: \$1,500

Mr. Mason (also discussed in #9) corrected the original report to add 21 expenditures totaling \$10,500, all of which were contributions from the PAC to candidates on the ballot in the primary. He also added the names of the 21 candidates supported by the PAC under "Committee Activity" on the cover sheet. (*Note:* Commission records show that the accurate amounts were timely disclosed by the candidates in their reports.) Mr. Mason explained that he was not made aware of these checks until March 4th and he filed the corrected report the same day he discovered the omissions. Mr. Mason further stated that the PAC recognizes the importance of timely and accurate filings, and even contracts with a campaign finance compliance vendor to review and submit its filings. He also stated that the PAC has an otherwise outstanding track record of filing reports timely and accurately. The amount of the omitted expenditures is over \$10,000 and none of the PAC's election-related expenditures were disclosed until three days after the primary election. **Recommendation Based on Commission Guidelines: reduction to \$1,000.**

## Corrected Reports Memo

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### 17. Jesus 'Jesse' Contreras (62099) Candidate, District Judge

Report: 8-day pre-election report due February 22, 2016  
Correction date: May 11, 2016 (71 days after election date)  
Activity report #1: contributions = \$23,950.00; expenditures = \$23,970.50;  
contributions maintained = \$925.50; outstanding loans = \$271,325.00  
Activity report #2: contributions = \$12,950.00; expenditures = \$23,970.50;  
contributions maintained = \$925.50; outstanding loans = \$271,325.00  
Prior corrections: none  
Penalty: \$8,300

Judge Contreras corrected the original report to accurately disclose a \$11,000 from himself on Schedule E (used for loans). The loan was originally disclosed as a contribution from Judge Contreras on Schedule A1 (used for monetary political contributions). As a result of the correction, the total contributions decreased \$11,000. Judge Contreras explained that on or about May 11th his treasurer discovered that the loan had been itemized on the wrong schedule and contacted the Commission's legal staff for assistance in correcting the report. The amount of the change in contributions is over 50% of the total. The correction was filed approximately two months after the primary election. **Recommendation Based on Commission Guidelines: reduction to \$1,000.**

### 18. Leann K. Rafferty (80287) District Judge

Report: 8-day pre-election report due February 22, 2016  
Correction date: June 28, 2016 (119 days after election date)  
Activity report #1: contributions = \$15,700.00; expenditures = \$18,399.98;  
contributions maintained = \$1,426.15; outstanding loans = -0-  
Activity report #2: contributions = \$9,200.00; expenditures = \$18,399.98;  
contributions maintained = \$1,426.15; outstanding loans = \$20,680.00  
Prior corrections: none  
Penalty: \$10,000

Judge Rafferty corrected the original report to accurately disclose a \$6,500 from herself on Schedule E (used for loans). The loan was originally disclosed as a contribution from Judge Rafferty on Schedule A1 (used for monetary political contributions). As a result of the correction, the total contributions decreased \$6,500. Judge Rafferty explained that after she learned her personal contributions to the campaign should be characterized as loans, she immediately contacted the Commission's legal staff for assistance in correcting the report. Judge Rafferty also corrected the report to add \$20,680 in outstanding loans, all of which were loans to herself. (Technically, political expenditures made from personal funds that are reported as loans are not required to be included in the outstanding loans total.) The amount of the change in contributions is over 50% of the total. The correction was filed approximately four months after the primary election. **Recommendation Based on Commission Guidelines: reduction to \$1,000.**

**No Recommendation (Items 19-20)**

**19. Gary W. Gates, Jr. (51418)  
Candidate, Railroad Commissioner**

Report: 8-day pre-election report due February 22, 2016  
Correction date: May 18, 2016 (78 days after election date)  
Activity report #1: contributions = -0-; expenditures = \$1,041,131.43;  
contributions maintained = \$81,441.57; outstanding loans = \$2,000,000.00  
Activity report #2: contributions = -0-; expenditures = \$1,041,131.43;  
contributions maintained = \$1,081,441.54; outstanding loans = \$3,000,000.00  
Prior corrections: 8-day pre-election report due December 1, 2014 (fine waived by the Commission)  
Penalty: \$9,000

Mr. Gates corrected the original report to add three loans from a financial institution totaling \$1,000,000 and increase the amount of outstanding loans by \$1,000,000. He also increased the amount of total contributions maintained by \$1,000,000. (Technically, bank loans are not required to be included in the total contributions maintained.) Mr. Gates explained that on approximately May 17, 2016, while discussing campaign finance with his campaign consultant, he discovered that "certain information may have been presented incorrectly in previous reports." He stated that he instructed the consultant to "immediately review all old reports and correct any misinformation, regardless of whether or not those discrepancies would ever be discovered by anyone outside our campaign." The amount of the unreported loans is significant and the amount of the increase in total outstanding loans is over 50% of the total. The correction was filed over two months after the primary election. **No Recommendation Based on Previous Commission Decisions: The Commission has not considered this type of correction.**

## Corrected Reports Memo

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### 20. Justin A. Holland (80066) State Representative

Report: 8-day pre-election report due February 22, 2016  
Correction date: May 27, 2016; and December 19, 2016 (two corrections)  
Activity report #1: contributions = \$83,533.83; expenditures = \$39,523.43;  
contributions maintained = \$306,760.11  
Activity report #2: contributions = \$71,033.83; expenditures = \$39,523.43;  
contributions maintained = \$68,223.81  
Activity report #3: contributions = \$71,033.83; expenditures = \$39,523.43;  
contributions maintained = \$71,581.05  
Prior corrections: none  
Penalty: \$9,900

On May 27, 2016, Representative Holland (also discussed in #13) corrected the original report to add a \$2,500 contribution and remove a \$15,000 contribution. The net result of the correction is a decrease of \$12,500 in total contributions. He also decreased the amount of total contributions maintained by \$238,536.30. Mr. Holland explained that long after the election, he was notified that the contributions maintained total was incorrectly calculated and showed the total contributions raised during the entire election cycle to date, instead of showing the balance as of the last day of the reporting period. He stated that the correction was filed as soon as he learned of the error and he has put processes in place to ensure that this mistake will not happen in the future. The amount of total contributions maintained originally disclosed is over four times the correct amount. The correction was filed almost three months after the primary election. **No Recommendation Based on Previous Commission Decisions: The Commission has not considered this type of correction.**

On December 19, 2016, he corrected the report to adjust the amount of total contributions maintained again. The second correction increased the amount by \$3,357.24. Mr. Holland explained that he updated the amount to correspond to the bank balance at the end of the reporting period. He also clarified the PAC name of one contributor to reflect the official name on record with the Commission. The amount of the change to the total contributions maintained does not exceed \$10,000 or 10% of the total. **Recommendation Based on Commission Guidelines: substantial compliance for the December 19th correction.**



*Texas Ethics Commission*  
**MEMORANDUM**

**TO:** Commissioners, Texas Ethics Commission

**FROM:** Ian M. Steusloff, Interim Executive Director/General Counsel

**DATE:** February 2, 2017

**SUBJECT:** Termination of Campaign Treasurer Appointments

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**CANDIDATE**

**1. Louie Minor, Jr. (00080024)**

Last report filed: July 15, 2015  
Treasurer appointment filed: May 19, 2015  
Office sought: State Representative, District 55

**POLITICAL COMMITTEE**

**2. Associated General Contractors of El Paso PAC (00041885)  
Adam Pacheco, Treasurer**

Last report filed: Report has never been filed  
Treasurer appointment filed: October 9, 2015

***Texas Ethics Commission***  
**MEMORANDUM**

**TO:** Commissioners, Texas Ethics Commission

**FROM:** Ian M. Steusloff, Interim Executive Director/General Counsel

**DATE:** February 2, 2017

**SUBJECT:** Reports More Than 30 Days Late; Imposition of Additional Fine

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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. Marisela Saldana (00058570)**

Former District Judge, District 148

Annual Report of Unexpended Contributions 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:

- Annual Report of Unexpended Contributions due 1/15/2013 – Report filed late; \$500 penalty waived by Commission

**Political Committees**

**2. John R. Wennerstrom, Jr., Treasurer**  
**Friends of ACC Bond (00080859)**

Semiannual Report due 7/15/2016 – Report not filed; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

Previous violations: None

**Lobbyists**

**3. Jeffrey Brooks (00070573)**

Annual Lobby Activities Report due 1/11/2016 – Report not filed; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

Previous violations: None.

**4. Robin Chandler (00070814)**

Annual Lobby Activities Report due 1/11/2016 – Report not filed; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

Previous violations: None.

**5. Kristine Donatello (00064024)**

Annual Lobby Activities Report due 1/11/2016 – Report filed over 30 days late; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

Previous violations: None.

**6. Geoffrey M. Gay (00053659)**

Annual Lobby Activities Report due 1/11/2016 – Report not filed; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

Previous violations: None.

**7. Matthew Haertner (00070567)**

Annual Lobby Activities Report due 1/11/2016 – Report not filed; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

Previous violations: None.

**8. Julie Marie Nahrgang (00070736)**

Annual Lobby Activities Report due 1/11/2016 – Report not filed; \$500 penalty not yet paid and not referred to AG because not yet at referral threshold.

Previous violations: None.



**DENTON COUNTY  
ELECTIONS ADMINISTRATION**

FRANK PHILLIPS, CERA  
Elections Administrator

KERRY MARTIN, CERA, REO  
Deputy Elections Administrator

January 3, 2017

Ms. Natalia Luna Ashley  
Executive Director, Texas Ethics Commission  
P.O. Box 12070  
Austin, TX 78711-2070

Ref: Denton County campaign finance filings

Dear Ms. Ashley,

With this letter, Denton County Elections Administration is requesting permission to accept campaign finance filings from local filers through an electronic filing application. Specifically, we are requesting to use EasyCampaignFinance from EasyVote.

EasyVote's **EasyCampaignFinance** module is a comprehensive campaign finance software package that provides election offices with a robust, easy-to use online tool to automate the filing and management of the necessary forms for campaign finance reporting designed to meet state requirements.

If you require further information on the software from EasyVote, you may contact Mr. Jason M. Barnett, Director of Business Development at 512-378-3834 or by email at

Due to the large number of filings Denton County receives, we believe that automating the process, much as the Texas Ethics Commission has done for State filers, will make for a smoother process for both the filer and for Denton County Elections.

If you require further information, please do not hesitate to contact me at 940-349-3220 or by email at [frank.phillips@dentoncounty.com](mailto:frank.phillips@dentoncounty.com).

Sincerely,

Frank Phillips  
Elections Administrator  
Denton County

Attachments

The Denton County Elections Office is seeking a Campaign Finance System for receiving and processing of disclosure reports that improve efficiency for this office, the elected officials and candidates using the system, and the general public accessing the system's data. The Denton County Elections Office is interested in a campaign finance system that includes the following requirements and/or features:

- **Cloud Based**  
Reducing the need for hardware/software support from the County IT department.
- **SaaS pricing model with no long term contracts**  
Eliminating the need for a significant upfront investment.
- System specifically designed for Campaign Finance and supported by individuals with a clear understanding of Campaign Finance and Elections law.
- US based support
- **Secure Electronic Submission**  
Candidates can quickly and efficiently submit their filings securely online, via a standard web browser. Within the module, each candidate completes, submits and updates all required forms. Submissions are time-stamped and cataloged by the system, ensuring an audit trail.
  - Each electronic submission will contain a sworn statement by the person required to file the report along with their digitized signature per Tex. Elec. 254.036(h) and in compliance with commission specifications.
- **Detailed Search & Reporting**  
Election staff can view a complete history of all campaign finance events including form submissions and communication with the office.
- **Public Display**  
Having a hosted system outside the county network, Election staff can quickly post submitted reports for public viewing without the need to first submit them to the county IT department for approval. The public interface will provide access to current and archived reports for candidates.
- **Automated Communication & Notifications**  
Election staff can easily and quickly communicate with candidates, directly or en masse via the system's online tool. Reporting deadlines and other regulatory initiated notifications are pushed to the appropriate campaign staff. Other custom notifications can be created/set by the election administrator.
- **Import Candidate History**  
The system will allow us to import and or save historical information for candidates.
- **Searchable Document Retention System Tied to Statute**  
Stores documents for the statutory retention period by candidate file or document type with a time stamp built in to know when the document can be discarded. System may include a search feature for ease of locating documents.

- **Personalized and Secure Candidate Profile**

Allow each new candidate to access the system, create an account, a profile, and allow them to submit forms or complete process(es) applicable to their situation.

**What Makes EasyCampaignFinance Stand Out from the Competition?**

- Cloud based software with US support both locally and virtually;
- User friendly system with a dedicated portal for each user (county staff, candidate/ official, and public);
- Software is scalable to fit the evolving needs of the county and/or changes to law or regulation;
- Dedicated team of experts in the areas of campaign finance and elections both at the local and state level.

**I would like to specifically point out the following:**

- 1. All of the forms on the website will be exact recreations of the State of Texas forms; specifically in a fillable PDF form,**
- 2. Elected official/candidate/public access will be directly through the Denton County website;**
- 3. For security purposes, prior to an elected official/candidate being granted access to use the application, they will be required to request access with Denton County Elections, by paper document with a “wet” signature. (Please see attached form), and**
- 4. Denton County Elections will maintain our current practice of allowing members of the public to request a hard copy of any filing that is maintained by the system.**

Frank Phillips  
Elections Administrator  
Denton County  
701 Kimberly Drive  
Denton, TX 76208  
940-349-3200

DENTON COUNTY ELECTIONS – CAMPAIGN FINANCE SECURITY FORM

This document is the undersigned's submission for the purpose of receiving access to file electronic campaign related reports with Denton County Elections. (This document is NOT for use by those required to file with the Texas Ethics Commission.)

Name:	Last First Middle
-------	-------------------

Committee Name: (if Committee)	
-----------------------------------	--

Mailing Address:	Street City State ZIP
------------------	-----------------------

Contact Phone:	Area Code Phone Number Extension
----------------	----------------------------------

Email Address:	
----------------	--

Signature and Affirmation:	<p>I swear, or affirm, under penalty of perjury, that I am the person required by law under the Texas Ethics Commission jurisdiction to file Campaign Finance reports with Denton County Elections.</p> <p>_____</p> <p>Signature</p>
----------------------------	---

Return to Denton County Elections, 701 Kimberly Drive, Denton, TX 76208, or fax to 940-349-3201.

## SECURITY

The EasyCampaignFinance system uses the Microsoft Azure platform which always included the following security features:

- **Identity and access management** – Azure Active Directory helps ensure that only authorized users can access your environments, data, and applications, and provides multi-factor authentication for highly secure sign-in.
- **Encryption** – Azure uses industry-standard protocols to encrypt data as it travels between devices and Microsoft datacenters, and crosses within datacenters.
- **Secure networks** – Azure infrastructure relies on security practices and technologies to connect virtual machines to each other and to on-premises datacenters, while blocking unauthorized traffic. Azure Virtual Networks extend your on-premises network to the cloud via a site-to-site virtual private network (VPN).
- **Threat management** – Microsoft Antimalware protects Azure services and virtual machines. Microsoft also uses intrusion detection, denial-of-service (DDoS) attack prevention, penetration testing, data analytics, and machine learning to constantly strengthen its defense and reduce risks.
- **Compliance** – We comply with both international and industry-specific compliance standards and participate in rigorous third-party audits, which verify our security controls.



## **EasyCampaignFinance Candidate Filing Instructions**

This document gives detailed instructions, step by step, for the filing of reports by candidates including e-signature.

## EasyCampaignFinance Candidate Instructions

1. Open browser of choice (IE, Firefox, Chrome, Safari, etc.)
2. Enter: [easyvote.county.com](http://easyvote.county.com) in address bar
3. Click on Officials/Candidates at top right
4. Click Register (there is a video to the left after you click Register – if you need further assistance)
  - a. Select your County/City from drop down menu
  - b. Enter your email address
  - c. Enter your first name
  - d. Enter your last name
  - e. Cell Phone is optional
  - f. Choose the office you are running for from the drop down menu under Office Occupying/Running for
  - g. Enter code in box
  - h. Click REGISTER
    - i. You will be sent an email thanking you for registering
    - ii. After the Filing Clerk has approved you – you will receive an e-mail with a link to click to complete your registration.
    - iii. After your registration is completed – you will be ready to login and begin submitting your documents.

### To Submit Documents

1. Follow Steps 1-3 from above
2. Click on Login
  - a. Enter your email that you registered with
  - b. Enter the **password** (if you forgot your password – click the link “Forgot Password?”)
  - c. Click Login
  - d. Click on File Reports (Instruction Video is a 5 minute video to give you instructions on how to complete the forms.)
    - i. Click Wizard/Upload next to the form that you want to complete
    - ii. Click Start Wizard
    - iii. The forms are broken down in to small snippets (after you complete each page – click NEXT STEP
    - iv. You will always be able to view your document before submitting (in pdf format) – if your document is complete on the review page – click E-Sign/Submit
    - v. Enter the **code on the right (security code)**
    - vi. Check the box next to “By checking this box you are certifying that statements on this form are complete, true and accurate.”
    - vii. Click Submit
    - viii. You will be defaulted back to the front page
    - ix. Click on My Submissions and look under STATUS and you will see that your form has been Submitted
    - x. When the Filing Clerk has accepted your form – the Submitted will be changed to Accepted
    - xi. When the Filing Clerk has faxed your form to Ethics – the Accepted will be changed to Faxed to Ethics

xii. When you look under STATUS and it says NEW – that means that you have not E-Signed/Submitted your form.

## **EasyCampaignFinance Administration Filing Instructions**

This document gives detailed instructions, step by step, for the filing from County level for the Elections Office.

## EasyCampaignFinance Administration Initial Set-Up

### A. Logging into System

1. Double Click the EasyVote Icon on your desktop
2. Enter your username (you will have to put the cursor in the box)
3. Enter your password
4. Choose Location from drop down menu
5. Click Login

### B. Admin Tab (Single Click ONLY)

1. Click County Setup
2. Enter County Name (i.e. Franklin – do not include the word county)
3. Enter Address – City, State and Zip
4. Enter Phone and Fax number
5. Enter Filer ID (this is the Q number issued to you by the Ethics Department)
6. Upload County Logo (must be .png)
  - a. Click Upload under County Logo
  - b. Locate file on your computer
  - c. Click Open
  - d. Click Save Changes
  - e. Click Close This Form

### C. Campaign Finance Tab (Single Click ONLY)

1. Dashboard is viewable only – you must click on Officials tab to work documents
2. Officials (once candidate has green check beside name you can begin accepting documents from them and uploading documents to public site)
  - a. To ACCEPT/REJECT document and send to ethics
    1. Highlight candidate/elected official name
    2. Highlight document name on right under Uploads/Filings
    3. Click Edit/View to Change name of Document, Click Save Changes, Click Close This Form
    4. Click Reject/Accept – Click Accept Submission to ACCEPT – Enter Reason if you want to REJECT and then Click Reject
    5. Once submission has been ACCEPTED – highlight document name and click Send to Ethics – If will ask if you are sure – click YES – it will ask if you want to make public – click YES
  - b. To Upload Scanned Document
    1. Find document and drag and drop under Uploads and Filings
    2. Once document has been dropped under the correct tab you can change date, type of document and description – click UPLOAD DOCUMENT

3. You would need to click on Edit/View and under Status click the circle beside ACCEPTED – click Save Changes – click Close This Form
4. You would then follow the steps above to Send to Ethics
3. All activity
  - a. This tab show all activity for all candidates/elected officials)

## TABS ACROSS TOP

1. Access Request (this tab is used to approve candidate/elected official access)
  - a. Highlight name
  - b. Click Accept/Active or Deny/Inactive (if you click Deny – give reason)
2. Update Blog (like a personal website for candidates)
  - a. Click New Blog Entry
  - b. Choose Expiration Date
  - c. Enter a Subject
  - d. If applicable, insert URL
  - e. Enter information that you want your candidates/elected officials to know)
  - f. Click Save
  - g. Click Close This Form
3. Send Bulk E-Mail
  - a. Choose the candidates/elected officials you would like to send e-mail
4. Send Bulk SMS
  - a. Choose the candidates/elected officials you would like to send text
5. Email Content
  - a. You can personalize any of the emails that are automated. DO NOT remove the links that we have in the emails that have them to click to reset password or click to complete registration)
  - b. After Thank You, put in your contact information
  - c. You can change all email content before you have to Save Change
  - d. When all emails are complete – click Save Changes
  - e. Click Close This Form
6. Resend Invites (used if candidate/elected official does not complete registration)
  - a. When you click Resend Invites – it will resend the email asking them to complete their registration (at this time it sends to everyone that has not completed their registration – 2015 release you will be able to choose who to send to)
7. Doc Due Dates
  - a. Double Click on the dates that documents are due (at this point everything defaults to CCDR being due – but with new release in 2015 you will be able to select which document will be due)
  - b. You must enter document due dates for each of the four (4) tabs (Less than \$2500, \$2500 or More, \$5000 or More, Non Election Year)
  - c. Click Close This
8. Office List (you must enter each office that is elected in your city/county)
  - a. Click New Office

- b. Enter Name of Office
- c. Click Save

## **EasyVote's Internal System Recovery Documents**

Further explanation of the backbone of EasyVote's backbone of their platform and enterprise performance.

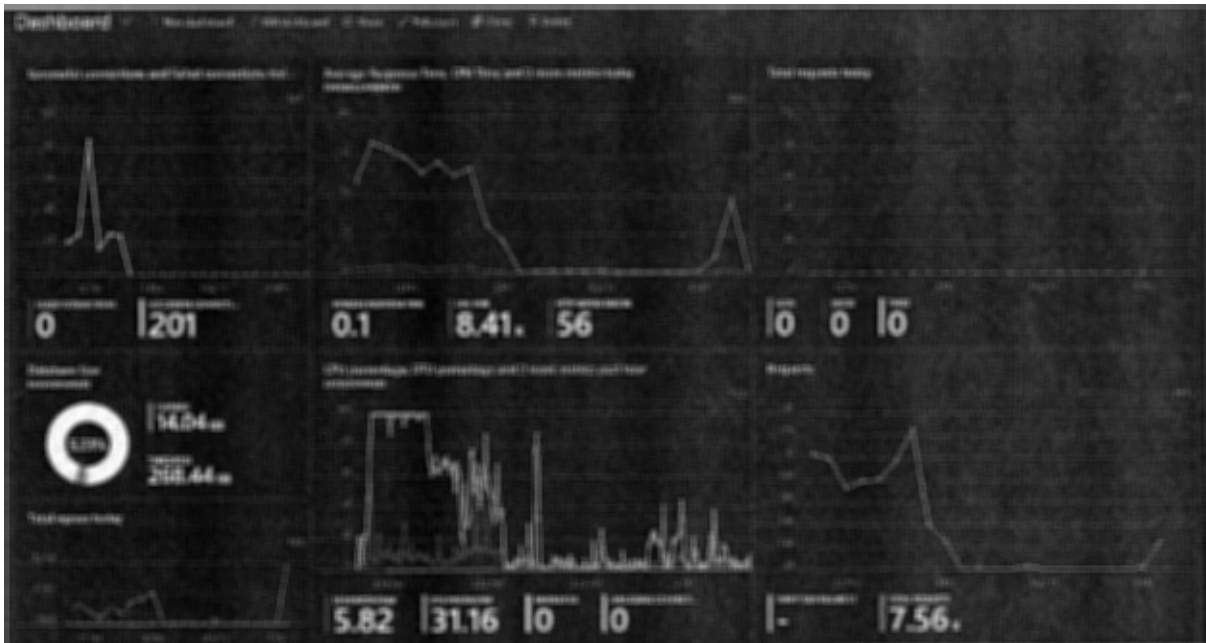


# EasyVote System Recovery

## 1 Introduction

EasyVote is based on a SaaS (Software as a Service) model and operates with the assumption that all of our customers have access to an Internet connection. That being said, SaaS must be available 99.6% of the time so that no customers experience outages due to the infrastructure that we supply being inaccessible at any time. Since EasyVote is entirely based on a green field build out on Microsoft Azure, the benefits of Cloud Based computing are inherited from the core of the Azure redundant and scalable architecture.

Azure provides the highest enterprise level performance and recovery tools as well as services that warn of saturation points before they become a problem. Below is one of the Azure dashboards that are used 24/7 to ensure the level of performance required by our customers.



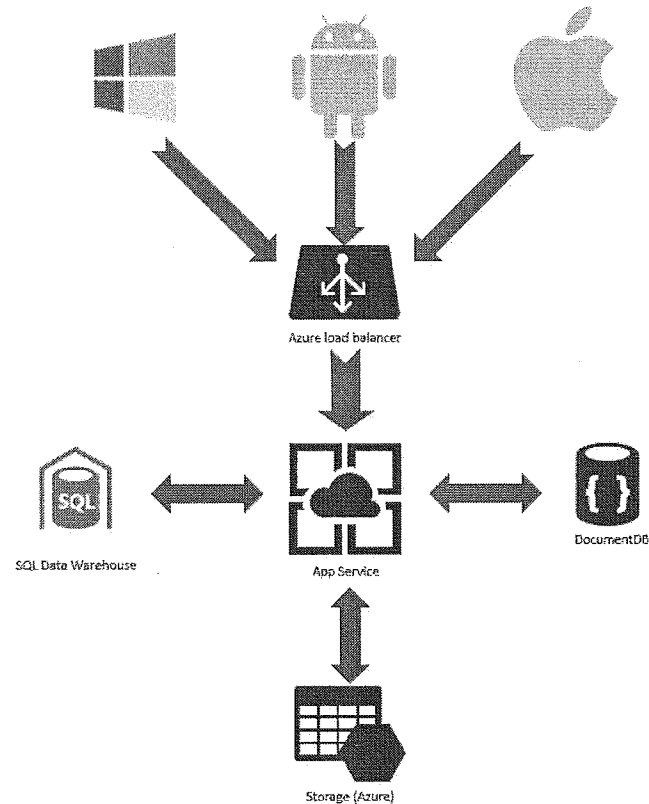
These dashboards allow the creation of **Alerts** that will send SMS and Emails to warn our administrators of any possible performance hampering issues.

### 1.1 Scale Out, Not Up

Adding more hardware is preferable to upgrading hardware. This is a new standard in the world of Cloud computing. As demand increases the Azure Auto Scale feature will initialize more hardware to handle the load, and as the load requirements diminish, hardware is taken offline.

## 2 Services and Data

EasyVote is built on your data, our services and the network. Below is a representation of how the data and services are assembled to allow continuous access to all of these services and your data.



Each part and level of EasyVote is built on a geographically redundant service and the SQL server has an added layer of protection called “Active geo-replicated”. This means that each SQL Server service is running on hardware that is physically located at different data centers around the United States.

**NOTE: No data or services are allowed outside the U.S. borders.**

## 2.1 SQL Server Details

The backbone of any searchable data storage is of course the database. With today's rise of the **NoSQL** databases, EasyVote has integrated this new technology into the appropriate places and taken full advantage of these new techniques.

EasyVote uses a hybrid approach by utilizing SQL based storage (Azure MSSQL Server) and NoSQL storage (Azure DocumentDB) to ensure the best performance as well as the maximum flexibility to satisfy our customer's feature requests.

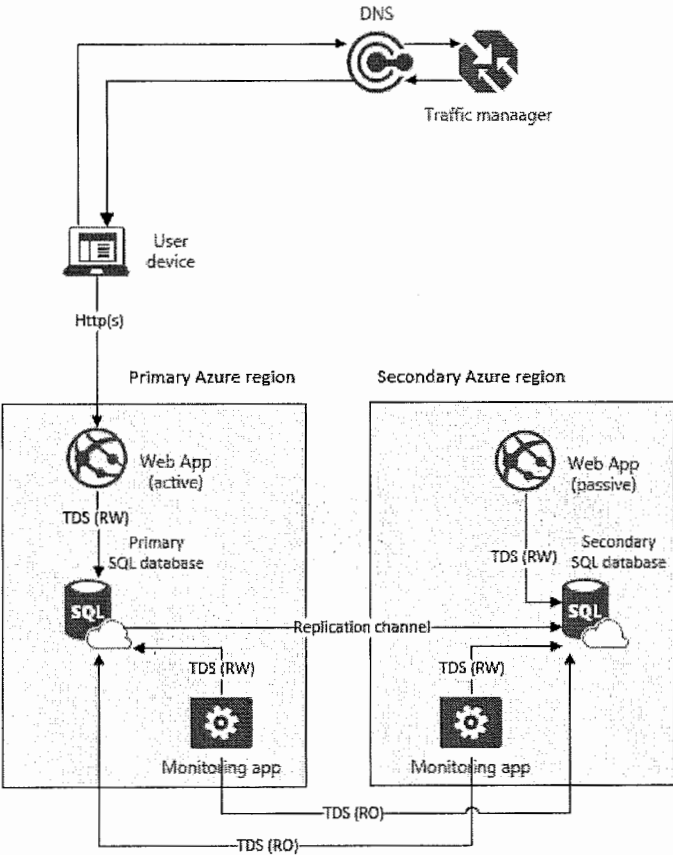
The EasyVote Microsoft SQL Server is replicated in Virginia as well as California. The physical separation of the primary and secondary databases ensures that your data is always available.

Log Shipping ensures that the databases are always in sync with each other so that when an issue arises, the Auto Fail Over will forward all SQL statements and queries to the secondary database. Once the issue is resolved the Fail Over recovery mechanism will resync the primary database and restore all edited data to the newly recovered production database.



Here are some more details about the Active geo-replication aspects of Azure SQL Server:

- Database-level disaster recovery goes quickly when you've replicated transactions to databases on different SQL Database servers in the same or different regions.
- Cross-region redundancy allows applications to recover from permanent loss of a datacenter caused by natural disasters, catastrophic human errors, or malicious acts.
- Online secondary databases are readable, and they can be used as load balancers for read-only workloads such as reporting.
- With automatic asynchronous replication, after an online secondary database has been seeded, updates to the primary database are automatically copied to the secondary database.



## 2.2 Disaster Recover Drills for SQL Server

Once a month, EasyVote DevOps performs a disaster recover drill. There is about a 25 second delay once the FAILOVER command is executed on the SQL Server and the secondary database takes over. All data is replicated before the test fail over is execute. Below is the TSQL command to execute to perform a test.

```
ALTER DATABASE <MyDB> FAILOVER;
```

In the event that disaster has occurred, the failover can be performed manually or automatically. Sometimes the automatic fail over does not react fast enough so the DevOps team can force the failover immediately by running the command below.

```
ALTER DATABASE <MyDB> FORCE_FAILOVER_ALLOW_DATA_LOSS;
```

## 2.3 File Storage

Azure File Storage is automatically protected from failure by the Microsoft Data Centers redundant servers and disk drives. This is a guaranteed service that requires no maintenance or testing from the DevOps as it is always available with a 99.90% uptime.

## 2.4 DocumentDB (NoSQL)

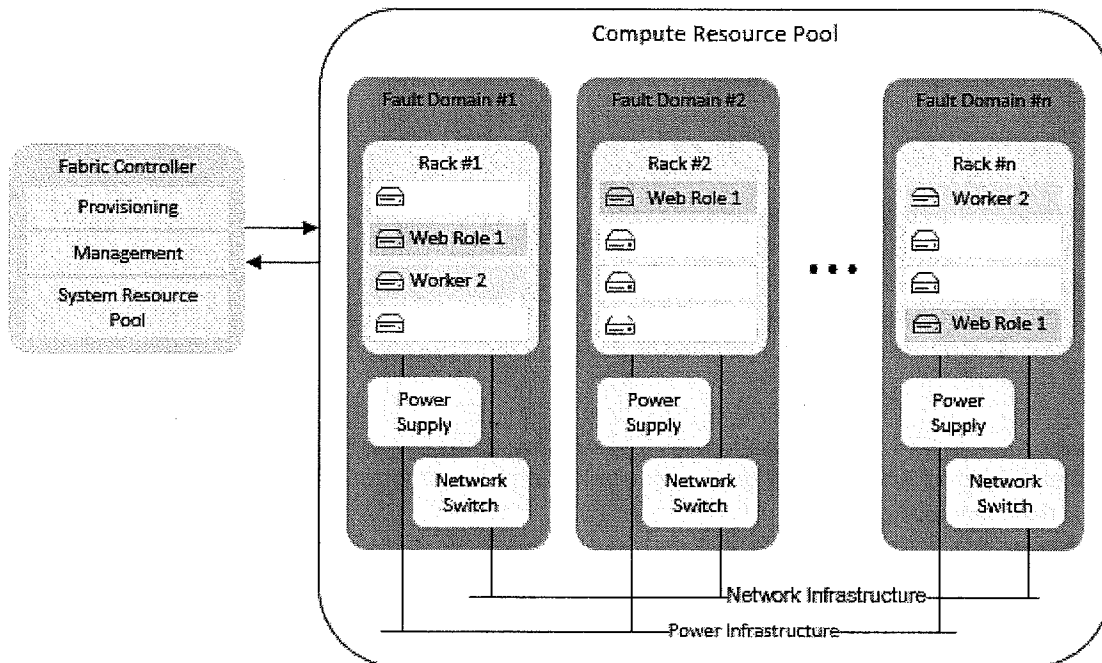
Azure DocumentDB is an enterprise level generic document (JSON/XML) storage and querying service that allows EasyVote to store unstructured data in a safe and efficient architecture.

DocumentDB has a 99.99% uptime and is by far the safest location for your custom fields and Campaign finance documents.

### 3 Web App Services

The Azure Fabric Controller (FC) is responsible for provisioning and monitoring the condition of the Azure compute instances. The Fabric Controller checks the status of the hardware and software of the host and guest machine instances. When it detects a failure, it enforces SLAs by automatically relocating the VM instances. The concept of fault and upgrade domains further supports the compute SLA.

When multiple role instances are deployed, Azure deploys these instances to different fault domains. A fault domain boundary is basically a different hardware rack in the same datacenter. Fault domains reduce the probability that a localized hardware failure will interrupt the service of an application. You cannot manage the number of fault domains that are allocated to your worker or web roles. The Fabric Controller uses dedicated resources that are separate from Azure hosted applications. It has 100% uptime because it serves as the nucleus of the Azure system. It monitors and manages role instances across fault domains. The following diagram shows Azure shared resources that are deployed and managed by the FC across different fault domains.



### 4 Summary

By building the EasyVote platform on a proven enterprise level Cloud service, an unprecedented level of reliability and consistency is derived from the massive hardware and software investments of Microsoft.

## Ian Steusloff - FW: EasyCampaignFinance status notification

---

**From:** Frank Phillips <Frank.Phillips@dentoncounty.com>  
**To:** "ian.steusloff@ethics.state.tx.us" <ian.steusloff@ethics.state.tx.us>  
**Date:** 2/1/2017 10:55 AM  
**Subject:** FW: EasyCampaignFinance status notification  
**Attachments:** image003.jpg

---

Good morning Ian,

I received your voicemail and I'm confident this answers your questions about notification once a submission is made.

Please let me know if you need any further information.

Frank Phillips  
Elections Administrator  
Denton County  
701 Kimberly Drive, Suite A101  
Denton, TX 76208  
940-349-3200

---

**From:** Jason Barnett |  
**Sent:** Wednesday, February 01, 2017 10:53 AM  
**To:** Frank Phillips <Frank.Phillips@dentoncounty.com>  
**Subject:** EasyCampaignFinance status notification

Frank,

There are several ways that a filer is notified in the system, including automatic notifications from your office to the filer via email and/or SMS text message. Examples of automatic notifications include:

- When a new filer is registered
- When a new filer is approved
- When a new document is submitted
- When a new document is accepted
- 5/10/15 day reminder when filing is due

Each time one of the events listed above happens, an email is automatically sent to the user. In addition to the automatically generated notifications, each filer can see the status of submitted documents in their user profile activity page. EasyCampaignFinance tracks all filing history for each user.

Let me know if you have any other questions.

Regards,  
Jason

Jason M. Barnett, CERV

Director of Business Development  
EasyVote Solutions  
512.378.3834





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

Chase Untermeyer, Chair  
Steven D. Wolens, Vice Chair  
Hugh C. Akin  
Jim Clancy

Chad M. Craycraft  
Wilhelmina Delco  
Mary K. "Katie" Kennedy  
Tom Ramsay

## **AGENDA**

---

Date and Time:	8:30 a.m., Thursday, February 16, 2017
Location:	Conference Room 244, Texas Workforce Commission 101 E. 15 <sup>th</sup> Street, Austin, Texas

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1. Call to order; roll call.
2. **Formal hearing notice pursuant to Sections 551.002 and 571.139(b), Government Code, Open Meetings Requirement, and Section 12.117, Ethics Commission Rules.** Contested Case Proceeding; In the Matter of Todd M. Smith, Lobbyist, Respondent. Sworn Complaint No. SC-31404103, alleges that the Respondent, a registered lobbyist, did not disclose on his 2013 lobby registration the names and addresses of seven persons who used political contributions to compensate him for services rendered, including political consulting services, as required by section 305.005(m) of the Government Code.
3. 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: Ian M. Steusloff  
Interim 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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*For more information, contact Ian M. Steusloff, Interim Executive Director, at (512) 463-5800.*