

TEXAS ETHICS COMMISSION

IN THE MATTER OF § **BEFORE THE**
§
NICK CASTILLO, § **TEXAS ETHICS COMMISSION**
§
RESPONDENT § **SC-31409187CI**

FINAL ORDER

Recitals

The Texas Ethics Commission (Commission) met on August 20, 2014, and by its own motion initiated sworn complaint SC-31409187CI.

The Commission notes that disclosure is the foundation upon which the campaign finance regulatory regime rests. When a candidate does not disclose fully his or her sources of campaign contributions and the recipients of his or her campaign expenditures the public is deprived of vital information. Circumventing these disclosure requirements can topple the entire purpose of the regulatory structure. This structure is essential in providing the electorate with the information and in maintaining the public’s trust in government.

In this case, the evidence indicates that the respondent ran in the 2012 Donna Independent School District School Board Election with a slate of candidates that included Jose Ernesto Lugo Jr., Dr. Mike Flores, and Alfredo Lugo. The respondent substantially defeated the purpose of disclosure by not disclosing on campaign finance reports the actual payees of political expenditures and the people from whom he accepted contributions. By not tracking and disclosing political contributions and the payees of political expenditures, the respondent contributed to an environment in which illegal activities occurred.

The evidence indicates that the respondent was a member of a slate of candidates who benefitted from votes that were illegally purchased by campaign workers. Following the November 2012 election, federal authorities filed a criminal complaint against three women on charges that they purchased votes with cash, and in some instances, alcohol, cigarettes, and cocaine, to benefit a slate of candidates in the Donna Independent School District school board election. The respondent and his fellow slate members were identified in federal court records as the beneficiaries of a vote-buying scheme. All the women subsequently pleaded guilty to vote-buying related charges.

The evidence also indicates that the respondent employed Francisco Garcia to help coordinate “block walking” for the slate of candidates. Francisco Garcia later pleaded guilty and was sentenced to 18 months in prison for charges related to buying votes in connection with the same election for which he was employed by the respondent.

The Commission makes no finding as to whether the respondent knowingly authorized, encouraged, or participated in the vote buying scheme. However, such illicit activity was enabled by a lack of diligent record keeping, oversight, and a failure to adhere to campaign finance reporting requirements.

The Texas Ethics Commission (Commission), having heard this case and voting to find a violation of laws under its jurisdiction, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The respondent is Nick Castillo, whose last known mailing address is 310 Scobey Avenue, #302, Donna, Texas 78537. The Commission initiated a sworn complaint against the respondent on August 20, 2014. The Notice of Hearing was mailed to the respondent on October 30, 2015, by certified mail, return receipt requested, restricted delivery and delivery confirmation.
2. The preliminary review hearing was held on November 30, 2015, at 2:00 p.m., by the Commission in Austin, Texas.
3. The respondent did not appear at the hearing.
4. During all times relevant to this complaint the respondent was an officeholder of and candidate for the Donna Independent School District (Donna ISD) Board of Trustees.
5. The complaint alleged the respondent did not properly report political contributions and political expenditures on the 30-day and 8-day pre-election campaign finance reports filed in connection with the 2012 Donna ISD school board election, as required by section 254.031 of the Election Code. The complaint also alleged that the respondent did not properly execute an affidavit on the 30-day and 8-day pre-election reports filed in connection with the 2012 Donna ISD school board election.

Report Affidavits

6. The 30-day pre-election report submitted to Donna ISD on the respondent's behalf contains a notarized signature of Cynthia Balli, the respondent's campaign treasurer. The report does not have a legible date stamp to indicate the date of filing, but it is signed on October 9, 2012. The 8-day pre-election report submitted to Donna ISD on the respondent's behalf contains the un-notarized signature of Cynthia Balli and is date stamped by Donna ISD on October 30, 2012.

Report Contents

7. The 30-day pre-election report submitted to Donna ISD on behalf of the respondent discloses \$3,000 in total political contributions and \$3,000 in total political expenditures. It discloses a total of \$0 in unitemized political contributions and a total of \$0 in

- unitemized political expenditures. The report consisted of only the cover sheets. It did not contain schedules to itemize the \$3,000 disclosed in total political contributions and total political expenditures.
8. The 8-day pre-election report submitted to Donna ISD on behalf of the respondent discloses \$2,500 in total political contributions and \$2,500 in total political expenditures. It discloses a total of \$0 in unitemized political contributions and a total of \$0 in unitemized political expenditures. The report consisted of only the cover sheets. That is it did not contain schedules to itemize the \$2,500 disclosed in total political contributions and total political expenditures.
 9. The respondent ran with a slate of candidates that included the late Alfredo Lugo, Jose Ernesto Lugo Jr., and Dr. Mike Flores.
 10. In response to the complaint, the respondent swore that, "I was not aware that reports had not been filed and understood that all reports were turned in for the slate as a group."
 11. In response to written questions, the respondent swore that the slate shared a bank account and all contributions were deposited into that account by the slate's treasurer, Cynthia Balli. The respondent stated that he was not in charge of the funds held in the joint bank account and expenditures were made to benefit the slate.
 12. In response to written questions, the respondent's slate member, Jose Ernesto Lugo Jr., swore that each candidate received an equal and proportional share of all contributions and an equal and proportional share of all expenditures. He stated that, "[t]he fundraising event decisions were discussed and approve [sic] by the slate. This would include the event, the event size, the food menu, the amount to spend on entertainment if any and an estimate of the costs and amount of the contributions the event would generate. All the event [sic] and the political contributions were always apportioned equally. The non-event political contributions were in most cases solicited and accepted by the individual slate members. Those contributions were apportioned equally. The records of political contributions were maintained by keeping copies of the contributor's check."
 13. Jose Ernest Lugo Jr. further stated: "All the members made decisions to some degree regarding spending decisions for the slate. Alfredo Lugo, Michael Flores, Nicolas Castillo, and myself made spending decisions. Sometimes a slate member would incur expenses and then request reimbursement of payment for the expense. This would be a spending decision which only one slate member would make. It would never be a major spending decision; but, nevertheless an expenditure on which a decision was made by an individual slate member. We would meet as a group especially for fund raising events or we talked on the telephone. It was a very informal process."
 14. Jose Ernest Lugo Jr. provided detailed bank records of a Frost Bank account in the name of all slate members and swore that all slate members had signing authority on the account. He stated that each member having signing authority over the joint account proved too difficult to track and control so the slate decided to close the Frost Bank account and transfer the funds to a bank account over which only their campaign

- treasurer, Cynthia Balli, would have control. The slate members transferred their political funds to a Wells Fargo account opened under the name “CYNTHIA BALLI DBA D.I.S.D. SCHOOL BOARD CAMPAIGN.” The bank records include checks issued directly to the respondent, to other members of the slate, and to all members of the slate.
15. According to bank records and the corrected campaign finance reports submitted by Jose Ernesto Lugo Jr., each slate member’s proportional share of political contributions accepted in the 30-day pre-election reporting period was approximately \$19,887. Each member’s proportional share of expenditures during that reporting period was \$17,620. With respect to the 8-day pre-election reporting period, bank records and Lugo’s corrected report show that each slate members’ proportional share of campaign contributions accepted during the reporting period was approximately \$4,025 and \$5,035 in political expenditures.
 16. Following the November 2012 election, federal authorities filed a criminal complaint against three women on charges that they purchased votes with cash, and in some instances, alcohol, cigarettes, and cocaine, to benefit a slate of candidates in the Donna ISD school board election. The federal criminal complaints described the women as “*politiqueras*” and stated that a *politiquera* is “a person who works for a candidate to encourage people to vote, to bring voters to the polls, to ensure that voters select the appropriate candidate, and to pay voters for their votes.” See, e.g., Criminal Complaint, *United States v. Castaneda*, No. M-13-2254-M, (S.D. Tex. Dec. 26, 2013) (emphasis added). The complaints also described how the *politiqueras* would give voters a card with the names of the desired candidates, and in exchange for voting for the desired candidates, the *politiqueras* would give the voter between \$3 and \$20 in cash, or beer, cigarettes, or other drugs. *Id.*
 17. According to an affidavit in support of a federal criminal complaint, one of the women told federal investigators that two candidates in the 2012 Donna ISD school board election gave her “\$100 to pay voters to vote for the candidates. The two candidates specifically instructed Escamilla to pay any voter that requested payment in exchange for his or her vote. [The woman] paid voters between \$3 and \$10 to vote for the candidates she worked for.” Affidavit in Support of Complaint, *United States v. Escamilla*, No. M-14-0072 (S.D. Tex. April 25, 2014). In a trial brief for that case, a federal prosecutor identified Alfredo Lugo, Ernesto Lugo, Michael Flores, and Nick Castillo as a slate of candidates that campaigned to maintain majority control of the Donna ISD school board and as the slate of candidates that Escamilla worked for. See Government’s Trial Brief, *United States v. Escamilla*, No. M-14-0072 (S.D. Tex. April 25, 2014). The brief stated that the evidence shows “that [the woman] worked as a *politiquera* for the [Donna School Board candidates named above] and that, as a *politiquera*, [she] encouraged people to vote, brought voters to the polls, and paid voters for their votes.”
 18. Other court records indicate that the respondent and the slate of candidates were the beneficiaries of an illegal vote-buying scheme. During a hearing in which she pleaded guilty to a vote-buying charge, another woman, swore that she paid \$10 each to

- approximately four voters in exchange for their votes for the slate of Donna ISD candidates comprised of Alfredo Lugo, Ernesto Lugo, Michael Flores, and Nick Castillo. Transcript of Rearrangement and Guilty Plea, *United States v. Solis*, No. 7:14-CR-01475 (S.D. Tex. Sept. 25, 2014). She also swore that Francisco “Frankie” Garcia worked as a campaign manager for the candidates and provided her with money to pay voters.
19. On December 1, 2014, a federal grand jury handed down an indictment alleging Francisco Garcia engaged in election fraud and a conspiracy to commit election fraud by paying voters with cash or cocaine to vote for four candidates for the Donna ISD school board. Sealed Indictment, *United States v. Garcia*, No. 7:14-cr-01427 (S.D. Tex. Sept. 16, 2014). Garcia pleaded guilty to one count of election fraud and one count of conspiracy to commit election fraud on March 2, 2015. A U.S. district court judge sentenced Garcia to 18 months in prison.
 20. The respondent stated that Garcia worked for the slate as a “campaign worker/manager.” The respondent stated that Garcia worked with other campaign workers and helped set up events. However, he denied paying Garcia to pay voters to vote for him or the slate.
 21. The respondent did not disclose the source of any campaign contributions or political expenditures in the campaign finance reports at issue. Therefore, he did not disclose any of the *politiqueras* or Francisco Garcia as a payee of political expenditures. However, Jose Ernesto Lugo Jr. submitted detailed reports and corrections to those reports, which include his proportional share of payments to “Frank Garcia” for “block walking.” Those corrections are corroborated by detailed financial records and affidavits sworn to by Jose Ernesto Lugo Jr. or Cynthia Balli.
 22. In addition, Jose Ernesto Lugo Jr. stated that Francisco Garcia performed various tasks for the benefit of the entire slate of candidates: “Part of the tasks as the event coordinator were to inform the public, secure the event site, inquire as to costs of fundraising event centers, purchase the food and beverages for these events. He also would coordinate block walking, where he, along with other individuals, would walk the streets passing out campaign literature.”

Conclusions of Law

1. Disposition of this case is within the jurisdiction of the Commission. GOV’T CODE § 571.061.
2. The respondent received legally sufficient notice of the hearing in this case. GOV’T CODE § 571.032 and 1 TAC § 12.21. The hearing was held in accordance with section 12.23, 1 Texas Administrative Code.

Report Affidavits

3. Each campaign finance report that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: “I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code.” ELEC. CODE § 254.036(h).
4. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. *Id.* § 254.064. The respondent was the person whose name was to appear on the ballot, therefore he was *the person* required to file the two pre-election reports at issue. *See id.*
5. The Election Code does not specifically define “affidavit,” but the generally accepted definition includes the requirement that the facts being sworn to be done so before an officer qualified to administer an oath. The respondent’s campaign treasurer signed the report, which contained an affidavit executed by the respondent’s campaign treasurer. The respondent did not sign the affidavit accompanying the respondent’s 30-day pre-election report. The respondent’s campaign treasurer, not the respondent, also signed the 8-day pre-election report at issue. This report was not accompanied by a notary stamp or seal, did not contain a signature of an officer administering an oath, and did not contain the signature of the respondent. Nevertheless, section 254.036 of the Election Code also provides that a campaign finance report is considered to be under oath even if the affidavit is defective.
6. The respondent cannot shield himself from responsibility for the content of the reports by delegating the reporting duties to a campaign treasurer or other members of his slate, as section 254.064 of the Election Code requires the respondent to file pre-election reports, and section 254.036(h) of the Election Code requires the respondent to sign the reports and also provides that a campaign finance report is considered to be under oath even if the affidavit is defective.
7. With regard to the respondent’s 30-day and 8-day pre-election campaign finance reports, there is credible evidence of a violation of section 254.036(h) of the Election Code.

Report Contents

8. Each report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. *Id.* § 254.031(a)(1).
9. Each report must also include the amount of political expenditures that in the aggregate exceed \$100 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. *Id.* § 254.031(a)(3).

10. Each report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6).
11. Each report must also include, as of the last day of the reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. *Id.* § 254.031(a)(8).
12. Jose Ernesto Lugo Jr. provided the Commission with detailed bank records and his corrected campaign finance report that equals Mr. Lugo's quarter share of all campaign activity. The respondent stated that the campaign was run collectively by the slate and each candidate benefitted equally from contributions and expenditures. Based on the fact each candidate agreed to share campaign contributions and expenditures, each candidate was responsible for reporting his own pro-rata share of each expenditure and contribution. *See* Ethics Advisory Opinion No. 331 (1996).
13. The bank records provided by Jose Ernesto Lugo Jr. indicate that the respondent should have itemized many political contributions of more than \$50 and political expenditures of more than \$100 in both campaign finance reports at issue. The respondent did not itemize any political contributions or political expenditures. Therefore, there is credible evidence of multiple violations of sections 254.031(a)(1) and 254.031(a)(3) of the Election Code.
14. The bank records indicate that the respondent disclosed an incorrect amount of total political contributions accepted and total political expenditures made in both campaign finance reports at issue. The 30-day pre-election report submitted on behalf of the respondent discloses \$3,000 in total political contributions and \$3,000 in total political expenditures. It discloses a total of \$0 in unitemized political contributions and a total of \$0 in unitemized political expenditures. According to bank records submitted, the respondent should have disclosed on the 30-day pre-election report approximately \$19,000 in political contributions accepted and \$17,000 in political expenditures made. Therefore, with respect to the 30-day pre-election report, there is credible evidence of violations of section 254.031(a)(6) of the Election Code.
15. The 8-day pre-election report submitted on behalf of the respondent discloses \$2,500 in total political contributions and \$2,500 in total political expenditures. It discloses a total of \$0 in unitemized political contributions and a total of \$0 in unitemized political expenditures. According to bank records, the report should have disclosed approximately \$4,025 in political contributions accepted and \$5,035 in political expenditures made. Therefore, with respect to the 8-day pre-election report, there is credible evidence of violations of section 254.031(a)(6) of the Election Code.
16. The respondent has not corrected the reports at issue.

17. The evidence also indicates that the respondent was a member of a slate of candidates that benefitted from illegally purchased votes and employed Francisco Garcia, a person who pleaded guilty to voter fraud in connection with same election for which his crimes arose. However, the respondent did not disclose payments to Garcia on campaign finance reports. Instead, the respondent filed inaccurate and incomplete campaign finance reports that substantially defeated the purpose of disclosure.
18. The Commission may impose a sanction against the respondent of not more than \$5,000 or triple the amount at issue, whichever amount is greater. GOV'T CODE § 571.173.

Therefore, the Texas Ethics Commission orders that:

1. The respondent pay to the Commission, within 30 days of the date of this order, a civil penalty in the amount of \$5,000.

Order Date: _____

FOR THE COMMISSION

Natalia Luna Ashley
Executive Director
Texas Ethics Commission