

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
ROBERT L. "BOB" HALL,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-3180254

## FINAL ORDER

### I. Recitals

The Texas Ethics Commission (Commission) met on June 17, 2021, to consider sworn complaint SC-3180254 at a formal hearing held in accordance with Sections 571.061, 571.121, 571.126 through 571.132, 571.137, and 571.139 of the Government Code. A quorum of the Commission was present. Senator Hall appeared at the hearing along with his counsel.

### II. Allegations

The complaint alleged that, in the January 2018 semiannual report as originally filed, the respondent: 1) did not disclose certain political contributions, in violation of Section 254.031(a)(1) of the Election Code; and 2) did not properly disclose the total amount of political contributions accepted during the reporting period, in violation of Section 254.031(a)(6) of the Election Code.

### III. Findings of Facts

The evidence admitted in the formal hearing or officially noticed supports the following findings of fact:

1. Sworn complaint SC-3180254 was filed on February 14, 2018.
2. The complaint alleged that the respondent, as Texas State Senator for District 2 and candidate for the same office, failed to include in-kind contributions on his January 2018 semiannual report for payments made by Texas Right to Life to broadcast a radio ad that the respondent narrated and that supported the respondent's candidacy in the March 6, 2018, primary election.
3. In response to the complaint, the respondent filed a general denial and asserted various objections challenging the Commission's authority to investigate the complaint and the Commission's provision of due process.
4. The respondent also asserted various privileges and objections in response to written questions and requests for the production of documents during the preliminary review of this complaint.

5. The Commission held a preliminary review hearing on February 27, 2020 on SC-3180254 in conjunction with SC-3180253, which alleged that the respondent had accepted a corporate contribution in violation of Section 253.003. At the conclusion of the preliminary review hearing the Commission found credible evidence of violations of Sections 254.031(a)(1) and (a)(6) of the Election Code, the issue raised in SC-3180254. The Commission dismissed SC-3180253.
6. The Commission ordered a formal hearing after the Commission and respondent were unable to settle and resolve the sworn complaint following the preliminary review hearing. The Commission held the formal hearing on June 17, 2021.
7. At the formal hearing, the Commission admitted an audio recording of the radio ad as evidence. The respondent narrates the radio ad at issue. The ad begins with the respondent stating “This is Senator Bob Hall.” The respondent asks listeners to vote for him and attacks his opponent in the March 2018 primary. The respondent also voices the radio ad’s disclosure statement: “Paid for by Texas Right to Life Committee, the oldest and largest pro-life organization in Texas.”
8. Texas Right to Life is composed of two affiliated organizations: Texas Right to Life Committee, Inc., (“the corporation”), a domestic nonprofit corporation, and Texas Right to Life PAC (“the PAC”), a general-purpose committee that files with the Commission. The corporation and the PAC are referred to collectively herein as “TRTL.”
9. Emily Cook, the general counsel of the corporation, testified at the formal hearing that the respondent traveled to a radio station where he recorded the ad at issue.
10. Cook testified that TRTL wrote a script for the ad and provided the script to the radio station where the respondent recorded the ad. TRTL then contacted the respondent and asked him to travel to the radio station where a script would be waiting for him to read, which he did. Cook testified that there was no representative for TRTL in the recording studio when the respondent recorded the ad and no TRTL representative told the respondent if or when the ad would run or how much TRTL would spend to broadcast the ad. Cook testified that it is the policy of TRTL to never tell a candidate if and how they will use an advertisement recording that they solicit from a candidate. Cook testified that TRTL never provided a notice to the respondent that TRTL had made an expenditure that would constitute an in-kind contribution.
11. Cook testified that the corporation made a mistake by accidentally using the corporate account to pay for the ad because “a corporation and a candidate cannot coordinate on a political expenditure.”
12. The respondent also testified at the formal hearing. The respondent testified that he recorded the ad, but did not recall where or when. He also testified that he did not remember whether he wrote the ad or whether he was given a script, but stated that “if I didn’t write it, I was the major author of it.” He also testified that TRTL never told him if, when, or where they would broadcast the ad, or how much it would spend to broadcast the

- ad. The respondent further testified that he did not speak to TRTL about potential reporting obligations he may have related to the radio ad but that his counsel spoke to TRTL about the matter after the time of the preliminary review hearing in February 2020 but that TRTL refused to provide a notice of in-kind contribution at that time. He also stated that based on past interactions, he believed that he was dealing with the PAC rather than the corporation when he recorded the ad. He testified that he never heard the ad and that he was unaware until the filing of SC-3180254 that the ad had actually been run on any radio station. He testified that he never received any notice from TRTL that the ad had run.
13. Records from three radio stations and campaign finance reports filed by the corporation and the PAC showed that the corporation made a total of three expenditures on December 7, 2017, and December 8, 2017, in the form of three payments totaling \$37,915 for the radio ad at issue as well as for other advertisements related to the race. TRTL later filed corrected reports to have the PAC, rather than the corporation, claim credit for the payments and asserted that the PAC had reimbursed the corporation for the cost of the advertisements.
  14. Although Cook testified that a specific dollar amount was not assigned to a given radio ad, the radio station records include agreements between the radio stations and TRTL that indicate TRTL spent a total of \$37,915 to broadcast radio ads relating to the respondent's race, including the radio ad featuring the respondent's voice.
  15. The respondent filed his January 2018 semiannual report on January 16, 2018. The respondent did not disclose political contributions for the recording or broadcast of the radio ad in his January 2018 semiannual report, which covered the period in which he recorded the ad and when the ad was broadcast by radio. The respondent filed a corrected January 2018 semiannual report on June 17, 2020, to disclose in-kind contributions from Texas Right to Life PAC totaling \$37,915 for the broadcast of the radio ad.
  16. In sum:
    - a. The respondent agreed to appear in the ad at the request of TRTL;
    - b. The respondent traveled to a radio station to record the ad;
    - c. The respondent read a script that he either wrote himself or that was provided by TRTL;
    - d. The respondent, in the ad, advocated for his election in the March 2018 primary election;
    - e. The respondent stated in the ad that the ad was paid for by Texas Right to Life Committee, evidencing his knowledge TRTL planned to pay to broadcast the ad;
    - f. TRTL paid to broadcast the ad in December 2017;
    - g. TRTL and the respondent did not discuss the details of if, where, and when the ad would run or how much would be spent to run the ad.
  17. The content of the radio ad and the circumstances of its creation show the respondent consented and approved to have TRTL pay to broadcast the ad for the benefit of his campaign. The Commission finds that the respondent consented to TRTL broadcasting the

ad by radio as evidenced by his acceptance of TRTL's invitation to go to a radio station and record an ad to benefit his campaign. The respondent evidenced his consent to the content of the ad because he read it in his own voice. The disclosure statement, "Paid for by Texas Right to Life Committee," voiced by the respondent, provides further evidence that the respondent knew that TRTL would pay to broadcast the ad, and that the respondent agreed to the ad being broadcast.

#### IV. Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

18. Disposition of this case is within the jurisdiction of the Commission. Tex. Gov't Code § 571.061.
19. The respondent received legally sufficient notice of the formal hearing, which met the requirements of Section 12.173(b) of the Ethics Commission Rules. *Id.* §§ 571.126, 571.032, 2001.051, 2001.052.
20. A campaign finance 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 the report, the full name and address of the person making the contributions, and the dates of the contributions. Tex. Elec. Code § 254.031(a)(1).<sup>1</sup>
21. A campaign finance report must 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).
22. "Contribution" means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. *Id.* § 251.001(2).
23. "Political contribution" means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
24. "Campaign contribution" means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution. *Id.* § 251.001(3).
25. "In-kind contribution" means a contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. The term does not include a direct

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<sup>1</sup> Citations and references to the Election Code and Administrative Code are to the codes as they existed in December 2018 through January 2019, the time relevant to this complaint.

- campaign expenditure. *Id.* § 20.1(8). For reporting purposes, the value of an in-kind contribution is the fair market value. *Id.* § 20.51(a).
26. “Direct campaign expenditure” means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. *Id.* § 251.001(8).
  27. A campaign expenditure is not a contribution from the person making the expenditure if it is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure was made. 1 Tex. Admin. Code § 20.1(5)(A).
  28. The difference between an in-kind contribution and a direct campaign expenditure depends on whether a candidate gives his prior consent or approval to the person making the expenditures. If a candidate gives prior consent or approval to a third party to make political expenditures on behalf of the candidate, the third party has made an in-kind contribution to the candidate, and the candidate has accepted the in-kind contribution and must report it on the campaign finance report covering the period in which he accepted the contribution. Tex. Ethics Comm’n Op. No. 331 (1996) (“EAO 331”).
  29. The definition of a “contribution” includes an agreement to make a transfer of a thing of value, which can include an agreement to make a transfer to a third party for the benefit of a candidate. *See* Tex. Elec. Code § 251.001(2). Therefore, when a third party coordinates with a candidate to make an expenditure, the resulting “contribution does not necessarily pass into the candidate’s possession.” EAO 331.
  30. Courts have consistently equated the state term “direct campaign expenditure” with the federal term “independent expenditure.” *E.g. Osterberg v. Peca*, 12 S.W.3d 31, 36 n.2 (Tex. 2000); *Catholic Leadership Coal. of Tex. v. Reisman*, 764 F.3d 409, 416 (5th Cir. 2014). In *Catholic Leadership*, the court stated, “the Texas Supreme Court has explained that ‘direct campaign expenditures’ constitute the equivalent of ‘independent expenditures’ under federal campaign finance law.” *Catholic Leadership*, 764 F.3d at 428 (5th Cir. 2014) (citing *Osterberg*, 12 S.W.3d at 36 n.2); *see also Texans for Free Enter.*, 732 F.3d at 537 (stating a Texas direct campaign expenditure only committee cannot make campaign expenditures with “prearrangement and coordination” with a candidate) (quoting *Buckley v. Valeo*, 424 U.S. 1, 47 (1976)).
  31. Just as the Fifth Circuit in *Texans for Free Enterprise* explained that a direct campaign expenditure by definition cannot be made with “prearrangement and coordination” with a candidate, “[b]y definition, an independent expenditure is political speech presented to the electorate *that is not coordinated with a candidate.*” *Citizens United v. FEC*, 558 U.S. 310, 360 (2010) (emphasis added) (citation omitted).
  32. The Texas Supreme Court and Fifth Circuit treating a “direct campaign expenditure” as the equivalent of an “independent expenditure” fits comfortably with the definition of direct campaign expenditures found in the Election Code and the Commission’s rules. While the federal term focuses on “coordination” and the state term focuses on “prior consent or

- approval,” courts use the terms interchangeably because an expenditure coordinated with a candidate must be with the prior consent or approval of the candidate. If the candidate participates in the production of the ad for a particular election, the candidate cannot plausibly claim he did not consent to its use in that election.
33. This is not a new standard. *See, e.g.* EAOs 331 (1996), 336 (1996); *In re Roy Santoscoy*, SC-3110483 (2011). *In re Roy Santoscoy*, a candidate who was verbally notified that a political committee was going to endorse his campaign. The candidate and political committee had prior discussions about the various ways in which the political committee could assist the campaign. *Id.* The political committee ultimately provided assistance by posting signs, distributing fliers, and calling voters. *Id.*
  34. The Commission held that since the candidate had prior knowledge that the political committee was going to support his campaign, and since the candidate approved the activities of the political committee, there was a verbal agreement between the parties that constituted an in-kind contribution to the candidate. *Id.* The Commission further held that because the activities and expenditures made on behalf of the candidate by the political committee were in-kind political contributions, the candidate had the burden of determining the fair market value and reporting those contributions. *Id.*
  35. Similar to *In re Santoscoy*, the respondent worked with a third party to develop campaign material and then the third party made expenditures to disseminate that material. Listening to the ad unquestionably proves that the respondent and Texas Right to Life coordinated to create the ad. Furthermore, the ad alone also proves that the respondent intended for the ad to be used in connection with his 2018 campaign for re-election. This is clear since the respondent, in his own voice, expressly advocates for his re-election in the March 2018 primary election. Finally, the respondent voicing the political advertising disclosure statement, “Paid for by Texas Right to Life Committee,” shows the respondent unmistakably expected Texas Right to Life to fund its dissemination to the public.
  36. Even though the evidence shows the Respondent did not know the particulars of when, where, and how often the advertisement would run, the respondent, like in *In re Santoscoy*, had the burden to report the fair market value of the expenditures made on his behalf as contributions. In this case, the fair market value is what Texas Right to Life paid to broadcast the ads, approximately \$38,000.
  37. The respondent argues that even if a candidate participates in the creation of a campaign ad, to the point of actually appearing in the ad, the candidate nevertheless has not accepted a contribution if the candidate did not instruct the third-party on how to distribute the advertisement and is not actually aware whether the advertisement was distributed or how much it cost to distribute. Adopting the respondent’s rule would lead to absurd results. A candidate would be able to step out of a recording booth or off a television set after recording a campaign ad a third party paid to produce and still avoid any reporting requirements. The respondent’s rule would also allow a candidate to avoid restrictions on

contributions, such as the ban on corporate contributions, simply by avoiding discussions about specific plans to disseminate an ad the candidate records with a third party.

38. The respondent's view is contrary to the text and purpose of the statute. A contribution includes an agreement to make a transfer of money or a thing of value. Parties may avoid talking about their agreement to have a third party pay to disseminate an ad the candidate created with the third party. However, the candidate's willing participation in the ad is proof he nevertheless made an agreement for the third party to disseminate the ad for the candidate's benefit. If a party participates in the production of an ad, that party has a duty to ascertain whether the advertisement was actually broadcast and the amount of any expenditures to broadcast the ad.
39. The respondent agreeing to appear in the ad, reading a script that advocated for his election, with knowledge that TRTL would pay to disseminate the ad, proves the respondent consented to the recording and broadcast of the ad. The respondent was required to report the payments made to broadcast the ad as in-kind contributions in his original January 2018 semiannual report. The respondent did not report any in-kind contributions from Texas Right to Life on his January 2018 semiannual campaign finance report as itemized contributions. The respondent also did not include the value to broadcast the ad in the total amount of political contributions during the reporting period. Therefore, the Commission finds by a preponderance of the evidence that the respondent violated Sections 254.031(a)(1) and 254.031(a)(6) of the Election Code.

#### **V. Confidentiality**

This final order is not confidential under Sections 571.132 and 571.140 of the Government Code and may be disclosed by either the respondent or members and staff of the Commission.

#### **VI. Sanction**

After considering the nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$5,000 civil penalty.

Date: \_\_\_\_\_

FOR THE COMMISSION

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Mary K. "Katie" Kennedy  
Chair  
Texas Ethics Commission