

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

Steven D. Wolens, Chair  
Chad M. Craycraft, Vice Chair  
Randall H. Erben  
Chris Flood

Mary K. "Katie" Kennedy  
Patrick W. Mizell  
Richard S. Schmidt  
Joseph O. Slovacek

## EXECUTIVE SESSION AGENDA

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Date and Time: 2:00 p.m., Thursday, December 13, 2018  
Location: Room E1.014, Capitol Extension, 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, and Section 551.074, Government Code, Personnel Matters; Closed Meeting.**
3. Discussion of pending litigation to seek legal advice relating to the following:
  - A. Cause No. D-1-GN-17-001878: *Texas Ethics Commission v. Michael Quinn Sullivan*, in the 250<sup>th</sup> Judicial District Court in Travis County, Texas; Cause No. 03-17-00392-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas; and Cause No. 18-0580: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas.
  - B. 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; et al.*; in the 53<sup>rd</sup> Judicial District Court of Travis County, Texas; and related case, Cause No. 03-17-00770-CV: *Empower Texans, Inc., and Michael Quinn Sullivan v. Tom Ramsay in his individual capacity, et al.*; in the Third Court of Appeals, Austin, Texas.
  - C. Cause No. D-1-GN-15-004455: *Texas Ethics Commission v. Empower Texans, Inc. and Michael Quinn Sullivan*, in the 345<sup>th</sup> Judicial District Court of Travis County, Texas; and related case, Cause No. 03-16-00872-CV: *Empower Texans, Inc., and Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.

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*For more information, contact Seana Willing, Executive Director, at (512) 463-5800.*

- D. 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; and related case, Cause No. 03-17-00167-CV: *Texas Home School Coalition Association, Inc. v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.
4. Discussion and seeking legal advice regarding referrals and orders under Subchapter F (Enforcement), Chapter 571, Texas Government Code.
  5. Discussion and seeking legal advice regarding the TEC's authority to charge a convenience fee for credit card payments.
  6. Discussion of personnel matters related to Executive Director, General Counsel, Director of Enforcement, and staffing in Legal Division.
  7. **Reconvene in open session.**
  8. 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: Seana Willing, 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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## PUBLIC MEETING AGENDA

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Date and Time:	2:30 p.m., Thursday, December 13, 2018
Location:	Room E1.014, Capitol Extension, Austin, Texas

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1. Call to order; roll call.
2. Presentation of certificates of service awards to Former Commissioners Hugh Akin, Jim Clancy and Tom Ramsay.
3. Discussion and adoption of TEC statutory change recommendations to the 86th Legislature as required by § 571.073 of the Government Code.
4. Discussion and possible action on the approval for Cameron County to use EasyCampaignFinance software from EasyVote for electronic filing of campaign finance reports.
5. Discussion and possible action on the approval for Aransas County to use EasyCampaignFinance software from EasyVote for electronic filing of campaign finance reports.
6. Discussion and possible action on policy allowing Executive Director to approve requests from local filing authorities to use EasyCampaignFinance software from EasyVote for electronic filing of campaign finance reports.
7. 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: Seana Willing, Executive Director.

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**Texas Ethics Commission  
Recommendations for Statutory Changes  
86<sup>th</sup> Legislative Session  
(For Adoption at December 14, 2018 Meeting)**

The following recommendations from the Texas Ethics Commission (the “TEC”) are made pursuant to Section 571.073(3) of the Texas Government Code. The relevant statutes have been attached as exhibits where applicable.

**I. RECOMMENDATIONS TO REPEAL UNCONSTITUTIONAL STATUTES**

**Recommendation No. 1: Repeal Statute that Prohibits Use of Legislatively Produced Materials in Political Advertising**

Repeal Section 306.005 of the Texas Government Code, which states that a person may not use in political advertising any audio or visual materials produced by or under the direction of the legislature or of a house, committee, or agency of the legislature.

Reason: On November 29, 2016, the TEC was permanently restrained and enjoined from enforcing Section 306.005 of the Texas Government Code following a final judgment issued in Cause No. 2016-27417, *Briscoe Cain v. Untermeyer, et al.*, in the 270th District Court of Harris County, Texas (no appeal). The trial court held that the statute violated the First Amendment to the United States Constitution and Article I, Section 8 of the Texas Constitution. This amendment would conform the statute to be consistent with the trial court’s final judgment.

A draft amendment to Chapter 306 of the Government Code is found at Exhibit A, page 5.

**Recommendation No. 2: Repeal Portion of Statute that Prohibits Corporations and Labor Unions from Contributing to Direct Campaign Expenditure Only Committees**

Amend Chapter 253 of the Texas Election Code to allow a corporation or labor organization to make a political contribution to a political committee that intends to act exclusively as a “direct campaign expenditure only committee,” also known as a SuperPac.

Reason: On October 16, 2013, in *Texans for Free Enterprise v. Texas Ethics Commission*, 732 F.3d 535 (5<sup>th</sup> Cir. 2013)(no appeal), the United States Court of Appeals for the Fifth Circuit affirmed a preliminary injunction enjoining the TEC from enforcing Sections 253.094(a) and 253.003(b) of the Election Code, which were declared unconstitutional under the First Amendment to the United States Constitution. A permanent injunction was issued by the trial court on December 20, 2013 (See *Texans for Free Enterprise v. Texas Ethics Commission*, 2013 U.S. Dist. LEXIS 187379). This amendment would conform the statute to be consistent with the Court’s opinion and the final judgment entered by the trial court.

A draft amendment to Title 15 of the Election Code is found at Exhibit B, page 6.

**Recommendation No. 3: Repeal Statute that Requires 60-Day Waiting Period and 10-Contributor Requirements for General-Purpose Committees**

Repeal Section 253.037(a) of the Texas Election Code relating to the 60-day and 10-contributor requirements applicable to general-purpose committees. In addition, repeal Section 253.037(c) of the Election Code, which merely provides an exception to Section 253.037(a).

Reason: On August 12, 2014, in *Catholic Leadership Coalition of Texas v. Reisman*, 764 F.3d 409 (5th Cir. 2014) (no appeal), the United States Court of Appeals for the Fifth Circuit struck down as unconstitutional portions of the Texas Election Code that required a general purpose committee to collect contributions from ten contributors and wait sixty days before exceeding \$500 in contributions and expenditures in an election. This amendment would conform the statute to be consistent with the Court’s opinion.

A draft amendment to Title 15 of the Election Code is found at Exhibit C, page 7.

**Recommendation No. 4: Repeal Statute Requiring Contribution and Expenditure Limits for Speaker Election**

Repeal Sections 302.017 and 302.019 of the Texas Government Code relating to contribution and expenditure restrictions for speaker elections.

Reason: On August 21, 2008, in *Free Market Foundation v. Reisman*, 573 F. Supp. 2d 952 (Dist. Court, WD Texas 2008) (no appeal), the United States District Court for the Western District of Texas, Austin Division, found that the contribution and expenditure restrictions for speaker elections in the Texas Government Code violated the First Amendment to the United States Constitution. This amendment would conform the statute to be consistent with the trial court’s final judgment.

A draft amendment to Chapter 302 of the Government Code is found at Exhibit D, page 8.

**II. RECOMMENDATIONS TO IMPROVE ENFORCEMENT EFFICIENCIES**

**Recommendation No. 5: Authorize Disclosure of Confidential Information Showing Possible Criminal Violations to Texas Rangers Public Integrity Unit**

Authorize the Commission to disclose to law enforcement agencies, including the Texas Rangers Public Integrity Unit, information relating to a sworn complaint.

Reason: Section 571.171, Texas Government Code, authorizes the TEC to refer certain matters to the appropriate prosecuting attorney for criminal prosecution without violating the confidentiality restriction under Section 571.140. Prior to 2014, the TEC referred allegations of criminal violations to the Travis County District Attorney’s Public Integrity Unit. After that office was disbanded in 2014, the Texas Rangers’ Public Integrity Unit took over the criminal investigation of public officials. That unit now handles the referral of these matters to the appropriate prosecuting attorney for criminal prosecution. There is no provision in Chapter 571 that allows the TEC to disclose or refer matters to the Texas Rangers for criminal investigation. In order to protect the public, the TEC must be authorized to disclose information to the Texas Rangers, local law enforcement authorities, and federal law enforcement authorities.

A draft amendment to Chapter 571 of the Government Code is found at Exhibit E, page 9.

**Recommendation No. 6: Amend Statutes to Provide Consistency to Records Retention Requirements for Campaign Finance Reports, Lobby Reports, and Personal Financial Statements**

Amend Title 15 of the Texas Election Code and Chapters 572 and 305 of the Texas Government Code to require filers to maintain records related to information disclosed in campaign finance reports, personal financial statements, and lobby reports for a consistent period of time sufficient to take into account the applicable statute of limitations for enforcement of potential violations.

Reason: Recordkeeping requirements for the various reports filed with the TEC and local filing authorities range from two years (for campaign finance reports) to four years (for lobby reports). There is no record retention requirement for personal financial statements. Pursuant to TEC Rule 12.5, the TEC cannot accept jurisdiction over a sworn complaint if the alleged violation is also a criminal offense and is barred from criminal prosecution by the applicable statute of limitations, which in many cases is two years. The TEC is barred from investigating alleged violations that are not criminal offenses if the conduct occurred more than three years before the complaint was filed. Having a uniform records retention requirement for all reports that could be the subject of a sworn complaint and ensuring the retention requirement is sufficient in length to prevent records from being destroyed before the statute of limitations has expired would improve the TEC's ability to enforce election laws under its jurisdiction.

A draft amendment to Chapter 572 of the Government Code is found at Exhibit F, page 10.

**III. RECOMMENDATIONS FOR COST SAVINGS EFFICIENCIES**

**Recommendation No. 7: Authorize the TEC to Provide Certain Notices via Email**

Amend Section 571.032 of the Texas Government Code to allow the TEC to send certain notices electronically, including notice that a sworn complaint does not comply with the form requirements or that the TEC has no jurisdiction over a sworn complaint.

Reason: Section 571.032, Texas Government Code, requires the TEC to send all initial notices, decisions, and reports to complainants and respondents using certified mail, restricted delivery, return receipt requested. The additional cost for this method of service is \$10.05 and the average delivery time (assuming the intended recipient accepts delivery) is three to five business days. This includes notices that a sworn complaint does not comply with form requirements or that the TEC does not have jurisdiction over the alleged violation. In FY 2018, the TEC dismissed 187 sworn complaints that did not comply with the form requirements or were not within the TEC's jurisdiction. In each instance, the TEC was required to send notice of the determination to both the complainant and the respondent by certified mail, restricted delivery, return receipt requested at a cost of regular mail plus \$10.05. The TEC estimates that it spends an additional \$2,500 annually to comply with the requirement that complainants and respondents must personally sign for delivery of the written notice that a sworn complaint was not accepted by the TEC. It is neither cost-effective nor efficient to use this method to provide notice of dismissals in these instances. Authorizing the TEC to send these notices by regular mail or electronic delivery would reduce costs and provide a more efficient method of communicating this information.

A draft amendment to Chapter 571 of the Government Code is found at Exhibit G, page 11.

#### IV. RECOMMENDATIONS TO ASSIST FILERS

##### **Recommendation No. 8: Allow Filers to Verify Reports Filed with the TEC with a Declaration**

Amend Section 571.077 of the Texas Government Code to allow filers who are eligible to file personal financial statements with the TEC on paper to verify the report by completing a written unsworn declaration subscribed by the filer as true under penalty of perjury.

Reason: H.B. 791 (effective 5/29/17) amended Section 572.0291 of the Texas Government Code to allow appointed officers to file personal financial statements with the TEC by certified mail. The personal financial statement form requires the filer to verify the report before a notary public. The TEC has been advised by filers that it can be costly and inconvenient to locate a notary in time to meet the statutory filing deadline. Section 132.001 of the Texas Civil Practice and Remedies Code authorizes the use of a written unsworn declaration in lieu of an affidavit. An unsworn declaration is signed by the affiant, who swears under penalty of perjury that the information contained in the document is true. Because there is no notary requirement with an unsworn declaration, filers would have a more convenient and less expensive way to verify the report in order to meet the filing deadline. The declaration would have the same force of law as a notarized affidavit. Amending Section 571.077 of the Texas Government Code to allow for the use of an unsworn declaration would make the statute consistent with Section 132.001 of the Texas Civil Practice and Remedies Code.

A draft amendment to Chapter 571 of the Government Code is found at Exhibit H, page 12.

##### **Recommendation No. 9: Allow Certain Campaign Finance Reports to be Filed in Black or Blue Ink or, Alternatively, Remove the Requirement**

Amend Section 254.036 of the Texas Election Code to allow TEC filers exempt from electronic filing of campaign finance reports to complete and file reports using blue or black ink. Alternatively, remove the requirement regarding ink color altogether.

Reason: Section 254.036 of the Texas Election Code requires paper reports filed with the TEC to be written or typed in black ink. The TEC has received repeated inquiries seeking clarification about whether paper reports printed in blue ink would be accepted and has been advised that local filing authorities are rejecting attempts to file paper reports printed in blue ink. It makes no difference to the TEC's administration of law whether a report is filed using black or blue ink.

Draft amendments to Chapter 254 of the Government Code are found at Exhibit I, page 13.



## EXHIBIT A

Repealed text is indicated by ~~[strikethrough]~~ text.

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### CHAPTER 306 OF THE GOVERNMENT CODE

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- 1 ~~[Sec. 306.005. USE OF LEGISLATIVELY PRODUCED AUDIO OR VISUAL MATERIALS~~  
2 ~~IN POLITICAL ADVERTISING PROHIBITED. (a) A person may not use audio or visual~~  
3 ~~materials produced by or under the direction of the legislature or of a house, committee, or~~  
4 ~~agency of the legislature in political advertising.~~  
5 ~~(b) After a formal hearing held as provided by Subchapter E, Chapter 571, the Texas Ethics~~  
6 ~~Commission may impose a civil penalty against a person who violates this section. The amount~~  
7 ~~of the penalty may not exceed \$5,000 for each violation.~~  
8 ~~(c) Subsection (a) does not prohibit describing or quoting the verbal content of the audio or~~  
9 ~~visual materials in political advertising.~~  
10 ~~(d) Subsection (a) does not apply to a photograph of a current or former member of the~~  
11 ~~legislature obtained from a house, committee, or agency of the legislature that is used in~~  
12 ~~accordance with terms and conditions established by the entity from which the photograph was~~  
13 ~~obtained.~~  
14 ~~(e) In this section:~~  
15 ~~(1) "Political advertising" has the meaning assigned by Section 251.001, Election Code.~~  
16 ~~(2) "Visual materials" means photographic, video, or other material containing a still or moving~~  
17 ~~recorded image or images.]~~

**EXHIBIT B**

Proposed language is indicated by underlined text.

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**TITLE 15 OF THE ELECTION CODE**

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1 Sec. 253.105. POLITICAL CONTRIBUTIONS TO DIRECT CAMPAIGN EXPENDITURE  
2 COMMITTEES

3  
4 (a) A corporation or labor organization may make a political contribution from its own property  
5 to a political committee that intends to act exclusively as a direct campaign expenditure only  
6 committee.

7  
8 (b) For purposes of this section, a “direct campaign expenditure only committee” is a political  
9 committee that makes direct campaign expenditures and does not make or intend to make  
10 political contributions to any candidate, officeholder, or specific-purpose committee established  
11 or controlled by a candidate or officeholder.

12  
13 (c) A direct campaign expenditure only committee’s acceptance of a political contribution from a  
14 corporation or labor organization does not constitute a violation of section 253.003(b) or  
15 253.094(a) of the Election Code if, before accepting the contribution, the committee files with  
16 the commission an affidavit stating:

17  
18 (1) the committee intends to act exclusively as a direct campaign expenditure only  
19 committee; and

20  
21 (2) the committee will not use its political contributions to make political contributions to  
22 any candidate for elective office, officeholder, or political committee that makes a  
23 political contribution to a candidate or officeholder.

**EXHIBIT C**

Repealed text is indicated by ~~text~~ text.

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**TITLE 15 OF THE ELECTION CODE**

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1 Sec. 253.037. RESTRICTIONS ON CONTRIBUTION OR EXPENDITURE BY GENERAL-  
2 PURPOSE COMMITTEE

3  
4 ~~[(a) A general purpose committee may not knowingly make or authorize a political contribution~~  
5 ~~or political expenditure unless the committee has:~~

6  
7 ~~(1) filed its campaign treasurer appointment not later than the 60th day before the date the~~  
8 ~~contribution or expenditure is made; and~~

9  
10 ~~(2) accepted political contributions from at least 10 persons.]~~

11  
12 (b) A general-purpose committee may not knowingly make a political contribution to another  
13 general-purpose committee unless the other committee is listed in the campaign treasurer  
14 appointment of the contributor committee.

15  
16 ~~[(e) Subsection (a) does not apply to a political party's county executive committee that is~~  
17 ~~complying with Section 253.031 or to a general purpose committee that accepts contributions~~  
18 ~~from a multicandidate political committee (as defined by the Federal Election Campaign Act)~~  
19 ~~that is registered with the Federal Election Commission, provided that the general purpose~~  
20 ~~committee is in compliance with Section 253.032.]~~

21  
22 (d) A person who violates this section commits an offense. An offense under this section is a  
23 Class A misdemeanor.

**EXHIBIT D**

Repealed text is indicated by ~~[strikethrough]~~ text.

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**CHAPTER 302 OF THE GOVERNMENT CODE**

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~~[Sec. 302.017. CONTRIBUTIONS AND LOANS FROM ORGANIZATIONS~~

~~(a) Except as provided by Subsection (b), a corporation, partnership, association, firm, union, foundation, committee, club, or other organization or group of persons may not contribute or lend or promise to contribute or lend money or other things of value to a speaker candidate or to any other person, directly or indirectly, to aid or defeat the election of a speaker candidate.~~

~~(b) This section does not apply to a loan made in the due course of business to a speaker candidate for campaign purposes by a corporation that is legally engaged in the business of lending money and that has continuously conducted the business for more than one year before making the loan to the speaker candidate.]~~

~~[Sec. 302.019. INDIVIDUAL CONTRIBUTIONS; CAMPAIGN EXPENDITURES~~

~~(a) Except as provided by Section 302.017 or 302.018, an individual other than the speaker candidate may contribute personal services and traveling expenses to aid or defeat a speaker candidate.~~

~~(b) An individual other than the speaker candidate may expend a total of not more than \$100 for the cost of correspondence to aid or defeat the election of a speaker candidate.~~

~~(c) Except as provided by Subsections (a) and (b), all campaign expenditures must be made by the speaker candidate from campaign funds.]~~

**EXHIBIT E**

Proposed language is indicated by underlined text.

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**CHAPTER 571 OF THE GOVERNMENT CODE**

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1 Sec. 571.1401. CERTAIN DISCLOSURE OF INFORMATION

2

3 (a) To protect the public interest, the commission may disclose to a law enforcement agency  
4 information that is confidential under Section 571.140(a).

5

6 (b) The commission may disclose information under this section only to the extent necessary for  
7 the recipient of the information to perform a duty or function that is in addition to the  
8 commission's duties and functions.

9

10 (c) Information disclosed to a law enforcement agency under this section remains confidential,  
11 and the agency must take appropriate measures to maintain that confidentiality.

12

13 (d) A person commits an offense if the person discloses confidential information obtained under  
14 this section. An offense under this subsection is a Class C misdemeanor.

**EXHIBIT F**

Repealed text is indicated by ~~strikethrough~~ text.  
Proposed language is indicated by underlined text.

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**CHAPTERS 305 AND 572 OF THE GOVERNMENT CODE;  
TITLE 15 OF THE ELECTION CODE**

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1 Sec. 572.0292. RETENTION OF RECORDS

2 (a) An individual required to file a personal financial statement shall maintain a record of the  
3 information that is necessary for filing the personal financial statement for at least [ ] years  
4 beginning on the filing deadline for the personal financial statement containing the information.

5 AND

6 Sec. 305.009. MAINTENANCE OF REPORTS.

7 (d) A registrant shall keep any records necessary to the reports required under this chapter for at  
8 least [ ] ~~[four]~~ years after the date the report is filed.

9 AND

10 Sec. 254.001. RECORDKEEPING REQUIRED.

11 (d) A person required to maintain a record under this section shall preserve the record for at least  
12 [ ] ~~[two]~~ years beginning on the filing deadline for the report containing the information in the  
13 record.

## EXHIBIT G

Proposed language is indicated by underlined text.

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### CHAPTER 571 OF THE GOVERNMENT CODE

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- 1 Sec. 571.032. MAILING OF NOTICES, DECISIONS, AND REPORTS. (a) Except as  
2 provided by Subsection (b) or (c), each written notice, decision, and report required to be sent  
3 under this chapter shall be sent by registered or certified mail, restricted delivery, return receipt  
4 requested.
- 5 (b) After written notice under Section 571.123(b) regarding the filing of a sworn complaint has  
6 been sent to a person in the manner required by Subsection (a), the commission may send the  
7 person any additional notices regarding the complaint by regular mail or electronic delivery  
8 unless the person has notified the commission to send all notices regarding the complaint by  
9 registered or certified mail, restricted delivery, return receipt requested.
- 10 (c) Written notice under Section 571.123(c) that a sworn complaint does not comply with the  
11 form requirements or that the commission does not have jurisdiction under Section 571.124(f)  
12 may be sent by regular mail or electronic delivery.

**EXHIBIT H**

Proposed language is indicated by underlined text.

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**CHAPTER 571 OF THE GOVERNMENT CODE**

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- 1 Sec. 571.077. STATEMENTS, REGISTRATIONS, AND REPORTS CONSIDERED TO BE  
2 VERIFIED. (a) A statement, registration, or report that is filed with the commission is  
3 considered to be under oath by the person required to file the statement, registration, or report  
4 regardless of the absence of or defect in the affidavit of verification, including a signature.  
5 (b) A person required to file a statement, registration, or report with the commission is subject to  
6 prosecution under Chapter 37, Penal Code, regardless of the absence of or defect in the affidavit  
7 of verification.  
8 (c) This section applies to a statement, registration, or report that is filed with the commission  
9 electronically or otherwise.  
10 (d) An unsworn declaration, in the format prescribed by Section 132.001 of the Texas Civil  
11 Practice and Remedies Code, may be used in lieu of an affidavit of verification when filing a  
12 paper report with the commission.  
13



## EXHIBIT I

Repealed text is indicated by ~~struckthrough~~ text.  
Proposed language is indicated by underlined text.

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### CHAPTER 254 OF THE ELECTION CODE

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1 Sec. 254.036. FORM OF REPORT; AFFIDAVIT; MAILING OF FORMS. (a) Each report filed  
2 under this chapter with an authority other than the commission must be in a format prescribed by  
3 the commission. A report filed with the commission that is not required to be filed by computer  
4 diskette, modem, or other means of electronic transfer must be on a form prescribed by the  
5 commission and written in black or blue ink or typed with black or blue typewriter ribbon or, if  
6 the report is a computer printout, the printout must conform to the same format and paper size as  
7 the form prescribed by the commission.

8 OR

9 Sec. 254.036. FORM OF REPORT; AFFIDAVIT; MAILING OF FORMS. (a) Each report filed  
10 under this chapter with an authority other than the commission must be in a format prescribed by  
11 the commission. A report filed with the commission that is not required to be filed electronically  
12 [~~by computer diskette, modem, or other means of electronic transfer~~] must be on a form  
13 prescribed by the commission [~~and written in black or blue ink or typed with black or blue~~  
14 ~~typewriter ribbon~~] or, if the report is a computer printout, the printout must conform to the same  
15 format and paper size as the form prescribed by the commission.





REMI GARZA  
ELECTIONS ADMINISTRATOR

September 14, 2018

Seana Willing,  
Executive Director, Texas Ethics Commission  
P.O. Box 12070  
Austin, TX 78711-2070

Ref: Cameron County campaign finance filings

Dear Ms. Willing,

With this letter, Cameron County Elections Administration is requesting permission to accept campaign finance filings from local filers through an electronic filing application. We are requesting to use software that meets or exceeds the specifications of the EasyCampaignFinance from EasyVote.

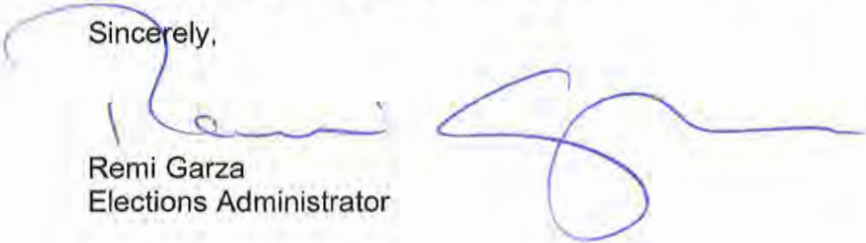
For your consideration EasyVote's **EasyCampaignFinance** module is a comprehensive campaign finance software package that provides election offices with a robust, easy-to use online tool to automate the filing and management of the necessary forms for campaign finance reporting designed to meet state requirements. I have attached documentation for your review to demonstrate Cameron County's expectations.

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 [jbarnett@easyvotesolutions.com](mailto:jbarnett@easyvotesolutions.com).

Due to the large number of filings Cameron 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 Cameron County Elections.

If you require further information, please do not hesitate to contact me at 956-544-0809 or by email at [remi.garza@co.cameron.tx.us](mailto:remi.garza@co.cameron.tx.us).

Sincerely,

  
Remi Garza  
Elections Administrator

Attachments

The Cameron 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 Cameron 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.

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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?**

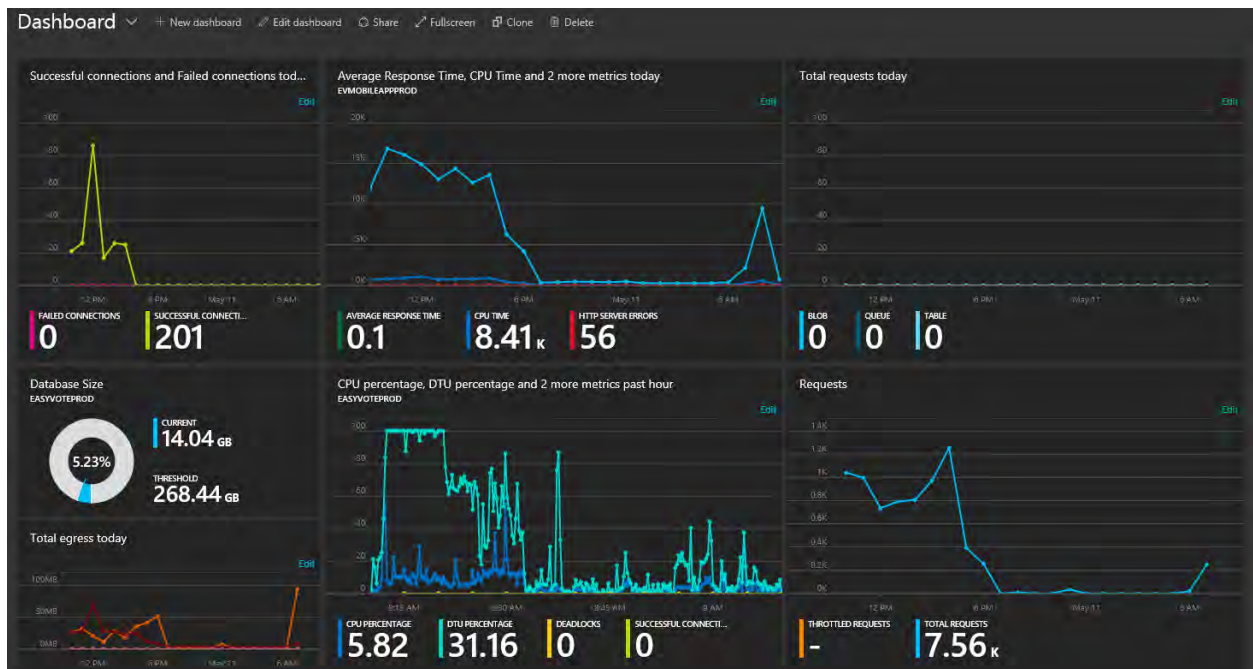
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# EasyVote System Recovery

## 1 Introduction

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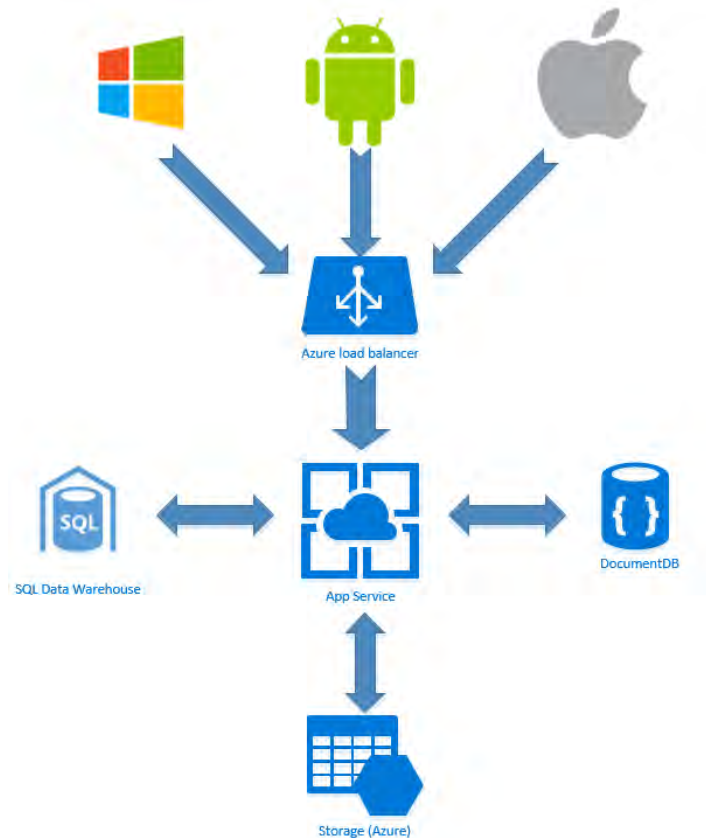
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EasyVote is built on your data, our services and the network. Below is a representation of how the data and services are assembled to allow continuous access to all of these services and your data.



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.

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## 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.

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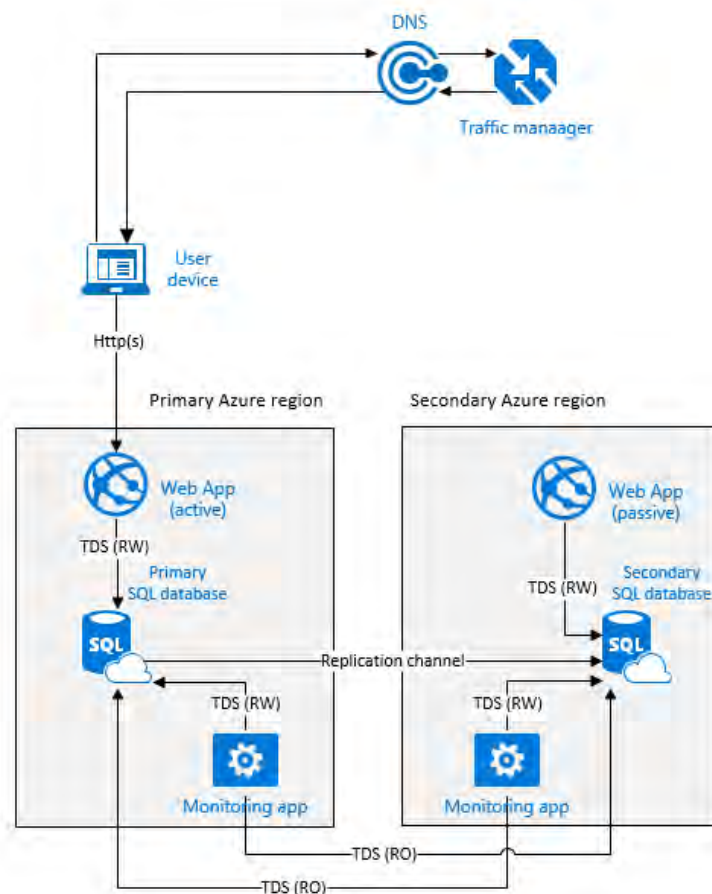
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Once a month, EasyVote DevOps performs a disaster recover drill. There is about a 25 second delay once the FAILOVER command is executed on the SQL Server and the secondary database takes over. All data is replicated before the test fail over is execute.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

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## 2.4 DocumentDB (NoSQL)

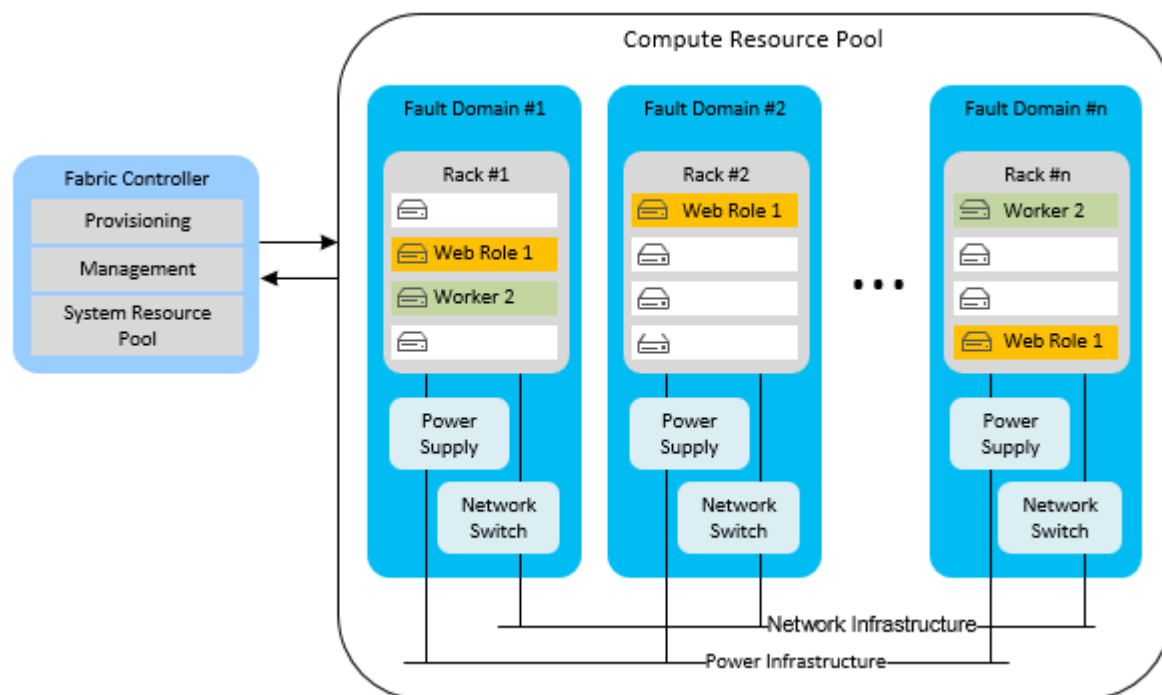
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The Azure Fabric Controller (FC) is responsible for provisioning and monitoring the condition of the Azure compute instances. The Fabric Controller checks the status of the hardware and software of the host and guest machine instances. When it detects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

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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.

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1. Double Click the EasyVote Icon on your desktop
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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
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  - 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
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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
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  - 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

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1. Open browser of choice (IE, Firefox, Chrome, Safari, etc.)
2. Enter: 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.



CAMERON 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 the Cameron County Elections Office. (This document is NOT for use by those required to file with the Texas Ethics Commission.)

Name:	Last First Middle
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Committee Name: (if Committee)	
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Mailing Address:	Street City State ZIP
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Contact Phone:	Area Code Phone Number Extension
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Email Address:	
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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 The Cameron County Elections Office.</p> <p>_____</p> <p>Signature</p>
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Return to Cameron County, 1050 E. Madison St, Brownsville, TX 78520, or fax to 956-550-7298.



Michele M. Bennett  
Elections Administrator

November 14, 2018

Ms. Seana Willing  
Executive Director, Texas Ethics Commission  
P.O. Box 12070  
Austin, TX 78711-2070

Ref: Aransas County campaign finance filings

Dear Ms. Willing,

With this letter, Aransas 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 [jbarnett@easyvotesolutions.com](mailto:jbarnett@easyvotesolutions.com).

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 the Aransas County Elections Administrator.

If you require further information, please do not hesitate to contact me at 361-729-7431 or by email at [mbennett@aransascounty.org](mailto:mbennett@aransascounty.org).

Sincerely,

A handwritten signature in blue ink that reads "Michele M. Bennett".

Michele M. Bennett  
Elections Administrator

Attachments

The Aransas 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 Aransas 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.
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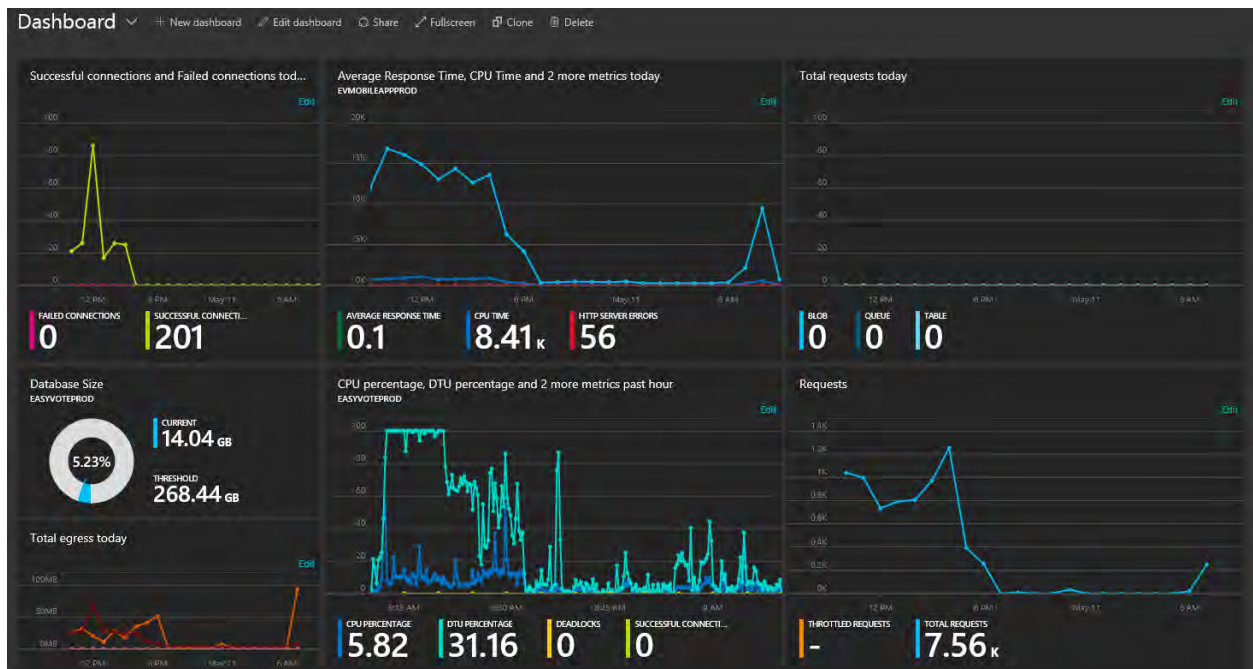
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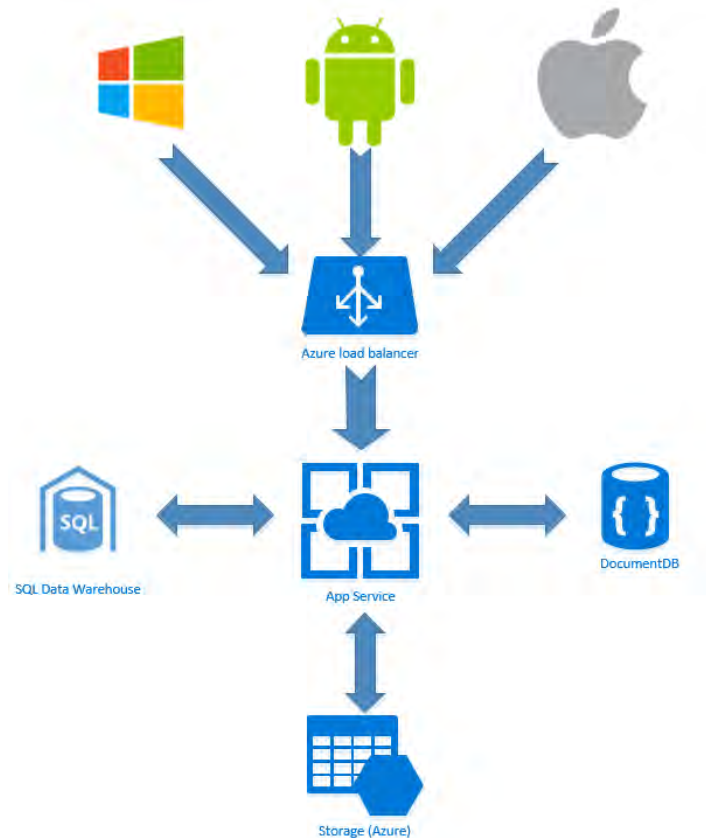
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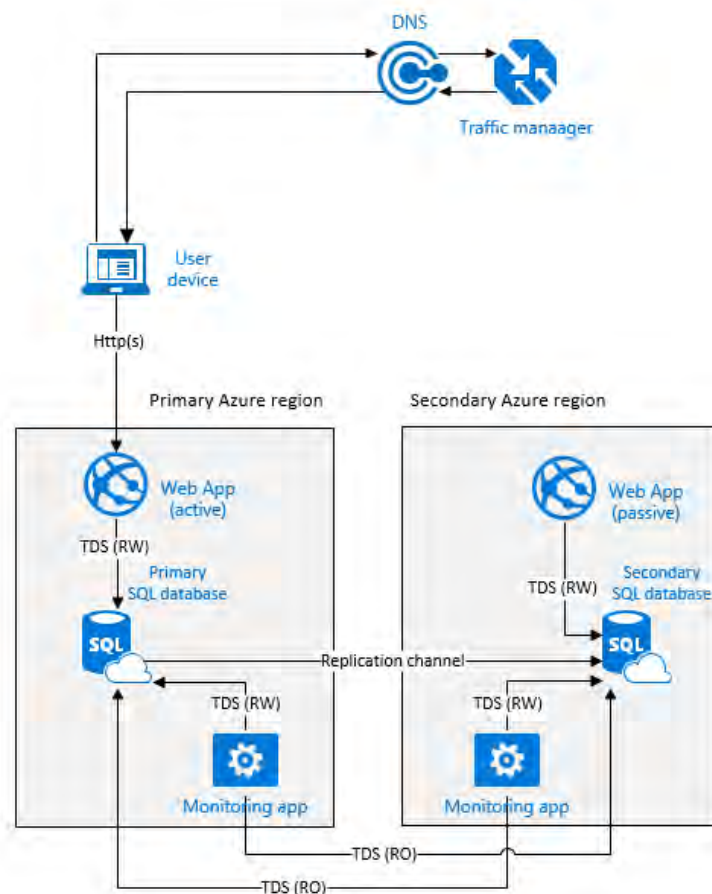
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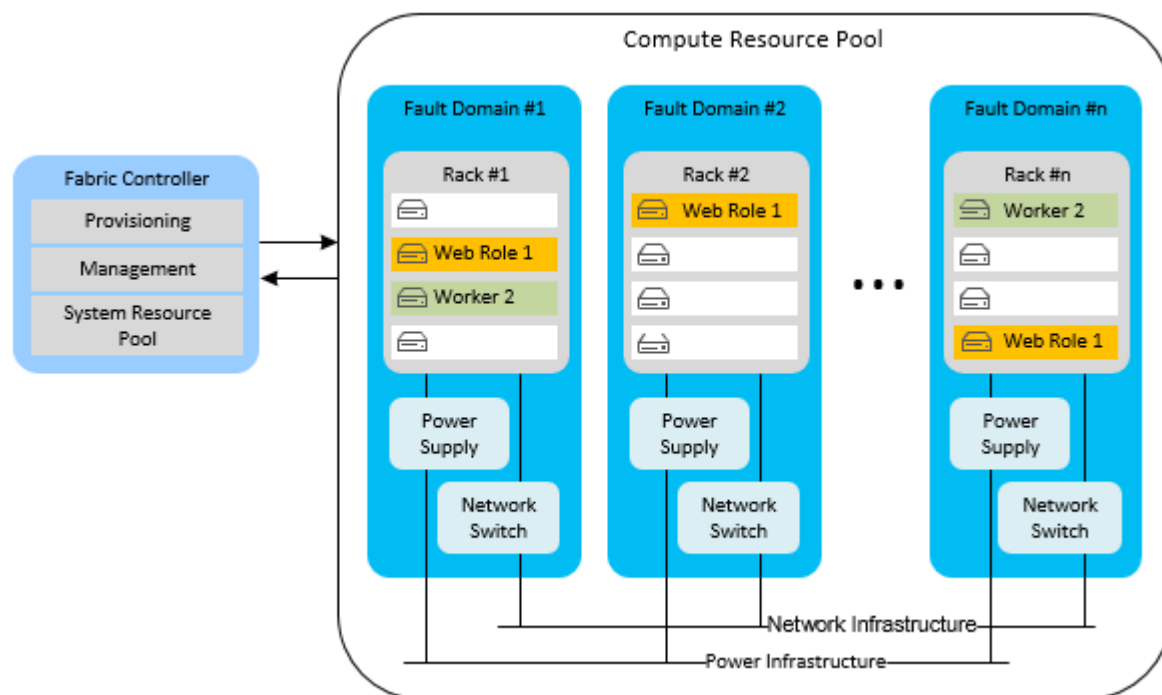
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    - ii. Click Start Wizard
    - iii. The forms are broken down in to small snippets (after you complete each page – click NEXT STEP
    - iv. You will always be able to view your document before submitting (in pdf format) – if your document is complete 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.

ARANSAS 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 the Aransas County Elections Office. (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 The Aransas County Elections Office.</p> <p>_____</p> <p>Signature</p>
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Return to Aransas County, 602 E Concho St., Rockport, TX 78382, or fax to 361-790-0177.





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

Steven D. Wolens, Chair  
Chad M. Craycraft, Vice Chair  
Randall H. Erben  
Chris Flood

Mary K. “Katie” Kennedy  
Patrick W. Mizell  
Richard Schmidt  
Joseph O. Slovacek

**PUBLIC MEETING AGENDA**

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Date and Time: 9:00 a.m., Friday, December 14, 2018  
Location: Room E1.014, Capitol Extension, Austin, Texas

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1. Call to order; roll call.
2. Comments by Commissioners.
3. Discussion regarding the next Texas Ethics Commission meeting.
4. Update regarding Texas Ethics Commission Legislative Appropriations Request for FY 2020-2021.
5. Presentation by Commissioner Mizell regarding ease of navigating through electronic version of meeting materials using iPads, tablets or laptops.
6. Approve minutes for the following meetings:
  - o Executive Session – October 3, 2018;
  - o Public Meeting – October 3, 2018; and
  - o Public Meeting – October 4, 2018.

**ADMINISTRATIVE WAIVERS, REDUCTIONS,  
APPEALS OF FINES**

7. Discussion and possible action on appeal of fines increased by the Commission, and 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 individual: Amanda J. Marzullo (00065422).

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*For more information, contact Seana Willing, Executive Director, at (512) 463-5800.*

**RULEMAKING****RULES FOR ADOPTION**

8. Discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 12.35, regarding frivolous complaints.
9. Discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 26.1, regarding political advertising on the Internet.
10. Discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Texas Ethics Commission Rules § 50.1 (Legislative Per Diem) relating to the legislative per diem required to be set under Article III, Section 24a, of the Texas Constitution.
11. Discussion and possible action on the adoption or proposal and publication in the Texas Register of new rule § 34.77, regarding the disclosure of foreign agent registration number on file with United States Attorney General.

**PROPOSED RULES**

12. Discussion and possible action on the proposal and publication in the Texas Register of new Ethics Commission Rules § 18.31, regarding adjustments to reporting thresholds based on rate of inflation under Government Code § 571.064.
13. Discussion and possible action on the proposal and publication in the Texas Register of new Ethics Commission Rules §16.12, regarding facial compliance reviews.

**ADVISORY OPINIONS**

14. Discussion of Advisory Opinion Request No. SP-14: Whether a public officer may use government resources for political advertising.

This opinion request construes section 39.02(a)(2) of the Penal Code and 255.003 of the Election Code.

15. Update regarding Advisory Opinion Request No. SP-15: Whether an associate judge may wear judicial robes and use the title “associate judge” in political advertising.

This opinion request construes section 39.02 of the Penal Code and sections 255.003 and 255.006 of the Election Code.

### OTHER POLICY MATTERS

16. Discussion and possible action on a petition for rulemaking concerning the designation of a corporation's political contributions made to a general-purpose committee for administrative expenses under § 253.100(a) of the Election Code.
17. Discussion and possible action on the proposal and publication in the Texas Register of new and amended Ethics Commission rules regarding corporations and labor organizations making political expenditures to finance the establishment and administration of, and solicitation of political contributions to, a general-purpose committee and making political contributions to a political committee for supporting or opposing measures exclusively under §§ 253.096 and 253.100 of the Election Code.
18. Discussion and possible action on any unfinished business from December 13, 2018 Public Meeting.
19. 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: Seana Willing, 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.

# 2019 Calendar

January						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

- 1 **New Year's Day**
- 6 Epiphany (Three Kings Day)
- 21 **Martin Luther King Day**

February						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

- 2 Groundhog Day
- 3 Super Bowl Sunday
- 4 Chinese New Year
- 14 Valentine's Day
- 18 **Presidents' Day**

March						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

- 5 Shrove Tuesday (Mardi Gras)
- 6 Ash Wednesday/First day of Lent
- 10 Daylight Saving Time starts
- 17 St. Patrick's Day
- 20 Spring equinox (spring begins)

April						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

- 1 April Fool's Day
- 14 Palm Sunday
- 19 Good Friday
- 20 Passover (first full day)
- 21 Easter
- 22 Easter Monday

May						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

- 5 Cinco de Mayo
- 6 Ramadan (first full day)
- 12 Mothers' Day
- 27 **Memorial Day**

June						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

- 5 Eid al-Fitr (first full day)
- 9 Pentecost
- 14 Flag Day
- 16 Fathers' Day
- 21 Summer solstice (summer begins)

July						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

- 4 **Independence Day**

August						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

September						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

- 2 **Labor Day**
- 11 Patriot Day
- 17 Constitution Day
- 23 Fall equinox (fall begins)
- 29 Rosh Hashanah (begins)

October						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

- 1 Rosh Hashanah (ends)
- 9 Yom Kippur
- 14 **Columbus Day**
- 27 Diwali
- 31 Halloween

November						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

- 1 All Saints' Day
- 3 Daylight Saving Time ends
- 11 **Veterans Day**
- 28 **Thanksgiving Day**
- 29 Black Friday

December						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

- 1 First Sunday of Advent
- 2 Cyber Monday
- 21 Winter solstice (winter begins)
- 23 Hanukkah (first full day)
- 24 Christmas Eve
- 25 **Christmas Day**
- 26 Kwanzaa begins
- 31 New Year's Eve



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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**EXHIBIT A**

**Text of Proposed Rule Amendment**

The deleted language is indicated by [strikethrough] text.

**CHAPTER 12. SWORN COMPLAINTS**

**SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES**

1 **§12.35. Frivolous Complaint.**

2 [~~(a) By a record vote of at least six commissioners, the commission may order a~~  
3 ~~complainant to show cause why the commission should not determine that the complaint~~  
4 ~~filed by the complainant is a frivolous complaint.]~~

5 [~~(b)~~] In deciding if a complaint is frivolous, the commission will be guided by the Texas  
6 Rules of Civil Procedure, Rule 13, and interpretations of that rule, and may also consider:

7 (1) the timing of the complaint with respect to when the facts supporting the alleged  
8 violation became known or should have become known to the complainant, and  
9 with respect to the date of any pending election in which the respondent is a  
10 candidate or is involved with a candidacy, if any;

11 (2) the nature and type of any publicity surrounding the filing of the complaint, and  
12 the degree of participation by the complainant in publicizing the fact that a  
13 complaint was filed with the commission;

14 (3) the existence and nature of any relationship between the respondent and the  
15 complainant before the complaint was filed;

16 (4) if respondent is a candidate for election to office, the existence and nature of any  
17 relationship between the complainant and any candidate or group opposing the  
18 respondent;

19 (5) any evidence that the complainant knew or reasonably should have known that  
20 the allegations in the complaint were groundless; and

21 (6) any evidence of the complainant's motives in filing the complaint.

22 [~~(c) Notice of a show cause hearing must be given at least 10 business days before the date~~  
23 ~~of the hearing. Notice shall be sent by registered or certified mail, restricted delivery, return~~  
24 ~~receipt requested.~~

- 1 ~~(d) Notice of an order to show cause shall include:~~
- 2 ~~(1) an explanation of why the complaint appears to be frivolous; and~~
- 3 ~~(2) the date, time, and place of the show cause hearing to be held under subsection (e) of~~
- 4 ~~this section.~~
- 5 ~~(e) Before making a determination that a complaint is a frivolous complaint, the~~
- 6 ~~commission shall hold a hearing at which the complainant may be heard and may be~~
- 7 ~~represented by counsel retained by the complainant.]~~

## EXHIBIT A

## Text of Proposed Rule Amendment

The proposed new language is indicated by underlined text.

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

1 **§26.1. Disclosure Statement.**

2  
3 (a) A disclosure statement that is required by §255.001, Election Code, must  
4 contain the words "political advertising" or any recognizable abbreviation, and  
5 must:

6  
7 (1) appear on one line of text or on successive lines of text on the face of  
8 the political advertising; or

9  
10 (2) be clearly spoken in the political advertising if the political  
11 advertising does not include written text.

12  
13 (b) A disclosure statement is not required on political advertising printed on  
14 letterhead stationery if the letterhead contains the full name of one of the  
15 following:

16  
17 (1) the person who paid for the political advertising;

18  
19 (2) the political committee authorizing the political advertising; or

20  
21 (3) the candidate authorizing the political advertising.

22  
23 (c) A disclosure statement is not required on: [~~on~~]

24  
25 (1) campaign buttons, pins, or hats, or on objects whose size makes printing  
26 the disclosure impractical; [~~impractical~~]

27  
28 (2) political advertising posted or re-posted on an Internet website, as long  
29 as the person posting or re-posting the political advertising.<sup>1</sup>

30  
31 (A) is not an officeholder, candidate, or political committee; and

32  
33 (B) did not make an expenditure exceeding \$100 in a reporting  
34 period for political advertising beyond the basic cost of hardware

---

(September 19, 2018)

<sup>1</sup> Proposed Rule 26.1(c)(2) effectively restates the amendment initially proposal by staff, creating an exception for members of the general public who, at little-to-no expense, express their political views on social media.

## EXHIBIT A

1           messaging software and bandwidth;<sup>2</sup>

2  
3           (3) the Internet social media profile webpage of a candidate or  
4           officeholder, provided the webpage clearly and conspicuously displays the  
5           full name of the candidate or officeholder;<sup>3</sup> or

6  
7           (4) political advertising posted or re-posted by a person on an Internet  
8           website,<sup>4</sup> provided the advertising is posted with a link<sup>5</sup> to a publicly  
9           viewable Internet webpage that:

10  
11           (A) contains the disclosure statement; or

12  
13           (B) is exempt from containing the disclosure statement under  
14           Subsection (c)(3).

15  
16           (d) For the purposes of subsection (c) of this section, an “Internet social media  
17           profile webpage” is an Internet webpage on a website where members of the  
18           public may, for no charge, connect electronically with other members of the  
19           public and share text, images, videos, and similar forms of communications.

---

<sup>2</sup> In (c)(2)(ii), we offer for consideration an exception for *de minimis* expenditures. This exception recognizes that social media makes it easy for the politically unsavvy to pay a small fee to “boost” a post, not realizing that doing so subjects the individual to disclosure requirements. We set the exemption threshold at \$100, aligning it with the threshold for reporting direct expenditures. We believe \$100 is a reasonable limit for distinguishing between typical social media users and politically sophisticated users whom can reasonably be expected to know of and comply with the rules for political reporting and disclosure. That said, we would accept any dollar amount the Commission deems appropriate. We similarly understand if the Commission wishes to remove the *de minimis* exception by striking the words “or coordinate with one or more persons to make an expenditure exceeding \$100 in a reporting period.”

<sup>3</sup> This exception relies on the same rationale expressed in Subsection (b), the exemption for political advertising printed on letterhead. Note that it would only apply to the profile page of a candidate or officeholder, and not to a page maintained by a specific-purpose political committee supporting a candidate or assisting an officeholder.

An alternative approach, one the Commission may wish to consider, would apply this exemption to anyone who publishes political advertising on his or her social media profile. Under this alternative, a disclosure statement would rarely be required. Notable exceptions would be banner ads and similar forms of advertising on social media and anonymous speech.

<sup>4</sup> The original amendment to the rule did not account for situations in which a member of the public “retweets” or “shares” a post from an officeholder or candidate containing political advertising. Under the draft rule amendment, such an individual would be required to include a disclosure since the original content was paid for or authorized by a candidate or officeholder.

<sup>5</sup> When an individual retweets or shares a post on social media, users are able to see the name of the original poster. By clicking on the name, users are linked back to the profile page of the person who originated the content.

## Exhibit A

### Legislative Per Diem Rule Amendment

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

The amended proposed new language is indicated by underlined text.

1 **§ 50.1. Legislative Per Diem**

2

3 (a) The legislative per diem is \$221 [~~\$190~~]. The per diem is intended to be paid to  
4 each member of the legislature and the lieutenant governor for each day during the  
5 regular session and for each day during any special session.

6

7 (b) If necessary, this rule shall be applied retroactively to ensure payment of the  
8 \$221 [~~\$190~~] per diem for 2019 [~~2015~~].



## EXHIBIT A

### Text of Proposed Rule

The proposed new language is indicated by underlined text.

#### Chapter 34. REGULATION OF LOBBYISTS

##### Subchapter C. COMPLETING THE REGISTRATION FORM

- 1 **§34.77. Disclosure of Registration under Foreign Agents Registration Act.**  
2 (a) The registration of any person who has also filed an active registration statement under  
3 the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. §611 et seq.), must  
4 include the registration number assigned to the registration statement by the United States  
5 Attorney General until the registration statement is terminated.  
6  
7 (b) This section is implemented upon funding by the legislature.







**GIOVANNI CAPRIGLIONE**  
 TEXAS HOUSE OF REPRESENTATIVES  
 DISTRICT 98

August 9, 2018

Mr. Steven D. Wolens  
 Chairman, Texas Ethics Commission  
 201 E. 14th Street, #10  
 Austin, TX 78701



Dear Chairman Wolens:

I am writing to request the Texas Ethics Commission review and consider revising your rules to increase transparency and accountability for lobbyists who are also registered foreign agents.

The issue of foreign influence in domestic affairs has been a significant topic of analysis and conversation in recent months. Most of the focus has been on federal affairs. However, state governments are not immune from attempted foreign influence. The right of the people to petition the government is a hallmark of Constitution and American democracy and should not be infringed. Transparency is also important to open and honest policy and political discussions.

Texas lawmakers and policymakers are on occasion visited by individuals representing foreign governments, including those required to register as foreign agents under U.S. law. That is why I respectfully request the Texas Ethics Commission to create a designation or process whereby Texans can know if lobbyists registered with the Texas Ethics Commission are also registered foreign agents under the federal Foreign Agents Registration Act (FARA).

“FARA is a disclosure statute that requires persons acting as agents of foreign principals in a political or quasi-political capacity to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts and disbursements in support of those activities,” according to the U.S. Justice Department website. “Disclosure of the required information facilitates evaluation by the government and the American people of the statements and activities of such persons in light of their function as foreign agents.”

Texans would benefit by easier access to foreign agent registration and designation at the Texas Ethics Commission. Today, if a state official wanted to know if a visitor was a registered foreign agent, he or she would have to know to about and how to navigate the Justice Department’s FARA website.

GIOVANNI.CAPRIGLIONE@HOUSE.TEXAS.GOV

CAPITOL OFFICE: P.O. Box 2910 • AUSTIN, TEXAS 78768-2910 • (512) 463-0690  
 DISTRICT OFFICE: P.O. Box 770 • KELLER, TEXAS 76244-0770 • (817) 807-8010

Mr. Steven D. Wolens

August 9, 2018

Page 2


The Texas Ethics Commission could simply require Texans who register as lobbyists to check a box or otherwise simply disclose whether they are also required to register with the U.S. Justice Department under the Foreign Agents Registration Act. Such increased transparency will improve the system and help ensure that efforts to exert foreign influence on Texas state government are properly disclosed.

Thank you for your consideration.

Sincerely,



Giovanni Capriglione  
State Representative  
District 98



Sarah Davis  
State Representative  
District 134

# TEXAS ETHICS COMMISSION

P.O. Box 12070, Capitol Station  
Austin, Texas 78711-2070

Steven D. Wolens  
Chair

Chad M. Craycraft  
Vice Chair

Seana Willing  
Executive Director



Commissioners

Randall H. Erben  
Chris Flood  
Mary K. "Katie" Kennedy  
Patrick W. Mizell  
Richard S. Schmidt  
Joseph O. Slovacek

August 13, 2018

Representative Giovanni Capriglione  
District 98  
Room E2.610  
P.O. Box 2910  
Austin, Texas 78768

Representative Sarah Davis  
District 134  
Room GW.4  
P.O. Box 2910  
Austin, Texas 78768

Dear Representative Davis and Representative Capriglione:

Just a note to acknowledge receipt of your August 9, 2018 letter regarding possible changes to the lobby forms to require disclosure of registered foreign agents.

We are looking at our authority to make this change and the feasibility and cost of doing so.

We will respond more fully to your request as soon as possible.

With kind regards,

  
Steven D. Wolens

[www.ethics.state.tx.us](http://www.ethics.state.tx.us)

(512) 463-5800 • FAX (512) 463-5777 • TDD (800) 735-2989

*Promoting Public Confidence in Government*



**Text of Proposed Rule Amendment**

The proposed new language is indicated by underlined text.

**Chapter 18. GENERAL RULES CONCERNING REPORTS**

**§18.31. Adjustments to Reporting Thresholds.**

(a) Pursuant to section 571.064 of the Government Code, the reporting thresholds are adjusted as follows:

<b>Campaign Finance Reports: Section of Election Code</b>	<b>Threshold Description</b>	<b>Original Threshold Amount</b>	<b>Adjusted Amount</b>
253.031(b)	The amount of political contributions or political expenditures permitted by a political committee before a campaign treasurer appointment is required	\$500	\$870
253.031(d)(2)	The amount of political contributions or political expenditures permitted by a county executive party of a political party before a campaign treasurer appointment is required	\$25,000	\$32,320
254.031(a)(1)	Threshold at which contributor information is required to be reported	\$50	\$90
254.031(a)(2)	Threshold at which lender information is required to be reported	\$50	\$90
254.031(a)(3)	Threshold at which information on the payee of a political expenditure is required to be reported	\$100	\$180
254.031(a)(5)	Threshold below which contributor information is not required to be reported	\$50	\$90
254.031(a)(5)	Threshold below which payee information is not required to be reported	\$100	\$180

254.031(a)(9)	Threshold at which the source of any credit, interest, return of deposit fee from political contributions or asset is required to be reported	\$100	\$130
254.031(a)(10)	Threshold at which the proceeds from sale of a political asset is required to be reported	\$100	\$130
254.031(a)(11)	Threshold at which any gain from an investment purchased with political contributions is required to be reported	\$100	\$130
254.031(a)(12)	Threshold at which any other gain from political contribution is required to be reported	\$100	\$130
254.0311(b)(1)	Threshold at which contributor information for contributions from non-caucus members is required to be reported by a caucus	\$50	\$90
254.0311(b)(2)	Threshold at which lender information is required to be reported by a caucus	\$50	\$90
254.0311(b)(3)	Threshold at which payee information for expenditures is required to be reported by a caucus	\$50	\$90
254.0311(b)(3)	Threshold below which payee information for expenditures is not required to be reported by a caucus	\$50	\$90
254.0311(b)(4)	Threshold below which contributor and payee information is not required to be reported by a caucus	\$50	\$90
254.0312	Threshold at which the best efforts rule requires one to make a written or oral request for contributor information in order to be considered in compliance when contributor information is missing	\$500	\$680

254.036	Threshold of political contributions and political expenditures below which a filer qualifies for the electronic filing exemption, if certain conditions are met	\$20,000	\$27,140
254.038(a)	Contribution threshold triggering a Special Report Near Election by Certain Candidates and Political Committees during the 9 days before election	\$1,000	\$1,790
254.039	Contribution threshold triggering Special Report Near Election by GPACs during the 9 days before election	\$5,000	\$6,090
254.039	Direct Campaign expenditure thresholds triggering Special Report Near Election by GPACs (\$1,000 for single candidate or \$15,000 for group of candidates) during the 9 days before election	\$1,000/\$15,000	\$1,790/\$26,780
254.0611(a)(2)	Threshold at which principal occupation/employer information for contributors to judicial filers is required to be reported	\$50	\$90
254.0611(a)(3)	Threshold at which the disclosure of an asset purchased with political contributions is required to be reported by judicial filers	\$500	\$900
254.0612	Threshold at which principal occupation/employer information for contributors to statewide executive and legislative candidates is required to be reported	\$500	\$900



254.095	Threshold of political contributions or political contributions below which a report is not required for officeholders who do not file with the Commission, unless also a candidate	\$500	\$900
254.151(6)	Threshold at which the principal occupation for GPAC contributors is required to be reported	\$50	\$90
254.1541(a)	Threshold of political contributions and political expenditures below which a GPAC has a \$100 contribution itemization threshold, rather than \$50	\$20,000	\$25,860
254.1541(b)	Contribution reporting threshold for GPACs qualifying under section 254.1541 set to \$100	\$100	\$180
254.156(1)	Threshold at which contributor, lender, and payee information is required for a political contribution, loan, or expenditure, respectively, to an MPAC	\$10	\$20
254.156(2)	Threshold at which contribution, loan, and expenditure information for MPACs qualifying under section 254.1541 is set to \$20	\$20	\$40
254.181, 254.182, 254.183	Threshold of political contributions and political expenditures below which a candidate or SPAC may elect to avoid certain pre-election filing requirements (modified reporting)	\$500	\$900
254.261	Threshold at which a person making direct campaign expenditures in an election must disclose the expenditures, including payee information	\$100	\$130



<b>Lobby Registrations and Reports: Section of Government Code</b>	<b>Threshold Description</b>	<b>Original Threshold Amount</b>	<b>Adjusted Amount</b>
305.003(1)	Threshold of expenditures over which a person must register as a lobbyist	\$500, by 1 Tex. Admin. Code §34.41	\$780
305.003(2)	Threshold of compensation or reimbursement over which a person must register as a lobbyist	\$1,000, by 1 Tex. Admin. Code §34.43	\$1,560
305.004(7)	Threshold of expenditures and compensation below which a person lobbying on behalf of political party is excepted from the requirement to register as a lobbyist	\$5,000	\$8,930
305.005(g)(2)	Threshold of category to report compensation less than \$10,000	\$10,000	\$17,860
305.005(g)(3)	Upper threshold of category to report compensation of at least \$10,000 but less than \$25,000	\$25,000	\$44,630
305.005(g)(4)	Upper threshold of category to report compensation of at least \$25,000 but less than \$50,000	\$50,000	\$89,260
305.005(g)(5)	Upper threshold of category to report compensation of at least \$50,000 but less than \$100,000	\$100,000	\$178,520
305.005(g)(6)	Upper threshold of category to report compensation of at least \$100,000 but less than \$150,000	\$150,000	\$267,770
305.005(g)(7)	Upper threshold of category to report compensation of at least \$150,000 but less than \$200,000	\$200,000	\$357,030
305.005(g)(8)	Upper threshold of category to report compensation of at least \$200,000 but less than \$250,000	\$250,000	\$446,280
305.005(g)(9)	Upper threshold of category to report compensation of at least \$250,000 but less than \$300,000	\$300,000	\$535,540
305.005(g)(10)	Upper threshold of category to report compensation of at least \$300,000 but less than \$350,000	\$350,000	\$624,790

305.005(g)(11)	Upper threshold of category to report compensation of at least \$350,000 but less than \$400,000	\$400,000	\$714,050
305.005(g)(12)	Upper threshold of category to report compensation of at least \$400,000 but less than \$450,000	\$450,000	\$803,310
305.005(g)(13)	Upper threshold of category to report compensation of at least \$450,000 but less than \$500,000	\$500,000	\$892,560
305.005(g-1)	Threshold of compensation or reimbursement at which a registrant must report the exact amount	\$500,000	\$892,560
305.0061(c)(3)	Threshold over which the name of a legislator who is the recipient of a gift, a description of the gift, and amount of the gift is required to be disclosed	\$50	\$90
305.0061(e-1)	Threshold below which an expenditure for food or beverages is considered a gift and reported as such	\$50	\$90
305.0063	Threshold of expenditures below which a registrant may file lobby activities reports annually instead of monthly	\$1,000	\$1,790

<b>Personal Financial Statements: Section of Gov't Code</b>	<b>Threshold Description</b>	<b>Original Threshold Amount</b>	<b>Adjusted Amount</b>
572.022(a)(1)	Threshold of category to report an amount less than \$5,000	less than \$5,000	less than \$8,930
572.022(a)(2)	Threshold of category to report an amount of at least \$5,000 but less than \$10,000	\$5,000 to less than \$10,000	\$8,930 to less than \$17,860
572.022(a)(3)	Threshold of category to report an amount of at least \$10,000 but less than \$25,000	\$10,000 to less than \$25,000	\$17,860 to less than \$44,630
572.022(a)(4)	Threshold of category to report an amount of at least \$25,000 or more	\$25,000 or more	\$44,630 or more

572.005, 572.023(b)(1)	Threshold to disclose the source and category of amount of retainer received by a business entity in which the filer has a substantial interest; section 572.005 defines substantial interest, in part, as owning over \$25,000 of the fair market value of the business entity	\$25,000	\$44,630
572.023(b)(4)	Threshold over which income from interest, dividends, royalties, and rents is required to be reported	\$500	\$900
572.023(b)(5)	Threshold over which the identity of each loan guarantor and person to whom filer owes liability on a personal note or lease agreement is required to be reported	\$1,000	\$1,790
572.023(b)(7)	Threshold of value over which the identity of the source of a gift and a gift description is required to be reported	\$250	\$450
572.023(b)(8)	Threshold over which the source and amount of income received as beneficiary of a trust asset is required to be reported	\$500	\$900

<b>Speaker Election and Certain Ceremonial Reports: Section of Government Code</b>	<b>Threshold Type</b>	<b>Current Threshold Amount</b>	<b>Adjusted Amount</b>
302.014(4)	Expenditure of campaign funds over \$10 must be disclosed, including payee's name and address and the purpose	\$10	\$20
303.005(a)(1) – (10)	Thresholds applicable to contribution and expenditure disclosure requirements for a governor for a day or speaker's reunion day ceremony report	\$50	\$90

(b) The effective date of this rule is January 1, 2020, and is implemented upon funding by the legislature.



## EXHIBIT A

## Text of Proposed Rule

The proposed new language is indicated by underlined text.

1                   **Chapter 16. FACIAL COMPLIANCE REVIEWS AND AUDITS**

2                   **§16.12. Facial Review of Total Amount of Political Contributions Maintained.**

3                   (a) In this section “expected total political contributions maintained” for a report subject to review  
4                   is the total amount of political contributions maintained disclosed on the previous report and all  
5                   monetary political contributions, loans, and credits, less all expenditures from political  
6                   contributions disclosed on the report that is subject to review, excluding the purchase of  
7                   investments that can be readily converted to cash.

8                   (b) When there is a difference greater than the threshold set by §20.50(c) between the total amount  
9                   of political contributions maintained disclosed in a report and the expected total political  
10                   contributions maintained, the commission may request from the filer the bank statement showing  
11                   the balance as of the last day of the reporting period for each account in which political  
12                   contributions are maintained.

13                   (c) Producing the requested bank statements that show the total amount of political contributions  
14                   was accurately reported in the report that is subject to review is sufficient to end the review of the  
15                   total amount of political contributions maintained as disclosed in the report.



**DRAFT 3**

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

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*December 14, 2018*

*Whether a public officer<sup>1</sup> may use government resources for political advertising. (SP-14)*

**BACKGROUND**

The Texas Ethics Commission (“Commission”) has been asked on numerous occasions about the permissibility of a public officer’s use of government resources for political advertising. For example, we have been asked whether (1) a judge may take a photograph, for use in political advertising, while occupying the judge’s bench in a courtroom, or (2) a public officer may be interviewed in his or her government office for use in a campaign video.

In the circumstances described above, the government resources come into the public officer’s custody or possession by virtue of holding the public office.

**SUMMARY**

A public officer, including a statewide officer, legislator, district judge, county officer, municipal officer, or school district officer, would be prohibited from using government resources, such as the judge’s bench in a courtroom or the officer’s office in a government building, to create a photograph, video, or other communication for political advertising because the officer has custody or possession of the government resources by virtue of holding the public office

**ANALYSIS**

The Commission, on its own initiative, issues this advisory opinion to address whether a public officer may use government resources, such as a judge’s bench located in a courtroom or the public officer’s office, to create a photograph, video, or other communication for political advertising. We also address whether a public officer may similarly use government resources that are equally accessible to the public. To resolve this question, we must address sections 39.02(a)(2) and 39.02(a)(1) of the Penal Code and section 255.003(a) of the Election Code, which restrict the use of government resources for political advertising.

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<sup>1</sup> “Public officer” includes an officer of the state or a county, municipality, city, or political subdivision, as defined in section 1.07(a) of the Penal Code and section 1.005 of the Election Code. This opinion applies to a state officer who is a district officer of the state government, such as a legislator or district judge (*see* Elec. Code §1.005(4)), or who is a statewide officer (*see id.* §1.005(19)). This opinion also applies to an officer of a county, city, school district, or other subordinate self-governing entity. *See id.* §1.005(13).

## DRAFT 3

### Use of Government Resources for Political Advertising

#### *Section 39.02(a)(2), Penal Code*

Section 39.02(a)(2) of the Penal Code states that a public servant may not, with intent to obtain a benefit<sup>2</sup> or harm or defraud another, intentionally or knowingly “misuse[] government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant’s custody or possession by virtue of the public servant’s office or employment.” Penal Code §39.02(a)(2). A public servant, as defined in the Penal Code, includes a public officer, among other enumerated persons.<sup>3</sup> Because the questions addressed by the Commission relate to public officers, this opinion applies to that class of public servants.

A “misuse” means:

[T]o deal with government property contrary to:

- (A) an agreement under which the public servant holds the property;
- (B) a contract of employment or oath of office of a public servant;
- (C) a law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or
- (D) a limited purpose for which the property is delivered or received.

*Id.* §39.01(2).

The use of government resources for an individual public servant’s benefit is a misuse contrary to the state constitutional requirements that public money be used for a public purpose. Tex. Const. art. III, §§51, 52(a).<sup>4</sup> Therefore, the use of government resources for an individual public

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<sup>2</sup> “Benefit” is defined, in pertinent part, as “anything reasonably regarded as economic gain or advantage.” Penal Code §1.07(a)(7).

<sup>3</sup> “Public servant” also includes an employee or agent of government, a juror or grand juror, an arbitrator or referee, a notary public, and a candidate for nomination or election public office. Penal Code §1.07(a)(41).

<sup>4</sup> Tex. Const. art. III, §§1 (legislature may not authorize grant of public money to any individual, association, municipal or other corporation), 52(a) (legislature may not authorize any county, city, town or other political corporation or subdivision of the state to grant public money or thing of value in aid of or to any individual, association, or corporation). *See also* Ethics Advisory Opinion Nos. 386 (1997) (use of state equipment or state employees to handle campaign contributions or prepare campaign finance reports for officeholders is a misuse of government resources), 172 (1993) (state employees’ work time may not be used to handle campaign contributions or expenditures); Gov’t Code §556.004 (prohibiting use of legislatively appropriated money and other resources for campaign purposes); Attorney General Opinion Nos. DM-431 (1997), JM-685 (1993) (both holding that governmental entity may not pay costs in connection with election contest involving government officeholder),



## DRAFT 3

servant's private campaign purposes would be a misuse. Section 39.02(a)(2) of the Penal Code applies only to a misuse of government resources that have "come into the public servant's custody or possession by virtue of the public servant's office or employment." A public officer would have custody or possession<sup>5</sup> of a courtroom, an office, or other government resources by virtue of having exclusive control over those resources as a public officer. The public officer's use of a judicial bench or government office, which is restricted to the custody or possession of that officer, for political advertising would confer a benefit to the individual public servant for private campaign purposes and would violate section 39.02(a)(2) of the Penal Code.

Regarding government resources, such as the public area of a government facility, in our opinion, such an area would not be in the "custody or possession" of a public officer. Such an area would be equally accessible to those not having custody or possession of the government resources. Therefore, section 39.02(a)(2) of the Penal Code would not prohibit a public officer from using the public areas of a courthouse or other government building to create a communication for political advertising.

Regarding specific examples about which we have been asked, a judge occupying the judge's bench in a courtroom would have custody or possession of the bench by virtue of holding the public office. The bench would not be equally accessible to the public. We conclude that section 39.02(a)(2) would prohibit the judge from using the judge's bench in the courtroom to create any communication for political advertising. Similarly, we conclude that section 39.02(a)(2) would prohibit a public officer from using a government office, of which the officer has custody or possession by virtue of holding the public office, for an interview for a campaign video. In our opinion, the best practices for public officers are to remove themselves from government facilities and decline to use other government resources, of which they have custody or possession, for campaign activity, including political advertising. We conclude that public officers may permissibly use government resources that are equally accessible to the general public, and they should relocate to publicly accessible areas, when creating photographs, videos, or other communications for political advertising.

### *Section 39.02(a)(1), Penal Code*

Section 39.02(a)(1) of the Penal Code states that a public servant may not, with intent to obtain a benefit or harm or defraud another, intentionally or knowingly "violate[] a law relating to the public servant's office or employment." Penal Code §39.02(a)(1).<sup>6</sup> Section 39.02(a)(2) of the

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MW-36 (1979) (public body has no authority to contribute public funds to or on behalf of an individual or organization).

<sup>5</sup> "Custody" is defined as "[t]he care and control of a thing or person for inspection, preservation, or security." Black's Law Dictionary 467 (10th ed. 2014). "Possession" is defined as "[t]he fact of having or holding property in one's power; the exercise of dominion over property," and "[t]he right under which one may exercise control over something to the exclusion of all others." *Id.* at 1351.

<sup>6</sup> "Law relating to a public servant's office or employment" means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly: (A) imposes a duty on the public servant; or (B) governs the conduct of the public servant. *Id.* §39.01(1). "Law" means the constitution or a statute of this state or of the United States, a written opinion of a court of record, a municipal ordinance, an order of a county commissioners court, or a rule authorized by and lawfully adopted under a statute. *Id.* §1.07(a)(30).

## DRAFT 3

Penal Code and the constitutional requirement to use public money for a public purpose are laws relating to the public officer's office or employment. Therefore, in our opinion, a public officer would violate section 39.02(a)(1) of the Penal Code by using government resources of which the officer has custody or possession, including the bench located in a courtroom or the government office, to create a photograph, video, or other communication for political advertising.

However, we caution that additional legal restrictions may apply to the use of any government resources, including other state or local laws or policies, and such restrictions may constitute law relating to a public servant's office or employment under section 39.02(a)(1) of the Penal Code. This prohibition has a wide application and "allows for a vast array of potential means of committing the offense." *State v. Martinez*, 548 S.W.3d 751, 759 (Tex. App. – Corpus Christi – Edinburg 2018), *reh'g denied*, 2018 Tex. App. LEXIS 5042 (Tex. App. – Corpus Christi – Edinburg June 11, 2018) (indictment alleging an offense under this provision must specify which law or laws relating to the public servant's office or employment were allegedly violated). We cannot address the application of laws or policies that are outside our jurisdiction for an advisory opinion.<sup>7</sup> Accordingly, we cannot provide assurance that section 39.02(a)(1) of the Penal Code, depending upon all applicable laws, would not prohibit a public officer from using other government resources that are generally accessible to the public to create a photograph, video, or other communication for political advertising.

### *Section 255.003(a), Election Code*

Section 255.003(a) of the Election Code states, in pertinent part, that an officer of a political subdivision may not knowingly "spend or authorize the spending of public funds for political advertising." Elec. Code §255.003(a).<sup>8</sup> The "spending" of public funds includes the use of a political subdivision employee's work time or a political subdivision's equipment or facilities.<sup>9</sup> "Political advertising" is defined, in pertinent part, as a communication supporting or opposing a candidate for nomination or election to a public office or a public officer that is published or broadcast in return for consideration or appears in various forms of writing or on an Internet website. *Id.* §251.001(16).

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<sup>7</sup> See Gov't Code §571.091 (specifying the laws the commission may consider in an advisory opinion).

<sup>8</sup> Section 255.003(a) of the Election Code applies to an officer of a political subdivision. "Political subdivision" includes a county, city, or school district or any other government entity that possesses authority for subordinate self-government through officers selected by it. Elec. Code §1.005(13)(C). By contrast, section 39.02 of the Penal Code applies to any public servant. *See supra*, n. 3 (defining "public servant").

<sup>9</sup> See, e.g., Ethics Advisory Opinion No. 443 (2002) (placement of campaign flyers in a school district teachers' lounge would involve the spending of public funds where school district employees were required to transport the flyers to an area of the school that was not accessible to the public), Ethics Advisory Opinion No. 45 (1992) (distribution of political advertising using school district equipment or school district employees on school district time would be the spending of public funds where an already existing internal mail system was used); Attorney General Opinion No. KP-177 (2018) (this statute prohibits the use of school district staff, facilities, or other resources where school districts electronically distributed links to Internet websites that were partisan in nature).

## DRAFT 3

For purposes of section 255.003(a) of the Election Code, we have concluded that the use of a facility maintained by a political subdivision, in an area that was restricted to its employees, required government resources to operate while in that restricted area, and therefore violated section 255.003(a) of the Election Code.<sup>10</sup> Furthermore, we have found violations of section 255.003(a) of the Election Code on numerous occasions since the statute was enacted where public officers controlled the access to certain government resources.<sup>11</sup>

## CONCLUSION

Section 39.02(a)(2) of the Penal Code prohibits a public officer from using government resources, of which the officer has custody or possession, to create a photograph, video, or other communication for political advertising. In addition, section 255.003(a) of the Election Code prohibits a public officer, who is also an officer of a political subdivision, from using government resources, such as restricted areas of government facilities, for political advertising. These statutes do not prohibit a public officer from using government resources that are equally accessible to the public for political advertising. Section 39.02(a)(1) of the Penal Code may, depending on all applicable laws, prohibit a public officer from using publicly accessible government resources for political advertising.

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<sup>10</sup> Ethics Advisory Opinion No. 443 (2002).

<sup>11</sup> See, e.g., *In re Brooks* (SC-3180260) (2018) (use of a county-owned vehicle dedicated to the officer's use), *In re Wilson* (SC-31712183) (2018) (use of a county Facebook page maintained by the officer), *In re Joiner* (SC-31605137) (2017) (use of newsletter headlined as from officer's desk), *In re Hawkins* (SC-31011409) (2012) (use of space in a city utility bill), *In re Downs* (SC-240588) (2004) (use of space in a city water bill), *In re McRae* (SC-240226) (2004), *In re Clark* (SC-240225) (2004) (use of city letterhead), *In re Bowman* (SC-240218) (2004) (use of emergency services district letterhead), *In re Lord* (SC-230963) (2004) (use of city-contracted video production), *In re Williams, et. al.* (SC-211170) (2001) (use of space in city water bill and airtime on city cable channel), *In re Morgan* (SC-210541) (2001) (use of internal mail system), and *In re Williams* (SC-991032) (1999) (use of special edition of sheriff's report).



**DRAFT**

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

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*December 14, 2018*

*Whether an associate judge may wear judicial robes and use the title “associate judge” in political advertising. (SP-15)*

**SUMMARY**

Section 255.006 of the Election Code does not prohibit an associate judge from wearing judicial robes or referring to the judge in political advertising as “Associate Judge, 1000th District Court, Texas County.”

**ANALYSIS**

*Use of “Associate Judge” in Political Advertising*

We address in this opinion whether an associate judge, who is also a candidate for state district judge, may wear judicial robes or refer to himself in political advertising in the following manner: “John Smith, Associate Judge, 1000th District Court, Texas County.”

Section 255.006 of the Election Code states:

- (a) A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office he does not hold at the time the agreement is made.
- (b) A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office he does not hold at the time the representation is made.

That law generally does not prohibit a judge from using the title “judge” in political advertising or campaign communications for another judicial office as long as the communications do not suggest that the judge holds a public office the person does not hold. *See, e.g.*, Ethics Advisory Opinion No. 171 (1993) (a part-time municipal judge seeking the office of district or county court-at-law judge may use the title “judge” in political advertising); *see also* Elec. Code §§ 251.001(16), (17) (defining “political advertising” and “campaign communication”).

(Oct. 2, 2018)

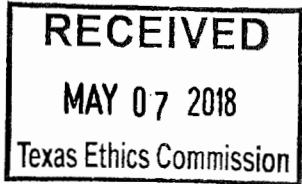
## **DRAFT**

For purposes of this opinion, the issue is whether wearing judicial robes or the use of the title “associate judge” would represent that the judge holds a public office, not whether the judge is actually a judge. In this instance, wearing judicial robes or using a reference to the associate judge as “Associate Judge, 1000th District Court, Texas County” does not, by itself, represent that the judge holds an office the judge does not hold, and therefore would not violate section 255.006 of the Election Code.

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DOCKET NO. \_\_\_\_\_

RULEMAKING PETITION OF § BEFORE THE TEXAS ETHICS  
ONE REALCO CORPORATION § COMMISSION  
§  
§  
§



**ORIGINAL PETITION FOR RULEMAKING**

COMES NOW, One Realco Corporation (Petitioner) on its own behalf and files this rulemaking petition with the Texas Ethics Commission (TEC) seeking to add a rule to be designated as 1 TAC §24.18.

1. Petitioner

Petitioner is a Texas corporation that intends to make political expenditures to finance the establishment, administration, maintenance, or operation of a Texas general-purpose committee.

2. Legal Authority

This petition is brought pursuant to Texas Government Code § 571.062(b) and Texas Government Code § 2001.021.

3. Current Rule

There is currently no rule that provides guidance on the manner for designating a corporate contribution to a general-purpose committee to be used for establishing, administering, maintaining, or operating such committee.

4. Proposed Rule

§ 24.18. Designation of Contribution for Administrative Purposes. Any of the following will serve to designate a corporate expenditure as restricted to the establishment, administration, maintenance, or operation of a general-purpose committee:

- (a) A contemporaneous written instruction that the expenditure is restricted to the administration, maintenance or operation of the committee accepting the expenditure;
- (b) The negotiable instrument conveying the contribution contains language indicating that the entity is a corporation, including but not limited to “Inc.”, “Incorporated”, “Corp.”, or “Corporation”; or
- (c) The general-purpose committee accepting the contribution reports the contribution as monetary contribution or monetary support from a corporation or labor organization on the committee’s campaign-finance report.

5. Reason for Rule

The Third Court of Appeals has opined that:

There is no such thing as a legal undesignated corporate political contribution. Individuals can legally make undesignated political contribution, but corporations cannot. A corporation must designate the purpose of the political contribution by contributing to a political committee that is exclusively devoted to measures, by making expenditures for the maintenance or operation of a corporate political committee, or by contributing to a political party under certain narrowly defined conditions.

*Ex parte Ellis*, 309 S.W.3d 71, 88 (Tex.App. – Austin 2010).

Despite this opinion, no state law nor administrative rule provides guidance as to how a corporation is to “designate” that its expenditures and contributions are for the establishment, administration, maintenance, or operation of a general-purpose committee. Arguably, failure of a corporation to properly “designate” that a contribution is for the establishment, administration, maintenance, or operation of a general-purpose committee could subject that corporation to civil and criminal penalties. The proposed rule sets forth the circumstances in which a corporate contribution is deemed properly “designated.”

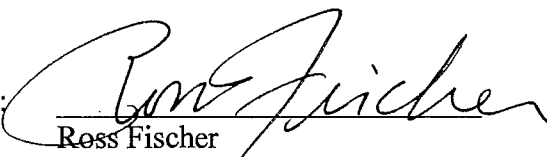


As proposed, the rule would provide three mechanisms for properly designating a contribution as intended for administrative purposes. First, the contribution can be accompanied by a written designation restricting the use of the funds to administration of the receiving general-purpose committee. Second, if the check itself contains language indicating that the contribution is from a corporation, that language will serve as a designation of the contribution for administrative uses (or, at the very least, clear and conspicuous notice to the recipient general-purpose committee). Third, if the recipient general-purpose committee reports the contribution as originating from a corporation, the contribution is deemed to have been properly designated. Any of these three options would provide evidence of the contributing corporation's or labor organization's designation for administrative purposes.

6. Request for Rulemaking. For the reasons stated above, the Petitioner requests the TEC to initiate a rulemaking proceeding and to adopt 1 TAC §24.18 to establish methods for properly designating a corporate contribution to a general-purpose committee.

Signed on this the 4<sup>th</sup> day of May, 2018.

Respectfully submitted,

By:   
Ross Fischer  
State Bar No. 24004647  
The Gober Group, PLLC  
P.O. Box 341016  
Austin, Texas 78734  
(512) 354-1786, Fax (877) 437-5755

ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

I, Ross Fischer, attorney for the Petitioner, certify that a copy of the foregoing pleading was served on this the 4<sup>th</sup> day of May, 2018.

Seana Willing  
Executive Director  
Texas Ethics Commission  
P.O. Box 12070  
Austin, Texas 78711-2070

**CMRRR # 7015 1520 0001 3799 7225 ✓**

Ian Steusloff  
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Texas Ethics Commission  
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**CMRRR # 7015 1520 0001 3799 7218**

  
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ROSS FISCHER

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Austin, TX 78734



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Seana Willing  
Executive Director  
Texas Ethics Commission  
P.O. Box 12070  
Austin, TX 78711-2070



## EXHIBIT A

## Text of Proposed New Rules and Amendments

The proposed new language is indicated by underlined text.

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

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

3           **Subchapter H. RULES APPLICABLE TO A POLITICAL PARTY ACCEPTING**  
 4           **CONTRIBUTIONS FROM CORPORATIONS OR LABOR ORGANIZATIONS**

5   **§20.521. Restrictions on Use of Contributions from Corporations or Labor**  
 6   **Organizations.**

7   A political party that accepts a contribution authorized by §253.104 of the Election Code  
 8   [~~§24.19 of this title (relating to Contribution to a Political Party)~~] may use the contribution  
 9   only for the following purposes:

10           (1) to defray normal overhead and administrative or operating costs incurred by the  
 11           party; or

12           (2) to administer a primary election or convention held by the party.

13  
 14   **§20.523. Separate Account Required.**

15   (a) Contributions authorized by §253.104 of the Election Code [~~§24.19 of this title (relating~~  
 16   ~~to Contribution to a Political Party)~~] must be maintained in an account separate from other  
 17   contributions accepted by a political party.

18   (b) Interest and other income earned from contributions authorized by §253.104 of the  
 19   Election Code [~~§24.19 of this title (relating to Contribution to a Political Party)~~] must be  
 20   maintained in the account required by subsection (a) of this section.

21   (c) Proceeds from the sale or rent of assets purchased either with contributions authorized  
 22   by §253.104 of the Election Code [~~§24.19 of this title (relating to Contribution to a Political~~

1 Party)] or with interest or other income earned from such contributions must be maintained  
2 in the account required by subsection (a) of this section.

3

4 **§20.525. Record of Contributions and Expenditures and Contents of Report.**

5 (a) The party chair of a political party is required to maintain a record of all contributions  
6 from corporations and labor organizations and all expenditures from such contributions.

7 (b) The party chair of a political party shall preserve the record required by subsection (a)  
8 of this section for at least two years after the filing deadline for the report containing the  
9 information on the record.

10 (c) The party chair of a political party that accepts contributions authorized by §253.104 of  
11 the Election Code [~~§24.19 of this title (relating to Contribution to a Political Party)~~] shall  
12 report all contributions and expenditures made to and from the account required by §20.523  
13 of this title (relating to Separate Account Required), in accordance with the reporting  
14 schedule in §20.529 of this title (relating to Reporting Schedule for Political Party  
15 Accepting Corporate or Labor Organization Contributions).

16 ...

17

18 **Subchapter I. RULES APPLICABLE TO A POLITICAL PARTY'S COUNTY**  
19 **EXECUTIVE COMMITTEE**

20 **§20.561. County Executive Committee Accepting Contributions from Corporations**  
21 **and/or Labor Organizations.**

22 (a) A county executive committee that accepts contributions from corporations or labor  
23 organizations authorized by §253.104 of the Election Code [~~§ 24.19 of this title (relating~~  
24 ~~to Contribution to a Political Party)~~] is subject to the provisions set out in Subchapter H of  
25 this chapter (relating to Rules Applicable to a Political Party Accepting Contributions from  
26 Corporations or Labor Organizations).

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3 **Chapter 24. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES**  
4 **APPLICABLE TO CORPORATIONS, ~~[AND]~~ LABOR ORGANIZATIONS, AND**  
5 **CERTAIN POLITICAL COMMITTEES**

6 **§24.19. Establishment and Administration of a General-Purpose Committee.**

7 (a) Section 253.100 of the Election Code authorizes a corporation or labor organization to  
8 make political expenditures only to:

9 (1) finance the establishment of a general-purpose committee; and

10 (2) finance the administration, including the maintenance and operation, of a  
11 general-purpose committee or the solicitation of political contributions to a general-  
12 purpose committee if the corporation or labor organization established the  
13 committee.

14 (b) A corporation or labor organization may make a political expenditure authorized by  
15 §253.100 of the Election Code to a general-purpose committee by either:

16 (1) making the expenditure directly from its own funds to pay an expense incurred  
17 by the committee;

18 (2) making a political contribution of funds to a separate account maintained by the  
19 committee and restricted to be used solely for a purpose authorized by §253.100 of  
20 the Election Code; or

21 (3) making an in-kind political contribution of its resources to the committee, such  
22 as the grant of office space or furniture, and restricted to be used solely for a purpose  
23 authorized by §253.100 of the Election Code.

24 (c) For purposes of subsection (b) of this section, a political contribution is restricted to be  
25 used solely for an authorized purpose if:

1 (1) the contribution is made by check, money order, or other negotiable instrument  
2 or transfer that clearly indicates in writing that the contribution is restricted for use  
3 for an authorized purpose; or

4 (2) the contribution is accompanied by a writing, signed by the contributor, that  
5 clearly indicates that the contribution is restricted for an authorized purpose.

6 (d) A general-purpose committee may not use a political contribution accepted under  
7 section 253.100 of the Election Code from a corporation or labor organization, or interest,  
8 income, or proceeds from such contributions, for any purpose other than those authorized  
9 by section 253.100 of the Election Code. This subsection does not prohibit a general-  
10 purpose committee from using such contributions to make purely nonpolitical  
11 expenditures.

12  
13 **§24.21. Separate Account Required.**

14 Political contributions accepted by a political committee from a corporation or labor  
15 organization authorized by subchapter D, chapter 253, of the Election Code, and interest,  
16 income, and proceeds from such contributions, must be maintained in an account separate  
17 from other contributions.

18  
19 **§24.23. Measure-Only Political Committees.**

20 Section 253.096 of the Election Code permits a political committee that supports or  
21 opposes measures exclusively to use political contributions accepted from a corporation or  
22 labor organization, or interest, income, or proceeds from such contributions, only to  
23 support or oppose measures.



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DOCKET NO. \_\_\_\_\_

RULEMAKING PETITION OF § BEFORE THE TEXAS ETHICS  
ONE REALCO CORPORATION § COMMISSION  
§  
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§



**ORIGINAL PETITION FOR RULEMAKING**

COMES NOW, One Realco Corporation (Petitioner) on its own behalf and files this rulemaking petition with the Texas Ethics Commission (TEC) seeking to add a rule to be designated as 1 TAC §24.18.

1. Petitioner

Petitioner is a Texas corporation that intends to make political expenditures to finance the establishment, administration, maintenance, or operation of a Texas general-purpose committee.

2. Legal Authority

This petition is brought pursuant to Texas Government Code § 571.062(b) and Texas Government Code § 2001.021.

3. Current Rule

There is currently no rule that provides guidance on the manner for designating a corporate contribution to a general-purpose committee to be used for establishing, administering, maintaining, or operating such committee.

4. Proposed Rule

§ 24.18. Designation of Contribution for Administrative Purposes. Any of the following will serve to designate a corporate expenditure as restricted to the establishment, administration, maintenance, or operation of a general-purpose committee:

- (a) A contemporaneous written instruction that the expenditure is restricted to the administration, maintenance or operation of the committee accepting the expenditure;
- (b) The negotiable instrument conveying the contribution contains language indicating that the entity is a corporation, including but not limited to “Inc.”, “Incorporated”, “Corp.”, or “Corporation”; or
- (c) The general-purpose committee accepting the contribution reports the contribution as monetary contribution or monetary support from a corporation or labor organization on the committee’s campaign-finance report.

5. Reason for Rule

The Third Court of Appeals has opined that:

There is no such thing as a legal undesignated corporate political contribution. Individuals can legally make undesignated political contribution, but corporations cannot. A corporation must designate the purpose of the political contribution by contributing to a political committee that is exclusively devoted to measures, by making expenditures for the maintenance or operation of a corporate political committee, or by contributing to a political party under certain narrowly defined conditions.

*Ex parte Ellis*, 309 S.W.3d 71, 88 (Tex.App. – Austin 2010).


Despite this opinion, no state law nor administrative rule provides guidance as to how a corporation is to “designate” that its expenditures and contributions are for the establishment, administration, maintenance, or operation of a general-purpose committee. Arguably, failure of a corporation to properly “designate” that a contribution is for the establishment, administration, maintenance, or operation of a general-purpose committee could subject that corporation to civil and criminal penalties. The proposed rule sets forth the circumstances in which a corporate contribution is deemed properly “designated.”

As proposed, the rule would provide three mechanisms for properly designating a contribution as intended for administrative purposes. First, the contribution can be accompanied by a written designation restricting the use of the funds to administration of the receiving general-purpose committee. Second, if the check itself contains language indicating that the contribution is from a corporation, that language will serve as a designation of the contribution for administrative uses (or, at the very least, clear and conspicuous notice to the recipient general-purpose committee). Third, if the recipient general-purpose committee reports the contribution as originating from a corporation, the contribution is deemed to have been properly designated. Any of these three options would provide evidence of the contributing corporation's or labor organization's designation for administrative purposes.

6. Request for Rulemaking. For the reasons stated above, the Petitioner requests the TEC to initiate a rulemaking proceeding and to adopt 1 TAC §24.18 to establish methods for properly designating a corporate contribution to a general-purpose committee.

Signed on this the 4<sup>th</sup> day of May, 2018.

Respectfully submitted,

By:   
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ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

I, Ross Fischer, attorney for the Petitioner, certify that a copy of the foregoing pleading was served on this the 4<sup>th</sup> day of May, 2018.

Seana Willing  
Executive Director  
Texas Ethics Commission  
P.O. Box 12070  
Austin, Texas 78711-2070

**CMRRR # 7015 1520 0001 3799 7225 ✓**

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General Counsel  
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**CMRRR # 7015 1520 0001 3799 7218**

  
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ROSS FISCHER

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

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*August 14, 1998*

*Whether a corporation may make political contributions to defray administrative expenses of a general-purpose political committee that has no other connection to the corporation. (AOR-444)*

The Texas Ethics Commission has been asked whether a corporation may make expenditures to defray administrative expenses of a general-purpose political committee that has no other connection to the corporation.

As a general rule, a corporation may not make a political contribution or expenditure. Elec. Code § 253.094.<sup>1</sup> There are, however, exceptions to that general rule. This request has to do with the following exception:

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<sup>1</sup>The prohibition applies to a corporation covered by Election Code section 253.091 as well as to an association covered by Election Code section 253.093, regardless of whether the association is incorporated.



A corporation, acting alone or with one or more other corporations, may make one or more political expenditures to finance the establishment or administration of a general-purpose political committee.

*Id.* § 253.100(a). The question raised here is whether that provision permits a corporation to make political expenditures to defray administrative expenses of a general-purpose committee even if the corporation did not establish the committee and has no other connection to the committee.

The language of section 253.100(a) is susceptible of the interpretation that any corporation may make political expenditures to finance the administration of any general-purpose political committee. The legislative history of section 253.100(a), however, suggests that the legislative intent underlying that section was that a corporation could make expenditures to defray administrative expenses of a general-purpose political committee only if the corporation had participated in the establishment of the committee.

In 1975, the legislature created several exceptions to the longstanding prohibition on political contributions and expenditures by corporations. Acts 1975, 64th Leg., ch. 711, § 8 at 2257, 2262-63. *See generally* Acts 1951, 52nd Leg., ch. 492, at 1097, 1190-91 (creating Election Code and prohibiting corporate political contributions and expenditures). One of the exceptions provided that, for purposes of the prohibition on political contributions and expenditures, the phrase "contribution

or expenditure” did not include expenditures for “the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization.” Acts 1975, 64th Leg., ch. 711, § 8, at 2257, 2263. The quoted language was a verbatim duplication of Congress’s 1972 amendment to the federal prohibition on corporate campaign contributions and expenditures in connection with federal elections.<sup>2</sup> Federal Election Campaign Act of 1971, Pub. L. No. 92-225, § 205, 86 Stat. 10 (1972). Federal Election Commission rules have interpreted that language to mean that a corporation may provide administrative support only to a separate segregate fund (a PAC) that the corporation itself established.<sup>3</sup> 11 C.F.R. §§ 102.14(c) (name of separate segregated fund must contain name of its connected organization), 114.5(b) (corporation may use general treasury funds to establish and administer its separate segregated fund). In our view, that is the most reasonable interpretation of that language. *See Eckerdt v. Frostex Foods, Inc.*, 802 S.W.2d 70, 72 (Tex. App.—Austin 1990, no writ) (in construing state statute, court may consider how similar federal statute has been implemented).

Since 1975, the Texas legislature has on several occasions amended the language of the provision regarding corporation expenditures for the administrative expenses of a general-purpose

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<sup>2</sup>The Texas law carried forward even the failure to include the preposition “of” to connect the words “establishment” and “administration” to the phrase “a separate segregated fund.” The omission has since been corrected in the Texas law, but not in the federal law.

<sup>3</sup>There have been minor changes to the wording of the federal law since 1972. Pub. L. 94-283, Title 1, § 112(2), May 11, 1976, 90 Stats. 490; Pub. L. 96-187, Title I, §§ 105(5), 112(d), Jan. 8, 1980, 93 Stat. 1354, 1366. The provision is now codified at 2 U.S.C. § 441b(b)(2)(C).

political committee. In 1977, the legislature amended the provision to state that, for purposes of the prohibition on political contributions and expenditures by corporations, the phrase "contribution or expenditure" did not include expenditures for "the establishment, administration and solicitation of contributions from the members and their families of one or more labor organizations, or from the stockholders, employees and their families of one or more corporations, or from the members and their families of one or more associations to a separate segregated fund or other general purpose political committee to be utilized for political purposes by one or more corporations or one or more labor organizations." Acts 1977, 65th Leg., ch. 276, § 6, at 735, 738. By pluralizing the references to corporations and labor organizations, the legislature made clear that corporations could pool their resources in establishing and administering political committees. The changes did not, however, indicate that a corporation that had not been involved in the establishment of a political committee would be permitted to make expenditures to defray the committee's administrative expenses.

In 1987, the legislature adopted the current language of section 253.100(a) as part of an across-the-board revision of the campaign finance law. Acts 1987, 70th Leg., ch. 899, § 1, at 2995, 3010. After the revision the words "establishment" and "administration" were connected by "or" rather than "and" so that the law states:



A corporation, acting alone or with one or more other corporations, may make one or more political expenditures to finance the establishment or administration of a general-purpose political committee.

*Id.* The use of “or” instead of “and” gives an entirely new cast to the provision and suggests that there need be no connection between a corporation that establishes a general-purpose political committee and a corporation that makes expenditures to defray the committee’s administrative expenses. In our view, however, the legislature did not intend the revision to change the scope of the exception set out in section 253.100(a). The recommendation for revision to the Election Code from the Texas Legislative Council to the 69th Legislature indicates that the language in section 253.100(a) was intended as a nonsubstantive change. TEX. LEGIS. COUNCIL, REPORT OF THE ELEC. CODE STUDY COMM. ELEC. CODE VOLUME II, p. 189 (Feb. 1985).<sup>4</sup> Furthermore, in 1991 the legislature amended the campaign finance law to permit a corporation (or labor organization) to make contributions to the state or county executive committee of a political party to be used to defray administrative expenses. Acts 1991, 72nd Leg., ch. 304, §§ 5.08, 5.19, at 1290, 1327, 1330-31 (codified at Elec. Code §§ 253.104, 257.002 - .005). The addition of that provision would have

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<sup>4</sup>Although the recommendations from the Texas Legislative Council were submitted to the 69th Legislature, S.B. 1068 proposed by Senator Edwards which incorporated the suggested revisions did not pass during the 69th Session. The Bill analysis for the House substitute to S.B. 1068, however, also indicates that section 253.100 was derived from the statutory predecessor and not new language. HOUSE COMM. ON ELECTIONS, BILL ANALYSIS, C.S.S.B. 1068, 69th Leg., R.S., at 4 (1985). During the 70th Legislature, H.B. 1818 was amended by a proposal from Senator Edwards. The amendment contained the same language under section 253.100 as the Texas Legislative Council’s report and S.B. 1068. SEN. AMEND. NO. 1 to H.B. 1818, 70th Leg., R.S. (filed May 30, 1987).

been unnecessary had Election Code section 253.100(a) already permitted the state or county executive committee of a political party (by definition, a general-purpose political committee) to accept corporate contributions to defray administrative expenses. We conclude, therefore, that a corporation may make expenditures to defray administrative expenses of a general-purpose political committee only if the corporation participated in the establishment of the general-purpose political committee.<sup>5</sup> *See generally* Ethics Advisory Opinion No. 163(1993) (Elec. Code § 253.100(b) allows corporation or corporations to solicit only stockholders, employees, or families of stockholders or employees of corporation or corporations assisting committee under Elec. Code § 253.100(a)).

Corporations and general-purpose political committees that rely on section 253.094 should be aware of the type of expenditures that are permissible as expenditures for the “administration” of a general-purpose political committee. Administrative expenses are, in essence, expenses for a committee’s infrastructure. Examples of administrative expenses are expenditures for rent and utilities. Ethics Advisory Opinion No. 132, at 4 (1993). In contrast, expenditures for fund raising<sup>6</sup>

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<sup>5</sup>In a case in which a nonprofit corporation has corporate members, the corporate members may make expenditures to defray administrative expenses of a general-purpose political committee established by the nonprofit corporation. *See generally* Ethics Advisory Opinion Nos. 217 (1994), 163 (1993).

<sup>6</sup>A corporation may make political expenditures to finance the solicitation of political contributions to a general-purpose political committee that the corporation assists from the corporation’s stockholders, employees, or families of stockholders or employees. Elec. Code § 253.100(b); *see* Ethics Advisory Opinion No. 163, at 2 n.3 (1993) (corporation may pay costs of soliciting its *own* stockholders, employees and families of stockholders and employees, not those of any other corporation).

for the committee or for support of candidates are not administrative expenses. *Id.*; *see also* Ethics Advisory Opinion No. 216 (1994) (payment of fine is administrative expense).

### SUMMARY

A corporation may make expenditures to defray administrative expenses of a general-purpose political committee only if the corporation participated in the establishment of the general-purpose political committee.