

CAUSE NO. 25-DCR-110888

THE STATE OF TEXAS § **IN THE 458TH DISTRICT COURT**
VS. § **OF**
KYLE PRASAD GEORGE § **FORT BEND COUNTY, TEXAS**

**STATE'S MOTION FOR THE COURT TO ADDRESS
FLAGRANT MISREPRESENTATIONS BY GEORGE'S ATTORNEYS**

The State of Texas, by her Assistant District Attorney, respectfully submits this motion for the Court to address the flagrant misrepresentations of law and fact in the pleadings filed by Jared Woodfill and Terry Yates (hereafter collectively “George’s Attorneys”).

SUMMARY OF THE ARGUMENT

The State understands that lawyers who represent a client in criminal cases have a duty to zealously represent their client. We expect nothing less in an adversarial system designed to seek the truth and to hold the State to its burden of proof.

This duty of zealous representation, however, does not – it *cannot* – give those same lawyers license to knowingly make objectively false statements of fact or law to a court.

As officers of the Court, all lawyers have a duty of candor to the tribunal and a responsibility to correct misstatements of fact when those misstatements are brought to the lawyers' attention. Without these ethical standards, the orderly resolution of fact and law questions through argument and discourse between lawyers and the court would devolve to presentment of false authority and evidence, as well as personal aspersions, without fear of consequences.

Pleadings recently filed by George's Attorneys do not meet this reasonable standard of professional conduct. Their pleadings include false *ad hominem* factual and legal assertions apparently intended to: (1) mispresent the content and scope of a Court of Criminal Appeals case;

(2) dissuade the District Attorney from discharging his constitutional duties; and (3) taint the jury pool.

If George's Attorneys believe that the true facts of this case merit dismissal or acquittal, the law gives them ample leeway to make those arguments and assert facts and law that they believe to be true and supportive of their position.

The law does not, however, give them any leeway to knowingly make false statements of material fact or law to this tribunal in their advocacy. As such, the State urges, and the judicial canons demand, that this Court confront this misconduct and take appropriate action.

SUMMARY OF RELEVANT FACTS

On August 11, 2025, George's Attorneys filed Motions to Quash Indictments. The motions relied, almost exclusively, on the Court of Criminal Appeals' decision in *DeLay v. State*, 465 S.W.3d 232 (Tex. Crim. App. 2014). The problem is that to support their reliance on *DeLay*, George's Attorneys invented and then cited statements that appear *nowhere* in the Court of Criminal Appeals' opinion. *See Exhibit A* (Table of Misstatements).

On August 13, 2025, the State filed a response exposing the repeated misstatements and putting George's Attorneys on notice of their duty to take corrective action. Rather than withdraw or amend their pleadings, George's Attorneys, astonishingly, filed a reply to the State's response on November 10, 2025, reasserting their mischaracterizations of *DeLay*. *Id.*

On October 31, 2025, George's Attorneys filed Motions to Dismiss for Prosecutorial Misconduct and Motions to Disqualify the Fort Bend County District Attorney. On November 18, 2025, George's Attorneys filed George's Reply to State's Response to Defendant's Motion to Disqualify and Dismiss, all of which display the same troubling course of misconduct. *Id.*

ARGUMENTS & AUTHORITIES

Courts have inherent power to discipline attorney misconduct.

Courts possess inherent power to discipline an attorney's behavior. *See Lawrence v. Kohl*, 853 S.W.2d 697, 700 (Tex. App.—Houston [1st Dist.] 1993, no writ) (holding that trial courts have the power to sanction parties for bad faith abuse of the judicial process not covered by rule or statute); *Kutch v. Del Mar College*, 831 S.W.2d 506, 509–10 (Tex. App.—Corpus Christi 1992, no writ) (same); *see also Public Util. Comm'n v. Cofer*, 754 S.W.2d 121, 124 (Tex. 1988) (recognizing the inherent power of courts to ensure an adversarial proceeding); *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398–99 (Tex. 1979) (recognizing that a court has inherent power “which it may call upon to aid in the exercise of its jurisdiction, in the administration of justice, and in the preservation of its independence and integrity”). A court has the inherent power to impose sanctions on its own motion in an appropriate case.

In re Bennett, 960 S.W.2d 35, 40 (Tex. 1997). It is within a Court’s inherent power to impose sanctions for “conduct, [that] if tolerated, breeds disrespect for and threatens the integrity of our judicial system.” *Id.*

The Texas Disciplinary Rules of Professional Conduct “define proper conduct” and, by contrast, what constitutes misconduct. *See TEX. DISCIPLINARY RULES PROF’L CONDUCT* preamble, ¶ 10, *reprinted in* Tex. Govt. Code Ann., tit. 2, subtit. G, app. A. These Rules provide that “All judicial systems prohibit, at a minimum, … the assertion in an adjudicatory proceeding of a *knowingly false* claim or defense.” TEX. DISCIPLINARY RULES PROF’L CONDUCT R. 3.01, cmt. 2 (emphasis added). It prohibits the filing of frivolous pleadings, which it defines as a filing that is made primarily for the purpose of harassing or maliciously injuring a person, or that contains *knowingly false* statements of fact. TEX. DISCIPLINARY RULES PROF’L CONDUCT R. 3.01 cmts. 2, 3 (emphasis added).

Rule 3.03 similarly imposes on all lawyers a duty of “candor” to the court. TEX. DISCIPLINARY RULES PROF’L CONDUCT R. 3.03. It states that “a lawyer shall not knowingly make a false statement of material fact or law to a tribunal. *Id.* at (a)(1). It also requires a lawyer to take

“remedial measures” to correct an untrue statement the lawyer makes to the court. *Id.* at (b). The requirement to correct a false statement is ongoing until “remedial legal measures are no longer reasonably possible.” *Id.* at (c).

Judges have an ethical responsibility to address attorney dishonesty.

“A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects *shall* inform the Office of General Counsel of the State Bar of Texas *or take other appropriate action.*” TEX. CODE JUD. CONDUCT, Canon 3D(2), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. B (emphasis added); *see also* *Cosby*, Nos. 13-24-00241-CR & 13-24-00242-CR, 2024 WL 5198842, at *3 n.3.

The flagrant misrepresentations by George's Attorneys warrant action by this Court.

In State's Exhibit A, the State has identified several misstatements in the pleadings filed by George's Attorneys. In a particularly egregious example from their motion to quash, George's Attorneys wrote:

The *DeLay* court specifically addressed First Amendment concerns in the political context. The Court noted that “Campaign finance activity is intertwined with political speech and association. The U.S. Supreme Court has repeatedly held that laws burdening political donations or expenditures must be narrowly tailored and justified by compelling interests.” *DeLay*, 465 S.W.3d at 253 (citing *Citizens United v. FEC*, 558 U.S. 310, 340 (2010)). The Court warned that “recasting a campaign finance reporting violation as money laundering introduces severe criminal penalties into the political arena and could chill protected political participation. Donors and campaign workers would think twice if routine financial mistakes or omissions might be escalated to ‘laundering’ charges.”

Defendant's Motion to Quash Indictment at 20-21 (emphasis added).

However, nothing in the above quoted passage appears in the *DeLay* opinion. First, it is a misstatement to claim that *DeLay* “specifically addressed” the First Amendment when the words appear only in a parenthetical and a footnote.¹ Second, there is no mention of or reference to *Citizens United*, not even in a footnote. Third, the language George’s Attorneys purport to quote *verbatim*, are conspicuously absent from the opinion.

Audaciously but not surprisingly, George’s Attorneys present other imagined or fictitious arguments and conclusions attributed to the Court of Criminal Appeals that are *nowhere to be found* in that opinion. Examples include:

<u>Excerpts from Defendant’s Motion to Quash Indictment</u>	<u>Page No.</u>
The <i>DeLay</i> court’s warning about misusing the money laundering statute resonates here: " <u>Using §34.02 to prosecute what is essentially an alleged campaign paperwork violation 'turns the statute on its head.</u> " The Court further noted that such applications " <u>find no support in the statute</u> " and represent improper attempts to criminalize routine political activities through creative prosecutorial theories. <i>DeLay</i> , 465 S.W.3d at 252-253.	Page 15
The <i>DeLay</i> court expressly addressed these policy concerns. The Court warned against prosecutorial theories that would " <u>transform every false document offense involving money into a money laundering felony.</u> " <i>DeLay</i> , 465 S.W.3d at 252-253.	Pages 18-19
The Court noted that such applications would " <u>usurp the carefully calibrated penalties for records tampering (typically a state jail felony) and upgrade them into far more severe offenses (third-degree felony or higher) whenever money is involved – even if the money itself is not illicit in any conventional sense.</u> " The Court concluded that allowing such prosecutions would " <u>undermine the legislative scheme</u> " and impose " <u>a much harsher punishment than the Legislature prescribed for the wrongdoing at issue.</u> "	Page 19

¹ Specifically, the First Amendment is referenced only twice in *DeLay*, neither time specifically addressing “First Amendment concerns in the political context” and neither time for the concerns expressed in George’s motion:

- *DeLay*, 465 S.W.3d at 250: “As with the money laundering statute, we conclude that the Legislature intended that conviction should depend upon proof of more than just the bare conduct (“make a political contribution”), which (while it may be subject to state regulation, within First Amendment boundaries) is not intrinsically condemnable.”
- *DeLay*, 465 S.W.3d at 251 n.68, attempting to reconcile adverse authority from the Texas Supreme Court: “Four justices dissented, observing that ‘[t]he Court says ‘knowingly’ [in Section 253.131(a)] modifies only the act of spending money. But spending money on core First Amendment speech cannot, in and of itself, be against the law—there has to be something more.’ Id. at 67 (Enoch, J., dissenting).”

The *DeLay* court also noted separation of powers concerns with such prosecutorial theories. Using §34.02 to prosecute what is essentially a record-keeping violation "bypasses the intended enforcement framework and imposing a much harsher punishment than the Legislature prescribed for the wrongdoing at issue." *DeLay*, 465 S.W.3d at 253.

Page 20

The above-cited examples, which George's Attorneys falsely attributed to the Court of Criminal Appeals in its *DeLay* decision, were brought to the attention of this Court and George's Attorneys in the State's response filed on August 13, 2025. Specifically, the State informed this Court: "Importantly, the Defendant repeatedly claims that the Court in *DeLay* said things that do not appear anywhere in the opinion" and proceeded to identify the manufactured quotations. *State's Response to Defendant's Motion to Quash* at 4-5.

George's Attorneys' habitual and unabashed disregard for the truth is not limited to their recitations of the law; it extends equally to their representations of fact. In their motion to dismiss alleging prosecutorial misconduct, George's Attorneys claim that the State "destroyed" several minutes of a witness interview that they claim "potentially" contained exculpatory statements.

Defendant Kyle Prasad George's Motion to Dismiss for Prosecutorial Misconduct at 2, 7. This assertion is false, and they know it.

The witness interview was recorded using two different devices: a tabletop camera and a ceiling-mounted camera. *See Exhibit B* (email to George's Attorneys). All recordings from both devices were provided to George's Attorneys in discovery. *Id. See also Exhibit C* (Misdemeanor Discovery Log No. 5). Although approximately 130 *seconds* of the tabletop recording is not viewable, *the ceiling-mounted camera captured the entire interview. See Exhibit B*. This was explicitly communicated to George's Attorneys in an email dated September 22, 2025. *Id.* And yet, they disingenuously, if not flat out dishonestly, argued:

Even though three hours of taped audio exists and can clearly be heard with no technical sound difficulties, these potentially explosive exculpatory disclosures for

the accused and/or incriminating disclosures for the prosecution somehow do not exist.”

Defendant Kyle Prasad George’s Motion to Dismiss for Prosecutorial Misconduct at 7 (emphasis added).

Not only does a complete recording of the interview exist, but George’s Attorneys have a copy of it in their possession. *See* State’s Exhibit C (Item 81).² Their assertion that a portion of the video no longer exists is patently false. The accusation that prosecutors intentionally destroyed potentially exculpatory evidence is not merely a misstatement, it alleges felonious conduct. To make such an outrageous claim when the evidence of its falsity is so clear, demonstrates bad faith, violates the rules of professional conduct, and warrants the imposition of sanctions, or other disciplinary action by this Court. Nevertheless, they attached a verification to their most recent filings swearing to the truth of these knowingly false claims.

George’s Attorneys conduct is not inadvertent, nor can it be excused as mere zealous advocacy. It is a calculated deception intended to mislead this Court into rendering an opinion based on facts and legal authority *they know* do not exist. In doing so, they have violated their duty of candor to this Court and their obligation to uphold the standards of this profession.

This Court has inherent authority to ensure that attorneys appearing before her conduct themselves with respect for the Court, the law, and the rules of professional conduct. Within that inherent power is the discretion to discipline attorney misconduct, particularly where, as here, there is clear evidence of bad faith. *See Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 107 (2017); *Bennett*, 960 S.W.2d at 40; *Howell v. Texas Workers’ Comp. Comm’n*, 143 S.W.3d 416, 446-47 (Tex. App.—Austin 2004, pet. denied) (all recognizing federal and state trial courts’

² All the videos were produced a *second* time on September 23, 2025. *See* State’s Exhibit D (Misdemeanor Discovery Compliance Log – Supp. No. 8).

inherent power to impose sanctions). Moreover, this Court has an ethical responsibility to inform the State Bar or take other appropriate action like impose sanctions.

REQUESTED RELIEF

It is not uncommon for criminal defense attorneys to frivolously claim prosecutorial misconduct whenever evidence or court proceedings are not developing as favorably for them as they may have hoped. This rarely, if ever, warrants a request for sanctions, and therefore there are few documented examples of the appropriate sanctions to impose in the criminal context.

However, the extraordinary conduct displayed in this case calls for an extraordinary response from this Court. Some examples of appropriate sanctions could include a fine, a finding of contempt, findings memorializing their dishonesty, or at a minimum a referral by this Court to the Chief Disciplinary Counsel of the State Bar of Texas.

For all the reasons set forth herein, the State respectfully requests this Court to address the repeated and flagrant violations of the Texas Disciplinary Rules for Professional Conduct and respond appropriately.

Respectfully submitted,



Charann Thompson
Assistant District Attorney
Fort Bend County, Texas



Katherine Peterson
Assistant District Attorney
Fort Bend County, Texas

CERTIFICATE OF SERVICE

I, the undersigned Assistant District Attorney, hereby certify that a true and correct copy of the foregoing response was e-filed and e-served on November 21, 2025, to the Defendant.



Katherine Peterson
Assistant District Attorney
Fort Bend County, Texas

State's Exhibit A - Table of Misstatements

	<u>Excerpt from Defense's Filing</u>	<u>Page</u>	<u>Pleading</u>	<u>Misstatement of Law</u>
1.	The <i>DeLay</i> court's warning about misusing the money laundering statute resonates here: " <u>Using § 34.02 to prosecute what is essentially an alleged campaign paperwork violation 'turns the statute on its head.'</u> " The Court further noted that such applications " <u>find no support in the statute</u> " and represent improper attempts to criminalize routine political activities through creative prosecutorial theories. <i>DeLay</i> , 465 S.W.3d at 252-253.	Page 15	Motion to Quash	The language in quotations does not appear in the <i>Delay</i> opinion.
2.	The <i>DeLay</i> court expressly addressed these policy concerns. The Court warned against prosecutorial theories that would " <u>transform every false document offense involving money into a money laundering felony.</u> " <i>DeLay</i> , 465 S.W.3d at 252-253.	Pages 18-19	Motion to Quash	The language in quotations does not appear in the <i>Delay</i> opinion.
3.	The Court noted that such applications would " <u>usurp the carefully calibrated penalties for records tampering (typically a state jail felony) and upgrade them into far more severe offenses (third-degree felony or higher) whenever money is involved – even if the money itself is not illicit in any conventional sense.</u> " The Court concluded that allowing such prosecutions would " <u>undermine the legislative scheme</u> " and impose " <u>a much harsher punishment than the Legislature prescribed for the wrongdoing at issue.</u> "	Page 19	Motion to Quash	The language in quotations does not appear in the <i>Delay</i> opinion.
4.	The <i>DeLay</i> court also noted separation of powers concerns with such prosecutorial theories. Using § 34.02 to prosecute what is essentially a record-keeping violation " <u>bypasses the intended enforcement framework and imposing a much harsher punishment than the Legislature prescribed for the wrongdoing at issue.</u> " <i>DeLay</i> , 465 S.W.3d at 253.	Page 20	Motion to Quash	The language in quotations does not appear in the <i>Delay</i> opinion.
5.	The Court noted that " <u>campaign finance activity is intertwined with political speech and association. The U.S. Supreme Court has repeatedly held that laws burdening political donations or expenditures must be narrowly tailored and justified by compelling interests.</u> " <i>DeLay</i> , 465	Page 20-21	Motion to Quash	The language in quotations does not appear in the <i>Delay</i> opinion.

	S.W.3d at 253 (citing <i>Citizens United v. FEC</i> , 558 U.S. 310, 340 (2010)).			
6.	The Court warned that " <u>recasting a campaign finance reporting violation as money laundering introduces severe criminal penalties into the political arena and could chill protected political participation. Donors and campaign workers would think twice if routine financial mistakes or omissions might be escalated to 'laundering' charges.</u> "	Page 21	Motion to Quash	The language in quotations does not appear in the <i>Delay</i> opinion.
7.	As the Court stated, courts must ensure that prosecutions " <u>adhere to the law as written and intended.</u> " <i>DeDelay</i> , 465 S.W.3d at 252.	Page 23-24	Motion to Quash	The language in quotations does not appear in the <i>Delay</i> opinion.
8.	The Court of Criminal Appeals affirmed ... the indictments lack of detail " <u>went to the core of what Jarreau allegedly did</u> " so greater specificity was required.	Page 12	Reply to State's Response to Motion to Quash	The language in quotations does not appear in the <i>Jarreau</i> opinion.
9.	<i>Jarreau</i> reiterated the classic rule that when a statute defines an element in " <u>several alternative ways,</u> " an indictment " <u>will fail for lack of specificity if neglect to identify which of the statutory means it addresses.</u> "	Page 12	Reply to State's Response to Motion to Quash	The language in quotations does not appear in the <i>Jarreau</i> opinion.
10.	"In <i>State v. Jarreau</i> , 512 S.W.3d 352 (Tex. Crim. App. 2017), for example, an indictment alleging engaging in organized criminal activity was quashed for failing to specify which underlying thefts or burglaries the defendant conspired to commit."	Page 12	Reply to State's Response to Motion to Quash	<i>Jarreau</i> was charged with delivery of a Dangerous Drug not organized crime. The indictment failed to specify whether it was a device or drug, not an underlying predicate of burglary or theft.
11.	Likewise, in <i>State v. Zuniga</i> , 512 S.W.3d 902 (Tex. Crim. App. 2017), the Court of Criminal Appeals reaffirmed that if a charging instrument " <u>fails to convey some requisite item of 'notice'" to the accused, then fundamental 13 fairness demands more specificity.</u>	Page 12	Reply to State's Response to Motion to Quash	The language in quotations does not appear in the <i>Zuniga</i> case.

12.	Notably the jury in <i>DeLay</i> ...asked “ <u>Can it constitute money laundering if the money wasn’t procured by illegal means originally?</u> ” The proper legal answer, as the court observed, was “ <u>no</u> ”.	Page 16	Reply to State’s Response to Motion to Quash	The language in quotations does not appear in the CCA <i>DeLay</i> opinion.
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	<u>Excerpt from Defense’s Filing</u>	<u>Page</u>	<u>Pleading</u>	<u>Misstatement of Fact</u>
1	“Even though three hours of taped audio exists and can clearly be heard with no technical sound difficulties, these potentially explosive exculpatory disclosures for the accused and/or incriminating disclosures for the prosecution <u>somehow do not exist.</u> ”	Page 7 Page 7	Motion to Dismiss Motion to Disqualify	A recording of the entire video exists and was provided to Mr. Woodfill. This was explicitly communicated to Mr. Woodfill in an email on September 22, 2025. Mr. Woodfill’s statement that a potentially exculpatory portion of the interview “do[es] not exist” is objectively and knowingly false.
2	“These concerns are heightened even further due to the fact that the plea agreement with Patel was signed personally by Brian Middleton.”	Page 7 Page 7	Motion to Dismiss Motion to Disqualify	The plea agreement, which is filed publicly, was signed by Assistant District Attorney Charann Thompson.
3	[The screenshot below] “It is part ... of the Facebook posts/collage that are the subject of the indictment of Defendant KP George.”	Page 11 Page 11 Page 18	Motion to Dismiss Motion to Disqualify Reply to State’s Response to Disqualify and Dismiss	The Defendant’s indictment, which is filed publicly, does not refer to or include the referenced post. It is not part of the Facebook posts/collage for which the Defendant stands charged.

Peterson, Katherine

From: Thompson, Charann
Sent: Monday, September 22, 2025 4:41 PM
To: jwoodfill@woodfilllaw.com
Cc: Peterson, Katherine
Subject: FW: Video file issues

Jared,

Please see the explanation regarding the video issue below. I have copied the videos again to the USB you provided and you can pick it up at your convenience.

Charann Thompson

Assistant District Attorney
Chief Prosecutor – Public Integrity Division
Fort Bend County, Texas
301 Jackson St.
Richmond, Texas 77469
281-341-4404 (office)
832-535-9512 (cell)

Board Certified in Criminal Law
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From: Peterson, Katherine <Katherine.Peterson@fortbendcountytexas.gov>
Sent: Friday, September 19, 2025 4:07 PM
To: Bohannon, John <John.Bohannon@fortbendcountytexas.gov>; Thompson, Charann <Charann.Thompson@fortbendcountytexas.gov>
Subject: RE: Video file issues

Thank you John.

Charann, I reviewed both sets of video and found that the time stamp on the ceiling camera approximately 1 hour, 45 minutes, and 40 seconds faster than the time stamp on the desk camera file naming system.

Using this information, you can approximate that the video that we cannot access on the desk camera, file stamped time of 15:01:28 corresponds to the ceiling camera time stamp of 16:47:08. That time can be found in this file: PI_2025_05_22_2PM_56_59. This file was provided to Defense in Discovery Supplement #5.

Reviewing the ceiling camera video, I can see that I was having difficulty with the desk camera around that time. I recall having to reset that camera at least once, maybe twice during the proffer.

Bottom line, Desk camera file WIN_20250522_15_01_28_Pro.mp4 cannot be repaired. However, that part of the proffer was captured in the ceiling camera file PI_2025_05_22_2PM_56_59, time stamp approximately 16:47:08.

Katie

From: Bohannon, John <John.Bohannon@fortbendcountytexas.gov>
Sent: Friday, September 19, 2025 3:41 PM
To: Peterson, Katherine <Katherine.Peterson@fortbendcountytexas.gov>; Thompson, Charann <Charann.Thompson@fortbendcountytexas.gov>
Subject: Video file issues

Katie,

I looked at the video, WIN_20250522_15_01_28_Pro.mp4, that you could not play. I tried to open the video in various players but was not successful. I also attempted to convert the video with two different software's but again was unsuccessful. I then examined the file with Forensic Toolkit (FTK) so that I could see the file in a digital view. I compared this video file to two other video files recorded the same day from the same device and noticed that the closing or footer portion of the file appears to be missing information I believe to be necessary to play the video.

I spoke with Jack Clark, the Forensic Examiner for our office, who also reviewed the file information. He agreed that it appears the file did not export/write completely or Windows did not link all of the clusters for the complete file. Either way the file, in its current state, is missing information that will allow it to play.

Respectfully,

John Bohannon, DA Investigator

Fort Bend County District Attorney's Office
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CAUSE NO. 24-CCR-241836A

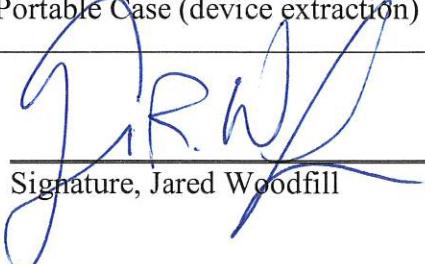
THE STATE OF TEXAS § IN COUNTY COURT AT LAW
 VS. § NO. 5
 KYLE PRASAD GEORGE § FORT BEND COUNTY, TEXAS

DISCOVERY COMPLIANCE LOG – SUPP. NO. 5

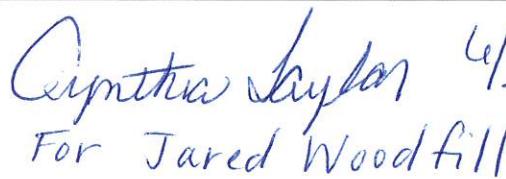
I, Jared Woodfill, by signing below acknowledge receipt or notice of the following items. As counsel for the defense, I am aware of the obligations and restrictions contained in Article 39.14 concerning the use, redaction, and dissemination of these materials.

	Item Received	# of items	How Received	ADA
66.	13 TR Caltzontzint Transfer of Evidence on 9-13-24	5	5TB	C. Thompson
67.	14 TR Caltzontzint SW for Seizure Cell Devices	6	5TB	C. Thompson
68.	15 TR Caltzontzint SW Cell Comm Devices from KP	5	5TB	C. Thompson
69.	16 TR Caltzontzint SW Subject Cellular Devices	2	5TB	C. Thompson
70.	17 TR Caltzontzint Transfer of Evidence 9-23-24	5	5TB	C. Thompson
71.	18 Grand Jury Indictment of KP George	1	5TB	C. Thompson
72.	19 TR Caltzontzint SW Facebook KP George	2	5TB	C. Thompson
73.	20 TR Caltzontzint Interview Ferrel Bonner	2	5TB	C. Thompson
74.	21 TR Caltzontzint Interview Shapnik Khan	2	5TB	C. Thompson
75.	22 TR Caltzontzint SW Google taralvpatel and kpgeorge.com	3	5TB	C. Thompson
76.	23 TR Caltzontzint SW Canva (Initial)	3	5TB	C. Thompson
77.	24 TR Caltzontzint SW AT&T, T-Mobile, Canva, etc.	8	5TB	C. Thompson
78.	25 Disposition of Offenses Taral Patel	1	5TB	C. Thompson
79.	26 Partial Disposition of Evidence from SW 6-12-24	3	5TB	C. Thompson
80.	Interrogatory Responses (5 pgs.)	1	5TB	C. Thompson
81.	Proffer videos	8	5TB	C. Thompson
82.	UI Agreement (4 pgs.)	1	5TB	C. Thompson
83.	Portable Case (device extraction) GHR023498	5	5TB	C. Thompson
84.	Portable Case (device extraction) GHR023499	5	5TB	C. Thompson

	Item Received	# of items	How Received	ADA
85.	Portable Case (device extraction) GHR023500	5	5TB	C. Thompson
86.	Portable Case (device extraction) GHR023501	5	5TB	C. Thompson
87.	Portable Case (device extraction) GHR023502	5	5TB	C. Thompson
88.	Portable Case (device extraction) GHR023503	5	5TB	C. Thompson


Signature, Jared Woodfill

6/27/25 Date


Cynthia Layton 6/25/25
For Jared Woodfill

**CAUSE NO. 24-CCR-241836
CAUSE NO. 24-CCR-241836A**

THE STATE OF TEXAS § IN COUNTY COURT AT LAW
VS. § NO. 5
KYLE PRASAD GEORGE § FORT BEND COUNTY, TEXAS

DISCOVERY COMPLIANCE LOG – SUPP. NO. 8

I, Jared Woodfill, by signing below acknowledge receipt or notice of the following items. As counsel for the defense, I am aware of the obligations and restrictions contained in Article 39.14 concerning the use, redaction, and dissemination of these materials.

	Item Received	How Received	ADA
115	Interview with Susan Bankston	Evidence.com 8/26/2025	Katherine Peterson
116	Reproduced proffer videos except WIN_20250522_15_01_28_Pro.mp4 which is corrupt	USB 9-23-25	C. Thompson

Signature, Jared Woodfill Date

Cyndi Taylor 9/23/25
Signature, Cyndi Taylor for Jared Woodfill Date



Distinguished by [Ex parte Perry](#), Tex.Crim.App., February 24, 2016

465 S.W.3d 232
 Court of Criminal Appeals of Texas.
 Thomas Dale DELAY, Appellant
 v.
 The STATE of Texas.
 No. PD-1465-13
 |
 Oct. 1, 2014.

Synopsis

Background: Defendant, a former member of the United States House of Representatives, was convicted in the District Court, Travis County, 331st Judicial District, Wayne Patrick Priest, J., of money laundering of funds of \$100,000 or more, and conspiracy to commit money laundering. Defendant appealed. The Austin Court of Appeals, [410 S.W.3d 902](#), reversed. The State filed petition for discretionary review.

Holdings: The Court of Criminal Appeals, [Price](#), J., held that:

[1] evidence did not support finding that defendant was aware of any violation of Election Code in national political party's state elections committee's contribution of "hard money" to Texas candidates in exchange for defendant's political action committee's (PAC) otherwise innocuous agreement to send "soft money" to elections committee, and

[2] evidence did not support a finding of any underlying violation of Election Code arising out of PAC's transferring \$190,000 from its corporate-donor derived "soft money" account to the soft money account of elections committee.

Affirmed.

[Johnson](#), J., filed concurring opinion in which [Cochran](#), J., joined.

[Meyers](#), J., filed dissenting opinion.

West Headnotes (11)

[1] [Criminal Law](#) Construction of Evidence
[Criminal Law](#) Verdict supported by evidence

In gauging the legal sufficiency of the evidence to support a particular criminal conviction, reviewing courts are obliged to view all of the evidence in the light most favorable to the jury's verdict, in deference to the jury's institutional prerogative to resolve all contested issues of fact and credibility; but sometimes appellate review of legal sufficiency involves simply construing the reach of the applicable penal provision in order to decide whether the evidence, even when viewed in the light most favorable to conviction, actually establishes a violation of the law.

[15 Cases that cite this headnote](#)

[2] [Criminal Law](#) Weight and sufficiency

Appellate court measures the sufficiency of the evidence by the so-called hypothetically correct jury charge, one which accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant is tried.

[24 Cases that cite this headnote](#)

[3] [Indictments and Charging](#)

[Instruments](#) Mode or means of committing offense

When the indictment alleges only one of alternative statutory definitions or elements for how the offense occurred, the State must prove the alternative that it has pled, and proof of some other alternative will not save the conviction.

[4] [Criminal Law](#) Weight and sufficiency

The hypothetically correct jury charge by which the sufficiency of the evidence is measured does

not necessarily have to track exactly all of the charging instrument's allegations.

[23 Cases that cite this headnote](#)

[5] [Conspiracy](#) ↗ [Money laundering](#)

[Currency Regulation](#) ↗ [Money laundering](#)

To commit or conspire to commit money laundering, the actor must be aware of the fact that the transaction he conducts, supervises, or facilitates involves the proceeds of criminal activity. [V.T.C.A., Penal Code § 34.02\(a\)\(2\)](#).

[2 Cases that cite this headnote](#)

[6] [Election Law](#) ↗ [Campaign Finance](#)

While a non-party-affiliated general-purpose political action committee (PAC) would commit a felony by knowingly accepting a political contribution given with the intent that it be used in connection with a campaign, the Election Code does not make it an independent felony for the PAC, once it has illegally accepted such contributions, to then pass those contributions on to candidates. [V.T.C.A., Election Code § 253.003\(b\)](#).

[7] [Conspiracy](#) ↗ [Money laundering](#)

[Currency Regulation](#) ↗ [Money laundering](#)

[Election Law](#) ↗ [Weight and Sufficiency](#)

Evidence did not support finding that defendant, a former member of the United States House of Representatives, was aware of any violation of Election Code arising out of national political party's state elections committee's sending \$190,000 of its "hard money" to Texas candidates following election committee's earlier agreement with defendant's non-party-affiliated general-purpose political action committee (PAC) to exchange PAC's "soft money," derived from corporate donors, for elections committee's "hard money," and thus evidence did not support defendant's conviction for money laundering or conspiring to launder money; although soft money could not be used in connection with a campaign, soft money retained its character

as soft money when received by elections committee, contributions to Texas candidates came from account into which no corporate contributions had been deposited, neither the transfer of hard money nor soft money by themselves violated Election Code, and no decisional law or other authority at that time had construed the Election Code so as to render such an agreed swap illegal under the Election Code. [V.T.C.A., Election Code § 253.003\(b\)](#); [V.T.C.A., Penal Code § 34.02\(a\)\(2\)](#).

[1 Case that cites this headnote](#)

[More cases on this issue](#)

[8] [Currency Regulation](#) ↗ [Money laundering](#)

The federal money laundering statute requires knowledge that the funds defendant is purported to have laundered constitute ill-gotten gains; however, the actor need not know that trafficking in what he knows to be ill-gotten gains constitutes money laundering. [18 U.S.C.A. § 1956\(a\)\(1\)](#).

[9] [Conspiracy](#) ↗ [Money laundering](#)

[Currency Regulation](#) ↗ [Money laundering](#)

[Election Law](#) ↗ [Weight and Sufficiency](#)

Evidence did not support a finding of any underlying violation of Election Code arising out of defendant's non-party-affiliated general-purpose political action committee's (PAC) transferring \$190,000 from its corporate-donor derived "soft money" account to the soft money account of national political party's state elections committee following elections committee's earlier agreement with defendant's PAC to exchange elections committee's "hard money" for PAC's "soft money," and thus evidence did not support convictions for money laundering and conspiring to launder money obtained against defendant, a former member of the United States House of Representatives; no decisional law or other authority had construed the Election Code so as to render elections committee's and PAC's agreed swap illegal under the Election Code, and although PAC's fund-raising literature could have led

corporate donors to improperly assume that their contributions would be steered toward campaigns of specific candidates, there was no evidence that corporate donors were cognizant of any illegality. [V.T.C.A., Election Code § 253.003\(b\)](#); [V.T.C.A., Penal Code § 34.02\(a\)\(2\)](#).

[More cases on this issue](#)

[10] [Election Law](#)  [Campaign Finance](#)

The two provisions in Election Code serving to criminalize unauthorized corporate political contributions were not intended to create separately actionable offenses, but rather identify only one third-degree felony offense. [V.T.C.A., Election Code §§ 253.003, 253.094](#).

[1 Case that cites this headnote](#)

[11] [Election Law](#)  [Campaign Finance](#)

Provisions in Election Code criminalizing unauthorized corporate political contributions require proof that the actor was actually aware of the existence of the particular circumstance surrounding the political contribution that rendered it unlawful, and of the fact that undertaking such conduct under those circumstances in fact constituted a “violation of” the Election Code. [V.T.C.A., Election Code §§ 253.003, 253.094](#).

[3 Cases that cite this headnote](#)

Attorneys and Law Firms

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OPINION

[PRICE](#), J., delivered the opinion of the Court in which [KELLER](#), P.J., and [WOMACK](#), [KEASLER](#), [HERVEY](#), [COCHRAN](#), and [ALCALA](#), JJ., joined.

The appellant was convicted of the offenses of (1) money laundering of funds of an aggregate value of \$190,000, a first-degree felony at the time,¹ and (2) conspiracy to commit money laundering of the same aggregate amount, then a felony of the second degree.² The trial court sentenced the appellant to five years' confinement for the object offense, although it suspended that sentence and placed the appellant on community supervision for a period of ten years. The trial court sentenced the appellant to three years' confinement for the conspiracy offense and did not suspend that sentence. On appeal, the Austin Court of Appeals reversed both convictions and rendered a judgment of acquittal with respect to each, having determined that the evidence was legally insufficient

*[235](#) to support them.³ We granted the State's petition for discretionary review to examine its contention that the court of appeals failed to consider all of the evidence and failed to view the evidence it did consider with the proper respect for the jury's fact-finding function. We will affirm the court of appeals's judgment.

To be convicted of money laundering, the accused must be shown to have “knowingly … conduct[ed], supervise[d], or facilitate[d] a transaction involving the proceeds of criminal activity[,]” and the crime that generated the proceeds must generally rise to the level of a felony.⁴ The appellant was convicted of having facilitated and conspired to facilitate the making of campaign contributions to certain Texas candidates with funds that were tainted because they were generated under circumstances that constituted a felony-grade violation of the Texas Election Code. The appellant has steadfastly insisted, both at trial and on appeal, that the funds were not tainted, for purposes of either money laundering or conspiracy to commit the same, because, as a matter of law, the circumstances under which the funds were generated did not violate any felony provision of the Election Code.

[1] It is axiomatic that, in gauging the legal sufficiency of the evidence to support a particular criminal conviction, reviewing courts are obliged to view all of the evidence in the light most favorable to the jury's verdict, in deference to the jury's institutional prerogative to resolve all contested issues of fact and credibility.⁵ But sometimes appellate review of legal sufficiency involves simply construing the reach of the applicable penal provision in order to decide whether the

evidence, even when viewed in the light most favorable to conviction, actually establishes a violation of the law.⁶ The court of appeals tacitly recognized this when it repeatedly alluded to our opinion in *Williams v. State*, in which we observed that, “[i]f the evidence establishes precisely what the State has alleged, but the acts that the State has alleged do not constitute a criminal offense under the totality of circumstances, then that evidence, as a matter of law, cannot support a conviction.”⁷ We agree with the court of appeals’s ultimate conclusion that, as a matter of law, what the State has proven in this case does not constitute either of the alleged criminal offenses.

I. BACKGROUND

A. The Facts

At the time he allegedly committed these offenses, in 2002, the appellant was the Republican Majority Whip of the United States House of Representatives. In *236 his capacity as Republican Majority Whip, the appellant established a congressional leadership federal political action committee called Americans for a Republican Majority (“ARMPAC”),⁸ with Jim Ellis as its director. In a calculated effort to gain more Republican officeholders in the Texas House of Representatives during the 2002 election cycle, with the ultimate goal of obtaining redistricting in Texas so that more Republicans might gain seats from Texas in the United States House of Representatives, the appellant set in motion events that led to the formation of Texans for a Republican Majority (“TRMPAC”), a Texas general-purpose political committee, with Ellis’s friend, John Colyandro, as its director. TRMPAC hired two fund-raisers: Susan Lilly, who specialized in raising political donations from individuals, and Warren RoBold, whose specialty was corporate fund-raising. TRMPAC generated fund-raising brochures, expressly identifying as its mission to “help Republican candidates successfully run and win campaigns in Texas” and assuring corporate donors that, “[u]nlike other organizations, your corporate contribution to TRMPAC will be put to productive use.” Indeed, “[r]ather than just paying for overhead,” corporations were told, “your support will fund a series of productive and innovative activities designed to increase our level of engagement in the political arena.” Among those activities promised were “[a]ctive candidate evaluation and recruitment” and “[m]onitoring of campaign progress.” One solicitation flier aimed at both individual and corporate donors specifically

listed among TRMPAC’s activities that it would “[f]ind the best candidates and help them win[,]” and, more pointedly, “[d]irect campaign contributions in targeted races.” Another promised that “[y]our support today will go directly to help Republican candidates in Texas successfully run and win their campaigns.” Yet another flier—this one actually returned to TRMPAC along with a \$5,000 corporate donation—directly asserted that “[a]ll contributions, whether to the PAC or individuals, will be used for direct campaign expenses.” The appellant was listed as a member of TRMPAC’s advisory board on most of this fund-raising literature, although the advisory board’s function was largely ceremonial.

The record suggests that RoBold enjoyed greater success raising corporate contributions than Lilly did soliciting from individuals. By the middle of September of 2002, TRMPAC had raised more than \$350,000 in corporate contributions. Those funds were deposited in TRMPAC’s so-called “soft money” account, out of which staff salaries and administrative expenses were regularly paid. TRMPAC also maintained a “hard money” account, into which it deposited contributions from individuals. In late August or early September of 2002, Ellis approached Terry Nelson, an officer with the Republican National State Election Committee (“RNSEC”), about the possibility of TRMPAC contributing soft money to RNSEC in exchange for RNSEC making contributions from its hard money account to Texas candidates. On September 13, 2002, Colyandro signed a blank check from TRMPAC’s soft money account and forwarded it to Ellis in Washington, who then completed the check in the amount of \$190,000, payable to RNSEC. On receipt, RNSEC deposited the check into its own soft money account. A short time later, *237 TRMPAC provided RNSEC with a list of seven Republican candidates for the Texas House of Representatives and requested RNSEC to send specific amounts totaling \$190,000, and in early October, the RNSEC cut checks to the campaigns of those seven candidates from its hard money account. At trial, this process was characterized by both parties as a “money swap.” There was some testimony that, because the uses to which individual political contributions can be put are more extensive than the permissible uses of corporate soft money, hard money is typically considered more valuable than soft, and that a “one-for-one” exchange of the type that TRMPAC negotiated with RNSEC was somewhat unusual. In any event, it is undisputed that RNSEC never transferred any money from its soft money account to its hard money account to cover the contributions it made to the seven Texas candidates.

Although the appellant did not testify at trial, certain statements he had made to the media over the years between the time of the indictment in 2005 and his trial in 2010 were introduced into evidence. Through those statements the appellant denied any direct participation in the money swap between TRMPAC and RNSEC, but he acknowledged that he was informed of the swap, and expressly approved of it, shortly after the fact. Indeed, it has been the consistent position of the defense throughout these proceedings that the swap was a perfectly legal exchange that did not violate the Texas Election Code. And indeed, the State does not seem to take issue with the appellant's assertions that neither TRMPAC's contribution of its excess soft money to RNSEC nor RNSEC's contributions to specific Texas candidates from its hard money account were unlawful in themselves. It was the State's principal theory at trial, nevertheless, that the prior agreement between TRMPAC and RNSEC to swap precisely \$190,000 of corporate contributions from TRMPAC's soft money account for that same amount of direct candidate contributions from RNSEC's hard money account violated the Election Code, thus generating criminal proceeds for purposes of money laundering.⁹ Alternatively, on appeal and again in this Court, the State has argued that, even if the TRMPAC/RNSEC agreement did not render the \$190,000 "proceeds of criminal activity" for purposes of money laundering, the corporations that contributed the money to TRMPAC in the first place also violated the Election Code, rendering the swap between TRMPAC and RNSEC a transaction involving tainted funds.

In support of this latter, largely appellate theory, the State points to testimony that it elicited from executives of a dozen *238 corporations who described the circumstances under which they were solicited to make, and did make, the initial corporate political contributions to TRMPAC. One of those corporate executives maintained that his company had insisted in writing that their contributions be used for the administrative expenses of the general-purpose committee itself, and for no other purpose, in undoubted compliance with Texas law.¹⁰ But RoBold confirmed that he did not expressly tell any of the corporate contributors that they must expressly designate their contributions for administrative uses only. Five of the corporate executives were never asked during trial whether they had expressly limited TRMPAC's use of their contributions to this purpose, though it is apparent from their demonstrated ignorance of Texas law with respect to the specific limitations on corporate contributions that they did not.¹¹ And six of the corporate executives expressly admitted on the stand that their corporate political contributions were

not expressly limited in scope to the specific purpose of defraying TRMPAC's administrative costs.¹² Most of them maintained, however, that they had trusted or assumed that their contributions would be put to a lawful purpose and/or that they had duly consulted with their corporate legal counsel, it never having been their *intention* to violate Texas law.¹³

B. The Indictment

In a re-indictment,¹⁴ the appellant was charged by separate counts with both the object offense of money laundering (Count II) and with conspiracy to commit money *239 laundering (Count I). In both counts, the proceeds of criminal activity that were claimed to have been laundered derived from alleged violations of Subchapter D of Chapter 253 of the Election Code,¹⁵ which governs corporate political contributions.

In Count II, which set out the object offense of money laundering,¹⁶ the indictment alleged two things of particular note. First, it expressly alleged that the particular transaction that constituted the money laundering was the transfer of \$190,000 from the RNSEC to the seven Texas candidates. Second, it expressly identified the event that rendered that \$190,000 the "proceeds of criminal activity" to be "a felony violation of [Section 253.003 of the Election Code](#)," and more specifically, "the offense of knowingly *making* a political contribution in violation of Subchapter D of the Texas Election Code[.]"¹⁷ Count II did not specifically allege *who* knowingly made the political contribution that violated Subchapter D. It also did not allege, as an alternative theory of the offense, that the \$190,000 sent from RNSEC to the seven candidates *also* constituted the proceeds of criminal activity by virtue of the knowing *acceptance* (that is, by TRMPAC) of a political contribution in violation of Subchapter D.¹⁸ Thus, Count II required the State to prove the underlying Election *240 Code violation by showing that someone knowingly *made* an unlawful political contribution under [Section 253.003\(a\)](#)—not that TRMPAC knowingly *accepted* one as proscribed by [Section 253.003\(b\)](#).¹⁹

Count I, which alleged conspiracy to commit money laundering,²⁰ was somewhat less specific with respect to the object offense, as conspiracy counts are wont to be.²¹ Unlike Count II, Count I did not identify the particular money

laundering transaction that the conspirators allegedly agreed to perpetrate. However, as with Count II, Count I also did not allege the alternative theory that the proceeds derived from criminal activity by virtue of the knowing *acceptance* of a political contribution in violation of Subchapter D of Chapter 253 of the Election Code. Thus, both counts required the State to prove the underlying Election Code violation by showing that someone knowingly *made* an unlawful political contribution under [Section 253.003\(a\)](#), not that TRMPAC knowingly *accepted* one as proscribed by [Section 253.003\(b\)](#).

C. The Appeal

The court of appeals panel, over the dissent of the Chief Justice, held that the evidence was insufficient to establish either count of the indictment.²² The majority opinion began with the premise that sufficient proof with respect to *both* counts, including the conspiracy count, depended upon evidence “that there was a felony criminal offense which generated proceeds.” *[241](#) ²³ With respect to the State's trial theory that TRMPAC's agreement with RNSEC to swap soft corporate money for hard money sufficed to taint the money that RNSEC sent back to the candidates, the court of appeals rejected the State's argument that this exchange constituted a violation of the Election Code.²⁴ Noting that it is legal for Texas corporations to make expenditures and contributions in connection with out-of-state elections, the court of appeals found nothing illegal about TRMPAC's transfer of \$190,000 of corporate donations to RNSEC.²⁵ Nor did RNSEC violate the Election Code by sending \$190,000 from its own individual donor hard money account to Texas candidates.²⁶ Because no funds were transferred between RNSEC's two accounts, the money TRMPAC sent to RNSEC retained its character as soft corporate money, to be used for whatever legal purposes RNSEC deemed fit, while the money RNSEC sent from its hard money account to Texas candidates retained its character as individual donor money.²⁷ Moreover, even if the funds that TRMPAC sent to RNSEC were somehow tainted, the transaction by which RNSEC sent money to Texas candidates did not “involve” that tainted money, and therefore could not support money laundering (or even a conspiracy to commit money laundering).²⁸

Nor did the majority believe that the State proved, for purposes of either money laundering or conspiracy to commit

money laundering, that RNSEC's transfer of funds involved criminally tainted proceeds by virtue of the initial corporate contributions made to TRMPAC. The court of appeals held that the State's evidence failed to show that the corporations harbored the requisite intent to violate [Section 253.003\(a\) of the Election Code](#), “[g]iven the testimony of the corporate representatives [of the lack of any intent to violate Texas law] and the undisputed facts that the corporations could lawfully make donations to TRMPAC and TRMPAC could lawfully transfer the corporate funds out of state[.]”²⁹ For this reason as well, the court of appeals held the evidence to be insufficient to support a conviction for either the object offense or the conspiracy offense.

Chief Justice Jones dissented. He opined that the jury had sufficient evidence, particularly in the form of TRMPAC's fund-raising literature, to infer that the corporate contributors were aware that TRMPAC intended to direct their contributions to candidates, in violation of Subchapter D of Chapter 253 of the Election Code.³⁰ In a footnote, he expressed the additional view that the agreement between TRMPAC and RNSEC to swap soft money for hard money was also enough to demonstrate an Election Code violation, opining that “[s]uch conduct appears to be an attempt to circumvent, rather than comply with, Election Code restrictions on the use of corporate political contributions.”³¹ Particularly in view of this disagreement among the justices below,³² we granted discretionary review.

*[242 II. ANALYSIS](#)

A. The Law: The Election Code and “Criminal Proceeds”

1. Definitions

A person commits money laundering if he “knowingly ... conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity [.]”³³ A person commits criminal conspiracy if, with intent that a felony (here, money laundering) be committed, he agrees with one or more persons that they engage in conduct that would constitute that offense, and one of them performs an overt act in pursuit of that agreement.³⁴ “Criminal activity” for purposes of money laundering “means any offense, including any preparatory offense, that is ... classified as a felony under the laws of

this state[.]”³⁵ “‘Proceeds’ means funds acquired or derived directly or indirectly from, produced through, or realized through an act.”³⁶ The criminal activity, the proceeds of which are said to have been involved in the transaction that the appellant conducted, supervised, or facilitated, was a purported felony-level violation (or violations) of the Texas Election Code.

Specifically, the proceeds are said to have been corporate political contributions made under circumstances that constituted a third-degree felony under the Election Code. Under [Chapter 253, Subchapter D, Section 253.094 of the Election Code](#), “[a] corporation ... may not make a political contribution ... that is not authorized by this subchapter.”³⁷ Violation of this stricture is labeled “an offense” that is a “felony of the third degree.”³⁸ An illegal corporate political contribution is also a third-degree felony by virtue of [Sections 253.003\(a\) and \(e\) of the Election Code](#), which provide that “[a] person may not knowingly make a political contribution in violation of” Chapter 253 of the Election Code,³⁹ and that making such an illegal contribution “is a felony of the third degree if the contribution is made in violation of Subchapter D[,]” which covers [Section 253.094](#)’s limitations on corporate political contributions.⁴⁰ A corporation “may make *243 one or more political expenditures to finance the establishment or administration of a general-purpose committee.”⁴¹ A “political committee” is “a group of persons that has as a principal purpose accepting political contributions or making political expenditures[,]” while a “general-purpose committee” is a political committee “that has among its principal purposes[,]” *inter alia*, supporting or opposing unidentified candidates for public office.⁴² A “political contribution” includes a “campaign contribution,” which is defined, in turn, as “a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office[.]”⁴³ Finally, “[c]ontribution’ means a direct or indirect transfer of money, goods, or services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer.”⁴⁴

2. The State's Alternative Theories of “Criminal Proceeds”

In a nutshell, the Texas Election Code prohibits a corporation from making a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign. The State contends that the appellant committed money laundering, and conspired to commit money laundering, by facilitating a transaction involving funds that constituted criminal proceeds in that they were derived from felonious corporate political contributions.

The State proffers two theories for what rendered the corporate political contributions felonious. At trial, the State's theory was that the appellant's general-purpose political committee, TRMPAC, illegally agreed upon a scheme with RNSEC to route corporate political contributions indirectly to candidates, in violation of [Sections 253.003\(a\), 253.094\(a\), and 253.100\(a\) of the Election Code](#), which together prohibit making corporate contributions to a general-purpose committee for any purpose other than the establishment and administrative expenses of that general-purpose committee.⁴⁵ We shall call this the “agreement” theory of criminal proceeds. The State's second theory, stressed more on appeal than at trial, was that the corporate political contributions were illegal at their inception because they were made by the various corporate entities to TRMPAC, *not* as designated “political expenditure [s] to finance the establishment or administration of [that] general purpose committee[.]” *244 as permitted by the Election Code,⁴⁶ but instead, with the specific intent that they be put to impermissible use in connection with Texas campaigns.⁴⁷ We shall designate this the “corporation” theory of criminal proceeds. We shall determine whether the evidence is sufficient to support convictions under *either* theory.

[2] [3] [4] There is an additional wrinkle to iron out before we proceed: What are the theories of the money laundering “transaction” that are available to the State for sufficiency-of-the-evidence purposes? As we have already noted, Count I, which alleged conspiracy to commit money laundering, did not specify the particular transaction by which the State intended to prove the underlying object offense of money laundering. But Count II, which alleged the object offense, identified the transaction to be RNSEC's hard money contributions to the seven Texas candidates. Is the State bound to this particular transaction, at least for purposes of proving the object offense of money laundering? It is arguable that sufficiency of the evidence should be measured against any non-statutory theory of “transaction” that the evidence would support, and not simply that which was alleged in the

indictment.⁴⁸ Rather than definitively resolve that question today, we will simply assume *arguendo* that the evidence may *also* support the appellant's convictions based on the transaction by which TRMPAC conveyed money from its soft money account to RNSEC's soft money account, so long as the evidence establishes that this transaction was made with funds that were by that time already tainted by either of the State's theories of criminal proceeds—"agreement" or "corporate." Ultimately, we agree with the court of appeals that the appellant's convictions cannot stand because there is no possible view of the evidence that can establish that *any* transaction alleged to comprise money laundering involved the proceeds of a felony violation of the Texas Election Code, under *either* theory of criminal proceeds.

B. Transaction One: RNSEC's Contribution to Texas Candidates

1. The "Agreement" Theory of Criminal Proceeds

[5] [6] [7] Presupposing that the relevant money laundering transaction is RNSEC's *245 hard money contributions to the seven Texas candidates, the question under the State's "agreement" theory is whether those funds constituted criminal proceeds by virtue of TRMPAC's earlier agreement with RNSEC to "swap" TRMPAC's soft money for RNSEC's hard money. In the State's view, this prior agreement itself constituted a felonious political contribution, in contemplation of [Sections 253.003\(a\) and \(e\) of the Election Code](#), because it was an "agreement" to make an "indirect transfer of money" "with the intent that it be used in connection with a campaign for elective office," under [Sections 251.001\(2\), \(3\) and \(5\) of the Election Code](#).⁴⁹ Like the court of appeals, we disagree.

The State does not contend that the transfer of corporate contributions from TRMPAC's soft money account to RNSEC's soft money account was, in itself, a violation of the Election Code.⁵⁰ And it is uncontested that RNSEC, in turn, never transferred this corporate money from its soft money account into its individual hard money account. Nor does the *246 State contend that the transfer of money from RNSEC's hard money account to the Texas candidates violated the Election Code. Presumably the State would agree that, had these transactions occurred serendipitously, without any prior collusion or plan on the part of TRMPAC and RNSEC—that is to say, had TRMPAC simply decided to send

its excess corporate contributions (beyond what it needed to cover its own administrative expenses) to RNSEC, which enjoyed greater flexibility in their uses, and had RNSEC made a wholly independent determination that some of its hard money could best be put to use in the form of contributions to support specific Republican candidates in Texas—then there would be no identifiable violation of Subchapter D of Chapter 253 of the Election Code. Although the evidence is clear that there was an explicit agreement to "swap" TRMPAC's soft corporate money for RNSEC's hard money, we fail to perceive how such a prior *agreement*—even an agreement entailing identical amounts (the so-called "one-for-one" swap of \$190,000) and specifying particular candidates—could serve to transmute two transfers, neither of which by itself violates the Election Code, into a single transfer that *does*. In the absence of any transfer of corporate money from RNSEC's soft money account into its hard money account, the character of the monies never changed; it cannot be said that the Texas candidates ever received corporate contributions, even indirectly. Therefore, we agree with the court of appeals that the agreement between TRMPAC and RNSEC did not violate Subchapter D of Chapter 253 of the Election Code.

Moreover, even were we to disagree with the court of appeals and hold that the prior agreement *could* somehow operate to change the character of the \$190,000 that RNSEC sent to the Texas candidates from hard money into corporate soft money, we still could not conclude that the evidence would suffice to establish money laundering. The reason is fairly simple: There is nothing in the record to show that the appellant *knew* that he was conducting, supervising, or facilitating a transaction *that involved the proceeds of criminal activity*. The State has failed to establish the requisite culpable mental state to prove the offenses of money laundering and conspiracy to commit money laundering.

[8] A person commits money laundering if he "knowingly ... conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity[.]"⁵¹ From a grammatical standpoint, this statutory language is patently ambiguous. Is it enough that the person knowingly conducts, supervises, or facilitates a transaction? Or must he also be "aware" of the added circumstance surrounding that conduct that makes it unlawful, namely, that the transaction he is conducting, supervising, or facilitating involves the proceeds of criminal activity?⁵² How much of the ensuing statutory language is the adverb "knowingly" intended to modify? As in other instances of statutory construction in the face of this sort of grammatical uncertainty, the question boils down to "how

far down the sentence” the Legislature intended for the *mens rea* requirement of knowledge “to travel.”⁵³ We think the Legislature *247 must surely have intended that, to commit or conspire to commit money laundering, the actor must be aware of the fact that the transaction involves the proceeds of criminal activity. Otherwise, the statute would attach a *mens rea* to nothing more than conduct—conducting, supervising, or facilitating a transaction—that is not intrinsically blameworthy. As in *McQueen v. State*, “[w]hat makes the conduct unlawful is that it is done under certain circumstances,” and, in the face of a statute that is ambiguous with respect to the extent of the *mens rea* requirement, we have resolved the ambiguity in favor of applying “some form of culpability … to those ‘conduct elements’ which make the overall conduct criminal.”⁵⁴ That is how the ambiguity in [Section 34.02\(a\)\(2\)](#) must be resolved.⁵⁵

There is no evidence in the record from which it may fairly be inferred that the appellant was *aware* that, by agreeing beforehand to send \$190,000 of soft money to RNSEC in exchange for RNSEC sending \$190,000 of its hard money to the Texas candidates, TRMPAC had committed a violation of the Election Code. Indeed, the evidence suggests that the appellant, to the extent that he was personally involved in the agreement at all, believed that, so long as the soft money retained its character as soft money and the contributions from RNSEC to the Texas candidates came from an account into which no corporate contributions had been deposited, the agreed-to swap would not run afoul of the Election Code. In the absence of some decisional law or other authority in Texas at that time that had construed the Election *248 Code so as to render such an agreed swap illegal under the Election Code, it cannot reasonably be concluded that the appellant was, or even could have been, aware that the transaction whereby RNSEC contributed hard money to the seven Texas candidates involved the proceeds of criminal activity. That being so, he simply was not susceptible to conviction for laundering money or conspiring to launder money.⁵⁶

2. The “Corporation” Theory of Criminal Proceeds

Continuing to entertain the presupposition that the relevant money laundering transaction is, as alleged in Count II of the indictment, RNSEC's hard money contributions to the seven Texas candidates, the evidence cannot support the appellant's convictions under the State's “corporation” theory for the

same reasons that the evidence cannot support prosecuting the appellant under the State's “agreement” theory. Because this transaction did not involve the corporate contributions originally made to TRMPAC (and because the appellant was not aware, in any event, that the transaction did involve corporate contributions on account of the agreement to swap TRMPAC corporate contributions for RNSEC hard money), it is inconsequential to the sufficiency analyses whether those corporate contributions were made to TRMPAC in violation of [Section 253.003\(a\)](#) and [Subchapter D of Chapter 253 of the Election Code](#). The transactions from RNSEC to the seven Texas candidates did not involve those corporate contributions. Thus, the evidence fails to establish that the transaction from RNSEC to the seven Texas candidates constituted money laundering or conspiracy under either the “agreement” or “corporation” theory of criminal proceeds.

C. Transaction Two: TRMPAC's Contribution to RNSEC

[9] Changing our focus to TRMPAC's transfer by check of the \$190,000 from its soft money account to RNSEC's soft money account as the relevant money laundering event, we must still conclude that the evidence was insufficient. It is true that, unlike the transfers from RNSEC's hard money account to the seven Texas candidates, this earlier transaction *did* involve *249 corporate political contributions that had been deposited into TRMPAC's soft money account. If these contributions were tainted because illegally made at the time TRMPAC forwarded them to RNSEC, then the jury may yet have had a rational basis to convict the appellant. For the reasons that follow, however, we ultimately reject the conclusion that the transfer from TRMPAC to RNSEC involved tainted proceeds.

1. The “Agreement” Theory of Criminal Proceeds

The agreement between TRMPAC and RNSEC was already in existence by the time the transaction occurred by which TRMPAC transferred \$190,000 from its soft money account to RNSEC's soft money account. But, for the reasons we have already explained at length, that agreement did not contemplate a transaction involving corporate contributions at all, much less an *illegal* transfer of corporate contributions, since the agreement was for RNSEC to make the contributions to the Texas candidates from its hard money account. The proceeds were not criminally tainted on

account of such an agreement. Therefore, conviction cannot be sustained predicated on TRMPAC's transfer of the money to RNSEC as the money laundering event based on the State's agreement theory of criminal proceeds. But the proceeds may yet have been tainted by the time that transaction occurred if the corporate contributions were illegally made at their inception, and we turn finally to that question.

2. The “Corporation” Theory of Criminal Proceeds

[10] [11] As we have already observed, there are actually two provisions in the Election Code that serve to criminalize unauthorized corporate political contributions. On the one hand, [Section 253.094\(a\)](#) prohibits political contributions by corporations that are “not authorized by” Subchapter D of Chapter 253, with [Section 253.094\(c\)](#) designating such an offense a third-degree felony.⁵⁷ While [Section 253.094](#) identifies no culpable mental state, neither does it plainly dispense with one. Under [Section 6.02\(b\)](#) and [\(c\)](#) of the Texas Penal Code, applicable to offenses defined outside of the Penal Code by virtue of [Section 1.03\(b\)](#), “intent, knowledge, or recklessness suffices to establish criminal responsibility.”⁵⁸ On the other hand, a “person,” including a corporation,⁵⁹ also commits the same level of felony (third degree) if he “knowingly” makes a political contribution that violates Subchapter D of Chapter 253, under [Sections 253.003\(a\)](#) and [\(e\)](#) of the Election Code. We do not think that the legislature intended to create separately actionable offenses under [Sections 253.094](#) and [253.003](#) of the Election Code. After all, it makes little sense to prohibit identical conduct in separate statutory provisions that carry an identical range of punishment, one of which fails to specify any culpable mental state at all but for which a culpable state is nevertheless required *250 (and for which mere recklessness will suffice), while the other *must* be committed at least knowingly. The provision requiring knowledge would be rendered essentially superfluous under this state of affairs, which means the Legislature would have accomplished a useless thing, contrary to our usual interpretive assumption.⁶⁰ To avoid this result, we shall read the two provisions *in pari materia*, entertaining the “supposition that several statutes relating to one subject are governed by one spirit and policy, and are intended to be consistent and harmonious in their several parts and provisions.”⁶¹ Accordingly, we conclude that the Legislature must have intended to identify only one third-degree felony offense of making a corporate contribution in violation of

Subchapter D of Chapter 253 of the Election Code, and that, moreover, it must have intended that such an offense be committed knowingly.

Here again, however, we are confronted with a statutory provision for which it is “not at all clear how far down the sentence the word ‘knowingly’ is intended to travel[.]”⁶² As with the money laundering statute, we conclude that the Legislature intended that conviction should depend upon proof of more than just the bare conduct (“make a political contribution”), which (while it may be subject to state regulation, within First Amendment boundaries) is not intrinsically condemnable. We hold that the State must also show that the actor was actually aware of the existence of the particular circumstance surrounding that conduct that renders it unlawful. Moreover, as written, [Section 253.003\(a\)](#) requires that the actor be aware, not just of the particular circumstances that render his otherwise-innocuous conduct unlawful, but also of the fact that undertaking the conduct under those circumstances in fact constitutes a “violation of” the Election Code.⁶³

We are keenly aware that the Texas Supreme Court has construed a similarly worded provision of the Election Code differently. In *Osterberg v. Peca*,⁶⁴ our sister Court was called upon to interpret Section 253.131(a), authorizing civil damages for the making of campaign contributions and expenditures that violate Chapter 253.⁶⁵ There, as here, the question was whether the word “knowingly” in the statute modified merely the making of a campaign contribution, or whether it also modified the statutory circumstance that the contribution was made “in violation of” the Election Code.⁶⁶ The majority concluded that “knowingly” should be read to modify only *251 the conduct, not the attendant circumstance, pointing to language from other Election Code provisions, including [Section 253.003\(b\)](#),⁶⁷ that are more explicit in assigning a *mens rea* to the circumstance surrounding conduct, as an indication of such a legislative intent.⁶⁸ Here, however, we are construing a criminal provision, not a civil one. Moreover, it is a penal provision that appears outside of the Penal Code itself, and in construing penal provisions that appear outside the Penal Code, we have recognized that the rule of lenity applies,⁶⁹ requiring “that ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.”⁷⁰ And indeed, even when construing provisions within the Penal Code, we have typically resolved ambiguities with

respect to the scope of the applicable *mens rea* in favor of making sure that mental culpability extends to the particular circumstance that renders otherwise innocuous conduct criminal.⁷¹ That the Legislature may have more explicitly assigned mental culpability to attendant circumstances in neighboring statutory provisions does not eliminate the patent ambiguity from [Section 253.003\(a\)](#) itself. Nor does it absolve us of the duty to ascribe a culpable mental state to the particular “statutory elements that criminalize otherwise innocent conduct.”⁷²

The State is correct to contend that there is evidence in the record from which the jury could rationally have inferred that the corporations that contributed to TRMPAC were aware that TRMPAC was determined to find a way to steer those contributions to the campaign coffers of specific candidates. The fund-raising literature at the very least encouraged the corporations to assume as much, and there was some testimony suggesting that RoBold, TRMPAC's corporate fund-raiser, may have not have disabused them of this notion, notwithstanding his denials.⁷³ But [*252](#) nothing in the record shows that anyone associated with the contributing corporations actually realized that to make a political contribution under these circumstances would in fact violate [Section 253.003\(a\)](#) (or any other provision) of the Texas Election Code. Only one of the testifying corporate executives evinced any such knowledge, and he represented one of the corporations, Philip Morris, that expressly designated that its contributions be put exclusively to the purpose of administering TRMPAC itself, so that its contribution was lawfully made. Every corporate executive who was specifically asked vehemently denied any intention to violate Texas law,⁷⁴ and the State produced no evidence that any of them was actually cognizant of any illegality. The State argues that the jury was entitled to discredit these corporate disavowals of illegal intent. That may be the case, but there remains an utter lack of circumstantial evidence—evidence, for example, of covert dealings or the wholesale failure to vet the contributions through in-house corporate counsel—from which a jury might rationally infer corporate knowledge of actual unlawfulness. While the corporate contributors may have had enough information about TRMPAC's *apparent* intentions from the fund-raising literature that they were, or ought to have been, aware of a substantial and unjustifiable *risk* that their corporate contributions would violate the Texas Election Code,⁷⁵ neither recklessness nor negligence serves to establish an offense under [Section 253.003\(a\)](#). On this state of the record, we cannot conclude that, at the time that

TRMPAC transferred those corporate contributions from its soft money account to RNSEC's soft money account, the contributions were tainted because the corporations had made them with the awareness that to do so under the circumstances constituted a violation of Chapter 253.003(a) of the Election Code. Because the State has failed to prove that the corporate contributors harbored the requisite *mens rea* to establish an offense under the Election Code, we agree with the court of appeals that it has not established that the [*253](#) money conveyed by TRMPAC to RNSEC constituted the proceeds of criminal activity for purposes of money laundering or conspiracy to commit money laundering.

III. CONCLUSION

For these reasons, we agree with the court of appeals that, as a matter of law, the State failed to prove facts to establish that the appellant committed either the object offense of money laundering or the inchoate offense of conspiracy to commit the same. Accordingly, we affirm the judgment of the court of appeals.

[JOHNSON](#), J., filed a concurring opinion in which [COCHRAN](#), J., joined.

[MEYERS](#), J., filed a dissenting opinion.

[JOHNSON](#), J., filed a concurring opinion in which [COCHRAN](#), J., joined.

As I read the indictment against appellant, he was charged in count I with conspiring with his co-defendants to “knowingly mak[e] a political contribution” in violation of the Election Code. Count II alleged that he “did knowingly conduct, supervise, and facilitate a transaction involving the proceeds of criminal activity … to wit, … knowingly making a political contribution” in violation of the Election Code. Thus the state had to prove for count II that the contribution made by TRMPAC to RNSEC violated the Election Code, that appellant was active in the process, and that he knew that the process violated the Election Code. If the contribution did not violate the Election Code, count II failed, as did count I because it is not a crime to conspire to do a legal act.

There is some evidence that appellant was aware of the transfer—knowledge claimed to be acquired after the fact—but none that he was directly involved. The soft money from TRMPAC went into RNSEC's soft-money account. Because

it came from TRMPAC's soft-money account and went into RNSEC's soft-money account, the beliefs and intents of the corporate executives became irrelevant; corporate money, regardless of the donor's actual intent, went into the corporate-money account. The money sent by RNSEC directly to Texas candidates came, as is required by law, from its hard-money account. Like some of Goldman Sachs's dealings with a Spanish bank, the wheeling and dealing was a tad shady, but legal.

MEYERS, J., filed a dissenting opinion.

You can always tell when an opinion is written with the outcome decided before any legal analysis is done because it reads like a medical report written by a doctor who has never conducted a physical examination of the patient. This is precisely how the court of appeals' opinion in this case comes across. The court of appeals concluded the evidence to be insufficient to sustain Appellant's conviction but directly misapplied the sufficiency of the evidence standards. *See DeLay v. State*, 410 S.W.3d 902 (Tex.App.—Austin 2013, pet. granted). In his dissent, Justice Jones aptly points out all of the correct criteria for sufficiency that was completely ignored by the majority. *Id.* at 917–19 (Jones, J., dissenting). Due to this misdiagnosis by the court of appeals, the State had to file a petition for discretionary review in our Court.

At oral argument before our Court, the State presented an accurate and clear rendition of how the sufficiency analysis should have been conducted in this case and how it would have indicated that Appellant's conviction was proper. Soon thereafter, however, counsel for Appellant was quick to set this court straight on what we really needed to do, stating:

***254** There is a fine line between prosecution and persecution that was crossed, and has been crossed, and continues to be crossed over the past decade when a prosecutorial posse essentially does what it has to do to manufacture an illegal act out of a series of legal ones ... When the third court shut the State down last September, in an equally bankrupt maneuver, concluding that the evidence was legally insufficient that Tom DeLay was guilty of money laundering and conspiracy. And when

this Court does what the law requires, to affirm the ultimate decision of the third court of appeals, it will do what needs to be done. And that is to shut down, once and for all, this decade long quest of manufacturing an illegal act out of a series of legal ones.

Based upon these marching orders, the majority has followed Appellant's instructions and crafted an opinion which is just as deficient in its analysis as the one from the court of appeals.

The majority in this case has changed the law and ignored the facts in order to arrive at a desired outcome, as it has done before. *See Baird v. State*, 398 S.W.3d 220 (Tex.Crim.App.2013)¹; *Wehrenberg v. State*, 416 S.W.3d 458 (Tex.Crim.App.2013)². To hold, for the first time, that **Section 253.003(a) of the Election Code** requires the actor to be aware that his actions constitute a violation of the Texas Election Code completely neuters this crime. It places a burden on the State that is impossible to overcome. How does the State gather enough evidence to prove that the corporation knew the actions violated the Election Code? What constitutes enough evidence to show knowledge? Which person in the corporation will be charged with the knowledge of the entire corporation? In addition to placing this ridiculous burden on the State, which effectively repeals the statute, this holding also allows corporations who simply cannot be bothered to look up the law to get away with making illegal contributions. When faced with a similar question in *Osterberg v. Peca*, 12 S.W.3d 31 (Tex.2000), the Texas Supreme Court came out on the other side, holding that “knowingly” modified only the conduct of the offense rather than the attendant circumstance, as the majority should have held here. In fact, even though the burden in its civil cases is far less than “beyond a reasonable doubt,” the Texas Supreme Court still did not believe that knowledge of illegality was an element of the offense. Further, it should be noted that **Section 253.003(b)**, the provision that immediately follows the one at question here, states that “A person may not knowingly accept a political contribution the person knows to have been made in violation of this chapter.” There, the Legislature specifically identifies that the actor must know of the illegality. In the provision that immediately precedes it, however, the Legislature makes no such clarification. If the Legislature intended what the majority now holds, it would have worded the provision in the same way it did **Section 253.003(b)**: a person may not knowingly make a political contribution the person knows

to be in violation of this chapter. The reality here is that the majority is eager to keep Appellant from *255 going to prison, and, as a result, it has done one better than what the appellant's attorney even asked for.

When you consider the elements of this crime as they should be, without the new addition of knowledge of illegality, the State presented sufficient evidence to support the conviction. Given that the evidence presented indicates that TRMPAC conveyed to the corporations that their donations would be used for individual campaigns, a rational juror could have concluded that the corporations made the donations with the intent that the money go to candidates. This means that the jury could rationally decide that the initial donations violated the law and were, therefore, proceeds of criminal activity.

Although the majority agrees that there was evidence that the corporations knew the donations would go to candidates, it concludes that this is not enough to affirm the conviction

because the State also needed to prove the corporations actually knew their contributions would violate the Texas Election Code. This holding is incorrect, and in crafting an opinion to suit only the majority's desired outcome for this case, it has changed the law, which leaves unfortunate and lasting effects on our jurisprudence, as is illustrated by *Baird* and *Wehrenberg*. The result of this particular case is that a corporation may now make election donations with immunity, since the State would never be able to prove it did not actually *know* the contribution violated the law. Because I would hold that knowledge of illegality is not an element of the crime, and that a rational jury could have found the essential elements of the crime charged beyond a reasonable doubt, as the rational jury in the case did, I respectfully dissent.

All Citations

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Footnotes

- 1 [TEX. PENAL CODE § 34.02\(a\)\(2\), \(e\)](#). The offense is alleged to have occurred in 2002, at which time it was a first-degree felony to launder money of an aggregate value greater than \$100,000. The money laundering statute has since been amended to raise the threshold value for a first-degree felony to \$200,000. Acts 2005, 79th Leg., ch. 1162, § 2, p. 3803, eff. Sept. 1, 2005. All citations are to the provisions of the Texas Penal Code and Texas Election Code as they existed in 2002.
- 2 [TEX. PENAL CODE § 15.02\(a\), \(d\)](#). Such an offense would have been a second-degree felony in 2002, since the object offense of money laundering was a first-degree felony at that time.
- 3 [DeLay v. State](#), 410 S.W.3d 902 (Tex.App.—Austin 2013).
- 4 See [TEX. PENAL CODE § 34.02\(a\)\(2\)](#); *id.* § 34.01(1)(A). “Criminal activity” may also include an offense punishable by confinement for more than one year under the laws of another state. *Id.* § 34.01(1)(B). That provision is not applicable in this case.
- 5 E.g., [Brooks v. State](#), 323 S.W.3d 893, 899 & n. 13 (Tex.Crim.App.2010).
- 6 See, e.g., [Shipp v. State](#), 331 S.W.3d 433 (Tex.Crim.App.2011) (plurality opinion) (holding that a retail store's printed receipt falls within the catch-all of “another commercial instrument” in contemplation of the forgery statute and that the evidence was therefore sufficient to support a conviction for passing a forged store receipt); [Wright v. State](#), 201 S.W.3d 765 (Tex.Crim.App.2006) (construing a statutory provision to hold that unusable toxic substances may be included to obtain a sufficient aggregate weight of methamphetamine to sustain the conviction).
- 7 [DeLay](#), 410 S.W.3d at 907, 915, 916 (citing [Williams v. State](#), 235 S.W.3d 742, 750 (Tex.Crim.App.2007)).

8 Testimony showed that “[a] leadership PAC is a Political Action Committee that many of the members of Congress ... have” whereby “the monies that they are able to raise and put in their PACs, they can use to help other like-minded politicians across the country get elected[.]”

9 In its opening remarks during the final guilt-phase summations, the State argued:

The moment, the moment that the decision was made to send the soft dollar check up to Washington, D.C. with the intent that it ultimately go to candidates for elective office is the moment that this money became proceeds of criminal activity, specifically, a third-degree felony.

* * *

This agreement, this—this agreement with the names of the candidates and the corresponding amounts is what separates this transaction from any other swap that anyone else in the [sic] history has done. It is this agreement that makes it money laundering.

In its brief on discretionary review, as in its brief on appeal, the State has consistently characterized the agreement as an “exchange” whereby TRMPAC used soft corporate contributions to “purchase” hard money from RNSEC for use by candidates. State’s Brief on the Merits at 25, 43, 45; State’s Brief on Direct Appeal at 170. The State employed similar terminology during its oral argument to this Court.

10 Philip Morris Companies, Inc., contributed \$25,000, along with a cover letter designating that this contribution must be used by TRMPAC exclusively to help cover its administrative expenses. TRMPAC’s accountant testified that another corporate donor, Lexmark International, Inc., also expressly designated that its \$5,000 corporate contribution could only be put to the purpose of defraying TRMPAC’s administrative costs.

11 El Paso Energy Services Company, Cornell Companies, Bacardi U.S.A., Inc., Cracker Barrel, and Reliant Energy made contributions of \$50,000, \$10,000, \$20,000, \$25,000, and \$25,000, respectively. Both Cracker Barrel’s and Reliant Energy’s contributions were not deposited into TRMPAC’s soft money account until October 1, 2002, several weeks after Colyandro had forwarded the blank check from that account to Ellis to hand over to RNSEC.

12 Five companies made corporate contributions without specifying a particular use for which they must be put: Questerra Corporation (\$50,000), Westar Energy (\$25,000), Diversified Collection Services, Inc. (\$50,000), Sears Roebuck and Co. (\$25,000), and The Williams Companies, Inc. (\$25,000).

13 During trial, the prosecutor asserted that at least two of the corporations eventually signed diversion agreements with the Travis County District Attorney in order to avoid prosecution in which, the prosecutor claimed, they did admit to some wrongdoing. The defense hotly contested these assertions. The record shows that Sears and Roebuck, Inc., as part of an agreement with the district attorney’s office whereby the indictment against it was dismissed, asserted that it had not intended to violate Texas law. According to the prosecutor, Cracker Barrel also “signed a pretrial diversion agreement accepting responsibility for having made a mistake[.]” although Cracker Barrel’s legal department had vetted TRMPAC’s solicitation and approved the contribution, having perceived no legal impediment at the time.

14 The original indictment also charged the appellant with conspiracy to violate the Texas Election Code. This Court ultimately sustained the trial court’s ruling “to quash the Election Code-based conspiracy charges” on the basis of our holding that [Section 15.01 of the Texas Penal Code](#), the criminal conspiracy provision, did not apply to offenses defined in the Election Code until legislative amendment in 2003. [State v. Colyandro](#), 233 S.W.3d 870, 885 (Tex.Crim.App.2007); [TEX. PENAL CODE § 15.01](#). See note 45, post.

15 TEX. ELEC.CODE ch. 253, subch. D.

16 Count II of the indictment (money laundering) alleged that the appellant:

did knowingly conduct, supervise, and facilitate a transaction involving the proceeds of criminal activity that constituted an offense classified as a felony under the laws of this state, to wit, the offense of knowingly making a political contribution in violation of Subchapter D of Chapter 253 of the Texas Election Code, a felony violation of [Section 253.003 of the Election Code](#); that the aforesaid transaction consisted of the transfer of funds of the aggregate value of \$190,000 from the Republican National Committee and the Republican National State Election Committee, a nonfederal component and account of the Republican National Committee, to several candidates for the Texas House of Representatives that were supported by Texans for a Republican Majority PAC, namely, Todd Baxter, Dwayne Bohac, Glenda Dawson, Dan Flynn, Rick Green, Jack Stick, and Larry Taylor; that the defendants conducted, supervised, and facilitated the aforesaid transaction by:

- (1) negotiating with Terry Nelson, deputy chief of staff of the Republican National Committee, for an agreement, arrangement, and understanding whereby Texans for a Republican Majority PAC would make a contribution of a certain sum of money to the Republican National Committee and its nonfederal component and account, the Republican National State Elections Committee, and whereby the Republican National Committee and the Republican National State Elections Committee would make contributions to the aforesaid candidates;
- (2) providing the said Terry Nelson with certain information concerning contributions to be made by the Republican National Committee and the Republican National State Elections Committee to the said candidates, to wit, the names of the said candidates and amounts that Texans for a Republican Majority PAC suggested be contributed to each of the said candidates;
- (3) signing the check reproduced at the conclusion of this count; and
- (4) transferring funds of the value of \$190,000 from Texans for a Republican Majority PAC to the Republican National Committee and the Republican National State Elections Committee;

and that the value of the funds that constituted the aforesaid proceeds of criminal activity was \$100,000 or more.

17 Emphasis added. See [TEX. ELEC.CODE § 253.003\(a\)](#) ("A person may not knowingly make a political contribution in violation of this chapter."); *id. § 253.003(e)* ("A violation of Subsection (a) ... is a felony of the third degree if the contribution is made in violation of Subchapter D .").

18 See *id. § 253.003(b)* ("A person may not knowingly accept a political contribution the person knows to have been made in violation of this chapter."); *id. § 253.003(e)* ("A violation of Subsection ... (b) is a felony of the third degree if the contribution is made in violation of Subchapter D .").

19 See [Curry v. State, 30 S.W.3d 394, 404–05 \(Tex.Crim.App.2000\)](#) (when the indictment alleges a few, but not all, of the alternative statutory manner and means of committing the offense, the hypothetically correct jury charge against which the sufficiency of the evidence will be measured is limited to only those statutory theories alleged, and evidence of other statutory alternatives will not satisfy the State's burden of proof); [Geick v. State, 349 S.W.3d 542, 547–48 \(Tex.Crim.App.2011\)](#) (when pled, a statutory definition becomes an element of the offense that the State must prove).

20 Count I of the indictment (conspiracy) alleged that the appellant:

with intent that a felony be committed, to wit, with intent that the offense of knowingly making a political contribution to a candidate for the Texas House of Representatives in violation of Subchapter D of Chapter

253 of the Texas Election Code, a felony of the third degree, be committed, and with intent that the offense of money laundering of funds of the value of \$100,000 or more, a felony of the first degree, be committed, did agree with one or more persons, namely, John Dominick Colyandro, also known as "John Colyandro," James Walter Ellis, also known as "Jim Ellis," Thomas Dale DeLay, also known as "Tom DeLay," Texans for a Republican Majority PAC, also known as "TRMPAC," and the Republican National Committee, also known as "the RNC," that they or one or more of them engage in conduct that would constitute the aforesaid offense, and the defendant, John Dominick Colyandro, the defendant, James Walter Ellis, and the Republican National Committee, did perform an overt act in pursuance of the agreement, to wit: [a lengthy list of overt acts by which TRMPAC sent the check to RNSEC in exchange for particular contributions for the seven named Texas candidates, as paraphrased by the court of appeals, see *DeLay*, 410 S.W.3d at 908].

21 See, e.g., *Farrington v. State*, 489 S.W.2d 607, 609 (Tex.Crim.App.1973) ("An indictment charging a conspiracy to commit a felony need not allege the offense intended with the particularity necessary in an indictment charging the commission of the intended offense."); *Smith v. State*, 781 S.W.2d 418, 420 (Tex.App.—Houston [1st Dist.] 1989, no pet.) (applying the holding of *Farrington* to an indictment under the current penal code).

22 *DeLay*, 410 S.W.3d at 916.

23 *Id.* at 909.

24 *Id.* at 912–13

25 *Id.* at 913.

26 *Id.*

27 *Id.*

28 *Id.* at 914–15.

29 *Id.* at 911.

30 *Id.* at 916–19.

31 *Id.* at 919 n. 3.

32 TEX.R.APP. P. 66.3(e).

33 TEX. PENAL CODE § 34.02(a)(2).

34 *Id.* § 15.02(a).

35 *Id.* § 34.01(1)(A).

36 *Id.* § 34.01(4).

37 TEX. ELEC.CODE § 253.094(a).

38 *Id.* § 253.094(c).

39 The general definitions in the Texas Penal Code apply to penal provisions outside the Penal Code. TEX. PENAL CODE § 1.03(b). Under Section 1.07(38) of the Penal Code, "person" includes a corporation. *Id.* § 1.07(38). Moreover, reading the various provisions of Chapter 253 of the Election Code together makes it

evident that “person” was meant to embrace corporations. See, e.g., *former TEX. ELEC.CODE* § 253.002 (repealed by Acts 2011, 82nd Leg., ch. 1009, § 6(1), p. 2557, eff. June 17, 2011) (prohibiting “a person” from knowingly making a direct campaign expenditure, but then excepting “a corporation” from this prohibition under certain circumstances). Indeed, if the Legislature did not intend for corporations to count as “persons” for purposes of [Section 253.003\(a\)](#), it would not have included subsection (e), making it a felony-grade offense if the “person” violates Subchapter D of Chapter 253, governing corporations and labor organizations. *TEX. ELEC.CODE* § 253.003(e).

40 *TEX. ELEC.CODE* § 253.003(a), (e). It is also an offense for a person to “knowingly accept” an illegal campaign contribution, under [Section 253.003\(b\) of the Election Code](#). See *id.* § 253.003(b) (“A person may not knowingly accept a political contribution the person knows to have been made in violation of this chapter.”). As we have already observed, however, this theory of how the corporate political contributions may have constituted the “proceeds of criminal activity” for purposes of money laundering and conspiracy to commit money laundering was not alleged in the indictment. We express no opinion regarding this theory since it is not before us.

41 *Id.* § 253.100(a) (emphasis added). An “expenditure” is defined as “a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment.” *Id.* § 251.001(6).

42 *Id.* § 251.001(12), (14).

43 *Id.* § 251.001(5), (3).

44 *Id.* § 251.001(2).

45 *Id.* §§ 253.003(a), 253.094(a), 253.100(a), 251.001(2), (3), (5). This Court held, in *Colyandro*, 233 S.W.3d at 885, that, at least as of 2002, [Section 15.01 of the Texas Penal Code](#), the criminal conspiracy provision, did not apply to offenses defined in the Election Code-although the Legislature changed that by amendment to the Election Code in 2003. See Acts 2003, 78th Leg., ch. 393, § 2, p. 1633, eff. Sept. 1, 2003; see also note 14, *ante*. The State focuses on the definition in Section 251.001(2) of “contribution,” which includes an “agreement ... to make a transfer[,]” *TEX. ELEC.CODE* § 251.001(2), to argue that the appellant violated the Election Code regardless of the applicability of [Section 15.01 of the Penal Code](#) to the Election Code.

46 *TEX. ELEC.CODE* § 253.100(a). See *Ex parte Ellis*, 309 S.W.3d 71, 88 (Tex.Crim.App.2010) (“[I]t is ... clear that [Section] 253.100 contemplates expenditures made by a corporation for certain purposes. A contribution with no strings attached would not qualify as such an expenditure. * * * [T]here is no such thing as a legal undesignated corporate political contribution.”); *TEX. ETHICS COMM'N OP.* No. 132, at 2 (1993) (“[T]he corporation may make a contribution of money to the general-purpose committee, with the restriction that it be used only for permissible purposes under [section 253.100](#).”).

47 *TEX. ELEC.CODE* §§ 251.001(3), 253.094(a), 253.003(a).

48 We measure the sufficiency of the evidence by the so-called hypothetically correct jury charge, one which accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant is tried. *Malik v. State*, 953 S.W.2d 234, 240 (Tex.Crim.App.1997). When the indictment alleges only one of alternative statutory definitions or elements for how the offense occurred, the State must prove the alternative that it has pled, and proof of some other alternative will not save the conviction. *Johnson v. State*, 364 S.W.3d 292, 294 n. 10 (Tex.Crim.App.2012). “[B]ut we have said

also that the hypothetically correct jury charge does not necessarily have to track exactly all of the charging instrument's allegations." *Id.* at 294.

49 **TEX. ELEC.CODE § 251.001(2),(3), (5); *id.* § 253.003(a), (e).** Actually, it is less than clear to us that the Texas Election Code makes it a *felony* for TRMPAC to pass on corporate contributions to candidates. While it is certainly true that TRMPAC would commit a felony by knowingly *accepting* a political contribution for this purpose, under **Section 253.003(b) of the Election Code**, *id.* § 253.003(b), we find no provision in the Election Code making it an independent felony for TRMPAC, once it has illegally accepted such political contributions, to then pass those contributions on to candidates. The trial court instructed the jury in this case that such a transfer was an offense in its own right, but did so on authority of a provision in the Texas Election Code that governs political parties and their political action committees, not a non-party-affiliated general-purpose committee such as TRMPAC. In its final jury charge at the guilt stage of trial, the trial court informed the jurors:

It is a violation of Subchapter D of Chapter 253 of the Texas Election Code for a political party or a *General Purpose political committee* to use corporate contributions in Texas at any time for purposes other than to defray the normal overhead expenses and operating costs incurred by the party or *political committee* or to administer a primary election or convention held by a party.

(Emphasis added). But this language (except for the italicized portions) derives from a completely different chapter (*not* Chapter 253, much less Subchapter D of Chapter 253) of the Election Code, which governs only political parties, not general-purpose political committees such as TRMPAC. See **TEX. ELEC.CODE § 257.002(a)** ("A political party that accepts a contribution [from a corporation] may use the contribution only to ... defray normal overhead and administrative or operating costs incurred by the party; or ... administer a primary election or convention held by the party.").

The closest we can find to a provision in Chapter 253 that might serve to criminalize TRMPAC's direct transfer of received corporate contributions to a candidate, apart from **Section 253.003(b)**'s prohibition of the knowing *acceptance* of political contributions for that purpose, is to be found in Section 253.005. See *id.* § 253.005(a) ("A person may not knowingly make or authorize a political expenditure wholly or partly from a political contribution the person knows to have been made in violation of this chapter."). But a violation of this provision constitutes only a Class A misdemeanor, *id.* § 253.005(c), and so it cannot support a conviction for money laundering, which requires that the proceeds of criminal activity derive from a felony offense. **TEX. PENAL CODE § 34.01(1)(A)**.

50 See **TEX. ETHICS COMM'N OP. NO. 277**, at 1 (1995) ("Although the restrictions on corporate political activity do not specify that they apply only to activity in connection with Texas elections, we have stated before that the clear purpose of title 15 [of the Texas Election Code, which regulates political funds and campaigns] is to regulate Texas campaigns and Texas elections.") (citing **TEX. ETHICS COMM'N OP. NO. 208** (1994) (Texas Election Code does not require general-purpose committees to report political expenditures made on out-of-state campaigns and officeholders)).

51 **TEX. PENAL CODE § 34.02(a)(2)** (emphasis added).

52 See *id.* § 6.03(b) ("A person acts knowingly, or with knowledge, with respect to ... circumstances surrounding his conduct when he is aware ... that the circumstances exist.").

53 ***Liparota v. United States*, 471 U.S. 419, 424 n. 7, 105 S.Ct. 2084, 85 L.Ed.2d 434 (1985)** (quoting W. LaFave & A. Scott, **CRIMINAL LAW** § 27 (1972)).

54 **781 S.W.2d 600, 603, 604 (Tex.Crim.App.1989)**. See also ***Liparota*, 471 U.S. at 426, 105 S.Ct. 2084** ("This construction is particularly appropriate where, as here, to interpret that statute otherwise would be to criminalize a broad range of apparently innocent conduct."); ***United States v. X-Citement Video, Inc.*, 513 U.S.**

64, 69, 73, 115 S.Ct. 464, 130 L.Ed.2d 372 (1994) (in construing a federal offense containing an ambiguity with respect to how much of ensuing statutory language the word “knowingly” was meant to modify, the Supreme Court concluded that the culpable mental state must be applied broadly, noting that, “[i]f we were to conclude that ‘knowingly’ only modifies the relevant verbs in [the statute], we would sweep within the ambit of the statute actors who had no idea that they were even dealing with sexually explicit material[,]” and that “the age of the performers is the crucial element separating legal innocence from wrongful conduct”); *Celis v. State*, 416 S.W.3d 419, 428 (Tex.Crim.App.2013) (plurality opinion) (“[C]ritical to the *McQueen* analysis was that the conduct regulated by the statute ... is an ‘otherwise lawful act’ that becomes criminal only under certain circumstances[.]”).

55 This is not to say that, in order to be convicted, the actor must also be aware that conducting, supervising, or facilitating a transaction that he *knows* involves proceeds of criminal activity constitutes money laundering. Under [Section 8.03\(a\) of the Penal Code](#), “[i]t is no defense to prosecution that the actor was ignorant of the provisions of any law after the law has taken effect.” [TEX. PENAL CODE § 8.03\(a\)](#). However, as we read [Section 34.02\(a\)\(2\) of the Penal Code](#), it is an *element* of the offense of money laundering that the actor was aware of the fact that the money he is purported to have laundered was the proceeds of felony criminal activity. The federal money laundering statute similarly requires knowledge that the funds constitute ill-gotten gains. See [18 U.S.C. 1956\(a\)\(1\)](#) (“Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity....”); *United States v. Morelli*, 169 F.3d 798, 804 (3d Cir.1999) (one of the elements of money laundering under this provision is “knowledge that the transaction involves the proceeds of some unlawful activity”). But, in order to commit the federal offense, the actor need not know that trafficking in what he knows to be ill-gotten gains constitutes money laundering. *United States v. Sokolow*, 91 F.3d 396, 408 (3d Cir.1996).

56 We perceive at least two other potential bases to question the legitimacy of the State’s “agreement” theory of criminal proceeds. Both questions derive from the statutory definition of “contribution” in [Section 251.001\(2\) of the Election Code](#): “an agreement made ... to make a transfer.” [TEX. ELEC.CODE § 251.001\(2\)](#). First of all, in order for the agreement between TRMPAC and RNSEC to exchange soft money deriving from corporate contributions for hard money to be given directly to political candidates to constitute an illegal *corporate* political contribution, so as to render the later transfer of hard money from RNSEC to the seven Texas candidates a transaction involving “criminal proceeds” for money laundering purposes, must the corporations themselves be parties to that agreement? After all, unless there is a violation of Subchapter D of Chapter 253 of the Election Code, which governs *corporate* contributions, there is no felony offense upon which to predicate convictions for money laundering or conspiracy to commit money laundering. And there is no evidence in the record that the corporate contributors had any knowledge of, much less complicity in, the money swap agreement between TRMPAC and RNSEC. Secondly, does an agreement to make a transfer of money constitute a “contribution” if the recipients of the transfer—here, the seven Texas candidates—are not parties to that agreement? It is at least arguable that the “agreement” contemplated by [Section 251.001\(2\) of the Election Code](#) must be between the contributor and the recipient. There is likewise no evidence in the record to show that any of the candidates was aware of TRMPAC’s agreement with RNSEC. In light of our disposition, we need not resolve these questions today.

57 [TEX. ELEC.CODE § 253.094\(a\), \(c\)](#).

58 See [TEX. PENAL CODE § 1.03\(b\)](#) (“The provisions of Titles 1, 2, and 3 [including Chapter 6] apply to offenses defined by other laws, unless the statute defining the offense provides otherwise[.]”); *id. § 6.02(b)* (“If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element.”); *id. § 6.02(c)* (“If the definition of an offense does not prescribe a culpable mental state, but one is nevertheless required under Subsection (b), intent, knowledge, or recklessness suffices to establish criminal responsibility.”).

59 See note 39, *ante*.

60 *E.g., Garza v. State*, 213 S.W.3d 338, 349 (Tex.Crim.App.2007) (“We must presume that ‘in enacting a statute, the Legislature intends the entire statute to be effective[,]’ and did not intend a useless thing.”) (quoting *Heckert v. State*, 612 S.W.2d 549, 552 (Tex.Crim.App.1981)).

61 *Azeez v. State*, 248 S.W.3d 182, 192 (Tex.Crim.App.2008) (quoting *Cheney v. State*, 755 S.W.2d 123, 126 (Tex.Crim.App.1988)).

62 *Liparota*, 471 U.S. at 424 n. 7, 105 S.Ct. 2084 (quoting W. LaFave & A. Scott, CRIMINAL LAW § 27 (1972)).

63 **TEX. ELEC.CODE § 253.003(a)**. See *McQueen*, 781 S.W.2d at 604 (noting the requirement of **TEX. PENAL CODE § 1.02(4)** that the Penal Code should be construed “to safeguard conduct that is without guilt from condemnation as criminal” to hold that “some form of culpability must apply to those ‘conduct elements’ which make the overall conduct criminal”).

64 12 S.W.3d 31 (Tex.2000).

65 See **TEX. ELEC.CODE § 253.131(a)** (“A person who knowingly makes or accepts a campaign contribution or makes a campaign expenditure in violation of this chapter is liable for damages as provided by this section.”).

66 *Osterberg*, 12 S.W.3d at 37–39.

67 See **TEX. ELEC.CODE § 253.003(b)** (“A person may not knowingly accept a political contribution *the person knows to have been made in violation of this chapter.*”) (emphasis added).

68 *Osterberg*, 12 S.W.3d at 37–39. Four justices dissented, observing that “[t]he Court says ‘knowingly’ [in Section 253.131(a)] modifies only the act of spending money. But spending money on core First Amendment speech cannot, in and of itself, be against the law—there has to be something more.” *Id. at 67* (Enoch., J., dissenting). Later, the dissenters continued: “And while it may be ‘natural’ to give the statute the reading the Court does today, it is no less ‘natural,’ and indeed it is grammatically sound, to take the Constitution into account and construe ‘knowingly’ to modify the entire succeeding phrase, including ‘in violation of [the Election Code].’” *Id. at 68*.

69 See, e.g., *State v. Johnson*, 219 S.W.3d 386, 388 (Tex.Crim.App.2007) (“We are mindful of the proposition that criminal statutes outside the penal code must be construed strictly, with any doubt resolved in favor of the accused.”); *State v. Rhine*, 297 S.W.3d 301, 309 (Tex.Crim.App.2009) (“Although the common-law rule that a penal statute is to be strictly enforced does not apply to the Penal Code [citing **TEX. PENAL CODE § 1.05(a)**], criminal statutes outside the penal code must be construed strictly, with any doubt resolved in favor of the accused.”) (footnote and internal quotation marks omitted).

70 *Liparota*, 471 U.S. at 427, 105 S.Ct. 2084 (internal quotation marks omitted).

71 *McQueen*, 781 S.W.2d at 603–04.

72 *X-Citement Video, Inc.*, 513 U.S. at 72, 115 S.Ct. 464.

73 RoBold testified he told the corporations only “that there is an opportunity to give corporate funds that would be utilized to help underwrite the administrative expense of TRMPAC who is also raising personal funds[,]” the personal funds, in turn, presumably for the purpose of making direct contributions to candidates. He would “normally make [it] very clear” that corporate donations would only be used for TRMPAC’s administrative costs, to free up individual donations for candidate contributions. He acknowledged that the fund-raising literature emphasized TRMPAC’s priority to channel contributions to candidates, but pointed out that this

literature was directed at both corporate and individual contributors. He flatly denied ever having personally “hinted” to corporate donors that their contributions were “going to go to candidates.” But some of the corporate executives denied that (or simply did not remember whether) RoBold expressly told them that their contributions would be limited to defraying TRMPAC’s administrative costs. The corporate executive for Sears testified that RoBold did not tell him his corporate contribution could only be put to a limited use but in fact told him instead that it would be used “[t]o elect more Republicans to Congress in Texas.” In its pretrial diversion agreement with the Travis County District Attorney, Sears claimed to have made its corporate “contribution on the basis of false and misleading information provided by the fundraiser that solicited the contribution[.]”

74 For example, notwithstanding Sears’s pretrial diversion agreement with the District Attorney, the Sears executive maintained:

A. I never thought I did anything illegal.

Q. Still don’t?

A. Right.

Q. And if RoBold said it was a—it was legal, you believed him and you still believe him, right?

A. Well, I—I don’t know about that. I believed it was legal at the time. I certainly did and I would never intentionally violate a campaign law at any level.

75 See [TEX. PENAL CODE § 6.03\(c\)](#) (“A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct ... when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist[.]”); [id. § 6.03\(d\)](#) (“A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct ... when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist[.]”).

1 The majority in *Baird* held, for the first time, that in order for evidence to be suppressed under [Article 38.23 of the Texas Code of Criminal Procedure](#), the defendant has the burden to prove that the State committed a crime in obtaining the evidence.

2 In *Wehrenberg*, in an effort to support its conclusion that evidence was derived from an independent source rather than a warrantless entry, the majority ratified, for the first time, the State’s actions in obtaining a search warrant based on the prediction of a future crime, rather than one that had already been committed.

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