



**REPORT TO THE TEXAS LEGISLATURE
INVESTIGATION OF THE DAUGHTERS OF THE REPUBLIC OF TEXAS**

**November, 2012
Office of the Attorney General**

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EXECUTIVE SUMMARY

This report reflects the Office of the Attorney General's ("OAG") conclusions and factual findings after conducting a comprehensive, year-and-a-half-long investigation into the Daughters of the Republic of Texas ("DRT"). The OAG's investigation concluded that the DRT failed to fulfill its fiduciary duty to the State of Texas as trustee of the historic Alamo. Specifically, the DRT did not properly preserve and maintain the Alamo, misused state funds for the organization's own benefit, failed to recognize or address conflicts of interest, and allowed its own organizational prerogatives to interfere with its duty to act in the best interests of the State of Texas and the Alamo. Additionally, when legislative committee hearings were convened to review the DRT's stewardship of the Alamo, testimony by the DRT's representatives was less than forthright and failed to disclose material information to the Texas Legislature.

Because the OAG is the state agency charged with providing oversight to nonprofit organizations in the State of Texas, the DRT's more general conduct as a Texas nonprofit corporation also fell within the scope of the investigation. In that regard, this report concludes that the DRT's leadership has imperiled the organization and its nonprofit mission by failing to exercise sound business judgment, violating state laws that govern nonprofit corporations, contravening the organization's own bylaws, and maintaining an ineffective governance structure that should be modernized to comport with standard best practices for nonprofit organizations.

The OAG's investigation into the DRT was formally opened in June of 2010 and concluded in October, 2011. In the wake of significant public scrutiny, highly publicized structural problems at the Alamo, and legislative testimony detailing misconduct by the DRT's leadership, the 82nd Legislature enacted a law transferring control of the Alamo to the General Land Office ("GLO"). Pursuant to that 2011 law, the GLO assumed control over the Alamo and executed an agreement that allowed the DRT to continue its longstanding relationship with the historic site.

Because the DRT's prior misconduct was addressed legislatively, the OAG agreed to defer to the Legislature's policy-making prerogative and is therefore not pursuing remedial legal action against the DRT. However, at the request of the Texas Legislature and in the interest of transparency, the OAG prepared this report to document improprieties that were uncovered during the investigation into the DRT.

The factual findings contained in this report are based upon the vast amount of evidence reviewed by the OAG during the course of its investigation. That evidence includes documents the OAG obtained from the DRT via Public Information Act requests, interviews with witnesses, legislative hearing transcripts, correspondence with the DRT, and independent research by investigators. Further, in an effort to ensure the Legislature is informed about more recent developments at the Alamo Complex, this report documents remedial efforts that the GLO has implemented since it took custody of the Alamo.

Finally, notwithstanding the misconduct uncovered during the investigation, this report recognizes that the DRT and its members have committed countless volunteer hours to serving the Alamo and the State of Texas. Indeed, generations of DRT members have demonstrated tireless commitment to the Alamo. Accordingly, it should be noted that the misconduct detailed in this report is largely attributable to the DRT's leadership—and that conduct should not detract from the individual DRT members who tirelessly and selflessly served the Alamo for over a century.

I. THE ATTORNEY GENERAL'S AUTHORITY

Under Texas law, the Attorney General is charged with protecting the “interest of the general public of this state in charitable trusts.”¹ The Texas Property Code defines a “charitable trust” as a “charitable entity,” which includes corporations established for “civil or public purpose as described by Section 501(c)(3) of the Internal Revenue Code.”² The DRT is a Texas nonprofit corporation with tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code. As a nonprofit corporation, the DRT is subject to the OAG’s oversight authority. Within the OAG, responsibility for policing misconduct by charitable organizations is assigned to the Charitable Trusts Section of the Financial Litigation and Tax Division.

The OAG’s investigation into the DRT, however, was not limited to its conduct as a nonprofit corporation. Indeed, the investigation principally focused on the DRT’s conduct as a trustee for the State of Texas, which falls within the OAG’s general duties and responsibilities as the State’s law firm.

As the chief legal officer of the State of Texas, the Attorney General has a duty to protect the State’s legal interests. Those interests were implicated when the DRT had custody of the Alamo and controlled the State’s Alamo-related funds. Consequently, the OAG’s investigation and the findings detailed in this report incorporate the DRT’s conduct both as a trustee with a fiduciary duty to the State of Texas and as a Texas nonprofit corporation.

II. BACKGROUND ON THE INVESTIGATION INTO THE DRT

In February, 2010, the OAG received an extensive written complaint from an informant who alleged misconduct by the DRT and senior members of its Board of Management. The complaint cited examples of alleged misrepresentations by the DRT’s leadership, misuse of state funds, inadequate preservation of the Alamo structure, and general mismanagement of both the DRT and state-owned assets under the DRT’s control. To support the contention that the DRT’s leadership was not properly conducting its affairs, the complaint chronicled the resignation of high-level Alamo employees, internal disputes over an ultimately unprofitable fundraising initiative, unsuccessful efforts to establish new funding sources for the Alamo, inadequate attention to structural deficiencies at the Alamo Complex, and inattention to the Alamo’s historic preservation needs.

Two months later, in April, the complainant notified the Governor’s Office that the DRT had formally petitioned the U.S. Patent and Trademark Office (“USPTO”)—and received preliminary approval—for a federal trademark of “The Alamo.” Although the DRT took possession of the Alamo in its capacity as trustee for the State of Texas, the DRT’s leadership failed to notify the State or seek its permission before attempting to trademark the Alamo in its own name. As a result, once the State learned about the improper trademark petition, it notified the DRT that the State objected to the organization’s trademark application. After informal negotiations with the DRT were unsuccessful, the State was compelled to retain outside legal

¹ TEX. PROP. CODE § 123.002.

² TEX. PROP. CODE § 123.001(1),(2).

counsel to represent the State before the USPTO and formally contest the DRT's trademark application.

In June, 2010, the OAG opened an investigation into the DRT. The OAG's investigation centered on two significant aspects of the organization's operations: (1) the DRT's failure to fulfill its fiduciary duty to the State as the trustee of the Alamo Complex; and (2) the DRT's governance failures as a Texas nonprofit corporation.

Approximately four months after the OAG began its investigation, the DRT entered into a highly publicized contract for marketing services with William Morris Endeavor Entertainment, LLC ("WME"), a Los Angeles-based talent agency that has historically sought employment opportunities for actors, musicians, athletes, and other entertainment sector personalities. The DRT's October, 2010 contract with WME sparked further controversy because of its high cost and its reported connection to the Alamo trademark application.

When the Texas Legislature convened for the 82nd Legislative Session, members of both the House of Representatives and the Senate expressed concerns about the DRT's stewardship of the Alamo. Consequently, legislative committees in both chambers held hearings that focused on the misconduct allegations and the DRT's performance as trustee of the Alamo. Representatives of the DRT and the OAG, along with other interested parties, provided public testimony about the DRT's stewardship of the Alamo to the Senate Administration and the House Culture, Tourism, and Recreation committees.

As the State of Texas' policy-making body, the Legislature was owed complete and candid answers to questions about the DRT's operations so that it could make an informed decision about the Alamo's future. However, in certain instances, the DRT representatives' testimony failed to completely and accurately disclose material facts about the organization, its finances, and its capacity to fulfill its duties as Alamo trustee. By the time legislative hearings were convened in the spring of 2011, the OAG's investigation into the DRT was quite advanced. Based on the OAG's in-depth knowledge of the DRT's operations nine months into the investigation, the OAG grew concerned that the DRT's representatives had provided inaccurate and misleading testimony to the Legislature. In response, the OAG submitted a series of written inquiries to the DRT so that its representatives could clarify their misstatements and correct the record. Although the DRT's written responses to the OAG's questions revealed that some of its representatives' testimony was not entirely accurate, the full scope of the DRT's misstatements to the Legislature has not been fully disclosed until the publication of this report.

On May 29, 2011, both chambers of the Texas Legislature held a final vote and overwhelmingly passed House Bill 3726, which transferred custody of the Alamo Complex—and all state-owned Alamo funds—to the General Land Office. Once the law became effective on September 1, 2011, the DRT was given four months to negotiate a contract with the GLO that would govern the organization's future relationship with the Alamo. Because the Legislature removed the DRT as custodian of the Alamo, the OAG deferred to the Legislature's policy-making prerogative and agreed to refrain from pursuing legal action against the DRT in court.

The OAG concluded its investigation in October, 2011. Thus, the findings and conclusions contained in this report largely reflect the DRT's conduct as of the conclusion of the OAG's investigation. However, in an effort to ensure the Legislature is informed about significant developments at the Alamo over the last twelve months, this report also documents remedial measures that the GLO has implemented since the conclusion of the OAG's investigation.

III. THE INVESTIGATIVE PROCESS

Chapter 12 of the Texas Business Organizations Code gives the OAG broad authority to “examine” the records of a Texas corporation.³ The Code enforces the OAG's examination authority by empowering the OAG to subpoena records from corporations the agency seeks to investigate. The statutory term for these civil subpoenas is a Request to Examine (“RTE”).⁴ Under Section 12.154 of the Code, information that the OAG obtains in response to an RTE is deemed “not public information” and therefore must be kept confidential unless the State institutes legal proceedings against the corporation in court.⁵

Shortly after an informant filed a complaint alleging widespread misconduct by the DRT, the OAG served the organization with the first in a series of RTEs subpoenaing records that were relevant to the investigation. In addition to the records that were obtained via RTEs, the OAG also obtained information from various other sources, including interviews with witnesses, documents voluntarily provided by informants, independent investigative research, correspondence with the DRT, and open records requests submitted to the DRT pursuant to the Texas Public Information Act (“PIA”).⁶

Information that the OAG obtained from publicly available sources is not confidential and can therefore be disclosed at the OAG's discretion. Consequently, this report relies entirely on information that the OAG is authorized to release to the public and does not include any information that the OAG exclusively obtained in response to an RTE. Those public documents, as well as information from other sources that the OAG is legally authorized to disclose, form the basis of this report to the Texas Legislature.

IV. LEGAL FRAMEWORK & HISTORICAL BACKGROUND

On January 26, 1905, the 29th Texas Legislature passed a law (the “1905 Act”) authorizing the Governor to purchase the Long Barracks, one of only two structures that still stood at the site of the historic Battle of the Alamo.⁷ The barracks were originally built to house monks who served

³ TEX. BUS. ORG. CODE §12.151. The Code also authorizes the OAG to “investigate” the “organization, conduct, and management” of a Texas corporation for violating its bylaws or the laws of the State of Texas. *See* TEX. BUS. ORG. CODE §12.153. This broad investigative authority applies to both for-profit and nonprofit corporations.

⁴ TEX. BUS. ORG. CODE §12.152.

⁵ TEX. BUS. ORG. CODE §12.154. The OAG is also authorized to disclose information received in response to an RTE if the State institutes an administrative proceeding against a corporation; the statutory confidentiality waiver is not limited to judicial proceedings.

⁶ TEX. GOV'T CODE, §552 et. seq.

⁷ *Conley v. Daughters of the Republic of Texas*, 156 S.W. 197, 200 (1913).

at the Spanish mission in San Antonio. During the Battle of the Alamo, some of the fiercest fighting reportedly occurred at the site of the Long Barracks.

Before the 1905 Act was passed and signed into law, the State of Texas owned the Alamo Shrine—but not the Long Barracks. Under the 1905 Act, the Governor was required to deliver the Long Barracks “together with the Alamo Church property already owned by the State to the custody and care of the Daughters of the Republic of Texas, to be maintained by them in good order and repair...subject to future legislation by the Legislature of the State of Texas.”⁸ Combined, the Alamo Shrine and the Long Barracks constitute “what is commonly known as the Alamo property in the City of San Antonio.”⁹

A few years later, litigation ensued and the courts were required to interpret both the legal implications of the 1905 Act and the nature of the DRT’s legal relationship with the State. In a 1913 decision styled *Conley v. Daughters of the Republic of Texas*, the Texas Supreme Court held that, by accepting the terms of the 1905 Act, the DRT “became a trustee for the State.”¹⁰ The Supreme Court’s determination that the DRT served as a trustee is legally significant because, in the State of Texas, the law provides that trustees owe a fiduciary duty to their beneficiaries.¹¹

As a general matter, the term ‘duty’ is defined as: “a legal obligation that is owed or due to another and that needs to be satisfied.”¹² A fiduciary duty is thus a heightened legal obligation to another—an obligation that requires the fiduciary to at all times act in the best interests of his or her beneficiary. A Texas Court of Appeals described a fiduciary as one “of whom the law requires an unusually high standard of ethical or moral conduct in reference to the beneficiaries and their interests.”¹³ In turn, the appeals court further explained that a fiduciary’s “duties are more than the ordinary duties of the marketplace.”¹⁴

Contrasting a fiduciary relationship with one where the parties simply conduct business on a transactional basis with one another, the appeals court explained that a fiduciary “may have *additional* duties that he would not have in an ordinary business relationship—a duty of full disclosure, for example, and a duty not to use the fiduciary relationship for personal benefit...”¹⁵ Indeed, those who are merely parties to a contract are generally judged under a lesser standard wherein they simply owe one another a duty of good faith and fair dealing. Under the lower standard, one party is not required to act at all times for the other party’s benefit, but rather is merely expected to deal fairly with the other party and not attempt to interfere with that party’s ability to benefit from the contractual relationship.

⁸ Act of Jan. 26, 1905, 29th Leg., R.S., (1905). Section 3 of the 1905 Act also gave the DRT authority to adopt a plan to “remodel[]” the State’s Alamo property—but stipulated that any plan adopted by the DRT had to be “approved by the Governor the Texas.” Further, Section 3 also provided that: “no changes or alterations shall be made to the Alamo church proper, as it now stands, except as absolutely necessary for its preservation.”

⁹ *Conley et. al. v. DRT*, 151 S.W. 877, 879, (Tex. Civ. App. – San Antonio 1912).

¹⁰ *Conley*, 156 S.W. at 200 (1913).

¹¹ *Johnson v. Brewer & Pritchard*, 73 S.W.3d 193, 199 (Tex. 2002).

¹² BLACK’S LAW DICTIONARY 580 (9th ed. 2009).

¹³ *Geeslin v. McElhenney*, 788 S.W.2d 683, 684-5 (Tex. App.—Austin 1990, no writ).

¹⁴ *Id.*

¹⁵ *Id.* (emphasis original).

Given the heightened legal duty that the law imposes on trustees, the Texas Supreme Court's determination that the DRT served the State in a trustee capacity meant that the organization owed a fiduciary duty to the State. The Supreme Court could have held that the DRT served the State in a lesser capacity—as a mere custodian, for example—but instead explicitly ruled that the DRT took possession of the Alamo as a trustee. In that capacity, the DRT owed a fiduciary duty to the State and was required to at all times put the State's interests above its own. As the U.S. Court of Appeals for the Fifth Circuit explained: "There is the First Commandment of fiduciary relations: Thou shalt exalt thy beneficiary above all others."¹⁶

Although the Texas Supreme Court was unmistakably clear when it ruled that the DRT "became a trustee" for the State of Texas, during the 82nd Legislative Session the DRT claimed that it did not owe a fiduciary duty to the State—and should therefore not be held to the same high standard as all other trustees. The DRT's General Counsel explained this legal theory during a March 9, 2011, legislative committee hearing, where he testified: "As opposed to taking the extremes that are imposed by the common law...we think that these fiduciary duties are well defined by statute and that's what we think the Daughters are measured by."¹⁷ While the legal justification for this novel theory is opaque at best, the purpose of the General Counsel's argument is clear. The General Counsel's goal was to excuse the client's conduct as trustee by arguing that the DRT should not be 'measured' against the 'extreme' standard by which fiduciaries are judged—which the Texas Supreme Court has described as "an unusually high standard of ethical or moral conduct in reference to beneficiaries and their interests."¹⁸

The General Counsel did not dispute the fact that the DRT was a trustee for the State: "There's no question the Daughters are the trustees [sic] for the beneficiary, the State of Texas."¹⁹ He simply argued—incorrectly—that the DRT was the rare breed of trustee that did not owe a fiduciary duty to its beneficiary: "We think that the statutes—the 1905 and the subsequent statutes—fairly well define what the trustee's role is to the State. And that is the care and custody of the Alamo."²⁰ The only explanation the General Counsel provided to support his argument was: "[I]f it was a regular trust document that might be written up between parties, then it would outline what the responsibilities are of the trustee to the beneficiary. There is no actual document like that. There is a statute."²¹ This argument fails for a multitude of reasons.

As a threshold matter, the Texas Supreme Court has long since resolved any doubt about the existence of a trust benefitting the State with the DRT as trustee. With that in mind, it is impossible to ignore the fact that, as the Supreme Court explained: "[Texas] courts have long recognized that...fiduciary duties are owed by a trustee to a beneficiary of a trust."²² The Supreme Court has also explained that: "A trust is not a legal entity; rather it is a fiduciary relationship with respect to property...A fiduciary occupies a position of peculiar confidence

¹⁶ *Fulton National Bank v. Tate*, 363 F.2d 562, 570 (5th Cir. 1966).

¹⁷ Hearings on Care for the Alamo Before the House Comm. on Culture, Recreation & Tourism, 82nd Leg., R.S. (Mar. 9, 2011) (statement of Jim Ewbank, General Counsel, Daughters of the Republic of Texas).

¹⁸ *Geeslin*, 788 S.W.2d at 684-5 (1990).

¹⁹ Hearings on Care for the Alamo Before the House Comm. on Culture, Recreation & Tourism, 82nd Leg., R.S. (Mar. 9, 2011) (statement of Jim Ewbank, General Counsel, Daughters of the Republic of Texas).

²⁰ *Id.*

²¹ *Id.*

²² *Johnson v. Brewer*, 73 S.W.3d 193, 199 (Tex. 2002).

towards another. Accordingly, a trustee's association with a trust is that of a relationship or status."²³

When the *Conley* decision was issued in 1913, it was well established as a matter of law that trustees owe their beneficiaries a fiduciary duty. Thus, throughout the 98-year period that elapsed between 1913 and the passage of the 2011 statute transferring custody of the Alamo to the GLO, the State justifiably relied on the Supreme Court's determination that the DRT took custody of the Alamo as a trustee—and therefore reasonably expected that the DRT's relationship with the State commanded the same high standards of care and loyalty that the law requires of all trustees. Without a guarantee that the DRT would be held to the highest fiduciary standards as a trustee, the Legislature would certainly not have allowed the DRT to retain custody of the its most treasured and historic landmark for nearly a century without imposing more robust statutory requirements on the organization.

The DRT's theory also fails because the Supreme Court applied the same legal test in *Conley* that it uses to adjudge the existence of a trust under more ordinary factual circumstances. Indeed, the direct trust that the Supreme Court recognized for the Alamo property in *Conley* is indistinguishable from the Court's other trust law jurisprudence. Consequently, there is no legal basis to support the notion that the DRT was somehow the lone trustee that did not owe a fiduciary duty to its beneficiary.

In a decision that preceded *Conley v. Daughters of the Republic of Texas*, the Supreme Court delineated the legal test that determines whether a trust relationship exists between two parties: "To construe a direct trust, there must be a conveyance or transfer to a person capable of holding it; there must also be an object or fund that is transferred, and a cestui que trust or purpose to which the trust fund is to be applied. No particular words are necessary to constitute a trust; but if it be the plain intention of the parties to create a trust, it will be regarded as such."²⁴ The Court applied the same test in *Conley* when it determined that the DRT became trustee of the Alamo under the terms of the 1905 Act: "To constitute a direct trust there must be a conveyance or transfer to a person capable of holding it; there must also be an object or fund transferred and a cestui que trust or purpose to which the trust fund is to be applied...Each element of a trust exists. This constituted the [DRT] a trustee of the state with the power to maintain the [Alamo] property in good order and repair."²⁵

Nearly four decades later, the language used by the Supreme Court had evolved slightly, but the legal test remained unchanged: "Texas cases hold that an express trust can come into existence only by the execution of an intention to create it by the one having legal and equitable dominion over the property made subject to [the trust]. Also, as distinguished from a trust arising from implications, an express trust arises either by an express agreement or by direct and positive acts of the parties or by some writing or deed."²⁶ In that case, the Supreme Court referred to the creation of an express trust, rather than a direct trust—which was the term that the Court used in *Conley*. However, that modernized language reflects a distinction without a difference because Texas courts have long recognized that "[e]xpress trusts are also known as direct trusts, and are

²³ *Ditta v. Conte*, 298 S.W. 3d at 191 (Tex. 2009) (internal citations omitted).

²⁴ *City of Austin v. Cahill*, 88 S.W. 542, 548 (Tex. 1905).

²⁵ *Id.* at 201.

²⁶ *Fitz-Gerald v. Hull*, 237 S.W.2d 256, 260 (Tex. 1951).

generally created by instruments that point out directly and expressly the property, persons, and purposes of the trust. Hence, they are called direct trusts in contradistinction to those trusts that are implied, presumed, or construed by law.”²⁷

Thus, Texas courts’ longstanding analytical framework for determining whether an express trust exists is essentially the same standard today that the Supreme Court applied in *Conley*. As a result, the body of caselaw holding that trustees owe a fiduciary duty to the beneficiaries of an express or direct trust is indistinguishable from the *Conley* decision. If, based upon the unique facts at issue in *Conley*, the Supreme Court had intended to carve out limitations on the DRT’s fiduciary duties, the Court could have done so. But the Court did no such thing.

Alternatively, the Court could have found that the DRT merely took possession of the Alamo in a strictly custodial capacity. The Court could have also construed the DRT’s acceptance of the terms of the 1905 statute in a manner that recognized a contractual relationship between the DRT and the State. But the Supreme Court did not venture toward any of these or any other myriad possible legal relationships between the State and the DRT. Instead, the Court applied the same legal standard that governs an ordinary direct or express trust—and applying that very same standard, the Court held that the DRT took possession of the Alamo as a trustee. Despite the DRT’s belated protestations to the Legislature that it should be held to a lesser fiduciary standard, their argument is simply not consistent with Texas Supreme Court precedent.

In light of the Supreme Court’s determination that the DRT was a trustee for the State within the ordinary meaning of an express or direct trust, there is no legitimate legal basis for the DRT to now claim it was a trustee—but somehow did not owe the same fiduciary duties to the State that all other trustees owe to their beneficiaries. As a Texas Court of Appeals observed: “An expressed trust is a fiduciary relationship in which one person holds a property interest, subject to an equitable obligation to keep or use that interest for the benefit of another.”²⁸

Under the express trust that was created when the DRT accepted the terms of the 1905 Act, the State retained a beneficial ownership interest in the Alamo properties as the beneficiary of the trust. The State’s ownership interest as beneficiary extended to not only the real property and furnishings at the Alamo, but also to all revenue generated by the Alamo, including proceeds from the gift shop and other onsite retail endeavors. Further, all donations to the Alamo—which includes monetary contributions and tangible items, such as historic artifacts—also belong to the State. Although the State retained an exclusive beneficial ownership interest in the state funds generated at the Alamo, these proceeds were not collected by the Legislature or subject to the General Appropriations Act. Instead, state funds generated at the Alamo were entrusted to the DRT’s control. But the DRT was not authorized to use state funds for *any* purpose. Rather, state funds could only be legally expended for purposes that directly benefited the Alamo.

The DRT’s duties as the State’s trustee—and the limitations imposed on the DRT’s use of state dollars received by the Alamo—are no different than the duties that govern trustees of any other

²⁷ *McLeod v. McCall*, 180 S.W. 293, 295 (Tex. Civ. App.—Beaumont 1915) (*internal citations omitted*). See also: BLACK’S LAW DICTIONARY 1548 (8th ed. 2004) (Express Trust: A trust created with the settlor’s express intent, usu. declared in writing, as opposed to a resulting trust or a constructive trust—also termed direct trust); *L.W. Levy & Co. v. Mitchell*, 114 SW 172, 175 (Tex. Civ. App. 1908) (*internal citations omitted*) (“...an express trust or direct trust was created.”).

²⁸ *R.R. Morrison v. L.A. Parish*, 384 S.W.2d 764, 766 (Tex. App.—Waco 1973).

express trust. Consider a situation where a landowner desires to place a commercial property in downtown San Antonio into a trust that will benefit her children. Under this scenario, the landowner transfers the property to a trustee, who agrees to take possession of the property pursuant to the terms provided in the trust instrument—and then maintains that property, along with any profits it produces, for the benefit of the landowners’ children. If the trustee leased a portion of the property to a tenant, the trustee would retain exclusive control over the lease proceeds and could use those dollars to build improvements on the property or pay for building maintenance—but *only to the extent the expenditures were in the beneficiary’s best interest*. Thus, the trustee *could not* use those lease proceeds for his own benefit, personally loan himself the proceeds, or divert trust resources for purposes that did not serve the beneficiary. Similarly, the trustee could use funds in the trust to hire an accountant to maintain the trust’s financial records—but *could not* use trust funds to hire an employee who strictly kept track of the trustee’s personal business affairs.

The legal framework governing the DRT’s duties and obligations to the State of Texas was largely unchanged for the three decades that followed the Supreme Court’s *Conley* decision. In 1945, however, the 49th Legislature expanded the DRT’s responsibilities when the organization was awarded custody of the French Legation, a historic Austin residence that served as the functional equivalent of the French Embassy when Texas was an independent republic.²⁹ Under the Texas Supreme Court’s ruling in *Conley*, with the passage of the 1945 law, the DRT also became the State’s French Legation trustee.³⁰

Ten years later, the 54th Legislature enacted a law that imposed restrictions on the expenditure of proceeds from concessions and entrance fees at the Alamo and the French Legation. Under the 1955 law, proceeds from retail sales at the Alamo could only be spent “for the purpose of *maintenance and repair* of state property and furnishings.”³¹ Additionally, while the *Conley* decision had already determined that the DRT “became a trustee for the State” under the 1905 Act, the Legislature effectively adopted the Supreme Court’s 1913 decision by stipulating that: “all profits obtained from the operation of concessions shall be *held in trust* by [the DRT].”³² The 1955 law was later recodified at Section 2203.003 of the Texas Government Code, but its substantive provisions—including the restrictions it placed on expenditure of proceeds from concessions—were unchanged and in effect until September 1, 2011, when the Legislature amended the law to transfer custody of the Alamo to the GLO.

Although the text of the 1955 law is relatively simple, the legal implications of that legislative change have proven to be somewhat complex. In its capacity as Alamo trustee, the DRT was entrusted with custody of the Alamo and any revenue derived from that state property. The DRT therefore had the same general discretion over Alamo funds that an ordinary trustee would have over private trust assets—though the DRT was also subject to a statutory obligation to maintain the Alamo in good order and repair—and was similarly subject to a fiduciary duty to spend state

²⁹ Op. Tex. Att’y Gen. No. V-1443 (1952).

³⁰ The 2011 Act removing the DRT as Alamo trustee did not apply to the French Legation, so the DRT remains the State’s trustee for that historic property.

³¹ Act of 54th Leg., R.S. (1955) (emphasis added). The text of the 1955 law provided that both entrance fees and proceeds from concessions at the Alamo could only be spent on “maintenance and repair” of state-owned buildings and furnishings. This report refers only to proceeds from concessions at the Alamo because the DRT never charged an entrance fee at the Alamo. However, if such an entrance fee had been imposed, the proceeds from those fees would have been subject to the same restrictions as proceeds from concessions.

³² *Conley*, 156 S.W. at 200 (1913) (emphasis added).

funds only for the benefit of the Alamo, not its own institutional prerogatives. However, when the law was changed in 1955, proceeds from Alamo concessions could only be used to maintain and repair the Alamo and its furnishings. As a result, the Legislature effectively altered the terms of the trust arrangement to create a special class of restricted Alamo funds.

Thus, while the DRT was authorized to spend state funds for purposes that were legitimately related to the Alamo and truly benefited the state-owned property, after 1955 *proceeds from Alamo concessions* could only be spent to *maintain and repair* the Alamo and its furnishings. Under the post-1955 legal framework, when a donation was made to the Alamo, the DRT could use those funds to purchase items that benefited the Alamo—but that were not related to maintenance or repair, such as educational materials or improvements on the Alamo grounds. However, *proceeds* from the Alamo gift shop could not be spent on those types of expenses because the 1955 law strictly limited revenue from concessions to maintaining and repairing the Alamo Shrine, the Long Barracks, and the state-owned furnishings in those structures.

The passage of the 1955 law did nothing to alter the fiduciary relationship between the State and the DRT as its trustee. Indeed, the 1955 law simply stipulated by statute that the proceeds from sales on the Alamo property were to be held in trust by the DRT. Thus, a trust agreement was not lacking as the General Counsel claimed.

Indeed, the governing instrument—at least in part—happened to be statutes enacted by the Texas Legislature, which along with the common law requirements and fiduciary duties required of trustees, governed the terms under which the DRT was entrusted with the State’s Alamo property. The Texas Supreme Court explicitly recognized the effect of the statute in *Conley* when it held that, by accepting the terms of the 1905 Act, the DRT “became a trustee for the State.”³³ And because Texas “courts have long recognized that fiduciary duties are owed by a trustee to a beneficiary of a trust,” the Legislature did not have to reiterate that legal reality when it enacted the 1955 law.³⁴ In fact, because a fiduciary duty is imputed to trustees under Texas law, the DRT could only legitimately claim to be held to a lesser standard if the Legislature had included language in the statute that specifically disclaimed the existence of a fiduciary relationship.

In addition to enacting laws regulating the DRT’s expenditure of state funds, the Legislature also subjected the DRT to various statutes governing Alamo-related records. The applicability of these public records laws have been the subject of multiple opinions and rulings by the Texas Attorney General’s Office, which is statutorily charged with rendering legal opinions and administering the Texas Public Information Act. For example, Attorney General Price Daniel was asked to determine whether the DRT was subject to the reporting requirements contained in House Bill 753, which was enacted in 1951 to “establish a system for the orderly maintenance and care of state property.”³⁵ The legal question at issue in the opinion turned on whether the DRT was a “state agency” within the meaning of H.B. 753.

³³ *Id.*

³⁴ Johnson, 73 S.W.3d at 199 (2002).

³⁵ Act of 52nd Leg., R.S., H.B. 753 (1951).

In response, Attorney General Opinion No. V-1443 ruled that “since the Daughters of the Republic is a trustee for the State, it is an ‘instrumentality’ which has possession of state property, and it is our opinion that [the DRT] constitutes an agency for the State within the meaning of H.B. 753.”³⁶ As a result, the Attorney General ruled that the DRT must “keep property records required by the Act, account for all property owned by the State in its possession, and file such reports as directed by the Comptroller.”³⁷

At the time Attorney General Opinion No. V-1443 was issued, the Texas Legislature had not yet enacted the Texas Public Information Act. However, since the law’s passage in 1973, multiple Texas Attorney General rulings have repeatedly ruled that the Public Information Act applied to the DRT. For example, in 1988 Attorney General Jim Mattox ruled that the DRT “is subject to the [Public Information Act] to the extent that it receives public funds for the management of the Alamo. All information regarding the collection, management, and expenditure of those funds is public.”³⁸ In 2000, Attorney General John Cornyn similarly ruled that “the DRT is a governmental body in this instance because the [Public Information Act] request [received by the DRT] seeks information concerning the collection, management, or expenditure of public funds.”³⁹ Thus, while the DRT is a private corporation that ordinarily would not be subject to state laws governing public records, any information that the DRT produced, collected, or maintained in conjunction with its duties as Alamo trustee constitute public records that are subject to the Public Information Act’s disclosure requirements.⁴⁰

V. GENERAL CONCLUSIONS

Based upon an extensive investigation into the DRT and its stewardship of the Alamo, this report generally concludes that the DRT’s leadership and management: (1) failed to properly maintain the Alamo in good order and repair as required by the Texas Government Code; (2) mismanaged state funds entrusted to the DRT’s control; and (3) breached the DRT’s fiduciary duty to the State of Texas as trustee of the Alamo.

In addition to the problems surrounding the DRT’s tenure as Alamo trustee, the OAG also documented significant issues associated with the DRT’s operations as a Texas nonprofit corporation. Specifically, the OAG uncovered multiple instances where the DRT violated its own bylaws and provisions of the Texas Business Organization Code that govern Texas nonprofit corporations. The State’s investigation also revealed that the DRT’s capacity to address its organizational failures was inhibited by its governance structure.

³⁶ Op. Tex. Att’y Gen. No. V-1443 (1952).

³⁷ *Id.*

³⁸ Tex. Att’y Gen. Open Records Letter No. 88-344 (1988).

³⁹ Tex. Att’y Gen. Open Records Letter No. 2000-2097 (2000).

⁴⁰ Under Chapter 552 of the Texas Government Code, the Public Information Act applies to all information “produced, collected, or maintained” by or for a “governmental body.” TEX. GOV’T CODE § 552.002(a). For the limited purposes of the Public Information Act, the term “governmental body” extends to “the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.” TEX. GOV’T CODE § 522.003(1)(a)(xii). However, the determination that a private corporation like the DRT is a “governmental body” as defined by Public Information Act does not mean the organization is a “governmental body” for purposes outside Chapter 552 of the Government Code. In 1998, for example, Attorney General Morales ruled that the DRT is not subject to the Open Meetings Act—which has a separate and distinct definition of a “governmental body” than the Public Information Act. Letter Op. Tex. Att’y Gen. No. 98-061. Nonetheless, the plain language of Chapter 552 clearly subjects the “part, section, or portion” of the DRT that “spends or is supported...by public funds” to the disclosure, retention, and related legal requirements codified in the Public Information Act.

Another significant problem that negatively impacted the DRT—as both a charitable organization and the State’s Alamo trustee—was the organization’s failure to maintain proper financial records. Financial ledgers reviewed by the OAG suggest that the DRT’s finances were largely in a state of disarray. The DRT maintained a myriad of separate bank accounts for no apparent reason. A review of the DRT’s financial records showed that the accounts served no particular purpose—because they were not employed to segregate the various funds under the DRT’s control.

Proceeds from Alamo gift shop sales, for example, were not maintained in a separate, segregated account. Thus, while the Government Code prohibited the DRT from using Alamo gift shop proceeds for any purpose other than maintaining and repairing the Alamo and its furnishings, the DRT did not maintain a special account for these restricted, limited-use state funds. Instead, the DRT comingled gift shop proceeds with both unrestricted state dollars and, in some instances, the organization’s own funds. As a result, the DRT could not ensure that state funds were only spent for legally authorized purposes.

The OAG’s investigation also revealed that the DRT’s leadership was not properly educated about the organization’s obligations as a trustee for the State—or the fiduciary duties associated with serving as a trustee. Consequently, the DRT breached those duties and allowed unnecessary conflicts of interest to develop between the organization and its beneficiary, the State of Texas.

VI. INVESTIGATIVE FINDINGS

A. THE DRT FAILED TO ADEQUATELY PRESERVE AND MAINTAIN THE ALAMO

Under the 1905 Act, the Alamo must “be maintained by [the DRT] in good order and repair.”⁴¹ Whether the DRT satisfied that statutory requirement is called into question by the fact that the DRT last approved a long-range master plan for the Alamo in 1979. Indeed, it was not until 2006 that the DRT even began its most recent, independent long-range planning process for the Alamo. However, whether that planning process was ever actually completed and approved is a matter of some controversy within the DRT. But even if the facts were not in dispute, it is now clear that no long-term preservation plan was ever effectively implemented.

According to the DRT’s official minutes, the organization’s General Convention approved a Master Plan for the Alamo on May 19, 2007 (“2007 Master Plan”). Despite the vote of approval at the organization’s annual membership meeting, the DRT’s leadership subsequently claimed that the 2007 Master Plan was not actually approved.

The dispute surrounding the 2007 Master Plan became an issue during legislative hearings, when the DRT’s representatives sought to avoid criticism by claiming the plan had never been approved. When legislators expressed concerns about the DRT’s failure to implement the Master Plan, the DRT’s representatives argued the organization should not be criticized for failing to implement an unapproved plan. However, the DRT’s attempts to rebut legislators’

⁴¹ Act of January 26, 1905.

concerns overlooked the fact that failing to approve and successfully implement a long-term Alamo preservation plan reflected a more significant stewardship failure.

Notwithstanding the DRT's statements to legislators asserting the Master Plan had not been approved, the DRT nonetheless relied on the 2007 Master Plan in fundraising appeals to prospective donors. For example, then-President General Madge Roberts referenced the 2007 Master Plan in fundraising letters to potential donors in December of 2007. In turn, donors relied on those representations to award grants to the DRT, including a \$1 million preservation grant awarded by the Ewing Halsell Foundation.

The DRT's governance structure, which is discussed at length below, was central to its inability to successfully adopt and implement a long-range plan for the Alamo. Under the DRT's complex bylaws, three levels of approval were necessary before a long-term Alamo preservation plan could be adopted and implemented. First, the DRT's Alamo Committee, which meets monthly, was required to review and approve all Alamo plans. Next, the 26-member Board of Management, which meets quarterly, had to grant its approval. Finally, the DRT's General Convention—which only meets annually and includes every member of the DRT—had to formally vote on a long-range Alamo plan. For the plan to be approved, it had to secure the support of a majority of the DRT members present at the annual convention.

When the 2007 Master Plan was still in the developmental phase in 2006, the DRT commissioned an engineering study so that its long-term plan could incorporate preservation projects and structural repairs. The engineering firm's findings were then incorporated into the 2007 Master Plan. According to those planning documents, the DRT's engineering firm found that the Alamo suffered from significant structural problems and thus had urgent preservation requirements. Indeed, leaks plagued the Alamo's roof and portions of the roof where leaks were present showed evidence of cracking. Further, the engineers also reported “discoloration of the walls”—which was attributed to a “rising damp”—and expressed concerns that the Alamo's 4-inch roof is “thin by today's standards.”⁴²

Given the problems documented by the engineering firm, the 2007 Master Plan recommended a series of engineering tests and structural repairs. Specifically, the Master Plan reported that “cracks in the roof of the Shrine are a concern and warrant further investigation. A finite computer analysis should be done in order to predict the capacity of the roof in its current, cracked condition.”⁴³

Despite those warnings, the DRT did not actually conduct finite computer analysis tests until the spring of 2010. Indeed, the DRT did not conduct the recommended structural tests until after an 8x4 inch piece of plaster fell from the roof to the floor twenty feet below. Even then, no testing actually occurred until the Governor's Office instructed the DRT to confirm whether the public could safely visit the Alamo.

According to a senior Alamo employee interviewed by OAG investigators, the roof of the Alamo Shrine has suffered from leaks since 1997. Separately, the former Director of the Alamo, David

⁴² 2007 Alamo Master Plan, pp. 38, 40.

⁴³ 2007 Alamo Master Plan, p. 40.

Stewart, corroborated the senior employee's statements to the OAG in his submission to Preservation Texas, which was filed after he resigned from his longtime executive position on the Alamo staff in May, 2009. According to Director Stewart's submission, which nominated the Alamo for designation as an endangered site, "the custodians of the Alamo have not approved and successfully accomplished any proactive measures to obtain the extensive funds needed to abate the ongoing deterioration of the historic structures."⁴⁴

Although multiple sources indicate roof leaks had persisted since 1997, the DRT did not approve a plan to repair the Alamo's roof until May, 2011. In recent years, the DRT failed to act despite the availability of funding for roof restoration. The DRT received a \$1 million preservation grant from the Ewing Halsell Foundation in May, 2008. However, for a variety of reasons—including organizational dysfunction, failures to prioritize historic preservation, and internal disagreements—the DRT did not utilize the Ewing Halsell Foundation's preservation grant to promptly and effectively repair the Alamo's roof.

It should be noted that the DRT contests the notion that delayed deployment of roof repairs stemmed from its failures and instead argues that its efforts to repair the Alamo's roof were stymied by the Texas Historical Commission, which the DRT claims delayed approving its proposed roof repair plan for almost 18 months. However, even assuming the DRT's allegations were true, the fact remains that even an 18-month delay does not account for the 15-year delay that transpired after the roof leak was discovered in 1997, five years of inaction after the DRT's engineering firm recommended remedial action in 2006, and the three years that elapsed after the Ewing-Halsell grant was awarded in May, 2008.

According to the GLO, multiple steps have been taken over the last twelve months to address the leaks and structural problems that have long plagued the Alamo's roof. The GLO reports that roof repairs have been implemented and are now complete. Further, the manufacturer of the roofing product, the contractor that repaired the roof, and GLO's construction services' personnel, as well as state architects and engineers, are conducting ongoing monitoring of the Alamo's roof. Finally, the GLO indicates that the newly installed roofing product and the contractor's installation work are subject to a 20-year warranty.

Another significant problem was the DRT's inadequate understanding of historic preservation. In the context of maintaining historic structures, historic preservation is effectively a term of art—and ordinary, day-to-day maintenance does not constitute historic preservation. Because the DRT did not fully grasp the nature and importance of historic preservation, it also failed to prioritize preservation in the Alamo's annual operating budgets.

The OAG's review of the DRT's Alamo budgets for fiscal years 2006 through 2009 revealed that only \$350 per year was allocated for preservation-related projects. When concerns about inadequate preservation spending arose during legislative hearings, the DRT's representatives protested that the Alamo's annual operating budget was not the exclusive source of preservation funding—and argued that grants augmented the annual Alamo operating budget's funding for

⁴⁴ Letter from David Stewart, former Director of the Alamo, to Preservation Texas (Oct. 17, 2009).

preservation.⁴⁵ However, the DRT’s failure to include historic preservation spending in its annual budget suggests that its leadership was not adequately focused on meaningful preservation efforts at the Alamo.

In sum, the DRT failed to: (1) prioritize historic preservation; (2) include adequate funding for preservation in its annual budgets; or (3) immediately remedy significant structural problems that were identified at the Alamo. These failures evidence a related—but independent and equally significant—oversight, which was the DRT’s inability to adopt, maintain, and implement a long-term strategic plan for the Alamo.

The absence of a long-term preservation and maintenance strategy, in turn, exacerbated the DRT’s failure to prioritize or adequately fund historic preservation—because there was not a blueprint that the organization’s leadership was compelled to follow when it made budgetary and governance decisions.

Finally, the decision to jettison the 2007 Master Plan not only interfered with strategic decision-making and legitimate historic preservation, it also dissipated state dollars that could have been utilized to repair and preserve the Alamo. According to the DRT, the 2007 Master Plan was developed at a cost of \$96,000.⁴⁶ Consequently, the financial, preservation, and opportunity costs associated with the DRT’s handling of the 2007 Master Plan were substantial.

The GLO reports that various steps have been taken to implement long-range planning and prioritize historic preservation at the Alamo. According to the GLO, the DRT developed an Alamo Management Plan that incorporates an historic preservation strategy. The GLO approved the plan, which became effective in June, 2012. Further, the GLO also reports that it is working with the Texas Historical Commission to prioritize the preservation projects contained in the management plan. These projects will be funded by the Ewing Halsell Foundation Grant and an “Alamo Investment Fund”—both of which are controlled by the GLO.

Additionally, the GLO’s Legislative Appropriations Request for the 2014-2015 Biennium includes an exceptional item seeking a \$1 million general revenue appropriation for preservation and restoration at the Alamo. According to the Deputy Land Commissioner’s October, 2012, testimony to the House Culture, Tourism, and Recreation Committee, the one-time funding request is necessary to finance an “extensive list of issues that need to be completed and fixed.”⁴⁷ The Deputy Commissioner further explained that there are multiple preservation projects “that couldn’t be properly tackled in the period of years leading up to [the GLO taking custody of the Alamo]” and stated: “We’re going to try to clean that up.”⁴⁸

⁴⁵ Hearings on Care for the Alamo Before the House Comm. on Culture, Recreation & Tourism, 82nd Leg., R.S. (Mar. 9, 2011) (testimony of Mary Carmack, Alamo Special Task Force Chairman, Daughters of the Republic of Texas).

⁴⁶ Letter from Patti Atkins, President General, Daughters of the Republic of Texas, to the Honorable Leticia Van de Putte, Senator, the State of Texas (April 22, 2011).

⁴⁷ The General Land Office’s Implementation of H.B. 3726 (82R), Regarding the Administration of the Alamo: Hearing Before the House Comm. on Culture, Recreation & Tourism, 82nd Leg. (Oct. 18, 2012) (testimony of Larry Laine, Deputy Commissioner and Chief Clerk, Texas General Land Office).

⁴⁸ *Id.*

B. THE DRT FAILED TO SECURE FUNDING FOR PRESERVATION OF THE ALAMO

1. *The Failure of the DRT's Capital Fundraising Campaign*

In May, 2007, the DRT launched a \$60 million fundraising campaign that was intended to pay for the improvements outlined in the 2007 Master Plan. Although the Master Plan included recommendations and goals related to preservation of the Alamo, the most prominent—and expensive—component of the plan was the construction of a new DRT-focused building that was intended to house the DRT Library on the grounds of the Alamo Complex. Despite the DRT's efforts to secure funding, financial records reviewed by the OAG indicate that the Capital Campaign had largely stalled by the end of 2008.

Throughout 2007 and 2008, the DRT was able to raise just \$1.6 million towards its \$60 million goal. From that time to the conclusion of the OAG's investigation in October, 2011, the DRT's fundraising successes were minimal. A significant impediment that negatively impacted the DRT's ability to raise money involved turnover within the Board of Management. When a new leadership team was elected by the same General Convention that voted to approve the 2007 Master Plan, the newly installed board members quickly distanced themselves from goals set out in the 2007 Master Plan. As a result, the long-range preservation plan for the Alamo was effectively abandoned by the DRT's newly elected officers. Until engineering studies were commissioned again in the summer of 2010—in response to demands from the Governor's Office that the DRT confirm the Alamo was safe for visitors—the DRT's preservation spending had been almost exclusively confined to a short-term contract with a conservator.

The DRT's inability to obtain funding for the Alamo stemmed from a combination of organizational dysfunction and highly publicized internal controversies, both of which substantially eroded public confidence in the DRT. Additionally, from the perspective of foundations and institutional donors, the DRT's cyclical management structure posed a significant concern that undermined its reputation as a nonprofit organization and therefore interfered with the DRT's capacity to secure the substantial financial commitments necessary to support the Alamo.

In March of 2010, the DRT launched the Allies of the Alamo campaign, a membership program that was intended to reenergize fundraising. However, the campaign ultimately failed to meet the revenue estimates detailed in the DRT's budget forecasts. Consequently, public confidence in the DRT was further eroded as yet another fundraising effort failed and the organization was forced to cancel its March, 2011, concert celebrating the 175th Anniversary of the Battle of the Alamo.⁴⁹

2. *The DRT Failed to Create an Alamo Business Plan*

In 2007, the DRT retained a paid consultant to help with fundraising for the 2008 Capital Campaign. Explaining that sophisticated donors are unwilling to commit funds to entities and

⁴⁹ The GLO reports that it has assumed control over approximately \$102,000 that was raised by the DRT during the Allies of the Alamo campaign.

projects that lack a strategic blueprint and demonstrated operational controls, the consultant urged the DRT to create an Alamo business plan. Although the DRT subsequently received grants to fund the creation of a business plan, no business plan was ever actually created. As a result, several Capital Campaign donors, citing the absence of a business plan, asked that their contributions be returned.

The DRT's inability to effectively manage either the Alamo or its own affairs appears to be directly related to its antiquated governance structure—which is largely cyclical because of complete turnover on the Board of Management and other key leadership positions every two years. Effective long-range business planning was essentially impossible because any attempt to produce and implement a long-term plan simply fell victim to the board's two-year term of office. Indeed, the highly factionalized nature of the DRT's active membership frequently meant that one elected board's long-range plan was repealed or nullified once a new board was selected two years later.

With the GLO's approval, a long-term planning document developed by the DRT became effective in June, 2012. Based upon the terms of the DRT's contract with the GLO, the current Alamo Management Plan will govern operations through August 31, 2013. According to the GLO, the Alamo Management Plan will be revised and updated on an annual basis and can be amended, if necessary, during the interim period.

3. *Financial Distress at the Alamo in 2011*

The DRT's financial ledger for Fiscal Year 2011 indicates the Alamo's income stream could not keep pace with its expenses. Indeed, by February, 2011, with three months remaining in the fiscal year, the DRT faced a \$225,000 shortfall.⁵⁰ At the time, the DRT was reliant upon gift shop sales for approximately 75% of the Alamo's total operating income. Thus, the 2011 deficit appears to be attributable to both a decrease in gift shop sales and the DRT's inability to reduce operating expenses to offset declining gift shop sales. The deficit was particularly problematic because the DRT's Alamo budget covered only basic operation and maintenance costs—while only a fraction of total budgeted expenses (2.4%) were earmarked for preservation.

Although the DRT underfunded historic preservation at the Alamo during its tenure as custodian, this report need not address the implications of prior failures on a prospective basis because custody of the Alamo has been transferred to the GLO. However, it is worth noting that the Legislature recognized the importance of securing financial support for the historic preservation, and authorized the GLO to partner with a private foundation to help provide long-term funding for the Alamo. The GLO reports that it issued a Request for Information seeking input from potential foundations about raising funds for the benefit of the Alamo. Further, the GLO indicated it has engaged in discussions with other organizations that assist foundations with fundraising and is working toward the formation of a permanent foundation to support the Alamo.

⁵⁰ The Alamo Budget Fiscal Years 2010-2011, "The Alamo Worksheet...Actual and Budget Preparation for FY 10/11." According to the GLO, the DRT's actual deficit for FY 2011 was reduced significantly to \$31,495 by the end of the fiscal year.

C. The DRT Breached Its Fiduciary Duty to the State of Texas

1. *The DRT's Attempt to Trademark The Alamo*

Although the DRT's 2008 Capital Campaign was well-intentioned, it proved to be overly ambitious—and was ultimately unsuccessful for a variety of reasons that this report attempts to explain. After the Capital Campaign failed, the DRT appropriately sought other revenue streams in an effort to meet the Alamo's increasingly costly preservation needs.

At the heart of one of the DRT's more controversial plans to raise revenue was its initiative to trademark and license the Alamo. Significant problems arose, however, when the DRT failed to consult with state officials prior to filing its trademark application. This failure not only caused the DRT and the State to become mired in a costly legal dispute—it also constituted a clear breach of fiduciary duty by the DRT.

As a trustee, the DRT did not own the Alamo and therefore could not assert ownership rights over intellectual property associated with the Alamo or its likeness. Thus, by attempting to trademark the State's property in its own name, the DRT improperly used its position as trustee to gain a benefit for itself at the expense of the State. The legally proper approach would have been for the DRT to seek a trademark on behalf of the State of Texas.

However, the DRT's October, 2009, application to the U.S. Patent and Trademark Office ("USPTO") sought to trademark the Alamo in the DRT's own name—rather than on behalf of the State. This decision plainly constituted a breach of fiduciary duty by the DRT. As the Texas Supreme Court has explicitly held, a trustee is prohibited "from using the advantage of his position to gain any benefit for himself at the expense of his trust and from placing himself in any position where his self interest will or may conflict with his obligations as trustee."⁵¹

The DRT further failed to fulfill its duty to the State when it elected not to notify or consult with the State prior to filing the trademark application. Under Texas law, trustees have a legal obligation to affirmatively disclose matters that affect their beneficiaries' interests: "Trustees and executors owe their beneficiaries a fiduciary duty of full disclosure of all material facts known to them that might affect the beneficiaries' rights."⁵² Yet, the DRT never informed the State about its plan to trademark Texas' most cherished and popular historic landmark.

When the State subsequently learned about the Alamo trademark submission from a third party, the Governor's Office notified the DRT that it should not continue to pursue its trademark application. The DRT's leadership, however, was unmoved by the State's objections. Consequently, the State engaged in months of unsuccessful negotiations with the DRT's leadership, which refused to back down. As a result, the State was forced hire outside intellectual property counsel to represent its interests before the USPTO. The State's formal objection to the DRT's trademark application, which was filed with the USPTO on October 13, 2009, explicitly stated that: "The State of Texas will be damaged by the registration by

⁵¹ Slay v. Burnett Trust, 187 S.W. 2d 377, 388 (Tex. 1945).

⁵² Huie v. DeShazo, 922 S.W.2d 920, 923 (Tex. 1996).

Applicant of the mark THE ALAMO in that it will block registration by the rightful owner of the mark, the State of Texas, and interfere with and disparage the State's claim of ownership.”⁵³

After months of costly legal negotiations, in April, 2011, the State and the DRT reached a preliminary agreement that protected the State of Texas’ rights to the Alamo trademark. That agreement was initially negotiated by the Governor’s Office, finalized by the GLO, and submitted to the USPTO in November, 2011. As a result, the GLO now holds the trademark “The Alamo” on behalf of the State of Texas. Under that agreement, the GLO gave the DRT non-exclusive rights to use the trademark “The Alamo.”

More recently, the GLO reports that it has retained outside legal counsel to advise the agency on intellectual property laws that governs the State’s Alamo trademark. The GLO indicates that outside counsel is responsible for completing all necessary registration requirements and advising GLO staff on product branding agreements for goods that feature “The Alamo” trademark.

Although the trademark disagreement between the State and the DRT was ultimately resolved, the adversarial proceedings that ensued were avoidable. Indeed, the trademark disagreement warrants further analysis here because it is illustrative of multiple themes that are addressed in this report.

First, the DRT did not understand its fiduciary duty to the State of Texas. In an ordinary trust case, a trustee who attempted to trademark his or her beneficiary’s property in the trustee’s own name would be found to have committed a clear breach of fiduciary duty. However, if the trustee instead sought to trademark a beneficiary’s intellectual property in the beneficiary’s name, that would constitute a careful exercise of fiduciary duty—because the trustee would be unquestionably acting in the beneficiary’s best interest. Thus, by attempting to trademark the Alamo in its own name, the DRT breached its fiduciary duty to the State of Texas.

Second, despite its duty to act in the State’s best interest, the DRT displayed little hesitation to approach the State as an adversary. Although the Governor’s Office expressed concerns about the trademark application, the DRT nonetheless escalated the dispute by petitioning to have the trademark issued in the DRT’s name over the State’s objections. Equally problematic, as this report details in Section VI.A.3., the OAG’s investigation revealed that state funds were improperly used to pay the DRT’s lawyers to negotiate against the State. Thus, the DRT not only attempted to trademark its beneficiary’s property in its own name—without notifying the State in advance—but when the State objected informally, the DRT continued to pursue the trademark, forced the State to incur expenses for outside counsel, and subsequently misappropriated state dollars to fund lawyers who negotiated against the State on the DRT’s behalf.

Third, the DRT’s adversarial approach prolonged the disagreement and drove up legal costs for both the DRT and the State. Ultimately, the DRT and the State entered into an agreement that

⁵³ Notice of Opposition; State of Texas, Opposer v. The Daughters of the Republic of Texas, Applicant; Application No. 77/847,556, In the United States patent and Trademark Office before the Trademark Trial and Appeal Board (Oct. 13, 2009).

was amenable to both parties. Thus, history shows that an agreement could have been secured before the State and the DRT were directly adverse in a contested legal matter.

2. *The DRT's Failed Contract with William Morris Endeavor, LLC*

The trademark dispute was closely tied to the DRT's decision to hire Los Angeles-based William Morris Endeavor Entertainment, LLC (WME) to develop a marketing plan for the Alamo. Part of that plan contemplated a large-scale event celebrating the 175th Anniversary of the Battle of the Alamo. By the fall of 2010, the State had formally objected to the DRT's trademark application. Despite that ongoing legal dispute, the DRT nonetheless moved forward with its plan to capitalize on the Alamo trademark by engaging WME to promote and market the Alamo.⁵⁴ The contract, which was executed by the President General on October 28, 2010, obligated the DRT to pay WME a total of \$900,000 over a one-year period.

Specifically, the terms of the WME contract provided for twelve monthly payments of \$75,000. Despite its nearly \$1 million cost, the contract was not included in the DRT's annual budget for FY 2011. Further, a review of the DRT's accounting records revealed that there was not sufficient funding to support the contract because the DRT was already facing a budget deficit when the WME contract was executed. Thus, while the WME contract, at first glance, may have seemed like a creative solution to the DRT's fundraising woes, the plan was destined to fail because the organization's leadership did not properly budget for this extraordinary expense.

In addition to uncovering significant financial problems associated with the WME contract, the OAG's investigation also revealed several governance failures:

First, the DRT's decision to hire WME was not the culmination of a well-developed, long-range plan. Neither the Alamo Committee, nor any other special committee related to the Alamo, was involved in the planning and decision-making process. Instead, the entire concept was conceived by the DRT's marketing staff—which independently developed and pursued the contract without consulting the relevant governance committees.

Second, when WME representatives made their presentation to the DRT, only a small group of DRT members were invited to participate in the meeting. Despite the contract's substantial cost, neither the Alamo Committee nor the Board of Management was present when a select few DRT representatives met with WME.

Third, under the DRT's bylaws, the Alamo Committee was required to approve all contracts involving the Alamo.⁵⁵ However, the WME contract was neither reviewed nor approved by the Alamo Committee.

Fourth, the DRT's bylaws also required that all contracts involving the Alamo be presented to the Board of Management as a recommendation of the Alamo Committee.⁵⁶ Because the

⁵⁴ Press Release, Daughters of the Republic of Texas, *The Alamo Becomes the First Historic Landmark Signed by William Morris Endeavor!* (Oct. 29, 2010).

⁵⁵ Daughters of the Republic of Texas Bylaws, Art. 10 §2(a).

⁵⁶ Daughters of the Republic of Texas Bylaws, Art. 7 §1(a).

contract was never even presented to the Alamo Committee, it was not even eligible for consideration and approval by the Board of Management.

Fifth, board members were not given a copy of the WME contract before they were asked to approve it.

Sixth, although the Board of Management has historically had contractual terms explained to board members before they were asked to vote on a proposed contract. However, legal counsel was not included in the WME contract approval process.

The chronology of events surrounding the WME contract is straightforward. The first week of October, 2010, WME representatives met with DRT President General Patti Atkins in San Antonio. During that meeting, Ms. Atkins reached an agreement in principle with WME wherein the DRT would pay \$75,000 per month for WME to promote the Alamo and market the 175th Anniversary concert. On October 15, the DRT's Marketing Director sent an email to the Board of Management outlining the terms of the proposed one-year contract with WME. After informally polling board members, Ms. Atkins sent an email on October 20 indicating that a majority of the Board would support the contract "only if we can get an underwriter."⁵⁷

Under the DRT's bylaws and provisions of the Business Organizations Code that govern nonprofit corporations, informally soliciting board members' input via email does not constitute a formal meeting of the Board. Nonetheless, although the Board of Management had neither met to approve the WME contract—nor authorized the President General to hire the firm—on October 27, 2010, Ms. Atkins signed the agreement.

On October 29, the DRT issued a press release announcing "the signing of a contract" with WME.⁵⁸ Nine days after Ms. Atkins signed the contract, on November 5, 2010, the Board of Management met in Austin for its quarterly meeting. During that meeting, board members elicited assurances from Ms. Atkins, who affirmed that private underwriters would be secured to fund the entirety of the \$75,000 per month agreement. Relying on Ms. Atkins' assurances that neither DRT nor state funds would be spent to finance the WME contract, the Board voted to ratify the agreement Ms. Atkins had executed nine days earlier.

Despite the President General's assurances to the board, the OAG's investigation revealed that both state and DRT funds were utilized to pay WME. Further, Ms. Atkins could not have made those assurances to the board in good faith—because it was simply not reasonable to believe that the DRT could secure \$900,000 in less than two months. Similarly, members of the Board of Management should have questioned the veracity of Ms. Atkins' assurances and requested supporting documentation because the Board was well aware of the DRT's recent fundraising difficulties.

Ultimately, the WME contract was compromised by a multitude of bylaws violations, deviations from the DRT's standard procedures, and even violations of the Business Organizations Code—

⁵⁷ Email from Patti Atkins, President General, Daughters of the Republic of Texas, to Tony Caridi, Marketing Director, Daughters of the Republic of Texas, and Carolyn Lightfoot (Oct. 20, 2010).

⁵⁸ Press Release, Daughters of the Republic of Texas (Oct. 29, 2012).

which contains specific provisions that regulate nonprofit corporations' meeting notices, meetings by remote communications technology, and boards of directors' governance procedures.⁵⁹ After DRT members expressed concern that the Board of Management had not properly approved the WME contract before it was executed, the President General argued that she secured the Board's approval via an email exchange with board members, which thus constituted an electronic meeting. However, the evidence unquestionably demonstrates that the President General executed the agreement without the Board's prior approval or authorization.⁶⁰

Indeed, rather than convene an actual board meeting, the President General merely "polled" selected board members via email and then characterized those email exchanges as an electronic board meeting. That flawed process appears to violate the Business Organizations Code's requirements for a special meeting of a nonprofit corporation's governing board.⁶¹ The President General's execution of the agreement without the Board's authorization also violated Article 7, Section 1(a) of the DRT's bylaws. While the DRT's General Counsel testified to the Texas Legislature that the DRT's bylaws were not violated, there is no evidence to support that testimony. All of the documents reviewed by the OAG during the course of its investigation suggest that the DRT's bylaws were, in fact, violated—and no documents appear to confirm that the WME contract approval was consistent with the bylaws' requirements.

Further, the OAG's investigation also revealed that the DRT did not actually secure underwriters to finance the WME contract. Because the WME contract received significant public scrutiny, the DRT's representatives were questioned about the agreement during a hearing before the Texas House of Representatives Committee on Culture, Tourism, and Recreation.⁶² The DRT's responses to those questions were misleading because they intimated that the DRT actually had secured underwriters to fund the WME contract. Concerned about the veracity of the DRT representatives' testimony, the OAG sent a written inquiry to the DRT's General Counsel, who subsequently acknowledged that two individuals had been *asked* for \$500,000 and \$300,000 contributions respectively. In a March 28, 2011 letter to the OAG, the DRT's General Counsel acknowledged that two individuals "expressed interest in underwriting the contract," but conceded that there were no "written monetary commitments" in place to service the contract.⁶³

Since then, at least one of the potential contributors cited in the General Counsel's letter has publicly disputed the DRT's description of the facts, explaining that he had only discussed providing financial support for the 175th Anniversary concert.⁶⁴ Further, the would-be contributor stated that he did not ultimately provide financial support to the DRT because he was never given the supporting documentation that he requested: "We'd been having problems getting information, including who the artists were going to be."⁶⁵

⁵⁹ TEX. BUS. ORG. CODE §§6.051, 6.002, 22.214, and 22.220.

⁶⁰ While the DRT maintains that proper procedures were followed—and that the DRT's Board of Management convened an electronic meeting before the President General executed the contract—the Board's own actions reflect its acknowledgement that the electronic meeting was not valid. If the purported electronic meeting were valid and legitimately authorized the President General to execute the WME contract, the Board of Management would not have had to ratify the contract after-the-fact when the board met for its quarterly meeting on November 5, 2011.

⁶¹ TEX. BUS. ORG. CODE §22.002.

⁶² Notice of Public Hearing, House Comm. on Culture, Tourism, & Recreation, 82nd Leg., R.S. (Mar. 9, 2011).

⁶³ Ewbank Letter (Mar. 28, 2011).

⁶⁴ Scott Huddleston, Senate Panel to discuss DRT's stewardship of Alamo Shrine, SAN ANTONIO EXPRESS-NEWS, April 12, 2011.

⁶⁵ *Id.*

Notwithstanding the President General's assurance that underwriters would exclusively fund the WME contract, only one \$75,000 commitment—which funded just the first month of the contract—was ever successfully secured. And even that commitment, a \$75,000 payment by a DRT member named Carolyn Lightfoot was listed on the Alamo's ledger as a loan.⁶⁶

When the Board of Management was asked to ratify the President General's decision to execute the WME contract on November 5, 2010, the DRT had only received Ms. Lightfoot's \$75,000 loan and had not secured any donations to pay for WME's services. Despite Ms. Atkins' October 20 email acknowledging that the Board would approve the agreement "*only if we can get an underwriter,*" the minutes of the November 5 board meeting reveal that she failed to inform board members that no underwriters had actually been secured.⁶⁷

Ultimately, the DRT was not able to secure any underwriters to fund the WME contract. As a result, the DRT made just one \$75,000 payment to WME—and that November, 2010, payment was funded by the money Carolyn Lightfoot loaned the DRT. Despite the absence of funding from underwriters to support the contract, the DRT continued to use WME's services through the month of December. And because the DRT lacked the financial resources to pay for those services, it was left with a \$75,000 debt to WME at the end of December.⁶⁸ By early January, 2011, the DRT had canceled its contract with WME, abandoned plans for a high-profile 175th Anniversary concert, and was left with debts totaling \$150,000 because of the failed WME contract.

When the House Culture, Tourism, and Recreation Committee held its hearing on the "care of the Alamo" two months later,⁶⁹ however, the DRT's representatives were less than forthcoming about the organization's outstanding debts to Carolyn Lightfoot and WME. In fact, when Sen. Leticia Van de Putte specifically inquired about the status of the WME contract, the DRT's General Counsel responded: "We no longer have a contract with [WME]—or any obligation to them."⁷⁰ That statement disregarded the \$75,000 debt to WME and the \$75,000 debt to Ms. Lightfoot.

Based upon the evidence reviewed during the course of the investigation, there are at least two potential reasons why the DRT was less than forthright about its outstanding financial obligations in the wake of the collapse of the WME contract. First, the DRT vigorously opposed House Bill 3726, which removed the DRT as Alamo trustee and transferred custody of the Alamo to the GLO. Given that opposition, the DRT had an obvious motivation for the organization to obscure the depth of its financial distress—and its intention to use state funds to satisfy its debt to WME. Second, the DRT's leadership did not want its own members to know that the President General had subjected the DRT to substantial debt without the authority to do so.

⁶⁶ Alamo Fund General Ledger (Oct. 2010 – Feb. 2011).

⁶⁷ Email from Patti Atkins (Oct. 20, 2010).

⁶⁸ Ewbank Letter (Mar. 28, 2011).

⁶⁹ Notice of Public Hearing, House Comm. on Culture, Tourism, and Recreation (Mar. 9, 2011).

⁷⁰ Hearings on Care for the Alamo Before the House Comm. on Culture, Recreation & Tourism, 82nd Leg., R.S. (Mar. 9, 2011) (testimony of Jim Ewbank, General Counsel, Daughters of the Republic of Texas).

Documents obtained by the OAG during the investigation reveal that Ms. Lightfoot always intended for her payment to be a loan. In November, 2010, when she submitted her \$75,000 check, she also demanded that the DRT provide “some written guarantee of payback.”⁷¹ Further, Ms. Lightfoot requested that the DRT repay her loan by March of 2011. In response to Ms. Lightfoot’s request, on November 2, 2010, President General Patti Atkins sent an email acknowledging her inability to authorize the DRT to incur debt: “Hey guys, I’m out of the loop here, but I can tell you up front I don’t have the authority to borrow money for the DRT or the Alamo. Tony I was under the impression you had the funds secured when I polled the [Board of Management]. They approved ONLY with underwriters to cover this expense.”⁷²

The President General’s November 2 email exchange also reveals that she was aware that underwriting had not actually been secured. Nonetheless, Ms. Atkins made no effort to inform the Board and instead allowed WME to begin providing services that the organization could not afford. Further, Ms. Atkins took no action to remedy the situation until January, thereby leaving the DRT an additional \$75,000 in debt to WME for services rendered in December. When the contract was finally cancelled in January, 2011, the DRT avoided a collection action or other litigation in California state court by agreeing to repay WME through a series of \$7,500 monthly payments over a ten-month period.⁷³

Given the WME contract’s high-profile announcement and the public controversy surrounding the President General’s decision to unilaterally execute the agreement without approval from the Board of Management, there was significant legislative and public interest in the agreement. In particular, legislators were concerned about the DRT’s decision to enter into such an expensive contract at a time when the organization had not devoted sufficient resources to repairing the Alamo’s structural problems. It was that concern that prompted Sen. Van de Putte to ask the DRT’s General Counsel “what happened” with the WME contract.⁷⁴ In turn, the General Counsel’s implausible statement that the DRT “no longer [had] a contract with [WME]—or any obligation with them,” prompted the OAG to seek additional information about the status of the contract and the DRT’s outstanding obligations to WME.⁷⁵

After reviewing the General Counsel’s testimony, the OAG had two primary concerns. First, the OAG wanted to confirm whether the DRT, in fact, had an outstanding debt to WME. Second, and more importantly, the OAG was particularly concerned about the DRT improperly using state funds to pay WME. In light of those concerns and the DRT’s seemingly implausible responses to legislators’ questions, on March 18, 2012, the OAG sent the DRT a letter specifically asking whether the organization: (1) had any outstanding debts to WME; and (2) had made any payments to WME with state funds.

⁷¹ Email from Carolyn Lightfoot, Daughters of the Republic of Texas, to Patti Atkins, President General, Daughters of the Republic of Texas and Tony Caridi, Marketing Director, Daughters of the Republic of Texas (Nov. 2, 2010).

⁷² Email from Patti Atkins, President General, Daughters of the Republic of Texas, to Tony Caridi, Marketing Director, Daughters of the Republic of Texas, and Carolyn Lightfoot (Nov. 2, 2010).

⁷³ Under the terms of the WME contract, any legal dispute would be governed by California law and subject to the jurisdiction of California courts.

⁷⁴ Hearings on Care for the Alamo Before the House Comm. on Culture, Recreation & Tourism, 82nd Leg., R.S. (Mar. 9, 2011) (statement of Sen. Leticia Van de Putte).

⁷⁵ Hearings on Care for the Alamo Before the House Comm. on Culture, Recreation & Tourism, 82nd Leg., R.S. (Mar. 9, 2011) (testimony of Jim Ewbank, General Counsel, Daughters of the Republic of Texas).

The first question was answered on March 28, 2011, when the DRT’s General Counsel sent a letter to the OAG indicating that he may have misunderstood Sen. Van de Putte’s question. Further, the General Counsel clarified that he did not mean to suggest that the DRT did not owe an outstanding debt to WME and acknowledged the existence of a settlement agreement requiring the DRT to make “ten (10) monthly payments of \$7,500 to pay for WME’s December 2010 services.”⁷⁶

Resolving the OAG’s second concern about the DRT’s use of state money to pay WME proved more difficult because the DRT was consistently less than forthcoming about how it intended to pay WME. As documented above, the DRT leadership’s pattern of duplicity dated as far back as the Board of Management’s post-hoc approval of the agreement, when the President General falsely told Board members that the WME contract would be funded by underwriters. And it seemingly continued two months later when the DRT’s General Counsel wrote in a January 18, 2011, letter to the OAG that: “payments [to WME] are to come from underwriting sources.”⁷⁷ In that letter, the General Counsel also affirmatively stated that: “No DRT funds or [state] Alamo funds have been committed to make payments on the [WME] contract.”⁷⁸

Given the fact that the WME contract had been abandoned by early January, it was simply not plausible that the DRT would secure underwriter funding for a cancelled contract—because the DRT had already proven incapable of obtaining donations to support the agreement when it was still a live contract. As a result, by the time the legislative hearings were convened in March, the OAG had significant concerns about the DRT’s candor with the State. Those concerns were exacerbated when the OAG received an evasive response to its March 18 letter.

Rather than disclose the truth about the DRT’s plans, the General Counsel instead misleadingly wrote: “As of March 28, 2011, State/Alamo funds have not been paid to WME for any purpose.”⁷⁹ Concerned that the DRT may not have revealed its true intentions, the OAG resubmitted the question on April 5—after the DRT was scheduled to make the first \$7,500 payment to WME.⁸⁰ The State finally learned the truth on April 12, 2011, when the DRT’s General Counsel acknowledged that the DRT paid WME with state funds: “Funds from the Alamo marketing budget in the amount of \$7,500 were paid to WME on April 4...”⁸¹

Once the OAG learned that the DRT planned to improperly use state funds to pay WME, it threatened legal action against the organization. On April 28, 2011, the OAG sent the DRT’s General Counsel a demand letter explicitly stating that state funds should not be utilized to finance the DRT’s May 1, 2011 payment to WME. A letter from the Deputy Attorney General for Civil Litigation warned the DRT that paying WME with state funds “constitute[d] a misappropriation of State resources and a breach of fiduciary duty to the State of Texas.”⁸² The

⁷⁶ Ewbank Letter (Mar. 28, 2011).

⁷⁷ Letter from Jim Ewbank, General Counsel, Daughters of the Republic of Texas to Marsha Acock, Assistant Attorney General, Charitable Trusts Section, Office of the Attorney General (Jan. 11, 2011).

⁷⁸ *Id.*

⁷⁹ Ewbank Letter (Mar. 28, 2011).

⁸⁰ Letter from Marsha Acock, Assistant Attorney General, Charitable Trusts Section, Office of the Attorney General, to Jim Ewbank, General Counsel, Daughters of the Republic of Texas (April 5, 2011).

⁸¹ Letter from Jim Ewbank, General Counsel, Daughters of the Republic of Texas to Marsha Acock, Assistant Attorney General, Charitable Trusts Section, Office of the Attorney General (April 12, 2011).

⁸² Letter from Bill Cobb, Deputy Attorney General for Civil Litigation, Texas Attorney General’s Office to Jim Ewbank, General Counsel, Daughters of the Republic of Texas (April 28, 2011).

very next day, the DRT's General Counsel responded with a letter explicitly promising the OAG that the DRT would not "make the May payment [to WME] from those [State] funds without further discussion with your office."⁸³

Despite the General Counsel's written assurance that no additional payments would be made with state funds, the DRT nonetheless secretly continued paying WME with checks drawn from state accounts under the DRT's control. Financial records subsequently obtained by the OAG show that checks drawn from state accounts were paid to a WME subsidiary on May 13, 2011 and June 10, 2011. The DRT's use of state funds to make the May and June payments to WME was not only legally improper—but it also violated the terms of the General Counsel's written assurances to the Texas Attorney General's Office.

Notably, the two additional improper payments were never proactively disclosed to the OAG. Indeed, the DRT's General Counsel never notified the OAG that additional payments were made to WME with state funds. In fact, those payments were never affirmatively disclosed but were instead discovered by the OAG in October, 2011, when the DRT produced financial records that the OAG sought in the process of completing its investigation.

An additional, final issue with the WME contract involves the propriety of the DRT Board's more recent efforts to repay Carolyn Lightfoot's \$75,000 loan. As of September, 2012, Ms. Lightfoot was a member of the Board of Management.⁸⁴ With a \$75,000 outstanding loan to the DRT, Ms. Lightfoot was not just a board member—she was one of the organization's largest creditors. Given the duty of care that a nonprofit's board members owe to the organization and the significant questions surrounding the propriety of repaying a loan that was never authorized by the Board of Management, Ms. Lightfoot's presence on the Board raises additional governance issues that may need to be resolved.

According to the GLO, the DRT repaid the State for all WME-related expenditures in May, 2012. Further, the GLO reports that it has assumed control over all state funds that were previously entrusted to the DRT.

3. *The Misappropriation of State Funds to Pay Legal Fees*

During the course of its investigation, the OAG also discovered that the DRT inappropriately spent state dollars on its own legal expenses. These expenditures were improper because they benefited the DRT—not the Alamo—and were unrelated to any legitimate Alamo purpose. Further, these expenditures constitute a breach of fiduciary duty because the DRT utilized state funds to finance lawyers who represented the DRT in a legal dispute against the State.

According to the DRT's financial records, since January 1, 2010, more than \$56,000 in Alamo funds—state dollars entrusted to the DRT's control—have been diverted to pay the DRT's attorneys' fees. Among the legal expenses that the DRT paid with state dollars were fees that its

⁸³ Letter from Jim Ewbank, General Counsel, Daughters of the Republic of Texas to Bill Cobb, Deputy Attorney General for Civil Litigation, Texas Attorney General's Office (April 29, 2011).

⁸⁴ Minutes of the Board of Management, Daughters of the Republic of Texas (Gonzales, Tex., Sept. 14, 2012).

lawyers received for: (1) negotiating the Alamo trademark dispute with the Governor's Office; (2) resolving the DRT's outstanding obligations to WME after it defaulted on the contract; (3) representing the DRT's interests before the Texas Legislature during the last Legislative Session—when the DRT opposed legislation that transferred custody of the Alamo to the General Land Office; and (4) negotiating the DRT's agreement with the GLO after the 2011 Act was passed.

These legal services solely benefitted the DRT in its own corporate capacity. Thus, by paying for its legal services with state funds, the DRT misappropriated state funds and committed a breach of fiduciary duty. Evidence that the DRT funded its legal counsel with state money was first discovered by the GLO, which was mediating an evidentiary dispute between the OAG and the DRT just before the conclusion of the investigation. According to the GLO, the DRT's legal services contracts are now subject to review by GLO staff, and state dollars can only be utilized to pay for expenses that relate directly to official Alamo business.

4. *The Absence of an Executive Director at the Alamo*

The Alamo is both one of the State's most important historical landmarks and its top tourist attraction. Given the Alamo's unique preservation requirements and historic significance, a professional, full-time Executive Director is necessary to ensure the Alamo Complex is properly managed, operated, and preserved. Until late 2009, the DRT appeared to recognize the importance of maintaining a full-time, professional executive officer to manage the Alamo and oversee its staff. However, in January, 2010, the DRT's leadership elected to allow its Alamo Committee chairman, a volunteer, to manage day-to-day operations at the Alamo.

Even before the DRT abolished the Alamo Director position in early 2010, the Alamo has historically lacked a functional chief executive who maintained operational control over the Alamo Complex. The OAG's investigation revealed that the DRT preferred a governance model wherein decision-making authority over day-to-day operations was retained by the Alamo Committee. Under the DRT's bylaws, Board of Management approval was required for even minor decisions involving the Alamo Complex. This board-driven governance structure was both ineffective and detrimental to the long-term preservation of the Alamo.

Traditionally structured and professionally managed nonprofit organizations typically require the governing board to hire an Executive Director, who is empowered to make day-to-day management decisions. However, the DRT's leadership adopted an alternate approach wherein volunteer committees and board members largely micro-managed Alamo operations. For example, even the Alamo Director was not authorized to independently hire low-level employees. Instead, both the Alamo Committee and the Board of Management had to approve all applicants for employment. More recently, the OAG's investigation revealed that each volunteer Alamo Committee member was assigned individual Alamo employees whom they were charged with managing directly. Although Alamo Committee members were effectively assigned management responsibilities, the OAG found no evidence that committee members were given any legal guidance about laws governing the employer/employee relationship. Thus,

this organizational structure was not only cumbersome, it also exposed the DRT and Alamo Committee members to unnecessary employment litigation risks.

In September 2010, the DRT terminated its long-time Chief of Alamo Security and began accepting applications for a replacement to run the Alamo's security apparatus. During the interview process, the Alamo Committee decided that one of the security chief applicants should fill the open Alamo Director's position. Although unique professional skills are necessary to oversee a historic structure like the Alamo, the DRT did not conduct a broad-based search for a qualified, professional chief executive. Instead, the DRT selected an Alamo Director whose most recent professional endeavor involved overseeing security at a shopping mall. The applicant selected by the DRT had no experience with nonprofit administration, museums, or historic landmarks.

Since the passage of House Bill 3726, GLO has taken custody of the Alamo and entered into an Interim Operating Agreement with the DRT that outlines the duties, responsibilities, and executive authority of several Alamo employees. In May, 2012, the GLO announced the appointment of a senior executive at a San Antonio-based nonprofit as the first-ever State Director of the Alamo.⁸⁵ On November 9, 2012, however, the GLO announced that the Director of the Alamo was resigning effective December 3, 2012. The press release announcing the State Director's resignation noted that he: "helped increase future revenue with a new vendor for the Alamo gift shop and new donation procedures. He also assisted with initiating major new conservation projects and working with the National Parks System to further the World Heritage nomination for the Spanish Missions, including the Alamo."⁸⁶

With the Director's resignation, the GLO reports that an executive-level staff member will be assigned to oversee operations at the Alamo. The second-ranking official at the Alamo, the Executive Administrator—who was selected by the DRT and approved by the GLO—reports directly to the GLO executive who is responsible for overseeing the Alamo Complex.

5. *Conflict of Interest: The DRT Library at the Alamo*

Prior sections of this report detail specific instances where the DRT leadership's decision-making clearly prioritized its own institutional prerogatives over fulfilling its duties to the State of Texas. The OAG's investigation also uncovered a more subtle, long-term conflict of interest that interfered with the DRT's duties as the State's Alamo trustee. This broader, systemic conflict stemmed from the DRT's failure to distinguish between its own mission as a nonprofit genealogical society and its fiduciary duties to the State of Texas as trustee of the Alamo.

The DRT Library, which occupies the state-owned Alamo Complex, lies at the nexus of these two competing and divergent interests. First, the DRT failed to distinguish and separate its own property from state-owned artifacts in its possession as a trustee for the State of Texas. Second, the OAG's investigation revealed that the DRT improperly utilized state funds to operate its library—which is not a state facility. Third, while the DRT incorrectly claimed that it owned all

⁸⁵ Press Release, General Land Office, Texas General Land Office Names State Alamo Director (May 16, 2012).

⁸⁶ Press Release, The Alamo, (Nov. 9, 2012).

the historic heirlooms in its library, the DRT nonetheless used state funds to pay staff salaries, maintenance, and other expenses that exclusively benefitted the DRT Library. Put differently, the DRT improperly asserted ownership over state-owned artifacts that were entrusted to its control—but nonetheless used state dollars to operate the facility where those purportedly DRT-owned artifacts were stored.

The Alamo Complex includes a building that houses the DRT Library and two conference rooms known as Alamo Hall. The largest of these meeting rooms was available to the public for a rental fee. While the public had to pay a fee to use facilities at the DRT Library—which the DRT funded with public money—the DRT availed itself and its members of those rooms at no charge. Two of the smaller rooms in Alamo Hall were not available to the public at all because they were used exclusively by a San Antonio-based DRT chapter.

The 2011 Alamo budget allocated more than \$350,000 in state funds for the operation of the DRT Library.⁸⁷ Because the DRT largely excluded the public from its library and primarily used the DRT Library to house its membership records and genealogical research staff, it is not clear how this endeavor served a legitimate Alamo purpose. Indeed, supporting the DRT Library certainly did not serve to preserve, maintain, or support the Alamo. Though state-owned artifacts were stored in the DRT Library, the DRT incorrectly asserted ownership over those artifacts. Consequently, the cost of storing those historic relics provides little legal justification for the decision to fund the DRT Library's operations with state dollars—because, at the time, the DRT apparently believed it was using state funds to maintain its own collection of artifacts. By utilizing state funds to support the DRT Library, the DRT misappropriated state resources for its own benefit and diverted public dollars that should have been used to support the Alamo.

Finally, the DRT's long-term plans appear to have improperly prioritized the Library over the Alamo. The 2007 Master Plan, for example, contemplated spending \$60 million on the Alamo Complex. Of that, approximately \$10 million was budgeted for a dramatic expansion of the DRT Library, while just \$1.6 million was allocated for historic preservation. The significant funding gap demonstrates not only the DRT's failure to prioritize historic preservation—but also an inherent conflict of interest between the DRT's own institutional prerogatives as a nonprofit corporation and its obligations as a trustee for the State.

The GLO reports that it has taken steps to remedy the DRT's utilization of state dollars to fund operations at the DRT Library. According to the GLO, state funding for the DRT Library will be reduced by 75% over the next three fiscal years. Thereafter, the availability of limited state funding is predicated on the notion that state-owned artifacts will be stored at the DRT Library. With the reduction of state funding, the GLO intends to prevent public funds from subsidizing the DRT's own operations at the Library, while also accounting for the cost of storing, preserving and maintaining historic artifacts that are owned by the State of Texas.

Finally, the GLO reports that it is conducting an audit to inventory all historic artifacts stored at the Alamo Complex. As explained above, the DRT previously purported to own the Alamo's historic relics. That assertion of ownership is misplaced because any items donated to the Alamo during the DRT's tenure as trustee are actually owned by the State—not the DRT. As a general

⁸⁷ The Alamo Budget, Fiscal Years 2010-2011.

matter, the DRT only owns items whose donors specifically expressed their intention to donate them to the DRT. In the absence of documentation memorializing a donor's intent to give an artifact or relic to the DRT, it must be presumed that a donation to the Alamo collection was a gift to the State of Texas—because the State, not the DRT owned the Alamo. As a result, when a relic or artifact is donated to the Alamo, that item is a gift to the State, just as a financial donation to the Alamo is a contribution to the State.

The purpose of the GLO's audit is reportedly two-fold. First, the auditors will determine whether artifacts are owned by the State or the DRT. Second, the auditors will establish a comprehensive inventory of all historic artifacts stored at the Alamo Complex. Once the audit is complete, the GLO will maintain a comprehensive inventory of all historic artifacts at the Alamo Complex on an ongoing basis.

D. LACK OF TRANSPARENCY

1. *Failure to Comply with the Public Information Act*

With the passage of the Public Information Act in the wake of a corruption scandal in the House of Representatives, the Texas Legislature mandated that the public's business be conducted transparently in order to prevent self-dealing and misuse of public resources. As explained in Section IV above, the Public Information Act extends to the "part, section, or portion" of an otherwise private corporation "that spends or is supported in whole or in part by public funds."⁸⁸ Under this provision, the DRT's records are subject to public disclosure to the extent they relate to the "collection, management, and expenditure of funds on behalf of state property."⁸⁹

However, the OAG's investigation revealed that the DRT consistently failed to comply with the Public Information Act. Indeed, the DRT never enacted procedures or established systems to facilitate the prompt and effective production of public documents as required by law. For example, neither the DRT's internal policies and procedures, nor the policies it established to govern daily operations, even acknowledge its legal duties and responsibilities with regard to public information. Thus, DRT personnel were neither informed about their statutory responsibility to preserve certain types of information, nor their legal obligation to produce that information in response to a written request from a member of the public.

Indeed, the DRT's policies contained no provisions instructing volunteers or employees how to properly process Public Information Act requests. With the passage of HB 3726 and the transfer of the Alamo to the GLO, the Public Information Act's applicability to the DRT may have narrowed in certain respects, but many aspects of the DRT's Alamo operations will likely remain subject to public disclosure requirements. Further, because the DRT's responsibility for the French Legation has not changed, its operations at that historic state-owned property remain fully within the purview of the Public Information Act.

⁸⁸ TEX. GOV'T CODE § 552.003(i)(A)(xii).

⁸⁹ Tex. Att'y Gen. Open Records Letter No. 88-344(1988), See also TEX GOV'T CODE SEC. 552.003(1)(A).

Recognizing the complexity of the legal issues surrounding the Public Information Act's application to the DRT under current circumstances, the GLO has requested guidance from the OAG about the applicability of the Public Information Act to the DRT as the state contractor responsible for day-to-day operations at the Alamo. Based upon its discussions with the OAG, the GLO will have the legal guidance necessary to help ensure the DRT fully complies with the requirements of the Public Information Act.

2. *Annual IRS Form 990*

As a 501(c)(3) nonprofit, tax-exempt corporation, the DRT is required to file an annual Form 990 tax return that discloses its activities and financial holdings to the federal government and the public. Under Internal Revenue Service regulations, these tax-exempt nonprofits must disclose both their own assets and assets owned by third parties that are entrusted to their custody. This disclosure requirement is particularly important to nonprofits' prospective donors—especially institutional donors, such as foundations—because benefactors often utilize 990s to scrutinize a charitable entity's finances as they evaluate whether to make a financial commitment to the organization.

Prior to January, 2011, when the DRT filed its tax return for fiscal year 2010—which ran from June 1, 2009 to May 31, 2010—the DRT failed to disclose salient details about Alamo-related assets. For example, the DRT's Form 990 tax return for fiscal year 2009 improperly reported certain state-owned Alamo funds as if they belonged to the DRT. As a result, the DRT's 2009 tax return inflated the organization's actual assets by \$1.4 million.

With the filing of an inaccurate tax return for FY 2009, the DRT exposed itself to both allegations of misrepresentation by benefactors and the possibility of IRS-imposed penalties. The DRT has stated that it employed a professional accounting firm to prepare its tax returns in a manner that comported with all applicable laws and regulations. While hiring an accounting firm to prepare its Form 990 undoubtedly demonstrated the DRT's good faith efforts to comply with federal laws governing tax-exempt nonprofit organizations, an outside accounting firm's capacity to properly prepare tax returns will necessarily be impacted by the quality of the client's own internal financial record-keeping.

As noted in Section V above, the OAG's investigation showed that the DRT's financial records were generally in a state of disarray—and that various types of funds under the DRT's control were not properly segregated into separate accounts. Even when it served as the State's trustee and was entrusted with the Alamo's \$6 million annual budget, the DRT never maintained a full-time, professional Chief Financial Officer. Instead, the DRT relied upon its Treasurer General, a part-time volunteer and elected officer, to manage its finances and maintain its accounting records. The better course would have been to employ a CFO who was responsible for managing the DRT's finances and advising the leadership about budgetary matters. Establishing a full-time CFO position would also have benefitted the DRT because a CFO could have helped encourage much-needed long-term financial planning and fostered at least some level of continuity when the Board of Management's leadership changed every two years.

E. THE DRT'S ISSUES AS A TEXAS NONPROFIT CORPORATION

As explained in Section 1 above, the Attorney General is charged with ensuring nonprofit corporations like the DRT comport with state laws governing charitable organizations. Prior sections of this report have addressed the DRT's conduct as the State's Alamo trustee. However, given the OAG's nonprofit oversight responsibilities, this report now examines the DRT's operations as a Texas nonprofit corporation.

1. *Organizational Dysfunction*

Among the most acute problems facing the DRT as a nonprofit organization is the highly factionalized nature of its membership ranks. As Dr. Bruce Winders, the longtime Historian and Curator of the Alamo, reportedly told the *New York Times*, "There is a kind of mini civil war going on within the organization...Unfortunately, the Alamo is caught in the middle."

As a matter of background, the DRT is a genealogical society. Membership in the DRT is limited to females whose ancestors lived in Texas before it was admitted to the United States in 1845. Thus, applicants must demonstrate their eligibility for DRT membership by documenting their family history. Reviewing applicants' genealogical history consumes a significant amount of active DRT members' time.

Of the DRT's more than 7,000 dues-paying members, only roughly 400 attended its May, 2011 General Convention. Thus, approximately 6% of DRT members appear to be active in the statewide organization. There are over 100 local DRT chapters, which are organized into 10 regional districts, each of which has a seat on the Board of Management. The DRT's \$350,000 annual operating budget is funded almost entirely by membership dues.

As a nonprofit corporation and genealogical society, the DRT primarily focuses on developing its membership, providing educational programs, and maintaining historical collections at DRT Headquarters, the Republic of Texas Museum, and the DRT Library at the Alamo. The DRT also maintains historic properties in Gonzales and Galveston. In addition, the DRT is actively raising money to fund the purchase and construction of a new facility called the Republic of Texas History Center, which is also known as Republic Village. Under the Republic Village proposal, the DRT plans to purchase property adjacent to the French Legation Museum so that it can relocate its headquarters and its Republic of Texas Museum into a single complex.⁹⁰ According to public reports, the DRT has indicated Republic Village will cost approximately \$2.8 million to acquire and construct.⁹¹

Given its broad array of focus areas, when the DRT served as Alamo trustee it was effectively forced to balance its organizational prerogatives with its duties to the State of Texas. Because the DRT's own initiatives command significant time and resources, the organization had to choose between advancing its goals and fulfilling its obligation to the State. For the reasons

⁹⁰ Daughters of the Republic of Texas, *Republic Village—Republic of Texas History Center* (undated), available at www.drinfo.org.

⁹¹ Shonda Novak, Daughters of the Republic of Texas' Big Vision, *AUSTIN AMERICAN-STATESMAN*, Aug. 5, 2012.

explained in detail above, the DRT struggled to balance its duties as Alamo trustee with its own expanding litany of institutional goals.

2. *Organizational Structure*

The DRT's current bylaws and organizational structure require that a completely new slate of officers, as well as a new governing board, be elected every two years. That governance model is inconsistent with accepted best practices for nonprofit organizations. A properly organized and managed nonprofit typically staggers its board members' terms. This structure improves governance because it fosters a certain amount of organizational continuity. Under the DRT's governance model, the President General is the de facto Executive Director. Further, the President General also retains exclusive authority to name all committee chairs, including the chairs of the Alamo Committee and French Legation Committee. Further, although the DRT's Board of Management meets only quarterly, the DRT lacks an executive committee. Under this structure, day-to-day decision-making is effectively delegated entirely to the President General.

In contrast, well-run nonprofits operating under a best practices business model have an executive committee comprised of the organization's most senior officers. Further, these organizations' bylaws authorize executive committee members to make certain types of decisions during the interim period between formal board meetings. A complex organization like the DRT would benefit from having a governing board or executive committee that meets monthly—and an executive committee that is empowered to make emergency decisions for the organization between regularly scheduled meetings. Under the DRT's structure, management of the organization is dependent on the judgment and integrity of the President General. The conduct documented in this report reveals the consequences of DRT's governance model, which gives the President General too much discretion and subjects her to little oversight from the Board of Management.

Because the President General is effectively without oversight under the DRT's governance structure, if the individual elected to that position is ineffective, incapable, or willing to violate the organization's bylaws, history demonstrates that the organization can suffer serious consequences over the course of the President General's two-year term.

3. *DRT Members Denied Access to Information*

As noted above, the DRT is a Texas nonprofit corporation and is therefore subject to Chapter 22 of the Business Organizations Code, which governs Texas nonprofit corporations. Under Section 22.351 of the Code, a member of a nonprofit corporation "is entitled to examine...the books and records of the corporation."⁹² This disclosure provision gives all members a statutory right to obtain access to the DRT's records. In addition to the Business Organization Code's disclosure requirements, for the reasons explained in Sections IV and VI.D.1 above, DRT records that relate to the Alamo may also be subject to disclosure to both members and non-members of the DRT under the Public Information Act.

⁹² TEX. BUS. ORG. CODE § 22.351.

Although the DRT has been subject to these statutory disclosure requirements for decades, the OAG's investigation documented multiple instances where the DRT delayed production of information that was required to be disclosed, ignored properly submitted requests for information, or simply refused to comply with the law. The OAG also noted instances where the DRT reportedly retaliated against members who exercised their statutory right to obtain information from the organization.

An example of the DRT's refusal to comply with the Business Organization Code's requirements for nonprofit corporations occurred when at least one board member and a number of individual DRT members submitted a written request for a copy of the WME contract and any related underwriting agreements secured by the leadership. Despite the existence of a state law requiring nonprofit organizations to provide its members copies of its records, the DRT's leadership initially refused to provide the requested information.

More recently, on August 31, 2012, the OAG received a formal written complaint from a member of the DRT's current Board of Management, who alleged ongoing violations of the DRT's bylaws and the Business Organizations Code.⁹³ According to the complaint, the board member was denied access to documents she requested in the furtherance of her fiduciary duties as a member of the Board of Management. The complaint was resolved on September 27, 2012, when the DRT made the requested information available to the complainant.⁹⁴ Although the complaint was ultimately resolved, on September 25, 2012, the Board of Management voted to formally admonish the complainant for filing a complaint with the OAG's Open Records Division.⁹⁵

The September 25, 2012, admonishment is problematic because it created an impression—whether well-founded or not—that the Board of Management would punish members who notify state authorities about an alleged violation of state law. Such an impression could have a deleterious effect on members' willingness to expose misconduct by the organization's leadership. Further, even the appearance of reacting punitively to members who allege misconduct could also serve to undermine the principles of transparency and public trust that are incumbent upon nonprofit organizations. Under no circumstances should an organization's members be punished for notifying authorities in good faith about an alleged legal violation.

4. *Expulsion Policy*

Under the bylaws, members who “discredit” the DRT are subject to expulsion by the Board of Management. Between 1895 and 2009, the Board expelled only one DRT member. Since 2009, three members have been expelled—including the whistleblower who contacted the OAG and prompted the investigation detailed in this report.

⁹³ *Id.*

⁹⁴ Certification of Kathleen Carter, Board of Management, Daughters of the Republic of Texas, and Karen Thompson, President General, Daughters of the Republic of Texas (Sept. 29, 2012).

⁹⁵ Letter from Karen Thompson, President General, Daughters of the Republic of Texas (Sept. 25, 2012).

Section 22.221 of the Business Organizations Code imposes a statutory standard of care upon the directors of nonprofit corporations. To satisfy that standard, board members must be free to act at all times in the best interest of the organization. To the extent the fear of expulsion for bringing “discredit” on the DRT serves to discourage board members from questioning leadership decisions, seeking appropriate background information, and objecting when the President General exceeds the limits of her authority, the bylaws’ expulsion provision could significantly interfere with board members’ ability to satisfy their statutory and fiduciary duties.

Thus, any bylaw that discourages board members from exercising their oversight role in good faith could contravene the Business Organizations Code and should be amended as necessary to discourage misconduct.

5. *Poor Management Practices*

The DRT does not operate like a modern nonprofit corporation. It does not have a paid Executive Director or CEO, nor a paid accounting executive or CFO. The President General and the Treasurer General, as elected members of the governing board, serve these traditionally executive functions despite the fact that they are strictly volunteers. When the DRT still served as Alamo trustee it relied exclusively on volunteer executives—who changed every two years—to oversee vast budgets, large staffs, and significant projects, including the Alamo’s nearly \$6 million budget and almost 90 employees.

The very nature of the DRT, with its heavy reliance on volunteers, creates a true double-edged sword. While the DRT’s dedicated volunteers devote invaluable time and effort to the organization, certain positions—such as CEO and CFO—seem to warrant full-time professional leadership. When confronted with this legitimate governance concern, the DRT’s officers often employ the ready justification that “you can only expect so much from a volunteer.” That response, however, overlooks the vastness and complexity of the DRT’s various missions. While it is true that only so much can be expected of a volunteer, that statement actually confirms the limitations of the DRT’s current management structure and thus does not rebut the obvious conclusion—that the DRT would benefit from employing full-time professionals in certain key positions to help manage the organization’s day-to-day operations.

6. *Bylaws Violations*

The DRT’s extensive bylaws were intended to impose checks and balances that would protect the organization and the Alamo from the very deterioration and mismanagement documented in this report. As this report reveals in significant detail, those well-intended checks and balances were simply not effective.

Unfortunately, because the bylaws are routinely altered—but not actually modernized—when new leadership teams are elected every two years, most DRT members have very little real understanding of what the bylaws require. Though the DRT expends considerable time, effort,

and money on the biennial revision of its bylaws, the OAG's investigation determined that these biennial changes have little real substantive impact.

Historically, even substantive revisions to the DRT's bylaws have been meaningless from a practical perspective because the bylaws are subject to the presiding President General's interpretation—and the Board has consistently failed to hold the President General accountable for exceeding her authority. However, adopting modernized bylaws would simplify the DRT's governing rules and therefore make them less susceptible to arbitrary interpretations by the President General. In turn, that change would help establish objective governance standards and policies that could begin to remedy the divisive factionalization of the membership ranks by ensuring that all rules apply equally to every member of the DRT.