

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
PETE GALLEGO,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-2807286

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on December 2, 2009, to consider sworn complaint SC-2807286. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.035 of the Election Code and section 20.59 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

### II. Allegations

The complaint alleged that the respondent improperly reported political expenditures as reimbursements to staff members and failed to properly report political expenditures made by credit card.

### III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondent is the state representative for District 74 and was a successful unopposed candidate in the March 2006 primary election and the November 2006 general election.
2. The allegations are based on his July 2006 and January 2007 semiannual campaign finance reports.
3. The respondent's July 2006 semiannual report disclosed the following:
  - \$245.00 in total political contributions of \$50 or less
  - \$24,372.24 in total political contributions
  - \$1,706.05 in total political expenditures of \$50 or less

- \$33,152.60 in total political expenditures
  - \$10,137.08 in total political contributions maintained as of the last day of the reporting period
  - \$0 in outstanding loans
4. The respondent's January 2007 semiannual report disclosed the following:
- \$2,565 in total political contributions of \$50 or less
  - \$136,640 in total political contributions
  - \$1,702.98 in total political expenditures of \$50 or less
  - \$63,091.50 in total political expenditures
  - \$90,661.72 in total political contributions maintained as of the last day of the reporting period
  - \$0 in outstanding loans

#### **Political Expenditures Made by Credit Card**

5. The complaint alleged that the respondent disclosed political expenditures made by credit card without disclosing "what was purchased, who was paid, or when it was purchased."
6. The respondent's January 2007 semiannual report disclosed on Schedule F (used to disclose political expenditures from political contributions) a \$902 political expenditure to "JP Morgan Chase" on July 12, 2006, for "Reimbursement" and a \$986.66 political expenditure to "JP Morgan Chase" on October 2, 2006, for "Reimbursement."
7. On January 22, 2009, the respondent filed a corrected January 2007 semiannual report to remove the \$902 political expenditure that previously disclosed a credit card company as the payee. The respondent swore that the expenditure at issue was inadvertently filed on the January 2007 semiannual report and was removed from the January 2007 semiannual report because the expenditure was correctly itemized on the July 2006 semiannual report.
8. The corrected January 2007 semiannual report also removed the \$986.66 political expenditure that previously disclosed a credit card company as the payee.
9. The respondent further corrected the January 2007 semiannual report to disclose four itemized political expenditures totaling approximately \$120 that were not previously disclosed on the report, and corrected the July 2006 semiannual report to disclose seven itemized political expenditures totaling \$860 that were not previously disclosed on the report. The corrected political expenditures at issue disclose on Schedule F the vendors of the goods or services as the payees, as well as the category of goods or services, and the payment dates.

10. The \$986.66 in expenditures were not originally itemized on the January 2007 and July 2006 semiannual reports.
11. The corrected January 2007 semiannual report disclosed the following four political expenditures, totaling approximately \$120:<sup>1</sup>
  - \$50 to Angie’s Restaurant in Austin, Texas, for “Staff Meal-Originally listed as JP Morgan Chase” on July 5, 2006
  - \$28 to Camino Real in El Paso, Texas, for “Staff Meal-Originally listed as JP Morgan Chase” on July 30, 2006
  - \$21.07 to Cooper’s BBQ and Grill in Junction, Texas, for “Staff Meal-Originally listed as JP Morgan Chase” on September 1, 2006
  - \$22.86 to JP Morgan Chase for “Service Fee” on September 7, 2006
12. The corrected July 2006 semiannual report disclosed the following seven political expenditures, totaling approximately \$860:
  - \$42.28 to Coyanosa Fuel Center in Coyanosa, Texas, for “Gas-Originally listed as JP Morgan Chase” on June 14, 2006<sup>2</sup>
  - \$491.27 to Fairmont Hotel in Dallas, Texas, for “Lodging-Originally listed as JP Morgan Chase” on June 25, 2006
  - \$134.95 to Hoffbrau Restaurant in Dallas, Texas, for “Staff Meal-Originally listed as JP Morgan Chase” on June 20, 2006
  - \$53.01 to Murphy’s USA in Uvalde, Texas, for “Gas-Originally listed as JP Morgan Chase” on June 30, 2006
  - \$44.00 to Shell-Austin in Austin, Texas, for “Gas-Originally listed as JP Morgan Chase” on June 15, 2006
  - \$46.22 to Shell-Austin in Austin, Texas, for “Gas-Originally listed as JP Morgan Chase” on June 20, 2006
  - \$53 to Town and Country-San Angelo in San Angelo, Texas, for “Gas-Originally listed as JP Morgan Chase” on June 14, 2006

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<sup>1</sup> None of the political expenditures at issue on the January 2007 corrected semiannual report were required to be itemized because none of the expenditures exceeded the \$50 threshold for itemization and there was no evidence that the respondent made over \$50 in political expenditures to any of these particular payees during the reporting period.

<sup>2</sup> The \$42.28 political expenditure was not required to be itemized because it fell under the \$50 threshold for itemization and there was no evidence that the respondent made over \$50 in political expenditures to that particular payee during the reporting period.

**Reporting of Political Expenditures as Reimbursements**

13. The complaint alleged that the respondent disclosed political expenditures reimbursements made to staff or other individuals without disclosing “what was purchased, who was paid, or when it was purchased.”
14. The complaint included lists of political expenditures, totaling approximately \$2,270, that were disclosed in the respondent’s July 2006 and January 2007 semiannual reports as reimbursements on Schedule F (used to disclose political expenditures from political contributions).
15. In response to the allegation, the respondent swore that he “denies that he knowingly or intentionally violated any provision of law relating to the reporting of reimbursement of staff members for political expenditures from personal funds.”
16. Out of 248 total political expenditures that the respondent disclosed on Schedule F on his July 2006 semiannual report, nine political expenditures, totaling approximately \$850, disclosed the following:
  - \$68.19 to Katherine Frolow in Austin, Texas, for “Reimbursement for Office Supplies” on February 13, 2006
  - \$60.62 to Katherine Frolow in Austin, Texas, for “Reimbursement for Shipping Expenses” on February 20, 2006
  - \$24.89 to Katherine Frolow in Austin, Texas, for “Reimbursement for Office Supplies” on June 5, 2006
  - \$210 to Martin Lujan in Austin, Texas, for “Reimbursement for Office Supplies” on February 17, 2006
  - \$275.55 to Martin Lujan in Austin, Texas, for “Reimbursement for Travel” on March 29, 2006
  - \$70 to Martin Lujan in Austin, Texas, for “Reimbursement for Retreat Expenses” on May 26, 2006
  - \$14.40 to Brian Powell in Alpine, Texas, for “Reimbursement for Shipping Expenses” on February 22, 2006
  - \$79.51 to Brian Powell in Alpine, Texas, for “Reimbursement for Staff Dinner” on March 24, 2006
  - \$49.49 to Brian Powell in Alpine, Texas, for “Reimbursement for Staff Dinner” on May 25, 2006
17. On January 22, 2009, the respondent filed a corrected July 2006 semiannual report to disclose that two of the political expenditures, totaling approximately \$345, were reimbursements for mileage.

18. For the remaining seven political expenditures, totaling approximately \$510, the corrected report disclosed the vendors of the goods or services as the payees, as well as the category of goods or services, for each expenditure at issue.
19. On the correction affidavit that accompanied the report, the respondent swore that the expenditures at issue “were inadvertently noted as reimbursement. The expenditures have been changed to reflect the place of purchase and noted as a reimbursement to various individuals [under the purpose description].”
20. Out of 350 total political expenditures that the respondent disclosed on Schedule F on his January 2007 semiannual report, ten political expenditures, totaling approximately \$1,420, disclosed the following:
  - \$256.90 to Adrianna Bernal in Austin, Texas, for “Reimbursement” on September 20, 2006
  - \$116.78 to Adrianna Bernal in Austin, Texas, for “Reimbursement” on December 22, 2006
  - \$200 to Ben Gallego in Alpine, Texas, for “Reimbursement” on October 13, 2006
  - \$45.12 to Elena Gallego in Alpine, Texas, for “Reimbursement” on July 14, 2006
  - \$96 to Elena Gallego in Alpine, Texas, for “Reimbursement” on October 5, 2006
  - \$55.75 to Martin Lujan in Austin, Texas, for “Reimbursement” on July 25, 2006
  - \$89.27 to Martin Lujan in Austin, Texas, for “Reimbursement” on December 22, 2006
  - \$230.54 to Jerry Philips in Austin, Texas, for “Reimbursementss [sic]” on August 15, 2006
  - \$142.60 to Edelmira Sotelo in Del Rio, Texas, for “Reimbursement” on September 11, 2006
  - \$185 to Edelmira Sotelo in Del Rio, Texas, for “Reimbursement” on November 29, 2006
21. On January 22, 2009, the respondent filed a corrected January 2007 semiannual report to disclose that four of the political expenditures at issue, totaling approximately \$575, were reimbursements for mileage.
22. The corrected report disclosed the vendors of the goods or services as the payees, as well as the category of goods or services, for four political expenditures at issue, totaling

approximately \$700, including one expenditure of \$42.51 to a payee and one expenditure of \$25 to a payee.<sup>3</sup>

23. On the correction affidavit that accompanied the report, the respondent swore that the expenditures at issue “were inadvertently filed as reimbursements. The expenditures originally filed as reimbursements have been changed to reflect the place of purchase.”
24. The corrected January 2007 semiannual report also removed the two political expenditures to Elena Gallegos, totaling approximately \$140. The respondent swore that these two expenditures at issue were inadvertently entered in an incorrect file and were not campaign related nor were they paid through campaign funds.

#### IV. Findings and Conclusions of Law

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

##### Political Expenditures Made by Credit Card

1. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3). Each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. *Id.* § 254.031(a)(5).
2. For purposes of reporting, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. *Id.* § 254.035(a). The amount of a political expenditure made by credit card is readily determinable by the person making the expenditure on the date the person receives the credit card statement that includes the expenditure. *Id.* § 254.035(c).
3. A report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company. Ethics Commission Rules § 20.59.
4. On the January 2007 semiannual report, the respondent disclosed a credit card company as the payee instead of the vendors who actually received payment for approximately \$1,890 in political expenditures.

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<sup>3</sup>The \$25 political expenditure was not required to be itemized because it fell under the \$50 threshold for itemization. As to the \$42.51 expenditure, the payment was made to a gas station and there was no evidence that the respondent made over \$50 in political expenditures to that particular payee during the reporting period.

5. The respondent corrected the July 2006 and January 2007 semiannual reports, removing the \$902 political expenditure at issue from the January 2007 semiannual report because he swore that it was properly disclosed on the July 2006 semiannual report. The evidence does not refute that assertion.
6. The respondent corrected the July 2006 and January 2007 semiannual reports, disclosing the dates of the payments, the vendors as the payees, and the purpose description for approximately \$990 of the political expenditures at issue that were not previously disclosed on the July 2006 and January 2007 semiannual reports. (Approximately \$160 of these political expenditures were not required to be itemized because they fell under the \$50 threshold for itemization.)
7. Although the respondent corrected the reports at issue to disclose the actual payees for the political expenditures made by credit card, the information was not properly disclosed when the reports were due. Therefore, with regard to approximately \$830 in political expenditures made by credit card, there is credible evidence of violations of sections 254.031 and 254.035 of the Election Code and section 20.59 of the Ethics Commission Rules.

### **Reporting of Political Expenditures as Reimbursements**

8. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3). Each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. *Id.* § 254.031(a)(5).
9. For the July 2006 and January 2007 semiannual reports, Ethics Advisory Opinion No. 450 (2003), describes the proper way to report staff reimbursement. The commission determined that a political expenditure made to reimburse a staff member may be reported in one of two ways: (1) reporting it as a loan to the candidate from the staff member and then as an expenditure by the candidate to repay the staff member; or (2) if the expenditure and reimbursement occur during the same reporting period, report a single expenditure by listing the name of the individual or entity paid by the campaign worker as the payee, showing the date of the expenditure as the date the staff member made the expenditure, and explaining in the “purpose” section that a staff member made the expenditure from personal funds and that the candidate subsequently reimbursed the staff member. The commission has since adopted section 20.62 of the Ethics Commission Rules, which sets forth the current method for reporting staff reimbursement.
10. The respondent corrected the July 2006 and January 2007 semiannual reports to disclose that approximately \$920 of the political expenditures at issue were reimbursements for mileage.

11. The respondent also corrected the January 2007 semiannual report to remove approximately \$140 in expenditures to an individual for "Reimbursement" because he swore that these payments made to the individual were not campaign related nor were they paid through campaign funds.
12. The remaining approximately \$1,210 in political expenditures at issue were improperly disclosed as reimbursements to staff members. The respondent failed to disclose the person who actually received payment for the goods or services that were purchased. However, approximately \$70 of these political expenditures were not required to be itemized because they fell under the \$50 threshold for itemization.
13. Although the respondent corrected the reports at issue to disclose the actual payees, the political expenditures were not properly reported when the reports were originally due. Therefore, with regard to approximately \$1,140 in political expenditures improperly disclosed as reimbursements to staff members, and approximately \$920 that did not properly disclose the purpose of the reimbursements, there is credible evidence of violations of section 254.031 of the Election Code.

#### **V. Representations and Agreement by Respondent**

By signing this order and agreed resolution and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. The respondent also acknowledges that each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. The respondent further acknowledges that, for purposes of reporting, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure and that the amount of a political expenditure made by credit card is readily determinable by the person making the expenditure on the date the person receives the credit card statement that includes the expenditure. The respondent also acknowledges that a report of a political expenditure by credit card must identify the vendor who receives



payment from the credit card company. The respondent also acknowledges that the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules. The respondent agrees to comply with these requirements of the law.

### **VI. Confidentiality**

This order and agreed resolution describes violations that the commission has determined are neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the commission.

### **VII. Sanction**

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$300 civil penalty.

### **VIII. Order**

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-2807286.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Pete Gallego, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director