

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

**RUSSELL BERRY,  
CAMPAIGN TREASURER,  
METROTEX ASSOCIATION OF  
REALTORS PAC,**

**RESPONDENT**

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BEFORE THE

**TEXAS ETHICS COMMISSION**

**SC-31407158**

## **ORDER and AGREED RESOLUTION**

### **I. Recitals**

The Texas Ethics Commission (Commission) met on August 7, 2015, to consider sworn complaint SC-31407158. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.031(a)(1), 254.031(a)(6), and 254.031(a)(8) of the Election Code, 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 the respondent disclosed an incorrect amount of total political contributions maintained, or, in the alternative did not disclose political contributions and expenditures on 12 campaign finance reports filed between April 2013 and July 2014.

### **III. Facts Supported by Credible Evidence**

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

1. At the time of the reports at issue, the respondent was the campaign treasurer for MetroTex Association of Realtors PAC (MetroTex PAC), a general-purpose political committee.
2. The complaint allegations, that the respondent did not report the correct amount of total political contributions maintained, or did not disclose political contributions and expenditures, were based on reports filed by the respondent as campaign treasurer for MetroTex PAC that showed political contributions maintained at the end of the reporting periods substantially increasing relative to political expenditures, without disclosing any

contributions or credits to account for the increase in total political contributions maintained.

3. In response to the complaint, the respondent admitted “[w]e erred in our reporting.” He swore “[w]e received political contributions from only one contributor, the Texas Association of Realtors Political Action Committee. Because of confusion with respect to reporting responsibility, we inadvertently neglected to report those contributions on the appropriate campaign finance reports.”
4. Texas Association of Realtors Political Action Committee (TRE PAC) is a general-purpose political committee that files monthly with the Commission. TRE PAC is the statewide political committee for the Texas Association of Realtors. It collects money from members across the state and then distributes some of that money to local political committees, such as MetroTex PAC, where specific expenditure decisions are made.
5. After receiving the complaint, the respondent filed corrections to the reports at issue and provided bank statements for the five bank accounts in which MetroTex PAC maintains political contributions. In the corrected reports, the respondent disclosed approximately \$201,240 in previously undisclosed political contributions. All political contributions came from TRE PAC. The corrected amounts of total contributions maintained for each report represent a total difference between the original reports and the corrected reports of approximately \$260,000. Credible evidence indicates that MetroTex PAC disclosed all political expenditures for the reports at issue.
6. MetroTex PAC’s 30-day pre-election report covering January 1, 2013, through April 1, 2013, disclosed \$74,000 in total political expenditures, \$0 in total political contributions, and \$470,920 in total political contributions maintained. The corrected report disclosed political expenditures totaling \$74,000, political contributions totaling \$36,600.71, and \$529,673.12 in total political contributions maintained. The corrected report represents a difference of \$58,753.12 for total political contributions maintained and \$36,600.71 in political contributions accepted. *See* chart below.

		<b>Contributions Maintained</b>	<b>Political Contributions Accepted</b>	<b>Political Expenditures</b>
30-day pre-election report (01/01/2013 through 04/01/2013)	Original	\$470,920.00	\$0	\$74,000
	Corrected	\$529,673.12	\$36,600.71	\$74,000
	Difference	\$58,753.12	\$36,600.71	\$0

7. MetroTex PAC’s 8-day pre-election report covering April 2, 2013, through May 1, 2013, disclosed \$0 in total political expenditures, \$0 in total political contributions, and \$470,920 in total political contributions maintained. The corrected report disclosed political expenditures totaling \$0, political contributions totaling \$3,106.80, and \$471,047.10 in total political contributions maintained. The corrected report represents a difference of \$127.00 for total political contributions maintained and \$3,106.80 in political contributions accepted. *See chart below.*

		<b>Contributions Maintained</b>	<b>Political Contributions Accepted</b>	<b>Political Expenditures</b>
8 day pre-election report (04/02/2013 through 05/01/2013)	Original	\$470,920.00	\$0	\$0
	Corrected	\$471,047.10	\$3,106.80	\$0
	Difference	\$127.00	\$3,106.80	\$0

8. MetroTex PAC’s July 2013 semiannual report covering May 1, 2013, through June 20, 2013, disclosed \$26,000 in total political expenditures, \$0 in total political contributions, and \$469,087 in total political contributions maintained. The corrected report disclosed political expenditures totaling \$26,000, political contributions totaling \$24,300.53, and \$456,525.48 in total political contributions maintained. The corrected report represents a difference of \$12,561.52 for total political contributions maintained and \$24,300.53 in political contributions accepted. *See chart below.*

		<b>Contributions Maintained</b>	<b>Political Contributions Accepted</b>	<b>Political Expenditures</b>
July 2013 semiannual report (05/01/2013 through 06/30/2013)	Original	\$469,087.00	\$0	\$26,000
	Corrected	\$456,525.48	\$24,300.53	\$26,000
	Difference	\$12,561.52	\$24,300.53	\$0

9. MetroTex PAC’s 30-day pre-election report covering July 1, 2013, through September 26, 2013, disclosed \$0 in total political expenditures, \$0 in total political contributions, and \$505,484.03 in total political contributions maintained. The corrected report disclosed political expenditures totaling \$0, political contributions totaling \$46,600.06, and \$491,381.72 in total political contributions maintained. The corrected report represents a difference of \$14,103 for total political contributions maintained and \$46,600.06 in political contributions accepted. *See chart below.*

		<b>Contributions Maintained</b>	<b>Political Contributions Accepted</b>	<b>Political Expenditures</b>
30-day pre-election report (07/01/2013 through 09/26/2013)	Original	\$505,484.03	\$0	\$0
	Corrected	\$491,381.72	\$46,600.06	\$0
	Difference	\$14,103	\$46,600.06	\$0

10. MetroTex PAC’s 8-day pre-election report covering September 27, 2013, through October 26, 2013, disclosed \$4,000 in total political expenditures, \$0 in total political contributions, and \$508,516.96 in total political contributions maintained. The corrected report disclosed political expenditures totaling \$4,000, political contributions totaling \$0, and \$496,955.17 in total political contributions maintained. The corrected report represents a difference of \$11,561.79 for total political contributions maintained and no difference in political contributions accepted or political expenditures made by the committee. *See chart below.*

		<b>Contributions Maintained</b>	<b>Political Contributions Accepted</b>	<b>Political Expenditures</b>
8-day pre-election report (09/27/2013 through 10/26/2013)	Original	\$508,516.96	\$0	\$4,000
	Corrected	\$496,955.17	\$0	\$4,000
	Difference	\$11,561.79	\$0	\$0

11. MetroTex PAC’s January 2014 semiannual report covering October 27, 2013, through December 30, 2013, disclosed \$1,000 in total political expenditures, \$0 in total political contributions, and \$499,107 in total political contributions maintained. The corrected report disclosed political expenditures totaling \$1,000, political contributions totaling \$39,705.75, and \$528,606.89 in total political contributions maintained. The corrected report represents a difference of \$29,499.89 for total political contributions maintained and a \$39,705.75 difference in political contributions accepted by the committee. *See chart below.*

		<b>Contributions Maintained</b>	<b>Political Contributions Accepted</b>	<b>Political Expenditures</b>
January 2014 semiannual report (10/27/2013 through 12/30/2013)	Original	\$499,107.00	\$0	\$1,000
	Corrected	\$528,606.89	\$39,705.75	\$1,000
	Difference	\$29,499.89	\$39,705.75	\$0

12. MetroTex PAC’s 30-day pre-election report covering December 31, 2013, through January 23, 2014, disclosed \$3,500 in total political expenditures, \$0 in total political contributions, and \$533,007.05 in total political contributions maintained. The corrected report disclosed political expenditures totaling \$3,500, political contributions totaling \$0, and \$536,829.45 in total political contributions maintained. The corrected report represents a difference of \$3,822.40 for total political contributions maintained and no difference in political contributions accepted or political expenditures made by the committee. *See* chart below.

		<b>Contributions Maintained</b>	<b>Political Contributions Accepted</b>	<b>Political Expenditures</b>
30-day pre-election report (12/31/2013 through 01/23/2014)	Original	\$533,007.05	\$0	\$3,500
	Corrected	\$536,829.45	\$0	\$3,500
	Difference	\$3,822.40	\$0	0

13. MetroTex PAC’s 8-day pre-election report covering January 24, 2014, through February 22, 2014, disclosed \$0 in total political expenditures, \$0 in total political contributions, and \$533,007.05 in total political contributions maintained. The corrected report disclosed political expenditures totaling \$0, political contributions totaling \$0, and \$534,172.69 in total political contributions maintained. The corrected report represents a difference of \$1,165.64 for total political contributions maintained and no difference in political contributions accepted or political expenditures made by the committee. *See* chart below.

		<b>Contributions Maintained</b>	<b>Political Contributions Accepted</b>	<b>Political Expenditures</b>
8-day pre-election report (01/24/2014 through 02/22/2014)	Original	\$533,007.05	\$0	\$0
	Corrected	\$534,172.69	\$0	\$0
	Difference	\$1,165.64	\$0	\$0

14. MetroTex PAC’s 30-day pre-election report covering February 23, 2014, through March 31, 2014, disclosed \$50,000 in total political expenditures, \$0 in political contributions, and \$478,861.25 in total political contributions maintained. The corrected report disclosed political expenditures totaling \$50,000, political contributions totaling \$0, and \$532,012.97 in total political contributions maintained. The corrected report represents a difference of \$53,151.72 for total political contributions maintained and no difference in political contributions accepted or political expenditures made by the committee. *See* chart below.

		<b>Contributions Maintained</b>	<b>Political Contributions Accepted</b>	<b>Political Expenditures</b>
30-day pre-election report (02/23/14 through 03/31/14)	Original	\$478,861.25	\$0	\$50,000
	Corrected	\$532,012.97	\$0	\$50,000
	Difference	\$53,151.72	\$0	0

15. The committee’s 8-day pre-election report covering April 1, 2014, through April 30, 2014, disclosed \$0 in total political expenditures, \$0 in total political contributions, and \$478,861.25 in total political contributions maintained. The corrected report disclosed political expenditures totaling \$0, political contributions totaling \$31,732.34, and \$529,989.77 in total political contributions maintained. The corrected report represents a difference of \$51,128.52 for total political contributions maintained and a difference in political contributions accepted of \$31,732.34. *See chart below.*

		<b>Contributions Maintained</b>	<b>Political Contributions Accepted</b>	<b>Political Expenditures</b>
8-day pre-election report (4/1/2014 through 4/30/2014)	Original	\$478,861.25	\$0	\$0
	Corrected	\$529,989.77	\$31,732.34	\$0
	Difference	\$51,128.52	\$31,732.34	\$0

16. The committee’s 8-day pre-election report covering May 1, 2014, through May 17, 2014, disclosed \$0 in total political expenditures, \$0 in total political contributions, and \$507,741.66 in total political contributions maintained. The corrected report disclosed political expenditures totaling \$0, political contributions totaling \$0, and \$523,007.69 in total political contributions maintained. The corrected report represents a difference of \$15,266.03 for total political contributions maintained and a difference in political contributions accepted of \$0. *See chart below.*

		<b>Contributions Maintained</b>	<b>Political Contributions Accepted</b>	<b>Political Expenditures</b>
8-day pre-election report (05/01/2014 through 05/17/2014)	Original	\$507,741.66	\$0	\$0
	Corrected	\$523,007.69	\$0	\$0
	Difference	\$15,266.03	\$0	\$0

17. MetroTex PAC's July 2014 semiannual report covering May 18, 2014, through June 30, 2014, disclosed \$4,500 in total political expenditures, \$0 in total political contributions, and \$546,200.04 in total political contributions maintained. The corrected report disclosed political expenditures totaling \$4,500, political contributions totaling \$19,194, and \$536,639.05 in total political contributions maintained. The corrected report represents a difference of \$9,560.99 for total political contributions maintained and a difference in political contributions accepted of \$19,194. *See* chart below.

		<b>Contributions Maintained</b>	<b>Political Contributions Accepted</b>	<b>Political Expenditures</b>
July 2014 semiannual report (05/18/2014 through 06/30/2014)	Original	\$546,200.04	\$0	\$4,500
	Corrected	\$536,639.05	\$19,194.00	\$4,500
	Difference	\$9,560.99	\$19,194.00	\$0

#### IV. Findings and Conclusions of Law

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

1. Each report must include, as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
2. The Commission has previously determined that there is no violation of section 254.031(a)(8) of the Election Code if the difference between the amount of political contributions maintained as originally disclosed and the correct amount does not exceed the lesser of 10% of the amount originally disclosed or \$2,500.
3. A campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. *Id.* § 254.031(a)(1).
4. A campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6).

5. With regard to all 12 reports at issue, the respondent corrected the total contributions maintained to reflect the actual amount of contributions maintained as of the last day of the reporting period in all bank accounts in which the committee maintained political contributions. The bank records provided by the respondent corroborate the accuracy of the corrected reports.
6. Two of the corrected reports showed an incorrect amount of contributions maintained of less than \$2,500 or 10% of the amount originally disclosed. Those reports are the 8-day pre-election report covering April 2, 2013, through May 1, 2013, and the 8-day pre-election report covering January 24, 2014, through February 22, 2014.
7. The remaining 10 reports disclosed an incorrect balance for total contributions maintained that exceeded \$2,500. Therefore, there is credible evidence of violations of section 254.031(a)(8) of the Election Code with respect to the remaining 10 campaign finance reports at issue.
8. In seven reports, the respondent did not disclose accepting political contributions from TRE PAC that totaled \$201,240.19. Each of the contributions was more than \$50, and therefore each was required to be itemized. Therefore, there is credible evidence of violations of sections 254.031(a)(1) and 254.031(a)(6) 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 report must include, as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. The respondent further acknowledges a campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. The respondent further acknowledges a campaign finance report must include the total amount of all

political contributions accepted and the total amount of all political expenditures made during the reporting period. The respondent agrees to comply with this requirement 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 nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$9,500 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-31407158.

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

\_\_\_\_\_  
Russell Berry, Respondent

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

Texas Ethics Commission

By: \_\_\_\_\_  
Natalia Luna Ashley, Executive Director