

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

ALFONSO "PONCHO" NEVAREZ,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-3150116

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (Commission) met to consider sworn complaint SC-3150116. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 253.003, 253.035(h), 253.094, 254.001, 254.031, and 254.0612 of the Election Code and sections 20.61 and 20.62 of the Ethics Commission Rules, and credible evidence of technical or *de minimis* violations of section 254.031 of the Election Code and section 20.61 of the Ethics Commission Rules, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

### II. Allegations

The complaint alleged that the respondent: 1) accepted political contributions from corporations and labor organizations; 2) did not properly report the total amount of political contributions maintained on four semiannual campaign finance reports; or, in the alternative, did not report political contributions and political expenditures; 3) did not properly disclose on multiple campaign finance reports political contributions, loans, and political expenditures; 4) did not disclose the principal occupation or job title, and employer for multiple contributors; and 5) made improper personal reimbursements.

### III. Facts Supported by Credible Evidence

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

1. The respondent is a State Representative for District 74. The respondent was elected on November 6, 2012, and had an active campaign treasurer appointment on file at all times at issue in the complaint.

**Acceptance of Corporate and Labor Organization Contributions**

2. The complaint alleged that the respondent accepted political contributions from corporations and labor organizations. On September 15, 2011, the respondent signed a campaign treasurer appointment form, which included an affirmation that he was aware of the restrictions regarding contributions from corporations and labor organizations in Title 15 of the Election Code.
3. The respondent disclosed accepting 27 contributions from 23 entities in his January 2013, January and July 2014, and January 2015 semiannual campaign finance reports.
4. Thirteen of the 23 entities that made 16 contributions to the respondent, totaling \$10,750, were political committees administered by corporations and labor organizations. The 13 political committees reported making political contributions to the respondent in their campaign finance reports filed with the Commission.
5. In addition, the respondent disclosed two contributions from "Pathfinder – Rene Ramirez" and one contribution from "Langley Banack INC." According to Texas Secretary of State (SOS) records, Pathfinder is a domestic for-profit corporation and Langley & Banack, Inc., is a domestic professional corporation.
6. In response to the complaint, the respondent explained that the owner of Pathfinder made the two contributions as an individual from his personal credit card and not from his business, Pathfinder. The respondent also denied the allegation regarding the contribution from Langley & Banack, Inc., because the entity is a professional corporation and the Commission has "routinely interpreted Section 253.091, Election Code, to mean that a professional corporation is not subject to the prohibition against corporate contributions." Professional corporations are permitted to make political contributions to candidates and officeholders. *See Op. Tex. Att'y Gen. No. MW-178 (1980).*
7. The respondent disclosed contributions totaling \$550 from the following entities: "Hesles Store, and Apartments," "Knights Inn," "J P Sanchez Rental," and "Y2Y One Builders." In response to the complaint, the respondent stated that according to Texas Secretary of State's SOS Direct database, none of the entities, under their existing names, are registered as corporations with the agency.
8. The respondent disclosed contributions totaling \$850 from the following entities: "BBO Custom Brokerage," "BBO Enterprises Logistics," "Charcoal Grill INC.," and "RG Consulting servicea[sic] Inc." In response to the complaint, the respondent stated that his campaign was "unaware of the donor's corporate status at the time the contribution was accepted." The respondent provided copies of the checks received from the four contributors. All of the names of the contributors on the checks included the abbreviation "Inc.," except for the name on the check for BBO Custom Brokerage. SOS records indicate

that all four contributors are domestic for-profit corporations.

### **Disclosure of Total Amount of Political Contributions Maintained**

9. The complaint alleged that the respondent did not properly disclose the total amount of political contributions maintained as of the last day of the reporting period in his July 2013, January and July 2014, and January 2015 semiannual reports. In response to the sworn complaint, the respondent swore that the total amount of political contributions maintained reported in the July 2013 report was correct and the remaining reports' total political contributions maintained amounts were incorrectly reported due to an error in accounting by the respondent's campaign staff. The respondent submitted bank statements that showed his campaign contribution account balance on or near the last day of the reporting period for the campaign finance reports at issue. The respondent's campaign finance reports and bank statements showed the following:

| <b>Report</b> | <b>Reported Political Contributions Maintained</b> | <b>Bank Balance as of Last Day of Reporting Period</b> | <b>Difference</b> |
|---------------|--|--|-------------------|
| July 2013     | \$2,500.00   | \$870.55   | \$1,629.45        |
| January 2014  | \$150.00   | \$10,217.85  | \$10,067.85       |
| July 2014     | \$3,200.00   | \$5,530.07   | \$2,230.07        |
| January 2015  | \$0.00   | \$18,088.15  | \$18,088.15       |

10. The respondent corrected two of the reports at issue.

### **Unreported Political Expenditures, Political Contributions, and Personal Loans**

11. The complaint alleged that the respondent reported the incorrect amount of total contributions maintained as of the last day of the reporting period; or, in the alternative, did not report political contributions and/or political expenditures as required by section 254.031 of the Election Code.
12. The Commission compared the activity documented in the respondent's campaign bank records with the activity that the respondent disclosed in the five campaign finance reports at issue in the complaint. The review showed that \$94,124.92 of political expenditures and \$111,423.10 of political contributions and loans of personal funds were documented in the respondent's campaign bank records, but not disclosed in his relevant campaign finance reports.
13. The respondent acknowledged that incomplete recordkeeping and inadequate communication with campaign staff caused a number of political expenditures and political contributions to go unreported. The respondent accepted responsibility for the reporting errors and denied converting any political contributions to personal use or knowingly

attempting to conceal information. The respondent further represented appropriate safeguards have been implemented to ensure proper oversight and reporting.

#### **Disclosure of Full Name of Contributors**

14. The complaint alleged that the respondent did not disclose the full name of four contributors that made political contributions to him totaling \$1,100. The respondent reported the following information for the four political contributions at issue in the complaint.
15. In response to the complaint, the respondent denied the allegation as to the first two contributors, because he disclosed the commonly used acronyms for the contributors' names. Similarly, the respondent denied the allegation as to the contributor, NCHA, swearing that "NCHA" is the commonly used acronym for the association (Texas Cutting Horse Association) whose PAC made a contribution to him. According to Commission records, the full name of the PAC is NCHA Texas Events PAC.
16. Later, the respondent provided copies of the checks he received from all of the contributors at issue; however, only two of the checks were legible. The names printed on the two legible checks were "TSCPA/POLITICAL ACTION COMMITTEE" (TSCPA) and "Tenaska Employees Texas PAC" (Tenaska PAC). Lastly, according to the Federal Election Commission, PNM Responsible Citizen[s] Group is an out-of-state PAC administered by the Public Services Company of New Mexico and the name for the PAC that was commonly used on the company's website was "PNM Responsible Citizens Group."

#### **Disclosure of Principal Occupation or Job Title, and Employer of Contributors**

17. The complaint alleged that the respondent did not disclose the principal occupation or job title, and employer of 14 contributors. The respondent disclosed accepting 14 contributions that each exceeded \$500 in his January and July 2014, and January 2015, semiannual campaign finance reports. For these contributions at issue, the respondent left blank the sections of Schedule A (used to disclose political contributions) that asked for the contributor's principal occupation or job title, and employer.
18. In response to the complaint, the respondent admitted that he did not disclose the principal occupation or job title, and the employer for the contributors at issue. Also, in response to the complaint, the respondent corrected the reports to include the omitted information for the contributors.

#### **Personal Reimbursements**

19. The complaint alleged that the respondent converted political contributions to personal use

when he reimbursed himself from political contributions for political expenditures he made with his personal funds but did not disclose the original political expenditures from his personal funds in his campaign finance reports.

20. The respondent disclosed some of the personal funds he used to make political expenditures as loans on Schedule E (used to disclose loans) of his 30-day and 8-day pre-election reports prior to the May 29, 2012, election, and January 2012 and July 2013 semiannual reports in the amount of \$50,250. The respondent indicated in the reports that \$38,500 of the \$50,250 was deposited in his campaign account with his political contributions.
21. Political expenditures made from the personal funds placed in his campaign account were properly disclosed on Schedule F (used to disclose political expenditures). The respondent also disclosed making political expenditures from personal funds that he intended to reimburse himself on Schedule G (used to disclose political expenditures made from personal funds) of his 30-day and 8-day pre-election reports prior to the November 6, 2012, election in the amount of \$2,147.85.<sup>1</sup>
22. Based on the reports filed by the respondent, he was entitled to reimburse himself \$50,250 from political contributions during the time at issue in the complaint.
23. The respondent disclosed in his January and July 2014, and January 2015 semiannual reports, the following reimbursements to himself:

| <b>Date</b>  | <b>Amount</b>   | <b>Category</b>              | <b>Description</b>   |
|--------------|-----------------|------------------------------|----------------------|
| 11/21/2013   | \$253           | Travel in District           | gas, meals, supplies |
| 05/30/2014   | \$5,000         | Loan Repayment/Reimbursement | payback loan         |
| 06/13/2014   | \$1,000         | Loan Repayment/Reimbursement | skeet shoot exp.     |
| 07/09/2014   | \$500           | Loan Repayment/Reimbursement | repayment            |
| 08/26/2014   | \$1,525         | Loan Repayment/Reimbursement | payments-split       |
| 10/01/2014   | \$3,500         | Loan Repayment/Reimbursement | repayment            |
| <b>Total</b> | <b>\$11,778</b> |                              |                      |

24. In response to the complaint, the respondent admitted that he did not disclose the original political expenditures that totaled \$253 and \$1,000 for which he subsequently reimbursed himself on November 21, 2013, and June 13, 2014. He submitted receipts showing his political expenditures for gas, meals, and supplies regarding his \$253 reimbursement to himself on November 21, 2013, but no receipts were submitted regarding the \$1,000 reimbursement made to himself on June 13, 2014.

<sup>1</sup>The respondent disclosed himself as the payee for the political expenditures on Schedule G instead of disclosing the vendor or vendors to whom he made the political expenditures with his personal funds. Therefore, he did not properly disclose the political expenditures and those expenditures were not eligible for reimbursement.

25. In addition, the respondent denied that he converted political contributions to personal use as to the remaining four reimbursements. He stated that the four reimbursements to himself, totaling \$10,525, were to repay loans of personal funds that he made to his campaign and he reported those loans properly on Schedule E of previous reports.

### **Disclosure of Actual Payees and Staff Reimbursements**

26. The complaint alleged that the respondent did not disclose the actual payee of 16 political expenditures on his July 2013, January and July 2014, and January 2015 semiannual reports.
27. In response to the complaint, the respondent swore that nine individuals were the actual vendors for 10 political expenditures in question in the complaint and thus, no violation occurred by disclosing their names as the payees. The respondent submitted a copy of the receipt from one of the individuals showing that she provided food for a fundraising event and a copy of the invoice from another individual who provided clay machines and targets for a fundraising event that involved skeet shooting.
28. The respondent stated that the documentation for the remaining seven political expenditures could not be located. However, the respondent swore that he made payments to three individuals because one provided labor, the second provided office space, and the third placed radio advertising for his campaign. He made payments to two individuals that were donations for a "local parent teach organization in Eagle Pass," and to a girls' soccer team. Last, the respondent made a payment to an individual for her mileage used to travel throughout the district on behalf of his campaign and made a payment to an individual for t-shirts she designed and sold to persons who worked in the capitol. The respondent provided sworn statements from the seven individuals that corroborated the respondent's characterization of each expenditures.
29. In addition, the respondent stated that three individuals used their personal funds to make political expenditures on his behalf. The respondent admitted that he should have disclosed the vendors to whom these individuals made the expenditures as the actual payees, and not the individuals that he reimbursed. Lastly, the respondent stated that he was the actual vendor of two of the political expenditures at issue, because he reimbursed himself from political contributions for political expenditures he previously made out of his personal funds.

### **Disclosure of the Full Name and Address of Payees**

30. The complaint alleged that the respondent did not properly disclose the full name of a payee and did not disclose addresses of 41 payees. The respondent disclosed in his January 2014 semiannual report a political expenditure to "MALC" of \$300 on November 27, 2013.

The respondent also disclosed "PENDING" as the address of 41 political expenditures totaling \$30,049 in his January and July 2014, and January 2015 semiannual reports. Each of the 41 political expenditures at issue exceeded \$100.

31. In response to the complaint, the respondent denied that a violation occurred when he disclosed the name of the payee as "MALC" for the political expenditure at issue. The respondent stated that he made a political expenditure to the Mexican American Legislative Caucus and MALC is "the widely used and recognized acronym" for the caucus. Internet research shows that "MALC" is a commonly used acronym for the Mexican American Legislative Caucus.
32. In regards to the remaining 41 payee addresses at issue, the respondent stated that not disclosing the addresses for the payees at issue was an "oversight by his campaign" and he would correct the reports to disclose the missing information. The respondent corrected most of the addresses at issue.

### Purpose of Expenditures

33. The complaint alleged that the respondent did not properly disclose the purpose of eight political expenditures. The respondent disclosed the following relevant information for the eight political expenditures in his July 2013, January and July 2014, and January 2015 semiannual reports:

| Date       | Amount  | Category                        | Description                       |
|------------|---------|---------------------------------|-----------------------------------|
| 1/29/2013  | \$300   | Travel in District              | District Travel                   |
| 3/22/2013  | \$469   | Travel in District              | Intern travel throughout district |
| 7/31/2013  | \$200   | Event Expense                   | Reimbursement                     |
| 12/16/2013 | \$170   | Advertising Expense             | RADIO                             |
| 5/23/2014  | \$4,500 | Event Expense                   | skee[r]tshoot event               |
| 6/13/2014  | \$1,000 | Loan<br>Repayment/Reimbursement | skeet shoot exp.                  |
| 10/02/2014 | \$571   | Travel in District              | repayment for travel              |
| 11/24/2014 | \$508   | Food/Beverage Expense           | District Event                    |

34. In response to the complaint, the respondent stated that the purpose for the expenditure made on January 29, 2013, was incorrect and "[t]he category for the expenditure should have been 'Salaries/Wages/Contract Labor,' while the description should have been reported as 'Campaign contract labor.'" In addition, the respondent stated that the expenditures made on March 22, 2013, and July 31, 2013, were reimbursements for political expenditures made from their personal funds on behalf of him and the vendors should have been disclosed as the payees for those expenditures instead of the names of the two individuals.

35. In regards to the political expenditures made on May 23, 2014, and October 2, 2014, the respondent swore that he would correct his reports to "clarify the purpose." Additionally, the respondent denied that a violation occurred regarding the purpose of the expenditure made on November 24, 2014, and stated that the purpose of the expenditure fulfilled the requirements of section 254.031(a)(3) of the Election code and section 20.61 of the Ethics Commission Rules.

### **Maintaining Records of Reportable Activity**

36. The sworn complaint involved alleged reporting violations regarding the respondent's January and July 2013, January and July 2014, and January 2015 semiannual reports. The records for the first report at issue were required to be kept until January 15, 2015, and the records for the most recent report at issue were required to be kept until January 15, 2017. The Notice of Complaint was mailed to the respondent on February 2, 2015. The notice informed the respondent that he should retain all records that pertain to the allegations in the complaint until the complaint is resolved.
37. On June 29, 2016, the Commission sent the respondent written questions to ascertain more information about political expenditures disclosed in the reports at issue in the complaint. The Commission also requested copies of the records for those political expenditures.
38. In response to the questions and request to produce the records, the respondent submitted documentation for some of the political expenditures and admitted that he did not retain the records for other political expenditures at issue in the complaint.

### **IV. Findings and Conclusions of Law**

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

#### **Acceptance of Corporate and Labor Organization Contributions**

1. "Contribution" means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. ELEC. CODE § 251.001(2).
2. "Political contribution" means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5). "Campaign contribution" means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution. *Id.* § 251.001(3).
3. A person may not knowingly accept a political contribution that the person knows was

made in violation of chapter 253 of the Election Code. *Id.* § 253.003(b).

4. A corporation or labor organization may not make a political contribution that is not authorized by Chapter 253, Subchapter D, of the Election Code. *Id.* § 253.094(a). The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. *Id.* § 253.091.
5. Fifteen of the 23 contributors that made political contributions to the respondent were not corporations or labor organizations. The evidence shows 13 of the contributors were political committees of corporations or labor organizations, one contributor was an individual, and one contributor was a professional corporation. Therefore, there is credible evidence of no violations of sections 253.003(b) and 253.094(a) of the Election Code regarding those 15 contributors at issue.
6. "Hesles Store, and Apartments," "Knights Inn," "J P Sanchez Rental," and "Y2Y One Builders" are not registered as corporations with the SOS, and there is insufficient evidence to determine whether the four contributors are corporations. Also, the name on the check of BBO Custom Brokerage, Inc. did not contain the word "Inc." and thus the respondent may not have known at the time of acceptance that the entity was a corporation. Thus, there is insufficient evidence that the respondent knew that BBO Custom Brokerage, Inc. was a corporation at the time he accepted the contribution. Therefore, there is insufficient evidence of violations of sections 253.003(b) and 253.094(a) of the Election Code regarding these five contributors at issue.
7. The respondent signed his campaign treasurer appointment form, which contained an affirmation that that he was aware of the restrictions regarding contributions from corporations and labor organizations. Even though the respondent denied being aware of the contributors' corporate status, credible evidence indicates that he knew at the time he accepted contributions from BBO Enterprises Logistics, Inc., Charcoal Grill, Inc., and RG Consulting Services, Inc. that they were corporations, because their names on the contribution check included the word "Inc." Therefore, there is credible evidence of violations of sections 253.003(b) and 253.094(a) of the Election Code regarding the remaining three contributors at issue who made political contributions totaling \$600.

#### **Disclosure of Total Amount of Political Contributions Maintained**

8. Each report filed under this chapter 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).

9. The differences between the total political contributions maintained amount reported on the four semiannual reports at issue and the campaign account balances ranged from approximately \$1,629 to \$18,088. There is credible evidence that the respondent did not properly report the total political contributions maintained on the four semiannual reports at issue. Therefore, there is credible evidence of violations of section 254.031(a)(8) of the Election Code.

### **Unreported Political Contributions, Political Expenditures and Personal Loans**

10. Generally, each campaign finance report must include all political contributions accepted and political expenditures made during a reporting period. *See* ELEC. CODE § 254.031.
11. Contributions from each person that in the aggregate exceed \$50 that are accepted during a reporting period must include the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
12. Each report filed under this chapter must include the amount of political expenditures that in the aggregate exceed \$100 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. *Id.* § 254.031(a)(3).
13. Contributions and expenditures that are not itemized must be included as a total amount on a campaign finance report. *Id.* § 254.031(a)(5).
14. A comparison of the respondent's bank statements and campaign finance reports at issue showed that \$94,124.92 of political expenditures, and \$111,423.10 of political contributions and loans of personal funds were documented in the respondent's campaign bank records, but not disclosed in his relevant campaign finance reports.
15. The respondent does not dispute that he failed to report a substantial amount of political contributions and political expenditures. However, such failure was unintentional, according to the respondent.
16. There is credible evidence of violations of sections 254.031(a)(1) and 254.031(a)(3).

### **Disclosure of Full Name of Contributors**

17. Each report filed under this chapter 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. ELEC. CODE § 254.031(a)(1).

18. At any stage of a proceeding under this subchapter, the commission shall dismiss a complaint to the extent the complaint alleges that a report required under Chapter 254, Election Code, contains the improper name or address of a person from whom a political contribution was received if the name or address in the report is the same as the name or address that appears on the check for the political contribution. GOV'T CODE § 571.1222.
19. The four contributions at issue each exceeds \$50. Although the checks provided to the Commission from PNM Responsible Citizens Group and NCHA were illegible, there is credible evidence that PNM Responsible Citizens Group is the commonly used name of the PAC and the respondent disclosed its name in his report. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code regarding this contributor's name. However, there is credible evidence that "NCHA" is not the commonly used acronym for the association's PAC and the full name of the PAC is NCHA Texas Events PAC. The respondent did not disclose the full name of that contributor when he disclosed the name as "NCHA." Thus, there is credible evidence of a violation of section 254.031(a)(1) of the Election Code as to this contributor's name.
20. Regarding the contributor, TSCPA, the respondent disclosed the name of the contributor that was written on the political contribution check; however, he disclosed "PAC," the abbreviation of "political action committee" as part of the contributor's name. Since the Commission has recognized "PAC" as an acceptable abbreviation for "political action committee," the respondent disclosed the full name of the contributor. There is credible evidence of no violation of section 254.031(a)(1) of the Election Code.
21. Regarding the remaining contributor, Tenaska PAC, the respondent did not disclose the same name that appeared on the contributor's political contribution check, because he omitted "Texas PAC" from the name of the contributor. Thus, there is credible evidence of a violation of section 254.031(a)(1) of the Election Code.

#### **Disclosure of Principal Occupation or Job Title, and Employer of Contributors**

22. In addition to the contents required by Sections 254.031 and 254.061, each report by a candidate for a statewide office in the executive branch or a legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 and that are accepted during the reporting period: (1) the individual's principal occupation or job title; and (2) the full name of the individual's employer. ELEC. CODE § 254.0612.
23. The 14 contributions at issue each exceeds \$500. The respondent, as a candidate for a legislative office, did not provide the principal occupation or job title, and employer for the 14 contributors at issue. Therefore, there is credible evidence of violations of section 254.0612 of the Election Code.

**Personal Reimbursements**

24. Except as provided by Section 253.0351 or 253.042, a candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if: (1) the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report required to be filed under this title that covers the period in which the expenditures from personal funds were made; and (2) the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. ELEC. CODE § 253.035(h).
25. The respondent admitted, and credible evidence indicates, that he did not disclose the original political expenditures he made from his personal funds and subsequently reimbursed himself from his political contributions on November 21, 2013, and June 30, 2014. Therefore, there is credible evidence of violations of sections 254.031 and 253.035(h) of the Election Code. However, in regard to the four remaining reimbursements the respondent made to himself for loans of personal funds he disclosed on Schedule E of several previous campaign finance reports, the political expenditures from those funds were disclosed on Schedule F and therefore, there is credible evidence of no violations of section 253.035(h) of the Election Code.

**Disclosure of Actual Payees and Staff Reimbursements**

26. Each report filed under this chapter must include the amount of political expenditures that in the aggregate exceed \$100 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).
27. Ethics Commission Rules section 20.62 states that political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee, with the intent to seek reimbursement from the officeholder, candidate, or political committee, that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made:
  - (1) the amount of political expenditures that in the aggregate exceed \$100 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; and
  - (2) included with the total amount or a specific listing of the political expenditures of

\$100 or less made during the reporting period.

28. There are 16 political specific political expenditures that each exceed \$100 for which whether the respondent disclosed the actual payee is at issue. Regarding the political expenditures made to two individuals on July 31, 2013, and May 23, 2014, documentation shows that the two individuals were the actual payees of the political expenditures at issue. For the remaining seven individuals, the respondent provided affidavits from the individuals that stated they were the actual payees of the political expenditures at issue for goods and services they provided to the respondent. Also, the respondent was the actual payee for the two political expenditures that he made to reimburse himself from political contributions for previous political expenditures made from his personal funds. There is credible evidence that the respondent disclosed the actual payees of 12 of the political expenditures at issue. Therefore, there is credible evidence of no violations of section 254.031(a)(3) of the Election Code as to 12 political expenditures at issue.
29. Regarding four political expenditures at issue in the complaint, the respondent disclosed the individuals who he reimbursed from his political contributions for political expenditures made on his behalf from those individuals' personal funds. However, the respondent did not disclose the vendors that those individuals made political expenditures to from their personal funds. There is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules regarding those four political expenditures.

#### **Disclosure of the Full Name and Address of Payees**

30. Each report filed under this chapter must include the amount of political expenditures that in the aggregate exceed \$100 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).
31. The 42 political expenditures at issue each exceed \$100. Regarding the first political expenditure at issue, the respondent made a political expenditure to the Mexican American Legislative Caucus and disclosed the commonly used acronym for the caucus as the name of the payee of the political expenditure. For the remaining 41 political expenditures at issue, the respondent disclosed "PENDING" for the addresses of the payees and thus, did not disclose the addresses of the payees for those expenditures. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code regarding the first political expenditure at issue. As to the remaining 41 political expenditures at issue, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.

#### **Purpose of Expenditures**

32. Each report filed under this chapter must include the amount of political expenditures that

in the aggregate exceed \$100 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).

33. The purpose of an expenditure means a description of goods, services, or other thing of value and must include a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure. Ethics Commission Rules § 20.61(a).
34. The eight political expenditures at issue each exceed \$100. The political expenditures made on March 22, 2013, and July 31, 2013, were disclosed in error and were addressed in the previous section regarding the actual payee allegation. Regarding the political expenditure made on January 29, 2013, the respondent did not disclose the correct purpose for the expenditure. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules. As to the remaining five political expenditures, the descriptions were not sufficiently specific because the descriptions did not either disclose the items or services purchased or disclose the candidate activity that was conducted by making the expenditure. However, the purposes, as initially disclosed by the respondent, were not misleading and did not substantially affect disclosure. Thus, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules as to the remaining political expenditures at issue.

### **Maintaining Records of Reportable Activity**

35. Each candidate and each officeholder shall maintain a record of all reportable activity. ELEC. CODE § 254.001(a). Each campaign treasurer of a political committee shall maintain a record of all reportable activity. *Id.* § 254.001(b). The record must contain the information that is necessary for filing the reports required by this chapter. *Id.* § 254.001(c). A person required to maintain a record under this section shall preserve the record for at least two years beginning on the filing deadline for the report containing the information in the record. *Id.* § 254.001(d).
36. Records required to be maintained by section 254.001 of the Election Code consist of records containing information needed to comply with reporting requirements, examples may include bank statements (front and back), deposit slips, cancelled checks (front and back), receipts, invoices, bills, and ledgers of contributions and expenditures. Ethics Commission Rules § 20.18(a).

37. Although not specifically alleged in the complaint, the respondent admitted that he did not retain records of nine political expenditures disclosed in four semiannual reports at issue in the complaint. Therefore, there is credible evidence of violations of section 254.001 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:
  - a person may not knowingly accept a political contribution from a corporation;
  - except as provided by section 253.0351 or 253.042, a candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if: (1) the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report required to be filed under this title that covers the period in which the expenditures from personal funds were made; and (2) the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement;
  - each candidate and each officeholder shall maintain a record of all reportable activity, the record must contain the information that is necessary for filing the reports required by this chapter, and a person required to maintain a record under this section shall preserve the record for at least two years beginning on the filing deadline for the report containing the information in the record;
  - each report filed under chapter 254 of the Election Code 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;

- each report filed under chapter 254 of the Election Code must include the amount of political expenditures that in the aggregate exceed \$100 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 purpose of an expenditure means a description of goods, services, or other thing of value and must include a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure; the brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear; merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure;
- staff reimbursements must be reported in accordance with section 20.62 of the Ethics Commission Rules;
- each report filed under chapter 254 of the Election Code 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; and
- in addition to the contents required by sections 254.031 and 254.061, each report by a candidate for a statewide office in the executive branch or a legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 and that are accepted during the reporting period: (1) the individual's principal occupation or job title; and (2) the full name of the individual's employer.

The respondent agrees to comply with these requirements of the law.

## **VI. Confidentiality**

This order and agreed resolution describes certain 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 \$15,000 civil penalty to be paid in full within six months of the date the Commission executes this order.

**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 sworn complaint SC-3150116.

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

\_\_\_\_\_  
Alfonso "Poncho" Nevarez, Respondent

EXECUTED by the Commission on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Seana Willing, Executive Director