

**STATE OF ARIZONA**

**CITIZENS CLEAN ELECTIONS COMMISSION**

MUR: No. 14-018 - ED ABLESER, JUAN MENDEZ, and ANDREW SHERWOOD

**STATEMENT OF REASONS BY EXECUTIVE DIRECTOR**

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On behalf of the Citizens Clean Elections Commission (“Commission”), the Executive Director hereby provides the Statement of Reasons showing there is no reason to believe that violations of the Citizens Clean elections Act and/or the Commission rules (collectively, the “Act”) may have occurred.

**I. Procedural Background**

On September 11, 2014, James Roy, a participating candidate for the legislature in legislative district 26, (“Complainant”) filed a complaint (“Complaint”) against Ed Ableser, Juan Mendez, and Andrew Sherwood (“Respondents”), participating candidates for the legislature in legislative district 26, alleging the Respondents violated Arizona’s campaign finance laws by using primary election funding for general election expenditures (**Exhibit A**). On September 23, 2014, Respondents, through their attorney, James Barton, submitted their Response to the Complaint (**Exhibit B**).

**II. Alleged Violations**

**A. Using primary election funds for general election expenditures**

Participating candidates may use primary election funds only for goods and services directed to the primary election, as specified in A.A.C. R2-20-106(G). A.R.S. §16-953(A) requires all candidates, at the end of the primary election period, to return “all monies in the candidate’s campaign account above an amount sufficient to pay any unpaid bills for

expenditures made during the primary election period and for goods or services directed to the primary election.”

Section 16-953(A) and A.A.C. R2-20-106(G) are consonant with the structure of the Clean Elections Act (“Act”). Under the Act, candidates voluntarily agree to expenditure limitations set forth in the Act. See A.R.S. § 16-941. The Act, by its terms, apportions funding between the primary and general elections. See A.R.S. § 16-951. Thus A.R.S. § 16-953(A) serves to backstop the limitations on general election expenditures, to which participating candidates agree, by ensuring that primary funds are not used to supplement general election grants resulting in expenditures beyond the limitations set forth in the Act and agreed to by participating candidates.

Complainant alleges Respondents violated A.R.S. §16-953(A) and A.A.C. R2-20-106(G) by producing signs during the primary election period with primary election funding and then displaying the signs after the primary election. Complainant states he did not observe the Respondents’ signs in legislative district 26 until the August 27, 2014, the day after the primary election. Complainant believes Respondents paid for the production of campaign signs during the primary election period but did not display the signs until the general election period, making the signs a general election expenditure.

### **III. Response**

Respondents believe the complaint is without merit. Respondents argue that all campaign signs paid with primary funds were displayed during the primary election period with the intent of influencing the primary election. Respondents provide declarations from Rick Rivera, the owner of J&R Graphics and Printing, and Kevin Smith, a part-time sign installer.

Mr. Rivera and Mr. Smith declare under the penalty of perjury that all signs purchased by Respondents were paid for and installed prior to the primary election on August 26, 2014.<sup>1</sup>

On August 22, 2014, Respondents each paid J&R Graphics and Printing \$1,258.53 (totaling \$3,775.59) for the production and installation Respondents' primary election signs. Additionally, Respondents each paid IQ Management \$133.33 (totaling \$399.99) on August 23, 2014 for the installation of campaign signs. The signs were produced and installed prior to the primary election. Therefore, the expenditure did not violate A.R.S. §16-953(A) and A.A.C. R2-20-106(G).

#### **IV. Analysis**

The sole issue in the Complaint is whether or not the signs were purchased and distributed during the primary period. Because the Response confirms they were, there is no reason to believe Respondents violated A.R.S. §16-953(A) and A.A.C. R2-20-106(G). I recommend the Commission find no reason to believe a violation occurred.

#### **V. Investigation After Reason to Believe Finding**

If the Commission determines by an affirmative vote of at least three (3) of its members that it has reason to believe a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding setting forth: (i) the sections of the statute or rule alleged to have been violated; (ii) the alleged factual basis supporting the finding; and (iii) an order requiring compliance within fourteen (14) days. During that period, the Respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission. A.R.S. § 16-957(A) & A.A.C. R2-20-208(A).

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<sup>1</sup> Respondent Juan Mendez provided his payment information to J&R Graphics and Printing on August 22, 2014 but the vendor did not process his payment until September 5, 2014. Respondent Mendez correctly reported the expenditure on his campaign finance reports and is not in violation of the Clean Elections Act or Rules.

After the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, the Commission shall conduct an investigation. A.A.C. R2-20-209(A). The Commission may authorize the Executive Director to subpoena all of the Respondent's records documenting disbursements, debts, or obligations to the present, and may authorize an audit.

Upon expiration of the fourteen (14) days, if the Commission finds that the alleged violator remains out of compliance, the Commission shall make a public finding to that effect and issue an order assessing a civil penalty in accordance with A.R.S. § 16-942, unless the Commission publishes findings of fact and conclusions of law expressing good cause for reducing or excusing the penalty. A.R.S. § 16-957(B).

After fourteen (14) days and upon completion of the investigation, the Executive Director will recommend whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred. A.A.C. R2-20-214(A). Upon a finding of probable cause that the alleged violator remains out of compliance, by an affirmative vote of at least three (3) of its members, the Commission may issue of an order and assess civil penalties pursuant to A.R.S. § 16-957(B). A.A.C. R2-20-217.

Dated this 8<sup>th</sup> day of October, 2014.

By:   
Thomas M. Collins, Executive Director

# EXHIBIT A

FILER'S INFORMATION

14 SEP 11 PM 12:02 CCEC

Citizens Clean Elections Commission  
1616 W. Adams  
Suite 110  
Phoenix, AZ 85007

September 11, 2014

To Whom It May Concern:

I wish to file a complaint against the campaigns of Andrew Sherwood (Elect Andrew Sherwood), Juan Mendez (Elect Juan Mendez), and Ed Ableser (Elect Ed Ableser).

The day after the primary election, August 27<sup>th</sup>, I observed that campaign signs for the three-way team of Sherwood, Mendez, and Ableser started going up in LD26. As I had put my signs up just a few days prior and I had been all over the district on the 25<sup>th</sup> and 26, I knew that these signs began going up on the 27<sup>th</sup>.

Please note that these signs were NEW campaign signs that included a "Re-Elect" message that would not have been there for the 2012 election when all three candidates were running for their respective offices for the first time.

It would not be possible for the signs to have been ordered on August 27<sup>th</sup>, been printed, dried, and installed, all on the same day. These signs were produced prior to the 27<sup>th</sup>. In other words, they were produced in the Primary Election Period. However, they were not used for the primary election and started going up on the first day of the General Election Period.

While I appreciate that it is easier to install signs on the posts of losing campaigns the day after the election, the net result of this action is that the three campaigns would have used primary funds for a general election expense.

I would ask that you investigate this matter and, if the facts agree with the facts as I believe them to have occurred, I would ask that the three candidates be fined an amount equal to the expenditure, to be deducted from their general election funding, along with whatever penalties are appropriate to discourage willful violations from three experienced Clean Elections candidates.

Thank you,



James Roy – 105 North Stewart, Mesa, AZ 85201

STATE OF ARIZONA }  
COUNTY OF Maricopa }  
Subscribed and sworn (or affirmed) before me this 11<sup>th</sup> day of  
September 2014  
Notary Public

REBECCA S. MOLINA  
Notary Public - State of Arizona  
MARICOPA COUNTY  
My Commission Expires August 15, 2015

# EXHIBIT B

September 23, 2014

VIA HAND DELIVERY AND VIA ELECTRONIC MAIL

Thomas Collins, Executive Director  
CITIZENS CLEAN  
ELECTIONS COMMISSION  
1616 West Adams, Ste. #110  
Phoenix, AZ 85007

14 SEP 23 PM 1:44 CCEC

RE: SEPTEMBER 11, 2014, JAMES ROY COMPLAINT

Executive Director Collins:

I am counsel in this matter for Elect Juan Mendez, Committee No. 201400217, Elect Andrew Sherwood, Committee No., 201400179 and Elect Ed Ableser, Committee No. 201400198 (the "Committees"). This letter is in response to the complaint filed by James Roy on September 11, 2014.

The complaint alleges that campaign signs for the Committees went up on or after August 27, 2014 based on the complainant's seeing the signs on August 27, but without remembering seeing them before. In fact, the signs were ordered, delivered, and installed to influence the primary election. The signs were paid for with primary election funds.

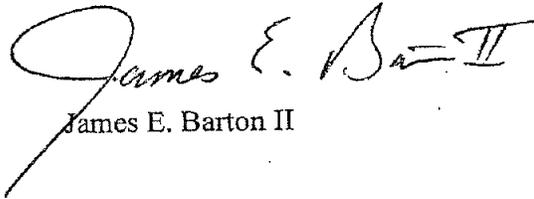
The Committees have verified that all the signs in question were ordered, paid for, printed and installed prior to August 27, 2014, all during the primary Election period, using primary election funds, with the intent of influencing the Primary Election. [Mendez Decl. ¶¶ 3-8; Sherwood Decl. ¶¶ 3-7; Ableser Decl. ¶¶ 3-7]. The sign makers and installers confirmed that printing, payment and installation of signs occurred during the Primary Election period, August 26, 2014 or before. [Rivera Decl. ¶¶ 4-10; Smith Decl. ¶¶ 4-8]. The expenditures were made during the primary period and were properly reported during the primary period. None of the signs which were ordered, paid for, and printed during the Primary Election Period were installed in the General Election Period.

Frankly, even without the information provided above the Commission could dismiss such flimsy complaints based on what Mr. Roy believes he has seen without any supporting evidence. As complainant stated in his complaint to this Commission, "if the facts agree with the facts as I believe them to have occurred. . ." Mr. Roy is uncertain of the facts and is seeking this Commission to conduct a fishing expedition on his behalf. The complainant mentions that he was "all over" the district on the 25<sup>th</sup> and 26<sup>th</sup> of August without providing details as to what parts of the district he was in or what times he was in any particular portion of the district. The more likely explanation is that complainant was not in parts of the district when signs were going up in those areas. According to the Independent Redistricting Commission, LD26 is 123.36 square miles, spanning Phoenix, Tempe, Mesa, Gilbert and Scottsdale. Thus, the simplest and most logical explanation is that the signs in question went up before August 27 2014, but complainant was not in the vicinity to view the signs at the time of installation.

The Commission should find no reason to believe that there has been a violation of the Citizens Clean Elections Commission's Act or rules.

If you have any questions, please do not hesitate to contact me.

Sincerely,

  
James E. Barton II

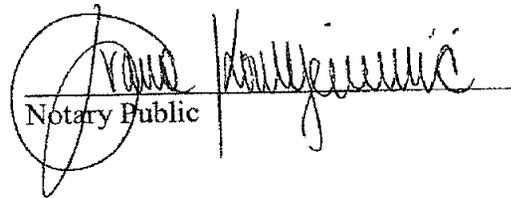
State of Arizona

County Maricopa

Subscribed and sworn (or affirmed) before me this 23<sup>rd</sup> day of September 2014.

(Seal)



  
Notary Public

## DECLARATION OF JUAN MENDEZ

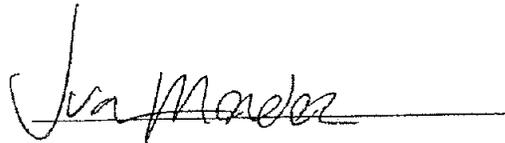
Juan Mendez declares the following:

1. I am currently a candidate for the Arizona Legislature in LD 26.
2. I have reviewed the complaint filed against my campaign by James Roy, dated September 11, 2014.
3. The signs mentioned in the complaint in question were purchased prior to August 27, 2014, during the Primary Election period. Specifically, the signs were ordered from J&R Printing on August 19, 2014.
4. The signs mentioned in the complaint in question were paid for prior to August 27, 2014, during the Primary Election period. On August 22, 2014, the date Ed Ableser, and Andrew Sherwood paid J&R Printing via check. At that time, I did not have a checkbook. Also on August 22, 2014, I provided J&R my debit card and necessary bank account information for the company to electronically withdraw the amount my campaign owed to the printing shop. It was my understanding and my expectation that my account would be charged and processing completed the same day I provided the information. For reasons beyond my understanding, knowledge, and control, J&R Printing did not withdraw funds on the date I provided my information to them, August 22, 2014. J&R completed processing on my account on September 5, 2014. To the best of my knowledge, J&R traditionally utilizes checks for payment, and less familiar with using debit cards or accounts to fund purchases. I do know that J&R does not regularly print signs for a coordinated campaign of three Arizona Legislative Candidates, and it is my opinion that J&R's lack of experience in these two areas is a contributing factor to the delay in payment processing.

5. It was my intent to pay on August 22, 2014 and when I provided my debit card and bank account information to J&R Printing with such an understanding and expectation. The transfer of my account information shows such an intent. I am not responsible for any backlog or oversight on the part of J&R to timely process my payment information which was provided in the Primary Election period, allocated from Primary Election funds, and accounted properly in my Primary Election budget calculations.
6. The signs mentioned in the complaint in question were installed prior to August 27, 2014, during the Primary Election period. The order placed with J&R was for immediate installation post manufacture for the 60 signs that J&R was responsible for installing. To the best of my knowledge, J&R fulfilled this obligation as quickly as possible post manufacture. The other 65 signs were to be picked up by Kevin Smith on August 23 and 24, and scheduled to be installed same day as pick up. Thus, 100% of the signs at issue in the complaint were installed prior to the Primary Election.
7. The intent of the purchase of the signs was for the influence of the Primary Election.
8. The purchase of the signs was a Primary Election expenditure and was paid for solely with Primary Election funds.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22<sup>nd</sup> day of September, 2014, at Tempe, Arizona.



Juan Mendez

## DECLARATION OF ANDREW SHERWOOD

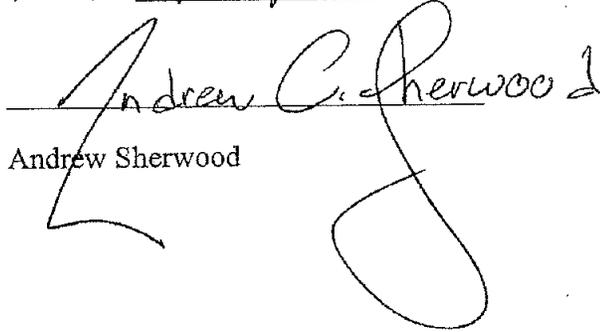
Andrew Sherwood declares the following:

1. I am currently a candidate for the Arizona Legislature in LD 26.
2. I have reviewed the complaint filed against my campaign by James Roy, dated September 11, 2014.
3. The signs mentioned in the complaint in question were purchased prior to August 27, 2014, during the Primary Election period. Specifically, the signs were ordered from J&R Printing on August 19, 2014.
4. The signs mentioned in the complaint in question were paid for prior to August 27, 2014, during the Primary Election period. Specifically, my campaign paid for the signs on August 22, 2014.
5. The signs mentioned in the complaint in question were installed prior to August 27, 2014, during the Primary Election period. The order placed with J&R was for immediate installation post manufacture for the 60 signs that J&R was responsible for installing. To the best of my knowledge, J&R fulfilled this obligation as quickly as possible post manufacture. The other 65 signs were to be picked up by Kevin Smith on August 23 and 24, and scheduled to be installed same day as pick up. Thus, 100% of the signs at issue in the complaint were installed prior to the Primary Election.

6. The intent of the purchase of the signs was for the influence of the Primary Election.
7. The purchase of the signs was a Primary Election expenditure and was paid for solely with Primary Election funds.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22<sup>ND</sup> day of September, 2014, at Tempe, Arizona.

  
Andrew Sherwood

## DECLARATION OF EDWARD ABLESER

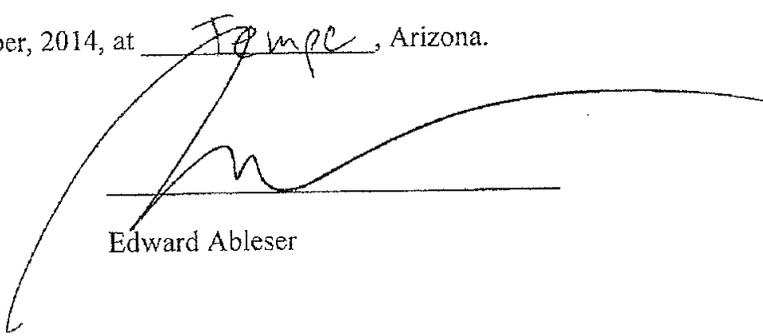
Edward Ableser declares the following:

1. I am currently a candidate for the Arizona Legislature in LD 26.
2. I have reviewed the complaint filed against my campaign by James Roy, dated September 11, 2014.
3. The signs mentioned in the complaint in question were purchased prior to August 27, 2014 during the Primary Election period. Specifically, the signs were ordered from J&R Printing on August 19, 2014.
4. The signs mentioned in the complaint in question were paid for prior to August 27, 2014 during the Primary Election period. Specifically, my campaign paid for the signs on August 22, 2014.
5. The signs mentioned in the complaint in question were installed prior to August 27, 2014 during the Primary Election period. The order placed with J&R was for immediate installation post manufacture for the 60 signs that J&R was responsible for installing. To the best of my knowledge, J&R fulfilled this obligation as quickly as possible post manufacture. The other 65 signs were to be picked up by Kevin Smith on August 23 and 24, and scheduled to be installed same day as pick up. Thus, 100% of the signs at issue in the complaint were installed prior to the Primary Election.
6. The intent of the purchase of the signs was for the influence of the Primary Election.

7. The purchase of the signs was a Primary Election expenditure and was paid for solely with Primary Election funds.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22 day of September, 2014, at Tempe, Arizona.



Edward Ableser

## DECLARATION OF RICK RIVERA

Rick Rivera declares the following:

1. I am Rick Rivera, and I am over 18 years of age and of sound mind.
2. I have personal knowledge of all facts contained in this declaration.
3. I am the owner of J&R Graphics and Printing, located at 638 W. Indian School Rd. Phoenix, AZ 85013 in Maricopa County.
4. On August 19, 2014, Andrew Sherwood ordered 125 signs from my printing shop. He also ordered 60 sign installations from my shop. A formal order slip was created on August 20, 2014. These signs were joint Sherwood, Ableser, Mendez signs. The costs of printing and installation was shared, with each candidate being responsible for 1/3<sup>rd</sup>.
5. My shop printed the signs in question in the complaint on August 20, 2014.
6. On August 21, 2014, my company installed 60 signs. Two installers, including myself, went out to perform these installations.
7. The remainder of the signs, 65 signs, were ready for pick up on August 23, 2014. They were picked up by a Mr. Kevin Smith on August 23, 2014 and August 24, 2014.
8. All three candidates paid me in full on August 22, 2014. Mr. Sherwood and Ableser paid via check. Mr. Mendez paid via electronic debit.
9. I typically accept checks for these types of transactions. Given the small size of our firm and the peak election season I regularly experience backlog during high volume weeks. It is common for me to process payments anywhere from 3 to 7 days after payment has been made during high volume weeks in the peak of election seasons.

10. In the case of Mr. Mendez's electronic debit payment, due to our abnormally high volume the week of August 22, 2014 and the resulting backlog the week after, my accountant was not able to properly process his payment until September 5, 2014. My company had his information on August 22, 2014 but did not process it in our usual turnaround time of 3-7 days due to our extreme backlog, until the later date.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 23 day of September, 2014, at Tempe, Arizona.

A handwritten signature in cursive script that reads "Rick Rivera". The signature is written in black ink and is positioned above a horizontal line.

Rick Rivera

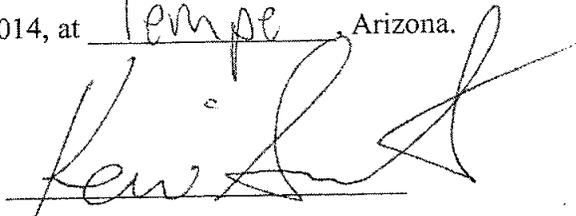
## DECLARATION OF KEVIN SMITH

Kevin Smith declares the following:

1. My name is Kevin Smith, and I am over 18 years of age, and of sound mind.
2. I have personal knowledge of all facts contained in this declaration.
3. I do campaign sign installation part time.
4. On Wednesday August 22<sup>nd</sup>, Andrew Sherwood contacted me to place an order for sign installation. I agreed to install 65 of his campaign signs as soon as they were ready for pickup.
5. The signs were ready for pickup on Thursday August 23<sup>rd</sup>. I picked the 35 signs up from J&R Printing on August 23<sup>rd</sup>. I picked up 30 signs from J&R Printing on August 24<sup>th</sup>.
6. On the evenings of August 23<sup>rd</sup> and August 24<sup>th</sup> I installed all 65 signs in the southern portion of LD26, south of the Broadway Road stretching from Tempe to Mesa.
7. I installed all signs after 10pm at night the night of August 23<sup>rd</sup> and 24<sup>th</sup>. This is because I did not want to install in the middle of the day due to the heat, and I prefer to avoid traffic so I can finish the installations much more quickly.
8. I was reimbursed for gas and other costs of actually performing the installations prior to August 26<sup>th</sup> 2014, during the Primary Election Period.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 29<sup>th</sup> day of September, 2014, at Tempe, Arizona.



Kevin Smith