

# Torres Law Group, PLLC

An Arizona Law Firm

Israel G. Torres

James E. Barton II

October 08, 2012

## Hand delivery

Todd Lang, Executive Director  
Arizona Clean Election Commission  
1616 West Adams, Ste. #110  
Phoenix, AZ 85007

RE: SEPTEMBER 28, 2012, STEPHEN KOHUT COMPLAINT

Executive Director Lang:

I am counsel in this matter for Dave for LD 11, Committee No. 201200460 (the "Committee"). This letter is in response to the complaint filed by Republican Party activist Stephen Kohut on September 28, 2012.<sup>1</sup> In summary, the Committee acknowledges its error in sending out its primary mailer to some Republican voters. Twenty-seven percent of the pieces from his last primary mailer went to Republican homes. The Committee is thus willing to repay to the Clean Elections fund \$1760, which is 27% of the cost of the mailer. As for the signs, they were purchased with the intention that they be used in the primary, the delay in installing provided no advantage to the Committee, thus there should be no penalty assessed based on this allegation. The remaining allegation is baseless, and the Commission should dismiss it.

### Mistake in the Mail Universe

After receiving the complaint, the Committee investigated the universe used for its last primary mailer and determined that 27% of the intended recipients were Republicans. [10/8/2012 Declaration of David Joseph, ("Joseph Decl.") attached hereto as Exhibit A, ¶ 3.] Unfortunately, the mail universe that the candidate reviewed did not have party

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<sup>1</sup> As of Friday, October 5, 2012, the Committee had not received notice of the complaint; however, based on my telephone conversation with you on Friday, I understand that Commission staff sent the complaint to the Committee on Tuesday, October 2. In any case, the Committee has no interest in further delaying the response.

affiliation listed on it. [*Id.* ¶ 4.] Although the Committee did not intentionally violate the Commission's rules, it acknowledges that sending mail supporting a Democratic candidate to Republican voters with primary funds is a violation.

The Committee paid Wholesale Lithography \$2590.93 for the post cards that are the subject of this complaint. [Wholesale Lithography invoice, attached hereto as Exhibit B.] The Committee paid \$3925.71 for mailing these post cards. [Jet Mail invoice, attached hereto as Exhibit C.] Thus, the total expenditure was \$6516.54, and 27% of that expense is \$1760. The Committee offers to repay \$1760 into the Clean Election fund, thus reducing its general election resources by the amount of money spent on the primary election mailers that went to Republican voters.

The Committee's offer provides a complete remedy. The Committee's returning \$1760 to the Clean Election fund effectively pays for those mailers with general election funds. In fact, the Committee is penalized for its mistake because the mail was not effective general election advocacy. The mail did not mention the general election. It did not mention the candidate's general election opponent. It was much too early to be effective in the general election.

The Committee urges the Commission to accept its offer based on these facts and on the Committee's cooperation with the investigation.

### **Signs Were Purchased and Used for the Primary**

The complaint alleges that the signs the Committee purchased near the end of August were not used for the primary. The basis for this is that the Committee purchased them near the end of the primary period and that there were major intersections that did not contain the signs.

The signs were purchased in the primary period and directed at the primary. [Joseph Decl. ¶ 5.] Although the Committee acknowledges that it did not put signs on every intersection in the district, it has supplied photographs of intersection that did contain the Committee's signs during the primary period. [*Id.* ¶ 6.] This expenditure was entirely directed at the primary, but because of delays in receiving the signs from the vendor, many of the signs were not installed before the primary. [*Id.* ¶ 7.]

The Committee asserts that given the Committee's intention to use the signs during the primary, and given that they were purchased before the primary, there was no violation of the Clean Elections Act in the purchase of the signs. Furthermore, the delay in installing the signs did not provide the Committee with any advantage, but actually disadvantaged the Committee when compared to the Committee's position had it installed all of the signs in the weeks leading up to the primary election. Because the

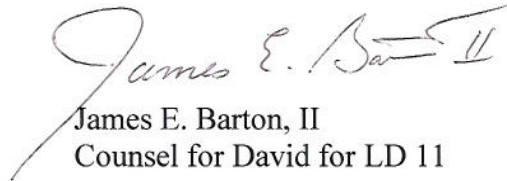
Committee did not receive any advantage from the delay in installing the signs, the Commission should recognize that this is a de minimis violation.

**Other Printed Material Was Used for the Primary**

The complaint alleges that other printed material was used during the general election. The complainant bases this allegation on nothing more than an overestimation of the number of pieces that could be produced for the invoiced price. In fact, the Committee received 20,000 pieces for the primary election for the indicated price. [Ex. B.] The Committee promptly distributed the card to volunteers and organizations supporting the Committee in the primary. [Joseph Decl. ¶ 9.] The majority of the cards were distributed either directly to voters or to supporting organizations before the primary election. [*Id.*] This expenditure was entirely directed at the primary, and the Commission should dismiss this allegation. [*Id.* ¶ 10.]

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

Sincerely,



James E. Barton, II  
Counsel for David for LD 11

# Exhibit A



## DECLARATION OF DAVID JOSEPH

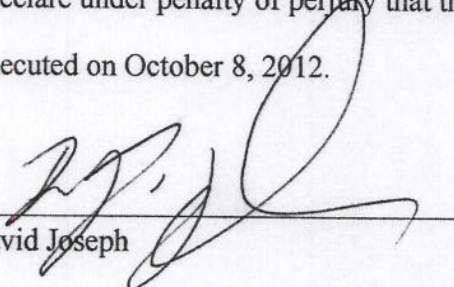
David Joseph declares the following:

1. I am currently a candidate for the Arizona Legislature in LD 11.
2. I have reviewed a copy of Stephen Kohut's September 28, 2012, complaint against my campaign committee.
3. Having investigated the universe used for the Committee's last primary mailer, I determined that 27% of the intended recipients were Republicans.
4. The mail universe that I reviewed did not have party affiliation on it.
5. The signs purchased with primary funds were for the primary election.
6. The attached images of signs were taken on August 28, 2012.
7. More signs would have been installed but for a conflict with the vendor which delayed their delivery. It would have been advantageous for the campaign to have more of the signs installed during the weeks before the primary
8. I received 20,000 palm cards in the week before the primary.
9. The majority of these palm cards were distributed to either voters or organizations supporting my campaign.
10. Each of these expenditures were directed at the primary election and were made with the intention that the subject material would be distributed prior to the primary election.

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

Executed on October 8, 2012.

David Joseph



Attachment to  
David Joseph Declaration





# Exhibit B



**Wholesale Lithographers**

Phone (520) 622-7146  
 Fax (520) 624-5707  
 831 E. 47th Street  
 Tucson, Arizona 85713

Bill Date 8/21/12  
 Inv Number/Order Date 8/21/12  
 Delivery Requested 8/21  
 Contact: Dave Joseph  
 Telephone:  
 Email: daveforld11@gmail  
 Purchase Order

*Handwritten signature: Dave Joseph*

SOLD TO Dave For LD 11

SHIP TO

| Ordered         | Shipped     | Description         | Amount           |
|-----------------|-------------|---------------------|------------------|
| 16,000          |             | 6 X 11 Post Card    | \$2,590.93       |
| 3,000           |             | 3.5 X 8.5 Palm Card | \$ 394.80        |
| 17,000          |             | 3.5 x 8.5 Palm Card | \$1,649.02       |
|                 |             |                     | <b>Sub total</b> |
|                 |             |                     | \$4,634.75       |
| 100# DiscGlsCvr |             |                     | Tax              |
| weight          | grade       | Remarks             | \$ 421.76        |
|                 |             |                     | <b>TOTAL</b>     |
|                 |             |                     | \$5,056.51       |
| weight          | grade       |                     |                  |
| Ink             | 4/4 process |                     |                  |

**Dave for LD 11**  
 Campaign Account  
 11109 N Pusch Ridge Vistas Dr  
 Tucson, AZ 85737  
 (520) 445-3112

1062

*WHOLESALE LITHOGRAPHERS*  
*FIVE THOUSAND FIFTY SIX*

Vantage West Credit Union  
 P.O. Box 15115  
 Tucson, AZ 85708

*MAILING LABEL*

|                 |                     |
|-----------------|---------------------|
| BALANCE FORWARD | <i>Aug 21, 2012</i> |
| THIS PAYMENT    | <i>5056.51</i>      |
| BALANCE         |                     |
| DEPOSIT         |                     |
| BALANCE FORWARD |                     |



# Exhibit C



# ARIZONA JET-MAIL

3710 E. 43rd Place #101  
 TUCSON, AZ 85713  
 Ph (520) 571-1329 FAX (520) 571-6494

# Invoice

|           |           |
|-----------|-----------|
| DATE      | INVOICE # |
| 8/21/2012 | 48157     |

|  |
|--|
| BILL TO  |
| Dave Joseph for LD11<br>11109 N Pusch Ridge Vistas Dr<br>Tucson AZ 85437 |

|          |                |          |
|----------|----------------|----------|
| P.O. NO. | TERMS          | JOB #    |
|          | Due on receipt | Wo131710 |

| QUANTITY | DESCRIPTION   | RATE     | AMOUNT   |
|----------|---|----------|----------|
|          | Mail Let's Create Jobs Postcard - Political Tags (15651 pieces) - per Estimate 019934 |          |          |
|          | Non-Taxable Services  | 78.26    | 78.26    |
|          | Taxable Service   | 391.28   | 391.28T  |
|          | Debit ESTIMATED Permit Postage  | 3,428.39 | 3,428.39 |
|          | State Sales Tax   | 7.10%    | 27.78    |

Dave for LD 11  
 Campaign Account  
 11109 N Pusch Ridge Vistas Dr  
 Tucson, AZ 85737  
 (520) 445-3112

1063

*ARIZONA JET-MAIL*

*Aug 21, 2012*

|                 |         |
|-----------------|---------|
| BALANCE FORWARD |         |
| THIS PAYMENT    | 3925.71 |
| BALANCE         |         |
| DEPOSIT         |         |
| BALANCE FORWARD |         |

*PAID*

Vantage West Credit Union  
 P.O. Box 15115  
 Tucson, AZ 85708

*PAID 8/21/12*  
*Check # 1063* *CH*

18% interest will be charged past 30 days.


**Total** \$3,925.71



E-Z Messenger SmartForm

Email SmartForm

Done

|   |  |
|---|--|
| SmartForm#: 20121003055<br>Firm Name: 21806 TORRES LAW GROUP, PLLC<br>Your Name: Jayelynn Willman<br>Attorney: James Barton<br>Address: 209 E. BASELINE RD., SUITE E-102<br>:<br>City: TEMPE, AZ 85283<br>Phone: (602) 626-8805 Ext: Fax: (602) 626-8889<br>Email: jayelynn@thetorresfirm.com | 20121008 13:55<br>Service Level: Routine<br>Attorney for: Plaintiff<br>Bar#: 023888<br>File#: D. JOSEPH<br>Hearing Date:<br>Statute Date:<br>Office:P<br>Route #:20  |
| <b>No Case Information</b>  | <b>Documents Attached</b>  |
| County:<br>Court:<br>Case Number:<br>Case Title:<br>Plaintiff:<br>Defendant:  | <b>Complaint Response</b>  |
| <b>DELIVERY INSTRUCTIONS</b>  |  |
| 1st Pick Up Address<br>From: <b>Torres Law Group</b><br>Address: <b>209 E. Baseline Rd.</b><br><b>Suite E-102</b><br>City: <b>Tempe AZ 85283</b><br>Phone: <b>(602) 626-8805</b>  | Deliver To<br>To: <b>Arizona Clean Elections Commission Todd</b><br><b>Lang, Executive Director</b><br>Address: <b>1616 W. Adams, Ste. 110</b><br>City: <b>Phoenix AZ 85007</b><br>Phone: <b>(602) 364-3477</b>  |
|    |  |
| <b>Tucson Office:</b> 65 E. Pennington Street<br><b>Phoenix Office:</b> 2502 N. Black Canyon H<br><b>Flagstaff Office:</b> 201 East Birch Avenue #12<br><b>Prescott Office:</b> 101 E. Gurley Street Mezzanine Suite A<br><b>Dallas Office:</b> 2017 Young Street                             | Tucson, AZ 85701      520.623.8436      520.624.1819 (fax)<br>Phoenix, AZ 85009      602.258.8081      602.258.8864 (fax)<br>Flagstaff, AZ 86001      928.226.7221      928.226.7243 (fax)<br>Prescott, AZ 86301      928.443.5440      928.443.5442 (fax)<br>Dallas, TX 75204      214.748.4200      214.748.4206 (fax) |