

1 CHARLES B. WALKER  
Executive Director  
2 City of San Diego Ethics Commission  
1010 Second Avenue, Suite 1530, San Diego, CA 92101  
3 (619) 533-3476

4 Complainant

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8 **BEFORE THE CITY OF SAN DIEGO**  
9 **ETHICS COMMISSION**

10 In the Matter of ) Case No. C02-6  
11 League of Conservation Voters, San Diego; )  
Michael Beck ) **STIPULATION, DECISION**  
12 Respondents. ) **AND ORDER**  
13 \_\_\_\_\_ )

14 **THE PARTIES STIPULATE AS FOLLOWS:**

15 1. Complainant Charles B. Walker is the Executive Director of the City of San  
16 Diego Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty  
17 to administer, implement, and enforce local governmental ethics laws contained in the San Diego  
18 Municipal Code [SDMC] relating to, among other things, campaign finance as set forth in the  
19 City’s Campaign Control Ordinance [ECCO].

20 2. Respondent League of Conservation Voters, San Diego [LCV] is an organization  
21 registered with the State of California as a General Purpose Recipient Committee that received  
22 contributions of \$1,000 or more in a calendar year to support or oppose state or local candidates  
23 in connection with the March 5, 2002, Primary Election.

24 3. At all relevant times herein, respondent Michael Beck [Treasurer] was the treasurer of  
25 LCV.

26 4. LCV and the Treasurer are referred to herein collectively as “Respondents.”

27 5. This Stipulation, Decision and Order [Stipulation] will be submitted for consideration by  
28 the Ethics Commission at its next scheduled meeting, and the agreements contained herein are

1 contingent upon the approval of the Stipulation and the accompanying Decision and Order by the  
2 Ethics Commission.

3 6. This Stipulation resolves all factual and legal issues raised in this matter by the Ethics  
4 Commission without the necessity of holding an administrative hearing to determine the  
5 Respondents' liability.

6 7. Respondents understand and knowingly and voluntarily waive any and all procedural  
7 rights under the SDMC, including, but not limited to, a determination of probable cause, the  
8 issuance and receipt of an administrative complaint, the right to appear personally in any  
9 administrative hearing held in this matter, the right to confront and cross-examine witnesses  
10 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to  
11 have the Ethics Commission or an impartial hearing officer hear this matter.

12 8. The parties agree that this Stipulation is binding upon the Ethics Commission, but is not  
13 binding upon any other law enforcement or government agency and does not preclude the Ethics  
14 Commission from cooperating with or assisting any other law enforcement or government agency  
15 with regard to this or any other related matter. In the event that the Ethics Commission receives a  
16 future complaint alleging a violation of the provisions of ECCO that are the subject of this  
17 Stipulation, the Ethics Commission shall review the complaint to determine whether Respondents  
18 have complied with the terms of this Stipulation. If such a review results in a determination that  
19 Respondents have fully complied with the terms of this Stipulation, the complaint shall promptly  
20 be dismissed. If the review results in a determination that the Respondents have not complied with  
21 the terms of this Stipulation, the Ethics Commission may elect to either initiate a new enforcement  
22 action and/or seek an order from a court of law enforcing the terms of this Stipulation.

23 9. The parties agree that it is their intent in entering into this stipulation to comply with the  
24 law currently contained in the Political Reform Act [PRA] and ECCO in a manner that meets the  
25 respective goals and objectives of the parties. If there are any changes in these laws that have a  
26 material impact upon the implementation of this Stipulation, each party shall participate in a  
27 good faith renegotiation of this Stipulation and shall not unreasonably withhold approval of any

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1 requested modifications to the Stipulation made by either party when it can be demonstrated that  
2 the requested modification is necessitated or warranted by changes in the law.

3 10. The parties agree that in the event the Ethics Commission refuses to accept this  
4 Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics  
5 Commission rejects the Stipulation and a full evidentiary hearing before the City Ethics  
6 Commission becomes necessary, no member of the Ethics Commission or its staff shall be  
7 disqualified because of prior consideration of this Stipulation.

### 8 **SUMMARY OF FACTS**

9 11. On or before February 26, 2002, LCV entered into an agreement with Planned  
10 Parenthood to obtain a list of potential voters in San Diego Council Districts 2 and 4. On or after  
11 February 26, 2002, LCV received an invoice from Planned Parenthood seeking \$430.54 for the  
12 list of names. Thereafter, LCV paid the sum of \$430.54 to Planned Parenthood as payment in full  
13 of the invoice amount.

14 12. On March 8, 2002, the League and Treasurer filed a Campaign Disclosure Form,  
15 commonly known as a Form 496 Late Independent Expenditure Report, with the Office of the  
16 City Clerk for the City of San Diego. On April 29, 2002, the League and Treasurer filed an  
17 amended Form 496 with the Office of the City Clerk for the City of San Diego. These Reports  
18 reflect an independent expenditure made by LCV between February 26, 2002, and March 3,  
19 2002, for a phone bank in support of Michael Zucchet, a candidate for the City Council District 2  
20 seat in the March 5, 2002, Primary Election in the City of San Diego. The Reports also reflect a  
21 contribution from an organization.

22 13. On March 8, 2002, LCV and Treasurer filed a second Form 496 Late Independent  
23 Expenditure Report with the Office of the City Clerk for the City of San Diego. On April 29,  
24 2002, the League and Treasurer filed another amended Form 496 with the Office of the City  
25 Clerk for the City of San Diego. These Reports reflect an independent expenditure made by  
26 LCV between February 26, 2002, and March 3, 2002, for a phone bank in support of Dwayne  
27 Crenshaw, a candidate for the City Council District 4 seat in the March 5, 2002, Primary  
28 Election in the City of San Diego.

1 14. On or about March 7, 2002, LCV paid to Telincs, Inc. the sums of \$2,456.60 and  
2 \$1,848.80, as payment for the two phone banks identified in paragraphs 12 and 13. Such phone  
3 banks were conducted by Telincs, Inc. with the use of the list of potential voters obtained from  
4 Planned Parenthood as set forth in paragraph 11.

5 15. On March 27, 2002, LCV and Treasurer filed a four page Campaign Disclosure Form,  
6 commonly known as a Form 460 Semi-annual Statement, with the Registrar of Voters for the  
7 County of San Diego covering the period from July 1, 2001, through December 31, 2001.  
8 Schedule A of this Campaign Disclosure Form reflects that LCV received a \$500 contribution  
9 from an individual on December 23, 2001.

10 16. On July 15, 2002, LCV and Treasurer filed an eleven page Campaign Disclosure Form,  
11 commonly known as a Form 460 Semi-annual Statement, with the Registrar of Voters for the  
12 County of San Diego covering the period from January 1, 2002, through June 30, 2002.  
13 Schedule A of this Campaign Disclosure Form reflects that LCV received a \$500 contribution  
14 from Planned Parenthood Action Fund on January 7, 2002.

15 **COUNT 1**  
16 **(Against LCV and Treasurer)**  
17 **[Violation of SDMC Section 27.2941(a)]**

18 17. The City of San Diego prohibits candidates and campaign committees supporting or  
19 opposing candidates from accepting campaign contributions from any individual in an amount in  
20 excess of \$250 per election. This prohibition is codified in SDMC section 27.2941(a) and states  
21 as follows:

22 It is unlawful for a candidate, committee supporting or opposing a candidate, or  
23 individual acting on behalf of a candidate or committee to solicit or accept from  
24 any other individual a contribution which will cause the total amount contributed  
25 by that other individual in support of or opposition to a candidate to exceed two  
26 hundred fifty dollars (\$250) for any single election.

27 18. As reflected in Schedule A of the Campaign Disclosure Form described above in  
28 Paragraph 15, LCV and Treasurer accepted a contribution from an individual in the amount of  
\$500 in violation of SDMC 27.2941(a).

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1 **COUNTS 2 and 3**  
2 **(Against LCV and Treasurer)**  
3 **[Violations of SDMC Section 27.2947(a)]**

4 19. The City of San Diego prohibits candidates and campaign committees supporting or  
5 opposing candidates from accepting campaign contributions from organizations. This prohibition  
6 is codified in SDMC section 27.2947(a) and states as follows:

7 It is unlawful for a candidate, committee, committee treasurer or other person  
8 acting on behalf of a candidate or committee to accept a contribution from any  
9 person other than an individual.

10 20. As reflected in Paragraph 16, LCV and Treasurer accepted a \$500 contribution from an  
11 organization, Planned Parenthood, in violation of SDMC section 27.2947(a).

12 21. As reflected in the Campaign Disclosure Form described above in Paragraph 12, LCV  
13 and Treasurer accepted a contribution from an organization.

14 **COUNT 4**  
15 **(Against LCV and Treasurer)**  
16 **[Violation of SDMC Sections 27.2941 and 27.2947(b)]**

17 22. SDMC section 27.2903 contains a comprehensive and detailed definition of  
18 “contribution” that reads in pertinent part as follows: “Contribution” includes: . . . (4) any  
19 expenditure made at the behest of a candidate or committee or elective officer, unless full and  
20 adequate consideration is received for making the expenditure.” This definition states that  
21 “contribution” does not include “independent expenditures.”

22 23. SDMC section 27.2903 also defines “independent expenditure,” which reads in pertinent  
23 part as follows: “An expenditure that is made to or at the behest of a candidate or a committee is  
24 not an independent expenditure.”

25 24. According to ECCO, a committee that makes an expenditure “at the behest” of another  
26 committee is not making an “independent expenditure,” but is instead making a “contribution” to  
27 the committee that the expenditure was made at the behest of.

28 25. Title 2, section 18225.7 of the California Code of Regulations defines “made at the  
behest of” as follows:

(a) “Made at the behest of” means made under the control or at the direction of, in  
cooperation, consultation, coordination, or concert with, at the request or  
suggestion of, or with the express, prior consent of. Such arrangement must occur

1 prior to the making of a communication described in Government Code Section  
2 82031.

3 (b) An expenditure is presumed to be made at the behest of a candidate or committee  
4 if it is:

5 (1) Based on information about the candidate's or committee's  
6 campaign needs or plans provided to the expending person by the  
7 candidate, committee, or agents thereof; or

8 (2) Made by or through any agent of the candidate or committee in the  
9 course of their involvement in the current campaign.

10 (c) An expenditure is not made at the behest of a candidate or committee merely when:

11 (1) A person interviews a candidate on issues affecting the expending  
12 person, provided that prior to making a subsequent expenditure,  
13 that person has not communicated with the candidate or the  
14 candidate's agents concerning the expenditure; or

15 (2) The expending person has obtained a photograph, biography,  
16 position paper, press release, or similar material from the candidate  
17 or the candidate's agents.

18 26. When LCV and Treasurer paid Telincs, Inc. for phone banks using the information it  
19 received from Planned Parenthood, LCV was acting in “cooperation, consultation, coordination,  
20 or concert with” Planned Parenthood, was acting at the behest of Planned Parenthood, and was  
21 therefore making a contribution to Planned Parenthood. In so doing, LCV and Treasurer violated  
22 SDMC section 27.2941(b) by making a contribution in excess of \$250, and violated SDMC  
23 section 27.2947 by making an organizational contribution supporting candidates for elective  
24 office in the City of San Diego.

## 25 **STIPULATIONS AND ORDER**

### 26 **AUTHORITY OF CITY TO REGULATE CONTRIBUTIONS**

27 27. The parties acknowledge, understand, and agree that for City candidate elections a stated  
28 purpose of ECCO, as set forth in SDMC section 27.2901, is to “prohibit contributions by  
organizations in order to develop a broader base of political efficacy with the community,” and  
agree that ECCO regulates contributions to committees that make independent expenditures in  
support of a City candidate as stated in Paragraph 27.2947(c) as follows:

For purposes of section 27.2947(a) and (b), the term “committee” includes any  
committee that makes independent expenditures, in addition to any controlled  
committee.

1 28. Respondents acknowledge that the making of independent expenditures from a  
2 committee receiving both individual and organizational contributions may cause the public to  
3 believe that an independent expenditure has been made from organizational contributions even if  
4 the independent expenditures do not exceed the amount of contributions that can be attributable  
5 to individuals.

6 29. Respondents acknowledge that the prohibition of commingled contributions contained in  
7 ECCO is a safeguard to give the public confidence that organizational contributions are not being  
8 expended in support of or opposition to candidates running for office in the City of San Diego.

9 30. Respondents acknowledge that ECCO prohibits a committee from accepting a  
10 contribution from an organization unless the committee is organized solely for the purpose of  
11 supporting or opposing the qualification of a City measure for the ballot, or the adoption or  
12 defeat of a City measure, and the committee pursues no other purpose.

13 31. Respondents acknowledge that ECCO's prohibition against two or more committees  
14 coordinating expenditures is a safeguard to give the public confidence that independent  
15 expenditures made to support or oppose a candidate for elective office are truly "independent"  
16 and not the result of multiple parties acting in concert.

### 17 **AGREEMENTS**

18 32. Respondents acknowledge, understand, and agree that should LCV decide in the future to  
19 make independent expenditures greater than \$1,000 to support or oppose a candidate for elected  
20 office of the City of San Diego in any City of San Diego election, it may do so through a  
21 committee organized and registered with the State of California as a General Purpose Recipient  
22 Committee or a Primarily Formed Recipient Committee, but must adhere strictly to the mandates  
23 of SDMC sections 27.2941 and 27.2947, and take reasonable and necessary measures to ensure  
24 that it only accepts contributions from individuals and that the amount of such contributions do  
25 not cause the total amount contributed by that individual in support or opposition to a candidate  
26 to exceed two hundred fifty dollars (\$250) for any single election. If Respondent's committee  
27 accepts \$500 (from an individual who earmarks a \$250 contribution for a primary election and  
28 \$250 for a general election), the Campaign Disclosure Form reporting such contribution shall

1 reflect two line items earmarking \$250 for the Primary Election and \$250 for the General  
2 Election. No organizational contributions may be accepted by such committee, even if the  
3 organizational contributions are not used to support or oppose a candidate for elected office of  
4 the City of San Diego in any City of San Diego election.

5 33. Respondents acknowledge, understand, and agree that any contributions deposited into a  
6 checking account containing organizational contributions must be transferred into a checking  
7 account for a committee that has not accepted organizational contributions before such funds  
8 may be spent on a candidate election in the City of San Diego. Such transfer shall be disclosed  
9 on a campaign statement showing that LCV was an intermediary and the contribution was  
10 earmarked and attributed to an individual making a contribution supporting or opposing a  
11 particular candidate.

12 34. Respondents acknowledge, understand, and agree that it may accept contributions  
13 through the California League of Conservation Voters, a California public benefit corporation  
14 (California Secretary of State corporation identification number C1826893) [California League],  
15 but only if the contributions are from individuals and the California League's role in the transfer  
16 of the contribution is limited to that of an intermediary. Such contributions shall be disclosed by  
17 LCV on a campaign statement identifying each individual contributor as required under state law  
18 with an indication that the contributions from individuals were made to support or oppose a  
19 particular candidate through an intermediary – the California League. Contributions made in this  
20 manner are considered contributions from individuals and therefore will not violate the  
21 prohibition against organizational contributions outlined above in paragraph 30.

22 35. Respondents acknowledge, understand, and agree that if a LCV committee chooses to  
23 accept a contribution from an organization, that committee may not use such funds to support or  
24 oppose a candidate in a City of San Diego election, nor may it co-mingle such funds with other  
25 monies used to support or oppose a candidate in a City of San Diego election.

26 36. Respondents acknowledge, understand, and agree that LCV committees shall not make  
27 any expenditures supporting or opposing a candidate for elective office in the City of San Diego  
28 if such expenditure is made at the behest of a candidate or other committee.



1 37. Respondents acknowledge, understand, and agree that LCV committees shall not make  
2 any expenditures supporting or opposing a candidate for elective office in the City of San Diego  
3 that are under the control of, at the direction of, in cooperation with, in consultation with, in  
4 coordination with, in concert with, at the request or suggestion of, or with the express, prior  
5 consent of, a candidate or other committee.

6 38. Respondents acknowledge, understand, and agree that, in accordance with the definitions  
7 contained in SDMC section 27.2903 and California Government Code section 82013, LCV is a  
8 “committee” if it receives contributions totaling one thousand dollars or more in a calendar year,  
9 or makes independent expenditures totaling one thousand dollars or more in a calendar year.

10 39. Respondents acknowledge, understand, and agree that if LCV is a committee as set forth  
11 in paragraph 38, the committee shall, in accordance with the requirements of SDMC section  
12 27.2921, establish its own campaign contribution checking account at an office of a bank or  
13 other financial institution providing checking account services located in the City of San Diego.

14 40. Respondents acknowledge, understand, and agree that if LCV creates a separate  
15 committee (such as a Primarily Formed Recipient Committee formed to support a single candidate  
16 or measure), that separate committee shall, in accordance with the requirements of SDMC  
17 section 27.2921, establish its own campaign contribution checking account at an office of a bank  
18 or other financial institution providing checking account services located in the City of San Diego.

19 41. The parties acknowledge, understand, and agree that this Stipulation applies solely to  
20 LCV’s participation in campaigns for elective office in the City of San Diego, and is not  
21 intended to control any aspect of LCV’s ability to establish other political committees to  
22 participate in elections in other cities or at the County, State, or Federal level.

23 **FACTORS IN AGGRAVATION**

24 42. ECCO unambiguously prohibits the acceptance of individual contributions that exceed  
25 \$250 per candidate per election, and unambiguously prohibits the acceptance of organizational  
26 contributions by committees supporting or opposing candidates running for elective office in the  
27 City of San Diego. A letter on file in the Clerk’s Office reflects that correspondence was sent to

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1 LCV on January 10, 2002, specifically calling attention to the provisions in ECCO which  
2 prohibit organizational contributions.

3 **FACTORS IN MITIGATION**

4 43. Respondents have not shown any intention to conceal, deceive, or mislead. Respondents  
5 have been sincere and have cooperated fully with Ethics Commission staff in assisting with the  
6 investigation. Respondent Michael Beck is a novice Treasurer and admits to not being familiar  
7 with ECCO. Because of Respondents' good faith effort to comply with ECCO and the technical  
8 nature of the violations, it is agreed by the parties that a fine is not warranted in this matter.

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11 DATED: \_\_\_\_\_

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CHARLES B. WALKER, Executive Director  
EXECUTIVE DIRECTOR ETHICS COMMISSION  
Complainant

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14 DATED: \_\_\_\_\_

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The League of Conservation Voters, San Diego  
Respondent

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16 DATED: \_\_\_\_\_

\_\_\_\_\_  
Michael Beck  
Respondent

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20 **DECISION AND ORDER**

21 The Ethics Commission has considered the above Stipulation at its meeting on October 10, 2002.

22 The Ethics Commission hereby approves the Stipulation.

23  
24 DATED: \_\_\_\_\_

\_\_\_\_\_  
DOROTHY LEONARD, Chair  
SAN DIEGO ETHICS COMMISSION