

1 STACEY FULHORST, Executive Director
City of San Diego Ethics Commission
2 1010 Second Avenue, Suite 1530
San Diego, CA 92101
3 Telephone: (619) 533-3476
4 Facsimile: (619) 533-3448

5 Petitioner

6
7 **BEFORE THE CITY OF SAN DIEGO**
8 **ETHICS COMMISSION**

9
10 In re the Matter of:) Case No.: 2013-39
11 DAVID ALVAREZ,)
12 Respondent.) **STIPULATION, DECISION, AND**
13) **ORDER**

14 **STIPULATION**

15 **THE PARTIES STIPULATE AS FOLLOWS:**

16 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics
17 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,
18 implement, and enforce local governmental ethics laws contained in the San Diego Municipal
19 Code [SDMC] relating to, among other things, the provisions of the City’s Election Campaign
20 Control Ordinance [ECCO].

21 2. At all times mentioned herein, David Alvarez was a candidate in the mayoral
22 special election on November 19, 2013. The David Alvarez for Mayor 2013 committee
23 (Identification No. 1360332) [Committee] is a campaign committee registered with the State of
24 California established to support Mr. Alvarez’s mayoral candidacy. At all relevant times herein,
25 the Committee was controlled by Mr. Alvarez within the meaning of the California Political
26 Reform Act, California Government Code section 82016. Mr. Alvarez is referred to herein as
27 “Respondent.”

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1 3. This Stipulation will be submitted for consideration by the Ethics Commission at its
2 next scheduled meeting, and the agreements contained herein are contingent upon the approval
3 of the Stipulation and the accompanying Decision and Order by the Ethics Commission.

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

7 5. Respondent understands and knowingly and voluntarily waives any and all
8 procedural rights under the SDMC, including, but not limited to, a determination of probable
9 cause, the issuance and receipt of an administrative complaint, the right to appear personally in
10 any administrative hearing held in this matter, the right to confront and cross-examine witnesses
11 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to
12 have the Ethics Commission or an impartial hearing officer hear this matter. Respondent agrees
13 to hold the City of San Diego harmless from any and all claims or damages resulting from the
14 Commission's investigation or this stipulated agreement, or any matter reasonably related
15 thereto. Respondent further agrees that the terms of this Stipulation constitute compliance with
16 the provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a
17 reference to each violation, and an order.

18 6. Respondent acknowledges that this Stipulation is not binding upon any other law
19 enforcement or government agency and does not preclude the Ethics Commission from referring
20 this matter to, cooperating with, or assisting any other law enforcement or government agency
21 with regard to this or any other related matter.

22 7. The parties agree that in the event the Ethics Commission refuses to accept this
23 Stipulation, it shall become null and void. Respondent further agrees that in the event the Ethics
24 Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission
25 becomes necessary, no member of the Ethics Commission or its staff shall be disqualified
26 because of prior consideration of this Stipulation.

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1 **Summary of Law and Facts**

2 8. Because the Committee was formed for the purpose of supporting a candidate in a
3 City of San Diego election, Respondent is required to comply with the provisions of ECCO.

4 9. ECCO mandates that all committees that pay for mass campaign literature (200
5 substantially similar pieces of campaign literature) for the purpose of supporting or opposing a
6 City candidate or measure include the words “paid for by” followed by the name and address of
7 the committee. SDMC § 27.2970. This disclosure must be made in a typeface that is easily
8 legible, contrasts with the background, and is no less than 12 points in size. *Id.*

9 10. The Committee produced and distributed the following mass campaign literature
10 that did not comply with the “paid for by” disclosure requirements in the City’s campaign laws:

11 (a) On approximately October 21, 2013, the Committee retained Mission Control
12 Inc. to design and print the mailer attached as Exhibit 1 and distribute it to approximately 47,000
13 City residents. The mailer’s “paid for by” disclosure was printed in a typeface color that did not
14 contrast with the background of the piece, rendering it difficult to read.

15 (b) On approximately November 13, 2013, the Committee produced the
16 postcard/walk piece attached as Exhibit 2. Approximately 35,000 postcards were printed, but
17 less than half were distributed to City residents. The postcard includes a “paid for by” disclosure
18 printed in 8 point type.

19 **Counts**

20 **Counts 1 and 2 - Violations of SDMC section 27.2970**

21 11. Respondent violated SDMC section 27.2970 by producing and distributing mass
22 campaign literature that did not comply with the “paid for by” disclosure requirements: one
23 mailer included a disclosure printed in a typeface color that did not contrast with the background,
24 and one postcard/walk piece included a disclosure printed in 8-point type instead of the requisite
25 12-point type size.

26 **Factors in Mitigation**

27 12. The Commission’s investigation revealed that the Respondent reasonably relied on
28 campaign consultant Mission Control to comply with ECCO when designing and printing the

1 mailer attached as Exhibit 1. This consultant has acknowledged its mistake and has agreed to
2 pay a portion of the fine referenced below in Paragraph 17.

3 13. Respondent fully cooperated with the Ethics Commission's investigation and
4 immediately ceased distribution of all campaign materials that did not contain a proper
5 disclosure.

6 14. The Committee has implemented additional procedures to ensure that all of its
7 future campaign materials include a disclosure that fully complies with ECCO.

8 **Conclusion**

9 15. Respondent agrees to take necessary and prudent precautions to comply with all
10 provisions of ECCO in the future.

11 16. Respondent acknowledges that the Ethics Commission may impose increased fines
12 in connection with any future violations of the City's campaign laws.

13 17. Respondent agrees to pay a fine in the amount of \$2,000 for violating SDMC
14 section 27.2970. This amount must be paid no later than February 7, 2014, by check or money
15 order made payable to the City Treasurer. The submitted payment will be held pending
16 Commission approval of this Stipulation and execution of the Decision and Order portion set
17 forth below.

18
19 DATED: _____ [REDACTED]
20 STACEY FULHORST, Executive Director
21 ETHICS COMMISSION, Petitioner

22
23 DATED: _____ [REDACTED]
24 DAVID ALVAREZ, Respondent

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DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on _____,
2014. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
with the Stipulation, Respondent pay a fine in the amount of \$2,000.

[REDACTED]

DATED: _____

JOHN C. O'NEILL, Vice Chair
SAN DIEGO ETHICS COMMISSION

EXHIBIT 1

P-1 P813

PRSR STD
US POSTAGE
PAID
MAILING PROS INC.

PO Box 13733
San Diego, CA 92113



P-1 P813*****AUTO**5-DIGIT 92168

OR CURRENT RESIDENT

SAN DIEGO CA



The only candidate whose family's struggles led him to public service and progressive principles, David Alvarez will be a Mayor for ALL of San Diego.

As Mayor, David Alvarez will:

- Create public-private partnerships to rebuild our neighborhoods and create jobs through economic development.
- Enact a Climate Action Plan that will make San Diego one of the greenest cities in the country.
- Keep our communities safe by retaining police officers and investing in our police department.
- Maintain a balanced budget and cut waste.
- Strengthen schools in every neighborhood and increase recreation center hours and city-sponsored afterschool programs for kids.
- Rebuild our transportation infrastructure, improving our roads and creating jobs for city residents.

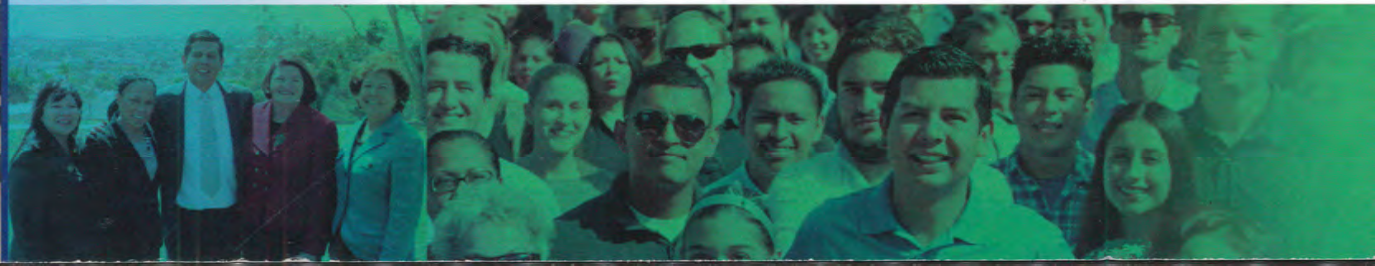
Endorsed by the San Diego County Democratic Party

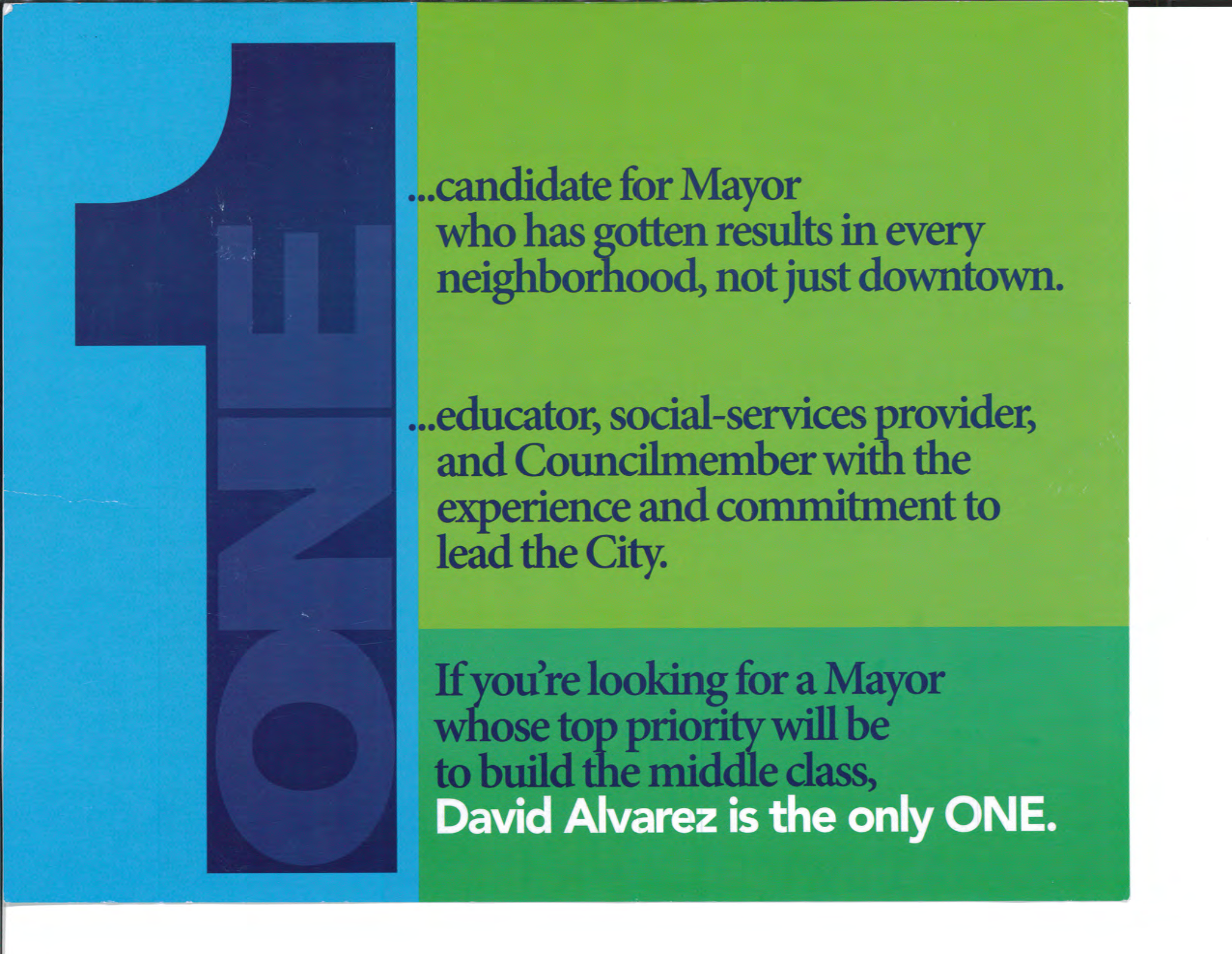
DAVID ALVAREZ
MAYOR 2013

VOTE NOVEMBER 19TH

www.alvarezformayor.com facebook.com/DavidAlvarezSD @AlvarezSD

Printed for David Alvarez for Mayor 2013, PO Box 13733, San Diego, CA 92113, TPCC #1360332





...candidate for Mayor
who has gotten results in every
neighborhood, not just downtown.

...educator, social-services provider,
and Councilmember with the
experience and commitment to
lead the City.

If you're looking for a Mayor
whose top priority will be
to build the middle class,
David Alvarez is the only ONE.

EXHIBIT 2

We Are San Diego

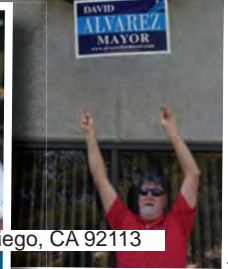


Vote David Alvarez for Mayor

David is endorsed by:

- The San Diego County Democratic Party
- California Nurses Association
- American Federation of Teachers
- Sierra Club, San Diego Chapter
- Assemblymember Toni Atkins
- Assemblymember Shirley Weber
- Councilmember Myrtle Cole

www.alvarezformayor.com



Paid for by David Alvarez for Mayor 2013, FPCC #1360332 PO Box 13733 San Diego, CA 92113

Vote David Alvarez



Your Polling Place is:



Polls are open from 7:00am to 8:00pm

If you still have a mail-in ballot, it needs to be dropped off at any poll location.

As a registered voter you have the right to vote, If you have a problem voting please call: (619) 402-1330



Tuesday is Election Day