

1 STACEY FULHORST, Executive Director  
City of San Diego Ethics Commission  
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5 Petitioner

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

9  
10 In re the Matter of: ) Case No.: 2012-18  
11 )  
12 SAN DIEGANS FOR RETIREMENT ) **STIPULATION, DECISION, AND**  
SECURITY – OPPOSE DEMAIIO FOR ) **ORDER**  
13 MAYOR 2012; SAN DIEGO CAN DO )  
BETTER, NO ON MEASURE B FOR )  
14 RETIREMENT FAIRNESS; AMERICAN )  
FEDERATION OF STATE, COUNTY AND )  
15 MUNICIPAL EMPLOYEES AFL-CIO; )  
AFSCME CALIFORNIA PEOPLE; and )  
16 AFSCME LOCAL 127, )  
Respondents. )

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18 **STIPULATION**

19 **THE PARTIES STIPULATE AS FOLLOWS:**

20 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics  
21 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,  
22 implement, and enforce local governmental ethics laws contained in the San Diego Municipal  
23 Code [SDMC] relating to, among other things, the provisions of the Election Campaign Control  
24 Ordinance [ECCO], SDMC section 27.2901, *et seq.*

25 2. At all times mentioned herein, American Federation of State, County, and  
26 Municipal Employees [AFSCME], AFSCME California People, and AFSCME Local 127 were  
27 the sponsors of San Diegans for Retirement Security – Oppose DeMaio for Mayor 2012 [SDRS]  
28 (registered with the State of California, Identification No. 1346793), and San Diego Can Do

1 Better, No on Measure B for Retirement Fairness [SDCDB] (registered with the State of  
2 California, Identification No. 1346628). SDRS, SDCDB, AFSCME, AFSCME California  
3 People, and AFSCME Local 127 are collectively referred to herein as “Respondents.”

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

7 4. This Stipulation resolves all factual and legal issues raised in this matter by the  
8 Ethics Commission without the necessity of holding an administrative hearing to determine  
9 Respondents’ liability.

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

21 6. Respondents acknowledge that this Stipulation is not binding upon any other law  
22 enforcement or government agency and does not preclude the Ethics Commission from referring  
23 this matter to, cooperating with, or assisting any other law enforcement or government agency  
24 with regard to this or any other related matter.

25 7. The parties agree that in the event the Ethics Commission refuses to accept this  
26 Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics  
27 Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission

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1 becomes necessary, no member of the Ethics Commission or its staff shall be disqualified  
2 because of prior consideration of this Stipulation.

3 **Summary of Law and Facts**

4 8. Because SDRS and SDCDB were formed for the purpose of opposing a City  
5 candidate and ballot measure respectively, Respondents are required to comply with the  
6 provisions in ECCO.

7 9. ECCO requires committees to file campaign statements in the time and manner  
8 required by California Government Code section 81000, *et seq.* and the regulations adopted by  
9 the Fair Political Practices Commission [FPPC]. It is unlawful under ECCO to fail to comply  
10 with the disclosure requirements of ECCO and state law. SDMC § 27.2930(j).

11 10. Committees are required to file campaign disclosure statements with the City Clerk  
12 in accordance with the deadlines established by state law. With respect to the June 2012 primary  
13 election, any committee that made independent expenditures to support or oppose a City  
14 candidate in the 16 days before the election (May 20, 2012, through June 4, 2012) was required  
15 to file a Late Independent Expenditure Report [Form 496] within 24 hours with the City Clerk.  
16 Cal. Gov't Code §§ 82036.5, 84204.

17 11. In addition to the above filing requirements, ECCO mandates that all committees  
18 that pay for mass campaign literature (200 substantially similar pieces of campaign literature) for  
19 the purpose of supporting or opposing a City candidate or measure include the words “paid for  
20 by” followed by the name and address of the committee. SDMC § 27.2970. This disclosure  
21 must be made in a typeface that is easily legible, contrasts with the background, and is no less  
22 than 12 points in size. *Id.*

23 12. SDRS made an independent expenditure on May 22, 2012, in the amount of  
24 \$21,742.94 to support the mayoral candidacy of Bob Filner. Respondents filed a Form 496 with  
25 the City Clerk to disclose this independent expenditure on May 29, 2012, six days late.

26 13. Respondents produced and distributed mass campaign literature in the form of five  
27 mailers, two door hangers, and two handouts in connection with the June 2012 primary election;

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1 four of these mailers, one door hanger, and one handout did not comply with the “paid for by”  
2 disclosure requirements in the City’s campaign laws:

3 (a) SDRS produced a mailer on approximately May 4, 2012, that was distributed  
4 to 73,674 City residents. This mailer included a “paid for by” disclosure printed in 8-point type.

5 (b) SDRS and SDCDB jointly produced 20,000 copies of a door hanger on  
6 approximately May 4, 2012. This door hanger included a “paid for by” disclosure printed in 8-  
7 point type.

8 (c) SDRS and SDCDB jointly produced 20,000 copies of a handout on  
9 approximately May 14, 2012. This handout included the names of the committees in 12-point  
10 type but did not include the phrase “paid for by” before the committee names.

11 (d) SDRS produced a mailer on approximately May 25, 2012, that was distributed  
12 to 41,367 City residents. This mailer included the name of the committee in 12-point type but  
13 did not include the phrase “paid for by” before the committee name.

14 (e) SDRS produced a mailer on approximately May 25, 2012, that was distributed  
15 to 47,802 City residents. This mailer included the name of the committee in 12-point type but  
16 did not include the phrase “paid for by” before the committee name.

17 (f) SDCDB produced a mailer on approximately May 30, 2012, that was  
18 distributed to 62,817 City residents. This mailer included the name of the committee in 12-point  
19 type but did not include the phrase “paid for by” before the committee name.

## 20 Counts

### 21 **Count 1 - Violation of SDMC section 27.2930**

22 14. Respondents violated SDMC section 27.2930 by failing to timely file a Form 496  
23 with the City Clerk disclosing an independent expenditure made on May 22, 2012. Respondents  
24 filed the Form 496 on May 29, 2012, six days late.

### 25 **Counts 2 through 7 - Violations of SDMC section 27.2970**

26 15. Respondents violated SDMC section 27.2970 by producing and distributing mass  
27 campaign literature in the form of four mailers, one door hanger, and one handout that did not  
28 comply with the “paid for by” disclosure requirements. As discussed above in Paragraph 13, one

1 mailer and one door hanger included the disclosure in 8-point type instead of the requisite 12-  
2 point type size, and one handout and three mailers did not include the phrase “paid for by” before  
3 the names of the committees.

4 **Factors in Mitigation**

5 16. Respondents have cooperated fully with the Ethics Commission investigation.

6 **Conclusion**

7 17. Respondents agree to take necessary and prudent precautions to ensure compliance  
8 with all provisions of ECCO in the future.

9 18. Respondents acknowledge that the Ethics Commission may impose increased fines  
10 in connection with any future violations of the City’s campaign laws.

11 19. Respondents agree to pay a fine in the amount of \$4,000 for violating SDMC  
12 sections 27.2930 and 27.2970. This amount must be paid no later than October 5, 2012, by  
13 check or money order payable to the City Treasurer. The submitted payment will be held  
14 pending Commission approval of this Stipulation and execution of the Decision and Order  
15 portion set forth below.

16 [REDACTED]

17 DATED: \_\_\_\_\_

18 \_\_\_\_\_  
19 STACEY FULHORST, Executive Director  
20 ETHICS COMMISSION, Petitioner

21 [REDACTED]

22 DATED: \_\_\_\_\_

23 \_\_\_\_\_  
24 WILLIE PELOTE, SR., on behalf of Respondents SAN  
25 DIEGANS FOR RETIREMENT SECURITY – OPPOSE  
26 DEMAIO FOR MAYOR 2012; SAN DIEGO CAN DO  
27 BETTER, NO ON MEASURE B FOR RETIREMENT  
28 FAIRNESS; AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES AFL-CIO;  
AFSCME CALIFORNIA PEOPLE; and AFSCME  
LOCAL 127

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**DECISION AND ORDER**

The Ethics Commission considered the above Stipulation at its meeting on \_\_\_\_\_, 2012. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of \$4,000.

[REDACTED]

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

\_\_\_\_\_  
CLYDE FULLER, Chair  
SAN DIEGO ETHICS COMMISSION