



THE CITY OF SAN DIEGO

November 6, 2015

VIA REGULAR & ELECTRONIC MAIL

Ms. Diane Takvorian
Environmental Health and Justice Campaign Fund working to elect Bob Filner for Mayor
2012
2727 Hoover Ave., Suite 202
National City, CA 91950

Re: Environmental Health and Justice Campaign Fund working to elect Bob Filner for
Mayor 2012 (ID # 1352009)

Dear Ms. Takvorian:

The Ethics Commission audit of the above-referenced committee is now concluded, and the Final Audit Report is enclosed. This report was delivered to the Ethics Commission at its regularly-scheduled meeting held on November 5, 2015. Although the report reflects two material findings, the Commission does not believe that the findings warrant an additional administrative remedy. In summary, the Commission determined that education was more appropriate than enforcement in this situation. As a result, the Commission voted to accept the report and take no further action.

Sincerely,

[REDACTED]

Rosalba Gomez
Ethics Commission Auditor

Enclosure

cc: Cary Davidson, Treasurer
Reed & Davidson LLP
515 South Figueroa Street, Ste. 1110
Los Angeles, CA 90071

Ethics Commission

1010 Second Avenue, Suite 1530 • San Diego, CA 92101
Tel (619) 533-3476 Fax (619) 533-3448





THE CITY OF SAN DIEGO

FINAL AUDIT REPORT

October 29, 2015

Ms. Diane Takvorian
Environmental Health and Justice Campaign Fund working to elect Bob Filner for Mayor 2012
2727 Hoover Ave., Suite 202
National City, CA 91950

Treasurer: Cary Davidson
Reed & Davidson LLP
515 South Figueroa Street, Ste. 1110
Los Angeles, CA 90071

SAN DIEGO ETHICS COMMISSION AUDIT REPORT:

Environmental Health and Justice Campaign Fund working to elect Bob Filner for Mayor 2012

I. Introduction

This Audit Report contains information pertaining to the audit of the committee, Environmental Health and Justice Campaign Fund working to elect Bob Filner for Mayor 2012, Identification Number 1352009 ("the Committee") for the period from September 25, 2012, through October 9, 2013. The Committee was selected for audit by a designee of the City Clerk in a random drawing conducted at a public meeting of the Ethics Commission held on September 12, 2013. The audit was conducted to determine whether the Committee materially complied with the requirements and prohibitions imposed by the City of San Diego's Election Campaign Control Ordinance (San Diego Municipal Code Chapter 2, Article 7, Division 29). The Election Campaign Control Ordinance (ECCO) was amended on January 1, 2013. This Committee operated under the previous ECCO, and therefore all Code references in this report relate to the provisions of ECCO that were in effect prior to January 1, 2013.

During the period covered by the audit, the Committee reported total contributions of \$38,559.00 (inclusive of \$25,000 in Committee loans) and total expenditures of \$30,949.00. **The audit revealed two material findings:**

- **the committee failed to comply with the late independent expenditure disclosure requirements in violation of San Diego Municipal Code section 27.2930.**

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- **the committee failed to comply with the “paid for by” disclosure requirement on one mass telephone communication in violation of San Diego Municipal Code section 27.2971.**

II. Committee Information

On October 12, 2012, the Committee filed a Statement of Organization with the San Diego City Clerk indicating that it qualified as a committee. The Committee was formed to support the election of Bob Filner for Mayor in the November 6, 2012, election. The Committee has not terminated. The Committee's treasurer is Cary Davidson of Reed & Davidson, LLP.

III. Audit Authority

The Commission is mandated by San Diego Municipal Code section 26.0414 to audit campaign statements and other relevant documents to determine whether campaign committees comply with applicable requirements and prohibitions imposed by local law.

IV. Audit Scope and Procedures

This audit was performed in accordance with generally accepted auditing standards. The audit involved a thorough review of the Committee's records for the time period covered by the audit. This review was conducted to determine:

1. Compliance with all disclosure requirements, pertaining to contributions, expenditures, accrued expenditures, and loans, including itemization when required;
2. Compliance with applicable filing deadlines;
3. Compliance with restrictions on contributions, loans and expenditures;
4. Accuracy of total reported receipts, disbursements and cash balances as compared to bank records; and
5. Compliance with all record-keeping requirements.

V. Summary of Applicable Law

San Diego Municipal Code Section 27.2930 – Base Level of Campaign Statements and Disclosures

Each candidate and committee shall file campaign statements in the time and manner required by California Government Code sections 81000 et seq. and title 2 of the California Code of Regulations with the following additional requirements:

California Government Code Section 82036.5 - Late Independent Expenditure

“Late independent expenditure” means any independent expenditure that totals in the aggregate

one thousand dollars (\$1,000) or more and is made for or against any specific candidate or measure involved in an election before the date of the election but after the closing date of the last campaign statement required to be filed prior to the election by a candidate or committee participating in the election.

California Government Code Section 82036.5 - Late Independent Expenditure Reports

- (a) A committee that makes a late independent expenditure, as defined in Section 82036.5, shall report the late independent expenditure by facsimile transmission, guaranteed overnight delivery, or personal delivery within 24 hours of the time it is made. If a late independent expenditure is required to be reported to the Secretary of State, the report to the Secretary of State shall be by online or electronic transmission only. A late independent expenditure shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section.

....

San Diego Municipal Code Section 27.2903 - Definitions

Mass telephone communications means live or recorded telephone calls that are substantially similar in nature to 500 or more individuals or households for the purpose of (a) supporting or opposing a clearly identified candidate or a clearly identified measure; or (b) conducting a poll that mentions or refers to a clearly identified candidate or a clearly identified measure.

San Diego Municipal Code Section 27.2971 - Telephone Communications

- (a) It is unlawful for any candidate or committee to engage or hire others to engage in mass telephone communications unless the communications include a statement that the communications are “paid for by,” “authorized by,” or are otherwise being made “on behalf of” immediately followed by the name of each candidate or committee that is paying for any of the resources used for the communications or that it otherwise authorizing the communication. For purposes of this subsection, “resources” include the purchase of a contact list, the development of a script, overhead expenses, and telephone charges. The type of disclosure required by this section shall be determined as follows:

- (1) A call is “paid for by” a candidate or committee when the candidate or committee pays directly for the call or pays another person to make the call on its behalf.

VI. Material Findings

San Diego Municipal Code Section 27.2930 – Failure to File Late Independent Expenditure Reports

California Government Code Section 82036.5 requires that independent expenditures totaling \$1,000 or more made during the “late period” must be disclosed on a Form 496 within 24 hours. The

Committee made independent expenditures totaling \$32,435.02 to support the election of Bob Filner in the November 6, 2012, general election. The majority of expenditures were payments made in connection with the Committee's canvassing activities. According to documentation provided by the Committee, the payments were made to Environmental Health Coalition employees as well as independent contractors specifically hired for the canvassing efforts.

The Committee treasurer/attorney relied on an inapplicable FPPC Regulation 18423(c) when preparing and filing the campaign statements. FPPC Regulation 18423(c) contains a special rule for in-kind contributions made by employers that donate their employee's time in support of a candidate. In those situations, a payroll date may be used instead of the date that services are provided. Although most of Regulation 18423 applies to both contributions and expenditures, the payroll date rule applies solely to contributions.

The Committee's misplaced reliance on Regulation 18423(c) resulted in the late reporting of \$11,240.12 in independent expenditures; of this amount, \$5,017.59 was disclosed one week before the election on Form 460, and the \$6,222.53 remainder was not disclosed until well after the election. The failure to timely report these independent expenditures deprived the voters of important information regarding who was supporting the candidate; however, it should be noted that the walk pieces disseminated by all the canvassers included the requisite disclosure indicating that they were paid for by the Committee. It's also relevant to note that the majority of the \$32,435.02 in total independent expenditures the Committee made in support of Filner for the November 2012 election were timely disclosed.

At the post-audit conference held on October 13, 2015, the Committee asserted that it strove to fully comply with all campaign disclosure requirements and never had any intent to omit important information.

San Diego Municipal Code Section 27.2971 - Failure to Comply with the "Paid for By" Disclosure Requirement on a Mass Telephone Communication

SDMC Section 27.2971 requires committees that pay for mass telephone communications to include the words "paid for by" immediately followed by the name of the committee that paid for it.

The audit revealed that the Committee used a "Voter Mobilization Calls November 2012 PAV (SD)" script to contact 2,778 households during the 2012 election, that did not include a "paid for by" disclosure. (The telephone communications referred to the mayoral candidacy of Bob Filner.) The failure to include the requisite "paid for by" disclosures deprived the public of information concerning the source of funding for these campaign communications.

At the post-audit conference held on October 13, 2015, the Committee stated that it was not aware that telephone communications were subject to the "paid for by" disclosure requirements. The Committee asserted that its disclosure omission was unintentional and that its overall actions evidence its intent to substantially comply with applicable regulations.

VII. Conclusion

Through the examination of the Committee’s records and campaign disclosure statements, the Auditor verified that the Committee timely disclosed all contributions received and all expenditures made, and that the Committee maintained all necessary documentation regarding contributions and expenditures in accordance with disclosure and record-keeping provisions of ECCO with the following exceptions:

- **the committee failed to comply with the late independent expenditures disclosure requirements in violation of San Diego Municipal Code section 27.2930.**
- **the committee failed to comply with the “paid for by” disclosure requirement on one mass telephone communication in violation of San Diego Municipal Code section 27.2971.**

[REDACTED]

Rosalba Gomez
Audit Program Manager

Date

[REDACTED]

Stacey Fulhorst
Executive Director

Date