



THE CITY OF SAN DIEGO

December 11, 2015

Mr. James Schmachtenberger  
Citizens for Patient Rights  
315 South Coast Hwy 101 #34  
Encinitas, CA 92024

Re: Citizens for Patient Rights, sponsored by the Patient Care Association, an association of medicinal cannabis patients and patient organizations (ID # 1338342)

Dear Mr. Schmachtenberger:

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 December 10, 2015. Although the report reflects fifteen material findings, the Commission does not believe that the findings warrant additional administrative remedies. 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

**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

December 2, 2015

Mr. James Schmachtenberger  
Citizens for Patient Rights  
315 South Coast Hwy 101 #34  
Encinitas, CA 92024

Treasurer: James Schmachtenberger  
315 South Coast Hwy 101 #34  
Encinitas, CA 92024

### SAN DIEGO ETHICS COMMISSION AUDIT REPORT:

*Citizens for Patient Rights, sponsored by the Patient Care Association, an association of medicinal cannabis patients and patient organizations*

#### I. Introduction

This Audit Report contains information pertaining to the audit of the committee, Citizens for Patient Rights, sponsored by the Patient Care Association, an association of medicinal cannabis patients and patient organizations, Identification Number 1338342 ("the Committee") for the period from April 27, 2011, through September 30, 2012. 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 \$265,003.00 (inclusive of \$3,000.00 in non-monetary contributions) and total expenditures of \$262,469.91. Total cash contributions relative to total expenditures resulted in a \$1,172.31 differential that was reconciled by the Committee's miscellaneous increase to cash. **The audit revealed fifteen material findings:**

- **The committee accepted and deposited twelve cash contributions of \$100 or more in violation of San Diego Municipal Code section 27.2941.**

#### Ethics Commission

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- **The committee made three cash expenditures of \$100 or more in violation of San Diego Municipal Code section 27.2917.**

## **II. Committee Information**

On April 27, 2011, 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 a referendum opposing the medical marijuana consumer cooperatives ordinance. The Committee submitted the referendary petition to the City Clerk on May 27, 2011, the City Clerk certified the petition signatures on July 12, 2011, and the City Council rescinded the subject ordinance on July 25, 2011. The Committee has not terminated. The Committee's treasurer is James Schmachtenberger.

## **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 27.2941 – Cash Contributions**

- (a) No contributions of \$100 or more shall be made or received in cash.

....

### **San Diego Municipal Code Section 27.2917 – Lawful Use of Campaign Funds by a Committee**

Uses of campaign funds held by any committee formed in accordance with this division shall be governed by title 9 of the California Government Code and title 2, division 6 of the California Code of

Regulations. It is unlawful to use campaign funds in any manner that would violate these provisions of California law.

**California Code Section 84300 – Cash Expenditures**

....

(b) No expenditure of one hundred dollars (\$100) or more shall be made in cash.

....

**VI. Material Findings**

**Section 27.2941 - Accepted and Deposited Cash Contributions over \$99**

Section 27.2941 prohibits cash contributions over \$99. The Committee accepted and deposited twelve cash contributions over the \$99 limit:

	Date	Contribution Type	Amount
1	5/23/11	Cashier's Check	\$ 65,000.00
2	6/13/12	Cash	\$ 6,000.00
3	6/22/12	Cash	\$ 9,000.00
4	6/26/12	Cash	\$ 7,000.00
5	7/10/12	Cash	\$ 3,200.00
6	7/18/12	Cash	\$ 6,000.00
7	7/25/12	Cash	\$ 4,500.00
8	7/27/12	Cash	\$ 3,200.00
9	8/8/12	Cash	\$ 1,100.00
10	8/9/12	Cash	\$ 800.00
11	8/28/12	Cash	\$ 3,000.00
12	9/24/12	Cash	\$ 900.00
			<u>\$ 109,700.00</u>

Accepting a cash contribution of \$100 or more prevents the use of routine checks and balances to track and verify the actual source of the contribution. Cash transactions also make it very difficult for the Commission to ensure that the identity of contributors are accurately reported. However, the Committee reported on its campaign statements that these contributions were received from the Patient Care Association of CA (PCA) and, during the course of the audit, the Committee provided supporting documentation demonstrating that the source of funds for the \$65,000 cashier's check was the PCA. In addition, the Committee provided copies of the withdrawal slips from PCA's bank account that corresponded with the 2012 cash contributions made around the same time to the Committee.

During the course of the audit and at the post-audit conference held on November 10, 2015, the

Committee’s treasurer, James Schmachtenberger, stated that he and other Committee representatives were aware of the prohibition concerning cash contributions of \$100 or more but did not realize that cashier’s checks were subject to the same restrictions. With respect to the other contributions reflected as cash in the Committee’s bank records, he explained that the PCA had encountered an extended series of problems with its bank that prevented it from being able to order checks. In order for PCA to make the contributions, they decided to use counter checks drawn off PCA’s bank account which would then be immediately deposited into the Committee’s bank account. (It should be noted that both the Committee and PCA had bank accounts at Union Bank.) As a result of a miscommunication between the Committee and the bank tellers, the transactions were ultimately reflected on bank records as “cash” deposits to the Committee’s bank account.

**Section 27.2917 – Cash Expenditures**

SDMC section 27.2917 and California Code Section 84300(b) prohibit committees from making cash expenditures of \$100 or more. The purpose of the prohibition is to ensure the proper handling of cash transactions and avoid inaccurate disclosures and improper practices.

The audit found that the Committee withdrew a substantial sum of cash from its checking account in order to make three expenditures of \$100 or more. As previously noted, cash transactions are very difficult to track and verify. The Committee’s bank records showed cash withdrawals totaling \$82,000. According to the Committee’s representatives, the cash was used to pay its bank to issue cashier’s checks to vendors for services rendered. The Committee’s representatives explained that the cashier’s checks were requested by the vendors because a vendor previously had issues with a Committee check clearing. The Committee accounted for the spending of the withdrawn cash through a combination of receipts and/or invoices. In particular, the Committee provided copies of the cashier’s checks issued to the La Jolla Group and the related invoices from the La Jolla Group for the same amounts. The Committee was unable to locate a copy of the cashier’s check issued to SL Graphics; however, it provided a SL Graphics invoice, dated February 2, 2012, reflecting the receipt of a \$2,000 “deposit” from the Committee. In addition, there was a cashier’s check fee charged to the Committee’s bank account on the same date the cash was withdrawn to pay SL Graphics. The table below details the Committee’s cash expenditures of \$100 or more that were attributed to the aforementioned vendors:

	Date	Notes	Payee on Campaign Statement	Description on Campaign Statement	Amount
1	5/24/11	Check No.1008 Payee: “Cash”	La Jolla Group	Petition Circulating	\$ 65,000.00
2	2/2/12	Bank “Cash” Withdrawal	SL Graphics	Initiative Printing	\$ 2,000.00
3	3/2/12	Bank “Cash” Withdrawal	La Jolla Group	Petition Circulating	\$ 15,000.00
					\$ 82,000.00

**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; however, the audit revealed the following material findings:

- **The committee accepted and deposited twelve cash contributions of \$100 or more in violation of San Diego Municipal Code section 27.2941.**
- **The committee made three cash expenditures of \$100 or more in violation of San Diego Municipal Code section 27.2917.**

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Rosalba Gomez  
Audit Program Manager

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Date

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Christina Cameron  
General Counsel

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Date