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

BEFORE THE CITY OF SAN DIEGO
ETHICS COMMISSION

In re the Matter of: WORKING SAN DIEGANS PAC, SUPPORTING HOWARD WAYNE 2010, WITH MAJOR FUNDING FROM AFSCME,

Case No.: 2010-87

Respondent.

STIPULATION

THE PARTIES STIPULATE AS FOLLOWS:

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

2. At all times mentioned herein, Working San Diegans PAC, supporting Howard Wayne 2010, with major funding from AFSCME [WSD] was a City committee sponsored by the American Federation of State, County, and Municipal Employees Local 127 [AFSCME Local 127] registered with the State of California (Identification No. 1331116). WSD is referred to herein as “Respondent.”
3. This Stipulation will be submitted for consideration by the Ethics Commission at its next scheduled meeting, and the agreements contained herein are contingent upon the approval of the Stipulation and the accompanying Decision and Order by the Ethics Commission.

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

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

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

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

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Summary of Law and Facts

8. ECCO defines “committee” as any person or combination of persons who raise $1,000 or more for the purpose of supporting or opposing a candidate or ballot measure, or make independent expenditures of $1,000 or more, within a single calendar year. SDMC § 27.2903.

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

10. California Government Code section 84101 requires that a Statement of Organization [Form 410] be filed within 10 days of qualifying as a committee. Government Code section 84102 requires that an amended Form 410 be filed within 10 days of any change in information contained therein. The Form 410 must be filed with the Secretary of State and the City Clerk.

11. City committees are generally required to file campaign disclosure statements [Forms 460] with the City Clerk in accordance with the deadlines established by state law. With respect to the November 2010 general election, City committees were required to file their first pre-election Forms 460 on or before October 5, 2010, covering the period through September 30, 2010. Cal. Gov’t Code §§ 84200.5, 84200.7, 84215.

12. According to SDMC section 27.2903, a committee is “sponsored” by another entity if any of the following criteria apply: the committee receives 80% or more of its contributions either from the entity or from the entity’s members; the entity collects contributions for the committee by use of dues from its members; the entity (alone or with other entities) provides administrative services for the committee; or the entity (alone or with other entities) sets the committee’s policies for soliciting contributions or making expenditures. ECCO requires sponsored committees participating in City elections to adhere to the reporting obligations set forth in FPPC Regulation 18419. SDMC § 27.2930(i).

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13. Regulation 18419 requires a committee that is sponsored by another entity to include the name of the sponsor in the name of the committee, and to identify the sponsor and the sponsor’s industry group or affiliation on the committee’s Form 410. In addition, whenever a committee files a campaign disclosure statement, it is required to identify itself using the committee’s “full name.” Cal. Gov’t Code § 84211(o).

14. In addition to the above filing requirements, ECCO mandates that all committees that pay for mass campaign literature (200 substantially similar pieces of campaign literature) for the purpose of supporting or opposing a City candidate include the words “paid for by” followed by the name and address of the committee. SDMC § 27.2970. This disclosure must be made in a typeface that is easily legible and contrasts with the background. *Id.*

15. The Commission’s investigation reveals that, from the time WSD was established, AFSCME Local 127 has been the committee’s sponsor because it meets one or more of the sponsorship criteria delineated above in Paragraph 12. Accordingly, Respondent was required to include AFSCME in its committee name, and to identify AFSCME as the committee’s sponsor on its Form 410. Respondent was also required to include AFSCME in its name on all of its campaign statements, as well as its “paid for by” disclosures on mass campaign literature.

16. On September 3, 2010, Respondent filed a Form 410 with the San Diego City Clerk that did not include the name AFSCME in the committee name and did not identify AFSCME as the sponsor of WSD.

17. On October 5, 2010, Respondent filed a Form 460 with the San Diego City Clerk covering the period through September 30, 2010, that did not include the name AFSCME as the committee’s sponsor.

18. On October 7, 2010, Ethics Commission staff contacted Respondent’s treasurer as well as Eleazar Elizondo, the consultant retained by AFSCME Local 127 (and the principal officer of WSD) and advised them that WSD should be registered as a committee sponsored by AFSCME. During this communication, Ethics Commission staff reminded Mr. Elizondo that any mass campaign literature distributed by WSD must contain a “paid for by” disclosure with the full name of the committee, including the name AFSCME as the committee’s sponsor.
19. On October 8, 2010, Respondent filed an amended Form 410 changing the committee’s name to “Working San Diegans PAC, supporting Howard Wayne 2010, with major funding from AFSCME” and identifying AFSCME as the committee’s sponsor.

20. Respondent produced and distributed 6 pieces of mass campaign literature to residents of Council District 6 in quantities of 6,000 each for a total of 36,000 (approximately 8,000 were distributed via mail and 28,000 were distributed by campaign workers canvassing the district). The literature distributed by mail was sent on October 1, 8, and 15, 2010, and the literature distributed via canvassing was disseminated from October 1 through 20, 2010. The “paid for by” disclosure included on each of the 6 pieces of mass campaign literature did not include the name AFSCME as the committee’s sponsor.

Counts

Counts 1 and 2 - Violations of SDMC section 27.2930

21. Respondent violated SDMC section 27.2930 by failing to include the name AFSCME in the committee name and failing to identify AFSCME as the committee sponsor when it filed a Form 410 with the City Clerk on September 3, 2010.

22. Respondent violated SDMC section 27.2930 by failing to include the name AFSCME as the committee’s sponsor when it filed a Form 460 with the City Clerk on October 5, 2010.

Counts 3 through 8 - Violations of SDMC section 27.2970

23. Respondent violated SDMC section 27.2970 by failing to include the name AFSCME as the committee’s sponsor in the “paid for by” disclosure on 6 pieces of campaign literature distributed in quantities of 6,000 each (for a total of 36,000) to residents of Council District 6 from October 1 through October 20, 2010, for the purpose of supporting City candidate Howard Wayne.

Factors in Aggravation

24. As explained above in Paragraph 18, the Ethics Commission staff reminded Respondent’s consultant on October 7, 2010, that the “paid for by” disclosure required on mass campaign literature must contain the full name of the committee, including the name AFSCME.
as the committee’s sponsor. Despite this warning, Respondent continued to disseminate campaign literature after October 7, 2010, that did not include the requisite information concerning the identity of the committee’s sponsor.

25. The “paid for by” disclosure included on two of the campaign mailers distributed by Respondent was not printed in a contrasting color and was not easily legible, as required by SDMC section 27.2970.

Factors in Mitigation

26. AFSCME Local 127 has limited prior experience participating in City of San Diego elections and reasonably relied on Eleazar Elizondo as the campaign consultant to ensure the committee’s compliance with all relevant provisions of the City’s campaign laws. Mr. Elizondo has therefore taken full responsibility for the violations described herein as well as the monetary penalty referenced below.

27. Respondent has cooperated fully with the Ethics Commission investigation.

Conclusion

28. Respondent agrees to take necessary and prudent precautions to ensure compliance with all provisions of ECCO in the future.

29. Respondent acknowledges that the Ethics Commission may impose increased fines in connection with any future violations of the City’s campaign laws.

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30. Respondent agrees to pay a fine in the amount of $10,000 for violating SDMC sections 27.2930 and 27.2970. Half of this amount must be paid no later than June 3, 2011, by check or money order payable to the City Treasurer. The submitted payment will be held pending Commission approval of this Stipulation and execution of the Decision and Order portion set forth below. The remaining $5,000 must be paid by check or money order made payable to the City Treasurer no later than August 31, 2011. Respondent acknowledges that if the remaining $5,000 is not timely paid in full, the Commission may refer the collection of the fine to the City Treasurer’s Collection Division, which may pursue any or all available legal remedies to recover late penalties, interest, and costs, in addition to seeking the outstanding balance owed.

DATED: ________________

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED: ________________

ELEAZAR ELIZONDO, Principal Officer of Respondent
WORKING SAN DIEGANS PAC, SUPPORTING HOWARD WAYNE 2010, WITH MAJOR FUNDING FROM AFSCME

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on __________, 2011. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of $10,000.

DATED: ________________

LARRY WESTFALL, Chair
SAN DIEGO ETHICS COMMISSION