



THE CITY OF SAN DIEGO

July 14, 2017

VIA REGULAR & ELECTRONIC MAIL

Mr. Derry Pence  
Protect our Jobs, No on B & C, Port of SD Ship Repair Assn.  
1995 Bay Front Street  
San Diego, CA 92113

Re: Protect our Jobs, No on B & C, Port of SD Ship Repair Assn., Major Funding by  
NASSCO and BAE Systems (ID# 1360951)

Dear Mr. Pence:

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 July 13, 2017. Although the report reflects one material finding, the Commission does not believe that the finding warrants 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  
Audit Program Manager

Enclosure

cc: James R. Sutton, Treasurer  
150 Post Street, Suite 405  
San Francisco, CA 94108

**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

June 16, 2017

Mr. Derry Pence  
Protect our Jobs, No on B & C, Port of SD Ship Repair Assn.  
1995 Bay Front Street  
San Diego, CA 92113

Treasurer: James R. Sutton  
150 Post Street, Suite 405  
San Francisco, CA 94108

### SAN DIEGO ETHICS COMMISSION AUDIT REPORT:

*Protect our Jobs, No on B & C, Port of SD Ship Repair Assn., Major Funding by NASSCO and  
BAE Systems*

#### I. Introduction

This Audit Report contains information pertaining to the audit of the committee, Protect our Jobs, No on B & C, Port of SD Ship Repair Assn., Major Funding by NASSCO and BAE Systems, Identification Number 1360951 (“the Committee”) for the period from September 27, 2013, through May 19, 2015. 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 10, 2015. 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).

During the period covered by the audit, the Committee reported total contributions of \$1,442,770.51 (inclusive of \$15,850.00 in non-monetary contributions) and total expenditures of \$1,426,920.51. **The audit revealed one material finding: the committee failed to include a “paid for by” disclosure in a mass telephone communication in violation of San Diego Municipal Code section 27.2971.**

#### II. Committee Information

On October 23, 2013, 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 seeking to overturn an Ordinance and Resolution approved by the City Council concerning an update to the Barrio Logan Community Plan. The referendum was successful and the City Council placed the

#### Ethics Commission

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measures on the June 2014 ballot as Propositions B and C. On March 26, 2014, the Committee filed an Amended Statement of Organization indicating that it was formed to oppose Propositions B and C. On August 3, 2015, the Committee filed a Statement of Termination indicating that its filing obligations were completed on May 19, 2015. The Committee's treasurer was James R. Sutton and its sponsor was the Port of San Diego Ship Repair Association.

### **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 27.2903 - 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.

#### **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 is 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 “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.

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## VI. Material Findings

### Section 27.2971: Failure to Include “Paid for By” Disclosure in 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 paid a vendor to conduct a telephone poll of 500 households in February of 2014 that referred to Propositions B and C but did not include the requisite “paid for by” disclosure.

At the post-audit conference held on June 15, 2017, the Committee representative indicated that the polling firm (Competitive Edge Research & Communication) was aware of the 500-call threshold and intended to set the number of respondents below this threshold; however, it was inadvertently set at 500 respondents. The Committee asserted that the 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 the necessary documentation regarding contributions and expenditures. **However, the audit revealed the following material finding: the committee failed to include a “paid for by” disclosure in a mass telephone communication in violation of San Diego Municipal Code section 27.2971.**

[REDACTED]

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Rosalba Gomez  
Audit Program Manager

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Date

[REDACTED]

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Stacey Fulhorst  
Executive Director

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Date