

**CITY OF SAN DIEGO
ETHICS COMMISSION**

Office of the Executive Director

MEMORANDUM

DATE: May 9, 2012

TO: Council President Tony Young and Members of the Committee on Rules, Open Government and Intergovernmental Relations

FROM: Stacey Fulhorst, Executive Director

SUBJECT: Recommendations Concerning Political Party Contribution Limits
Docketed for Rules Committee meeting on May 16, 2012

For the reasons set forth in greater detail below, the Ethics Commission recommends that the City of San Diego adopt political party contribution limits of \$3,000 per election for district candidates and \$12,000 per election for citywide candidates, with each limit serving as an aggregate limit for contributions from all levels of the same political party.

As you know, the District Court issued a final order in the *Thalheimer, et al. v. City of San Diego* litigation on January 20, 2012. As part of its order, the Court struck down the City's \$1,000 limit on contributions from political parties to City candidates and stated that a new limit may be adopted only if the City demonstrates that it has seriously considered the balance between the following: "(1) the need to allow individuals to participate in the political process by contributing to political parties that help elect candidates with (2) the need to prevent the use of political parties to circumvent contribution limits that apply to individuals."

Although the Court struck down the City's \$1,000 contribution limit for political parties, it ruled that party contributions to candidates must comply with the City's attribution requirements in order to prevent circumvention of the City's individual contribution limits. In other words, a political party that makes a contribution to a City candidate may only use donations from individuals in amounts of \$500 or less to fund the contribution.

At its regularly-scheduled meeting on April 12, 2012, and at a special meeting on April 20, 2012, the Commission deliberated on the issue of a new limit for political party contributions as well as corresponding attribution rules. In particular, the Commission considered the following:

- a memorandum prepared by Thad Kousser, Associate Professor of Political Science at the University of California, San Diego on April 12, 2012, concerning the pros and cons of enacting a limit on political party contributions, the applicable constitutional tests, and

comparisons with the limits in place in other jurisdictions to use as possible benchmarks (Exhibit 1);

- a chart of contribution limits for individuals and political parties currently in place in the 15 largest U.S. cities (Exhibit 2);
- a PowerPoint presentation prepared by Barrett Tetlow, Executive Director of the Republican Party of San Diego County, and presented at the Commission meeting on April 12, 2012 (Exhibit 3);
- a letter from Jess Durfee, Chair of the San Diego County Democratic Party, dated April 11, 2012 (Exhibit 4);
- information concerning the contributions made by political parties to City candidates in the 2010 election cycle and 2012 primary, as of March 17, 2012 (Exhibit 5);
- a memorandum dated April 18, 2012, from Christina Cameron, Ethics Commission General Counsel, addressing the legal issues relevant to consideration of a contribution limit for political parties (Exhibit 6);
- a letter from Charles H. Bell Jr., General Counsel to the California Republican Party, dated April 19, 2012 (Exhibit 7);
- a memorandum from Barrett Tetlow, Executive Director of the Republican Party of San Diego County, dated April 19, 2012 (Exhibit 8); and,
- comments from the Commission's Executive Director and General Counsel, as well as testimony provided by the following individuals at the Commission meetings on April 12 and 20, 2012: Barrett Tetlow, Executive Director of the Republican Party of San Diego County; April Boling, Treasurer for the Republican Party of San Diego County; William Moore, attorney for the San Diego County Democratic Party; Thad Kousser, Associate Professor of Political Science at UCSD; and Simon Mayeski, member of the board of California Common Cause, as reflected in the minutes from the April 12, 2012, and April 20, 2012, meetings of the Ethics Commission (Exhibits 9 and 10).

After carefully reviewing the applicable facts and laws, and considering the requisite balancing test, the Commission voted to recommend that the City adopt political party contribution limits of \$3,000 per election for district candidates and \$12,000 per election for citywide candidates. Additionally, the Commission voted to recommend that these limits serve as an aggregate limit for contributions from all levels (i.e., national, state, local) of a political party. The Commission's decisions were based in large part on the following:

- Charles Bell, General Counsel to the California Republican Party, argued that the City is legally precluded from imposing additional filing requirements on state general purpose recipient committees. (All state and local political parties are considered state general

purpose recipient committees under California law.) In other words, he asserted that the City of San Diego may not require the California Republican Party to file any type of disclosure document attesting to the fact that it used conforming funds (i.e., donations from individuals in amounts of \$500 or less) to make contributions to City candidates. (See Exhibit 7 for additional details.) Although the Commission did not concede this point, it acknowledged that the state law referenced by Mr. Bell does call into question its ability to enforce the attribution rules upheld by a federal court in the *Thalheimer* case. The Commission considered the fact that any state or local political party could assert that attribution filing requirements are prohibited under state law should the City adopt such filing requirements. The Commission decided to accept Mr. Bell's arguments at face value for purposes of conducting the balancing test required by the court. Without an attribution filing requirement, the City has no way of verifying that a political party used conforming funds to make a contribution to a City candidate. The inability to verify compliance with attribution rules significantly increases the potential for circumvention of the City's contribution limits by special interests funneling large contributions through a political party to a City candidate.

- Even if attribution filing requirements were adopted by the City, the Commission considered information provided by Ms. Boling concerning political parties' complex financial situations created by federal campaign laws, and their corresponding inability to demonstrate that conforming funds were actually used to pay for contributions to City candidates. Specifically, federal campaign laws require political parties to maintain separate accounts for "hard" and "soft" money. Contributions from individuals (in amounts up to \$10,000) are deposited into the hard money, or "federal" accounts; accordingly, the parties would use their federal accounts to make contributions to City candidates. Federal law also requires, however, that political parties pay for all their administrative and overhead costs from their federal accounts, and seek reimbursement of a specific percentage of these costs from their state (or "soft money") accounts. This law results in a substantial amount of funds being transferred back and forth between federal and state accounts on a regular basis. As a result, there is no way for the Commission or the public to determine that a political party had sufficient conforming funds on hand to make a particular contribution to a City candidate.
- The Commission considered the associational rights of political parties as reflected in their ability to meaningfully participate in local elections through direct contributions, member communications, and independent expenditures. The Commission took into account that federal campaign laws limit direct contributions from political parties to federal candidates to \$5,000, but allow substantially more money to be spent by parties in the form of coordinated expenditures (the specific amount varies per candidate based on a formula). In the City of San Diego, political parties are allowed to accept unlimited donations from any source for coordinated expenditures in the form of member communications, and the Commission considered the fact that the local Republican Party spent over \$1.5 million on coordinated member communications in the 2008 election cycle, while the local Democratic Party spent almost \$500,000 on member

communications in the same cycle. The Commission also took into account that political parties may now accept unlimited contributions from any source for the purpose of making unlimited independent expenditures to support City candidates. In summary, the Commission ultimately agreed with Professor Kousser's assessment that the parties have "two bullhorns to make their voices heard" and that "a reasonable limit on party-to-candidate contributions will not close off opportunities for parties to exercise their freedom of speech and associational rights." (Exhibit 1 at p. 5)

- William Moore, General Counsel to the San Diego County Democratic Party, testified that a political party contribution to a City candidate was important to signal its support in the early stages of a campaign, and that the act of signaling was more important than the actual amount of the contribution. He explained that political parties tend to use (unlimited) member communications to support candidates later in the election cycle.
- The local Democratic Party recommended a contribution limit for political parties between \$5,000 and \$10,000; the local Republican Party recommended no limit (with tight attribution rules) or, alternatively, a limit between \$29,000 and \$3,000,000. (See Exhibits 3, 4, 8, 9, and 10 for further details.) Some of the limits proposed by the Republican Party were based on a comparison to congressional elections; Professor Kousser pointed out that municipal elections are distinct from congressional elections in that the potential pool of contributors is much smaller because the potential sphere of influence as an elected official is limited to the City of San Diego (as opposed to the entire country).
- There are only a handful of court cases dealing with political party contribution limits. In general, these cases indicate that limits for political parties must be higher than individual limits. Although the courts have consistently indicated that they will defer to the discretion of legislative bodies to set a specific limit, they have also upheld political party contribution limits ranging from 5 times to 36 times the amount of individual contribution limits in the relevant jurisdictions. The Commission considered these cases during its deliberations, and noted that the recommended limits of \$3,000 and \$12,000 are 6 to 24 times the individual limit of \$500.
- Professor Kousser testified that the average amount spent by the top two candidates in district races in recent election cycles was approximately \$200,000. (Candidates running in Council Districts 1 and 2 typically spend substantially more than candidates running in Districts 4 and 8.) As far as citywide races, he testified that the average spent by the top two city attorney candidates was approximately \$560,000, and the average spent by the top two mayoral candidates was \$1.3 million. He therefore suggested that the Commission consider a ratio of 4-to-1 for the difference between contributions to citywide candidates and district candidates.
- Although there is no difference in the individual contribution limit for citywide and district candidates, the Commission considered the fact that political party contributions

are not analogous to individual contributions in this regard. While a citywide candidate has a much larger pool of potential individual donors than a district candidate, every candidate can generally look to only one political party for support. The Commission therefore looked at the cost involved in running for district versus citywide office and determined that Professor Kousser's recommended ratio of 4-to-1 was appropriate. Put another way, the Commission took into account that meaningful participation by a political party in a citywide race would require a contribution four times larger than a contribution in a district race.

- Professor Kousser calculated the average limit for political parties in the top 15 U.S. cities. He also calculated limits based on per-resident and per-voter comparisons. All options led to a range between \$9,000 and \$13,000 for citywide elections, and he suggested the Commission consider setting a limit of \$12,000 for contributions to citywide candidates which he noted would be the highest of the 15 cities with the exception of Jacksonville (which has a \$50,000 limit for political parties). Employing his 4-to-1 suggested ratio, he recommended the Commission consider setting a limit of \$3,000 for district elections.
- In his letter dated April 19, 2012, Mr. Bell pointed out that the state and county parties in California are considered separate entities under state law. Consequently, he asserted that the state party opposes any proposal to treat all levels of a political party as "affiliates" for purposes of contribution limits.
- Federal campaign laws currently impose a \$5,000 limit on contributions from a national political party to a federal candidate, and another \$5,000 aggregate limit on contributions from all other levels of the same political party combined. The City's outside counsel in the *Thalheimer* litigation recommended an aggregate limit for different levels of the same political party as opposed to an outright ban from sources outside the county.
- Although the Commission noted that contributions from political parties do not create the appearance of corruption that is created when special interests make large contributions, it also noted that political parties can have a polarizing effect by pushing candidates and elected officials to support the more extreme views of both political parties. (Although the local Republican Party representatives denied that this is the case, the local Democratic Party representative acknowledged that one of the main purposes of political parties is to "enforce party discipline," and that political parties tend to pressure candidates and officials to "toe the line.") The Commissioners took this public policy consideration into account in light of the officially non-partisan nature of the City's elections.

In summary, the Commission considered a wide variety of opinions and a host of empirical data in conducting the requisite balancing test between the associational rights of political parties and the need to prevent circumvention of the City's individual contribution limits. The Commission believes the recommended limits of \$3,000 (district) and \$12,000 (citywide) per election reflect

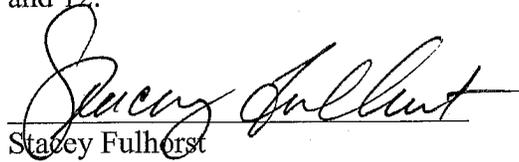
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an appropriate balancing of these interests, and further the purpose and intent of the City's campaign laws by avoiding the appearance of corruption created by large campaign contributions to City candidates.

We have prepared draft amendments to the Municipal Code to reflect the Commission's recommendations concerning political party contribution limits. The draft amendments also contain language incorporating other aspects of the *Thalheimer* rulings, including the ability of committees making independent expenditures to receive unlimited contributions from any source. Both clean and strike-out versions of the draft amendments are attached as Exhibits 11 and 12.



Stacey Fulhorst
Executive Director

Attachments:

- Exhibit 1: Memo from Professor Thad Kousser dated April 12, 2012
- Exhibit 2: Chart of contribution limits in 15 largest cities
- Exhibit 3: Power Point presentation prepared by Barrett Tetlow dated April 11, 2012
- Exhibit 4: Letter from Jess Durfee dated April 11, 2012
- Exhibit 5: Information re: political party contributions made in 2010 and 2012 elections
- Exhibit 6: Memo from Christina Cameron dated April 18, 2012
- Exhibit 7: Letter from Charles H. Bell, Jr., dated April 19, 2012
- Exhibit 8: Memo from Barrett Tetlow dated April 19, 2012
- Exhibit 9: Minutes from Ethics Commission meeting of April 12, 2012
- Exhibit 10: Minutes from Ethics Commission meeting of April 20, 2012
- Exhibit 11: Clean version of proposed amendments to the Municipal Code
- Exhibit 12: Strike-out version of proposed amendments to the Municipal Code

NOTE: Attachments will be distributed on Friday, May 11, 2012 (after the Commission approves the minutes from the meeting on April 20, 2012)

EXHIBIT 1

Party-to-Candidate Contribution Limits in San Diego City Elections

To: Chair and Members of the City of San Diego Ethics Commission
From: Thad Kousser, Associate Professor of Political Science, UC San Diego
Date: April 12, 2012. (revised April 23, 2012 to correct references to contribution chart)

Policy Question: Should the City of San Diego limit the size of contributions from parties to candidates for city elections? If so, what should the size of these limits be, both in district elections and in citywide contests?

Summary of Report: This report reviews the goals of campaign finance limits and the current legal context in which candidates, parties, and the funders of San Diego city elections operate before laying out the pros and cons of enacting a limit on party-to-candidate contributions. Given the distinctive role played by parties in local elections, the many alternative avenues through which parties can help candidates, and the attribution limits already placed on the funds that parties may use to contribute to candidate, a case could be made for leaving these contributions unlimited. There are also compelling reasons to enact limits. If Commissioners wish to do so, this report lays out the constitutional tests that courts are likely to apply to judge them, and provides comparisons with the limits in place in large cities in the rest of the nation as possible benchmarks.

I. Competing Goals in Campaign Finance Regulation: Policymakers and courts have pursued multiple goals in creating campaign finance laws in the United States, and sometimes the pursuit of one goal comes at the cost of another. Here are several commonly espoused goals that Commissioners may wish to keep in mind, along with caveats about how pursuing one might need to be balanced against harming another goal:

- **Preventing Corruption (or the appearance of corruption).** In the landmark *Buckley v. Valeo* (1976) case, the Supreme Court identified this as the compelling governmental interest that could justify curtailing free expression by limiting campaign contributions. Recognizing this points out the tradeoff between preventing corruption and limiting speech, perhaps motivating policymakers to set limits at levels that prevent corruption yet still allow for effective expression and political competition.
- **Freedom of Expression.** The courts have consistently held that campaign spending is necessary for candidates, individuals, interest groups, and parties to exercise their First Amendment rights. While limits on contributions and upon some expenditures made by non-candidates have been upheld, judges and many

policymakers are cautious about imposing burdens on the free speech and associational rights of all actors.¹

- **Electoral Competitiveness.** Because incumbent officeholders running for reelection have so many electoral advantages – both in their name recognition and their perquisites of office – their opponents need to raise significant funds to challenge them effectively. Tight limits on contributions and laws that discourage expenditures could harm the chances of challengers and lead to less competitive elections.²
- **Transparency of Exchanges.** It is important for voters, journalists, and other observers to know where campaign money comes from and where it goes. Direct contributions from parties to candidates are reported quite transparently, but tight limits on these sorts of exchanges could have the perverse effect of pushing contributions away from paths that make the donor-to-recipient relationship clear and toward paths – including independent expenditures by groups that are not as readily identifiable as parties – in which it is obscured from voters. Efforts to curb corruption through tight party-to-candidate limits could motivate donors to pursue these paths and thus reduce transparency. On the other hand, a complete absence of limits on individual-to-party and party-to-candidate contributions could make parties into conduits through which individual-to-candidate contribution limits are circumvented.

II. Current Law provides three ways for parties to influence elections for city office:

1. Through direct contributions from parties to candidates for citywide or district offices, which are currently subject to no limits. The funds that parties may draw upon to make these contributions, though, may only be raised in attributed contributions of \$500 or less from individuals (and not from non-individuals such as corporations, labor unions, and other interest groups). This legal regime was set in place by Judge Gonzalez's January 2012 ruling, which effectively resolved the *Thalheimer v. City of San Diego* case. Commissioners know well the history of San Diego's regulation of party-to-candidate contributions. Such

¹ Supreme Court justices focused on the effect of contribution limits on associational rights rather than free speech in the *Buckley* decision and in the majority opinion written by the Court's more liberal justices in the *Nixon v. Shrink Missouri Government PAC* (2000) case, both of which upheld contribution limits. The limits in question in *Shrink Missouri* applied to contributions from individuals and political committees, ranged from \$250 to \$1000, depending on the level of office, and were adjusted for inflation. In Justice Kennedy's dissenting opinion in *Shrink Missouri* and in the majority opinion in *Randall v. Sorrell* (2006), which struck down Vermont's contribution limits as unconstitutionally low, the emphasis shifted from associational rights to the effect of contribution limits on a candidate's freedom of speech.

² My analysis of the correlation between individual contribution limits and city council incumbent reelection rates across the largest California cities found no link between these types of limits and competitiveness (Declaration of Thad Kousser in Support of City's Reply, *Thalheimer v. City of San Diego*). However, because parties behave differently than individual donors, concentrating their funds on the most competitive seats, a restriction on party contributions may indeed reduce the potential for electoral competitiveness.

contributions had been banned by Section 27.2950 of the San Diego Municipal Election Campaign Control Ordinance (ECCO). After Judge Gonzalez preliminarily enjoined the City from enforcing this ban on February, 2010, the City adopted a \$1000 per election limit on party-to-candidate contributions (ECCO Section 27.2934(b)). Judge Gonzalez overturned this limit in her 2012 ruling, but retained the requirement that parties make these contributions with funds raised only from individuals giving the party \$500 or less.

2. Through communication with party members. Parties may spend unlimited sums communicating with their members – voters who have registered with their party – during the course of an election. Citywide, 252,795 of San Diego’s 626,807 registered voters are Democrats (40.3%), and 176,274 are Republican (28.1%).³ To make these communications, parties can engage in a broad range of campaigning and grassroots mobilization activities: sending direct mail to their members, calling them, knocking on their doors, and urging them to post lawn signs supporting a candidate. Because parties may raise funds for these purposes from any source and may directly coordinate with candidates on member communications, they energetically exercise this route to advocacy. Combining the city council and mayoral elections held from 2004 to 2010, the Republican Party spent \$2.7 million on member communications and Democrats spent \$1.1 million.⁴ A party’s ability to make these communications is protected in state statute (California Government Code 85703), which prevents local governments from banning or limiting such expenditures.
3. Through independent expenditures on behalf of – though not coordinated with – candidates. Applying the *Citizens United v. Federal Elections Commission* (2010) case to San Diego, Judge Gonzalez ruled in 2012 that parties can make unlimited independent expenditures, can raise funds for these expenditures from both individuals and non-individuals (such as corporations, labor unions, and other interest groups), and that parties can solicit unlimited sums for this purpose. While parties may not coordinate this spending with candidates, the fact that parties can coordinate their member communications with candidates gives them a familiarity with candidate messages and strategies that can render this prohibition moot.

III. Should Contributions from Parties to Candidates be Limited? Given the many alternate avenues through which parties can influence elections for city office in San Diego, valid arguments could be made to place a tight limit on direct contributions to candidates, or to leave this route entirely unlimited. Here are potential rationales behind each approach.

1. Reasons to leave party-to-candidate contributions unlimited:

³ These figures are taken from a March 1, 2012 analysis of registration run by the San Diego County Registrar of Voters.

⁴ These totals are calculated from the election-by-election estimates of member communication expenditures provided to me by Ethics Commission Executive Director Stacey Fulhorst.

a. Parties play a distinct role in financing campaigns, contributing in order to help their members win close elections rather than to influence the behavior of incumbents in office. This is clear both in studies of party giving at the state and national level, as well as from recent patterns in San Diego. A quantitative analysis in the leading book on state campaign finance, “demonstrates, once again, that party organizations make contributions in such a way as to gain or maintain a majority in the legislature (i.e., giving mostly to competitive races and nonincumbents), a tendency that sets them apart from other contributors. ... Whereas PACs, corporations, and individuals tend to contribute to the advantage incumbents have in campaign fund raising (see chapter 9), political parties’ contribution patterns make it possible for some challengers to have the money to run in competitive races.”⁵ This is similar to the strategy that the federal Democratic Congressional Campaign Committee pursued in the 2006 congressional elections of focusing party money on competitive races.⁶ In San Diego, when parties were free to make unlimited contributions during the 2010 general election, both major parties focused their contributions on the competitive, open District 6,⁷ but did not make direct contributions in District 8 (which featured a run-off between two Democrats). Because parties direct their contributions to close districts rather than to incumbent officeholders, *limiting party contributions could aid incumbents and reduce electoral competitiveness.*

b. Because of parties’ distinct goals and giving patterns, party contributions are *less likely to bring corruption or its appearance.* Parties represent broader interests than individuals or interest groups do, and since no individual or group may provide more than \$500 of the funding for a party-to-candidate contribution in San Diego, these contributions will necessarily aggregate a broad array of interests. It will be hard to charge that any recipient of these funds has been “bought and sold” by a narrow interest. Additionally, because parties do not focus their funds on current officeholders in the way that other contributors do, their patterns of giving do not appear aimed at influencing incumbents’ policy decisions. Parties try to change election outcomes, rather than to swing a specific city council vote.

c. Party-to-candidate contributions *follow a transparent path that makes a candidate’s allegiances and backers clear.* Journalists and watchdogs can use public records compiled by the City Clerk to see who funds these contributions and where the money goes. Voters know what the “name brand” of a party means, allowing them to learn more about where a candidate stands from a party contribution than they can learn, for example, from contributions by groups such as “Unite

⁵ From Anthony Gierzynski and David A. Breau, 1998, “The Financing Role of Parties,” in Joel A. Thompson and Gary F. Moncrief, *Campaign Finance in State Legislative Elections* (Washington, DC: Congressional Quarterly, Inc.), pp. 200, 204.

⁶ See John Sides, Daron Shaw, Matt Grossman, and Keena Lipsitz, 2012, *Campaigns and Elections: Rules, Reality, Strategy, Choice* (New York: W. W. Norton and Company), p. 109.

⁷ According to city campaign finance reports, the San Diego County Democratic Party contributed \$17,000 to Howard Wayne’s campaign, while the Republican Party of San Diego County contributed \$20,000 for Lorie Zapf’s campaign.

Here San Diego,” “San Diego Works!,” or “San Diegans for Healthy Neighborhoods and a Strong Economy.”

2. Reasons to limit party-to-candidate contributions:

a. Because parties already have the ability to support their favored candidates through member communications and independent expenditures, *they have plentiful opportunities to exercise their freedom of expression*. If direct contributions were the only way for parties to play a role in elections, then a party could legitimately argue that a tight restriction would reduce its voice to a whisper. Yet city elections in California in the post-*Citizens United* era offer parties two bullhorns to make their voices heard to party registrants and to all voters. The openness of the surrounding legal context means that a reasonable limit on party-to-candidate contributions will not close off opportunities for parties to exercise their freedom of speech and associational rights.

b. Even though parties represent broader interests than a trade association, union, corporation, or single-issue advocacy group, *they still do not represent the broadest possible public interest* and could thus exert undue influence on lawmakers through unlimited contributions.⁸ If enormous party contributions become vital to the campaigns of officials running for elections, parties may be able to pressure them to toe the party line while in office by threatening to withhold support from those who govern from the ideological center. If so, the absence of limits could strengthen each major party’s ability to polarize city politics.

A counterargument to this rationale might be that parties already possess the ability to enforce polarization through their control over member communications and party independent expenditures. Yet direct party-to-candidate contributions still play an important role in campaigns, because campaigns are about more than just communications. They are also about crafting a message, designing a campaign strategy, and organizing a volunteer field campaign. All of those activities can be supported by party-to-candidate contributions, but not through other routes of party spending. That makes direct contributions an important source of a party’s clout, and means that a limit on them could be an effective curb on party influence.

c. Those who are worried about the polarizing effect of parties in city elections may be especially concerned that *the party activists who determine endorsements and*

⁸ Whether or not the influence of parties can be deemed “corruption” is a debatable constitutional proposition. In *Nixon v. Shrink Missouri Government PAC* (2000), in which limits applied to individuals and political committees, the majority opinion worried that “the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic government,” while Justice Thomas’ dissent argued that corruption and its appearance should only be asserted as compelling state interests when a “‘corruption’ in the narrow *quid pro quo* sense” was at issue. The majority’s reasoning in that case might be extended to make the argument that party contributions could corrupt candidates for San Diego city office, thus providing a state interest in limiting these contributions. Yet under Justice Thomas’ reasoning, a limit on party contributions could only be justified by a concern that candidates were motivated by party contributions to give “official favors” or “act contrary to their obligations of office.”

contributions are among the most polarized actors in American politics. National surveys of party activists show that they are generally more ideologically extreme than officeholders, and that California's Democratic activists are the most left-leaning activist group in the nation while our state's Republicans activists are among the most right-leaning.⁹ California's local elections, which have been formally non-partisan since the Progressive Era, paradoxically empower party activists through avenues such as party contributions. Because San Diego elections do not feature a public party nomination contest, fights inside of a party organization determine who will win the party's endorsement and campaign contributions. Rather than empowering voters who register with a party to pick their standard bearer, this gives power to the activists who control endorsements and contributions. Often, they support the candidate who most closely reflects a party's positions, as in the current mayoral contest. Placing no limits on party contributions accentuates the power – and the potential polarizing influence – of the party activists who control the flow of party money.

IV. If Commissioners Favor a Limit, How Should it be Constructed? If

Commissioners do wish to enact a limit, they face the dual tasks of constructing one that meets San Diego's campaign finance policy goals at the same time that it withstands constitutional scrutiny. Balancing competing policy goals requires resolving a debate among competing values: setting a limit that prevents corruption, stops the circumvention of other limits, and preserves the transparency of financial exchanges while at the same time allowing parties to compete with each other and to exercise their First Amendment rights is a tough trick. Withstanding court scrutiny is also a challenge, since courts have upheld some limits on party-to-candidate contributions while striking down others.¹⁰ The courts have, however, provided guidance about the key tradeoff that policymakers must grapple with and the "danger signs" that would cause them to overturn a limit.

The *Randall v. Sorrell* (2006) Test. Because contribution limits infringe upon First Amendment speech protections, they must be "closely drawn" to meet their objectives. The 2006 *Randall v. Sorrell* decision provides the clearest articulation of what a closely drawn party-to-candidate contribution limit should look like (or, rather, what they should *not* look like). When the Supreme Court, in a 6-3 opinion written by Justice Breyer, struck down Vermont's party-to-candidate contribution limits, it applied a fundamental balancing test and noted five danger signs present in Vermont's limits. This test requires lawmakers to balance between, on the one hand, "the need to allow individuals to participate in the political process by contributing to political parties that help elect candidates," and, on the other, "the need to prevent the use of political parties 'to circumvent contribution limits that apply to individuals.'" (*Randall* at 258-59) Judge Gonzalez made multiple references to this balance

⁹ "Party activists" are defined as county party chairs and convention delegates, with figures reported in Robert S. Erikson, Gerald C. Wright, and John P. McIver, 1993, *Statehouse Democracy: Public Opinion and Policy in the American States* (New York: Cambridge University Press), pp. 102-104.

¹⁰ In the *Federal Election Commission v. Colorado Republican Federal Campaign Committee* (2001) case, the Supreme Court upheld a \$5000 limit on party-to-candidate contributions in congressional elections that was coupled with larger (\$33,780 to \$67,560) caps on coordinated expenditures. In *Randall v. Sorrell* (2006), the Court struck down party-to-candidate contribution limits of \$200 to \$400 in Vermont state elections.

when she struck down San Diego's \$1000 per election party-to-candidate contribution limit in 2012. She also compared the size of San Diego's limit to limits in other large U.S. cities, and looked at *Randall's* five danger signs (three of which were present in San Diego's limit).

Comparison to Limits in Other Cities. While the courts have not relied exclusively on the size or per capita impact of contribution limits to assess their constitutionality, Supreme Court justices and Judge Gonzalez have considered these relevant factors. Table 1 below report provides three ways to compare San Diego's limits: their amount, their per resident impact, and their per voter impact.¹¹ All of these comparisons are done at the citywide level rather than in districts.

- A. *Total Amount:* To make an apples-to-apples comparison, I look at total size of the party-to-candidate contribution limits per election, rather than per cycle. San Diego's overturned limits, then, would have imposed a \$1000 per election limit. Chicago, Indianapolis, and Columbus impose no limits on party contributions. In the eleven cities that do impose limits, limits range from \$350 per election in Austin to \$50,000 in Jacksonville. The mean amount is \$9,198 per election and the median¹² is \$4,950.¹³
- B. *Total Amount per Resident:* San Diego is a relatively large city, so dividing each city's contribution limit by the size of the city's population provides a better sense of how to compare the costs of reaching voters through broadcast media in a city. Contribution limits range from \$0.0003 per resident in Los Angeles to \$0.06 in Jacksonville, with a mean of \$0.0084 and a median of \$0.0011. Given San Diego's population, a limit of the same per capita size would be \$11,025 per election to match the mean city level and \$1,382 to match the median city.
- C. *Total Amount per Voter:* Even in two cities with the same population, the size of city electorates can vary radically based on the number of ineligible voters living in a city and, critically, the timing of elections. Gathering data on the number of voters in the most recent mayoral contest in other large cities shows that San Diego, which combines its regularly scheduled mayoral races with state and federal contests, has much higher turnout rates than Los Angeles and cities in Texas, which hold mayoral contests off of the even-year electoral cycle. More voters means more costs for campaigns in their direct mail expenses and field organization. Using the per voter size of limits and extrapolating from the size

¹¹ Supreme Court decisions do not provide crystal clear guidance on whether to make per capita or per voter comparisons. While the majority opinion in *Randall v. Sorrell* (2006) compares the size of Vermont's limits to limits in congressional districts and Missouri limits on a per capita and per citizen basis (using the data sources that it could easily obtain), it considers campaign costs as one of the factors that justify striking down a Vermont limit that was actually *higher*, relative to population size, than the Missouri limit which it had upheld.

¹² The median case provides a better representation of a "typical case" than an arithmetic average does when one or two outlying cases skews the distribution. Since Jacksonville's very high party-to-candidate contribution limits of \$50,000 (nearly five times the next highest limit) is an outlier, medians rather than means provide the most faithful summary of typical patterns across cities.

¹³ This is the limit in New York, the only city which imposes a total "per cycle" contribution limit rather than limits for each election.

of San Diego's electorate, the city could set a limit on party contributions of \$13,362 per election to match the mean city contribution limit and \$2,882 to match the median city.

Party-to-Candidate Limits in the Largest U.S. Cities

| City | Limit (per election) | Population (2010) | Limit per Resident | Mayoral Votes Cast | Limit per Voter |
|---------------|-------------------------|----------------------|-----------------------|-----------------------|--------------------|
| New York | \$4,950 | 8,175,133 | \$0.0006 | 1,154,802 | \$0.0043 |
| Los Angeles | \$1,000 | 3,792,621 | \$0.0003 | 285,658 | \$0.0035 |
| Chicago | No Limit | 2,695,598 | | 590,357 | |
| Houston | \$10,000 | 2,099,451 | \$0.0048 | 123,620 | \$0.0809 |
| Philadelphia | \$11,500 | 1,526,006 | \$0.0075 | 180,443 | \$0.0637 |
| Phoenix | \$10,880 | 1,445,632 | \$0.0075 | 169,085 | \$0.0643 |
| San Antonio | \$1,000 | 1,327,407 | \$0.0008 | 76,020 | \$0.0132 |
| San Diego | TBD | 1,307,402 | | 214,572 | |
| Dallas | \$10,000 | 1,197,816 | \$0.0083 | 55,711 | \$0.1795 |
| San Jose | \$1,000 | 945,942 | \$0.0011 | 134,320 | \$0.0074 |
| Jacksonville | \$50,000 | 821,784 | \$0.0608 | 192,592 | \$0.2596 |
| Indianapolis | No Limit | 820,445 | | 180,317 | |
| San Francisco | \$500 | 805,235 | \$0.0006 | 197,242 | \$0.0025 |
| Austin | \$350 | 790,390 | \$0.0004 | 58,228 | \$0.0060 |
| Columbus | No Limit | 787,033 | | 179,032 | |
| Mean | \$9,198 | | \$0.0084 | | \$0.0623 |
| Median | \$4,950 | | \$0.0011 | | \$0.0132 |

Sources: Contribution limits taken table produced by Ethics Commission Executive Director Stacey Fulhorst in March, 2012, population figures taken from 2010 Census, and 2009-2011 mayoral votes cast collected from appropriate election administrator websites.

Two Levels of Limits? All of these comparisons are done at the citywide level, but Commissioners may wish to set larger party-to-candidate contribution limits in mayor's races and other citywide contests than in district races. Running citywide requires candidates to reach out to far more voters and to campaign in a larger geographic area, yet does not open the door to a larger base of party contributors because contributions are likely to come only from a single party. Candidate spending in the last open mayoral contest shows just how expensive a citywide campaign can be, compared with district races. The 2005 special mayoral election featured a total of \$4.7 million in spending by seven candidates, while the

race held at the same time for the open 2nd Council District (a competitive seat with a large number of voters) saw approximately \$430,000 in combined spending by ten candidates.¹⁴

Potential Danger Signs. Set forth in *Randall*, these five tests will guide judicial scrutiny of any party-to-candidate contribution limits.

1. Are the limits so low that they “significantly restrict the amount of funding available for challengers to run competitive campaigns”? (*Randall*, at 253) Because parties typically direct the bulk of their spending to candidates running in closely contested races, this is an important question. In her 2012 ruling, Judge Gonzalez answered it in a surprising way. She noted that when parties were allowed to make unlimited contributions in 2010, the Republican Party made a \$20,000 contribution to a single City Council candidate, greater than the \$1000 limit that was later enacted. It is true that, had the limit been in place, the funds available to this candidate (Lorie Zapf) would have been reduced. But it does not follow that Zapf would have been unable to run a competitive campaign against Howard Wayne, the Democrat contesting this open seat. A \$1000 party limit would have prevented him from receiving \$17,000 from the Democratic Party, a near wash in terms of affecting electoral competition. Perhaps there is another way to judge how large a limit should be in order to give challengers an opportunity to run a competitive election: by comparing how much parties gave in that contest to the total sums spent by each candidate. This is the test performed in *Randall* (at 253). Under this test, if the \$1000 limit had been in effect, it would have reduced Zapf’s expenditures (which totaled \$117,380 in the June election) by 16.2% and Wayne’s (which totaled \$167,050) by 9.6%. Limits could be set so that they lessen this impact, even if they do not give parties to opportunity to give exactly as much as they would wish to give under no limits.

2. Are the party-to-candidate limits the same size as the limits on contributions from other types contributors, an equivalence that fails to recognize the “constitutional importance of associating in political parties to elect candidates”? (*Randall* at 256) One danger sign for Vermont’s limits on party contributions was that because they were the same as the limits on individual contributions, party members were prevented from associating with one another to help elect candidates. Parties could not effectively combine many small individual contributions and focus them on “whichever candidates the party believes would best advance its ideals and interests.” (*Randall* at 257) Applying this test to San Diego’s \$1000 party limit and comparing it to the \$500 individual-to-candidate contribution limit, Judge Gonzalez observed that, “The City’s limit on contributions is merely twice that of individuals.” To pass muster, then, a party limit must exceed the size of the individual limit by a multiple that is greater than two.

3. Does the limit count the value of volunteer services in its definition of a contribution? (*Randall* at 259) The overturned \$1000 limit in San Diego did not do so, and Judge Gonzalez noted this in favor of the City’s defense.

¹⁴ The campaign finance figures in this paragraph and the next paragraph come from campaign finance reports provided to me by Ethics Commission Executive Director Stacey Fullhorst.

4. Is the limit indexed to inflation? The overturned \$1000 limit in San Diego (ECCO Section 27.2934) was indexed to inflation, and Judge Gonzalez noted this in favor of the City's defense.

5. Does the record of legislative action to set the limit contain "any special justification that might warrant a contribution limit so low or so restrictive as to bring about the serious associational and expressive problems that we have described"? (*Randall* at 261) Commissioners and the City Council must consider and make explicit the City's legitimate interest in limiting party-to-candidate contributions. Are the City's broad anti-circumvention and anti-corruption interests sufficient here?

First, an anti-circumvention case may be difficult to make under the post-*Citizens United* legal regime. An individual, interest group, corporation, or labor union who wishes to influence San Diego elections is free to spend unlimited amounts on: 1. An independent expenditure on behalf of a candidate, 2. A contribution to a party to make an independent expenditure, and 3. A contribution to a party to communicate with its members in coordination with a candidate. What is left to circumvent? Because party-to-candidate contributions can be funded only by individuals and only in sums of \$500 or less, they do not appear to be a useful conduit for circumvention today.

Second, Judge Gonzalez cast doubt upon the anti-corruption justification, pointing to the special role played by parties. She wrote that, "the Court cannot say, for example, that a Republican politician is necessarily 'corrupt' – or that there is an appearance of corruption – just because that politician votes to pass issues supported by the Republican Party after he or she takes office. To the contrary, that is the exact purpose of our political party system."

Regardless of what limit the Commission wishes to impose upon party-to-candidate contributions, no limit is likely to withstand judicial scrutiny unless the City provides firm justification that balances, "the need to allow individuals to participate in the political process by contributing to political parties that help elect candidates," against "the need to prevent the use of political parties 'to circumvent contribution limits that apply to individuals.'" (*Randall*, at 258-59) After laying out this test, Judge Gonzalez stated in her 2012 ruling that, "At this time, the Court cannot say whether a \$5000 or \$20,000 limit on contributions by political parties would be sufficient to pass the constitutional muster under *Randall*. Whatever the new limit the City decides to enact it would be required to demonstrate that it seriously engaged in the required balancing of the interests set forth above."

A New Example of Acceptable Limits? Although the case has not yet been appealed, a February 24, 2012 initial ruling by the U.S. District Court for the District of Montana (*Lair v Murry*) relies on the precedent in *Randall* and draws on *Thalheimer* to uphold limits on aggregate party contributions in Montana state elections of \$18,000 for governor and lieutenant governor, \$2,600 for public service commissioner, \$1,050 for state senators, and \$650 for any other public officer. These limits are adjusted for inflation and between five and 36 times as large as the limits imposed on individuals and political action committees for the same offices. Montana has a population of 989,415, and had a gubernatorial election turnout of 486,734 in 2008.

EXHIBIT 2

**CONTRIBUTION LIMITS
POLITICAL PARTIES TO CANDIDATES
(NATION'S 15 MOST POPULATED CITIES)**
(per election, except as noted)

| CITY | PARTISAN ELECTIONS | LIMITS FOR INDIVIDUALS (District/Citywide) | LIMITS FOR POLITICAL PARTIES | AUTHORITY |
|---------------|--------------------|--|--|---|
| NEW YORK | ✓ | \$2,750/\$4,950 per cycle | \$2,750/\$4,950 per cycle ¹ | Admin. Code § 3-703 |
| LOS ANGELES | | \$500/\$1,000 | \$500/\$1,000 ¹ | Charter § 470(c)(3),(4) |
| CHICAGO | | \$1,500 ² | No Limit | Muni Code § 2-164-040 |
| HOUSTON | | \$5,000/\$5,000 | \$10,000/\$10,000 ¹ | Muni Code § 18-38 |
| PHILADELPHIA | ✓ | \$2,900 per year | \$11,500 per year ¹ | Muni Code § 20-1002 |
| PHOENIX | | \$430 | \$10,880/\$10,880 ³ | Muni Code § 12-1500, incorporating Arizona statute 16-905 |
| SAN ANTONIO | | \$500/\$1,000 | \$500/\$1,000 ¹ | Muni Code § 2-302 |
| SAN DIEGO | | \$500/\$500 | TBD | Muni Code § 27.2935 |
| DALLAS | | \$1,000/\$5,000 | \$2,500/\$10,000 ¹ | Muni Code § 15-A2 |
| SAN JOSE | | \$500/\$1,000 | \$500/\$1,000 ¹ | Muni Code § 12.06.210 |
| JACKSONVILLE | | \$500/\$500 | \$50,000 | Florida Statutes § 106.08 |
| INDIANAPOLIS | ✓ | No Limit | No Limit | Indiana Code § 3-9-2-4 |
| SAN FRANCISCO | | \$500/\$500 | \$500/\$500 ¹ | Muni Code § 1.114 |
| AUSTIN | | \$350/\$350 | \$350/\$350 | Charter Art. 3, § 8(A) |
| COLUMBUS | | No Limit | No Limit | Ohio Code § 3517.102 |

¹ Limits apply to political parties and other political committees

² Limits apply only to lobbyists and persons with business before the City

³ Limit applies to all political parties and political organizations combined

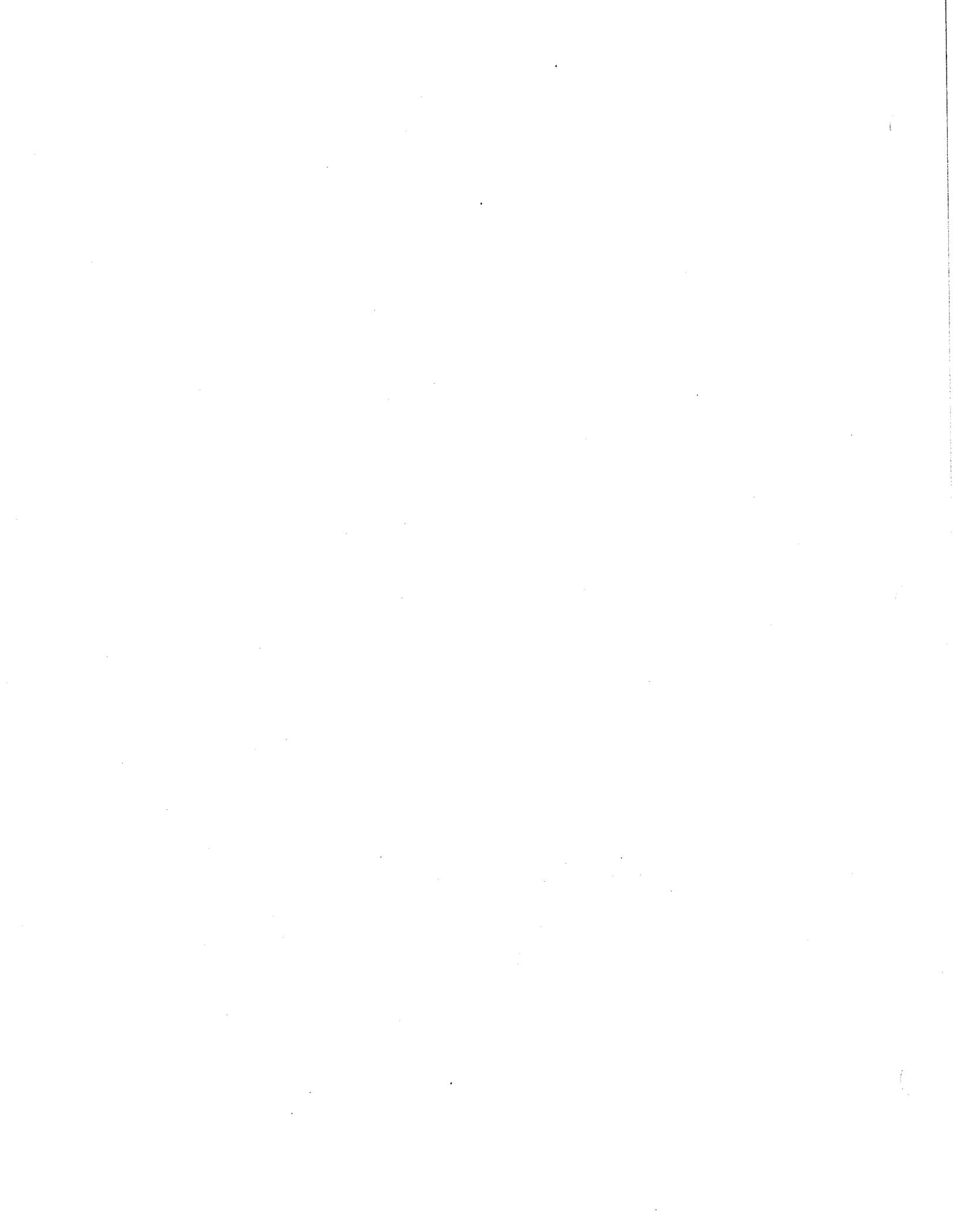


EXHIBIT 3

Post-Thalheimer v San Diego The Role of County Parties in City Elections

Presented by
Barrett Tetlow
Executive Director

1

What is a County Party?

- County Party Central Committees are governed by California Election Code 7400-7470
- Directly elected by voters of the party every two years
- Six elected members per Assembly District (48)
- Plus all party nominees for the 'former partisan' offices (Assembly, State Senate, Congress)
- All members, including the Chairman, of a County Central Committee are unpaid volunteers

2

What does a County Party Do?

- 1) Maximize Party voter registration
- 2) Maximize (recruit and maintain) our volunteer base
- 3) Maintain a year-round presence
- 4) Endorse candidates aligned with their philosophy
- 5) Maximize communication to Party voters
- 6) Maximize the rate at which Party voters vote
- 7) Maintain the integrity of voting process through poll observing
- 8) Raise the funds necessary to execute on the above

3

Parties are Unique

Political parties are unlike other individuals and entities because the candidates do expressly associate with them and vote on issues advocated/supported by them. In light of this, the Court cannot say, for example, that a Republican politician is necessarily "corrupt"—or that there is an appearance of corruption—just because that politician votes to pass issues supported by the Republican Party after he or she takes office. To the contrary, that is the exact purpose of our political party system.

Thalheimer v San Diego

4

Parties are Unique (cont.)

- Parties do not have business before the City and no financial stake in the outcome of Council decisions
- Parties are unlike a developer seeking approval for a project or a city employee union(s) asking for a raise(s) or retroactively enhancing pension benefits.
- Political parties are unlike other individuals and entities because they cannot corrupt a candidate and therefore no limit can be justified.

5

How is a County Party Financed?

Republican Party Example

1) Direct Mail

Average contribution is \$35

2) Donor Clubs

Century Club (\$100), Reagan Club (\$250) Chairman Circle (\$1,000), Chairman Pinnacle (\$5,000)

3) Events

Lincoln Reagan Dinner and the Salute to Republican Elected Officials

4) Victory Campaign

Voter Registration, Get-Out-The-Vote, Member Communications

6

Four Year Boom and Bust Cycle

- Both the DEM and REP county parties operate year-round, but donations dramatically increase a few months before an election, particularly in presidential election years
- We see a huge increase in donations in election years

| | | | |
|--------------------|-----|---|------|
| Off-year 2009 | 12% | } | 100% |
| Gubernatorial 2010 | 25% | | |
| Off year 2011 | 13% | | |
| Presidential 2012 | 50% | | |
- Six months after an election we expect to raise almost nothing
- We know that we must end each four-year election cycle with over \$100k just to make it through the off-year

7

Types of Money in Politics

- Post McCain-Feingold, there are different types of money in politics. Two major types of money are federal (or hard) money and state (or soft) money.
- Federal (or hard) money is money raised from individuals in amounts less than \$10,000 per year.
- State (or soft) money is corporate, union or money from individuals in excess of \$10,000 per year
- As a result the County Central Committee is really one organization with two financial "masters"; RPSDC Federal Committee (regulated by the FEC) and RPSDC State Committee (regulated by the FPPC).

8

**There is a Reason Why We
Call it Hard Money**

Hard (federal) money is very valuable and hard
to raise

Typically raised by direct mail where the average
contribution is \$35 or donor club membership
(\$100, \$250, \$1000)

Constant struggle to raise it and pay for
operations

Soft (state) money is much easier for county
parties to raise

9

**Federal (Hard) Cash on
Hand at 2/29/12**

San Diego County Democratic Party
\$134,525.26

Republican Party of San Diego County
\$69,778.87

Federal Election Commission
http://www.fec.gov/finance/disclosure/imaging_info.shtml

10

Federal Money

- Purely federal activities must be paid for with federal money
- Purely non-federal activities are paid with state (soft) money
- If we send a mailer to GOP voters supporting Congressman Brian Bilbray we would have to pay for that with 100% federal money

11

Federal Money (cont.)

- Most expense are "shared", meaning they help both federal and non-federal candidates
- Federal law requires a County Committee to pay for certain activities from their federal account but can transfer a % of state money into the account.
- Based on the activity or event the formula changes

Administrative

Voter Drive

Direct Candidate Support

Fundraising

Public Communication

Exempt

12

Shared Costs Administrative Formula

- Day-to-day operations of a county party are paid for using the Administrative Formula
- This formula changes every two years depending on the composition of federal seats on the ballot

| | |
|-------------------------------|--------------------|
| Presidential-Only | 28% Fed-78% State |
| Presidential and Senate | 36% Fed- 64% State |
| Senate-Only | 21%Fed- 79%State |
| Non-Presidential & Non-Senate | 15% Fed- 85% State |

How the Democratic Party paid rent and stamps

Sample 12501257739
SCHEDULE H4 (FEC Form 3X)
DISBURSEMENTS FOR ALLOCATED
FEDERAL/NONFEDERAL ACTIVITY

PAGE 22 OF 30
FOR LINE 21 & OF FORM 3X

NAME OF COMMITTEE (in Full)
San Diego County Democratic Party Fed Act

A Full Name (Last, First, Middle Initial) Transaction ID: **HA-2009-22314-e** Allocated Activity or Event:
HCA Office Park I LP Administrative Fundraising Event
Mailing Address 8304 Crown Vista Road Voter Drive Direct Candidate Support
Suite 102 Public Committee (in party only) by PAC

City State Zip Code
San Diego CA 92118-1215

Purpose of Disbursement:
Office rent

Activity or Event Identifier:
Administrative 2011/2012

Allocated Activity or Event Year-To-Date
38014.21

Date: **02 22 2012**

| | | |
|---------------|-------------------|--------------|
| FEDERAL SHARE | NON-FEDERAL SHARE | TOTAL AMOUNT |
| \$21.52 | 1122.7 | 1144.22 |

B Full Name (Last, First, Middle Initial) Transaction ID: **HA-2009-25011-e** Allocated Activity or Event:
Plenary Bows Administrative Fundraising Event
Mailing Address 1 Lambert Road Voter Drive Direct Candidate Support

City State Zip Code
Shelton CT 06200-0708

Purpose of Disbursement:
Rent Postage Meter

Activity or Event Identifier:
Administrative 2011/2012

Allocated Activity or Event Year-To-Date
2594.26

Date: **02 22 2012**

| | | |
|---------------|-------------------|--------------|
| FEDERAL SHARE | NON-FEDERAL SHARE | TOTAL AMOUNT |
| \$1.3 | 49.2 | 50.5 |

C Full Name (Last, First, Middle Initial) Transaction ID: **HA-2009-25594-e** Allocated Activity or Event:

How the Republican Party paid for volunteer activities

DISBURSEMENTS FOR ALLOCATED FEDERAL AND FEDERAL ACTIVITY
FOR LINE 214 ON FORM 990

NAME OF ORGANIZATION
Republican Party of San Diego County

A. Rep Name (Last, First, Middle Initial) TRANSMISSION ID: 11407612
Rancho Bernardo Inn
 Meeting Address: 17500 Bernardo Center Drive
 City: San Diego CA Zip Code: 92128

Allocated Activity of Service:
 Administrative Fundraising Support
 Voter Drive Voter Candidate Support
 Public Events (not to party only) by PAC

Personnel of Organizations: Party and Government Representatives
Activity or Event Identifier: Administrative
 (When None)

Allocated Activity of Service Year-To-Date:
 Date: 01/01/12 to 12/31/12

FEDERAL SPENDING: 00.00 + NON-FEDERAL SPENDING: 00.00 = TOTAL AMOUNT: 00.00

B. Rep Name (Last, First, Middle Initial) TRANSMISSION ID: 843785
Wons
 Meeting Address: 12000 Bernardo Plaza Drive
 City: San Diego CA Zip Code: 92128

Allocated Activity of Service:
 Administrative Fundraising Support
 Voter Drive Voter Candidate Support
 Public Events (not to party only) by PAC

Personnel of Organizations: Party and Government Representatives
Activity or Event Identifier: Administrative

Allocated Activity of Service Year-To-Date:
 Date: 01/01/12 to 12/31/12

FEDERAL SPENDING: 00.00 + NON-FEDERAL SPENDING: 00.00 = TOTAL AMOUNT: 00.00

C. Rep Name (Last, First, Middle Initial) TRANSMISSION ID: 11417124
RK Practitioner, Rancho Bernardo
 Meeting Address: 17500 Bernardo Center Dr.
 City: San Diego CA Zip Code: 92128

Allocated Activity of Service:
 Administrative Fundraising Support
 Voter Drive Voter Candidate Support
 Public Events (not to party only) by PAC

Personnel of Organizations: Party
Activity or Event Identifier: Administrative

Allocated Activity of Service Year-To-Date:
 Date: 01/01/12 to 12/31/12

FEDERAL SPENDING: 00.00 + NON-FEDERAL SPENDING: 00.00 = TOTAL AMOUNT: 00.00

15

What to do with Limited Resources?

- If a party wishes to contribute to a city candidate it faces several choices
- 1) Do we have federal (hard) money from individuals in less than \$500?
 - 2) Is this more important than other core party activities, such as voter registration, or supporting a federal candidate?
 - 3) Can we continue to pay for monthly administrative operations (rent, salaries) if we do this?
 - 4) Can we continue to pay for other activities (fundraising, public communications) if we do this?

16

**Democratic Party
Contributed \$55k
to Candidates
through 3/17/12**

| | | |
|---------|----------------------------------|----------|
| 3/16/12 | Sherri Lightner for City Council | \$9,000 |
| 3/16/12 | Mat Kostrinsky for City Council | \$6,000 |
| 3/16/12 | Mat Kostrinsky for City Council | \$7,000 |
| 3/16/12 | Bob Filner for Mayor | \$3,500 |
| 3/16/12 | Bob Filner for Mayor | \$3,500 |
| 3/12/12 | Bob Filner for Mayor | \$16,000 |
| 1/25/12 | Bob Filner for Mayor | \$10,000 |

All contributions must be paid with 100% federal money and attributed to donors in amounts of \$500 or less per donor

CA Secretary of State

<http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1018460&session=2011&view=contributions>

17

**Republican Party
Contributed \$35k
to Candidates
through 3/17/12**

| | | |
|---------|--------------------------------|----------|
| 3/02/12 | Scott Sherman for City Council | \$15,000 |
| 2/21/12 | Scott Sherman for City Council | \$10,000 |
| 2/08/12 | Scott Sherman for City Council | \$10,000 |

All contributions must be paid with 100% federal money and attributed to donors in amounts of \$500 or less per donor

CA Secretary of State

<http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1018475&session=2011&view=contributions>

18

Last Cycle

During the 2010 cycle, there was a period of time where the parties could make unlimited contributions. Each party contributed \$20,000 to their endorsed candidates in SDCC 6

19

Cost of Campaign SDCC6 2010

| | <u>June</u> | <u>Nov</u> |
|---------------------------------|--------------|---------------|
| Lorie Zapf Committee | \$87k | \$243k |
| Party Membership Communications | \$27k | \$90k |
| Independent Expenditures | \$14k | \$53k |
| Contributions by Party | \$20k | \$0 |
| Grand Total | | \$516k |
| | | |
| Howard Wayne Committee | \$93k | \$181k |
| Party Membership Communications | \$29k | \$38k |
| Independent Expenditures | \$120k | \$127k |
| Contributions by Party | \$20k | \$0 |
| Grand Total | | \$589k |

San Diego Ethics Commission 20

Cost of Mayoral Races

| Candidate | Raised-to-Date |
|-------------------------------|---------------------|
| Carl DeMaio | \$1.2M* |
| -\$500k self | |
| Bob Filner | \$300k |
| Party Contribution | \$33k or 11% |
| Bonnie Dumanis | \$343k |
| Nathan Fletcher | \$963k |
| San Diegans for Fletcher IE | \$261k |
| (12 individuals, 6 companies) | |

21

Is Unlimited Really Unlimited?

- While at the moment, county parties can contribute *unlimited* amounts to city candidates the reality is that county parties will never be able to do that.
- Limited by major constraints
 - Hard to raise hard (federal) money for both parties
 - Limited number of individual donors
 - Need federal money for daily operations
- Even with no limit, party contributions will be a fraction of the total money spend on campaigns.

22

Citizens United Myth

Myth- We are in this situation because of *Citizens United*

False- *Citizens United* was about the use of pooled corporate funds to make independent expenditures

23

Billionaire Myth

Myth- George Soros could contribute \$1,000,000 to the Republican Party and then the Republican Party could contribute \$1,000,000 to a city candidate

False- Because of the attributions rule contained in ECCO and upheld by the Court, a party could only contribute \$500 from Soros' contribution to a City candidate.

24

Fortune 500 Myth

Myth- Wal-Mart could contribute \$1,000,000 to the Democratic Party and then the Democratic Party could contribute \$1,000,000 to a city candidate

False- Wal-Mart's contribution would be state (soft) money, none of which could be contributed to a City candidate

25

Stockpile Myth

Myth- County parties could stockpile federal (hard) money and then make a large contribution to a city candidate. They could do this by paying all routine expenses with state (soft) money.

False- Activities that a party does on a daily basis (shared expenses) requires the use of federal money. (Rent, salaries, mailers, food, stamps, phones)

26

Advantage Myth

Myth- The _____ Party would have an advantage if there is no limit

False- In 2010, both parties contributed \$20k to their candidates. To date the Democratic Party has contributed \$55k to their endorsed candidates while the GOP has contributed \$35k

27

Little Guy Myth

Myth- The 'little guy' has no chance if county parties can contribute unlimited amounts

False- As the Court pointed out this empowers the 'little guy' because it's *accepted understanding that a political party "combines its members' power to speak by aggregating contributions and broadcasting messages more widely than individual contributors generally could afford to do, and the party marshals this power with greater sophistication than individuals generally could, using such mechanisms as speech coordinated with a candidate."*

(Randall v. Sorrell)

28

Special Interest Myth

Myth- County parties are just another special interest group

False- the democratically elected, unpaid volunteers of a county party have no economic issues before the City. Political parties are unlike other groups because the candidates *do expressly associate with them* and vote with them

➤ That is the exact purpose of our political party system

29

Conclusion

- The Republican Party has been and will continue to be staunch defender of everyone's right to free speech
- This forty-year experiment in regulating speech has created an overcomplicated system
- The solution is that contributions to candidates should be unlimited, transparent, and enforced with real penalties
- This would eliminate need for IE's, member communications, Super PACs, 527s, and slate mail
- Growing consensus, even with progressives, that this is the only workable system

30

Conclusion

Due to the unique nature of a party no limit can be justified

➤ Contributions are self limiting

We would be comfortable if party contributions to candidates were unlimited with tighter attributions rules

City has a legitimate need in creating tighter but practical attribution rules

31

EXHIBIT 4



April 11, 2012

Ethics Commission
City of San Diego
1010 Second Ave., Suite 1530
San Diego, CA 92101

Commission Members:

On behalf of one of the political party organizations directly affected by *Thalheimer v. City of San Diego* and the City's response to the rulings in that case, I submit the following reflections and recommendations on the Ethics Commission's "Proposed Amendments" (Rev. April 4, 2012) to the Election Campaign Control Ordinance.

▪ **POINT 1: Timing of Donor Attributions for Party Contributions**

We believe the current law requiring attribution within six months of the party's contribution to a candidate campaign is sufficient to demonstrate compliance with the \$500 contribution limit, without imposing an undue burden of "double reporting" during regular reporting periods.

The funds available to the party for candidate contributions have already been reported, attributed to individual donors, and made public as required by law. As long as the party ultimately establishes that its attributions complied with the \$500 per-election limit, no discernible public interest is met by requiring earlier "re-reporting" – especially since the question of which exact funds to use for those contributions is determined by the party, not by the original donors to whose names the contributions would be attributed.

The funds used by the party might not have been received during the same reporting period in which it makes a campaign contribution, or even during the same election year, making a connection to regular reporting cycles even more tenuous. This was presumably the basis for the existing rules set forth in SDMC Section 27.2930.

▪ **POINT 2: Identification of Individuals for Attributions of Less Than \$100**

In accordance with federal and state law, the party has received numerous contributions of less than \$100 for which the individual donors' names were not reported or required to be reported. These are nonetheless small donations from individuals which are compliant with the City's rules governing contributions to campaigns.

To require attributions for small-dollar original contributions to the party would effectively prevent us from using a significant source of our own funds that we are legally permitted to contribute to campaigns. Therefore we support the City's current rules, which mirror the federal and state disclosure requirements with which the party complies.

Our position on this issue is linked to our recommendation for limits on party contributions to campaigns (see Point 3). With reasonable limits in place, there is no question that the party has received and will continue to receive ample contributions of up to \$500 from individuals that it can, in turn, contribute to campaigns.

▪ POINT 3: Dollar Limits on Party Contributions to Candidate Campaigns

In the ruling of Judge Gonzalez early this year and in subsequent discussions, there has been a great deal of consideration of the norms and goals of campaign finance regulations. Without restating those factors here, we believe that \$5,000 would be sufficient to allow us and our members to fully exercise our constitutional rights of association and free speech. As a matter of policy for the City of San Diego, we would recommend that the limit be \$10,000, for both district and citywide elections.

▪ POINT 4: Time Limits on Attributable Contributions to the Party

On this point we support the current law, which does not require that the party attribute our candidate contributions to donations made to us in a certain period of time. As long as the original contributions to the party, as well as our contributions to campaigns, are made and reported legally, any further restriction on *which* of our own funds we can use would infringe on our freedom of expression. The party's fundamental right to apply the contributions of our supporters as we deem appropriate has been affirmed in *Thalheimer v. City of San Diego*.

▪ POINT 5: Clarification on the One-Time Attribution of an Amount to a Party Contribution

It would be useful, and consistent with the City's other regulations on contribution limits, to clarify that an amount attributed to one party contribution may not be attributed to any other party contribution.

I thank you for your time and consideration.

Sincerely,



Jess Durfee
Chair

San Diego County Democratic Party

EXHIBIT 5

SAN DIEGO COUNTY DEMOCRATIC PARTY

| DATE | RECIPIENT | CONTEST | POSITION | PAYMENT TYPE | AMOUNT |
|-------------------------|--------------------------------------|-----------------------|----------|--------------|--------------|
| 2010 ELECTION | | | | | |
| 6/16/2010 | HOWARD WAYNE FOR COUNCIL 2010 | CITY COUNCIL MEMBER 6 | SUPPORT | MONETARY | \$ 17,000.00 |
| 2012 ELECTION - TO DATE | | | | | |
| DATE | RECIPIENT | CONTEST | POSITION | PAYMENT TYPE | AMOUNT |
| 1/25/2012 | BOB FILNER FOR MAYOR 2012 | MAYOR 1 | SUPPORT | MONETARY | \$ 10,000.00 |
| 3/12/2012 | BOB FILNER FOR MAYOR 2012 | MAYOR 1 | SUPPORT | MONETARY | \$ 16,000.00 |
| 3/16/2012 | SHERRI LIGHTNER CITY COUNCIL 2012 | CITY COUNCIL MEMBER 1 | SUPPORT | MONETARY | \$ 9,000.00 |
| 3/16/2012 | MAT KOSTRINSKY FOR CITY COUNCIL 2012 | CITY COUNCIL MEMBER 7 | SUPPORT | MONETARY | \$ 7,000.00 |
| 3/16/2012 | MAT KOSTRINSKY FOR CITY COUNCIL 2012 | CITY COUNCIL MEMBER 7 | SUPPORT | MONETARY | \$ 6,000.00 |
| 3/16/2012 | BOB FILNER FOR MAYOR 2012 | MAYOR 1 | SUPPORT | MONETARY | \$ 3,500.00 |
| 3/16/2012 | BOB FILNER FOR MAYOR 2012 | MAYOR 1 | SUPPORT | MONETARY | \$ 3,500.00 |
| | | | | | \$ 55,000.00 |

REPUBLICAN PARTY OF SAN DIEGO COUNTY

| DATE | RECIPIENT | CONTEST | POSITION | PAYMENT TYPE | AMOUNT |
|-------------------------|----------------------------------|-----------------------|----------|--------------|--------------|
| 2010 ELECTION | | | | | |
| 5/19/2010 | LORIE ZAPF FOR CITY COUNCIL 2010 | CITY COUNCIL MEMBER 6 | SUPPORT | MONETARY | \$ 10,000.00 |
| 5/20/2010 | LORIE ZAPF FOR CITY COUNCIL 2010 | CITY COUNCIL MEMBER 6 | SUPPORT | MONETARY | \$ 10,000.00 |
| 8/19/2010 | LORIE ZAPF FOR CITY COUNCIL 2010 | CITY COUNCIL MEMBER 6 | SUPPORT | MONETARY | \$ 1,000.00 |
| | | | | | \$ 21,000.00 |
| 2012 ELECTION - TO DATE | | | | | |
| DATE | RECIPIENT | CONTEST | POSITION | PAYMENT TYPE | AMOUNT |
| 2/8/2012 | SHERMAN, SCOTT | CITY COUNCIL MEMBER 7 | SUPPORT | MONETARY | \$ 10,000.00 |
| 2/21/2012 | SHERMAN, SCOTT | CITY COUNCIL MEMBER 7 | SUPPORT | MONETARY | \$ 10,000.00 |
| 3/2/2012 | SHERMAN, SCOTT | CITY COUNCIL MEMBER 7 | SUPPORT | MONETARY | \$ 15,000.00 |
| | | | | | \$ 35,000.00 |

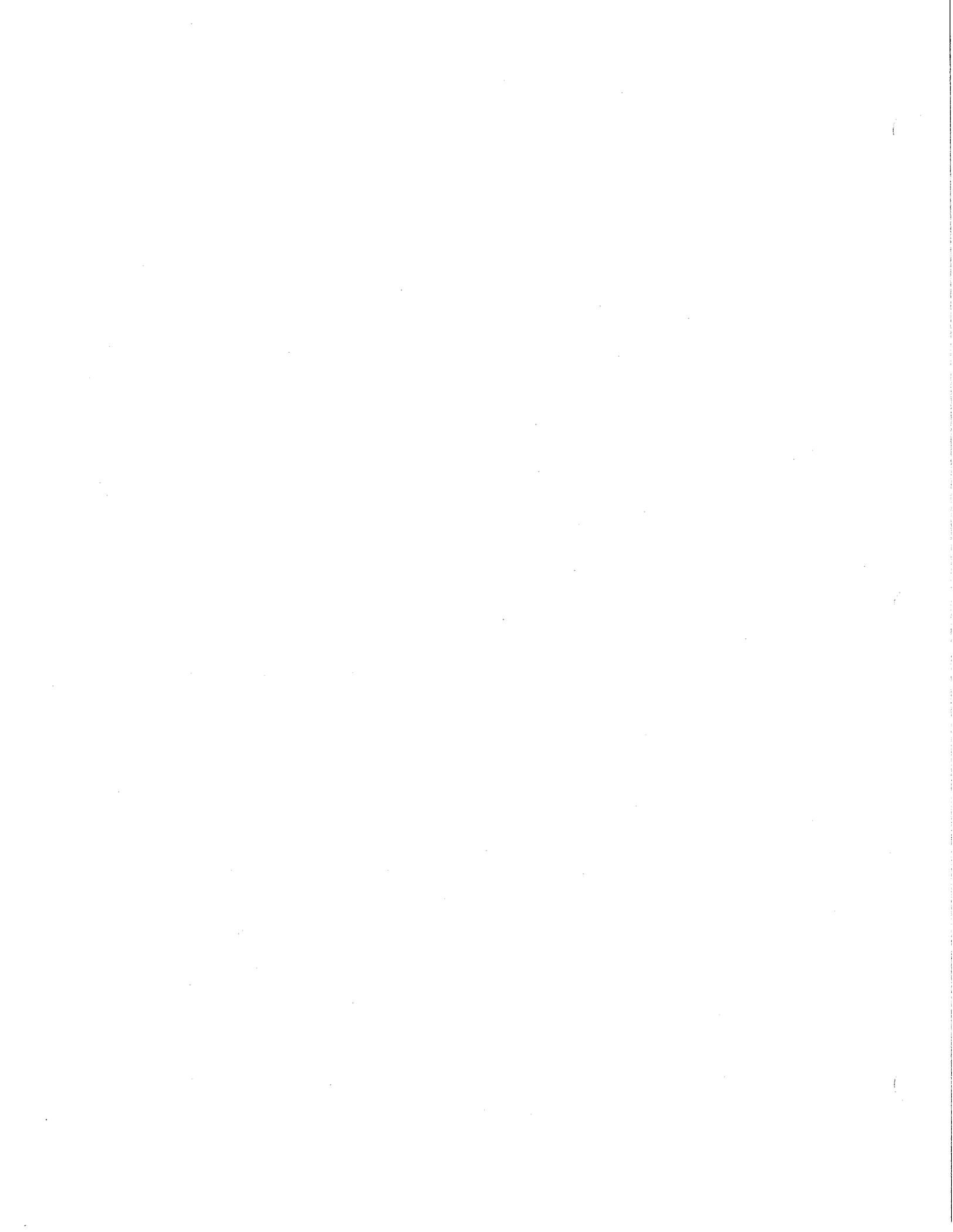
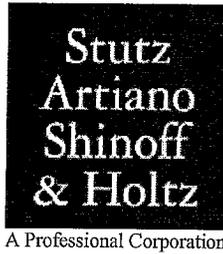


EXHIBIT 6



MEMORANDUM

DATE: April 18, 2012

TO: Chair and Members of the San Diego Ethics Commission

FROM: Christina Cameron, General Counsel

SUBJECT: Political Party Contribution Limits
Docketed for Ethics Commission meeting on April 20, 2012

At its meeting on April 12, 2012, the Ethics Commission ("Commission") voted to recommend a limit on the amount of money that a political party committee may contribute to a City candidate, leaving open the question of what that limit should be. The purpose of this memorandum is to provide additional guidance to the Commission on this issue by describing how the courts have dealt with political party contributions to candidates.

Rather than prescribing a specific formula for arriving at an acceptable contribution limit, the courts have identified various criteria or warning signs that could signal that a particular contribution limit is too low. Other than finding that a particular limit may be too restrictive, the courts have traditionally been reluctant to determine with any degree of specificity the appropriate contribution limit for a given jurisdiction, leaving such decisions to the discretion of legislative bodies. *FEC v. Beaumont*, 539 U.S. 146, 157-58 (2003). What is important is that any decision to establish a limit has meaningfully considered certain competing interests identified by the courts and further discussed below.

Based on a review of the relevant court cases, it is my recommendation that the Commission consider the following inquiries in identifying a limit to recommend for contributions from political parties to City candidates:

1. Is the limit low enough to minimize the possibility that political parties will be used to circumvent the City's \$500 contribution limit from individuals to City candidates? In 2001, the United States Supreme Court held that political party contributions may be limited as a means of minimizing circumvention of individual contribution limits. *FEC v.*

Chair and Members of the San Diego Ethics Commission
April 18, 2012
Page 2

Colorado Republican Federal Campaign Committee, 533 U.S. 431 (2001). In *Colorado*, the Court observed that “substantial evidence demonstrates how candidates, donors, and parties test the limits of the current law, and it shows beyond serious doubt how contribution limits would be eroded if inducement to circumvent them were enhanced by declaring parties’ coordinated spending wide open.” *Id.* at 457. Although the City’s attribution rules will require political parties to identify individuals who donated \$500 or less to the party, there is no way to determine with any certainty if those funds were actually used to make a contribution to a City candidate. (As explained at the last meeting, political parties accept contributions from individuals up to \$10,000 in their federal or “hard money” accounts.) For this reason, an extremely high contribution limit would tend to invite more potential for circumvention than a lower limit.

2. Is the limit so low that it fails to recognize the right of individuals to associate with a political party? In a 2006 case involving Vermont’s campaign finance statutes, the United States Supreme Court determined that Vermont’s “insistence that political parties abide by exactly the same low contribution limits that apply to other contributors threatens harm to a particularly important political right, the right to associate in a political party.” *Randall v. Sorrell*, 548 U.S. 230 (2006) at 256. Similarly, in the *Thalheimer* litigation, the court noted that the City’s \$1,000 limit for political parties was “merely twice that of individuals, even though political parties are meant to assist their members ‘by aggregating contributions and broadcasting messages more widely than individual contributors generally could afford to do.’” *Thalheimer*, p. 24, citing *Colorado* at 453. Both the *Randall* court and the *Thalheimer* court hypothesized about the ability of 6,000 citizens to give \$1 to a political party for the purpose of electing a candidate. In other words, the Commission should consider the ability of political parties to help elect candidates by aggregating small donations from a large group of citizens.
3. Does the limit reflect an appropriate balance between “(1) the need to allow individuals to participate in the political process by contributing to political parties that help elect candidates with (2) the need to prevent the use of political parties to circumvent contribution limits that apply to individuals”? This is the standard set by the United States Supreme Court in the *Randall* case, and reiterated by the District Court in its recent order in the *Thalheimer* case.

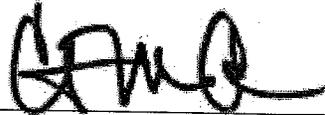
It is also relevant to note how the courts have evaluated specific contribution limits in place in other jurisdictions:

- In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court upheld federal contribution limits of \$1,000 for individuals and \$5,000 for political committees.

Chair and Members of the San Diego Ethics Commission
April 18, 2012
Page 3

- In the 2006 *Randall* case, the Supreme Court struck down Vermont's contribution limits of \$200 for state representative candidates, \$300 for state senate candidates, and \$400 for statewide candidates (individuals and political parties were subjected to the same limits).
- More recently, a district court judge reviewed the constitutionality of Montana's limits for political party contributions, which range from \$650 to \$18,000 per election, depending on the office sought (i.e., \$18,000 for gubernatorial candidates; \$2,600 for public service commissioner candidates; \$1,050 for state senate candidates; and \$650 for all other state candidates). *Lair v. Murray*, Case No. CV-12-12-H-CCL (Montana Dist., Feb. 24, 2012). After observing that Montana's political party limits were 5 to 36 times the amount of the respective limit for individual contributors, and noting that the *Thalheimer* court had invalidated San Diego's \$1,000 limit because it was "merely twice that of individuals," the *Lair* court upheld Montana's range of political party contribution limits. *Lair* at 23-25.

In summary, the foregoing illustrates that there is not one specific contribution limit that would survive judicial scrutiny. In fact, the District Court acknowledged in its recent Order that it could not say "whether a \$5,000 or a \$20,000 limit on contributions by political parties would be sufficient to pass the constitutional muster . . ." *Thalheimer*, p. 26. Instead, there are a range of limits that could result from the City appropriately balancing the associational rights of political parties with valid anti-circumvention interests. (For example, if the criteria in the *Lair* case were applied to San Diego, the range would be \$2,500 to \$18,000.) Within any range of acceptable limits, the Commission should select a contribution limit that takes into consideration the factors it deems relevant to this inquiry, which may include the limits in place in other jurisdictions, the benchmarks provided by Professor Kousser, and the public policy considerations discussed at the last meeting (e.g., the need to ensure that political parties are not "king-makers" in local non-partisan elections).



Christina Cameron
General Counsel



EXHIBIT 7

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April 19, 2012

BY FACSIMILE & EMAIL

FAX # (619) 533-3448

EM: ethics commission@sandiego.gov

Clyde Fuller, Chairman
W. Lee Biddle, Commissioner
Deborah Cochran, Commissioner
Faye Detsky-Weil, Commissioner
Hon. William J. Howatt, Jr., Commissioner
John C. O'Neill, Commissioner
Bud Wetzler, Commissioner
San Diego Ethics Commission
1010 Second Avenue, Suite 1530
San Diego, CA 92101

Dear Chairman Fuller & Commissioners:

On behalf of the California Republican Party ("the CRP"), the following comments are submitted concerning the proposed amendments to ECCO that will be discussed at your Friday, April 20, 2012 meeting.

1. Proposed Treatment of All Political Party Committees of a Party as Affiliates

The CRP opposes the proposal to treat all political party committees of the same qualified political party as "affiliates" for purposes of any contribution limits imposed on political party committees that contribute to candidates in the City of San Diego. [Proposed SDMC § 27.2934(b), Decision Point 1, Options A-D.]

The CRP is the recognized entity of the Republican Party in California. (Elec. Code § 7300 et seq.) County Republican Central Committees are separate organizational entities with their own governing statutes (Elec. Code § 7400 et seq.) and bylaws. The CRP and county central committees have been defined and treated as separate entities by the California Political Reform Act ("the Act") (Gov. Code §§ 85205, 85311), and generally as separate entities by the

Letter to Lee Fuller, Chairman
& Commissioners
San Diego Ethics Commission
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Federal Election Campaign Act of 1971, as amended. (Title 2, USCA, § 431 (1) (C) [local party committee]; 431 (15) [state party committee].)

Moreover, the CRP opposes any proposal to ban contributions to a City candidate by a state or other local political party committee that is not a “San Diego County political party committee.”

Option A imposes a limit on contributions to a San Diego candidate from a political party committee that exceed some dollar limit, which is not stated.¹

Option B appears to apply a contribution limit to all political party committees of the same party. In effect, this option treats the CRP as an affiliate of the SDRP, which is inconsistent with state law in particular and generally with federal law.

Option C bans political party committees in other jurisdictions, including state political party committees, from making any political contributions to City candidates. There is no justification whatever for this approach, which has constitutional problems and appears to be a solution in search of a problem. (See, e.g., *Vannatta v. Keisling*, 899 agF.Supp. 488 (D. Oregon 1995).)

Option D applies the contribution limits to political party committees in San Diego County and state political party committees but bans political party committees in other jurisdictions from making any political contributions to City candidates. Similarly, there is no justification whatever for this approach for the reasons stated with respect to Option C.

2. Proposed Special Reporting and Recordkeeping Requirements for Statewide General Purpose Committees Such as CRP

The CRP is also considered to be a “state general purpose committee” under the Act, and as such, the Fair Political Practices Commission has opined that Gov. Code § 81009.5 broadly preempts local efforts to impose additional filing requirements on state general purpose committees. The FPPC’s Formal Opinion *In Re Olson*, No. O-01-012, 2001 WL 909209 (2001), opined that political parties as “state general purpose committees” are not required to comply with special reporting or filing requirements imposed by local jurisdictions in certain expenditures made in the local jurisdiction.

The proposed ECCO amendments include, among other things:

- (a) A requirement that political party committees, as defined, file statements within 10 days of making a contribution to a City of San Diego candidate (or within 48 hours if

¹ The CRP does not object to the concept but concurs with the objections to such limits that the San Diego Republican Party may file on this issue.

the contribution was made during a 10 day period preceding the election) disclosing the contribution, attributing it to individual donors to the political party committee of \$500 or less, providing information about contributions so attributed. [Proposed SDMC §27.2930(b).]

- (b) A prohibition on a political party committee making a contribution to a City of San Diego candidate based on a special recordkeeping requirement applicable to a state general purpose committee. [Proposed SDMC §27.2930(e) (Decision Point 2).]
- (c) A prohibition on a political party committee making a contribution attributed to an individual based upon a special recordkeeping requirement applicable to a state general purpose committee. [Proposed SDMC §27.2930(e) (Decision Point 3, Options A - E).]
- (d) A related prohibition of dual attributions to a single donor to a political party committee with respect to contributions to City of San Diego candidates and a requirement to comply with the reporting requirement of SDMC § 27.2930(b). [Proposed SDMC §§27.2930(g) and (h).]

The CRP believes these requirements imposed on state general purpose committees such as the CRP violate the prohibition of Gov. Code § 81009.5, and although the City of San Diego may assert that the proposed ordinance amendments are within its constitutional authority to adopt laws regulating municipal affairs, the analysis of *In Re Olson* directly applies and demonstrates that Gov. Code § 81009.5 would preempt such enactments as to political party committees that are statewide general purpose committees. (*CalFed Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 17)(“*CalFed*”).²

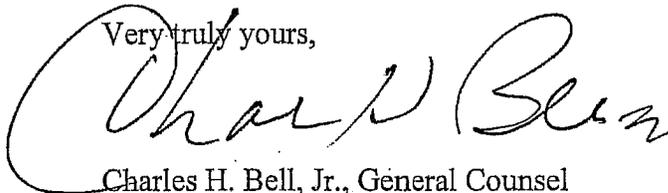
We urge the City Ethics Commission and the City Council not to go down this path. The last instance in which the Ethics Commission proposed to go this direction involved a purported attempt to regulate “member communications” by state general purpose committees and political party committees. The Legislature intervened to amend Gov. Code § 85703 to make crystal clear that that provision of Proposition 34 (2000) preempted local ordinances that sought to regulate such expenditure activity differently. (Stats. 2007, Ch. 708.)

² In 2004, the Legislature amended Gov. Code § 82027.5(b) to specify that political party committees including local committees were “state general purpose committees” to bring them within special reporting rules. Most political party committees already were filing as state general purpose committees at that time. CRP here asserts only that such regulations should not be made applicable to statewide general purpose committees for which the logic and language of Gov. Code § 81009.5, *In re Olson* and the *CalFed* decision should exempt such committees.

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Thank you for the opportunity to comment on the proposed legislative amendments.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Charles H. Bell, Jr.", written in black ink.

Charles H. Bell, Jr., General Counsel
California Republican Party

EXHIBIT 8

The Republican Party of San Diego County

MEMORANDUM

TO: San Diego Ethics Commission
FROM: Barrett Tetlow, Executive Director
SUBJECT: Contribution limit for political parties
DATE: 4/19/2012

We maintain our opinion that there shouldn't be any limit on what a county central committee party can give to their endorsed candidates. The only legal reason for a limit is the City's anti-corruption or an anti-circumvention interest. The Court has rejected the City's anti-corruption argument and upheld that "political parties are unlike other individuals and entities because the candidates *do expressly associate* with them and vote on issues advocated/supported by them."

The Court struck the \$1,000 limit as "it appears to the court 'no weight at all' was given to the required balance". Any contribution limit that is so low and restrictive that it 'reduces the voice of the political parties to a whisper' is unconstitutional. According to the Court "whatever the new limit the City decides to enact it would be required to demonstrate that it seriously engaged in the required balance". The Court has 'no scalpel to probe' what the limit should be. However, the Court left *clues* in the ruling as to how the City should proceed. The new limit should be something that was determined by thorough research, a limit that a previous Court upheld and similar to other jurisdictions.

We offer the following suggesting in the spirit of dialogue for your considering:

Clue 1 (page 22, line 9-13 Thalheimer v San Diego)

- The Court cited the limit in *Colorado II* which was \$33,780 in coordinated spending for a US Congressional seat.
 - This number could be adjusted based on population. A congressional seat represents 702,906 people while the City of San Diego is 1,301, 617.
 - Therefore the limit could be based on the *Colorado II* limit for congressional seats at \$62,555 for San Diego as it is 1.8 times larger than a congressional seat.
- The Court cited the limit in *Colorado II* which was \$67,560 in coordinated spending for a US Senate seat.
 - The City of San Diego has a population of 1,301,617 and is larger than nine states so the limit could be \$67,560 based on the *Colorado II* limit for Senate seats.

Clue 2 (page 22 line 28- page 23 line 6 Thalheimer v San Diego)

- National Political Parties may also make coordinated expenditures with their Senate candidates that range from \$88,400- \$2,458,500.
http://www.fec.gov/info/charts_441ad_2011.shtml#Senate
 - The City of San Diego has a population of 1,301,617 with 855,183 eligible voters is similar to Rhode Island, which as a population of 1,052,567 with 833,168 eligible voters. The Rhode Island limit is \$88,400 so the city limit could be **\$88,400.**

Clue 3 (page 22 line 25-27 Thalheimer v San Diego)

- The Court cites comparisons to state limits.
 - 20 states, including California, have no limits.
 - A County Party Central Committee is created by state law.
 - The state party has a similar attribution limit so the City could make their rules conform to state law. **No limit but with an attribution.**

Clue 4 (page 22 line 19-line 25 Thalheimer v San Diego)

- The Court cites comparison to other cities' contribution limit.
 - San Diego is the eighth largest city in the US so the City could use the **median** of the 15 largest cities in the US to determine the limit.
 - New York (\$2750/\$4950)
 - Los Angeles (\$500 council/\$1,000 citywide)
 - Chicago (no limit)
 - Houston (\$10,000/\$10,000)
 - Philadelphia (\$11,500 per year)
 - Phoenix (\$10,440/\$10,440)
 - San Antonio (\$500/\$1000)
 - San Diego ?
 - Dallas (\$2,500/\$10,000)
 - San Jose (\$500/\$1000)
**Court already rejected that argument (page 22 line 19-21 Thalheimer v)*
 - Jacksonville (\$50,000)
 - Indianapolis (no limit)
 - San Francisco (\$500/\$500)
** Court already rejected that argument (page 22 line 19-21 Thalheimer v)*
 - Austin (\$350/\$350)
 - Columbus (no limit)

Clue 5 (page 23 line 21-page 25 line 5 Thalheimer v San Diego)

- The Court cites the *Randall* case that it is “accepted understanding that political parties combine it’s member’s power to speak by aggregating contributions and broadcasting messages more widely than individual contributors generally could afford to do.”
- So what is membership?
 - County Party Central Committee Members
 - Central Committee membership is determined by CA Elections Code 7401-7406. The Republican Party of San Diego County has 58 committee members who each could give individually \$500 to a candidate.
 - Since political parties ‘combine member’s power more widely than individual contributors generally could afford to do’ the limits should be greater than \$500.
 - 58 members x \$501 = **\$29,058**
 - 58 members x \$750= **\$43,500**
 - 58 members x \$1,000= **\$58,000**
 - Voters
 - The Republican Party of San Diego County is 512,537 registered republicans and 178,070 registered republicans in the City of San Diego. If each member gave \$1, as cited in the *Randall* case, that the contribution limit would be **\$512,537** or **\$178,070** in the city of San Diego.
 - The Democrat Party of San Diego County has 516,535 registered democrats and 256,268 in the city of San Diego so the limit would be **\$516,535** or **\$256,268** in the city of San Diego.

Clue 6 Contributions (page 24 line 3- 26 Thalheimer v San Diego)

- As cited in the *Randall* case example of 6,000 members giving \$1, membership is treated as contributions.
- Total number of individual donors for the past 4 year cycle x \$ (greater than \$500) to determine the limit.

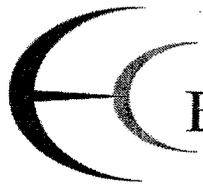
Conclusion:

The Court has no ‘scalpel to probe’ and the City ‘is better equipped to make empirical judgments as to contributions limits as council members have particular expertise in matters related to the costs and nature of running for office.’ If the City decides to enact a limit it would be required to demonstrate that it seriously engaged in striking the required balance. If a limit was enacted that new limit should be a limit upheld by a past court decision and similar to other jurisdictions.

Thank you for your consideration.



EXHIBIT 9



THE CITY OF SAN DIEGO
ETHICS COMMISSION

**Minutes for Meeting of
Thursday, April 12, 2012**

Item 1: Call to Order

Commission Chair Fuller called the meeting to order at 5:00 p.m.

Item 2: Roll Call

Present – Commission Chair Fuller, Vice Chair William Howatt, Commissioners Faye Detsky-Weil, John O'Neill, and Bud Wetzler (Commissioner Detsky-Weil arrived at 5:05 p.m.)

Excused – Commissioner Cochran

Staff – Executive Director Stacey Fulhorst, General Counsel Christina Cameron, Program Manager Steve Ross, and Senior Investigator Lauri Davis

Item 3: Approval of Commission Minutes

Approval of Ethics Commission Minutes of March 8, 2012

Motion: Approve
Moved/Seconded: Howatt/O'Neil
Vote: Carried Unanimously
Abstained: Wetzler
Excused: Detsky-Weil

Item 4: Non-Agenda Public Comment

None

Item 5: Commissioner Comment

None

Item 6: Executive Director Comment

None

Item 7: General Counsel Comment

None

Item 8: Discussion and Possible Action Concerning Proposed Limit for Contributions from Political Parties to City Candidates and Attribution Rules

Director Fulhorst explained that, pursuant to the recent order from the District Court, there are two issues for the Commission to consider: (1) whether to recommend a new limit for contributions from political parties to City candidate, and (2) whether to recommend changes to the current attribution rules to require disclosure of more information in a more timely manner. She explained that because the Court did not provide any guidelines for adoption of a new contribution limit for political parties, she asked UCSD Professor Thad Kousser to compile a report concerning the pros and cons of adopting a limit, relevant legal guidelines, and benchmarks the Commission might consider if it decides to recommend a new limit. This report, together with a chart of contribution limits in place in the 15 largest cities and a listing of contributions made by political parties to City candidates in the 2010 and 2012 election cycles were provided with the backup materials for the meeting. In addition, Ms. Fulhorst noted that the backup materials included a letter from the San Diego County Democratic Party and a PowerPoint presentation from the Republican Party of San Diego County.

Director Fulhorst reminded the Commission that the City Council Rules Committee has asked the Commission to prioritize its recommendations concerning political party contribution limits and attribution rules. She added that she has been asked to report back to the Committee by mid-May, 2012.

William Moore with the San Diego Democratic Party commented regarding the issues addressed in the letter from the Party's Chair. He explained that a direct contribution from a political party signals that the party is not only endorsing the candidate, but is willing to financially support the candidate. He stated that the signaling is more important than the actual amount. He indicated that the Democratic Party believes a \$5,000 contribution limit would be sufficient to fulfill its rights of association and would pass constitutional muster; however, from a public policy perspective, the Democratic Party recommends a \$10,000 limit. He also indicated that the Democratic Party does not support any changes to the current attribution rules as they do not

believe changes are necessary and would potentially pose administrative difficulties.

Commissioner O'Neill asked Mr. Moore if the Democratic Party supports a different limit for district races versus citywide races. Mr. Moore replied that an increased limit for political parties to candidates in citywide races would necessitate a corresponding increase for limits from individuals to citywide candidates.

Commission Chair Fuller asked Mr. Moore if the Democratic Party is opposed to a political party contribution limit above \$10,000. Mr. Moore responded that there is no need for a higher limit unless you are attempting to circumvent the individual contribution limit of \$500.

Commissioner Detsky-Weil asked how the Democratic Party arrived at the \$5,000 and \$10,000 figures. Mr. Moore responded that \$5,000 is "real money," and that a \$10,000 contribution would signal that it was an important race from the perspective of the political party, but these amounts are not so large that they could fund an entire race.

Barrett Tetlow with the Republican Party of San Diego County delivered a PowerPoint presentation that addressed the differences between "hard" and "soft" money raised by political parties, the administrative expenditures that must be made from hard money (or federal) accounts, and the limited nature of funding remaining to make contributions to City candidates. He submitted that the Republican Party does not believe a limit on political party contributions is justified, but that the party supports tighter attribution rules.

Commissioner O'Neill asked Mr. Tetlow about the issue raised in Professor Kousser's report concerning the polarizing effect of political parties and the tendency for political parties to move elected officials away from the ideological center and make them beholden to the party. Mr. Tetlow responded that the Republican Party typically spends money to support moderate Republicans.

Mr. Moore asked if he could also respond to Commissioner O'Neill's query. Mr. Moore acknowledged that political parties do put pressure on candidates to "toe the party line." He stated that one of the main purposes of a political party is to "enforce party discipline."

April Boling commented on attribution rules, which she believes will be very important if there is no limit on political party contributions. In lieu of the current requirement that attribution reports be filed within 6 months of a contribution, she recommended 30 calendar days. She expressed her view that all contributions, regardless of amount, should be identified on an attribution report, and questioned how the Commission could enforce the attribution requirements without this detailed disclosure. Although she supports an itemization of all donor funds including those under \$100, she

expressed her view that address and occupation/employer information are not necessary on an attribution report, but that the donors should be listed in alphabetical order. She also suggested that the Commission's Audit Manual be amended to include sample testing of political party attributions, and that the law require political parties to maintain records associated with all donations that they attribute to candidate contributions. She does not believe there is any need to limit the timeframe for how far back a party may go to attribute a donor's funds as long as there is a requirement that the party maintain and produce records to verify the original contribution.

Commission Chair Fuller asked Ms. Boling if a 30-day filing requirement for attribution reports would be difficult for treasurers. Ms. Boling replied that political parties have professional treasurers and should be sophisticated enough to submit attribution reports for the contributions they make to City candidates.

Commissioner Howatt asked Ms. Boling about her recommendation that all donor funds be itemized. She explained that if a political party is not required to identify donors under \$100 the public could receive nothing more than a statement that party complied with the attribution rules by using \$99 or less from unspecified donors.

Commissioner Detsky-Weil asked Ms. Boling about her recommendation that there be no reach-back time limit for donor attribution. Ms. Boling reiterated her view that the time limit should not matter as long as the party has records to verify the donations. She added that if the Commission decides to recommend a time limit, it should be four years and should use an anchor date such as January 1 so that the pool doesn't shift every time it makes a contribution.

Ms. Fulhorst asked Ms. Boling if she believes the political parties should have to demonstrate that they had sufficient conforming cash on hand to fund a contribution to a City candidate. Ms. Boling replied that she does not think this is an issue and reiterated that the parties can demonstrate compliance by verifying donor contributions. Ms. Fulhorst noted that it will be important for the Commission to consider whether donor identification is sufficient even if campaign disclosure statements indicate that a political party does not have enough contributions from individuals in amounts of \$500 or less in its account to fund a particular contribution to a City candidate.

Simon Mayeski with Common Cause commented on the specific decision points outlined in the draft amendments prepared by staff. He expressed his view that attribution reports should be filed within 10 days because the political parties should have this information at the time they make contributions to City candidates. He indicated that he supports disclosure of all donor funds on an attribution report, including those under \$100. With respect to the reach back time frame, he submitted that political parties should comply with the 12-month pre-election fundraising time limits

applicable to City candidates. Finally, with respect to a new contribution limit, he indicated that no limit is a viable option provided that complete disclosure rules are implemented. If the Commission is inclined to recommend a limit, he suggested \$7,500 would be appropriate.

Director Fulhorst presented the decision points outlined in the draft Municipal Code amendments prepared by staff.

Commissioner Howatt commented that political party contributions are antithetical to non-partisan elections.

Commissioner Biddle expressed agreement with Commissioner Howatt's view. He submitted that injecting unlimited contributions from political parties would undermine the foundation of the City's campaign laws and give political parties an outsized role in elections. He added that if political parties are permitted to give unlimited contributions to City candidates, then the individual \$500 limit should be reconsidered.

Motion: Recommend no limit for contributions from political parties to City candidates
Moved/Seconded: Wetzler/Fuller
Vote: Failed 5-1 (Fuller voted yes)
Excused: Cochran

Motion: Recommend same limit for political party contributions to district and citywide candidates
Moved/Seconded: Wetzler/Detsky-Weil
Vote: Failed 3-3 (Biddle, Howatt, and O'Neill voted nay)
Excused: Cochran

Motion: Recommend limits of \$5,000/\$10,000 for contributions from political parties to district/citywide candidates
Moved/Seconded: Biddle/Fuller
Vote: Failed 4-2 (Biddle and O'Neill voted yes)
Excused: Cochran

The Commissioners generally concurred that the issue of a specific limit for political party contributions should be continued to the next Commission meeting.

Motion: Recommend attribution of all donor funds regardless of amount
Moved/Seconded: O'Neill/Detsky-Weil
Vote: Carried unanimously
Excused: Cochran

Motion: Clarify that funds attributed to one party contribution may not later be attributed to another party contribution
Moved/Seconded: O'Neill/Wetzler
Vote: Carried unanimously
Excused: Cochran

Motion: Recommend elimination of donor addresses in attribution reports
Moved/Seconded: O'Neill/Biddle
Vote: Carried unanimously
Excused: Cochran

With respect to the issue of filing deadlines for attribution reports, Ms. Boling commented that the staff recommendation that they coincide with candidate pre-election filing deadlines would be onerous for political treasurers. She added that a 10-day filing requirement was reasonable if donor addresses and occupations are not required.

Motion: Recommend attribution reports be filed within 10 days of a candidate contribution unless the contribution is made within 10 days of an election, in which case the attribution report must be filed within 48 hours.
Moved/Seconded: O'Neill/Howatt
Vote: Carried unanimously
Excused: Cochran

The Commissioners generally concurred that the reach back time limit for contributions should be continued to the next meeting and discussed at the same time as a specific limit for political party contributions.

Item 9: Discussion and Possible Action Concerning Additional Proposed Amendments to Campaign Laws

April Boling proposed the following amendments to the City's campaign laws:

- (1) Eliminate the requirement that contributions be returned if not deposited within 30 business days.
- (2) Increase the time period to obtain contributor occupation and employer information from 30 business days to 60 calendar days to coincide with state law.
- (3) Change the font size for "paid for by" disclosures from 12-point type to 6-point type to coincide with the state's sender identification law.
- (4) Eliminate the "paid for by" requirement on campaign literature not sent via mail.
- (5) Eliminate the requirement that solicitations contain a warning that individual contributors may not be reimbursed by an organization.

- (6) Lift the ban on contributions from sole proprietorships to coincide with federal law that treats sole proprietorships as individuals.
- (7) Recommend a higher contribution limit for candidates in citywide races.
- (8) Eliminate the third pre-election filing for City candidates.

William Moore commented that he has been advised by political treasurers that the third pre-election filing is burdensome.

Item 10: Proposed Amendments to Ethics Commission Operating Policies

Due to the lateness of the hour, this item was continued to the next Commission meeting.

Item 11: Adjourn to Closed Session.

Commission Chair Fuller adjourned the meeting to closed session at approximately 7:55 p.m. He stated the Commission would reconvene into open session following the conclusion of closed session in order to report any action taken during the closed session portion of the meeting.

Reconvene to Open Session

Commission Chair Fuller called the meeting back into open session at approximately 8:10 p.m.

Reporting Results of Closed Session Meeting of April 12, 2012

Ms. Cameron reported the results of the closed session meeting of April 12, 2012:

Item-1: Conference with Legal Counsel (2 potential matters)

Case No. 2012-15 - In Re: Alleged Acceptance of Contribution In Excess of Limit and Contribution from Organization

| | |
|-----------------|-------------------------------------|
| Motion: | Dismiss |
| Moved/Seconded: | Howatt/Biddle |
| Vote: | Carried 5-1 (Detsky-Weil voted nay) |
| Excused: | Cochran |

Case No. 2012-17- In Re: Alleged Failure to Disclose Economic Interests

| | |
|-----------------|------------------------|
| Motion: | Initiate Investigation |
| Moved/Seconded: | O'Neill/Howatt |
| Vote: | Carried unanimously |
| Excused: | Cochran |

Item-2: Conference with Legal Counsel (1 potential matters)

Item withdrawn

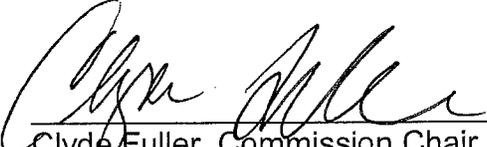
Item-3: Conference with Legal Counsel (1 potential matter)

San Diego Ethics Commission Audit Report: David Alvarez for Council 2010

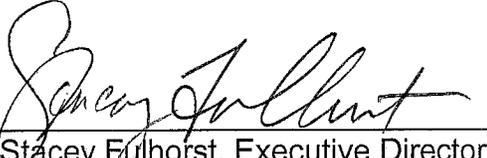
Motion: Accept Final Audit Report
Moved/Seconded: Howatt/Detsky-Weil
Vote: Carried unanimously
Excused: Cochran

Adjournment

The meeting adjourned at approximately 8:15 p.m.



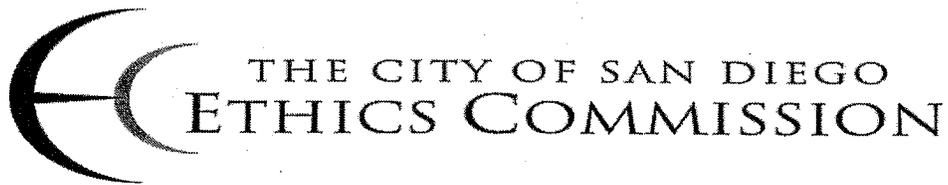
Clyde Fuller, Commission Chair
Ethics Commission



Stacey Fulhorst, Executive Director
Ethics Commission

THIS INFORMATION WILL BE MADE AVAILABLE IN ALTERNATIVE FORMATS UPON REQUEST.

EXHIBIT 10



**Minutes for Meeting of
Friday, April 20, 2012**

Item 1: Call to Order

Commission Chair Fuller called the meeting to order at 11:30 a.m.

Item 2: Roll Call

Present – Commission Chair Fuller, Commissioners Lee Biddle, Faye Detsky-Weil, John O’Neill, and Bud Wetzler (Commission Vice Chair William Howatt arrived at 11:35 p.m.)

Excused – Commissioner Cochran

Staff – Executive Director Stacey Fulhorst, General Counsel Christina Cameron, Program Manager Steve Ross, and Senior Investigator Lauri Davis

Item 3: Approval of Commission Minutes

Approval of Ethics Commission Minutes of April 20, 2012

Motion: Approve with minor changes
Moved/Seconded: O’Neill/Biddle
Vote: Carried Unanimously
Excused: Cochran

Item 4: Non-Agenda Public Comment

None

Item 5: Discussion and Possible Action Concerning Proposed Limit for Contributions from Political Parties to City Candidates and Attribution Rules

Director Fulhorst explained that the Commission Chair scheduled this special meeting to continue the discussion of issues not resolved at the April 12 meeting concerning political party contribution limits. She advised the Commission that there have been two developments since the last meeting. First, she explained that in discussions with April Boling she learned that it is not feasible for a political party to demonstrate that it used only funds from individuals in amounts of \$500 or less to make contributions to a City candidate. She reminded the Commission that Barrett Tetlow from the local Republican Party explained at the last meeting that federal campaign laws require the parties to segregate their funds into federal/hard money accounts and state/soft money accounts, and that they are required to use hard money to pay for a certain percentage of overhead and administrative expenses. She recently learned, however, that federal law also requires political parties to pay for all their administrative and overhead costs from their federal accounts, and seek reimbursement of the appropriate percentage of these costs from their state accounts. For this reason, conforming money in the federal account is frequently drawn down in excess of the amount required to pay those administrative costs. To comply with federal law, the parties have to transfer substantial funds between their state and federal accounts on a regular basis. As a result, there is no way for the Commission or the public to determine whether a political party had sufficient conforming funds on hand to make a particular contribution to a City candidate.

The second development since the last meeting is addressed in the letter from Charles Bell, attorney for the California Republican Party. Mr. Bell asserts that state law prohibits the City from imposing additional filing requirements on state general purpose recipient committees. In other words, he maintains that the City may not require the California Republican Party to file attribution disclosure reports. Although Mr. Bell represents the state party, Ms. Fulhorst advised the Commission that she has conferred with Ms. Cameron and confirmed that the laws cited in Mr. Bell's letter apply to local political parties as well. As a result, there is essentially a conflict between state law and the order issued by the District Court.

In order to address this conflict, Director Fulhorst explained that the Commission could go back to court (likely both state and federal courts) or could consider an alternative. The first alternative is a proposal mentioned by Commissioner Biddle at a previous meeting that would require City candidates to obtain the attribution information from the political party and file a disclosure report with the City Clerk. She noted that a drawback with this option is the candidate would clearly be relying on information from the political party, and the Commission would have no way to hold the political party responsible. She added that another drawback for this option is the

potential for a political party to assert that requiring a candidate to file the party's attribution information is essentially an indirect filing obligation for the party.

A different option involves accepting Mr. Bell's legal arguments at face value for purposes of conducting the balancing test required by the court. In other words, the Commission could recognize that the absence of any attribution reporting requirements would increase the potential for circumvention of the City's individual contribution limit. The Commission could take this factor into consideration when setting a particular party limit.

Finally, Director Fulhorst noted that the letter from Mr. Bell also addresses the aggregation of contribution limits from various levels of the same political party. He points out that all of the county parties in the state are considered separate entities under state law; therefore, he contends that each county party should be permitted to make a separate contribution to a City candidate within prescribed limits. Ms. Fulhorst advised the Commission that, according to research conducted by Ms. Cameron, federal law currently imposes a \$5,000 limit on contributions from a national political party and another \$5,000 aggregate limit on contributions from all other levels of the same political party combined. Additionally, she reported that the City's outside counsel in the *Thalheimer* litigation recommended an aggregate limit for different levels of the same political party as opposed to an outright ban from sources outside the county. She said that the outside counsel also expressed his view that the District Court would uphold an aggregation law.

In response to a question from Commissioner O'Neill on the apparent conflict between the *Thalheimer* ruling and state law, Director Fulhorst explained that the court upheld the application of the City's attribution rules to contributions from political parties, but did not address the issue of whether the attribution reporting requirements could be preempted under state law.

General Counsel Cameron provided an overview of the memorandum she prepared for the meeting, and discussed the importance of arriving at a limit that balances the associational rights of political parties with the need to prevent circumvention of individual contribution limits. She pointed out that a limit can be too low, as was the case when the *Thalheimer* court stated that it was clear that the City had not conducted the balancing test when arriving at the previous \$1,000 limit. On the other hand, a limit should not be so high as to create the potential for circumvention of the individual limit. She mentioned a recent Montana court case, and observed that although it is not binding on the City, the court upheld a range of political party limits that represented amounts equal to 5 times the individual limit to 36 times the individual limit (depending upon the office sought). She also discussed the fact that in the *Shrink* case, the facts involved a multiplier of 10 times the individual limit for political parties, and the court did not indicate that this limit was problematic. Finally, she noted that federal campaign laws currently limit individual

contributions to \$1,000 and political party contributions to \$5,000. In summary, she advised that different benchmarks as well as public policy considerations may be considered, and that conducting a proper inquiry is more important than the number ultimately chosen.

In response to a question from Commissioner Howatt regarding the appropriateness of a \$5,000, \$10,000, or \$20,000 limit, or no limit at all, Ms. Fulhorst responded that there is no magic number, but that the Commission may consider a number of factors, including the limits that were evaluated in the *Buckley*, *Shrink*, and *Montana* cases, as well as the data provided by Professor Thad Kousser.

Commissioner Howatt discussed the potential for disenfranchising different individuals and groups other than political parties by permitting political parties to make direct contributions to City candidates. He expressed his view that political parties can be a composite of separate groups that exert pressure on candidates and officials, and that the City should not give large political parties an outsized role in campaigns. Ms. Fulhorst reiterated the direction from the court that the City consider the rights of individuals to associate with a political party and balance these rights with the City's interest in preventing opportunities for circumvention. General Counsel Cameron added that the courts recognize that there is a special place for political parties in election campaigns.

UCSD Professor Thad Kousser noted that at its prior meeting the Ethics Commission decided that some limit for political parties was more appropriate than no limit, and that his comments would be focused on factors that could help the Commission arrive at a limit. He suggested that the Commission consider various benchmarks, including the limits in place in the top 15 U.S. cities. He noted that other cities are a better basis for comparison than congressional races; cities have a much more limited donor pool because their elected officials will only have the power to influence municipal decisions whereas congressional candidates have the potential to influence national affairs.

He explained that the Commission could consider the average limit for the cities that had limits, and could also consider a limit based on a per-resident or per-voter comparison. Based on his calculations, each option leads to limits between \$9,000 and \$13,000 for citywide races. He added that the \$13,000 limit is based on the per-voter comparison, and that San Diego has a higher voter turnout than some of the other cities because its elections coincide with national elections.

Professor Kousser observed that with respect to different limits for district and citywide elections, about half the cities in the chart have them and half do not. He pointed out that running for citywide office is significantly more expensive than running for district office. He noted that the top two district candidates in

past election cycles spent on average \$200,000 per election cycle, the top two city attorney candidates averaged \$560,000, and the top two mayoral candidates averaged \$1.3 million (not including Steve Francis as a self-funded candidate).

He suggested that a higher limit for citywide races would recognize the parties' associational rights as more people typically want to associate with their parties in a mayoral election than in a district election. As for increasing the likelihood of circumvention with a larger limit, he pointed out that because of the higher costs of a citywide election – in essence, a bigger “pie” – a larger limit for citywide elections versus district elections wouldn't actually increase the respective slice of each pie. In other words, the amount of the political party contribution as a percentage of overall candidate spending would be essentially the same.

Professor Kousser discussed the different ratios that could be used, stating that the cities in the chart used 2-to-1 to 4-to-1 ratios. He pointed out that having different limits (district versus citywide) for party contributions does not mean there should also be different limits for individual contributions as there are different dynamics involved. With individual limits, there are a larger number of individuals interested in a citywide campaign, thus allowing citywide candidates to raise significantly more money from more people. Party contributions, on the other hand, do not involve more potential donors in a citywide race than a district race; as a result, it is appropriate to treat these limits differently.

Professor Kousser recommended a party limit of \$12,000 per citywide election, which he noted would be the largest limit of all the cities on the chart other than Jacksonville. This amount would represent 24 times the limit in place for individuals. He recommended the Commission consider a 4-to-1 ratio for district elections, such that the limit for contributions from political parties to district candidates would be \$3,000 per election. He expressed his view that these limits are large enough to recognize the parties' associational rights but not so large that they create the potential for circumvention. In addition, he noted that the suggested limits would represent 6 and 24 times the amount of the individual limit, which fits well within the 5 to 36 multipliers recently upheld in the Montana case.

In response to an inquiry from Commissioner O'Neill, staff advised that some (but not all) of the limits on the chart referenced by Professor Kousser are indexed for inflation. Director Fulhorst noted that the City's laws already include an indexing mechanism.

In response to a question from Commissioner Howatt regarding registered voters, Professor Kousser noted that there are currently 252,000 registered Democrats, 176,000 registered Republicans, and that the majority of the remainder are “declined to state,” which is a growing trend throughout the

state and the country. Commissioner Howatt asked about an individual's right to disassociate from a political party, and Professor Kousser explained that the courts have recognized the right to associate with (not disassociate from) political parties. Finally, with respect to satisfying the *Randall* requirements, Professor Kousser noted that a limit for political party contributions would serve as an anti-circumvention tool, preventing parties from being used as pass-throughs for money laundering, thereby making the City's individual limit irrelevant.

Barrett Tetlow with the Republican Party of San Diego County reiterated his previous recommendation that there be no limits for contributions from political parties, and stated that the Republican Party will "probably be going back to court" if the limit adopted by the City is too low. He suggested that the Commission consider three relevant factors in arriving at a recommended limit: (1) has the City considered the balancing test (he stated that he believes the Commission has done an excellent job); (2) has the limit selected been upheld by a court; and (3) what limits are in places in other jurisdictions (he added that more than just the 15 jurisdictions in the chart should be considered).

Mr. Tetlow addressed the suggestions contained in his April 19, 2012, memorandum to the Ethics Commission and pointed out that a limit between \$62,000 and \$68,000 would be appropriate for San Diego based on a comparison between the size of a congressional/senate district and the City's population. He also suggested that because the City's population and number of eligible voters are comparable to Rhode Island's, the City could adopt the same limit as Rhode Island's: \$88,000. If the limit were based on the number of members of the San Diego County Party Central Committee (58), it would be set at \$29,000 (individual limit of \$500 multiplied by 58). Alternatively, if the limit were based on the number of voters registered with each political party, \$1 for each registered voter would result in a limit of \$178,000 for the Republican Party and \$256,000 for the Democratic Party. Finally, he suggested the Commission consider the \$500 individual limit multiplied by 6,000 people.

April Boling commented on the proposed attribution rules, recommending that there be no limit on how far back a party may go to identify an individual for attribution purposes. Alternatively, if the Commission decides to recommend a time limit, she expressed her support for Option C in the staff's Municipal Code draft, which limits the look-back period to January 1 of the second most recent odd-numbered year.

Simon Mayeski with Common Cause expressed his support for the numbers recommended by Professor Kousser and noted that they are based on facts. He also expressed his view that, because San Diego is a California city, the Commission should consider other California cities for comparison purposes.

William Moore with the San Diego Democratic Party recapped his discussion from the previous meeting and stated that the contribution limit should be high enough for a political party to signal support in the early stages of a campaign, or between \$5,000 and \$10,000. He said that if campaigns cost on average \$142,000 in Council District 6, a \$5,000 limit, or 3.5% of the average cost, would be a significant amount. He noted that the parties tend to use member communications to persuade voters later in the election cycle. He also noted that the City's elections are non-partisan, and that individuals should have the most influence in the process.

Ms. Fulhorst explained that federal law imposes a \$5,000 limit on direct party contributions to candidates and a limit of approximately \$36,000 for coordinated expenditures. In contrast, local law imposes no limits on coordinated expenditures if they are in the form of member communications. Commissioner Biddle added that under local law, following the rulings in *Citizen United* and *Thalheimer*, there are no limits on the funds a committee can receive for the purpose of making independent expenditures to support candidates.

In response to a question from Commissioner Detsky-Weil regarding a political party's ability to track individual contributions, Ms. Fulhorst explained that parties do track the receipt of all contributions including those under \$100, but cannot track a particular dollar all the way through to a contribution to a candidate.

In response to a question from Commissioner Howatt, Ms. Cameron confirmed that the citations in Mr. Bell's letter are accurate and that state law is potentially in conflict with the District Court's ruling in *Thalheimer*. She explained that Judge Gonzalez upheld the City's attribution rules, but did not address whether the disclosure requirement would be precluded by state law.

Ms. Fulhorst pointed out that this is a factor the Commission may want to take into account; there is a basis for a political party to sue the City if it imposes rules requiring the filing of attribution disclosure reports. Without a disclosure requirement, she observed that the attribution rules would essentially be unenforceable.

Commissioner Howatt expressed his view that limiting the size of political contributions would serve to limit corruption if attribution reporting requirements are eliminated.

In response to a question from Commissioner Biddle, Ms. Fulhorst clarified that the elimination of attribution reporting requirements would not also mean the elimination of the law that requires political parties to use only donations from individuals in amounts of \$500 or less to fund contributions to City candidates. She confirmed that the Commission could investigate a potential violation of the attribution rules if there were sufficient facts to suggest a

violation might have taken place. Commissioner Biddle commented that a lower contribution limit will be particularly important if there are no attribution reporting requirements.

Motion: Recommend no attribution reporting requirements for contributions from political parties to City candidates
Moved/Seconded: O'Neill/Howatt
Vote: Carried unanimously
Excused: Cochran

On the issue of an aggregate limit, Commissioner Biddle suggested that a single limit be applied to all levels of a particular party. Commissioner Wetzler suggested one limit for a local county party with a separate limit for the other levels of the same party combined. Commissioner O'Neill pointed out that if there is a single limit for all levels of a party, a local party could be short-changed if a party outside San Diego makes a contribution. Commissioner Howatt expressed his support for a single aggregate limit, adding that it would not limit the ability of parties to participate in other ways, such as member communications and get-out-the-vote efforts.

Motion: Recommend a single aggregate limit for contributions from all levels of the same political party to a City candidate
Moved/Seconded: O'Neill/Howatt
Vote: Carried 5-1 (Wetzler voted nay)
Excused: Cochran

Commissioner Biddle commented that, without attribution reporting requirements, he has concerns about setting a limit that is too high. Although he previously suggested that \$5,000 was an appropriate limit for district elections, he said he was now supporting the suggestion made by Professor Kousser that the per election limit for district candidates be set at \$3,000 in light of the Commission's decision to not require attribution disclosure reports.

Commissioner O'Neill stated that he would prefer to discuss the limit for district candidates in conjunction with a limit for citywide candidates. He opined that a 2-to-1 ratio is too low, and that a ratio of 4-to-1 or 6-to-1 would be better. He recommend a \$3,000 limit on contributions from political parties to City candidates in district elections, and a \$12,000 limit in citywide elections.

Commissioner Wetzler observed that the limits suggested by Commissioner O'Neill are comparable to those recommended by the local Democratic Party.

Commissioner Howatt stated that he was not opposed to the suggested limits, but commented that San Diego's history of corruption does not stem from political party contributions. Ms. Fulhorst concurred with Commissioner

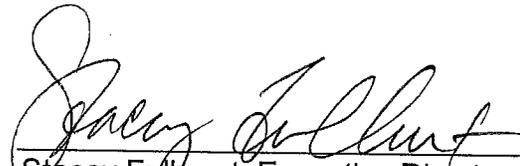
Howatt's observation, and noted that Judge Gonzalez stated in her order that political parties do not create the same appearance of corruption as special interests. Instead, the anti-circumvention concerns involve the potential for special interests to create an appearance of corruption by moving large contributions through political parties to City candidates.

Motion: Recommend a \$3,000 per election limit on contributions from political parties to City candidates in district elections, and a \$12,000 limit in citywide elections
Moved/Seconded: O'Neill/Biddle
Vote: Carried 5-1 (Fuller voted nay)
Excused: Cochran

Adjournment

The meeting adjourned at approximately 1:40 p.m.


Clyde Fuller, Commission Chair
Ethics Commission


Stacey Fulhorst, Executive Director
Ethics Commission

THIS INFORMATION WILL BE MADE AVAILABLE IN ALTERNATIVE FORMATS UPON REQUEST.

EXHIBIT 11

SAN DIEGO ETHICS COMMISSION REVIEW OF THE CITY'S
Election Campaign Control Ordinance

PROPOSED AMENDMENTS

Related to the *Thalheimer* Rulings

Rev. April 26, 2012

Chapter 2: Government

Article 7: Elections, Campaign Finance and Lobbying

Division 29: Election Campaign Control Ordinance

§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:

- (a) All *candidate* and *committee* campaign disclosure statements that are generated from the output of a computer software program shall be generated with the names of all contributors listed in alphabetical order by last name. *Treasurers* for any *committee* that files handwritten campaign disclosure statements shall make reasonable good faith efforts to list the names of all contributors in alphabetical order by last name.
- (b) Any payment made by a political party for *member communications* to its members who are registered with that party and that would otherwise qualify as a *contribution* or *expenditure* shall be reported on that political party's campaign disclosure statement in a manner that identifies the payment as a "member communication."
- (c) In addition to any other campaign statement required to be filed pursuant to the California Political Reform Act, every *candidate*, *controlled committee*, and *committee* primarily formed to support or oppose a *candidate*, shall file a pre-election statement on the Friday before any *election* in which the *candidate* is listed on the ballot. This statement shall have a closing date of the Thursday before the *election* and shall cover activity and payments occurring through that day.
- (d) When reporting *contributions* for regularly scheduled *City candidate elections*, *candidates* and *committees* shall include the notation "(P)" for all *contributions* that the contributor has designated for a primary *election*, and shall include the notation "(G)" for all *contributions* that the contributor has designated for a general *election*. In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation "(P)" for all *contributions* the *candidate* or *committee* has allocated for the primary *election*, and

shall include the notation "(G)" for all *contributions* the *candidate* or *committee* has allocated for the general *election*.

- (e) When reporting *contributions* for specially scheduled *City candidate elections*, *candidates* and *committees* shall include the notation "(S)" for all *contributions* that the contributor has designated for a *special election*, and shall include the notation "(R)" for all *contributions* that the contributor has designated for a *special run-off election*. In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation "(S)" for all *contributions* the *candidate* or *committee* has allocated for the *special election*, and shall include the notation "(R)" for all *contributions* the *candidate* or *committee* has allocated for the *special run-off election*.
- (f) In conjunction with making the notations required by subsections (d) and (e), *candidates* and *committees* shall disclose the cumulative amount of *contributions* received from the contributor for each *election*.
- (g) *Sponsors* and *sponsored committees* participating in *City elections* are subject to the reporting obligations set forth in title 2, section 18419 of the California Code of Regulations.
- (h) It is unlawful to fail to comply with the disclosure requirements of California Government Code sections 81000 *et seq.*, the disclosure requirements of title 2 of the California Code of Regulations, and the additional requirements of this section.

§27.2934 Contribution Limitations for Political Party Committees

- (a) A political party committee, as defined in California Government Code section 85205, as may be amended, shall not be prohibited from making *contributions* to a *candidate* or *controlled committee* in a *City candidate election*, but shall be subject to the restrictions set forth in this section.
- (b) It is unlawful for a political party committee to make, or for a *candidate* or *controlled committee* to solicit or accept, a *contribution* that would cause the total amount contributed by all local, state, and federal committees of the same political party to the *candidate* and the *candidate's controlled committee* to exceed \$3,000 for any council district *election* or to exceed \$12,000 for any citywide *election*.
- (c) It is unlawful for a political party committee to make a *contribution* to a *City candidate* unless the *contribution* is attributable to donations received from one or more individuals.
- (d) It is unlawful for a political party committee to make a *contribution* to a *City candidate* by attributing more than \$500 to the same individual per *candidate* per *election*.
- (e) It is unlawful for any portion of an individual's donation used by a political party committee for attribution purposes to be used again as a funding source for a different

attribution made under this section.

- (f) The dollar amounts set forth in subsection (b) are subject to changes in the Consumer Price Index as described in section 27.2937.

§27.2935 Contribution Limitations

- (a) It is unlawful for an individual to make, or for a *candidate* or *controlled committee* to solicit or accept, a *contribution* that would cause the total amount contributed by that individual to the *candidate* and the *candidate's controlled committee* to exceed \$500 for any single *City candidate election*.
- (b) For purposes of this section, an officeholder who is the subject of a recall *election* is deemed to be a *candidate* seeking elective office, and the *contribution* limit set forth in subsection (a) shall apply to any *payment* made to any *candidate controlled committee* for purposes of supporting or opposing the recall of that officeholder, regardless of whether such *payment* is made before, during, or after the circulation of a recall *petition*.
- (c) Nothing in this section is intended to limit the amount of his or her own money or property that a *candidate* may contribute to, or expend on behalf of, the *candidate's* own campaign.
- (d) The *contribution* limits imposed by this section do not apply to contributions made to *general purpose recipient committees* or *primarily formed recipient committees*.
- (e) The *contribution* limits imposed by this section do not apply to *contributions* made to a *professional expense committee*, as discussed in sections 27.2965-27.2969.
- (f) The dollar amounts set forth in this section are subject to changes in the Consumer Price Index as described in section 27.2937.

§27.2937 Indexing of Campaign Contribution Limits

- (a) The *contribution* limits set forth in sections 27.2934 and 27.2935 shall be adjusted on a biennial basis in accordance with this section. Such adjustments shall commence in 2011 for the *contribution* limits set forth in sections 27.2934(d) and 27.2935(a) and in 2015 for the *contribution* limits set forth in section 27.2934(b).
- (b) through (e) [no changes in text]

§27.2950 Prohibitions and Limits on Contributions From Organizations

- (a) It is unlawful for a *candidate* or *controlled committee*, or any *treasurer* thereof, or any other *person* acting on behalf of any *candidate* or *controlled committee*, to solicit or accept a *contribution* from any *person* other than an individual or a political party committee for a *City candidate election*.

- (b) It is unlawful for a *person* other than an individual or a political party committee to make a *contribution* to a *candidate* or *controlled committee* for a *City candidate election*.
- (c) The prohibitions in subsections (a) and (b) shall not be construed to prevent a *person* other than an individual or political party committee from making a *contribution* to a *controlled committee* that is organized solely for the purpose of supporting or opposing the qualification, adoption, or defeat of one or more ballot measures, and the *controlled committee* pursues no other purpose.
- (d) For purposes of subsection(c), a recall *election* is not a ballot measure *election*.
- (e) For purposes of this section, a *contribution* made from a personal or family trust account is considered a *contribution* made by an individual.

§27.2951 Prohibition on Contributions From Organization Bank Accounts

For purposes of a *City candidate election*, including a *City recall election*:

- (a) It is unlawful for any individual to make a *contribution* to a *candidate* or *controlled committee* drawn against a checking account or credit card account unless such account belongs to one or more individuals in their individual capacity.
- (b) It is unlawful for any *candidate* or *controlled committee* to accept a *contribution* unless it is drawn against a checking account or credit card account belonging to a political party committee or to one or more individuals in their individual capacity.
- (c) For purposes of this section, a *contribution* made from a personal or family trust account is considered a *contribution* made by an individual in his or her individual capacity.

§27.2953 Contributions for Recall Elections

- (a) For purposes of making, soliciting, and accepting *contributions* under this division, the eventual occurrence of a recall *election* may be presumed upon the earlier of:
 - (1) the date a notice of intention to circulate a recall *petition* is published pursuant to the recall provisions of this article; or,
 - (2) the date a statement of organization for a *committee* to recall the officeholder is filed with the City Clerk or the Secretary of State pursuant to state and local law.
- (b) The limits on *contributions* set forth in sections 27.2934 and 27.2935 and the prohibition against *contributions* from non-individuals other than political party committees set forth in sections 27.2950 and 27.2951 shall apply to every *payment* made to support or oppose the recall of an individual holding *elective City office*, regardless of whether such *payment* is made before, during, or after the circulation of a recall *petition*.

- (c) *Contributions* accepted for a recall *election* shall not count toward the *contribution* limits applicable to any other *election* even if ballots pertaining to the recall effort are never cast.
- (d) After the failure of a recall *petition* or after the recall election, all remaining *controlled committee* campaign funds shall be considered surplus campaign funds subject to the provisions of section 27.2924(c).

§27.2980 Disclosure of Electioneering Communications

- (a) through (f) [no changes in text]
- (g) Any communication, other than a *member communication*, made at the behest of a *candidate* is a *contribution* to that *candidate* and is subject to the limits and prohibitions specified in sections 27.2935 and 27.2950.
- (h) [no changes in text]



EXHIBIT 12

SAN DIEGO ETHICS COMMISSION REVIEW OF THE CITY'S
Election Campaign Control Ordinance

PROPOSED AMENDMENTS

Related to the *Thalheimer* Rulings

Rev. April 26, 2012

Chapter 2: Government
Article 7: Elections, Campaign Finance and Lobbying
Division 29: Election Campaign Control Ordinance

§27.2903 Definitions

Unless otherwise defined in this section, or the contrary is stated or clearly appears from the context, the definitions of the Political Reform Act of 1974 (Government Code sections 81000 *et seq.*) and the definitions contained in the regulations adopted by the Fair Political Practices Commission shall govern the interpretation of this division.

Agent through Professional fees and costs [no change]

~~*Shared management* means an organizational structure in which there is common management and control of two or more *general purpose recipient committees*. In determining whether there is common management and control, consideration shall be given to the following factors:~~

- (a) ~~The same *person* or substantially the same *person* manages the operation of the different *general purpose recipient committees*;~~
- (b) ~~There are common or commingled funds or assets;~~
- (c) ~~The *general purpose recipient committees* share the use of the same offices or employees, or otherwise share activities, resources, or personnel on a regular basis;~~
- (d) ~~There is otherwise a regular and close working relationship between the *general purpose recipient committees*.~~

Special Election through Vendor [no change]

§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:

- (a) All *candidate* and *committee* campaign disclosure statements that are generated from the output of a computer software program shall be generated with the names of all contributors listed in alphabetical order by last name. *Treasurers* for any *committee* that files handwritten campaign disclosure statements shall make reasonable good faith efforts to list the names of all contributors in alphabetical order by last name.
- (b) ~~A general purpose recipient committee attributing contributions pursuant to section 27.2936 totaling \$100 or more to the same individual for purposes of supporting or opposing a candidate in an election shall, within six months of the attribution, separately disclose such contributions on a campaign statement filed with the City Clerk by supplying all identifying information regarding the contributor, reporting the date of the attribution as the "date received," showing the amount attributed to the individual at that time, identifying the applicable candidate and election for which the attribution was made, and indicating that the contribution is being re-reported per San Diego Municipal Code section 27.2930.~~
- (c) ~~A general purpose recipient committee that submits all of the information required by subsection (b) in a supplemental document attached to a campaign statement filed with the City Clerk will be deemed to have complied with the provisions of subsection (b).~~
- (d)(b) Any payment made by a political party for *member communications* to its members who are registered with that party and that would otherwise qualify as a *contribution* or *expenditure* shall be reported on that political party's campaign disclosure statement in a manner that identifies the payment as a "member communication."
- (e)(c) In addition to any other campaign statement required to be filed pursuant to the California Political Reform Act, every *candidate*, *controlled committee*, and *committee* primarily formed to support or oppose a *candidate*, shall file a pre-election statement on the Friday before any *election* in which the *candidate* is listed on the ballot. This statement shall have a closing date of the Thursday before the *election* and shall cover activity and payments occurring through that day.
- (f)(d) When reporting *contributions* for regularly scheduled *City candidate elections*, *candidates* and *committees* shall include the notation "(P)" for all *contributions* that the contributor has designated for a primary *election*, and shall include the notation "(G)" for all *contributions* that the contributor has designated for a general *election*. In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation "(P)" for all *contributions* the *candidate* or *committee* has allocated for the primary *election*, and shall include the notation "(G)" for all *contributions* the *candidate* or *committee* has allocated for the general *election*.
- (g)(e) When reporting *contributions* for specially scheduled *City candidate elections*, *candidates* and *committees* shall include the notation "(S)" for all *contributions* that the contributor has designated for a *special election*, and shall include the notation "(R)" for all *contributions* that the contributor has designated for a *special run-off*

election. In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation "(S)" for all *contributions* the *candidate* or *committee* has allocated for the *special election*, and shall include the notation "(R)" for all *contributions* the *candidate* or *committee* has allocated for the *special run-off election*.

- (h)(f) In conjunction with making the notations required by subsections (f)(d) and (g)(e), *candidates* and *committees* shall disclose the cumulative amount of *contributions* received from the contributor for each *election*.
- (i)(g) *Sponsors* and *sponsored committees* participating in *City elections* are subject to the reporting obligations set forth in title 2, section 18419 of the California Code of Regulations.
- (j)(h) It is unlawful to fail to comply with the disclosure requirements of California Government Code sections 81000 *et seq.*, the disclosure requirements of title 2 of the California Code of Regulations, and the additional requirements of this section.

§27.2934 Contribution Limitations for Political Party Committees

Notwithstanding the provisions of sections 27.2935, 27.2936, 27.2950, and 27.2951:

- (a) A political party committee, as defined in California Government Code section 85205, as may be amended, shall not be prohibited from making *contributions* to a *candidate* or *controlled committee* in a *City candidate election*, but shall be subject to the ~~*contribution limit set forth in subsection (b)*~~ restrictions set forth in this section.
- (b) It is unlawful for a political party committee to make, or for a *candidate* or *controlled committee* to solicit or accept, a *contribution* that would cause the total amount contributed by ~~the political party committee~~ all local, state, and federal committees of the same political party to the *candidate* and the candidate's controlled committee to exceed \$1,000 for any single *City candidate election* \$3,000 for any council district election or to exceed \$12,000 for any *citywide election*.
- (c) It is unlawful for a political party committee to make a contribution to a City candidate unless the contribution is attributable to donations received from one or more individuals.
- (d) It is unlawful for a political party committee to make a contribution to a City candidate by attributing more than \$500 to the same individual per candidate per election.
- (e) It is unlawful for any portion of an individual's donation used by a political party committee for attribution purposes to be used again as a funding source for a different attribution made under this section.
- (e)(f) The dollar ~~amount~~ amounts set forth in this section subsection (b) ~~is~~ are subject to changes in the Consumer Price Index as described in section 27.2937.

§27.2935 Contribution Limitations

- (a) It is unlawful for an individual to make, ~~to or for any~~ a candidate or controlled committee ~~supporting or opposing a candidate, or for any candidate or committee supporting or opposing a candidate~~ to solicit or accept, a *contribution* that would cause the total amount contributed by that individual to ~~support or oppose~~ the *candidate* and the candidate's controlled committee to exceed \$500 for any single City candidate election.
- (b) For purposes of this section, an officeholder who is the subject of a recall *election* is deemed to be a *candidate* seeking elective office, and the *contribution limits* limit set forth in subsection (a) shall apply to any *payment* made to any candidate controlled committee for purposes of supporting or opposing the recall of that officeholder, regardless of whether such *payment* is made before, during, or after the circulation of a recall *petition*.
- (c) Nothing in this section is intended to limit the amount of his or her own money or property that a *candidate* may contribute to, or expend on behalf of, the *candidate's* own campaign.
- (d) The *contribution* limits imposed by this section do not apply to contributions made to general purpose recipient committees or primarily formed recipient committees, which are discussed in section 27.2936.
- (e) The *contribution* limits imposed by this section do not apply to *contributions* made to a *professional expense committee*, as discussed in sections 27.2965-27.2969.
- (f) The dollar amounts set forth in this section are subject to changes in the Consumer Price Index as described in section 27.2937.

§27.2936 Contribution Limitations for General Purpose Recipient Committees

- (a) ~~General purpose recipient committees may participate in City candidate elections by using contributions from individuals, subject to the contribution limits established by this section.~~
- (b) It is unlawful for any *general purpose recipient committee* to use a *contribution* for the purpose of supporting or opposing a *candidate* unless the *contribution* is attributable to an individual in an amount that does not exceed \$500 per *candidate* per *election*.
- (c) It is unlawful for two or more *general purpose recipient committees* with *shared management* to attribute *contributions* to the same individual for the purpose of supporting or opposing one or more *candidates* seeking *elective City office* if it causes the total amount those *committees* attribute to that individual to exceed the *contribution* limits set forth in subsection (b).

- (d) ~~A general purpose recipient committee that attributes a contribution to an individual for the purpose of supporting or opposing one or more candidates seeking elective City office shall comply with the reporting requirements set forth in section 27.2930(b) and (c).~~
- (e) ~~For purposes of this section, an officeholder who is the subject of a recall election is deemed to be a candidate seeking elective office, and the contribution limits set forth in subsections (b) and (c) shall apply to any payment made to a general purpose recipient committee for purposes of supporting or opposing the recall of that officeholder, regardless of whether such payment is made before, during, or after the circulation of a recall petition.~~
- (f) ~~This section shall not be construed to limit the amount of money that an individual or any other person may give to a general purpose recipient committee in the form of contributions, dues, donations, fees, or other forms of monetary transactions, but shall be construed to limit the source and amount of contributions a general purpose recipient committee may use to participate in City candidate elections.~~
- (g) ~~The dollar amounts set forth in this section are subject to changes in the Consumer Price Index as described in section 27.2937.~~

§27.2937 Indexing of Campaign Contribution Limits

- (a) The contribution limits set forth in sections 27.2934, and 27.2935, ~~and 27.2936~~ shall be adjusted on a biennial basis in accordance with this section. Such adjustments shall commence in 2011 for the contribution limits set forth in sections ~~27.2935 and 27.2936~~ 27.2934(d) and 27.2935(a) and in 2013 2015 for the contribution limits set forth in section ~~27.2934~~ 27.2934(b).

(b) through (e) [no changes in text]

§27.2950 Prohibitions and Limits on Contributions From Organizations

- (a) It is unlawful for a candidate or controlled committee, or any treasurer thereof, or any other person acting on behalf of any candidate or controlled committee, to solicit or accept a contribution from any person other than an individual or a political party committee for the purpose of supporting or opposing a candidate for elective City office a City candidate election.
- (b) It is unlawful for a person other than an individual or a political party committee to make a contribution to a candidate or controlled committee for the purpose of supporting or opposing a candidate for elective City office a City candidate election.
- (e) It is unlawful for any primarily formed recipient committee to solicit or accept from any person other than an individual, or for any person other than an individual to make, a contribution supporting or opposing a candidate for elective City office.
- (d)(c) The prohibitions in subsections (a) through (e) and (b) shall not be construed to prevent a person other than an individual or political party committee from making a

contribution to a controlled committee that is organized solely for the purpose of supporting or opposing the qualification, of a *City measure* for the ballot, or the adoption, or defeat of a *City measure* one or more ballot measures, and the controlled committee pursues no other purpose.

~~(e)~~(d) For purposes of section 27.2950(d) subsection(c), a recall *election* is not an a ballot measure election on a *City measure*.

~~(f)~~(e) For purposes of this section, a *contribution* made from a personal or family trust account is considered a *contribution* made by an individual.

~~(g)~~ It is unlawful for a *general purpose recipient committee* to attribute a *contribution* to a *person* other than an individual for the purpose of supporting or opposing one or more *candidates* for *elective City office*.

~~(h)~~ This section shall not be construed to prevent a *general purpose recipient committee* from accepting a *contribution* from any *person* for any purpose, but shall be construed to limit the source of *contributions* a *general purpose recipient committee* may use to participate in *City candidate elections*.

§27.2951 Prohibition on Contributions From Organization Bank Accounts

For purposes of supporting or opposing a *candidate seeking elective City office*, and for purposes of supporting or opposing the recall of an individual holding *elective City office* a *City candidate election*, including a *City recall election*:

(a) It is unlawful for any individual to make ~~, or any committee to accept,~~ a *contribution* to a *candidate* or *controlled committee* drawn against a checking account or credit card account unless such account belongs to one or more individuals in their individual capacity.

(b) It is unlawful for any *candidate* or *controlled committee* to accept a *contribution* unless it is drawn against a checking account or credit card account belonging to a political party committee or to one or more individuals in their individual capacity.

~~(b)~~(c) For purposes of this section, a *contribution* made from a personal or family trust account is considered a *contribution* made by an individual in his or her individual capacity.

~~(e)~~ This section shall not be construed to prevent a *general purpose recipient committee* from accepting checks or credit card *payments* from any *person* for any purpose, but shall be construed to prohibit accounts not owned by individuals from being the source of *contributions* a *general purpose recipient committee* may use to participate in *City candidate elections*.

§27.2953 Contributions for Recall Elections

(a) For purposes of making, soliciting, and accepting *contributions* under this division, the eventual occurrence of a recall *election* may be presumed upon the earlier of:

- (1) the date a notice of intention to circulate a recall *petition* is published pursuant to the recall provisions of this article; or,
 - (2) the date a statement of organization for a *committee* to recall the officeholder is filed with the City Clerk or the Secretary of State pursuant to state and local law.
- (b) The limits on *contributions* set forth in sections 27.2934 and 27.2935 and 27.2936 and the prohibition against *contributions* from non-individuals other than political party committees set forth in ~~section~~ sections 27.2950 and 27.2951 shall apply to every *payment* made to support or oppose the recall of an individual holding *elective City office*, regardless of whether such *payment* is made before, during, or after the circulation of a recall *petition*.
- (c) *Contributions* accepted for a recall *election* shall not count toward the *contribution* limits applicable to any other *election* even if ballots pertaining to the recall effort are never cast.
- (d) After the failure of a recall *petition* or after the recall election, all remaining *controlled committee* campaign funds shall be considered surplus campaign funds subject to the provisions of section 27.2924(c).

§27.2980 Disclosure of Electioneering Communications

- (a) through (f) [no changes in text]
- (g) Any communication, other than a *member communication*, made at the behest of a *candidate* is a *contribution* to that *candidate* and is subject to the limits and prohibitions specified in sections 27.2935, ~~27.2936~~, and 27.2950.
- (h) [no changes in text]

