

1 CHARLES B. WALKER
Executive Director
2 City of San Diego Ethics Commission
1010 Second Avenue, Suite 1530, San Diego, CA 92101
3 (619) 533-3476

4 Complainant

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BEFORE THE CITY OF SAN DIEGO

8

ETHICS COMMISSION

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In the Matter of)

Case No. C02-7

10

The Lincoln Club of San Diego County,)
C. April Boling)

**STIPULATION, DECISION
AND ORDER**

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Respondents.)

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THE PARTIES STIPULATE AS FOLLOWS:

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1. Complainant Charles B. Walker is the Executive Director of the City of San

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Diego Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty to

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administer, implement, and enforce local governmental ethics laws contained in the San Diego Municipal

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Code [SDMC] relating to, among other things, campaign finance as set forth in the City's Campaign

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Control Ordinance [ECCO].

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2. Respondent Lincoln Club of San Diego County [the Lincoln Club] is an organization registered

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with the State of California as a General Purpose Recipient Committee (ID 831561) that received

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contributions of \$1,000 or more in a calendar year to support or oppose state or local candidates in

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connection with the March 5, 2002, Primary Election.

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3. At all relevant times herein, Respondent C. April Boling [Treasurer] was the treasurer of the

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Lincoln Club.

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4. The Lincoln Club and the Treasurer are referred to herein collectively as "Respondents."

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5. This Stipulation, Decision and Order [Stipulation] will be submitted for consideration by the

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Ethics Commission at its next scheduled meeting, and the agreements contained herein are

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1 contingent upon the approval of the Stipulation and the accompanying Decision and Order by the Ethics
2 Commission.

3 6. This Stipulation resolves all factual and legal issues raised in this matter by the Ethics
4 Commission without the necessity of holding an administrative hearing to determine the Respondents'
5 liability.

6 7. Respondents understand and knowingly and voluntarily waive any and all
7 procedural rights under the SDMC, including, but not limited to: a determination of probable cause; the
8 issuance and receipt of an administrative complaint; the right to appear personally in any administrative
9 hearing held in this matter; the right to confront and cross-examine witnesses testifying at the hearing; the
10 right to subpoena witnesses to testify at the hearing; and the right to have the Ethics Commission or an
11 impartial hearing officer hear this matter.

12 8. The parties agree that this Stipulation is binding upon the Ethics Commission, but is not binding
13 upon any other law enforcement or government agency and does not preclude the Ethics Commission
14 from cooperating with or assisting any other law enforcement or government agency with regard to this or
15 any other related matter. In the event that the Ethics Commission receives a future complaint alleging a
16 violation of the provisions of ECCO that are the subject of this Stipulation, the Ethics Commission shall
17 review the complaint to determine whether Respondents have complied with the terms of this Stipulation.
18 If such a review results in a determination that Respondents have fully complied with the terms of this
19 Stipulation, the complaint shall promptly be dismissed. If the review results in a determination that the
20 Respondents have not complied with the terms of this Stipulation, the Ethics Commission may elect to
21 either initiate a new enforcement action and/or seek an order from a court of law enforcing the terms of
22 this Stipulation.

23 9. The parties agree that it is their intent in entering into this stipulation to comply with the law
24 currently contained in the Political Reform Act [PRA] and ECCO in a manner that meets the respective
25 goals and objectives of the parties. If there are any changes in these laws that have a material impact
26 upon the implementation of this Stipulation, each party shall participate in a good faith renegotiation of this
27 Stipulation and shall not unreasonably withhold approval of any

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1 requested modifications to the Stipulation made by either party when it can be demonstrated that the
2 requested modification is necessitated or warranted by changes in the law.

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

8 **Summary of Facts**

9 11. On February 23, 2002, Respondents filed a Campaign Disclosure Form, commonly known as
10 a Form 460 Pre-Election Statement, covering the period from January 1, 2002, through February 16,
11 2002, in connection with the March 5, 2002, Primary Election.

12 12. On July 30, 2002, Respondents filed a Campaign Disclosure Form, commonly known as a
13 Form 460 Semi-Annual Statement, covering the period from February 17, 2002, through June 30, 2002.
14 This form reflected additional activity related to the March 5, 2002, Primary Election.

15 13. Schedules A of the Campaign Disclosure Forms described above in Paragraphs 11 and 12
16 reflect monetary contributions received by the Lincoln Club from both individuals and organizations.

17 14. Schedule D of the Campaign Disclosure Forms described above in Paragraphs 11 and 12
18 reflect independent expenditures by the Lincoln Club during the reporting period in support of Thomas
19 Martin, a City of San Diego Council Candidate for District 6, and Kevin Faulconer, a City of San Diego
20 Council Candidate for District 2.

21 15. The independent expenditures described above in Paragraph 14 have been verified to be from
22 contributions attributable to those collected only from individuals.

23 **Violation of SDMC Section 27.2947(a)**

24 16. The City of San Diego prohibits candidates and campaign committees supporting or opposing
25 candidates from accepting campaign contributions from organizations. This prohibition is codified in
26 SDMC section 27.2947(a) and states as follows:

27 It is unlawful for a candidate, committee, committee treasurer or other person acting
28 on behalf of a candidate or committee to accept a contribution from any person other
than an individual.

1 17. As reflected in the Campaign Disclosure Forms described above in Paragraphs 11 and 12,
2 Respondents accepted contributions from persons other than individuals, in violation of SDMC section
3 27.2947(a).

4 **STIPULATIONS AND ORDER**

5 **Authority of City to Regulate Contributions**

6 18. The parties acknowledge, understand, and agree that for City candidate elections a stated
7 purpose of ECCO, as set forth in SDMC Section 27.2901, is to “prohibit contributions by organizations
8 in order to develop a broader base of political efficacy with the community,” and agree that ECCO
9 regulates contributions to committees that make independent expenditures in support of a City candidate
10 as stated in Paragraph 27.2947(c) as follows:

11 For purposes of section 27.2947(a) and (b), the term “committee” includes any
12 committee that makes independent expenditures, in addition to any controlled
committee.

13 19. Respondents acknowledge that the making of independent expenditures from a committee
14 receiving both individual and organizational contributions may cause the public to believe that an
15 independent expenditure has been made from organizational contributions even if the independent
16 expenditures do not exceed the amount of contributions that can be attributable to individuals.

17 20. Respondents acknowledge and understand that the prohibition of commingled contributions
18 contained in ECCO as described above in Paragraph 19 is a safeguard to give the public confidence that
19 organizational contributions are not being expended in support of or opposition to candidates running for
20 office in the City of San Diego.

21 21. The parties acknowledge that Attachment A to this Stipulation consists of a chronology of
22 events that illustrates the typical involvement of the Lincoln Club in making independent expenditures
23 supporting candidates for elective office in City of San Diego elections.

24 22. The parties acknowledge that Attachment B to this Stipulation is a flowchart that illustrates a
25 mutually agreeable process for the Lincoln Club to follow that will fully comply with ECCO.

26 23. Respondents agree that no contributions collected from persons other than individuals shall be
27 transferred to any committee making expenditures in support of or opposition to any candidate for City
28 elected office, and that a separate Recipient Committee may be formed for that purpose.

1 **Factors in Mitigation**

2 24. Respondents have not shown any intention to conceal, deceive, or mislead. Respondents have
3 been sincere and have cooperated fully with Ethics Commission staff in assisting with the investigation.
4 Respondents have complied with the spirit and intent of ECCO by making independent expenditures for
5 City of San Diego candidate elections attributable to contributions collected only from individuals.
6 Because of Respondents' good faith effort to comply with ECCO, the technical nature of the violation,
7 and the general agreement that a legislative review is needed with regard to the regulations contained in
8 ECCO pertaining to contributions to committees making independent expenditures, it is agreed by the
9 parties that a fine is not warranted in this matter.

10 DATED: _____

11 _____
12 CHARLES B. WALKER, Executive Director
13 CITY OF SAN DIEGO ETHICS COMMISSION
14 Complainant

15 DATED: _____

16 _____
17 THE LINCOLN CLUB OF SAN DIEGO COUNTY
18 Respondent

19 DATED: _____

20 _____
21 C. APRIL BOLING
22 Respondent

23 **DECISION AND ORDER**

24 The Ethics Commission has considered the above Stipulation at its meeting on _____. The
25 Ethics Commission hereby approves the Stipulation.

26 DATED: _____

27 _____
28 DOROTHY LEONARD, Chairperson
SAN DIEGO ETHICS COMMISSION

LINCOLN CLUB - CHRONOLOGY

The following chronology is based on a potential scenario involving the Lincoln Club's use of its members' dues (political contributions) to make independent expenditures to support candidates in City of San Diego primary and general elections. The Lincoln Club is a political organization that receives dues (political contributions) from individuals and persons other than individuals and uses those dues to make expenditures in support of candidates for office in federal, state, and various local jurisdictions.

- Step 1 The Lincoln Club receives 10 dues checks from individuals in the amount of \$1,000 each [Flowchart Item 1]. The Lincoln Club doesn't want to commingle the funds with the corporate dues, so it deposits the individual contributions into its Federal PAC. The Lincoln Club will not disclose these funds on a California campaign disclosure statement.
- Step 2 The Lincoln Club also receives one dues check from a corporation in the amount of \$5,000 [Flowchart Item 2]. The Lincoln Club has elected to register with the state as a General Purpose Recipient Committee [State PAC] in order to receive this contribution. The State PAC will report this contribution on its next campaign disclosure statement.
- Step 3 The Lincoln Club also receives one dues check from an individual in the amount of \$1,000, and deposits it into the account of State PAC. [Flowchart Item 3]
- Steps 4 & 5 The Lincoln Club decides to make independent expenditures on behalf of several candidates it is endorsing in the City's primary election. The Club's Federal PAC transfers \$1,250 to a second General Purpose Recipient Committee [City PAC] it has created. [Flowchart Item 4] The contribution will be reported on City PAC's next campaign disclosure statement, which will identify the individual contributors as required under state law, with an indication that the contributions were made through an intermediary – the Lincoln Club's Federal PAC. The Lincoln Club also transfers \$250 from State PAC to City PAC. [Flowchart Item 5] The contribution will be reported on City PAC's next campaign disclosure statement, which will identify the individual contributor (Individual 11) as required under state law, with an indication that the contribution from that individual was made through an intermediary – the Lincoln Club's State PAC. The Lincoln Club shall also annotate its campaign disclosure statement to reflect that it has earmarked individual contributions for specific candidates for City office. The Lincoln Club will transfer no more than \$250 per individual contributor per candidate in the primary election into City PAC, regardless of the committee from which the contributions are transferred.
- Step 6 The Lincoln Club's City PAC makes expenditures in support of several candidates for the primary election. [Flowchart Item 6] The expenditures will be reported on City PAC's next campaign disclosure statement.
- Steps 7 & 8 The Lincoln Club decides to make independent expenditures on behalf of several candidates it is endorsing in the City's general election. The Club's Federal PAC transfers \$3,750 to City PAC. [Flowchart Item 7] The contribution will be reported on City PAC's next campaign disclosure statement, which will identify the individual contributors as required under state law, with an indication that the contributions were made through an intermediary – the Lincoln Club's Federal PAC. The Lincoln Club also transfers \$250 from State PAC to City PAC. [Flowchart Item 8] The contribution will be reported on City PAC's next campaign disclosure statement, which will identify the individual contributor (Individual 11) as required under state law, with an indication that the contribution from that individual was made through an intermediary – the Lincoln Club's State PAC. The Lincoln Club shall also annotate its campaign disclosure statement to reflect that it has earmarked individual

contributions for specific candidates for City office. The Lincoln Club will transfer no more than \$250 per individual contributor per candidate in the general election into City PAC, regardless of the committee from which the contributions are transferred.

Step 9 The Lincoln Club's City PAC makes expenditures in support of several candidates for the general election. [Flowchart Item 9] The expenditures will be reported on City PAC's next campaign disclosure statement.

Note: Steps 4-9 may be repeated as long as the transfers do not cause an individual dues-paying member to contribute more than \$250 per candidate per election.

LINCOLN CLUB - FLOWCHART

