

**BEFORE THE
FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA**

In the Matter of:

THE CITY OF NORCO

and

ANDY OKORO,

Respondents.

Agency Case No. 18/789

OAH No. 2024110448

PROPOSED DECISION

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings (OAH), State of California, heard this matter on March 24 and 25, 2025, by videoconference.

Senior Commission Counsel Theresa Gilbertson represented complainant Enforcement Division, Fair Political Practices Commission (Commission or FPPC). Attorney Colin R. Burns, Harper & Burns LLP, represented respondent City of Norco (Norco), and Gary Winuk, Kaufman Legal Group, APC, represented respondent Andy Okoro (Okoro) (collectively, respondents).

Documentary evidence and testimony were received. The record was kept open until March 28, 2025, for the parties to submit closing briefs and until April 4, 2025, for the parties to submit any responses. Okoro timely submitted a closing brief which marked Exhibit CCC and complainant timely submitted a responding brief which was marked Exhibit number 36; both exhibits were lodged with the record. Thereafter, the record closed.

SUMMARY

In September 2018, Norco sent a communication to its residents about Measure R (Measure R communication), a ballot measure that, if successful, would raise Norco's local sales tax by one cent. Norco's city manager, Okoro, working under the direction of the Norco City Council, was involved in the preparation and distribution of the Measure R communication, which appeared as a letter from him with a depiction of his signature.

Complainant argued the communication was a campaign-related mass mailing and, as such, violated several provisions of the Political Reform Act (PRA) and its regulations. Norco argued the mailer was informational material for constituents, not a political statement. Okoro, in addition to joining in Norco's argument and positing additional legal challenges to complainant's allegations, argued he should not be held personally liable for any PRA-related violations.

Applying the standards set out by the courts and incorporated into the Commission's regulations, there is insufficient evidence to establish that the Measure R communication constitutes campaign material. Therefore, there is no basis to find

respondents committed the PRA-related violations as alleged by complainant. Under these circumstances, the Accusation must be dismissed.

FACTUAL FINDINGS

Parties

1. Complainant is the Commission's enforcement division. The Commission's mandate is to administer the PRA, codified at Government Code sections 81000 through 91014, and its regulations, codified at California Code of Regulations, title 2 (Regulation or Reg.) sections 18104 through 18998.

2. Norco is a city within Riverside County. It is known for its equestrian-based lifestyle. Okoro was Norco's city manager and a Form 700 (Statement of Economic Interest) filer at all relevant times.

Background

3. In July 2018, the Norco City Council adopted resolutions to place a sales tax proposal, Measure R, on the November 2018 ballot. The City Council also determined there would be a need to educate the public about the proposal and directed City personnel to prepare that material, the Measure R communication.

4. Norco staff, including Okoro, arranged for Measure R communication's preparation and distribution. The text of Measure R communication reads as follows:

Dear Norco Resident,

Over my 15 years of service in Horsetown USA, I have learned that Norco residents are very passionate about their

town, I admire their commitment to the community and how much they value the unique lifestyle the City offers, including Norco's large lots, animal-keeping amenities, miles of horse trails, and hundreds of acres of open space. Even though cities on every side of us have exploded in population, Norco has remained a picture of stability and has preserved its cherished lifestyle – a lifestyle that cannot be found anywhere else in Southern California.

Like you, I believe Norco's unique lifestyle deserves to be preserved and protected. I would be negligent if I didn't inform you that Horsetown USA is at a historic turning point. Due to unfavorable actions by Sacramento politicians, as well as Norco's limited rooftops and low property tax base, the community's way of life is in jeopardy. This is why I am writing to you about Measure R.

Measure R is on the ballot this November. Measure R is a one-cent sales tax that will allow Norco to invest about \$4.5 million a year in infrastructure and vital services. Measure R will allow Norco to preserve its quality of life, and restore deteriorating streets, trails, parks, facilities and equestrian amenities. Measure R will prevent additional cuts to Norco's public safety services so we can maintain safe levels of sheriff and fire protection without risking emergency response times.

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As you make your decision on Measure R, I urge you to consider these additional factors.

Without Measure R, Norco's streets, trails, parks and facilities will continue to deteriorate, the community will lose more programs and services, and there will be further reductions in public safety. Ultimately, residents could experience a decline in their quality of life, as well as property values.

An advisory committee of Norco residents spent nearly two years planning, studying, researching, and debating how to meet the City's infrastructure needs. These residents recommended placing a revenue measure on the ballot.

Before going to the voters, your City tightened its belt, reduced services, eliminated programs, and cut budgets across the board. Additional cuts could negatively affect Norco's unique lifestyle.

The rising cost of public safety and pensions are a challenge for all cities in California, including Norco. Your City has successfully implemented measures to reduce staffing levels and has contracted out services. These responsible actions have saved Norco money, however additional funding is needed to protect the Norco lifestyle.

Measure R will not apply to grocery and produce purchases, prescription medication, home payments, insurance and

most services. Visitors will contribute a major share of the revenue while funds will stay right here in Norco to benefit residents.

Measure R is a local solution to a statewide problem. The State of California has crippled your City's finances; however, politicians in Sacramento cannot touch one penny from Measure R.

Measure R has built-in safeguards and requires firm citizen oversight, as well as third-party independent audits. Norco residents will oversee spending to ensure that the community's priorities can be satisfied.

This is a critical time for the community to gather and work together in order to keep Norco "Norco" and preserve the Horsetown USA lifestyle. Please take your time as you research Measure R. Residents are encouraged to ask questions, request information, and speak directly with City representatives at any of our Community Outreach events throughout the Fall. For detailed information on Measure R, please visit [website] or email [email address].

Thank you for taking the time to learn more about Measure R and how to protect Norco's unique lifestyle.

Sincerely,

(signed)

Andy Okoro, CPA/City Manager, City of Norco

(Exh. 8, p. A85 [bold text in original].)

5. The Measure R communication was inserted into one of the regular newsletters Norco sends its constituents quarterly. Other Norco publications have similar layouts and pictures and use fonts similar to those used in the Measure R communication. (See e.g., Exhs. I, J, R, S, T, U, Y, Z .) One of the newsletters, dated July 2018, discusses establishing an equestrian historic district within Norco. (Exh. Z, p. B212.) Another lists dates for a community outreach tour where City Hall “pop ups” were scheduled and Norco citizens were invited to come to “collect election information, engage in community conversation, receive City news, [and] ask questions of City staff ” (Exh. U, p. B206.)

Commission Enforcement Action

6. After the Measure R communication was mailed to Norco citizens, the Commission received a complaint about it. Complainant investigated the complaint and determined the communication constituted a campaign-related mass mailing and its distribution at public expense violated the PRA’s prohibition on expending public funds on mailings. As such, the communication violated other provisions of the PRA because it did not include a proper disclosure, and Norco, as its source, had not filed a 24-hour independent expenditure report or a semi-annual campaign statement. Because of Okoro’s involvement in the mailing, complainant also determined Okoro too was liable for the alleged violations.

7. On March 5, 2024, the Commission issued an order, “Order Finding Probable Cause and to Prepare and Serve an Accusation” regarding respondents. On June 24, 2024, pursuant to the Commission’s March 5, 2024 order, complainant served

respondents with an Accusation and supporting documents including the Statement to Respondents, notifying them they could request a hearing on the allegations.

8. Respondents timely requested a hearing and this matter ensued.

Parties' Stipulation Regarding Facts

9. The parties jointly filed a stipulation regarding the facts as follows:

1. Respondent City of Norco ("City") is a city in the County of Riverside, California
2. Respondent, Andy Okoro ("Okoro" or "City Manager") was the city manager for the City at all relevant times.
3. As the City Manager, Okoro had a duty to file Statements of Economic Interest, also known as Form 700s.
4. On July 18, 2018 and August 1, 2018, the Norco City Council voted to place a one-cent sales tax ballot measure on the November 6, 2018 General Election Ballot. This measure was designated "Measure R" and will hereafter be referred to as such.
5. Measure R was approved by the voters with 56.55% of the votes. A total of 8,431 votes were cast, with 4,768 voting in favor.
6. Measure R appeared on the ballot with the title, "CITY OF NORCO (HORSETOWN USA) – LIFESTYLE PROTECTION AND VITAL SERVICES MEASURE. The measure read,

"To keep Norco 'Norco,' continue protecting Norco's unique animal-keeping lifestyle, avoid further infrastructure deterioration, continue restoring and maintaining local streets, trails, facilities, equestrian amenities and parks, and prevent additional cuts to police, fire and emergency medical services; shall the City of Norco adopt a locally controlled one-cent sales tax, generating approximately \$4.5 million annually, until ended by voters, requiring independent audits and a Citizens' Oversight Committee?"

7. Per the City Charter, the City practices a "Council-Manager" form of government, meaning that the city council establishes the policies of the City, and the city manager carries out that policy. The City website (norco.ca.us) also states that the "City Manager is responsible for the overall administration of the City organization and for administering programs and policies adopted by the City Council. The City Manager develops a recommended annual budget that identifies the program and service needs of the City and their related financial, personnel and capital improvements."

8. On or around September 4, 2018, Respondents caused a four-page mailing related to Measure R ("Mailer") to be distributed by the United States Post Office. The total pieces sent were 9,314.

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9. The City paid approximately \$4,196.86 for the printing of the Mailer. The postage was paid for through the vendor's USPS permit with the United States Post Office.

10. The Mailer was a four-page full-color mailing. The subject matter was Measure R. The Mailer included a full page that featured a letter from Okoro.

11. The City has sent mailings to residents and provided examples to the Enforcement Division during the investigation.

12. The City and Okoro have no prior violations of the Act, and Respondents cooperated fully with Commission staff in investigating and resolving this matter.

13. City and Okoro are each charged in the Accusation with violations of various Regulations of the Fair Political Practices Commission. One such violation is 2 Cal. Code Regs. § 18901.1, regarding "Campaign-Related Mailings Sent at Public Expense."

14. Reg. 18901.1 (a) contains 4 factors that must be established to show a violation.

15. The parties agree that Reg. 18901.1 (a) factors: (1) generally regarding that the item must be tangible, (3) generally regarding that public money must be spent, and (4) generally regarding that more than 200 similar items

were sent during an election; have been established by the Enforcement Division regarding the Mailer.

16. The parties dispute [the applicability of Reg.] 18901.1(a)(2), which provides: "The item sent either: (A) Expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, as defined in Section 82025(c)(1). (B) When taken as a whole and in context, unambiguously urges a particular result in an election."

17. The Parties agree that the Mailer did not: "(A) Expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, as defined in Section 82025(c)(1)."

18. Therefore, for purposes of Reg 18901.1(a)(2), the issue is whether the Mailer: "(B) When taken as a whole and in context, unambiguously urges a particular result in an election."

19. "For the purposes of subdivision (a)(2)(B), an item unambiguously urges a particular result in an election if it meets either of the following criteria: (1) It is clearly campaign material or campaign activity such as bumper stickers, billboards, door-to-door canvassing, or other mass media advertising including, but not limited to, television,

electronic media or radio spots. (2) When considering the style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose." (Reg. 18901.1(c).)

20. The Parties agree the Mailer was not "clearly campaign material or campaign activity" under [Reg.] 18901.1(c)(1)."

21. Therefore, for purposes of whether the Mailer "unambiguously urged" under Reg. 18901.1(a)(2)(B), the issue is whether: "(2) When considering the style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose." (Reg. 18901.1(c)(2).)

22. "For purposes of subdivision (c)(2), when considering the style, tenor, [and] timing of an item, factors to be considered include, but are not limited to, whether the item is any of the following: (1) Funded from a special appropriation related to the measure as opposed to a general appropriation. (2) Is consistent with the normal communication pattern for the agency. (3) Is consistent with the style of other communications issued by the agency. (4) Uses inflammatory or argumentative language." (Reg. 18901.1(e).)

23. For purposes of 18901.1(e)(1), the parties agree that the Mailer was funded from a general appropriation and not a special appropriation related to the measure.

(Exh. 18, pp. A307-A311.)

Complainant's Arguments

10. Complainant argued the Measure R communication was not informational material, noting phrases in its text complainant argued were inconsistent with other Narco communications. Complainant pointed out the following language in the Measure R communication as being particularly inconsistent with the neutral, measured tone of other Norco communications:

- "Norco's unique lifestyle deserves to be preserved and protected."
- "due to unfavorable actions by Sacramento politicians."
- "The community's way of life is in jeopardy."
- "preserve its quality of life."
- "maintain safe levels of sheriff and fire protection without risking emergency response times."
- "As you make your decision on Measure R, I urge you to consider these additional factors."
- "Facilities will continue to deteriorate, the community will lose more programs and services, and there will be further reductions in public safety."

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- "could experience a decline in their quality of life, as well as their property value."
- "Additional cuts could negatively affect Norco's unique lifestyle."
- Additional funding is needed to protect the Norco lifestyle.
- "The State of California has crippled your City's finances."
- "This is a critical time for the community to gather and work together in order to keep Norco, 'Norco' and preserve the Horsetown USA lifestyle."
- "Protect Norco's unique lifestyle."

11. Regarding Okoro's personal liability, complainant cited Government Code section 8316.5, which provides that any person who violates any provision of the PRA or aids or abets any other person in violating the PRA shall be liable as long as that person has filing or reporting obligations under the PRA, or who is compensated for services involving the planning, organizing, or directing any activity regulated or required by PRA. Because Okoro both filed a Form 700 and was directly involved in the development and distribution of the Measure R communication, complainant argued there are grounds for holding him personally liable for the PRA-related violations set out in the Accusation.

Norco's Arguments

12. Norco argued that the Measure R communication was a necessary effort to educate its citizens about the challenging budgetary climate the city was facing and the serious repercussions to it if Measure R did not pass. Norco introduced evidence, demonstrating that, largely due to state takeaways siphoning away local resources for

state government expenses, Norco would not have been able to maintain its equestrian amenities as well as other basic municipal services without an increase in the local sales tax. (See e.g., Exhs. C, D, & E.)

13. Measure R was developed by an ad hoc committee comprised of Norco city officials and members of the public who convened to study Norco's growing budgetary concerns. The ad hoc committee also determined the public would need to be educated about the budgetary shortfall Norco was facing and the need for increased revenue to address it.

14. Norco's position is that the Measure R communication is just that, a necessary, City Council-authorized, and objective source of information about impending budgetary issues Norco as a community was facing. Norco vigorously disagrees with complainant's characterization of the Measure R communication as a campaign advertisement, arguing that, as a mailer paid with general appropriations from the city's public outreach budget, distributed in the same manner as other city communications, and bearing what Norco contends is "a style and tenor . . . consistent with an ordinary municipal mailing and . . . contain[ing] truthful information that was conveyed in a moderate and non-argumentative tone" (Exh. A, p. B254), the Measure R communication did not expressly advocate or unambiguously urge a result in an election.

15. Norco cites the seminal case, *Stanson v. Mott* (1976) 17 Cal.3d 206 in support of its contention that, while governmental bodies may not participate in elections by using public funds to propagate campaign material, they may use public funds to prepare and disseminate informational material. The *Stanson* case is known for developing the "style, tenor, and timing of the publication" criteria incorporated in Regulation section 18901.1.

16. Norco noted *Stanson v. Mott* does not include an analysis applying the criteria it developed to particular facts. The opportunity for that did not occur until the holdings of *Keller v. State Bar* (1989) 47 Cal.3d 1152. In *Keller*, the Court addressed the actions of the State Bar. In an inaugural speech, its incoming president had given a speech referencing an upcoming judicial retention election in which he used the words “idiotic cries of . . . self-appointed vigilantes . . . [and] unscrupulous politicians” (*Keller*, supra, 47 Cal.3d at 1171.) State Bar personnel also prepared a packet including a copy of the president’s speech, a sample speech entitled “The Case for an Independent Judiciary,” sample letters, a sample press release, and related materials about judicial independence including quotes about the subject from the Founding Fathers for local bar associations to distribute.

17. In *Keller*, the Court applied the “style, tenor, and timing” criteria, and found the material basically informative despite some “strident” language in the Bar president’s speech. Nonetheless, the *Keller* court determined the State Bar packet overall constituted campaign material because the sample letters, press releases etc., were prepared and intended to assist the local bar associations to which the material was sent to campaign for justices running for office.

18. The last case cited by Norco is *Vargas v. City of Salinas* (2009) 46 Cal.4th 1. Norco argued *Vargas* supports its contention that a governmental entity can use public funds to provide information about a ballot measure even if the material is not entirely neutral. Norco also noted the Commission had incorporated the analytical factors *Vargas* set out to determine whether a governmental communication had tipped into clearly prohibited campaigning in its own regulations. Norco cited an FPPC staff report from 2009 which advocated for adopting the *Vargas* standard “for determining when a [government] communication constitutes improper campaign

material or activity.” (Exh. ZZ, p. B245.) The staff report also advocated for adopting the then-proposed Regulation section 18901.1 and noted “the *Vargas* standard has been incorporated in Regulation section 18901.1(c) as the test for determining when a communication “unambiguously urges” the election or defeat of a candidate or measure.” (*Ibid.*)

19. As further indication that Regulation 18901.1 incorporates the *Vargas* analysis, Norco pointed out text in the regulation that quotes or tracks language from the *Vargas* court’s discussion of factors for determining when a government communication constitutes campaign material. These similarities include that both the regulation and the *Vargas* opinion reference whether the material was funded with special appropriation versus general appropriation funds, whether the style, type of information, and manner of dissemination of the communication in question are consistent with those of other governmental communications by the governmental entity, and whether the governmental communication “uses inflammatory or argumentative language.”

20. Norco then argued that, applying the *Vargas*/Regulation 18901.1 factors, the Measure R communication is not campaign material: (i) The Measure R communication was paid for by general appropriation, not special appropriation funds; (ii) the Measure R communication “summarized staff’s studies of the City’s finances and the Council’s Resolutions. Like *Vargas*, these were natural subjects to include in a city mailer.” (Exh. A, p. B260.); (iii) the Measure R communication was prepared by the same vendor, delivered by U.S. mail as were other City-issued mailers, and to the same recipients; and (iv) when “[v]iewed as a whole, the [Measure R communication]’s style and tenor was entirely consistent with a municipal mailer and readily distinguishable from a partisan newsletter . . . ”

21. Regarding the most subjective of the *Vargas* factors, i.e., whether the Measure R communication used inflammatory or argumentative language, Norco argued its language was at least as modulated as that of the city communication addressing the measure, Measure O, at issue in the *Vargas* case. Norco pointed out that, like the Measure R communication, the Measure O communication described essential service cuts if the measure passed, did not include opposing views, and used language clearly signaling its opposition to the measure.

OKORO'S TESTIMONY

22. Okoro obtained his undergraduate degree in accounting from Wichita State University and a master's of science degree, also in accounting from the University of Houston. He is a certified public accountant. Okoro has over 32 years of experience in public service, primarily in the field of finance management, including 20 years at Norco. Before serving as Norco's city manager, he served as Norco's Director of Fiscal and Support Services and as Deputy City Manager. Okoro left Norco in June 2022.

23. Part of Okoro's regular duties included overseeing the production and distribution of a newsletter Norco regularly published. Before publication of the newsletter with the Measure R communication, Okoro consulted Norco's City Attorney, John Harper, regarding whether the communication complied with any applicable law and was assured it did.

OKORO ARGUMENTS

24. Okoro, in addition to joining with the arguments urged by Norco, argued the Commission has no authority to promulgate intended to incorporate legal standards established by the *Vargas* case because *Vargas's* analysis is not based on the

PRA. Further, citing the United States Supreme Court case, *Citizens United v. FEC* (2010) 558 U.S. 310, Okoro argued such provisions negatively implicate governmental free speech by attempting to parse out which governmental communications are political or campaign-related in nature.

25. Okoro also made several arguments regarding whether he can be found personally liable to hold him liable for the PRA violations alleged in the Accusation. He noted the main PRA provision complainant cited, Government Code section 89001, does not explicitly set out who can be held liable for its violation. Further, the voter information guide for Proposition 73 which enacted Government Code section 89001, reference its application to state and local elected officials, not non-elected officials such as Okoro.

26. Additionally, Okoro argued that, in following the City Council's direction and the City Attorney's advice, he did not act "purposefully or even negligently regarding these communications." (Exh. B, p. 275.) The implication of the second argument suggests there is some intent element to the provisions Okoro is charged with violating.

Complainant's Responses to Respondents' Contentions

27. Complainant rejects respondents' contentions that the Measure R communication is informational and does not unambiguously urge a particular result. Complainant noted the Measure R communication, contrary to respondents' assertions, was larger and longer than other Norco mailings which are about the size of a postcard. Moreover, complainant noted there are no other mailings from Norco incorporating the letter form that the Measure R communication uses. "This style of communication, as opposed to the brief announcements about city happenings, is a

marked difference and is part of the array of factors considered when assessing [whether] a communication has crossed the threshold into campaigning.” (Exh. 1, p. A23.)

28. As stated above, complainant also disagrees that Measure R’s language is purely informative. Complainant’s position is that the language is argumentative and inflammatory.

LEGAL CONCLUSIONS

1. The Commission is responsible for administering the PRA, including enforcing it through administrative proceedings. (Gov. Code, §§ 83111 & 83116.)

2. As the moving party, complainant has the burden of proving the allegations set out in the Accusation. (Evid. Code, § 500.) The standard of proof is preponderance of the evidence. (Evid. Code, § 115) The term preponderance of evidence means “more probable than not.” (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 488.)

3. Government Code section 89001 prohibits sending newsletters or other mass mailings at public expense. Despite the absolute language of the provision, its regulations clarify that only those communications either expressly advocating a particular outcome of an election, are clearly campaign material such as bumper stickers or billboards, or, of relevance to this matter “when the style, tenor, and timing of the communication can be reasonably characterized as campaign material and not a fair presentation of facts serving only an informational purpose.” (Reg., § 18420.1, subd.(b)(2).) The factors used to assess style, tenor, and timing for purposes of determining whether a particular communication constitutes campaign material

include whether it is consistent with the normal communication patterns and style of the sender and whether the language of the communication is “inflammatory or argumentative” language. (Reg. § 18420.1, subd. (d).) If a governmental communication meets the standards to be considered campaign material and costs \$1,000 or more, the person or persons responsible for the communication is considered a committee. (Gov. Code, § 82013.)

4. Government agencies that spend \$1,000 or more to make and distribute campaign material are also making independent expenditures and are considered independent expenditure committees. Independent expenditure committees are required to file independent expenditure reports with the Commission during the 90-day period before an election (Gov. Code, §§ 84200.6, sub (b), 84204) as well as a semi-annual campaign statement. (Gov. Code, §81002, subd. (a).)

5. As acknowledged by both complainant and respondents, the regulations cited in the Accusation incorporate standards from *Vargas* and its predecessor case, *Stanton*. Both *Stanton* and *Vargas* recognize that under certain circumstances, government communication can constitute campaign material but can also sometimes best be understood as information and, as such, their publication are an appropriate use of public funds.

6. In the *Vargas* case, the plaintiffs were supporters of a local ballot measure, Measure O, to reduce and ultimately repeal a utility users tax imposed by the defendant, the City of Salinas. They brought suit against Salinas for spending public moneys to publish studies undertaken about the likely effect of the utility tax repeal, a one-page summary listing the programs and services that Salinas’s city council had voted to reduce or eliminate if Measure O was adopted, and a city newsletter also describing the proposed City program and reductions. In their suit, the plaintiffs

alleged Salinas's materials did not provide a balanced analysis of the arguments for and against the measure and were intended to dissuade voters from voting for it.

7. The *Vargas* court acknowledged *Stanson's* prohibition against government entities "taking sides" in elections. (*Vargas, supra*, 46 Cal.4th at 36.) As with the *Stanson* court, however, *Vargas* recognized governmental entities may speak out about ballot measures as long as their messages do not amount to campaigning. In delineating the distinction, the *Vargas* court held that these communications do not necessarily have to be neutral in tone or effect:

Indeed, upon reflection, it is apparent that in many circumstances a public entity inevitably will "take sides" on a ballot measure and not be "neutral" with respect to its adoption. For example, when a city council or county board of supervisors votes to place a bond or tax measure before the voters, it generally is quite apparent that the governmental entity supports the measure and believes it should be adopted by the electorate. . . . Thus, the mere circumstance that a public entity may be understood to have an opinion or position regarding the merits of a ballot measure is not improper.

(*Ibid.*)

8. Regarding the City Roundup newsletter in which Salinas had posted information about the likely impact of Measure O, the *Vargas* court noted the following factors in determining the publication was not campaign material:

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In sum, a variety of factors contributes to our conclusion that the actions of the City that are challenged in this case are more properly characterized as providing information than as campaigning: (1) the information conveyed generally involved past and present facts, such as how the original [utility tax] was enacted, what proportion of the budget was produced by the tax, and how the city council had voted to modify the budget in the event Measure O were to pass; (2) the communications avoided argumentative and inflammatory rhetoric and did not urge voters to vote in a particular manner or to take other actions in support of or in opposition to the measure; and (3) the information provided and the manner in which it was disseminated were consistent with established practice regarding use of the Web site and regular circulation of the city's official newsletter.

(*Vargas, supra*, 46 Cal.4th at p. 40.)

9. The *Vargas* court also included an example of what it considered clearly impermissible campaign-related communications funded by a government entity albeit from another jurisdiction to illustrate its holding. The case *Vargas* cites, *Schulz, et al., v. State of New York et al.*, (NYS Court of Appeals 1995) (*Schulz*), 86 N.Y.2d 225, involves a citizen-tax-payer group that brought suit against various governmental entities alleging unconstitutional use of public funds for private purposes. Among the claims was that a state agency printed and published at public expense a newsletter

“containing unequivocal promotion of a partisan political position” in violation of the state constitution.

10. In determining the newsletter constituted impermissible campaign material at public expense, the *Schulz* court focused on the following text in it: “Led by the Bush Administration, Republicans in New York and across the nation are seeking to slash assistance to the needy. The Republicans appear to have devised a strategy of using distortions and half-truths about Medicaid and welfare to divide the people in a key election year.” (*Schulz, supra*, 86 N.Y.2d at p. 235.) The *Schulz* court also noted the newsletter’s reference to President Bush and Republicans “using welfare as the ‘Willie Horton issue of the 1992 campaign’.” (*Ibid.*) Finally, similar to the *Keller* case (See Factual Finding 9), the New York newsletter contained a sample letter for readers to use to write to the governor and express their support for programs and services for the needy.

11. The *Vargas* court cited the *Schulz* matter as an example of “blatantly partisan” expression that could not be funded with public funds. A reasonable inference from *Vargas*’ reference to *Schulz* is that the standard for finding government speech constitutes campaign material is quite high, requiring clear reference to partisan matters and openly exhorting the reader toward political action.

12. Many of the factual circumstances at issue in the *Vargas* case are similar to those in this matter. Both involve local jurisdictions facing difficult fiscal challenges and local taxation issues. Both involved their respective city governments’ established views about how best to face their challenges. The *Vargas* court attached a copy of the Salinas City Round-up newsletter that included the communication regarding Measure O. (See, *Vargas, supra*, 46 Cal.4th at Appendix A.) The Salinas newsletter’s tone is decidedly more formal and information-heavy than that of the Measure R

communication. It is an easier call to label Salinas's communication as purely informational. The Measure R communication's tone and emphasis on the community's equestrian lifestyle and need to maintain equestrian-related amenities is, however, consistent with at least one other communication, "Frequently Asked Questions About the Creation of an Equestrian Historic District" (Exh. Z), which, similar to the Measure R communication, stressed the importance of equestrian amenities to the Norco culture and lifestyle. As consistency with the pattern and style of other communication is a factor in determining whether a communication constitutes campaign material, this supports a finding that the Measure R communication is informational, rather than campaign material.

13. Additionally, to the extent the Measure R communication "urges" anything – as noted in its text – it is to encourage Norco constituents to understand the issue is important and their engagement with it is therefore also important. It is not difficult to discern City officials' view on the issue but, as the *Vargas* court makes clear, that is not the defining issue. What is important is that government entities do not abuse their access to public funds to sway the democratic process unfairly and possibly without transparency. Considering all the relevant factors, the weight of the evidence supports a finding that Measure R is informational, not campaign material.

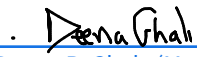
14. Under these circumstances, there is insufficient evidence to establish the PRA violations set out in the Accusation against either Norco or Okoro. Without a basis for finding liability under the PRA, other arguments raised by respondents regarding whether the Commission is authorized to apply the PRA to government entity communications and whether there is legal basis for charging Okoro as an individual are moot.

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ORDER

The Accusation against respondents City of Norco and Andy Okoro is dismissed.

DATE: 05/06/2025


Deena R. Ghaly (May 6, 2025 10:30 PDT)

DEENA R. GHALY

Administrative Law Judge

Office of Administrative Hearings