

1 ANGELA J. BRERETON (SBN 209972)  
Assistant Chief of Enforcement  
2 THERESA GILBERTSON (SBN 288598)  
Senior Commission Counsel  
3 **FAIR POLITICAL PRACTICES COMMISSION**  
1102 Q Street, Suite 3050  
4 Sacramento, CA 95811  
Telephone: (279) 237-5960  
5 Email: tgilbertson@fppc.ca.gov

6 Attorneys for Complainant  
Enforcement Division of the Fair Political Practices Commission  
7

8  
9 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**  
10 **STATE OF CALIFORNIA**

11 In the Matter of ) OAH No. 2024110448  
12 ) FPPC No. 2018/00789  
13 )  
14 )  
15 )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

THE CITY OF NORCO and ANDY  
OKORO

Respondents.

Hearing Judge: Deena R. Ghaly  
Hearing Date: **March 24 and 25, 2025**  
Hearing Time: 9:00 a.m.  
Hearing Place: Via videoconference  
320 W. Fourth Street, Suite 630  
Los Angeles, CA 90013

**INTRODUCTION**

Complainant, the Enforcement Division of the Fair Political Practices Commission, submits this brief pursuant to Government Code section 83116 and title 2, California Code of Regulations sections 18361.5 and 18361.9.<sup>1</sup> The purpose of this brief is to provide the Enforcement Division's recommendation regarding this proposed decision pursuant to Regulation 18361.9(b)(1). Regulation 18361.9 refers to Government Code section 11517 for the possible actions the Commission can take regarding this proposed decision from the Administrative Law Judge after a full hearing on this matter.

<sup>1</sup> The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18104 through 18998 of title 2 of the California Code of Regulations, and all regulatory references are to this source. See §§ 83111 and 83116.

1 The proposed decision of Administrative Law Judge Deena R. Ghaly, dated May 6, 2025, states  
2 findings of fact that are not supported by or consistent with the evidence presented at the hearing in this  
3 matter on March 24 and 25, 2025. The proposed decision does not accurately or correctly apply the law  
4 pertinent to this matter. There is no additional material evidence that could, with reasonable diligence,  
5 have been discovered and presented at the administrative hearing.

6 The Enforcement Division recommends that the Commission reject the proposed decision and  
7 decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with  
8 or without taking additional evidence, consistent with the evidence in the record and that accurately applies  
9 the relevant law. (Gov. Code section 11517(c)(2)(E).)

#### 10 **A. FINDINGS NOT SUPPORTED BY THE EVIDENCE PRESENTED**

11 The proposed decision makes several findings that are not supported by the totality of the evidence  
12 presented.

13 On page 7, paragraph 5, the proposed decision states: “The Measure R communication was  
14 inserted into one of the regular newsletters Norco sends its constituents quarterly.” This finding is not  
15 supported by the entirety of the evidence presented at the hearing. The Measure R communication was a  
16 stand-alone outreach mailer; it was not an insert into a longer, regularly issued mailing. The entirety of  
17 the mailing was four pages dedicated to Measure R. The mailing in its entirety was provided by the  
18 Complainant in this matter to the Enforcement Division and was also provided in an exhibit submitted by  
19 the Respondent City of Norco. There is no evidence to support a finding that it was an insert in a larger  
20 document.

21 Moreover, the evidence presented does not support a finding that Norco regularly sent a newsletter  
22 to constituents quarterly. Respondent Norco submitted evidence of all mailings from August 2017 through  
23 September 2024. These mailings are not named “Newsletter.” Rather, the mailings are named, “Farmers  
24 Market,” “Farmers Market / 2018 State of the City,” “Community Outreach Tour / Town Hall (RURAL),”  
25 et cetera. The subject matter of these mailings is typically forward-looking, informing residents of  
26 upcoming events and opportunities to learn more. The evidence suggests that mailings were sporadic and  
27

1 communication specific, not a regular newsletter. In relevant part, Okoro testified, “As far as the  
2 newsletter itself, this [Measure R communication] came to replace that.” While Okoro refers to the  
3 Measure R mailing as a “newsletter,” elements of Okoro’s testimony contradict other evidence presented  
4 at the hearing. Norco’s witness, Hannah Hernandez, refers to these mailings as “outreach mailings” and  
5 indicates that they are prepared and distributed as needed or by request of various city departments. In  
6 particular, Hernandez testifies that the exhibits submitted represent the entirety of mailings sent by the  
7 City. At best, there appears to be an annual State of the City mailing and event calendar issued in or around  
8 September or October of each year, although in 2019 this mailing was issued in March. The proposed  
9 decision’s finding implies that the City sends newsletters on a regular, quarterly basis, and that the mailing  
10 at issue was included in such a mailing, but the evidence does not support this. A more accurate finding  
11 would be simply that Norco had previously sent a variety of mailings to residents.

12 “Other Norco publications have similar layouts and pictures and use fonts similar to those used in  
13 the Measure R communication.” This finding cites Respondents’ Exhibits I, J, R, S, T, U, Y, Z. However,  
14 the evidence submitted contradicts this finding. The referenced exhibits are distinct from the Measure R  
15 communication. Exhibits I and J are Power Point presentations, not an unsolicited mailing. Exhibits R, S,  
16 T, U, Y, Z are postcard-sized mailers that are dominated by event announcements, such as a farmers  
17 market or community outreach tours. The prior mailers invited residents to attend events, including events  
18 to learn about city happenings or city policy. The Measure R communication is a departure from prior  
19 mailings in that it was an 11 by 17 inch bi-fold “gloss book” mailing.<sup>2</sup> The mailing was dedicated to the  
20 subject and includes a long-form letter from the City manager imploring residents to vote in favor of  
21 Measure R. The layouts are distinctly different. Prior mailings were densely packed with information and  
22 announcements. The Measure R communication is longer, the mailing itself is larger, and it includes a full  
23 letter on one page. In contrast, Exhibit Y was a 6.25 by 9-inch double-sided mailing dedicated to a  
24 “Housing Element Update Process.”<sup>3</sup> The first page features an invitation to participate in a city-hosted  
25 forum, and the mailing provided relevant event dates. The reverse side of the mailing is informative and  
26

---

27 <sup>2</sup> Exhibit MM.

28 <sup>3</sup> Exhibit PP.

1 includes statements such as, “What is a housing element?” and a short answer.<sup>4</sup> A more accurate finding  
2 would be that the Measure R communication was a departure in style from previous and subsequent  
3 mailings.

4 B. STATEMENT OF LAW IS NOT ACCURATE OR CORRECTLY APPLIED

5 The proposed decision overly emphasizes the case law regarding the prohibited use of public funds  
6 and Government Code section 54964. Moreover, the decision is not consistent with the Commission’s  
7 own interpretation of the relevant Regulations.

8 The Commission enforces the Political Reform Act. Here, the issues under the Act are whether a  
9 mailer qualified as a mass mailing at public expense, whether the City of Norco qualified as an  
10 independent expenditure committee, and whether the City of Norco filed campaign statements and reports.  
11 The Commission does not enforce Government Code section 54964, a prohibition of the use of public  
12 funds for express advocacy, nor does the Commission regulate other uses of public funds. The Court in  
13 *Vargas v. City of Salinas, et al.* (2009) 46 Cal.4<sup>th</sup> 1, in a decision related to whether a communication was  
14 a permissible use of public funds, affirmed a prior case precedent that a communication by a governmental  
15 agency need not contain express advocacy to constitute prohibited campaign activity.

16 While *Vargas* was instructive in creating a framework for Regulation sections 18420.1 and  
17 18901.1, the regulations themselves are the authority for determining when a governmental agency has  
18 made an independent expenditure and when the governmental agency has sent a mass mailing in violation  
19 of Government Code section 89001. The regulatory scheme creates a similar, but distinct legal standard.  
20 In particular, Regulation 18901.1 prohibits mailings where, when considering the style, tenor, and timing  
21 of the communication, it can reasonably be characterized as campaign material and is not a fair  
22 presentation of facts serving only an informational purpose.<sup>5</sup> The parties stipulated that this was the  
23 relevant legal question here.

24 The proposed decision repeatedly relies on *Vargas* to support the ruling and does not properly or  
25 fully analyze the mailing based on the Regulation itself.

---

27 <sup>4</sup> Exhibit Y.

28 <sup>5</sup> Regulation 18901.1, subdivision (c)(2).

1 The proposed decision acknowledges that the Measure R mailing differs from the “more formal  
2 and information-heavy” mailing discussed in *Vargas*.<sup>6</sup> The proposed decision acknowledges that, “It is an  
3 easier call to label [the communication discussed in *Vargas*] as purely informational.”<sup>7</sup> However, the  
4 proposed decision then goes on to state, “The Measure R communication’s tone and emphasis on the  
5 community’s equestrian lifestyle and need to maintain equestrian-related amenities is, however, consistent  
6 with at least one communication.” The proposed decision goes on to cite a mailing sent three years after  
7 the relevant mailing.

8 There are two problems with this paragraph in the proposed decision. First, it conflates separate  
9 provisions of the regulation. This misstates the legal standard. Second, it relies on evidence of the City’s  
10 actions after the mailing in question, which misapplies the evidence by giving undue credence to actions  
11 taken after the violations took place.

12 The provisions of the regulation consider both the “style, tenor, and timing” and whether the  
13 communication is “a fair presentation of facts serving only an informational purpose.” The analysis should  
14 consider the style, tenor, and timing, and also, separately, whether it was a fair presentation of facts serving  
15 only an informational purpose. Instead, the proposed decision considers both together. By conflating the  
16 two analyses, the proposed decision improperly concludes that the presentation of facts was informational  
17 because the City spoke similarly about lifestyle factors in a mailing sent three years later.

18 Additionally, the proposed decision improperly finds that the Measure R communication is  
19 consistent with prior mailings because the “prior” mailing the proposed decision relies on was actually  
20 sent three years after the Measure R communication. This inaccurate finding is then applied in the analysis  
21 to conclude that the Measure R communication did not unambiguously urge.

22 In contrast, the evidence supports a finding that the Measure R communication was a departure  
23 from prior City communications in the style, tenor, and timing. The City broke from the ordinary pattern  
24 of mailing smaller, one or two-page, informational outreach mailings regarding local events or soliciting  
25 participation in community forums. The Measure R communication was sent two months before the  
26

---

27 <sup>6</sup> Proposed Decision, page 24, paragraph 12.

28 <sup>7</sup> Proposed Decision, page 24, paragraph 12.

election and just days after the measure was placed on the ballot. The Measure R communication, though it was sent via the same method and manner as prior mailings, is a departure in the style as it was a multi-page, glossy book, and featured a personal entreaty from a city official. Unlike other communications issued by the City, including presentations to interested persons and answers to frequently asked questions, the Measure R communication was not purely informational. Instead, the communication urged residents to vote for the ballot measure in order to “preserve the Horsetown USA lifestyle” and act at a “critical time” to “keep Norco ‘Norco.’” When taken in context, the communication unambiguously urges voters to vote in favor of Measure R.

Adoption of the proposed decision would create a different standard for applying Regulation 18901.1 compared to how the Commission has ruled in prior stipulations.<sup>8</sup> For example, the Commission has approved findings for the Enforcement Decision stipulations with similar facts. In *City of Garden Grove and Scott Stiles*, FPPC No. 2018-01357 and *Poway Unified School District*, FPPC No. 2020-00350, the Commission applied the regulation to mailings and other communications that were not purely informational and, when considering the style, tenor, and timing, the communications unambiguously urged a particular result.<sup>9</sup> The proposed decision would be a break from the Commission’s prior application of Regulation 18901.1.

### C. IN THE ALTERNATIVE

If the Commission adopts the proposed decision, the Enforcement Division recommends the following technical and minor changes to the proposed decision:

1. On page 13, on the third line of paragraph 10: “with other ~~Narco~~ Norco communications.”
2. On page 14, on the second line of paragraph 11: “Code section ~~8316.5~~, 83116.5, ...”
3. On page 20, on the first line of paragraph 3: “Government Code section ~~89001prohibits~~ 89001 prohibits...”

---

<sup>8</sup> It should be noted that the Commission has also articulated its standard for applying Regulation 18901.1 in advice letters, opinions and other cases.

<sup>9</sup> Exhibits 15 and 16.

1 4. On page 21, on the sixth line of paragraph 4: “annual campaign statement. (Gov. Code, §  
2 ~~81002, subd. (a)~~ 84200.)

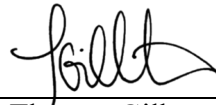
3 RECOMMENDATION

4 Thus, the Enforcement Division respectfully requests and recommends that the Commission reject  
5 the proposed decision and adopt a decision that is consistent with the evidence in the record and that  
6 accurately applies the relevant law.

7  
8 Dated: May 28, 2025

9 **FAIR POLITICAL PRACTICES COMMISSION**

10 By: Angela J. Brereton  
Assistant Chief of Enforcement

11 

12 Theresa Gilbertson  
Senior Commission Counsel  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28