

KENDALL L.D. BONEBRAKE (SBN 267317)
Chief of Enforcement
THERESA GILBERTSON (SBN 288598)
Senior Commission Counsel
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street, Suite 3050
Sacramento, CA 95811
Telephone: (279) 237-5960
Email: tgilbertson@fppc.ca.gov

Attorneys for Complainant
Enforcement Division of the Fair Political Practices Commission

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of	) OAH No. 2024110448
	) FPPC No. 2018/00789
	)
CITY OF NORCO and ANDY OKORO,	) COMPLAINANT’S ANSWER TO
	) RESPONDENT’S PETITION FOR
Respondents.	) RECONSIDERATION
	)
	)
	)
	)
	)

On August 21, 2025, this matter came before the Fair Political Practices Commission (“Commission”) for oral argument on the proposed decision of Administrative Law Judge Deena R. Ghaly, dated May 6, 2025 (“Proposed Decision”). On August 21, 2015, the Commission rejected the Proposed Decision and, on October 16, 2025, issued its Decision in the matter. On October 31, 2025, Respondent City of Norco (“the City” or “Norco”) filed a petition for reconsideration. Complainant, the Enforcement Division of the Commission, submits the following answer.

I. INTRODUCTION

Norco’s petition for reconsideration should fail because it fails to show any prejudicial errors of law or fact.

//

1 **II. DISCUSSION**

2 California Code of Regulations, Title 2, Section 18361.9(c)(2) sets forth the grounds pursuant to
3 which a party may petition the Commission for reconsideration.¹ Here, Respondent asserts that the
4 Commission’s decision contains prejudicial errors of law or fact, but Respondent fails to demonstrate
5 that any such prejudicial error occurred.

6 Prejudicial error is a standard of review that requires an appellant to show not just that an error
7 occurred but that the error was so prejudicial that a miscarriage of justice occurred.²

8 Norco’s petition contains three main arguments in its attempt to prove prejudicial error.
9 However, as discussed in detail below, each of these arguments fail.

10 **1. The Commission Utilized the “Unambiguously Urges Standard” to Reach its**
11 **Conclusion**

12 Norco first argues that the Commission’s discussion of “express advocacy” was erroneous.
13 However, as the Commission’s discussion of “express advocacy” was not the basis for the decision, the
14 discussion could not have caused a prejudicial error. The Commission’s decision instead analyzed, and
15 based its conclusion on, the “unambiguously urges” standard. The discussion regarding express
16 advocacy was not essential to the decision, and even if found to be erroneous, caused no harm.

17 **2. The Commission Properly Determined that the Measure R Mailer “Unambiguously**
18 **Urged” the Passage of Measure R**

19 Norco next argues that the Commission erred in concluding that the City’s Measure R Mailer
20 (“Measure R Mailer” or “Mailer”) “unambiguously urged” the passage of Measure R. However, Norco
21 largely repeats the same arguments it made at oral argument and in the briefings made to the
22 Commission and merely argues that the Commission’s interpretation and application of its own
23 regulation is erroneous.

24
25
26 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references
27 are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of title 2
of the California Code of Regulations, and all regulatory references are to this source. See §§ 83111 and 83116.

28 ² Mendoza v. Club Car (2000) 81 Cal.App.4th 287, 306.

1 When analyzing the “unambiguously urges” standard, the Commission’s decision concludes that
2 the Measure R Mailer included inflammatory and argumentative language. Norco challenges that
3 determination and argues that the Measure R Mailer was not inflammatory and argumentative because it
4 was not as blatantly partisan as egregious examples from case law. However, this argument is flawed.
5 Language does not have to rise to the level of these extreme and egregious examples in order for a fact
6 finder to conclude that the language is inflammatory or argumentative. Unlike the analysis in relevant
7 case law, which compares examples of what a court has concluded is “moderate” in tone and
8 informative with the language of the subject communication, an argument, such as Norco’s, that
9 compares the subject communication with examples of what courts have concluded was extremely
10 partisan, does not lead to a sound legal conclusion.

11 The Commission’s analysis and resulting determination that the language in the Mailer was
12 inflammatory or argumentative and not serving only an informational purpose did not constitute a
13 prejudicial error of law or fact. The Commission properly supported their decision with evidence from
14 the record. For example, the Commission distinguished between the *Vargas* mailing, which factually
15 conveyed that the City Council had voted to cut specific services if the measure passed and the Measure
16 R Mailer, which framed the ballot measure as being caused by “unfavorable actions by Sacramento
17 politicians” and included vague threats of deteriorating facilities, lost services and programs, and
18 reductions to public safety.

19 Norco goes on to argue that the Commission erred by not considering the City’s overall
20 communication pattern as it relates to the timing of the Measure R Mailer. Specifically, Norco argues
21 that the Measure R Mailer was not a break in the communication pattern for the City because the City
22 had previously communicated with its residents about financial issues and the impact of Measure R
23 through public meetings, including a town hall, before it sent the Measure R Mailer. However, while
24 clearly a fact known to the City, the City did not make this argument in the underlying matter, and, even
25 if they had, it is not relevant here. Tangible unsolicited mass mailings sent directly to voters’ homes and
26 public meetings, requiring active attendance by interested residents, are very different communications
27 that reach significantly different populations in both size and interest.

Here, the Measure R Mailer was sent to Norco residents, approximately 64 days before the election. The Commission properly considered this timing, and the City’s diversion in communication style, as part of the overall analysis “...[a]s a whole and in context...” as required.

3. The Commission had Authority to Promulgate and has Authority to Enforce Regulation 18420.1

Finally, Norco argues that the Commission did not have the authority to promulgate and enforce Regulation 18420.1 and that the regulation is unconstitutional.

The Commission has the authority to adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act of 1974. One purpose of the Act is to ensure that, “receipts and expenditures in election campaigns [are] fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.”³ The Commission is also charged with and has the authority to enforce provisions of the Act.⁴ Regulation 18420.1 stems from the Commission’s authority to enforce the Act’s requirements that persons, including state and local agencies, file campaign disclosure statements and reports when making independent expenditures.⁵ Further, the regulation was promulgated to assist the regulated community in identifying when a communication qualifies as the kind of speech, specifically campaign speech, that will necessarily bring it into the purview of the Commission’s jurisdiction. The authority to further define “expenditure” is squarely within the authority of the Commission and is necessary and vital to the Commission’s mission to enforce the provisions of the Act. Regulation 18420.1 interprets the term “unambiguously urges” found in the relevant statute, section 82031, and is consistent with the overall purpose and intent of the Act.

Norco’s only argument here is that the Commission, having previously stated in advice letters that public agency involvement in supporting or opposing ballot measures was outside the scope of the Act, is forever bound by these statements. However, advice letters do not create law, regulation, or

³ Section 81002.

⁴ Section 83111.

⁵ See Section 82031.

1 policy and are not precedential in value. Advice letters are directed to the individuals who request the
2 advice and can provide a complete defense for that individual who receives advice from the
3 Commission.⁶ To restrict the authority of the Commission in such a way would defeat the purpose of the
4 Act, creating a system in which the Commission is arbitrarily beholden to past statements. Further, the
5 law has changed since the Commission made those statements regarding this issue. Notably, in 2009, the
6 legislature added the statement, “including a payment of public moneys by a state or local governmental
7 agency” to the definition of independent expenditure.

8 With respect to Norco’s invocation of *Citizens United v FEC* (2010) 558 U.S. 310, these
9 arguments must fail. The Commission does not demand that state and local agencies submit their
10 advertisements to the Commission for approval. The Commission is required to provide advice to
11 requesters, and this advice, by law, can constitute a complete defense.⁷ The Commission is required to
12 prepare and publish instructions to explain the duties of persons and committees under this title.⁸ These
13 statutory requirements are intended to promote the purposes of the Act to promote transparency and
14 further the public interest. The existence of these tools does not create an obligation on the part of the
15 regulated community to take advantage of them in order to avoid violating the Act.

16 Norco has now adopted the argument made in Respondent Andy Okoro’s Opening Hearing Brief
17 and suggests that the Commission should not be empowered to implement the Act if a party does not
18 admit that the communication is subject to the Act. This argument cannot stand. It is necessary and
19 consistent with the enforcement of Section 89001 and the broader reporting and disclosure requirements
20 of the Act for the Commission to be empowered to “determine what speech may or may not be”
21 campaign speech.

22 In addition, similar arguments regarding the Commission’s regulatory authority and the
23 constitutionality of Regulation 18420.1 have been tested in Superior Court and failed.⁹

24 //

25 ⁶ Section 83114, subdivision (b).

26 ⁷ *Id.*

27 ⁸ Section 83113, subdivision (b).

28 ⁹ See *California State Association of Counties vs. Fair Political Practices Commission, Superior Court of California, Los Angeles*, Case No. BS174653, December 14, 2020.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Dated: November 10, 2025

By: Kendall L.D. Bonebrake
Chief of Enforcement

Bill

Theresa Gilbertson
Senior Commission Counsel