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City of Norco

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of

CITY OF NORCO AND ANDY OKORO,

Respondents.

OAH Case No. 2024110448
FPPC Case No. 18/789

**RESPONDENT CITY OF NORCO'S
PETITION FOR RECONSIDERATION**

The City of Norco petitions the Fair Political Practices Commission to reconsider its October 17, 2025 decision in the above-entitled matter. This Petition is made on the ground that the October 17, 2025 “decision contains prejudicial errors of law or fact.” (Regulation 18361.9(c)(2)(b))

1. The Commission’s discussion of the “express advocacy” erroneously concludes “express advocacy” can be found without the use of words of express advocacy.

In its decision, the Commission notes “The Supreme Court of the United States has long recognized that communications are not required to include ‘magic words’ in order to constitute ‘express advocacy.’” In *Fed. Election Com. v. Mass. Citizens for Life, Inc.* (1986) 479 U.S. 238 (*Massachusetts Citizens for Life*) and that, “While the parties may have agreed that the Measure R mailer was insufficient to meet the ‘express advocacy,’ the Commission is not bound by this agreement as to the applicable law, and the parties’ conclusions are not determinative as to whether the Measure R mailer is express advocacy or the functional equivalent of express advocacy.” The discussion of “express advocacy” is dicta because the Commission did not rely on the “express advocacy standard; and the analysis of the “express advocacy” standard could lead to confusion

1 because it is incorrect. Regardless of what is stated in *Massachusetts Citizens for Life*, the FPPC
2 Regulation defining “express advocacy” specifically requires the use of such terms. (See Gov. Code
3 82025; A mailing expressly advocates for or against a measure if it contains words like “vote for,”
4 “elect,” “support,” “defeat,” or “reject” in relation to a specific candidate or ballot measure.) As this
5 portion of the opinion was incorrect and, purely dicta, the Commission should remove it.

6 **2. The Commission erred in its conclusion that the Measure R Mailer “Unambiguously**
7 **Urged” the Passage of Measure R**

8 After discussing each factor of the “unambiguously urged” 4-factor test, the Commission concludes
9 that “when considering the style, tenor, and timing of the Measure R mailer, we find that it can be
10 reasonably characterized as campaign material and is not a fair presentation of facts serving only an
11 informational purpose. (Regulation 18901.1(c)(2).) As a whole and in context, the Measure R mailer
12 unambiguously urged Norco residents to vote to pass Measure R. (See Regulation
13 18901.1(a)(2)(B).)” The Commission notes it was “most persuaded by the inflammatory and
14 argumentative content of the mailer, as well as its timing and distinct style.”

15 As to “inflammatory and argumentative”, the City refers and incorporates by reference the
16 arguments made in its opening brief. Including that the letter was substantially less suggestive than
17 the eight page *City Round-up*. Norco did not include examples about “hamper[ing] the Police
18 Department’s ability to promote the City Council’s #1 goal of maintaining a safe and peaceful
19 community;” “Students at 27 Salinas schools will lose the benefit of supervised street crossing;” or
20 “[e]liminat[ing] a first line of defense against Bio/Chemical terrorism[.]” Norco’s Mailer discussed
21 preserving quality of life, restoring deteriorating streets, trails, parks, facilities and equestrian
22 amenities, and preventing additional cuts to public safety.

23 Norco’s Mailer did not ‘unambiguously urge[] a particular result,’ inasmuch as some voters
24 might believe that the identified public facilities are unnecessary or that public funds would be better
25 spent for other purposes. (*Vargas, supra*, 46 Cal.4th at fn. 17.) Thus, voters in Norco could have
26 simply decided that allowing the horse trails to further deteriorate was a better option.

27 The statements in the Mailer that the State had “crippled” the City’s finances and that
28 “politicians in Sacramento could not touch one penny” of Measure R funds provided important and

1 truthful information to voters about the tax, and did not rise to the level of the “strident passages” of
2 *Keller* which “denounce[d] the ‘idiotic cries of ... self-appointed vigilantes ... [and] unscrupulous
3 politicians.’” (*Keller* at 1172.)

4 The language in Norco’s Mailer came nowhere close to that used in *Schultz*: “Republicans
5 appear to have devised a strategy of using distortions and half-truths about Medicaid and welfare to
6 divide the people in a key election year[;]” “‘Willie Horton issue of the 1992 campaign[;]’” “‘vote
7 for the men and women who put people before politics[;]’” “Let’s not scapegoat the poor.” (*Schultz*,
8 86 N.Y.2d at 235-236.)

9 Like the *City Round-up*, Norco’s Mailer merely reported important information about the tax
10 measure and summarized Staff’s analysis and Council’s Resolutions. The Mailers did not
11 “unambiguously urge” a result in as much as some voters may have thought the facilities were
12 unnecessary or the money would be better used for other purposes. The language was less strident
13 than that found “basically informative and factual” in *Keller*. And the language was nowhere near
14 that found inflammatory in *Schultz*. Therefore, the Mailer’s language was moderate and not
15 inflammatory or argumentative and this factor, like the previous three, suggests the Mailer was
16 *informational*.

17 As to timing, and as discussed in *Peninsula Guardians*, “the timing of the mailers is not
18 dispositive.” (*Peninsula Guardians, Inc. v. Peninsula Health Care Dist.* (2011) 200 Cal.App.4th
19 1108, 1132.) The City of Norco had been communicating to its residents about its financial issues
20 and the impact of the sales tax Measure through multiple public meetings, including a town hall,
21 prior to sending the Measure R informational mailer. As also stated by *Peninsula Guardians* “While
22 District did not publish its newsletter on a fixed schedule, it still is significant that the summer 2006
23 newsletter was part of a larger series of communications with residents. (See *DiQuisto, supra*, 181
24 Cal.App.4th at p. 273.) District did not suddenly begin communicating about the proposed
25 hospital on the eve of the election.” (*Peninsula Guardians, supra*, 200 Cal. App. 4th at 1132.)

26 As to “distinct style”, like the mailer in *Vargas*, the “...style and tenor of the publication in
27 question were entirely consistent with an ordinary municipal newsletter” (emphasis added)
28 (*Vargas, supra*, 47 Cal.4th at p. 38-39.) Norco’s Mailer contained the City’s logo, graphics, and

1 information about the proposed sales tax. Viewed as a whole, the mailer’s style and tenor were
2 consistent with a municipal mailer and readily distinguishable from a partisan newsletter. The
3 graphics were neutral and included photos of a horse, horse trail, and “walk” sign with a horse. Norco
4 did not provide emotional photos of meth labs or schools that would lose crossing guards. It was
5 written in narrative form, with regular font. Thus, the Measure R mailer was informational.

6 **3. Because the Measure R Mailer was informational, the Commission’s decision**
7 **erroneously concluded that Norco violated “Count 2: Alleged Violation of Sections**
8 **84502 and 84504.2 – Failure to Include Proper Disclosure on a Campaign**
9 **Advertisement (Respondent Norco)”**

10 **4. Because the Measure R Mailer was informational, the Commission’s decision**
11 **erroneously concluded that Norco violated “Count 3: Alleged Violation of Section**
12 **84204(a) – Failure to Timely File 24-Hour Independent Expenditure Report**
13 **(Respondent Norco)”**

14 **5. Because the Measure R Mailer was informational, the Commission’s decision**
15 **erroneously concluded that Norco violated “Count 4: Alleged Violation of Section**
16 **84200(b) – Failure to Timely File Semi- Annual Campaign Statement (Respondent**
17 **Norco)”**

18 **6. The Commission’s Decision Erroneously Concludes that the Commission Had**
19 **Authority to Promulgate Regulation 18420.1.**

20 As the Commission noted in dozens of prior opinions, and for the reasons stated therein and in
21 Respondent Okoro’s brief, which the City joined, “[b]efore 2008, the FPPC stated, on literally dozens
22 of occasions, that enforcement of the *Stanson* restrictions of communications by public entities were
23 outside the scope of the FPPC’s authority.” (*Id.* at p. B282.) Based on the Commission’s own prior
24 analysis, enforcement of *Stanson* restrictions are outside the scope of the Commission’s authority.

25 **7. The Commission’s Decision Erroneously Upheld Its Enforcement of Regulation 18420.1**

26 The United Supreme Court in *Citizens United v. FEC* (2010) 558 U.S. 310 “criticized
27 government actions that cause undue restrictions of speech.” (Exh. B, p. B285.) In *Citizens United*,
28 the Court criticized the Federal Elections Commission (FEC) advisory process in determining

1 political speech, because it intervened in the realm of free speech by applying an ambiguous standard
2 and an 11-factor test to determine what constituted political speech. Similarly, the FPPC regulation
3 puts the FPPC in the position of determining what speech may or may not be engaged in by a public
4 entity, based on an ambiguous standard and 4-factor test. The basis of *Citizens United*'s criticism of
5 the FEC's two-part, 11-factor balancing test at issue in that case was that it effectively required
6 individuals to "ask a governmental agency for prior permission to speak." (*Citizens United, supra*,
7 558 U.S. at p. 335.) The Court explained, "[t]hese onerous restrictions thus function as the equivalent
8 of prior restraint by giving the FEC power analogous to licensing laws implemented in 16th- and
9 17th- century England, laws and governmental practices of the sort that the First Amendment was
10 drawn to prohibit." (*Ibid.*)

11 That is exactly what the FPPC has demanded that public agencies *and individuals* do before
12 distributing communications about elections. The Commission's opinion responds that there is
13 "nothing to indicate or suggest that *Stanson* and *Vargas* are no longer valid or that Respondent Norco
14 has some constitutional right to use public funds for campaigning purposes." Norco does not
15 advocate that it has a right to use public funds to campaign. Norco advocates that, following *Citizens*
16 *United*, the unambiguously urge test, and the Commission's determination that, if public agencies
17 are confused about the test they must submit their advertisements to the Commission for approval,
18 is unconstitutional under the holding of *Citizens United*. Further, even assuming *Stanson* and *Vargas*
19 are valid when the determinations are made by a *Court*, such First Amendment restrictions may not
20 be imposed as a prior restraint by an administrative agency.

21
22 Dated: October 31, 2025

Respectfully submitted,

HARPER & BURNS LLP



Colin Burns
Attorney for Respondent
City of Norco

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I, Sarah Torres, am employed in the County of Orange, State of California. I am over the
4 age of 18 and not a party to the within action; my business address is 453 South Glassell Street,
5 Orange, California 92866.

6 On October 31, 2025, I caused to be served a copy of the foregoing document(s) described
7 as **RESPONDENT CITY OF NORCO'S PETITION FOR RECONSIDERATION** on the
8 interested parties, in this action as follows:

9 *SEE ATTACHED SERVICE LIST*

10
11
12
13 (BY REGULAR MAIL) I mailed a copy by enclosing it in a sealed envelope with postage fully
14 prepaid. I am readily familiar with the firm's business practice for collection and processing of
15 correspondence for mailing with the U.S. Postal Service, pursuant to which practice the
16 correspondence will be deposited with the U.S. Postal Service this same day in the ordinary course of
17 business. I am aware that on motion of the party served, service is presumed invalid if postal
18 cancellation date or postage meter date is more than one day after the date of deposit for mailing
19 contained in the affidavit.

20 (BY FEDERAL EXPRESS) The package was Federal Expressed (Pre-paid - Next Day Service -
21 Authorization to Leave at Location without Obtaining a Signature). I am readily familiar with the
22 firm's practice of collection and processing documentation for Federal Express. The package was
23 deposited at the prearranged Federal Express location in the ordinary course of business.

24 X (BY EMAIL) I e-mailed such documents to the aforementioned person(s).

25 X (STATE) I declare under penalty of perjury under the laws of the State of California that the
26 above is true and correct.

27 (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at
28 whose direction the service was made.

Executed on October 31, 2025, at Orange, California.



Sarah Torres

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