



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

To: Chair Silver, and Commissioners Baker, Ortiz, Wilson, and Wood

From: Galena West, Executive Director
James M. Lindsay, Chief of Enforcement
Theresa Gilbertson, Senior Commission Counsel

Subject: Assignment of Hearing to Administrative Law Judge

Case Name: City of Norco and Andy Okoro; FPPC Case No. 18/789

Date: August 5, 2024

I. INTRODUCTION

Respondent City of Norco (the “City”) is a city in Riverside County. Respondent Andy Okoro (“Okoro”) was the city manager for the City of Norco at all relevant times. On July 18, 2018 and August 1, 2018, the Norco City Council voted to place Measure R on the November 6, 2018 General Election ballot. Measure R imposed a one-cent sales tax.

The City used public funds to send a prohibited mass mailing. The mass mailing failed to include an advertisement disclosure statement. The City failed to timely file campaign statements and reports, including a semi-annual campaign statement and a 24-hour independent expenditure report. Okoro caused the City to violate the prohibition of publicly funded mass mailings by including a personal, signed appeal to voters that unambiguously urged voters to approve the ballot measure. The City, through its attorney Colin Burns of the Law Offices of Harper & Burns LLC, filed a notice of defense in response to the Accusation and requested an administrative hearing. Okoro, through their attorney, similarly filed a notice of defense in response to the Accusation and requested an administrative hearing.

II. COMMISSION ACTION ONLY REQUIRED IF THE COMMISSION DESIRES TO PARTICIPATE IN THE ADMINISTRATIVE HEARING

The Executive Director and the Chief of Enforcement are recommending an administrative law judge (“ALJ”) conduct the hearing pursuant to Government Code section 11512, subdivision (a). The ALJ will then make a recommendation to the Commission on the findings of fact, law and penalty, if applicable, in the matter. The Commission will then make the final determination on the case.

This memorandum is submitted to each member of the Commission pursuant to California Code of Regulation section 18361.5, subdivision (b), which provides:

If the Executive Director determines that a hearing on the merits should be conducted before an administrative law judge alone pursuant to Government Code section 11512(a), he or she shall provide a copy of the accusation as well as a memorandum describing the issues involved to each member of the Commission. If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an administrative law judge is available.

Thus, no Commission action is required if the Commission approves the recommendation that the administrative hearing in this matter should be conducted before an ALJ. However, two or more Commissioners may vote to keep the matter with the Commission if so desired.

III. PROCEDURAL HISTORY

The Enforcement Division initiated this administrative action against the City and Okoro by serving a Report in Support of a Finding of Probable Cause (“PC Report”) on or about August 31, 2023. In response to the PC Report, the City and Okoro requested a hearing and also requested records in possession of, and relied upon by, the Enforcement Division. The Enforcement Division provided documents to the City and Okoro on or around December 13, 2023. The City and Okoro filed a Response to the PC Report on January 2, 2024. The Enforcement Division filed a Rebuttal to the Response to the PC Report on January 16, 2024.

On February 29, 2024, the Fair Political Practices Commission conducted a probable cause conference on the matter. Senior Commission Counsel Theresa Gilbertson appeared on behalf of the Enforcement Division. Counsel Colin Burns appeared on behalf of the City and Okoro. Okoro was present for the hearing. The hearing officer for the probable cause conference, Senior Commission Counsel Jack Woodside, determined probable cause existed to believe that the City and Okoro violated the Act as alleged in the PC Report. As a result, Mr. Woodside issued an order dated March 5, 2024 finding probable cause and instructing the Enforcement Division to issue an accusation against the City and Okoro.

On June 24, 2024, the Commission’s Chief of Enforcement James M. Lindsay issued an Accusation against the City and Okoro. Colin Burns, on behalf of the City, submitted a Notice of Defense on July 10, 2024 to request an administrative hearing in this matter. Gary Winuk, on behalf of Okoro, submitted a Notice of Defense on July 12, 2024 to request an administrative hearing in this matter.

IV. HEARING OPTIONS

Every hearing in a contested case must be presided over by an ALJ. The agency itself shall determine whether the ALJ is to hear the case alone or whether the agency itself is to hear the case with the ALJ.¹

When the agency itself hears the case, the ALJ shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the ALJ. When the agency itself hears the case, the agency shall issue its decision within 100 days of submission of the case.² When the ALJ hears a case, he or she shall exercise all powers relating to the conduct of the hearing. A rule of the ALJ admitting or excluding evidence is subject to review in the same manner and to the same extent as the ALJ's proposed decision in the proceeding.³

If the matter is heard solely by the ALJ, the ALJ will issue a proposed decision for the Commission's consideration within 30 days after the case is submitted.⁴ The agency may adopt the decision in its entirety, reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision, make technical or minor changes, or reject the proposed decision.⁵

V. SUMMARY OF THE ACCUSATION

The Accusation alleges the Respondents violated the Political Reform Act as follows:

As to the City and Okoro:

Count 1: Prohibited Campaign Related Mailing Sent at Public Expense

The City and Okoro were prohibited from sending campaign related mass mailings at public expense. The City and Okoro sent a campaign related mass mailing at public expense when they used public moneys to mail more than 200 copies of a four-page, full-color mailing that unambiguously urged the passage of a local ballot measure. By sending the mass mailings at public expense, the City and Okoro violated Government Code Section 89001 and Regulation 18901.1.

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¹ See Gov't Code § 11512, subdivision (a).

² See Gov't Code § 11517, subdivision (b).

³ See Gov't Code § 11512, subdivision (b).

⁴ See Gov't Code § 11517, subdivision (c)(1).

⁵ See Gov't Code § 11517, subdivision (c)(2)(A-E).

As to the City:

Count 2: Failure to Include Advertisement Disclosure Statement

The City had a duty to include the proper advertisement disclosures on a mass mailing. The City failed to include a proper advertisement disclosure on a mass mailing sent on or around September 4, 2018. By failing to include proper advertisement disclosure, the City violated Government Code Sections 84502 and 84504.2.

Count 3: Failure to Timely File a 24-Hour Independent Expenditure Report

The City had a duty to timely file 24-hour independent expenditure reports within 24 hours of making an independent expenditure. The City made an independent expenditure on or around September 4, 2018 by publicly funded mass mailing but failed to timely file a 24-hour independent expenditure report. By failing to timely file the report, the City violated Government Code Section 84204, subdivision (a).

Count 4: Failure to Timely File a Semiannual Campaign Statement

The City had a duty to timely file a semiannual campaign statement. The City failed to timely file a semiannual campaign statement for the reporting period of July 1, 2018 through December 31, 2018. By failing to timely file the statement, the City violated Government Code Section 84200, subdivision (b).

VI. CONCLUSION

If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an ALJ is available.⁶ Otherwise, hearing of this matter will be conducted before an ALJ alone pursuant to Section 11512, subdivision (a).

⁶ Reg. § 18361.5, subdivision (b).

1 JAMES M. LINDSAY
Chief of Enforcement
2 THERESA GILBERTSON
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
1102 Q St, 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 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**
10

11 In the Matter of:) FPPC No. 18/789
12)
13 CITY OF NORCO and ANDY OKORO) **ACCUSATION**
14)
15 Respondents.) (Gov. Code §11503)
16)
17)

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, after a finding
19 of probable cause pursuant to Government Code Section 83115.5, alleges the following:

20 **JURISDICTION**

21 1. The complainant is the Enforcement Division of the Fair Political Practices Commission
22 (the "Commission") and makes this Accusation in its official capacity and in the public interest.

23 2. The authority to bring this action is derived from Title 2, California Code of Regulations,
24 Sections 18361 and 18361.4, subdivision (g), and the statutory law of the State of California, specifically
25 including, but not limited to, Government Code Sections 83111, 83116, and 91000.5, which assign to the
26 Enforcement Division the duty to administer, implement, and enforce the provisions of the Political
27 Reform Act, found at Government Code Sections 81000 through 91014.

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1 3. When enacting the Political Reform Act (the “Act”),¹ California voters specifically found
2 and declared that previous laws regulating political practices had suffered from inadequate enforcement,
3 and it was their purpose to ensure that the Act be vigorously enforced.²

4 4. To that end, Section 81003 requires that the Act be liberally construed to achieve its
5 purposes.

6 5. Receipts and expenditures in election campaigns should be fully and truthfully disclosed
7 in order that the voters may be fully informed and improper practices may be inhibited.³ Another purpose
8 is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁴

9 **RESPONDENTS**

10 6. Respondent, City of Norco (“City”) is a city in the County of Riverside, California.

11 7. Respondent, Andy Okoro (“Okoro” or “City Manager”) was the city manager for the City
12 of Norco at all relevant times.

13 **APPLICABLE LAW**

14 8. All applicable law in this Accusation is the law as it existed during the relevant time for
15 the violations alleged.

16 **A. Prohibited Campaign Related Mailing Sent at Public Expense**

17 9. The Act prohibits sending a newsletter or other mailing at public expense.⁵

18 10. Regulations further describe what qualifies as a newsletter or other mailing. Newsletters
19 and other mailings are prohibited if (1) the item is a tangible item; (2) the item expressly advocates the
20 qualification, passage, or defeat of a clearly identified measure, or unambiguously urges a particular
21 result in an election; (3) public moneys are paid to distribute the item, or to prepare the item, for more
22 than \$50, with the intent of sending the item; and (4) more than 200 substantially similar items are sent
23 during the course of an election.⁶

24
25 ¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. The regulations of the
26 Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of
27 Regulations.

² Sections 81001, subdivision (h), and 81002, subdivision (f).

³ Section 81002, subdivision (a).

⁴ Section 81002, subdivision (f).

⁵ Section 89001.

⁶ Regulation 18901.1, subd. (a).

1 11. A mailing expressly advocates for or against a measure if it contains words like “vote
2 for,” “elect,” “support,” “defeat,” or “reject” in relation to a specific candidate or ballot measure.⁷ If a
3 mailing does not contain express language it still may unambiguously urge a particular result in an
4 election in one of two ways: (1) when it clearly is campaign material or campaign activity, such as
5 bumper stickers, billboards, door-to-door canvassing, posters, advertising “floats,” or mass media
6 advertising;⁸ or (2) when the style, tenor, and timing of the communication can be reasonably
7 characterized as campaign material and not a fair presentation of facts serving only an informational
8 purpose.⁹

9 12. Some factors to consider when assessing style, tenor, and timing include, but are not
10 limited to whether the communication is (1) funded from a special appropriation related to the measure
11 as opposed to a general appropriation; (2) consistent with the normal communication pattern for the
12 agency; (3) consistent with the style of other communications issued by the agency; and (4) using
13 inflammatory or argumentative language.¹⁰

14 13. The Commission adopted Regulation 18420.1 based on the California Supreme Court’s
15 decision in *Vargas v. City of Salinas, et. al.* (2009) 46 Cal. 4th 1.¹¹ In *Vargas*, the Court relied heavily
16 on its decision in *Stanson v. Mott* (1976) 17 Cal. 3d 206. *Stanson* established the analysis for
17 determining when communications by a governmental agency that do not contain express advocacy
18 still constitute campaign activity. The Court went on to conclude that certain publicly financed
19 literature that is not clearly campaign material and that purports to contain only relevant information
20 can be prohibited campaign activity depending on the “style, tenor and timing of the publication.”¹²

21 14. Neither *Vargas* nor *Stanson* directly concerned any provisions of the Act. They were
22 decided based on the constitutional prohibition against unauthorized use of public funds. But, since in
23 those cases the State Supreme Court had defined when government agencies are prohibited from using
24 public moneys to pay for communications related to ballot measures, the Commission adopted the
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26 ⁷ Regulation 18225, subd. (b)(2).

27 ⁸ Regulation 18420.1, subd. (b)(1).

28 ⁹ Regulation 18420.1, subd. (b)(2).

¹⁰ Regulation 18420.1, subd. (d).

¹¹ Fair Political Practices Commission, Minutes of Meeting, Public Session, Sept. 10, 2009, item no. 25, page 3.

¹² *Id.* at 222.

1 parameters described in *Vargas* for determining when a government agency makes contributions and
2 independent expenditures under the Act.¹³

3 **B. Campaign Statements and Reports**

4 15. A committee is any person or combination of persons who, in a calendar year, receives
5 contributions totaling \$2,000 or more; makes independent expenditures totaling \$1,000 or more; or
6 makes contributions totaling \$10,000 or more to or at the behest of candidates or other committees.¹⁴

7 16. The Act defines an independent expenditure to mean, “an expenditure, made by any
8 person, including a payment of public moneys by a state or local government agency, in connection
9 with a communication which expressly advocates the election of defeat of a clearly identified candidate
10 or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in
11 context, unambiguously urges a particular result in an election but which is not made to or at the behest
12 of the affected candidate or committee.”¹⁵

13 17. When a state or local governmental agency uses public moneys for a communication
14 that (1) expressly advocates for or against a clearly identified candidate or ballot measure or (2)
15 unambiguously urges a particular result in an election, the Act identifies that payment as an
16 independent expenditure.¹⁶ The standard for determining if a communication by a public agency
17 qualifies as an independent expenditure is the same as the standard for the campaign related mailings
18 sent at public expense discussed above.¹⁷

19 18. If a state or local governmental agency distributes communications that qualify as
20 campaign expenditures and cost \$1,000 or more in a calendar year, it qualifies as an independent
21 expenditure committee.¹⁸ A committee must file a late independent expenditure report within 24 hours
22 of making an expenditure of \$1,000 or more during the 90 days prior to an election.¹⁹ The report must
23 include the committee’s name, committee’s address, number or letter of the measure, jurisdiction of the
24 measure, amount, date, and description of goods or services for which the late independent expenditure

25 ¹³ Fair Political Practices Commission, Minutes of Meeting, Public Session, Sept. 10, 2009, item no. 25, page 3.

26 ¹⁴ Section 82013.

27 ¹⁵ Section 82031.

28 ¹⁶ Regulation 18420.1, subd. (a).

¹⁷ See Regulations 184201.1 and 18901.1.

¹⁸ Regulation 18420, subd. (d).

¹⁹ Sections 84200.6, subd. (b), and 84204.

1 was made.²⁰ In addition to the 24-hour independent expenditure report, an independent expenditure
2 committee must also file a semi-annual campaign statement, which includes some of the information
3 reported on the 24-hour independent expenditure report and additional information which provides more
4 transparency.²¹ Requiring local government agencies to file campaign statements and reports furthers
5 the Act’s purpose in disclosing expenditures made in election campaigns so that voters are fully
6 informed and improper practices are inhibited.²²

7 **C. Advertisement Disclosures**

8 19. An advertisement includes any general or public communication that is authorized and
9 paid for by a committee for the purpose of supporting or opposing one or more ballot measures.²³

10 20. An advertisement that is paid for by an independent expenditure must include a
11 disclosure statement that identifies the name of the committee. “Paid for by” should immediately
12 precede the committee’s name.²⁴

13 21. The law requires that the disclosure area look a specific way, including the text
14 appearing in an Arial or equivalent type of at least 10-point font and being in a contrasting color and
15 printed or drawn on the bottom of at least one page that is set apart from any other printed matter.²⁵

16 **D. Individual Liability**

17 22. Any person who violates any provision of this title, who purposely or negligently causes
18 any other person to violate any provision of this title, or who aids and abets any other person in the
19 violation of any provision of this title, shall be liable under the provisions of this chapter. However, this
20 section shall apply only to persons who have filing or reporting obligations under this title, or who are
21 compensated for services involving the planning, organizing, or directing any activity regulated or
22 required by this title.²⁶

25 ²⁰ Section 84204.

26 ²¹ The reporting period for the semi-annual period for this expenditure would be July 1, 2018, through December 31,
2018. The semi-annual statement would be due on January 31, 2019.

27 ²² Section 81002, subd. (a).

28 ²³ Section 84501.

²⁴ Section 84502.

²⁵ Section 84504.2.

²⁶ Section 83116.5.

1 23. Section 89001 (the ban on public mailers that advocate for passage or defeat of a ballot
2 measure) does not limit who may be charged for violating its provisions. Thus, both an entity such as a
3 city, and an individual may be equally liable and charged.

4 24. In the history of the Commission, there have been at least eight instances of public
5 officials (elected and nonelected) also being named as respondents in cases involving violations of
6 Section 89001.²⁷

25.7 **E. Factors to be Considered by the Fair Political Practices Commission**

8 26. In framing a proposed order following a finding of a violation pursuant to Government
9 Code Section 83116, the Commission and the administrative law judge shall consider all the
10 surrounding circumstances including but not limited to the following factors set forth in Regulation
11 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused by the
12 specific violation; (2) The level of experience of the violator with the requirements of the Political
13 Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence
14 or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate,
15 negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the
16 Commission staff or any other governmental agency in a manner not constituting complete defense
17 under Government Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern
18 and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
19 (8) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide
20 full disclosure.²⁸

21 **GENERAL FACTS**

22 27. On July 18, 2018, and August 1, 2018, records maintained by the City Clerk indicate
23 that the Norco City Council voted to place Measure R on the November 6, 2018, General Election
24 ballot.

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26
27 ²⁷ A stipulation was approved by the Commission in October 2023, *In the Matter of City of Garden Grove, Scott Stiles*;
28 FPPC No. 18/1357, in which the city manager was charged individually. The Commission has directed the Enforcement
Division to consider public officials as named Respondents when the evidence warrants it.

²⁸ Regulation 18361.5, subdivision (e).

1 28. Measure R imposed a one-cent sales tax within the City, and voters approved it with
2 56.4 percent of the votes. In 2018, the City had a total population of 26,761.²⁹

3 29. The City sent a four-page full-color mailing to its residents by utilizing the United States
4 Postal Service. Measure R was the subject of this mailing. Included in the four-page mailing was a
5 personal letter (with a signature at its conclusion) from Norco's City Manager, Okoro, which
6 unambiguously urged support for local Measure R.

7 30. The letter started with "Dear Norco Resident" and the signature at the end stated that
8 Okoro was a CPA and the City Manager of Norco.

9 31. Records maintained by the City Clerk show that the City's previous mailings to
10 residents showed that this mailing regarding Measure R was not consistent in style with past
11 communications and departed from the City's normal style and tone of communication.

12 32. Previous mailings informed residents of City-sponsored events. They maintained a
13 neutral and informational tone. They did not include language urging the public to vote for or against a
14 particular candidate or ballot measure. The use of a colorful mailer regarding a ballot measure was a
15 marked departure from prior communications from the City or city officials.

16 33. The mailer had a non-neutral title and was entitled "Measure R – Lifestyle Protection and
17 Vital Services Measure". The mailing also contained inflammatory and argumentative language aimed
18 at influencing voters to support Measure R, including the following: "Norco's unique lifestyle deserves
19 to be preserved and protected;" "[d]ue to unfavorable actions by Sacramento politicians;" "the
20 community's way of life is in jeopardy;" "preserve its quality of life;" "maintain safe levels of sheriff
21 and fire protection without risking emergency response times;" "[a]s you make your decision on
22 Measure R, I urge you to consider these additional factors;" "facilities will continue to deteriorate, the
23 community will lose more programs and services, and there will be further reductions in public safety;"
24 "could experience a decline in their quality of life, as well as their property values;" "[a]dditional cuts
25 could negatively affect Norco's unique lifestyle;" "additional funding is needed to protect the Norco
26 lifestyle;" "[t]he State of California has crippled your City's finances;" "[t]his is a critical time for the
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²⁹ Per the Southern California Association of Government's 2018 Statistical Summary of the City.

1 community to gather and work together in order to keep Norco, ‘Norco,’ and preserve the Horsetown
2 USA lifestyle;” and “protect Norco’s unique lifestyle.”

3 34. Given the style, tenor, and timing of this mailing, it is apparent that it unambiguously
4 urged a vote in support of Measure R. The City did not convey any opposing arguments or factors that
5 voters could also use to make an educated decision on Measure R.

6 35. According to City records, on or about October 4, 2018, the City incurred \$4,196.86 in
7 total costs paid out of the City’s General Fund to print and distribute 9,314 copies (the registered voter
8 pool of the City) of this mailing that unambiguously urged for the passage of Measure R. The City
9 retained a printing and mail distribution company to handle these tasks.

10 36. Furthermore, the mailing failed to display a proper advertisement disclosure statement.
11 However, the mailing was clearly sent by the City, as it prominently showed the City’s seal, and the
12 page with Okoro’s letter identified Okoro as the city manager.

13 37. According to the City’s online records database, the expenditure was not reported on a
14 24-hour late independent expenditure report or a semi-annual campaign statement.

15 **PROCEDURAL HISTORY**

16 38. The Enforcement Division initiated an administrative action against the City and Okoro in
17 this matter by serving a packet containing a cover letter, a Report in Support of a Finding of Probable
18 Cause (“PC Report”), a fact sheet regarding probable cause proceedings, selected sections of the
19 Government Code regarding probable cause proceedings for the Commission, and selected regulations of
20 the Commission regarding probable cause proceedings.

21 39. The PC Report was served via email to counsel representing the City and Okoro, on or
22 around August 31, 2023. Counsel for the City and Okoro had previously agreed to accept service via
23 email. The information contained in the PC Report packet advised the City and Okoro that they had 21
24 days in which to request a probable cause conference, file a written response to the PC Report, or both.

25 40. On or around September 21, 2023, Counsel representing the City and Okoro requested a
26 hearing and requested records in possession of, and relied upon by, the Enforcement Division.

27 41. Counsel representing the City and Okoro was served with the Enforcement Division’s
28 response to Respondents’ Discovery Request on or around December 13, 2023.

1 42. The City and Okoro filed a Response to the Probable Cause Report on January 2, 2024.

2 43. Pursuant to Regulation 18361.4, subdivision (e), on January 16, 2024, the Enforcement
3 Division filed a Rebuttal to Response to Report in Support of a Finding of Probable Cause.

4 44. On February 29, 2024, the Fair Political Practices Commission conducted a probable cause
5 conference on the matter. Senior Commission Counsel Theresa Gilbertson appeared on behalf of the
6 Enforcement Division and Colin Burns appeared on behalf of the City and Okoro.

7 45. On March 5, 2024, the Hearing Officer issued an order finding, based on the PC Report,
8 that there was probable cause to believe the City and Okoro violated the Act and directed the Enforcement
9 Division to issue an Accusation against the City and Okoro in accordance with the finding.

10 **VIOLATIONS**

11 46. The City and Okoro committed four violations of the Act as follows:

12 **Count 1**

13 **Prohibited Campaign Related Mailing Sent at Public Expense (City and Okoro)**

14 47. Complainant incorporates paragraphs 1 – 46 of this Accusation, as though completely set
15 forth here.

16 48. The City and Okoro were prohibited from sending a campaign-related mass mailing at
17 public expense.

18 49. The City spent \$4,196.86 at public expense by sending 9,314 copies of a campaign-
19 related mass mailing to registered voters that unambiguously urged the passage of local tax Measure R.

20 50. By sending a campaign-related mailing at public expense, the City and Okoro violated
21 Section 89001 and Regulation 18901.1.

22 **Count 2**

23 **Count 2: Failure to Include Proper Disclosure on Campaign Advertisement (City)**

24 51. Complainant incorporates paragraphs 1 – 50 of this Accusation, as though completely set
25 forth here.

26 52. The City had a duty to include the proper advertising disclosures on a mass mailing sent
27 on or around September 4, 2018.
28

1 53. The City failed to include the proper advertising disclosures in a mass mailing sent on
2 September 4, 2018.

3 54. By failing to include the proper advertising disclosures on a mass mailing, the City
4 violated Sections 84502 and 84504.2.

5 **Count 3**

6 **Count 3: Failure to Timely File 24-Hour Independent Expenditure Report (City)**

7 55. Complainant incorporates paragraphs 1 – 54 of this Accusation, as though completely set
8 forth here.

9 56. The City had a duty to timely file a 24-hour independent expenditure report within 24
10 hours of making an independent expenditure of \$1,000 or more.

11 57. The City failed to timely file a 24-hour independent expenditure report for \$4,196.86
12 within 24 hours of making the independent expenditure.

13 58. By failing to timely file a 24-hour independent expenditure report, the City violated
14 Section 84204, subdivision (a).

15 **Count 4**

16 **Count 4: Failure to Timely File Semi-annual Campaign Statement (City)**

17 59. Complainant incorporates paragraphs 1 – 58 of this Accusation, as though completely set
18 forth here.

19 60. The City had a duty to timely file a semi-annual campaign statement for the reporting
20 period of July 1, 2018 through December 31, 2018 by the January 31, 2019 due date.

21 61. The City failed to timely file a semi-annual campaign statement for the reporting period
22 of July 1, 2018 through December 31, 2018 by the January 31, 2019 due date.

23 62. By failing to timely file the semi-annual campaign statement by the January 31, 2019
24 due date, the City violated Section 84200, subdivision (b).

25 **MITIGATING OR EXCULPATORY FACTORS**

26 63. Although the mailing was missing the proper advertising disclosures, it was clearly sent by
27 the City, as it prominently showed the City's seal, and the page with Okoro's letter identified Okoro as
28 the city manager so there was no confusion as to who the sender of the mailing was.

1 64. The City’s position on this matter is that the City considered the ruling in the *Vargas* case
2 and concluded that the messaging in the mailing at issue was within the boundaries of the law. The City
3 argues that the Commission has taken a stricter position on evaluating whether mailings and
4 advertisements from public entities crosses into political expenditures than the Supreme Court in 2009.
5 The City further argues that at the time of the violation, the Commission had little to no materials to guide
6 local jurisdictions on what constitutes language that “unambiguously urges” and that the same language
7 would likely not be utilized today under the Commission’s current guidance. The Enforcement Division
8 disagrees with Respondents’ interpretation of the relevant legal authority and disagrees that the alleged
9 violations were the result of confusion or a lack of guidance.

10 **AGGRAVATING FACTORS AND OTHER RELEVANT MATERIALS**

11 65. Although available, neither the City nor Okoro reached out to the Commission to seek
12 advice regarding the mass mailing before it was sent.

13 **PRAYER**

14 WHEREFORE, Complainant prays as follows:

- 15 1. That the Fair Political Practices Commission hold a hearing pursuant to Section 83116 and
16 Regulation 18361.5, and at such hearing find that the City and Okoro violated the Act as
17 alleged herein;
- 18 2. That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c),
19 order the City and Okoro to pay a monetary penalty of up to \$5,000 for the violation of the
20 Political Reform Act alleged in **Count 1**;
- 21 3. That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c),
22 order the City and Okoro to pay a monetary penalty of up to \$5,000 for the violation of the
23 Political Reform Act alleged in **Count 2**;
- 24 4. That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c),
25 order the City and Okoro to pay a monetary penalty of up to \$5,000 for the violation of the
26 Political Reform Act alleged in **Count 3**;

1 5. That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c),
2 order the City and Okoro to pay a monetary penalty of up to \$5,000 for the violation of the
3 Political Reform Act alleged in **Count 4**;

4 6. That the Fair Political Practices Commission, pursuant to Regulation 18361.5, subdivision
5 (e), consider the following factors in framing a proposed order following a finding of a
6 violation pursuant to Section 83116: (1) The extent and gravity of the public harm caused
7 by the specific violation; (2) The level of experience of the violator with the requirements
8 of the Political Reform Act; (3) Penalties previously imposed by the Commission in
9 comparable cases; (4) The presence or absence of any intention to conceal, deceive or
10 mislead; (5) Whether the violation was deliberate, negligent or inadvertent; (6) Whether the
11 violator demonstrated good faith by consulting the Commission staff or any other
12 governmental agency in a manner not constituting complete defense under Government
13 Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern and
14 whether the violator has a prior record of violations of the Political Reform Act or similar
15 laws; and (8) Whether the violator, upon learning of a reporting violation, voluntarily filed
16 amendments to provide full disclosure.

17 7. That the Fair Political Practices Commission grant such other and further relief as it deems
18 just and proper.

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20 Dated: June 24, 2024

James M. Lindsay

James M. Lindsay, Chief of Enforcement
Fair Political Practices Commission