

CLIENT NEWS BRIEF

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**COURT CLARIFIES WHAT IS PERMISSIBLE PUBLIC AGENCY
PARTICIPATION IN BALLOT MEASURE CAMPAIGNS**

In Vargas v. City of Salinas (2009) 46 Cal.4th 1 (“Vargas”), the California Supreme Court determined that the City of Salinas (“City”) did not engage in improper campaign activities where information about a local ballot initiative was disseminated via the City’s website and the City’s newsletter. Proponents of a local ballot initiative sued the City alleging improper government expenditures for communications concerning a local ballot initiative in violation of Government Code section 54965.

In general, a public agency may spend public funds for informational materials or informational activities pertaining to a ballot measure. A public agency is prohibited from expending public funds to engage in “campaign activities” or “campaign materials.” Previous court decisions have not provided an exhaustive list of what constitutes impermissible potential campaign materials or activities. However, the following campaign materials or activities, when paid for with public funds, have been identified as improper: bumper stickers, mass media advertisement, billboards, door-to-door canvassing, and the dissemination of campaign literature prepared by private proponents or opponents of a ballot measure.

The Vargas case grew out of a local tax-relief initiative called Measure O, which qualified for the November 2002 ballot in the City of Salinas. Had Measure O passed, it would have repealed the City’s long-standing utilities users tax. Under the direction of the City Manager, each of the municipal departments prepared detailed reports and financial analysis discussing the reduction or elimination of specific services or programs that could be implemented if Measure O passed. These reports were presented to the City Council, in several formats, including slide presentations. The reports and presentations were placed on the City’s web site after the City Council adopted the departments’ recommendations for prospective cuts. The City also informed residents of staff’s analysis of Measure O through articles in the City’s periodic newsletter to residents, and by means of a one-page summary of the anticipated service cuts. The newsletter was also posted on the City’s website.

The Vargas plaintiffs disagreed with the City’s analysis of the consequences of Measure O. The plaintiffs also contended that the City interfered with the electoral process, improperly used

public funds for “campaign materials” that were intended to influence voters against Measure O, and violated the plaintiffs’ rights to free expression.

The Supreme Court concluded that the City simply made its position and the proponents’ position on the ballot measure available to the public through the City’s web site. Furthermore, the reports, presentations, and newsletter prepared by the City provided factual information about the consequences of approving the ballot measure, but none of the materials instructed voters how they should vote. Finally, the style of the materials did not resemble traditional campaign materials. As a result, the court concluded the City’s actions were not unlawful. Although not specifically addressed in this case, the court’s analysis of Government Code section 54964 is equally applicable to Education Code section 7054, which governs the use of school district and community college district property and public funds in connection with a ballot measure or candidate for office.

If you have any questions regarding this case or materials in connection with a ballot measure, please contact any of our seven statewide offices.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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