CITY OF OAKLAND

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Oakland City Council

Re: Advisory on Case on Ballot Measure Campaigning, Vargas v. City of Salinas.

Dear President Brunner and the Members of the City Council:

Since there has been recent discussion of possible City proposed ballot measures either in June or November, this is an opportune time to inform the City Council of a recent California Supreme Court decision that discussed City campaigning on ballot measures.

In the spring of 2009, the California Supreme Court unanimously held that public agency expenditures in connection with a ballot measure may be unlawful even if they do not "expressly advocate" a position on the measure. The court went on to find certain City efforts valid and others invalid. Vargas v. City of Salinas, 46 Cal.4th 1 (2009). The holding in Vargas is consistent with the advice the Oakland City Attorney's Office has given in the past.

Prior to the issuance of Vargas, it was well established that public funds cannot be used to conduct campaigns for or against ballot measures.

Facts

In September 2001, residents of the City of Salinas ("Salinas") obtained the necessary signatures to qualify a tax-reduction measure for the ballot ("Measure O"). If passed by the voters, Measure O would have repealed the Salinas's Utility Users Tax ("UTT"), thereby eliminating 13 percent of general fund revenue.

One month before the election two supporters of Measure O filed suit against the City of Salinas and various Salinas officials, claiming that they had unlawfully spent public funds for campaign activities by preparing and disseminating website materials, pamphlets, and newsletters.

Activities that the Court Found to Be Valid

The Supreme Court found the following activities generally valid:

- Four months before election, identifying programs/services to be cut if measure passes.
- Posting complete, objective minutes and reports to City website four months before election.
- Producing and making available informational "flyer" through City Clerk and libraries four months before election.
- Including informational, non-partisan articles in regularly-published newsletter 30 days before election.

The Supreme Court considered the "style, tenor, and timing" to conclude that the actions did not constitute "campaigning" because:

> (1) information generally provided past and present facts, e.g. how original tax enacted, proportion of budget produced by tax, and how Council had voted to modify if measure passed;
> (2) communications avoided argument/ inflammatory rhetoric, did not urge vote in particular manner or support or oppose measure; and
> (3) information provided and manner in which information was presented was consistent with established practice regarding use of Web site and regular circulation of newsletter.

Activities the Court Found to Be Invalid

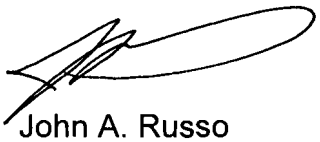
The Supreme Court found the following generally invalid:

- Posting large billboards prior to election saying "IF MEASURE IS APPROVED, SIX RECREATIONAL CENTERS, THE MUNICPAL POOL, AND TWO LIBRARIES WILL CLOSE.
- Distributing privately-produced campaign literature. (51 Ops.Cal.Atty.Gen. 190 (1968).)
- Mailings shortly before election: "unquestionably" can constitute campaign activity that may not be paid for by public funds.

Conclusion

We are happy to discuss and advise you on activities related to any future ballot measures to assure compliance with the Vargas decision.

Very truly yours,



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Cc: Mayor Dellums
City Administrator Lindheim