

SDCTA's Guidelines of Inappropriate Use of Public Funds for Advocacy

The California Supreme Court ruled in *Vargas v. City of Salinas* that, “the determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the style, tenor and timing of the publication”. Recognizing that interpretation of “style and tenor” of communication is subjective, SDCTA will continue to monitor communication materials issued by government agencies leading up to elections. Details on SDCTA’s interpretation of *Vargas* can be found in the appendix. The following examples serve as a non-comprehensive guide for what SDCTA considers inappropriate use of public funds for advocacy for or against a ballot measure:

1. The use of public funds to purchase bumper stickers, posters, advertising ‘floats,’ or television and radio “spots”.
2. The use of public funds to purchase any type of automotive wrap (e.g. bus wrap, car wrap, trolley wrap).
3. The use of public funds to make campaign calls or automated "robo" calls.
4. The use of public funds to create and maintain any social media website or other modern tech tools, e.g. Twitter, Facebook, etc.
5. The use of public funds for direct mail, media buys, and contracted services as a part of coordinated campaign during a period coinciding with upcoming elections.
6. The use of public funds for direct mail "surveys" that also make a case for increased revenue prior to public entity voting to placing the measure on the ballot.
7. The use of public funds for "push" polls that are intended to change the opinion of the voter.
8. The use of public funds for advertising on print and electronic media.

These guidelines do not preclude elected officials from expressing their opinions and advocating for or against a particular outcome or policy.

APPENDIX

Glossary of Terms

Bumper stickers: an adhesive label or sticker with a message intended to be attached to the bumper of an motor vehicles and to be read by the occupants of other vehicles.

Advertising float: a decorated exhibit or scene mounted on a mobile platform and pulled or driven in an effort to publicly relay a message.

Advertising spot: the practice of advertising via the mediums of radio, television or the internet in which airtime is purchased from a station or network in exchange for airing the commercials.

Robo call: an automated telemarketing phone call that uses both a computerized auto-dialer and a computer-delivered recorded message.

Automotive wrap: the practice of covering (wrapping) a vehicle in an advertisement, thus turning it into a mobile billboard.

Push poll: a political campaign technique in which an individual or organization attempts to influence or alter the view of respondents under the guise of conducting a poll.

Media buy: The buying of advertising space from a company operating media properties.

Social media: internet sites based on user participation and user-generated content.

SDCTA Interpretation of California Supreme Court Ruling of Vargas v. City of Salinas

Although the Court of Appeal judgment of Vargas v. City of Salinas was affirmed by the Supreme Court of California, they also concluded that the Court of Appeal applied an incorrect standard in evaluating the validity of the City's conduct.

(From section III.B.19 of the decision) The Supreme Court concludes that the campaign activity/informational material dichotomy set forth in *Stanson v. Mott* remains the appropriate standard for distinguishing the type of activities that presumptively may not be paid for by public funds, from those activities that presumptively may be financed from public funds. The Court of Appeal erred in relying solely upon the circumstance that the challenged communications of the City did not **expressly advocate** the approval or rejection of Measure O, and in failing to evaluate the City's activities under the *Stanson* standard (emphasis added).

This is critical because *Stanson* explicitly identified a number of materials and activities that unquestionably constitute campaign activities (without any need to consider their "style, tenor, and timing") – for example, the use of public funds to purchase bumper stickers, posters, advertising 'floats,' or television and radio "spots" – and also identified a number of activities that are clearly informational – for example, providing a fair presentation of facts in response to a citizen's request for information. The circumstance that *in some instances* it may be necessary to consider the style, tenor, and timing of a communication or activity to determine whether, from an objective standpoint, the communication or activity realistically constitutes *campaign* activity rather than *informational* material, does not render the distinction between campaign and informational activities impermissibly vague.

The decisions further states: "Whatever virtue the 'express advocacy' standard might have in the context of the regulation of campaign contributions to and expenditures by candidates for public office, this standard does not meaningfully address the potential constitutional problems arising from the use of *public funds* for *campaign activities* that we identified in *Stanson*. If a public entity could expend public funds for *any* type of election-related communication so long as the communication avoided 'express words of advocacy' and did not 'unambiguously urge a particular result', the public entity easily could overwhelm the voters by using the public treasury to finance bumper stickers, posters, television and radio advertisements, and other campaign material containing messages that,

while eschewing the use of express advocacy, nonetheless as a realistic matter effectively promote one side of an election. Thus, for example, if the City of Salinas, instead of taking the actions that are at issue in this case, had posted large billboards throughout the City prior to the election stating, ‘IF MEASURE O IS APPROVED, SIX RECREATION CENTERS, THE MUNICIPAL POOL, AND TWO LIBRARIES WILL CLOSE,’ **it would defy common sense** to suggest that the City had not engaged in campaign activity, even though such advertisements would not have violated the express advocacy standard,” (emphasis added).

In addition, the ruling cites an out-of-state decision as a concrete illustration of why the express advocacy standard is inadequate to restrain government’s improper use of public funds for campaign activities. In the example, the plaintiff challenged the defendant town council’s appropriation of \$200,000 in public funds for a proposed campaign “to better inform citizens about growth management issues” by promoting the merits of “smart growth” or “managed growth” policies. The appropriated funds were to be spent for “direct mail, media buys, and contracted services” as a part of “a coordinated print, radio and television campaign” to during a period coinciding with upcoming elections. Taking into account the nature and timing of the proposed expenditures, the court concluded that the advertisements appear to be **more than informational** in nature and prohibited the council from using public funds in that manner (emphasis added).

Recognizing that interpretation of “style and tenor” of communication is subjective, SDTCA will continue to watchdog communication materials issued by government agencies leading up to elections to provide our opinion on this matter on behalf of taxpayers.