



PRESS RELEASE

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SUBJECT: Salinas Wins in Court of Appeal

The California Court of Appeal for the Sixth Appellate District has unanimously affirmed the award of attorney fees and costs in the amount of \$229,423 to the City of Salinas in a long-standing litigation with plaintiffs, Angelina Morfin Vargas and Mark Dierolf, over a 2002 ballot measure to repeal City utility taxes.

In earlier litigation, Vargas and Dierolf unsuccessfully claimed that in 2002 the City had misused public funds in connection with Measure O. Plaintiffs were supporters of Measure O. Prior to the election, the City issued an authorized report, published a informational handout and published several articles in a City newsletter describing the fiscal impact upon municipal services if the measure were passed. Plaintiffs sued the City and alleged that the publications were illegal campaign materials and represented a misuse of public funds. The City contended that the materials were protected under the Constitution, informational, disseminated through appropriate forms of communication with the citizens and were properly produced to provide factual information on an important public issue. As a result, the superior court dismissed Plaintiffs case at an early stage in the litigation because it did not have even a minimal basis in law to proceed. In an early round of appeals by the Plaintiffs, the California Supreme Court in the *Vargas I* decision ruled in favor of the City of Salinas.

After the case was returned to the local court, the City was awarded its attorney's fees and costs. The Plaintiffs argued the City was not entitled to its fees and moreover they were entitled to their attorney's fees as the law was interpreted in their favor.

The recent Court of Appeal decision once again vindicated the City's position and ruled that plaintiffs "obtained no relief and their lawsuit had no merit." The superior court, the appellate court, and the California Supreme Court all agreed that the publication of the challenged material

and providing information to the public by the City “was not a misuse of public funds.” The Court of Appeal affirmed the refusal to award fees to Plaintiffs under a fee-shifting statute that allows the award of fees to a successful party that has enforced an important right affecting the public interest. Such an award was unwarranted in this case where Plaintiffs had no success and presented a meritless lawsuit.

The award of attorney fees to the City under a specific statute, the anti-SLAPP law, was ruled proper, however. The anti-SLAPP law was enacted to expedite the dismissal of “strategic lawsuits against public participation” (SLAPP) -- lawsuits that arise from protected speech in connection with a public issue and that lack even minimal merit. Under a provision of the law, the award of fees to a defendant, such as the City here, prevailing on such a motion to strike is mandatory.

The Court of Appeal reaffirmed the conclusions of *Vargas I* that the anti-SLAPP law extends to statements and writings of governmental entities and public officials on matters of public interest and concern. The Court rejected Plaintiffs’ contention that the award of fees to a public entity defendant under the anti-SLAPP law chills the constitutional right of petition because such fees can only be awarded in a narrow set of circumstances – namely, where a plaintiff has no probability of prevailing on the merits. The Court of Appeal specifically recognized the taxpayers “substantial interest in avoiding unnecessary drains upon the public fisc occasioned by meritless lawsuits” as well as the government’s “right to express itself on issues important to the public.” In the court’s view “government certainly has the freedom to speak” and the First Amendment does not protect baseless litigation. The communications by the City of Salinas were previously found in *Vargas I* to be constitutionally proper, fair and informational, serving to educate and inform the community.

The trial court decision awarding attorney fees was rendered by Monterey County Superior Court Judge Susan Dauphine. The City was represented by the Law Offices of Joel Franklin.

“I am delighted with this well-reasoned gem of a decision,” City Attorney Vanessa Vallarta stated. “Government has an important duty to educate in a fair and impartial manner on matters of concern to the public,” Vallarta stated. “If a lawsuit has no merit, then a public entity should be entitled to recover its fees as provided in the anti-SLAPP statute.”

Appellate counsel Joel Franklin noted, “What Salinas did in this case was constitutionally proper and an important contribution to informing the citizenry in the ‘marketplace of ideas,’ so that voters can have all the necessary information to make intelligent election decisions.” Where parties “refuse to follow the law or fail to make even a prima facie showing when they bring this type of law suit, the Court of Appeal properly has held they can be accountable,” Franklin stated.