

Sasha Linker

From: Jason Bezis <[REDACTED]>
Sent: Wednesday, December 19, 2018 11:19 AM
To: CommAsst
Subject: Public Comment Concerning FPPC No. 16/19959 (Dec. 20, 2018 Hearing, Agenda Item No. 3)

Follow Up Flag: Flag for follow up
Flag Status: Flagged

To the Fair Political Practices Commissioners:

Appended below is an editorial that appeared in the December 12, 2018 print editions of the *San Jose Mercury News* and *East Bay Times*, two of the three largest daily newspapers in the San Francisco Bay Area. It concerns the draft stipulation, decision and order for FPPC No. 16/19959 (In the matter of BART), to be considered at your December 20th meeting (agenda item no. 3).

I am submitting this editorial for your consideration and for the record. I will be submitting my own comments concerning FPPC No. 16/19959 Wednesday afternoon.

Sincerely,
JASON A. BEZIS
Complainant for FPPC No. 16/19959
State Bar No. 225641
Lafayette, Calif.

San Jose Mercury News & East Bay Times, Wednesday, December 12, 2018 editions, p. A10.

Editorial: BART's \$7,500 fine for publicly funding campaign a joke

Abusive use of tax money will continue until FPPC, district attorneys and state attorney general crack down

By [Mercury News & East Bay Times Editorial Boards](#) |

PUBLISHED: December 12, 2018 at 5:10 am | UPDATED: December 17, 2018 at 9:43 am

A proposed [\\$7,500 fine](#) against BART for its taxpayer-funded campaign supporting a \$3.5 billion bond measure is a joke.

The [penalty recommended](#) by the staff of the state Fair Political Practices Commission would be merely a rounding error compared to the bounty the transit district will collect from Measure RR, the property-tax increase voters approved two years ago. For BART, the fine is simply a cost of doing business. Indeed, in local government agencies across California, use of public funds for political campaigns have become the norm.

It's illegal. But the abuse will continue until the FPPC, district attorneys across the state, including Alameda County's Nancy O'Malley in this case, and Attorney General Xavier Becerra start cracking down. It must be stopped. Elected officials must be held accountable.

BART's hardly alone. For example, the [East Bay Regional Park District](#) this year launched a political campaign for its property tax extension. [Los Angeles County](#) in 2017 ran television ads appearing to back a quarter-cent sales tax increase to help the homeless. And [El Cerrito](#) officials in 2014 conducted a publicly funded campaign to double the city's sales tax.

No matter what the causes' merits are, public money should be used to deliver services, not campaign for tax increases. The law and the courts have been clear on that point. Local agencies may provide information about ballot measures, but they may not become advocates.

Local officials seem to think that as long as they don't say "vote 'yes' " that they haven't crossed the legal threshold. "We were diligent to keep all material educational, never suggesting how people should vote," BART spokeswoman Alicia Trost said after the fine was announced.

They still don't get it. The [style, tenor and timing](#) of the communication is another critical determinative of whether it crosses a legal line. So when BART produced videos in the middle of the campaign with what the FPPC called "inflammatory and argumentative statements," the transit agency crossed the line.

"We need to spend more dollars to get it (BART) into a more modern condition," said a rider in [one of the videos](#) produced at public expense. "It's time to rebuild," BART championed in [the other](#).

This wasn't merely information; this was pure political advocacy, which permeated the material BART offered throughout the campaign. As [we said at the time](#), they [lied to voters](#) about the cost of the bond measure and conducted what we called a "legally questionable taxpayer-funded campaign." It turns out we were right. But sadly, there have been no meaningful consequences.

The fault lies partially with the FPPC, which usually issues trivial fines. The commission on Dec. 20 will consider the recommended BART penalty. But in fairness, the commission's jurisdiction is usually limited to penalties for reporting violations — in this case, BART's failure to disclose the political expenditures.

The much more serious transgression, the use of public money for political purposes, is usually criminal — and falls under the jurisdiction of district attorneys and the state attorney general. Until they take this seriously, the abuse will continue.