

Miyo Prassas
1753 Valley Park Ave.
Hermosa Beach, CA 90254

August 17, 2020

By email to:

tstock@fppc.ca.gov

Intake Manager, Enforcement Division, Tara L. Stock

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Fair Political Practices Commission

1102 Q Street, Suite 3000

Sacramento, CA 95811

Re: Complaint No. COM-05192020-00965, Escalante, Committee to Improve Hermosa Schools- Yes on S, Hermosa Beach City School District

Dear Ms. Stock:

This letter is written in response to the letter sent by Mr. Terry Tao of Tao/Rossini APC on June 12, 2020 regarding Complaint No. COM-05192020-00965 and to the FPPC decision to not pursue an enforcement of this complaint.

In his response to the FPPC, Mr. Tao, a seasoned attorney, purposely confuses and ignores the evidence in my complaint. It is distressful to think that the FPPC may have used Mr. Tao's letter as reason to abandon an investigation or prosecution levied by my complaint. Using the common tropes that my complaint is "groundless" and that it is "frivolous and politically motivated", Mr. Tao tries to cover up for the Hermosa Beach City School District, HBCSD Superintendent Pat Escalante and the Yes on S Committee by using important sounding, yet minor and unsupported arguments in his attempt to discredit my complaint.

Mr Tao is also a subject of Complaint No. COM-05182020-00960. He was paid approximately \$11,000 of taxpayer and school district funds, intended to educate children, by the Hermosa Beach City School District in order to give a one-hour presentation one week before the \$59M bond election. Mr. Tao's presentation violated Education Code section 7054(2). His presentation was purposely NOT a fair and impartial presentation of

facts as evidenced by the 42.75 hours of preparation billed to the district for his curated misinformation.

The first component of Mr. Tao's letter "1. Campaign Contributions Causing Conflicts of Interest (84308)" argues that "TPRC was hired for the purpose of disseminating information, not campaigning." He also claims that HBCSD did not violate Education Code section 7054(2) by hiring TPRC Communications because "there is nothing in the agreement with TPRC to indicate that the district was providing anything other than a fair and impartial presentation of the facts about the bond, as permitted by section 7054(2)."

Both statements are proven incorrect by the evidence. First, Mr. Zaleski's email to Superintendent Pat Escalante after the district lost a November 2014 \$54M facilities bond vote (Exhibit #5). In that email it is obvious that Mr. Zaleski's intention was to win the vote for the district and he argued that his services would greatly help the district with winning their next bond.

Second, the fact that HBCSD intentionally hired Mr. Zaleski without, apparently, interviewing or receiving proposals from other possible candidates for the job alludes to the fact that the district was not interested in hiring an unbiased consultant. Superintendent Escalante was no doubt aware that Mr. Zaleski had a kindergartener enrolled at HBCSD in 2016 and that he would be motivated by his belief that his child would directly benefit from passage of a bond that would build the district's desired brand-new campus for 510 3rd and 4th graders. Unfortunately for Mr. Zaleski, 4 years later, there is still no new campus for his daughter – but there *are* 10% less students enrolled in the district while taxpayers continue to pay for a brand-new, unneeded, 510 student campus.

The district's specifically hiring TPRC Communications points to their belief that TPRC Communications would be more motivated than other communication firms to bend the rules for the district in order to win passage of the bond. This fact challenges Mr. Tao's argument that "Nor is there any evidence of a connection between TRPC (Tao gets the name wrong in most of his letter – the correct name is TPRC.) and the Yes on S Committee." Without an investigation by the FPPC, there is no way to prove Mr. Tao's statement.

Third, the fact TPRC was originally only hired for the exact duration of the campaign and that his work was to *target* certain groups (Exhibit #1) also indicates that the district originally hired Mr. Zaleski solely to help pass their bond. Why didn't the district hire a communications firm years before the bond election?

Lastly, the egregious amounts of incorrect, misleading, and *biased* information contained in the Facebook posts (Exhibit #4 with detailed examination of each post discussed below) and on the district's website (See Complaint information regarding egregious misinformation, misleading information and omissions of the HBCSD website prior to the

bond vote.) is evidence that HBCSD had no intention of disseminating impartial information about Measure S using TPRC services.

The district repaid Mr. Zaleski's efforts to pass Measure S by continuing to renew his contract at taxpayer expense directly after their bond won. The district even says so much in their board meeting written recommendation (Exhibit #3). As late as May 2018, two years after the bond vote, HBCSD is still praising Mr. Zaleski's efforts to pass Measure S. Their board recommendation to renew TPRC Communications's contract states that "Since March 2016 [the start of the Yes on S campaign] TPRC Communications has successfully implemented a communications plan that focused on social media, website, newsletters, press releases and communication systems to disseminate [highly biased] information about the district and specifically facilities bond Measure S."

How did the district determine that Mr. Zaleski's work was *SUCCESSFUL*? Because he helped pass their desired bond. If Mr. Zaleski's work for the district was not about passing their bond, then why all this talk about what a great job he did to pass the bond? Why would anything he did need to be targeted and focused if he was just disseminating impartial, run-of-the-mill information to no one in particular?

The May 2018 board recommendation to continue TPRC's contract also states that TPRC duties included *focused* work not only social media (Facebook and Twitter) but also the district's website, newsletter and press releases. Therefore Mr. Tao addressing only the district's FB pages that were directed by TPRC is incomplete as to the full extent of TPRC's duties at taxpayer expense.

Next Mr. Tao argues that since Facebook is free, HBCSD did not expend taxpayer funds and thus did not violate the provisions of Education Code section 7054(2). However, the district's hiring of TPRC Communications at taxpayer expense to oversee the district's Facebook page, twitter accounts and website DID involve the use of district funds and services. Therefore, the information that TPRC distributed on behalf of the district according to Education Code section 7054(2) was *required* to be fair and impartial. By extension, if a district printer was donated and therefore "free", it does NOT mean that copying and distributing biased and untruthful information using that printer prior to a bond vote is acceptable – or the time and cost of the district's employee (or contractor) who used the "free" printer to make copies of misinformation was a legal use of taxpayer funds.

The FB pages that were posted were NOT fair and impartial information. See Exhibit #4 in Complaint #COM-05192020-00965 for the following examples of misinformation spread through HBCSD Facebook posts.

Example #1: HBCSD FB post from April 12 discusses what "*could*" be improved if Meas. S were to pass.

The district could have written a never-ending list of what *COULD* be improved – not that it *WOULD* necessarily be improved. The post has a link to the district’s website which was full of incorrect and misleading information. (Please see my complaint regarding Illegal use of a taxpayer paid website in order to benefit the Yes on S Committee.)

Example #2: HBCSD FB post from May 18 claims that the “*Measure S truth*” is a potential boost in home values. This post was unabashedly biased and is highly debatable.

Example #3: HBCSD FB post from June 3 claims that HBCSD has the smallest amount of funding per pupil when compared to all neighboring cities in the South Bay. This is a patently false statement.

The CDE uses the same funding rates <https://www.cde.ca.gov/fg/aa/pa/pa1516rates.asp> to fund all school districts in California. This funding system became effective in 2013. The basic funding rate for each student is based on grade level. School districts get additional funds for at risk students. HBCSD gets the same amount of funding per student per grade level as do other school districts in the South Bay and California with similar demographics.

Example #4: HBCSD FB post from May 5 claims that there are 18 portable classrooms in use at Valley and View [schools].

Three portable classrooms at Valley School and nine portable classrooms at View School were recent additions (since 2014) because HBCSD refused to use the 15 permanent classrooms either at the grandfathered-in seismically safe North School or the 15 permanent classrooms at the contractually available seismically safe Pier Avenue School to house students. HBCSD created artificially overcrowded conditions at Valley and View schools by not using all available existing permanent classrooms and campuses within the district. Instead, for three years prior to the bond vote, while holding out for a brand-new campus, the district purchased portable classrooms to install on already severely overcrowd campuses while lying to parents about the true facility facts.

An example of artificially overcrowding the K-2nd grade campus at View School happened in February 2015 after the district lost a November 2014 facilities bond and prior to the June 2016 Measure S bond vote. HBCSD School Board members voted to move SIX classrooms of third grade students from Valley School (previously the 3rd through 8th grade campus) to View School (previously a Kindergarten through 2nd grade campus) which necessitated purchasing three more portable classrooms to install at View School prior to the 2016 bond vote. The original six permanent third grade classrooms at Valley were no longer used for third grade students and were left unused or underused by the district. School board member’s excuse for this move was based on misinformation that can be further detailed to the FPPC if desired.

Example #5: HBCSD FB Post from June 1 and June 2 asks voters to visit www.voteMeasureS.com for the “facts” about the “comprehensive plan to address our *underfunded* schools.” We have already established that HBCSD schools are NOT underfunded compared to other local school districts (see FB Example #4). In fact, HBCSD also has a vibrant and active Education Foundation, that many other school districts don’t have, which contributes hundreds of thousands of additional funds for Hermosa students each year.

Was the website that readers were directed to, www.voteMeasureS.com, paid for by HBCSD using taxpayer money or was it a biased website produced by the Yes on S Committee which was controlled by the husbands of two current school board members? The FB post *did not* recommend that voters visit the District’s website for bond information which would have been more likely.

The June 2nd post also asks voters to get all the details at www.VOTEmeasureS.com - unnecessarily capitalizing the word VOTE in the web address as in VOTE [FOR] measure S.

The second component of Mr. Tao’s letter “2. Campaign Contributions Causing Conflicts of Interest” argues that “it is unclear ... whether Ms. Prassas is accusing the District or the Yes on S Committee of failing to report [the district’s expenditures of between \$8,000 to \$25,000 on TPRC as a campaign expenditure on behalf of the Yes on S Committee].” He further argues that “Cal. Code Regs., tit 14 Section 18420(a) does not require that state or local government agencies report their own contributions, so while the Yes on S Committee could theoretically be in violation of the Cal. Code Regs., tit. 14, Section 18420, the District cannot be.”

According to information published by Orrick: Campaign Finance and Political Conduct Rules for California School District and Community College District Bond and Tax Elections (Campaign Finance Reporting Requirements, page 4.):

*“Any person or entity that directly or indirectly receives contributions or makes expenditures of \$1,000 per year to or for a ballot measure campaign committee, or that makes contributions amounting to \$10,000 or more per year to such a committee (Please also see complaint #COM-05182020-00960 for District contributions to the Yes on S Campaign of more than \$10,000.) , must comply with reporting requirements of the Political Reform Act. **The Act makes no exception for public agencies.**”*

“Contributions” include:

- “Compensation paid to a person for services rendered to a committee, even if the compensation is paid by a third party. For example, if a campaign consultant performs services on behalf of

the Citizen's Committee for Measure A, and is paid by the District for all or part of the services, the fee is a contribution."

- *"Payment of a public employee's salary for time spent working on behalf of a committee."*
- *"Payment of an employee's ordinary salary when the employee spends more than 10% of his or her compensated time in any month rendering services for political purposes at the direction of the employer, or is otherwise relieved of ordinary duties to be able to contribute time." (Please also see contributions identified in complaints #COM-05182020-00961 and #COM-05192020-00965.)*

According to FPPC advice Chapter 1: Are You a Committee? **HBCSD would qualify as a Major Donor Committee since it made in behest expenditures to the Yes on S Committee totaling \$10,000 or more in a calendar year.** (See complaints #COM-05182020-00960, #COM-05182020-00961 and #COM-05192020-00965.)

Mr. Tao's then reiterates his statement that "TPRC was hired for the purpose of disseminating information, not campaigning". However, the actual facts and evidence leads to the opposite conclusion. TPRC was indirectly campaigning for the Yes on S Committee by disseminating misleading information and misinformation through Facebook posts and the district's website. Without a thorough investigation by the FPPC, it is unclear who exactly was responsible for the idea for each biased post and the wording of each biased statement posted on FB by HBCSD through TPRC during the bond campaign.

Mr. Tao's statement that "In none of the contractual documents Ms. Prassas has adduced is there any evidence of campaign activity on the part of TPRC" was also refuted by the facts above. Although the campaign activity was indirect, it still had the effect of compelling voters to specifically vote for the \$59M bond which was obviously TPRC and the district's intent.

Terry Tao's statement that "The second part of the complaint provides no basis for further FPPC investigation" was obviously made in hopes that making the statement would dissuade the FPPC from investigating HBCSD illegal actions.

The third component of Mr. Tao's letter "3. Conflicts of Interest" argues that "The passage of the Bond was a vote of the people in Hermosa Beach, not a "government decision" and "That in no way was Ms. Escalante's remuneration tied to the Bond passage" which Mr. Tao claims can be "conclusively proven".

First of all, the fair and impartial "vote of the people" was tampered with by HBCSD contributing copious amounts of misinformation and misleading information to voters at taxpayer expense prior to the bond vote by way of TPRC Communications Facebook posts and Twitter posts, newsletters, etc. and the district's website, Terry Tao's May 31st presentation and HBCSD Superintendent Pat Escalante's May 25th 2016 "Measure S Informational" presentation. In addition, Superintendent Escalante was in constant communication with the Yes on S committee chairman and treasurer directly and through

their wives who were school board members. There are emails that prove seamless communication between the Yes on S Committee Chairman, Michael Collins, the Yes on S paid political consultant Larry Fox, Jon Isom and Isom staff paid for by taxpayers, and Superintendent Escalante to coordinate ongoing campaign efforts.

Mr. Tao states “That in no way was Ms. Escalante’s remuneration tied to the Bond passage” which he claims can be “conclusively proven” by her 2015 employment agreement which she entered into with the HBCSD.

According to Mr. Tao, that agreement states that she was to serve as the District’s superintendent until June 2019 CONTINGENT upon receipt of a satisfactory evaluation from the Hermosa Beach School District Board of Education. Her agreement also entitled her to an annual step-up salary increase that was CONTINGENT upon receipt of a satisfactory evaluation. Mr. Tao also states that the Board was given discretion to increase the salary schedule by an amount equal to the uniform salary schedule increase received by other District certified management employees again, CONTINGENT upon Pat Escalante performance. Since the most important event to school board members was to pass the \$59M bond to completely rebuild a current grandfathered-in campus, rather than renovating it or using classrooms at Pier Avenue School, obviously Pat Escalante making that a reality by whatever means necessary would land her a positive evaluation by the HBCSD Board of Education.

Therefore, contrary to Mr. Tao’s opinion that there is “conclusive proof” that Ms. Escalante’s remuneration WAS NOT tied to the Bond passage, I would say that Ms. Escalante’s contract was indeed proof that she would be paid according to whether or not she could successfully pass the district’s desired facilities bond. If the Bond had failed, it would have been the second try in two and one-half years, with the first bond under Ms. Escalante’s direction offered in November 2014 failing to win the vote of Hermosa citizens. The failure of Measure S would have been a huge, expensive embarrassment for the district.

If Measure S had failed to pass because Ms. Escalante’s efforts were not sufficient to pass it, as her efforts were in November 2014, School Board members would have likely given her an unsatisfactory evaluation, thus denying any step-up increase in salary.

There is nothing in Ms. Escalante’s contract that prevented the District from firing Ms. Escalante contingent upon an unsatisfactory evaluation. If Ms. Escalante had been fired from HBCSD her prospects for future employment at her current salary level at another school district would have been highly unlikely. That is because of Ms. Escalante’s previous disappointing work history of being reassigned after only five years as principal at El Rodeo Elementary School and then let go after serving only one year as director of the Adult Education at Beverly Hills Unified School District. (See Exhibit 22 of Complaint #COM—05192020-00965 - Conflict of Interest by HBCSD Superintendent Pat Escalante.)

Compounded with the prospect of being let go after only three years as Superintendent at HBCSD in 2016, Ms. Escalante's work history along with her advanced age would have probably negatively affect any future job prospects.

Conversely if Ms. Escalante was instrumental in passing Measure S for HBCSD, she had the prospect of large increases in salary with retirement in June 2020 at a very high compensation level and thus a high lifetime retirement pension.

Ms. Escalante's ultimately high compensation level at HBCSD belied her previous inadequate work history, lack of superintendent experience, lack of a PhD and lack of real administration responsibility due to the small size of HBCSD (approximately only 1,300 Kindergarten through 8th grade students in two working schools).

Conclusion

Mr. Terry Tao's response to the FPPC regarding my complaint is unconvincing and does not come close to exonerating HBCSD Superintendent Escalante, the Committee to Improve Hermosa Schools – Yes on S, and the Hermosa Beach City School District.

I hope that the FPPC will reconsider Mr. Tao's letter and protect fair and impartial bond elections on behalf of trusting taxpayers. The Hermosa Beach School District's trusted position in our community makes it more concerning that they were so willing and able to flout the laws for unsuspecting voters. I humbly request that the FPPC please reassess their decision not pursue an investigation or enforcement of my sworn complaints: COM-05182020-00960; COM-05182020-00961, and COM-05192020-00965.

I would be happy to answer any other questions that you might have if you decide to continue investigating my complaints.

Sincerely,



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June 12, 2020

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Intake Manager, Enforcement Division Tara L. Stock

Fair Political Practices Commission

1102 Q Street, Suite 3000

Sacramento, California 95811

Re: Complaint No. COM- 05192020-00965; Escalante, Committee to Improve Hermosa Schools - Yes on S, Hermosa Beach City School District

Dear Ms. Stock:

This letter is written to address Ms. Miyo Prassas' sworn complaint against Hermosa Beach City School District ("District"), the Yes on S Committee ("Committee"), and Pat Escalante regarding the passage of the District's Measure S Facilities Bond ("Bond") in 2016. The complaint alleges violations of Government Code sections 84308 and 871000, Education Code section 7054, and Cal. Code Regs., tit. 14, § 18420. The complaint has three components, each of which will be addressed in turn. All are groundless.

1. Campaign Contributions Causing Conflicts of Interests (84308)

The first component of the complaint alleges a violation of Government Code section 84308, which regulates the campaign contributions of parties to a proceeding to government decision-makers in that proceeding. But the factual allegations of this part of the complaint do not actually relate to Government Code section 84308. Instead, Ms. Prassas alleges that the District expended taxpayer resources to promote the passage of the Bond. Specifically, she alleges the District's website failed to present information impartially, as required by Education Code section 7054(2), and in this manner contributed to the Committee.

Education Code section 7054(2) requires that when school districts use funds, services, supplies, or equipment to "provide information to the public about the possible effects of any bond issue," the information provided must constitute "a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue..."

As evidence to support her claim that the District violated this statute, Ms. Prassas adduced screenshots of the District's Facebook page, in which the District highlighted some of the benefits of a yes vote. She also provided a copy of an agreement with a consultant, TRPC Communications ("TRPC"), in which TRPC contracted to disseminate information about the Bond via "social media, a website, an e-newsletter, and community/media relations."

Posting information on a Facebook page does not involve the use of "funds, services, supplies, or equipment." Thus, the District's Facebook posts did not constitute a violation of Education Code section 7054(2). The District did expend funds to hire TRPC, but there is nothing in the agreement with TRPC to indicate that the District was providing anything other than a fair, impartial presentation of the facts about the bond, as permitted by section 7054(2). Nor is there any evidence of a connection between TRPC and the Yes and S Committee.

The first component of the complaint provides no basis for an FPPC investigation.

2. Campaign Contributions Causing Conflict of Interest

The second component of the complaint also claims a violation of Government Code section 84308, which, to reiterate, regulates the campaign contributions of parties to a proceeding to government decision-makers in that proceeding. But, as with the first component of the complaint, the allegations in the second part of the complaint do not relate to Government Code section 84308. Instead, Ms. Prassas alleges a failure to report the District's expenditure of between \$8,000 and \$25,000 on TRPC as a campaign expenditure on behalf of the Yes on S Committee, and claims this is a violation of Cal. Code Regs., tit. 14, § 18420. It is unclear from the language of the complaint whether Ms. Prassas is accusing the District or the Yes on S Committee of failing to report.

Cal. Code Regs., tit. 14, § 18420(a) requires candidates or committees that receive contributions from state or local government agencies to report receipt of the contributions. The regulation does not require that state or local government agencies report their own contributions, so while the Yes on S Committee could theoretically be in violation of the Cal. Code Regs., tit. 14, § 18420, the District cannot be. In any event, Cal. Code Regs., tit. 14, § 18420(b) provides that "The payment by a state or local government agency of the salary or expenses of its employees or agents is an expenditure or contribution only if the salary or expenses are for campaign activities and meet the requirements of Regulation 18423." As established above, TPRC was hired for the purpose of disseminating information, not campaigning. In none of the contractual documents Ms. Prassas has adduced is there any evidence of campaign activity on the part of TPRC.

The second part of the complaint provides no basis for further FPPC investigation.

3. Conflict of Interest

The third component of the complaint alleges that Ms. Escalante had a financial conflict of interest in the use of her official position as superintendent to pass the Bond, a violation of Government Code section 87100. Her financial interest was supposedly “that of - continued employment and the prospect of substantial salary and benefit increases if the district’s desired bond passed.”

Government Code section 87100 provides that “No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”

For a number of reasons, there was no violation of Government Code section 871000. First, the passage of the Bond was a vote of the people in Hermosa Beach, not a “governmental decision” regarding which Ms. Escalante could be conflicted. Second, receipt of salary is not the kind of “financial interest” contemplated by section 87100. Third, in no way was Ms. Escalante’s remuneration tied to the Bond’s passage. This can be conclusively proven.

In 2012, the District hired Ms. Escalante to serve as its Superintendent. In 2015, she entered into an employment agreement with the District under which she was to serve as the District’s superintendent until June 30, 2019. The agreement was subsequently amended to extend through June 30, 2020. A copy of the agreement is provided below.

Effective July 1, 2015, her base salary was to be \$165,448. Contingent upon receipt of a satisfactory evaluation from the Hermosa Beach School District Board of Education (“Board”), she was entitled to a step up in salary until she reached the maximum step on this scale:

Step 1:	\$171,239
Step 2:	\$177,233
Step 3:	\$183,259

The Board was also given discretion to increase the salary schedule by an amount equal to the uniform salary schedule increase received by other District certificated management employees.

Thus there is no evidence that Ms. Escalante had, as the complaint falsely alleges, “the prospect of substantial salary and benefit increases if the district’s desired bond passed.” The third part of the complaint provides no basis for further FPPC investigation.

Conclusion

The complaint is frivolous and politically motivated. I would ask that the FPPC take no further action on this matter and would be pleased to answer any questions you might have during your investigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Tao", with a long horizontal line extending to the right.

Terry Tao, AIA, Esq.
Tao Rossini, a Professional Corporation