



July 11, 2019

Board of Directors of Valley Metro
Attn. Mayor Kevin Hartke
Board of Directors of Valley Metro Rail, Inc.
Attn. Councilmember Robin Arredondo-Savage
101 North First Avenue, Suite 1400
Phoenix, AZ 85003

SENT VIA U.S. MAIL AND E-MAIL

Re: Valley Metro & Use of Official Resources to Influence Outcome of an Election

Dear Mayor Hartke & Councilmember Robin Arredondo-Savage:

Arizona law broadly prohibits the use of taxpayer resources to influence an election or sway public opinion to advance a political position. *See* A.R.S. §§ 16-192(A), 11-410(A), 9-500.14; 48-5103(C). Despite these legal prohibitions and the sound public policies behind them, it appears that Valley Metro and Valley Metro Rail, Inc. (“Valley Metro Rail”) have been using taxpayer resources to oppose Phoenix Proposition 105, a voter-led ballot measure that would prohibit the expansion of light rail and redirect revenues to other transportation requirements.

As you know, the Public Transportation Fund (“Fund”) established in Title 48 of Arizona Revised Statutes provides a major share of Valley Metro’s budget. Under A.R.S. § 48-5103(C), the statutory prohibition on using Fund resources to engage in electioneering is plain and unambiguous:

Monies in the fund shall not be spent to promote or advocate a position, alternative or outcome of an election, to influence public opinion or to pay or contract for consultants or advisors to influence public opinion with respect to an election regarding taxes or other sources of revenue for the fund or regarding the regional transportation plan.

We also understand that Valley Metro Rail receives significant funding from the Fund as well as contributions from taxpayers of member cities, including Chandler,

Glendale, Mesa, Phoenix, and Tempe. State law likewise plainly prohibits the use of municipal resources to influence an election:

A city or town shall not spend or use its resources, including the use or expenditure of monies, accounts, credit, facilities, vehicles, postage, telecommunications, computer hardware and software, *web pages, personnel*, equipment, materials, buildings or any other thing of value of the city or town, for the purpose of influencing the outcomes of elections. A.R.S. § 9-500.14(A) (emphasis added).

Both A.R.S. § 48-5103(C) and A.R.S. § 9-500.14(A) underscore what should be an obvious notion of good public policy: Taxpayer resources should not be used to advocate for the outcome of an election or to advance a particular political position. This is particularly true when a public agency is a beneficiary of, or would otherwise be impacted by, “an election regarding taxes or other sources of revenue.”

Despite these prohibitions, and the public policy underlying them, it appears that Valley Metro has committed both personnel and resources to oppose Proposition 105.

Specifically, it is our understanding that Valley Metro’s Chief Executive Officer, Scott Smith, has appeared at public events during which he attempted to influence public opinion regarding Proposition 105. Because Mr. Smith’s salary, and that of his staff, are funded by Valley Metro’s Operating Budget, which, in turn receives substantial funding from the Fund, any portion of his time, or staff time, “spent promot[ing] or advocate[ing] a position” or the “outcome of an election,” or “influenc[ing] public opinion” regarding Proposition 105 would violate § 48-5103(C).

Additionally, Valley Metro’s own website has a “Just the Facts” page that is replete with advocacy *against* what the page characterizes as the “anti-light rail ballot initiative,” i.e. Proposition 105. See <https://www.valleymetro.org/just-facts>. That webpage has a series of “commonly asked questions” that conveniently suggest to readers Valley Metro’s preferred answer. For example, the webpage asks, “Why continue to invest in light rail?” And then provides the answer, “High-capacity transit is and will be the most effective way to move large numbers of people in finite spaces.” By asking the question, “Why continue to invest in light rail?” and then providing reasons for doing so, which also happen to be purely subjective and speculative, directly “promote[s] or advocate[s] a position... with respect to an election regarding taxes or other sources of revenue for the [F]und.” In other words, according to Valley Metro’s webpage, taxpayers *should* “continue to invest in light rail,” and consequently, Proposition 105 *should* be rejected because it would end such “investments.”

Among the other “facts” cited on this page include unsubstantiated assertions that light rail “helps to spur job growth and economic development, while also providing

community-wide health benefits.” Whether light rail “spur[s] job growth and economic development” is pure editorializing on a highly debated topic, and one on which the evidence suggests the opposite may be true, at least for many firms. These “facts,” and others on Valley Metro’s webpage, are, in fact, advocacy, that promote specific positions and attempt to influence public opinion. They are, in short, prohibited electioneering.

Based on the foregoing, it is our opinion that Valley Metro’s public resources have been spent to promote the outcome of an election and otherwise influence public opinion in violate of state law.

We request that any public engagements by Mr. Smith or other Valley Metro personnel advocating, directly or indirectly, for a preferred outcome of Proposition 105 stop immediately. We also request that no portion of Valley Metro’s resources, including any webpage operated by Valley Metro, be directed toward influencing the Proposition 105 election or public opinion regarding that election.

Should you have any questions, please do not hesitate to contact me directly at (602) 462-5000 or jriches@goldwaterinstitute.org.

Sincerely yours,



Jon Riches
Director of National Litigation
& General Counsel

cc. Michael Minnaugh, General Counsel, mminnaugh@valleymetro.org

Other Commonly Asked Questions

Why light rail?

Light rail is essential to a balanced transportation plan and helping to serve the more than two million people moving to the Valley in the next 12-15 years. It supports 45,000 riders each day, connecting them to work, school and entertainment. It helps to spur job growth and economic development, while also providing community-wide health benefits.

Phoenix voters approve of this mode, having voted to initiate and expand light rail on three separate occasions in 2000, 2004 and 2015. The Phoenix City Council has also heard the public's feedback with dozens of council actions that support the design and development of light rail.

Why continue to invest in light rail?

We need all modes — including rideshare and autonomous vehicles — to support our quick growth and limited real estate. High-capacity transit is and will be the most effective way to move large numbers of people in finite spaces. We've doubled our capacity along Central Avenue with the addition of light rail, despite having removed two automobile lanes. Valley Metro is partnering with the private sector and tech companies to innovate how we move around this Valley, now and into the future.

How are businesses supported during light rail construction?

After the success of six previous rail projects in metro Phoenix, Valley Metro has learned how to customize a business support plan that is active before and during construction. It can consist of business assessments, rebates, special events, customized signage, marketing/social media assistance, accounting/financial planning, in addition to staff being available 24/7. "Considerate" construction is also part of the plan, which entails maintaining business access, safe routes for pedestrians and localized hiring and spending.

Is light rail safe?

Yes, Valley Metro Rail is safe. In fact, it's safer than traveling in an automobile. Since the inception of our Respect the Ride program in late 2017, we've increased our security staff by 30% and have seen a decrease in security incidents by more than 30%. The Respect the Ride code of conduct welcomes all riders on board with the expectation of respectful behavior towards fellow passengers, staff and property.

**STAY
INFORMED**



The light rail initiative will be voted on by Phoenix residents on August 27, 2019.

For more information, visit valleymetro.org/august27ballot to subscribe to the email list or follow @ValleyMetro on Facebook or Twitter.

Valley Metro

Just the Facts

INFORMATION ON THE ANTI-LIGHT RAIL BALLOT INITIATIVE AND ITS IMPACTS



What is the anti-light rail initiative?

An initiative was filed with the City of Phoenix in November 2018 to amend the city charter to terminate "the furtherance of any light rail extension or any other fixed rail line transit system" in Phoenix. It also seeks to "redirect the funds" to finance infrastructure improvements in South Phoenix and throughout the city. This initiative is specific to the City of Phoenix; however, it could have repercussions on the future of transportation funding in the region.

What is the status of the initiative?

The Phoenix City Council referred the initiative to the August 27, 2019 citywide ballot. There is a legal challenge focused on election law concerns from the Arizona Chapter Associated General Contractors.

What projects could be affected by the initiative?

The initiative seeks to terminate the construction of Phoenix light rail extensions, including:

- South Central Extension/Downtown Hub
- Northwest Extension Phase II
- Capitol/I-10 West Extension
- Any future fixed rail investment, including streetcar or commuter rail

What happens to the funding for projects affected by the initiative?

The initiative seeks to redirect City of Phoenix Proposition 104 (Transportation 2050) funds to finance other infrastructure improvements within South Phoenix and the city. However, Proposition 104 only funds 20–25% of the total cost of building Phoenix's light rail program. The city could potentially lose upwards of \$5 billion in federal and regional monies dedicated to rail projects to other cities in this region and the U.S.

What are the potential impacts?

In addition to the potential loss of billions in federal and regional rail dollars, the initiative could impact the region's air quality plan and the federal funds associated with pollution reduction efforts. It could also impact the region's ability to renew upcoming transportation funding and maintain the system we have today.

What about our streets?

City of Phoenix streets are funded by more than \$8 billion through 2050. Every street will be repaved and a plan is underway to accelerate this program. There are sufficient dollars to fund both streets and transit — it doesn't have to be one vs. the other.

Does work continue on the extensions even with the initiative?

Yes, Valley Metro continues to advance the projects, each in various stages of planning, design and pre-construction. Moving ahead is consistent with the existing policy, which was established by previous voter-approved measures and multiple Phoenix City Council actions. Continued work is also critical to keeping projects in the Federal Transit Administration funding pipeline and maintaining schedule commitments.

Regional Light Rail System AREAS IMPACTED BY ANTI-LIGHT RAIL INITIATIVE

