

**Supplement No. 1 (Draymond Green/Warriors Basketball) to FPPC Regulation 18420.1  
Complaint Against Bay Area Rapid Transit District (BART) Concerning Illegal Use of  
Public Resources to Promote Passage of November 2016 Measure RR, a \$3.5 Billion Bond  
Measure, in Alameda, Contra Costa and San Francisco Counties.**

This is to serve as the first supplement (Draymond Green/Warriors Basketball) to a complaint filed October 28, 2016 under FPPC Regulation 18420.1 and Government Code sections 8314 and 54964 against the San Francisco Bay Area Rapid Transit District (hereinafter “BART”), a public entity, concerning illegal use of public resources to promote passage of the \$3.5 billion Measure RR bond measure on the November 2016 ballot in Alameda, Contra Costa and San Francisco counties. The official title of Measure RR is “BART Safety, Reliability and Traffic Relief.”

This supplemental complaint concerns BART public resources used illegally to plan, produce and publicize a video featuring basketball player Draymond Green of the Golden State Warriors to promote Measure RR. On Friday, October 28, 2016, BART released a 31-second video titled “Draymond Says” and an accompanying “news article,” YouTube post, Facebook post, and Twitter post to promote the video. The BART video, BART World Web Web homepage, BART “news article,” BART YouTube post, BART Facebook post and BART Twitter post all contain the message “**BART needs to stay safe and reliable.**” These communications paid for with public moneys by BART, a local governmental agency, unambiguously urge a particular result in the November 2016 election: they urge “yes” votes for Measure RR, referred to on the ballot as “**BART Safety, Reliability and Traffic Relief.**” These BART communications constitute “contributions” or “independent expenditures” benefiting the Yes on RR campaign (FPPC ID#1381218), officially named the “Committee to **Keep BART Safe and Reliable,**” which uses the phrase “**Keep BART Safe and Reliable**” in its campaign logo (see Exhibit 7). Most of the BART communications promoting the Draymond Green video also include the phrase, “**BART is the backbone of the Bay Area.**” Three of the four Yes on RR campaign’s 15-second/30-second television/internet spots posted to YouTube begin with the same phrase, “**BART is the backbone of the Bay Area**” (and also use the phrase “**44 years,**” which also is in the BART Draymond Green video). The similarities between the BART-produced Draymond Green 31-second video and related promotional effort and the Yes on RR campaign mailers and Yes on RR 15- and 30-second television/internet spots are not accidental coincidences. BART appears to be reinforcing messages of the Yes on RR campaign (“**BART is the backbone of the Bay Area**”; keep/stay “**safe and reliable**”; “**44 years**”) through illegal use of public resources, including the BART-produced Draymond Green video and related promotional effort.

**Content of BART “News Article” Promoting BART’s “Draymond Says” Video**

On or about October 28, 2016, BART posted an item under the “News Articles” section of its official [www.bart.gov](http://www.bart.gov) website titled, “10.28.2016 Draymond Green: **BART needs to stay safe and reliable.**” See: <http://www.bart.gov/news/articles/2016/news20161028>

The “news article” contains an image of Mr. Green wearing a “WARRIORS BASKETBALL” shirt in what appears to be a Warriors basketball facility. That image links to a 31-second “Draymond Says” YouTube video: <https://youtu.be/NLI0anKYiE0>

The text in the “news article” below the Draymond Green image/YouTube link says, “Golden State Warrior, NBA All-Star and Olympic Gold Medalist, Draymond Green says: **“BART is the backbone of the Bay Area..BART needs to stay safe and reliable** for future generations.””

Attached Exhibit 1 is a screenshot of this BART “news article.”

### **Content of BART Twitter Post Promoting BART’s “Draymond Says” Video**

“SFBART” is the primary Twitter “handle” for BART, which controls and maintains it. The webpage <https://twitter.com/SFBART> says that as of 7:00 p.m. on October 29, 2016, “SFBART” has 197,591 followers. “SFBART” posted an item to its Twitter account promoting its “Draymond Says” video on Friday, October 28, 2016 at 2:54 p.m. The URL is: <https://twitter.com/SFBART/status/792122499442040832>

The text of that Twitter post (or “tweet”) says, “Draymond Green: **“BART is the backbone of the Bay Area..BART needs to stay safe and reliable** for future generations.”” It includes a link to the YouTube video: <https://youtu.be/NLI0anKYiE0>

As of 1:00 p.m. on Saturday, October 29, 2016, this Twitter post had received four comments, 15 retweets and 37 likes.

Exhibits 2 and 3 are screenshots of this BART “tweet” and the number of “SFBART” followers.

### **Content of BART Facebook Post Promoting BART’s “Draymond Says” Video**

BART controls and maintains a Facebook page: <https://www.facebook.com/bartsf/>

BART posted an item to its Facebook page promoting its “Draymond Says” video on Friday, October 28, 2016 at 4:22 p.m.

The text of that Facebook post says, “Draymond Green: **“BART is the backbone of the Bay Area..BART needs to stay safe and reliable** for future generations.”” It includes an image from the video, which links to the YouTube video: <https://youtu.be/NLI0anKYiE0>

Exhibit 4 is a screenshot of this BART Facebook page post.

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### **Content on BART World Wide Web Website Homepage (www.bart.gov) Promoting BART’s “Draymond Says” Article & Video**

The BART World Web Web website homepage, [www.bart.gov](http://www.bart.gov), touted the Draymond Green video through the weekend of October 29<sup>th</sup>-30<sup>th</sup>, 2016. The homepage included this text: “Draymond Green: **BART needs to stay safe and reliable** Watch Draymond.”

The phrase “Draymond Green: BART needs to stay safe and reliable” included a web link to the BART “news article”: <http://www.bart.gov/news/articles/2016/news20161028>

The phrase “Watch Draymond” included a web link to the BART YouTube video: <https://youtu.be/NL10anKYiE0>

Exhibit 5 is a screenshot of BART’s World Wide Web homepage, [www.bart.gov](http://www.bart.gov), as of 12:35 a.m. on Sunday, October 30, 2016.

### **Content of BART’s 31-Second “Draymond Says” YouTube Post and Video**

The 31-second “Draymond Says” video is posted to YouTube at:

<https://www.youtube.com/watch?v=NL10anKYiE0>

“BARTable” posted the video. “BARTable” apparently is a YouTube channel controlled by BART. The text associated with the YouTube webpage says, “Published on Oct 28, 2016 Golden State Warrior, NBA All-Star and Olympic Gold Medalist, Draymond Green says we should all take BART when we go to the Warriors game. Go Dubs!”

Draymond Green is the only person who speaks in the video. Mr. Green says, “**BART is the backbone of the Bay Area.** BART and the Warriors have been connecting people across the bay for **44 years.** **BART needs to stay safe and reliable** so future generations can enjoy games as well. Let’s all show BART some love and take BART the next time we come to games.”

Spokesperson Draymond Green wears a shirt that says “WARRIORS BASKETBALL” and he appears to be speaking inside of a Warriors basketball facility. Other men wearing Warriors uniforms are seen playing basketball in the background. One in the near background appears to be two-time (2015 and 2016) National Basketball Association Most Valuable Player Stephen Curry, as the number “30” is seen on his uniform. On the wall in the background are seen four banners bearing Warriors insignia.

Other video images include BART trains and passengers at various stations and Warriors fans walking to or from a game.

Exhibit 6 is a screenshot of the YouTube webpage that hosts the “Draymond Says” video.

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## FPPC Regulation 18420.1 Analysis

BART is engaging in illegal campaign activity urging voters to support Measure RR, impermissible under the California Supreme Court's *Stanson v. Mott* line of cases and Government Code §8314, among other legal authorities. The 31-second Draymond Green video and the "news article," the BART World Wide Web homepage, BART Facebook page post, Twitter post and YouTube post promoting it, all produced and distributed by BART, constitute campaign communications under FPPC Regulation 18420.1 because they "taken as a whole and in context, unambiguously urge a particular result in an election." They clearly urge "yes" votes in the November 2016 Measure RR election because Mr. Green said "**BART needs to stay safe and reliable**" and BART's YouTube video, BART's World Web Web homepage, BART's Facebook post, BART's Twitter post and BART's "news article" all tout the "**stay safe and reliable**" quotation. This phrase in all of these BART Draymond Green communications refers to Measure RR because the measure's official title is "**BART Safety, Reliability and Traffic Relief.**" The slogan of the Yes on RR campaign is "**Keep BART Safe and Reliable,**" as seen in its logo, and the official name of the Yes on RR campaign committee is the "**Committee to Keep BART Safe and Reliable.**" A mass mailing by the "Committee to Keep BART Safe and Reliable – Yes on RR 2016" says in its largest typeface, "**Keep BART Safe and Reliable! AFTER 44 YEARS BART IS OVERCROWDED AND WEARING DOWN.**" (The reverse side of the mailer repeats "**AFTER 44 YEARS**" four times.) See Exhibit 7. Web ads by the Committee to Keep BART Safe and Reliable say as their main text "**Keep BART Safe and Reliable. VOTE YES ON RR.**" See Exhibit 8.

FPPC Regulation 18420.1(b) says in part, "a communication paid for with public moneys by a state or local governmental agency unambiguously urges a particular result in an election if the communication meets either one of the following criteria: (1) It is clearly campaign material or campaign activity such as bumper stickers, billboards, door-to-door canvassing, or **other mass media advertising including, but not limited to, television or radio spots** (2) when considering the **style, tenor, and timing** of the communication, it can be reasonably characterized as campaign material and is **not a fair presentation of facts serving only an informational purpose.**" (emphasis added).

FPPC Regulation 18420.1(d) says, "when considering the style, tenor, timing of a communication, factors to be considered include, but are not limited to, whether the communication is any of the following: (1) Funded from a special appropriation related to the measure as opposed to a general appropriation. (2) Is consistent with the normal communication pattern for the agency. (3) Is consistent with the style of other communications issued by the agency. (4) Uses inflammatory or **argumentative language.**" (emphasis added).

The "Draymond Says" video is clearly campaign material or campaign activity as it is a form of "mass media advertising." The video is approximately 30 seconds long, the length of a typical television advertisement. BART posted the video to YouTube, a mass medium. BART promoted the video through the "news article" and perhaps through other means. Moreover, the

BART-produced Draymond Green video begins with the exact same phrase (“**BART is the backbone of the Bay Area**”) that begins at least three of the Yes on RR campaign’s 15- and 30-second television/internet spots, as discussed below. [The Draymond Green video also includes the phrase “**44 years**,” which also is in Yes on RR television/internet spots and in the Exhibit 7 Yes on RR mailer (which uses the phrase “**44 YEARS**” five times).]

When considering the style, tenor, and timing of the YouTube video, BART World Web Web homepage item, Facebook post, Twitter post and “news article” communications, they can be reasonably characterized as campaign material and are not a fair presentation of facts serving only an informational purpose. Mr. Green’s “**BART needs to stay safe and reliable** so future generations can enjoy games as well” statement is argumentative language that mirrors the name, logo, slogan, primary message and committee name of the “Yes on RR” campaign (“Committee to Keep BART Safe and Reliable”). Mr. Green’s statement implies that BART will not stay safe and reliable for future generations if action is not taken.

*Style, Tenor and Content of BART Draymond Green Video Matches Three Yes on RR Ads*

The style and tenor of the BART-produced 31-second Draymond Green video is akin to the style of 15- and 30-second television advertisements. In fact, **the first eight words spoken by Draymond Green in the BART video, “BART is the backbone of the Bay Area,” directly match the first eight words spoken by the male narrator in three of the four Yes on RR television/internet spots** posted by the Yes on RR campaign on YouTube. See:

<https://www.youtube.com/watch?v=4PbTv19qEZg> (30 second spot)

<https://www.youtube.com/watch?v=CRC4rX1FuO4> (15 second spot)

<https://www.youtube.com/watch?v=3Ne8xwr91Zc> (15 second spot)

“Yes for BART – Measure RR” posted these television/internet spot to its YouTube channel/account on October 14, 2016 and October 21, 2016. **The male narrator in all three Yes on RR spots begins, “BART is the backbone of the Bay Area, but it’s 44 years old.”** (All three Yes on RR ads also claim about Measure RR at 0:08, “It’ll make BART trains less crowded and reduce highway commute traffic,” which is a false statement because none of Measure RR’s revenues may permissibly purchase more BART cars.) Therefore, the style and tenor of the BART-produced Draymond Green video closely matches the style and tenor of Yes on RR television/internet spots.

BART appears to be reinforcing messages of the Yes on RR campaign (“**BART is the backbone of the Bay Area**”; keep/stay “**Safe and Reliable**” and “**44 years**”) through illegal use of public resources, including the BART-produced Draymond Green video and related promotional effort. The Yes on RR campaign has expended \$100,000’s on mass mailers, radio, television and internet ads in recent weeks. Exhibit 9 is the Yes on RR committee’s Form 460 report for the period from September 25 to October 22, 2016. See pp. 46-51 for the nearly \$330,000 that the Yes on RR campaign has spent on Comcast television ads during the four-week period. Page 52 discloses another \$174,000 spent on web technology. The Yes on RR campaign therefore spent

more than a half million dollars during a four-week period on television and internet advertising alone.

The fact that the BART communications relating to the Draymond Green video do not expressly advocate for “yes” votes on Measure RR does not make them permissible. Footnote 8 of the California Supreme Court’s 1976 *Stanson v. Mott* opinion endorses a 1960 California Attorney General opinion concerning a newspaper advertisement illegally placed by a school district to promote a ballot measure, “After reviewing the relevant judicial authorities, the Attorney General concluded that although the advertisement did not explicitly urge a “Yes” vote and did disclose relevant factual information, the use of public funds to pay for the advertisement would nonetheless be improper ... ‘The style, tenor and timing of the advertisement placed by the board of trustees points plainly to the conclusion that the publication was designed primarily for the purpose of influencing the voters at the forthcoming school bond election.’” (35 Ops.Cal.Atty.Gen. 112, 114.)” BART’s YouTube post, World Wide Web homepage post, Facebook post, Twitter post and “news article” promoting the BART-produced Draymond Green video are similar to the school district advertisement deemed “improper” by the California Supreme Court in 1976. Both the Draymond Green video and the school district advertisement did not explicitly urge “Yes” votes, but they both were designed primarily for the purpose of influencing voters at a forthcoming bond election.

### **Possible “Paid Spokesperson” Relationship Between Draymond Green and BART**

Draymond Green possibly appeared in this BART promotional video as a paid spokesperson. BART possibly paid Mr. Green \$5,000 or more for his appearance in this advertisement that supports passage of Measure RR. If so, then BART must file a FPPC Form 511 report (Paid Spokesperson). See:

<http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Forms/511.pdf>

### **Possible In-Kind Contribution or In-Kind Independent Expenditure by Warriors Organization Benefiting Yes on RR Campaign**

The FPPC also should consider if the Golden State Warriors Basketball organization has made an in-kind contribution or independent expenditure benefiting the Yes on RR campaign. The Golden State Warriors Basketball organization very likely authorized BART or BART’s agents to film at the Warriors facility. The Warriors organization very likely authorized Mr. Green to wear a “WARRIORS BASKETBALL” shirt and allowed Stephen Curry in the “30” jersey to be filmed prominently just behind Mr. Green. If BART paid any compensation to the Warriors organization or provided any other form of consideration to the Warriors organization related to Draymond Green’s appearance, then such compensation and/or consideration must be disclosed as a contribution and/or independent expenditure benefiting the Yes on RR campaign.

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## Conclusion

The similarities (“**BART is the backbone of the Bay Area;**” “**safe and reliable;**” “**44 years**”) between the BART-produced, 31-second Draymond Green video (and BART communications via the BART homepage and BART Facebook, Twitter and YouTube accounts promoting it) and Yes on RR television/internet 15-second and 30-second spots are not accidental coincidences.

As BART has engaged in campaign activity, pursuant to Regulation 18420.1(f), the FPPC should require BART to file the necessary campaign finance reports for the direct and indirect costs of its campaign activities relating to promotion of Measure RR on the November 2016 ballot in Alameda, Contra Costa and San Francisco counties. BART needs to publicly disclose the value of public resources that it expended for campaign activities supporting passage of Measure RR as either a contribution to Yes on RR campaign or as an independent expenditure supporting Measure RR. For the “Draymond Says” video, BART needs to report as campaign activity the costs of planning the video, production of the video, and promotion of the video via YouTube, Twitter, its internet homepage, its BART “news article,” and by other means of publicity. If Draymond Green is a “paid spokesperson” for BART, then a Form 511 report must be filed.

Sincerely,  
/s/ Jason A. Bezis  
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October 31, 2016

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