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September 23, 2016

Hon. Michael Cohen, Director of  
Finance  
California Department of Finance  
State Capitol, Room 1145  
Sacramento, CA 95814

Re: Legality of approving a Final Funding Plan for the California High-Speed Rail Authority pursuant to Streets & Highways Code Section 2704.08(d).

Dear Mr. Cohen,

I am writing to you on behalf of my clients: the Transportation Solutions Defense and Education Fund, the California Rail Foundation, and the Community Coalition on High-Speed Rail, in the wake of the Legislature's recent passage of Assembly Bill 1889. That bill purports to "clarify" language contained in California Streets & Highways Code §2704.08, which was approved by California voters in November 2008 as part of Proposition 1A, the Safe, Reliable, High-Speed Passenger Train Bond Act for the Twenty-First Century.

While AB 1889 has not yet been signed by the Governor, I wanted to put you on notice that, as my clients have already indicated to the Legislature during its consideration of the bill, the bill violates Article XVI, Section 1 of the California Constitution. It does so by materially changing the terms of Proposition 1A after its approval by the voters without referring that change to the voters for their ratification.

I expect that, assuming the Governor does not veto the bill because of its unconstitutionality, once it is signed, the California High-Speed Rail Authority plans to prepare, approve, and send to you for your approval, one or more Final Funding Plans, as described in Streets & Highways Code §2704.08(d), for your consideration and approval. I also expect that the funding plan(s) will rely on AB 1889 in determining that the usable segment(s) involved will be, when the construction proposed in the funding plan is complete, "suitable and ready for high-speed train operation." However, that assertion will be fraudulent and contrary to the voters' intent when they approved Proposition 1A.

The meaning of the language in question in §2704.08 was abundantly clear when it was presented to the voters. The Legislature may not, after the fact, attempt to "clarify" that language in a way that fundamentally alters the expressed voters' intent. Consequently, my clients will be filing an action for declaratory and injunctive relief challenging the validity of AB 1889. You will be named as a respondent and defendant in that suit, as your approval of the funding plan(s) would be a necessary step towards the illegal expenditure of the bond funds, and the lawsuit will seek to enjoin that approval, as well as other steps that would involve or lead to the illegal expenditure of public funds. Please feel free to contact me if you need more information.

Most sincerely

  
Stuart M. Flashman

cc: J. Brown, Governor  
J. Chiang, State Treasurer  
B. Yee, State Controller  
Assembly Member K. Mullin  
B. P. Kelly, Secretary of State Transportation Agency  
D. Richard, Chair, California High-Speed Rail Authority Board  
J. Hartnett, General Manager, Caltrain