This minute order is effective immediately. No formal order or other notice is required. (Code Civ. Proc. §1019.5; CRC Rule 3.1312.)

Item 15 **2016-00204740-CU-MC**

John Tos vs. Ca High Speed Rail Authority

Nature of Proceeding: Motion to Strike

Filed By: O'Grady, Sharon L.

***** If oral argument is timely requested on this matter, it will take place at** 11:00 a.m. *******

Defendants California High-Speed Rail Authority (“CHRSA”) and The Board of Directors of CHSRA (collectively "Defendants"), moved to strike as to the First Amended Complaint (“FAC”) of Plaintiffs, John Tos, Quentin Kopp, Town of Atherton, a municipal corporation, County of Kings, a subdivision of the State of California, Morris Brown, Patricia Louise Hogan-Giorni, Anthony Wynne, Community Coalition on High-Speed Rail, a California nonprofit corporation, Transportation Solutions Defense and Education Fund, a California nonprofit corporation, and California Rail Foundation, a California nonprofit corporation (“Plaintiffs”). Defendants’ motion to strike is moot in light of the court ruling upon Defendants' demurrer sustaining it without leave to amend.

This minute order is effective immediately. No formal order or other notice is required. (Code Civ. Proc. §1019.5; CRC Rule 3.1312.)

Item 16 **2016-00204740-CU-MC**

John Tos vs. California High Speed Rail Authority

Nature of Proceeding: Order to Show Cause Re: Preliminary Injunction

Filed By: Flashman, Stuart

If oral argument is timely requested on this matter, it will take place at 11:00 a.m.

Plaintiffs, John Tos, Quentin Kopp, Town of Atherton, a municipal corporation, County of Kings, a subdivision of the State of California, Morris Brown, Patricia Louise Hogan-Giorni, Anthony Wynne, Community Coalition on High-Speed Rail, a California nonprofit corporation, Transportation Solutions Defense and Education Fund, a California nonprofit corporation, and California Rail Foundation, a California nonprofit corporation (“Plaintiffs”), petition for a preliminary injunction in conjunction with their action for declaratory and injunctive relief as to Defendants California High-Speed Rail Authority ("CHSRA") and The Board of Directors of CHSRA ("Board"). Plaintiffs’ petition is denied as set forth below.

Procedural Background

On March 22, 2017, Plaintiffs brought an *ex parte* application for temporary restraining

order consistent with the injunctive relief prayed in their First Amended Complaint (FAC). Defendants opposed the application. The court denied the *ex parte* application without prejudice and set the matter for hearing as a petition for preliminary injunction, deeming the *ex parte* application papers to be the moving papers and instructing that statutory timelines applied to all further briefing.

On March 28, 2017, Plaintiffs filed an addendum in support of their petition accompanied by a Declaration of John Tos. The Defendants subsequently filed timely Opposition. Defendants complain that the Court should decline to consider the Plaintiffs' supplemental filings because they are not compliant with the statutory timelines for briefing, i.e. new evidence submitted less than 16 court days before the hearing, and argument not properly within a Reply brief. The Court has accepted and considered these limited additional filings given the procedural course of this matter, and the Defendants' full opportunity to counter the limited material. Nevertheless, as discussed below, the court has not relied upon the Plaintiffs' additional filings in reaching its decision on the petition.

As a further preliminary matter, Plaintiffs have requested that the court take judicial notice of four documents in support of their motion for preliminary injunction: (1) the full text of AB 3034, a bill enacted by the California Legislature during its 2008 legislative session (EC 451(a).); (2) the full text of AB 1889, a bill enacted by the California Legislature during its 2016 legislative session (EC 451(a).); (3) the Central Valley Segment Funding Plan, a funding plan approved by CHSRA and subsequently submitted on January 3, 2017 to Mr. Michael Cohen in his official capacity as the Director of the California Department of Finance for his consideration and approval (EC 452(c).); and (4) a letter dated March 3, 2017 from Mr. Cohen to the Executive Director of CHSRA, written in his official capacity as the Director of the California Department of Finance, giving his approval to the Central Valley Segment Funding Plan (EC 452(c).). These requests are unopposed and are granted upon the grounds specified in the request.

Plaintiffs' object to paragraphs 4, 5, 6, and 7, to the O'Grady Declaration, and Exhibits 3, 4, 5, and 6, supported by those paragraphs, upon the ground that the information regarding Plaintiffs' prior litigation related to the high speed train is not relevant to this action. The objections are sustained to that end.

Plaintiffs' Petition for Preliminary Injunction

Plaintiffs' petition for injunctive relief is founded upon their FAC. Plaintiffs' action challenges the constitutionality of AB 1889, a statute enacted in the 2015-2016 Legislative session that added Section 2704.78 to the California Streets & Highways Code ("§2704.78"). In enacting new §2704.78, the Legislature expressly stated its intent was to clarify an existing provision of the Streets & Highways Code §2704.08(d) which had been enacted by the voters in November 2008 as part of the Safe, Reliable High-Speed Passenger Train Bond Act for the Twenty-First Century, designated on the ballot as Proposition 1A ("Prop. 1A"). Prop. 1A was a 9.95 billion dollar California general obligation bond measure intended to assist in funding a portion of the

construction of a high-speed rail system in California under the governance of CHSRA. Plaintiffs allege that the enactment of §2704.78 violates the California Constitution because, instead of clarifying the voter enacted statute, new §2704.78 materially changes the terms of the bond measure without seeking or obtaining the voters' prior lawful approval. Plaintiffs' argue that such a material amendment to Prop. 1A is a violation of Article XVI Section 1 of the California Constitution. Thus, Plaintiffs seek the Court's declaration that §2704.78 is facially unconstitutional and therefore void.

In addition, Plaintiffs allege that CHSRA intends to expend public funds in substantial reliance upon the precept that §2704.78 is constitutionally valid, but if §2704.78 is instead unconstitutional and invalid *ab initio*, any expenditures premised upon its validity are illegal as directly contrary to the preexisting and controlling provisions of Prop. 1A enacted by the voters.

Plaintiffs emphasize that their complaint does not present an "as applied" challenge to the Legislature's enactment of §2704.78. Plaintiffs instead maintain that while their "case is brought in the context of CHSRA's attempt to use AB 1889 as the basis for approving two funding plans, what is at issue is a fundamental disagreement between Plaintiffs and CHSRA over the facial constitutionality of that statute." (Pltfs' MPA, p. 8:1 -7.)

Based upon the foregoing, Plaintiffs' FAC expressly seeks the following relief: (1) a declaratory judgment that AB 1889 violates Article XVI Section 1 of the California Constitution and is therefore invalid and void; (2) a preliminary injunction, and permanent injunction preventing CHSRA from expending any public funds toward the approval of a Funding Plan that relies on AB 1889 for purported compliance with the requirements of Prop. 1A; (3) a preliminary injunction, and permanent injunction preventing CHSRA from expending any Prop. 1A high-speed rail construction bond funds towards the construction of any and all projects based on a second Funding Plan that relies upon AB 1889 for purported compliance with the requirements of Streets & Highways Code §2704.08(d); and (4) recovery and restoration to the California State Treasury of any funds that CHSRA illegally, improperly, or wastefully spent toward the preparation or approval of any improper/noncompliant Funding Plans, and of any Prop. 1A funds illegally spent to implement or in reliance upon such alleged improper and/or illegal Funding Plans.

In sum, Plaintiffs' describe the goal of the preliminary injunction as "to 'freeze' the use of those funds to maintain the status quo until the court can determine whether AB 1889 is constitutional, and therefore whether a funding plan relying on it can validly allow CHSRA to commit and expend Prop. 1A bond funds on rail construction." (Pltfs' MPA, p. 2:1-4.)

Facts and Background

The parties generally agree upon the underlying facts which are not in material dispute on the pending petition and the general legal standard that governs the court's consideration at this juncture. As discussed below, the main focus of Plaintiffs' action

is the meaning of the phrase “suitable and ready for high-speed train operation” found only twice in Prop. 1A, and whether the Legislature’s subsequent enactment of a definition for that phrase through AB 1889 unconstitutionally conflicts with the original meaning enacted by the voters of California and thus violates Article XVI Section 1 of the California Constitution.

A summary of the generally agreed facts is of value here to provide the necessary foundation for the court’s analysis of the parties’ competing arguments. In addition, a thorough and authoritative discussion of Prop. 1A and its core components is contained within the opinion in *California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal. App. 4th 676, 684-697, which this court has also referred to for general foundational information and background.

Proposition 1A, AB 3034

In 2008, the Legislature proposed and voters approved Prop. 1A which authorized construction of a high-speed train system in California, and the issuance of $9 billion in general obligation bonds to partially fund the high-speed train system. (Stats. 2008, ch. 267 [Assem. Bill No. 3034], §9, codified at Sts. & Hy. Code, § 2704 et seq.)

The Legislature’s proposal was presented to the voters at the general election held in November 2008, as mandated by Article XVI Section 1 of the California Constitution.

Article XVI, Section 1 is entitled “Debt limitation; Legislative and elective approval” and provides in relevant part as follows:

> “The Legislature shall not, in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars ($300,000) … unless the same shall be authorized by law for some single object or work to be distinctly specified therein which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within 50 years of the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged…; but no such law shall take effect unless it has been passed by a two-thirds vote of all the members elected to each house of the Legislature and until, at a general election or at a direct primary, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by authority of such law shall be applied only to the specific object therein stated or to

> the payment of the debt thereby created. Full publicity as to matters to be voted upon by the people is afforded by the setting out of the complete text of the proposed laws, together with the arguments for and against them, in the ballot pamphlet mailed to each elector preceding the election at which they are submitted, and the only requirement for publication of such law shall be that it be set out at length in ballot pamphlets which the Secretary of State shall cause to be printed. The Legislature may, at any time after the approval of such law by the people, reduce the amount of the indebtedness authorized by the law to an amount not less than the amount contracted at the time of the reduction, or it may repeal the law if no debt shall have been contracted in pursuance thereof." (Cal Const, Art. XVI § 1, emphasis added.)

In accord with Article XVI, Section 1, Prop. 1A was presented to the voters and set forth specific criteria for the bond proceeds as well as for the design and capacity of the system. (*California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal. App. 4th 676, 685.) For instance, Prop. 1A represented no more than $950 million of bond proceeds can be used for non-high-speed rail connectivity with high-speed rail lines. (Id., Sts. & Hy. Code, § 2704.095.) Prop. 1A represented that high-speed rail will feature electric trains capable of operating at speeds of 200 miles per hour or greater, guaranteed maximum travel times between major destinations, and achievable operating headway (time between successive trains) of five minutes or less. (Id., Sts. & Hy. Code, § 2704.09, subds. (a), (b) & (c).)

The CHSRA is identified by Prop. 1A as the administrative body with primary responsibility for overseeing the planning and construction of the high-speed rail system. (§2704.01, subd. (b); Pub. Util. Code, § 185020.) The CHSRA is subject to the terms of the financing program set forth in article 2 and the fiscal provisions set forth in article 3 of Prop. 1A. (§§ 2704.04 et seq., 2704.10 et seq.)

The Official Voter Information Guide for Proposition 1A contained in part the following official information to inform the voters of the meaning of their vote. (O'Grady Dec., p.2:24-27, Exh. 2.):

"A YES vote on this measure means: The state could sell $9.95 billion in general obligation bonds, to plan and to partially fund the construction of a high-speed train system in California, and to make capital improvements to state and local rail services. California's transportation system is broken: skyrocketing gasoline prices and gridlocked freeways and airports. High-speed trains are the new transportation option that reduces greenhouse gases and dependence on foreign oil. High-speed trains are

cheaper than building new highways and airports to meet population growth and require NO NEW TAXES.

“Establishes a clean, efficient 220 MPH transportation system. • Improves existing passenger rail lines serving the state’s major population centers. • Provides for California’s growing population. • Provides for a bond issue of $9.95 billion to establish high-speed train service linking Southern California counties, the Sacramento/San Joaquin Valley, and the San Francisco Bay Area. • Provides that at least 90% of these bond funds shall be spent for specific construction projects, with private and public matching funds required, including, but not limited to, federal funds, funds from revenue bonds, and local funds.”

Legislative Analysis represented:

“High-Speed Train System. Currently, California does not have a high-speed intercity passenger train system that provides service at sustained speeds of 200 miles per hour or greater. In 1996, the state created the California High-Speed Rail Authority (the authority) to develop an intercity train system that can operate at speeds of 200 miles per hour or faster to connect the major metropolitan areas of California, and provide service between northern California and southern California.[¶] Over the past 12 years, the authority has spent about $60 million for pre-construction activities, such as environmental studies and planning, related to the development of a high-speed train system. The proposed system would use electric trains and connect the major metropolitan areas of San Francisco, Sacramento, through the Central Valley, into Los Angeles, Orange County, the Inland Empire (San Bernardino and Riverside Counties), and San Diego. The authority estimated in 2006 that the total cost to develop and construct the entire high-speed train system would be about $45 billion. While the authority plans to fund the construction of the proposed system with a combination of federal, private, local, and state monies, no funding has yet been provided.”

“The High-Speed Train System. Of the total amount, $9 billion would be used, together with any available federal monies, private monies, and funds from other sources, to develop and construct a high-speed train system that connects San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim, and links the state’s major population centers, including Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. The bond funds may be used for environmental studies, planning and engineering of the system, and for capital costs such as acquisition of rights-of-way, trains, and related equipment, and construction of tracks, structures, power systems, and stations. However, bond funds may be used to provide only up to one-half of the total cost of construction of each corridor or segment of a corridor. The measure requires the authority to seek private and other public funds to cover the remaining costs. The measure also limits the amount of bond funds that can be used to fund

certain preconstruction and administrative activities."

"Other Passenger Rail Systems. The remaining $950 million in bond funds would be available to fund capital projects that improve other passenger rail systems in order to enhance these systems' capacity, or safety, or allow riders to connect to the high-speed train system. Of the $950 million, $190 million is designated to improve the state's intercity rail services. The remaining $760 million would be used for other passenger rail services including urban and commuter rail."

Prop. 1A was enacted by the voters in 2008. Section 2704.08 of Prop. 1A is the statute that was amended or clarified in 2016 by the Legislature's enactment of AB 1889 and new §2704.78.

Section 2704.08 as enacted by the voters is entitled "Limitations on use of proceeds; Detailed funding plan; Prioritization; Failure to comply." Pursuant to subdivision (a) of section 2704.08, the bond proceeds cannot be used for more than 50 percent of the total cost of construction for each usable segment or corridor. "Corridor," as used in the Bond Act, is "a portion of the high-speed train system as described in Section 2704.04" (§ 2704.01, subd. (f)), and "usable segment" is "a portion of a corridor that includes at least two stations" (§ 2704.01, subd. (g)). Section 2704.08 requires the CHSRA to prepare a preliminary funding plan (§ 2704.08, subd. (c)) before the Legislature appropriates the funds and a final funding plan (§ 2704.08, subd. (d)) before the proceeds of bonds are committed for expenditure.

Section 2704.08, subdivision (c)(2)(H) and (d)(2)(B) are the primary focus of Plaintiffs' facial constitutional challenge. Section 2704.08, subdivision (c) provides in relevant part as follows:

> "(c)(1) No later than 90 days prior to the submittal to the Legislature and the Governor of the initial request for appropriation of proceeds of bonds authorized by this chapter for any eligible capital costs on each corridor, or usable segment thereof … the authority shall have approved and submitted to the Director of Finance … a detailed funding plan for that corridor or a usable segment thereof….
>
> "(2) The plan shall include, identify, or certify to all of the following:
>
> "(A) The corridor, or usable segment thereof, in which the authority is proposing to invest bond proceeds….

> "(H) The corridor or usable segment thereof would be suitable and ready for high-speed train operation. (Emphasis added.)

Section 2704.08, subdivision (d) then requires a final pre-expenditure funding plan as follows: "Prior to committing any proceeds of bonds described in paragraph (1) of subdivision (b) of Section 2704.04 for expenditure for construction and real property and equipment acquisition on each corridor, or usable segment thereof, other than for costs described in subdivision (g), the authority shall have approved and concurrently submitted to the Director of Finance and the Chairperson of the Joint Legislative Budget Committee the following: (1) a detailed funding plan for that corridor or usable segment thereof … and (2) a report or reports … indicating that (A) construction of the corridor or usable segment thereof can be completed as proposed in the plan submitted pursuant to paragraph (1), (B) if so completed, the corridor or usable segment thereof would be suitable and ready for high-speed train operation …"(Emphasis added.)

AB1889

In 2016, the Legislature enacted AB 1889 which introduced a new statute into the California Streets and Highways Code, §2704.78. The new statute, entitled "Suitability and readiness for high-speed train operation; Use of bond proceeds; Reports," provides in relevant part as follows:

> "(a) For purposes of the funding plan required pursuant to subdivision (d) of Section 2704.08, a corridor or usable segment thereof is "suitable and ready for high-speed train operation" if the bond proceeds, as appropriated pursuant to Senate Bill 1029 of the 2011-12 Regular Session (Chapter 152 of the Statutes of 2012), are to be used for a capital cost for a project that would enable high-speed trains to operate immediately or after additional planned investments are made on the corridor or useable segment thereof and passenger train service providers will benefit from the project in the near-term." (Emphasis added.)

AB 1889 passed and was subsequently approved by the Governor on September 28, 2016. The uncodified portion of AB 1889 provides in relevant part as follows:

> "The people of the State of California do enact as follows:

SECTION 1. (a) In passing AB 3034 (Chapter 267 of the Statutes of 2008), the Legislature placed before the voters the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Proposition 1A), which was approved and provides $9 billion to initiate the construction of a high-speed train system connecting the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim and linking California's major population centers.

(b) Additionally, Proposition 1A included $950 million for intercity, commuter, and urban rail systems that will ultimately provide connectivity to the high-speed train system.

(c) In 2012, the High-Speed Rail Authority released the Revised 2012 Business Plan, which called for near-term investments in northern and southern California, known as the "Bookends," which would enable high-speed trains to share infrastructure with existing passenger rail service providers as part of a blended system, as envisioned in Proposition 1A.

(d) Also in 2012, using the Revised Business Plan as a guidepost, the Legislature passed and the Governor signed SB 1029 (Chapter 152 of the Statutes of 2012), appropriating over $7.5 billion in state and federal funding to begin construction of the project in the central valley and in the Bookends, and for local connectivity projects throughout the state.

(e) Of the amount appropriated, the Legislature dedicated $1.1 billion to passenger rail projects on the system's Bookends that will ultimately be part of the blended system utilizing shared infrastructure.

(f) In 2013, the Legislature passed and the Governor signed SB 557 (Chapter 216 of the Statutes of 2013), which reaffirmed the Legislature's commitment to investments in the Bookends.

(g) It is the intent of the Legislature, in appropriating funding for initial investments, that these projects should proceed to

> construction in the near-term to provide economic benefits, create jobs, and advance improved, safer, and cleaner rail transportation and that these initial investments are consistent with and further the goals of Proposition 1A.
>
> (h) Consistent with Proposition 1A, these early investments will enable passenger train service providers to begin using the improvements on a corridor or useable segment thereof while additional work is completed to enable high-speed train service.
>
> [¶¶]
>
> **(k) This act clarifies that early investments in the Bookends and elsewhere along the system, which will ultimately be used by high-speed rail trains, are consistent with the intent of the Legislature in appropriating funding and with the will of the voters in approving Proposition 1A**." (Emphasis added.)

After the passage of AB 1889, CHSRA prepared two final funding plans: one for the above referenced electrification project and the other for a "Central Valley Segment." The latter would run slightly more than 100 miles, from Madera to Shafter, roughly paralleling Highway 99. (See, Exhibit C to Plaintiffs' RJN at pp. 6-8.) On January 3, 2017, CHSRA transmitted the two finalized funding plans to the Director of the California Department of Finance, as well as to the Legislature's Joint Legislative Budget Committee. (See, Flashman Decl., Exh. A.). On March 3, 2017, the Director sent CHSRA a letter approving the Central Valley Segment Funding Plan. (Pltfs' RJN, Exh. D.) With that letter, Prop. 1A bond funds may be raised and committed to construction of the Central Valley Project.

Legal Standard on Petition for Preliminary Injunction

In deciding whether or not to grant a preliminary injunction, courts must evaluate two factors: (1) the likelihood that the petitioner will prevail on the merits at trial; (2) the balance of any interim harm to the petitioner if the injunction is denied compared with the harm to the responding party if the injunction is issued. (*Common Cause v. Board of Supervisors* (1989) 49 Cal. 3d 432, 441-442; *Saltonstall v. City of Sacramento* (2014) 231 Cal. App. 4th 837, 856.)

The second factor involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo. (*14859 Moorpark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal. App. 4th 1396, 1402; see *O'Connell v. Superior Court* (2006) 141 Cal. App. 4th 1452.) By balancing the respective equities, the trial court should conclude whether or not to grant an

injunction that restrains defendant's rights pending the trial. (*Pro-Family Advocates v. Gomez* (1996) 46 Cal. App. 4th 1674, 1681.) A trial court, however, may not grant a preliminary injunction regardless of the balance of harm unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. (*Hunt v. Superior Court* (1999) 21 Cal. 4th 984, 999.)

The burden is on Plaintiffs to show all of the elements necessary to support issuance of a preliminary injunction; the Plaintiffs must affirmatively show that harm is likely to result if the injunction is not granted. (*Saltonstall v. City of Sacramento* (2014) 231 Cal. App. 4th 837, 856; *Casmalia Resources, Ltd. v. County of Santa Barbara* (1987) 195 Cal. App. 3d 827, 838.) The more likely that the Plaintiffs will ultimately prevail, however, the less severe the harm that must be shown, especially when the injunction maintains, rather than alters, the status quo. (*King v. Meese* (1987) 43 Cal. 3d 1217, 1227; *Right Site Coalition v. Los Angeles Unified School Dist*. (2008) 160 Cal. App. 4th 336, 341-342; *14859 Moorpark Homeowner's Assn. v. VRT Corp*. (1998) 63 Cal. App. 4th 1396, 1407.) Thus, if the party seeking the injunction can make a sufficiently strong showing of likelihood of success on the merits, the trial court has discretion to issue the injunction notwithstanding that party's inability to show that the balance of harms tips in his or her favor. (*Right Site Coalition v. Los Angeles Unified School Dist*. (2008) 160 Cal. App. 4th 336, 342; *14859 Moorpark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal. App. 4th 1396, 1407.)

In making its determination, the court must not determine the merits of the controversy or whether the petitioner will prevail but only whether there is a likelihood the petitioner will prevail. (See *Best Friends Animal Society v. Macerich Westside Pavilion Property LLC* (2011) 193 Cal. App. 4th 168, 182-185; *Youngblood v. Wilcox* (1989) 207 Cal. App. 3d 1368, 1372; see also *Pro-Family Advocates v. Gomez* (1996) 46 Cal. App. 4th 1674, 1681 n.9; *Hunt v. Superior Court* (1999) 21 Cal. 4th 984, 999.)

Although a court must consider both factors in making its decision it may deny a preliminary injunction if either of the two factors alone would support a ruling denying relief. (*Jessen v. Keystone Savings & Loan Assn.* (1983) 142 Cal. App. 3d 454, 459.)

Likelihood That The Plaintiffs Will Prevail On The Merits At Trial

To prevail on the merits of their claim, Plaintiffs will be required to show that the Legislature's enactment of §2704.78 is facially unconstitutional in light of Article XVI Section 1 of the California Constitution. As described below, to make such a showing, Plaintiffs will be required to prove that the Legislature's enactment of §2704.78 conflicts with the "single object or work" "distinctly specified" in Prop. 1A, because all moneys raised by authority of Prop. 1A shall not "be applied only to the specific object therein stated or to the payment of the debt thereby created." Based upon the limited case authorities that have previously evaluated alleged violations of Article XVI Section 1 of the California Constitution, the constitutional injunction against later repeal of the bond law as alleged by Plaintiffs here "aims to prevent the Legislature from making substantial changes in the scheme or design which induced voter approval." In this respect, Plaintiffs will be required to prove that the Legislature's enactment of

§2704.78 makes substantial changes in the proposition's scheme or design which induced voter approval of Prop. 1A, amounting to the effective equivalent of a repeal of Prop. 1A. The court does not find that Plaintiffs have demonstrated a likelihood of success on this broad constitutional question.

Plaintiffs assert that "the law is very clear that once the voters approve a bond measure, the bond proceeds may only be used for the purposes the voters intended, as defined by the terms of the bond measure." In this respect, Plaintiffs cite *O'Farrell v. County of Sonoma* (1922) 189 Cal. 343, 348-349; *Peery v. City of Los Angeles* (1922) 187 Cal. 753, 767-769; *High-Speed Rail Auth., supra*, 228 Cal.App.4th at p. 701; *Veterans of Foreign Wars v. State of California* (1974) 36 Cal.App.3d 688, 692.) Plaintiffs argue that the "only way the terms of the bond measure can be altered is by returning to the voters" citing *O'Farrell,* 189 Cal. at p. 348.

Plaintiffs contend that the clause "suitable and ready for high-speed train operation" as enacted by the voters was not unclear, uncertain, or requiring the Legislature's further clarification. Plaintiffs argue that the term "Suitable" means suited for - i.e., designed for the use of high-speed trains" and the term "Ready" means "immediately available for high-speed train use." Plaintiffs argue that AB 1889 modified that provision so that a "usable segment" would be considered "suitable and ready for high-speed train operation" even if it would not be ready (and perhaps not even suitable) after completion of the project and expenditure of the dedicated bond funds.

Plaintiffs argue that by enacting AB 1889, the Legislature "figuratively loosen[ed] the bonds of the financial straitjacket to give CHSRA more 'wiggle room' in designing and approving a usable segment, contrary to §2704.08 (c) and (d). (Citing *O'Farrell, supra*, 189 Cal. at p. 348.) Consequently, Plaintiffs contend that the Legislature's enactment of AB 1889 was facially unconstitutional in violation of Article XVI Section I of the California Constitution, and that an expenditure of public funds that would violate Prop. 1A requirements if AB 1889 had not been enacted would be an illegal expenditure of public funds that may be enjoined under Code of Civil Procedure §526a.

In Opposition, CHSRA first argues that by its terms, Prop. 1A broadly authorizes the Legislature to impose "conditions and criteria" by statute on any appropriation of bond funds. (§ 2704.06.) CHRSA contends that in enacting AB 1889, and providing that "suitable and ready for high-speed rail" permits bond funds to be used for capital costs for a project that would enable high-speed trains to operate "after additional planned investments are made on the corridor or useable segment thereof and passenger train service providers will benefit from the project in the near term," the Legislature exercised its authority to impose "conditions and criteria" by statute on the funds it appropriated in 2011. (§§ 2704.76, subd. (b); 2704.77, 2704.78, subd. (a).)

CHSRA also contends that if Prop. 1A did not expressly authorize the Legislature to impose conditions on the use of bond proceeds in the manner allowed in AB 1889, the Legislature nonetheless has the constitutional authority to amend Prop. 1A. CHSRA argues that the Legislature may amend a bond measure that is proposed by the Legislature and ratified by the voters <u>without constitutional limitation</u> so long as the

amendment does not impliedly repeal the bond act by making “substantial changes in the scheme or design which induced voter approval” of the bond measure, such as by appropriating funds for “an alien purpose.” CHSRA cites *Veterans of Foreign Wars v. State of California* (1974) 36 Cal.App.3d 688, 693-694 (“*Veterans”*) and Cal. Const., art. XVI, § 1 in support of this position. CHSRA argues that the Plaintiffs have not alleged substantial changes in the scheme or design which induced the voter’s approval of Prop. 1A, and that AB 1889 made no change to the purpose for which bond proceeds are used because the proceeds “are still being used to build a high-speed train system.”

CHSRA contends that the Plaintiffs' reliance on *O 'Farrell v. County of Sonoma* (1922) 189 Cal. 343, 348-349 and *Peery v. City of Los Angeles* (1922) 187 Cal 753, 767 is misplaced because those decisions are distinguishable on their facts, and more importantly the contract theory on which their analysis is based has been eroded by decades of subsequent case law, as reflected in both *Veterans of Foreign Wars, supra* , 36 Cal.App.3d at p. 693, and *High-Speed Rail Auth., supra,* 228 Cal.App.4th 676. CHSRA argues that *Veterans* and *High-Speed* do not hold that a bond act must be implemented in strict compliance with its terms.

To the contrary, CHSRA argues that the Third District Court of Appeals in *High-Speed* recognized "fluidity of the planning process for large public works projects." (*High-Speed, supra*, 228 Cal.App.4th at p. 703.) "[T]he Supreme Court has allowed substantial deviation between the preliminary plans submitted to the voters and the eventual final project. [...] ‘[T]he authority to issue bonds is not so bound up with the preliminary plans . . . that the proceeds of a valid issue of bonds cannot be used to carry out a modified plan if the change is deemed advantageous.’” (*Ibid*., quoting *Cullen v. Glendora Water Co.* (1896) 113 Cal. 503, 510; see also, e.g., *City of San Diego v. Millan* (1932) 127 Cal. App. 521, 536 [holding that bond act providing for construction of arched masonry dam was not violated by legislatively-mandated design change to an earth-filled rock embankment dam].)

CHSRA concludes its argument on the merits reminding that when considering acts of the Legislature, courts must presume that a statute is valid “unless its unconstitutionality clearly, positively, and unmistakably appears.” (*People v. Falsetta* (1999) 21 Cal.4th 903, 912-913.) This deference and the presumption of validity afforded all legislative acts arise because the California Legislature “may exercise any and all legislative powers which are not expressly ... denied to it by the [California] Constitution.” (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691.) “In other words, [courts] do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited.” (*Ibid*., internal quotations and citation omitted.) Any “restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.” (*Ibid*., internal quotations and citation omitted.) Thus,”"[i]f there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action.” (*Ibid*., internal quotations

and citations omitted.)

The parties' competing arguments on the merits raise three key questions on the merits of the action: (1) did §2704.06 of Prop. 1A broadly authorize the Legislature to enact the new definition of "suitable and ready for high-speed train operation" in §2704.78 even if it materially amended that phrase as originally enacted and intended by the voters; (2) if not, does the Legislature's enactment of the definition of "suitable and ready for high-speed train operation" in §2704.78 conflict with the "single object or work" "distinctly specified" in Prop. 1A, because all moneys raised by authority of Prop. 1A shall not "be applied only to the specific object therein stated or to the payment of the debt thereby created;" or (3) does the Legislature's enactment of the new definition of "suitable and ready for high-speed train operation" in §2704.78 make "substantial changes in the scheme or design which induced voter approval" of Prop. 1A effectively repealing Prop. 1A.

§2704.06

CHSRA first argues that Prop. 1A "broadly authorizes the Legislature to impose 'conditions and criteria' by statute on any appropriation of bond funds" under §2704.06, and thus authorizes the Legislature to enact the definition of "suitable and ready for high-speed train operation" in new §2704.78 even if it materially alters the original meaning of that phrase. The court disagrees for purposes of this petition.

§2704.06, which is entitled "Availability of proceeds for planning and capital costs" only provides:

> "The net proceeds received from the sale of nine billion dollars ($9,000,000,000) principal amount of bonds authorized pursuant to this chapter, upon appropriation by the Legislature in the annual Budget Act, shall be available, and **subject to those conditions and criteria** that the Legislature may provide by statute, for (a) planning the high-speed train system and (b) capital costs set forth in subdivision (c) of Section 2704.04, consistent with the authority's certified environmental impact reports of November 2005 and July 9, 2008, as subsequently modified pursuant to environmental studies conducted by the authority."

The court does not find that §2704 expressly or implicitly bestowed carte blanche power upon the Legislature to change, modify, or delete the prescribed components of the funding plans and reports expressly provided in §2704.08. The court is not persuaded that the Legislature's authority to place statutory "conditions and criteria" upon the availability of appropriated Prop. 1A funds also authorized the Legislature to enact amendments to Prop. 1A that would otherwise violate the general restrictions of Article XVI Section 1 of the California Constitution.

§2704.78 and the "Single Object or Work" Specified in Prop. 1A

The court finds that the Plaintiffs have not shown a probability of success on their claim that §2704.78 necessarily conflicts with the "single object or work" "distinctly specified" in Prop. 1A or that the new law makes "substantial changes in the scheme or design which induced voter approval" which effectively repeal Prop. 1A in violation of article XVI Section 1 of the California Constitution.

Article XVI Section 1 of the California Constitution expressly requires that "all moneys raised by authority of such law shall be applied only to the specific object therein stated or to the payment of the debt thereby created." Further, the Legislature is empowered under article XVI Section 1 to "repeal the law if no debt shall have been contracted in pursuance thereof." (Cal. Const., Art. XVI § 1.) "[A] bond act approved by the voters can, by its terms, limit the purposes for which the bond proceeds can be spent." (*California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal. App. 4th 676, 701-704 citing *O'Farrell v. County of Sonoma* (1922) 189 Cal. 343, 348-349 and *Mills v. S. F. Bay Area Rapid Transit Dist.* (1968) 261 Cal.App.2d 666, 668.) "Whether the limitation be deemed to be contractual [citation] or of a status analogous to such relation [citation] or a restriction implied by the requirement of popular approval of the bonds [citation], it does restrict the power of the public body in the expenditure of the bond issue proceeds, and hence in the nature of the project to be completed and paid for." (*Mills v. S. F. Bay Area Rapid Transit Dist*., *supra*, 261 Cal.App.2d 666, 668.) "More importantly, article XVI, section 1 of the California Constitution requires that the works funded by a bond measure shall be 'distinctly specified' in the measure presented to the voters, and that any bonds to be issued as authorized by the bond act approved by the voters 'shall be applied only to the specific object therein stated.'" "The logical basis for invalidating [later] amendments is not that they violate a metaphorical contract; rather, that they clash with the constitutional provision which required popular approval of the bonds in the first place…." (*State School Bldg. Fin. Com. v. Betts* (1963) 216 Cal.App.2d 685, 693.) "The constitutional injunction against later repeal of the bond law aims to prevent the Legislature from making substantial changes in the scheme or design which induced voter approval." (*Veterans of Foreign Wars v. State Of California* (1974) 36 Cal.App.3d 688, 693.)

These authorities require the court to preliminarily consider what the voters understood and intended by the phrase "suitable and ready for high-speed train operation" in relation to the single object or work distinctly specified in Prop. 1A and its discernible scheme or design.

The same basic rules of statutory construction apply to statutes enacted by the voters as to statutes passed by the Legislature. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037.) If the language of a statute is clear and unambiguous, the court has nothing to construe and consequently does not need to resort to the various forms of indicia of legislative intent. (*Rehman v. Department of Motor Vehicles* (2009) 178 Cal.App.4th 581, 586.) However, if the language is ambiguous, courts may consider ballot summaries and arguments in

determining the voters' intent and understanding of a ballot measure. (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571.) On occasion, courts also have resorted to extrinsic materials such as "various pre-election materials (newspaper articles and editorials, committee reports, interest-group articles, etc." as an aid in interpreting ambiguous language in statutes or initiative measures. (*AFL-CIO v. Deukmejian* (1989) 212 Cal.App.3d 425, 436; *Brown v. Superior Court* (2016) 63 Cal. 4th 335, 343-349 [legislative bill analyses].)

Having applied the foregoing guidance where applicable, the court does not find the Plaintiffs have demonstrated a probability of success that the phrase "suitable and ready for high-speed train operation" has the certain restrictive meaning ascribed by Plaintiffs within the context of the overall statutory scheme enacted by the voters. Instead, in comparison to the "single object or work" specified in Prop. 1A, it cannot easily be declared that §2704.78 makes such a substantial change to Prop. 1A's apparent scheme or design that it implicitly repeals Prop. 1A.

The weight of the information and analyses provided to the voters explained that Prop. 1A funds would only be appropriated and used to construct a high-speed train system and in lesser part to fund capital projects that improve other passenger rail systems. The voters were informed that the bond funds may be used for a broad array of purposes including environmental studies, planning and engineering of the system, and for capital costs such as acquisition of rights-of-way, trains, and related equipment, and construction of tracks, structures, power systems, and stations. In short, the "single object or work" specified in Prop. 1A was primarily the general construction of a high-speed train system. Neither the language nor stated intent of §2704.78 facially clashes with, abandons, or repeals the "single object or work" specified in Prop. 1A. The stated goal remains the construction of a high-speed train system.

The court concludes that Plaintiffs have not shown a probability of success in establishing §2704.78 necessarily conflicts with the "single object or work" "distinctly specified" in Prop. 1A, or that the new law makes "substantial changes in the scheme or design which induced voter approval" that effectively repeal Prop. 1A in violation of article XVI Section 1 of the California Constitution.

<u>The Balance Of Any Interim Harm</u>

The court also finds that the balance of interim harms weigh greatly in favor of CHSRA.

Here, an injunction could significantly harm the State and the public interest. As more specifically described in CHSRA's opposition, CHSRA has received a grant pursuant to the American Recovery and Reinvestment Act ("ARRA") ($2.55 billion) as well as further grants pursuant to a 2010 appropriations act ($928 million). Pursuant to the ARRA Cooperative Agreement with the FRA, the CHSRA is committed to ensure that the Central Valley construction results in a completed project usable for train service. The CHSRA is required to match the ARRA federal grant money, approximately dollar

for dollar. The FRA and the CHSRA have agreed that the ARRA funds, which must be fully expended by September 2017, may be spent first, to be followed by the State's match to those ARRA funds, before the 2010 grant funds may be spent. The match must be provided on a schedule memorialized in a Funding Contribution Plan ("FCP"). State funds will have to be spent soon and as required by the FCP to begin matching the federal ARRA funds for the ongoing Central Valley construction. Failure to timely match the federal ARRA funds as set forth in the schedule in the FCP could have disastrous consequences for the CHRSA and the State. Most damaging is the potential for FRA to demand repayment of the federal grant monies already disbursed to the Authority, which the terms of the ARRA Cooperative Agreement would allow. The federal government can enforce that repayment requirement by withholding and redirecting back to the U.S. Treasury other federal funds that would otherwise be provided to California, such as highway funds.

Thus, a demand for repayment of the ARRA funds could result in a loss of $2.55 billion dollars to the State of California. Ultimately, the California taxpayers would pay for this, either through direct usage of other state funds (such as general fund monies) to make the repayment, or indirect usage of state funds to backfill (for state highway projects, for example) the federal money withheld to effectuate the repayment. Further, demand for repayment of ARRA monies expended also could lead the FRA to attempt to cancel the $928 million in 2010 appropriations granted but not yet spent, resulting in a potential total loss of $3.5 billion dollars. Lastly, the FRA also could prevent any further funding grants to the CHRSA, which could result in further losses to the State in the future, and which could be devastating to the development of the high-speed rail in California. None of this would be in the public interest.

In counter to the CHRSA’s showing, Plaintiffs contend that the defendants have other funds that may be used because according to CHRSA’s own Funding Contribution Plan of December 31, 2016, it still has a balance of over $100 million in ARRA grant funds, as well as several hundred million dollars of Greenhouse Gas Reduction Fund cap & trade auction proceeds upon which to draw. (See, Warren Decl., 11, 13, 14.) However, Plaintiffs argue that if Defendants were allowed to continue to commit and expend bond funds on the Central Valley Segment, and the CHSRA’s use of the funds is ultimately found to be contrary to the “single work or object” of Prop. 1A, that money would be lost beyond recovery, permanently damaging the ability of CHSRA to construct the project that the voters intended. (*Id*., 15.) Plaintiffs additionally contend that permitting the funding as anticipated would result in irreparable harm to plaintiff Tos by virtue of the funding of the State’s condemnation action against his real property. As argued by CHSRA, this contention is unpersuasive since the Tos condemnation proceeding is already funded by a deposit of just compensation.

In weighing the competing potential harms at issue, the court finds that the potential harm to the State and CHSRA that could result from the issuance of a preliminary injunction in this matter would far exceed the potential harm if CHSRA made intervening expenditures of bond funds while proceeding with the currently approved

plan.

CONCLUSION

The court is not persuaded that there is a likelihood that the Plaintiffs will prevail on the merits at trial, and the balance of any interim harm to the Plaintiffs if the injunction is substantially less than the harm to the Defendants if the requested injunction is issued. The petition for preliminary injunction is therefore denied.

Item 17 **2017-00206206-CU-PT**

In Re: Hayden Spencer Joseph Maclean

Nature of Proceeding: Petition for Change of Name

Filed By: McClean, Hayden Spencer Joseph

The petition is GRANTED. The Court will sign the order submitted with the moving papers.

Item 18 **2017-00206212-CU-PT**

In Re: Michael David Fox

Nature of Proceeding: Petition for Change of Name

Filed By: Fox, Michael David

The petition is GRANTED. The Court will sign the order submitted with the moving papers.

Item 19 **2017-00206264-CU-PT**

In Re: T. Parker

Nature of Proceeding: Petition for Approval for Transfer of Structured Settlement Payment

Filed By: Conway, Michael J.

This matter was originally set for hearing on 3/30/2017 but was continued to this date to permit Mr. Parker to file no later than 4/14/2017 a supplemental declaration. No supplemental declaration has to date been filed, much less by the 4/14/2017 deadline. Accordingly, this Court is unable to conclude that the transfer proposed here is in Mr. Parker's "best interest" as required by Insurance Code §10139.5 and the present petition is therefore denied.

This minute order is effective immediately. No formal order or other notice is required. (Code Civ. Proc. §1019.5; CRC Rule 3.1312.)

Item 20 **2017-00208624-CU-PT**

In Re: S. Cobbs

Nature of Proceeding: Petition for Approval for Transfer of Structured Settlement Payment