Civ. No. C075668

CALIFORNIA COURT OF APPEAL
THIRD APPELLATE DISTRICT

CALIFORNIA HIGH-SPEED RAIL AUTHORITY *et al.*,

Petitioners

v.

THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Respondent

JOHN TOS *et al.*,

Real Parties in Interest

Sacramento County Superior Court Case Number 34-2011-0113919-CU-MC-GDS and 34-2013-00140689-CU-MC-GDS; Department 31, Hon. Michael P. Kenny, Judge. Tel.: 916-874-6353

ANSWER OF REAL PARTIES IN INTEREST JOHN TOS ET AL. TO AMICUS CURIAE BRIEFS OF BAY AREA TRANSIT AGENCIES, L.A. COUNTY MTA, SCAG, AND SENATOR CATHLEEN GALIANI IN SUPPORT OF PETITIONERS

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INTRODUCTION

It is, perhaps, not surprising that the various amici curiae responded to herein have filed briefs in support of Petitioners. The Bay Area Transit Agencies and the Los Angeles area public agencies both will reap major financial benefits from the issuance of the Proposition 1A bonds and Petitioner California High-Speed Rail Authority's ("Authority") ability to move forward with its current project[1]. In these times of limited public funding for rail infrastructure project, it does not pay to look such gift horses in the mouth.

Sen. Galgiani also has motives for her brief. She is a long-time supporter of the Authority and its project, and, as she points out, was the initial author of the bond measure that was approved by the voters as Proposition 1A. Having cast her lot with the Authority, she has chosen to continue supporting it.

While support from these amici is expected, it does not have a high legal value. The arguments made by amici either echo those already made by Petitioners or focus on the benefits of allowing the Authority's project to proceed unfettered by court review. Regardless of those benefits, the California Constitution requires that a voter-approved bond measure's

[1] A good portion of these funds are themselves questionable as to whether they conform to the requirements of the bond measure. (See infra.)

provisions be followed. In this case, as the trial court properly concluded, they were not. The trial court's decisions therefore must be upheld.

ARGUMENT

I, RESPONSE TO AMICUS BRIEF OF SENATOR GALGIANI.

A. THE COMMITTEE'S DETERMINATION THAT IT WAS "NECESSARY OR DESIRABLE" TO ISSUE THE BONDS DID NOT COMPLY WITH THE BOND MEASURE.

1. Senator Galgiani's Opinions About the Bond Measure are not Entitled to Consideration.

Sen. Galgiani points vigorously to her status as the original author of AB 3032, the legislation that included the bond measure that was ultimately approved by the voters as Proposition 1A. (See, Application of Hon. Catherine Galgiani for Leave to File Amicus Brief ["Galgiani Application"] at pp. 1, 2.) However, the opinions of any one legislator about a statute's meaning or intent, even those of the author of the legislation, are not considered in construing the legislation. (*Grupe Development Co. v. Superior Court* (1993) 4 Cal.4th 911, 922.) This is all the more the case here. While Sen. Galgiani, then an assembly member, initially authored the legislation, it was modified extensively in the Senate, where her role was extremely limited[2]. (See, Exhibit 2 to Request for Judicial Notice of Hon. Cathleen Galgiani at pp.1-4 [listing amendments to the bill made in the

[2] While she could present her bill to Senate committees, she could neither propose nor vote on Senate amendments to the bill.

Senate]; see also 15 HSR 4138-4176 [bill analysis and text of AB 3034 as amended in Senate].)

2. The Language of the Bond Measure, Being Clear, Requires no Interpretation.

Sen. Galgiani's brief starts from the premise that the language of the bond measure requires interpretation. The trial court's ruling on both the validation action and the mandamus action did not, however, involve interpreting the language of the bond measure. That was proper, as the language of the measure is clear and unambiguous.

> Indeed, the canons of construction which courts employ in determining questions of statutory interpretation, require resort first to the language of the statute itself. If that language is clear on its face, no further "construction" or "authority" is required, or even permitted. (*Newton v. Clemons* (2003) 110 Cal.App.4th 1, 11.)

3. The Determination of Whether It was Necessary or Desirable to Issue Bonds, Like any Quasi-Legislative Determination, Required Substantial Evidence.

In Street & Highways Code §2704.13[3], the bond measure specifically states:

> The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Sections 2704.06 and 2704.095 and, if so, the amount of bonds to be issued and sold.

As the trial court properly held, this language required the Committee to <u>determine</u> whether or not it was necessary or desirable to

[3] Unless otherwise indicated, all statutory references herein are to the Streets & Highways Code.

issue the bonds authorized by the measure to carry out the construction of the high-speed rail system (§2704.06) or the improvements to connecting rail systems (§2704.095), and if so, the amount of bonds to be issued and sold. That determination was, as Petitioners and their amici point out, a discretionary act. Nevertheless, the trial court found that some judicial review, however deferential, was required in order to protect against arbitrary or capricious actions. (1 HSR 55-56; see also, *Id.* at p.65:4-9.) This was proper, because the Committee's determination was a quasi-legislative action, and as such, court review of its propriety, while highly deferential, is proper. (1 HSR 56:7-17.)

Legislative discretion, while broad, is not unlimited. That discretion was required to be anchored in the words and intent of the bond measure and the bond statutes, and in that sense it was a legal discretion.

> Legal discretion means an impartial discretion *taking into account all relevant facts*, together with legal principles essential to an informed and just decision. (*Catricala v. State Personnel Bd*. (1974) 43 Cal.App.3d 642, 646 [emphasis added].)

The court therefore applied the standard of review generally applicable to a quasi-legislative action: "whether there was substantial evidence to support the legislative decisions." (1 HSR 56:2-3 [quoting from *Morgan v. Community Redevelopment Agency* (1991) 231 Cal.app.3d 243, 259-260].)

The trial court therefore carefully reviewed the evidence before the Committee, searching for any evidence that might support the Committee's determination. It could find none. For the Committee to make its determination unguided by any evidence is practically the definition of arbitrary and capricious.[4]

Sen. Galgiani argues that the trial court went too far by considering whether the Committee's determination was required to be, "desirable to the State government as a whole, or to the tax paying public."[5] In fact, the trial court was simply searching for any evidence that would support the Committee's determination. As the trial court noted, the Authority's bare request for bond issuance said nothing more than that it wanted the bonds issued. (*Id*. at p.66: 17-19.) It was for the Committee, not the Authority, to determine if that request should be granted because bond issuance was necessary or desirable. If it were otherwise, there would be no reason for the Legislature to have created the Committee and placed in the bond measure the requirement that the Committee make its own determination Since the Legislature is presumed not to engage in idle acts (*People v.*

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[4] In fact, counsel for Petitioners, in response to a question from the trial judge, asserted that the Committee would have been justified in making its determination by flipping a coin. (1 HSR at p. 122:19-24.)

[5] Sen. Galgiani cites to page 9 of the trial court's validation ruling. The quoted language does not appear on that page. It actually appears on p.15 of the ruling (1 HSR 66:12-13) in the context of explaining that the Authority's bare request for bond issuance was not substantial evidence indicating that bond issuance was either necessary or desirable.

Correa (2012) 54 Cal.4th 331, 348; see also, Civil Code §3532 ["The law neither does nor requires idle acts."]), Sen. Galgiani's interpretation cannot be correct.

4. The Committee Was Required to Determine Whether It Was Necessary or Desirable to Issue the Bonds At That Time.

Sen. Galgiani argues that whether bond issuance was necessary or desirable had already been decided by the voters' approval of the bond measure. (Galgiani Brief at p.7.) While the overall desirability of issuing bonds may have been decided by the voters, what was before the committee was whether at that specific time, issuing bonds was necessary or desirable to achieve the bond measure's goals. (See Decision, 1 HSR 66:11 ["It does not necessarily determine that issuance of the bonds at the time of the request actually was desirable …"] [emphasis added].) The trial court could find no evidence to support that determination; because there was none.

Sen. Galgiani also asserts that the Committee was only to determine, "whether the amount of the bonds requested is sufficient to carry out the purposes of the Bond Act." (Galgiani Brief at p.7.) Neither the sufficiency language nor the limitation to the Committee's purpose are anywhere to be found in the bond measure. While Sen. Galgiani may have authored the initial text of the measure, she does not have license to insert, post-election, provisions that were not before the voters.

5. The Committee's Duties Differed from Those of the Groups Charged with Evaluating the Funding Plan.

Finally, Sen. Galgiani argues that requiring evidence to support the Committee's determination would result in a confusing and unnecessary overlap between the roles of the Committee and of the Peer Review Group, Director of Finance, and the Legislature. There is no overlap or confusion because the functions of the groups are different.

The role of the Committee was to determine the appropriateness of authorizing the issuance of bonds. The roles of the Peer Review Group, Director of Finance, and Legislature, by contrast, involved reviewing the Funding Plans prepared by the Authority[6]. Just as the Authority was not given responsibility for determining the appropriateness of issuing the bonds, the Committee was not intended to review the validity of the Funding Plans or the appropriateness of authorizing expenditure of bond funds pursuant to those plans. The trial court's decision says nothing different. What the trial court was looking for (at this level) was not evidence that the bond funds would be used wisely, but only that it was either necessary or desirable to issue the bonds.[7] It was in that respect, and that respect alone – considering the appropriateness of issuing bonds – that

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[6] As with the Committee, and as will be discussed further below, review by these groups did not supplant the need for judicial review.

[7] Whether the Committee (or the court) needed to consider whether the proposed use of the bond funds conformed to the voters' intent and therefore constituted use "for the purposes of" the bond measure is a question the trial court did not reach.

the Committee had a responsibility to consider the "best interests of the State and the People," and the Committee violated that responsibility by making an arbitrary and capricious determination that was "entirely lacking in evidentiary support." (*Carrancho v. California Air Resources Board* (2003 111 Cal.App.4th 1255, 1265.)

B. IN THE *TOS ET AL*. CASE, THE TRIAL COURT ACTED PROPERLY IN ORDERING RESCISSION OF THE DEFECTIVE FIRST FUNDING PLAN.

In *Tos et al. v. California High-Speed Rail Authority et al*. ("the *Tos Case*"), the trial court considered whether the Authority's first Funding Plan complied with the requirements of the Bond Act, and if not, what remedy, if any, was proper. (1 HSR 75:2-8) The court concluded that the Funding Plan failed to substantially comply with the Bond Act in two respects: failure to identify adequate funding for the proposed usable segment and failure to properly certify that all project-level environmental clearances for that segment had been completed. (1 HSR 80:9-15.)

Sen. Galgiani does not contest that the Funding Plan failed to meet the requirements of the Bond Act. Instead, she argues that: 1) no private right of action existed allowing enforcement of these Bond Act provisions, and 2) even if a private right of action was allowable, the trial court erred in ordering rescission of the defective Funding Plan. Sen. Galgiani's arguments go against long-standing precedent on enforcing provisions of a voter-approved bond measure. They should therefore be rejected.

1. Any Taxpayer has a Right to Sue to Enforce Provisions of a Bond Act.

Article XVI, §1 of the California Constitution provides that the State may not incur substantial indebtedness unless the terms of that indebtedness have first been approved by California voters. (*See, e.g., Veterans of Foreign Wars v. State of California* (1974) 36 Cal.App.3d 688, 692-693.) California law has long held that taxpayers, whose payments would be used to pay the bond debt, have standing to enforce a bond measure's provisions. (*Id*.; *see also, Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013; *O'Farrell v. County of Sonoma* (1922) 189 Cal. 343 [challenging expenditure as not conforming to bond measure's requirement]; *Peery v. City of Los Angeles* (1922) 187 Cal. 753 [challenging violation of interest rate provision of bond measure].)

Here, the requirements of the first Funding Plan were part of a statutory scheme intended to protect the financial integrity of the subsequent legislative appropriation and of the "updated" second Funding Plan. Plaintiffs John Tos and Aaron Fukuda, both as voters and taxpayers, had standing to sue to enforce these important requirements.

2. The Trial Court's Decision did not Violate the Separation of Powers Doctrine.

Sen. Galgiani argues that in ordering rescission of the Authority's Funding Plan, the trial court violated the separation of powers doctrine.

There is no basis for this assertion. According to her brief, the trial court's writ ordering rescission of the Funding Plan " …has the ultimate legislative effect of repealing the Legislature's budgetary decision to appropriate funds in connection with those plans." (Galgiani Brief at p.11.) This is nonsense. The trial court specifically refused to invalidate the Legisature's appropriation of bond funds. (1 HSR 86:4-5.) However, even if the court had decided to invalidate the appropriation of bond funds for the ICS, that would not have violated separation of powers.

This Court directly addressed the appropriateness of a court's invalidating a legislative appropriation based on violation of a ballot measure in *Shaw v. People ex rel Chiang* (2009) 175 Cal.App.4th 577, 595-596.

> We are particularly cognizant that "[t]he enactment of a budget bill is a legislative function; it is both a right and a duty that is expressly placed upon the Legislature and the Governor by our state Constitution." (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1214; see Cal. Const., art. IV, § 12.) Nevertheless, even in matters involving the state budget, "the courts have the responsibility for determining the constitutionality of acts of the Legislature, and in doing so to give effect to the will of the electorate which is, of course, paramount." (*Schabarum, supra*, at p. 1218.)

In that case, an initiative bond measure had, in addition, redefined the State's Public Transportation Account ("PTA"), which receives state gas tax "spillover" revenue, as a trust fund account and required that the account's funds be used "*only* for transportation *planning and mass*

transportation purposes, as specified by the Legislature." (*Id.* at pp. 588-589 [emphasis in original].) While the initiative allowed the legislature to amend that section of the initiative, it could only do so if the amendment was "*consistent with, and furthers the purposes of, this section*." (*Id*. [emphasis in original].)

Subsequently, the legislature did indeed pass an amendment that created a new account, the Mass Transportation Fund ("MTF"), and provided for transfer of some gas tax spillover funds that would otherwise gone into the PTA account to, instead, be placed in the MTF. (*Id.* at p. 592.) The legislation also provided that MTF funds could be used for a variety of purposes, including purposes not allowed for the MTA trust funds, as specified in the initiative. (*Id*)

The legislation establishing the MTF and the transfer of funds from the PTA to the MTF was challenged for violating the bond initiative's provisions. (*Id.* at p. 594.) This Court held that the Legislation establishing the MTF and transferring funds from the PTA to the MTF was not consistent with the intent of the bond initiative and therefore was invalid as an unconstitutional amendment to the bond initiative. (*Id*. at pp. 602-603.)

Thus, in *Shaw*, this Court specifically held that the courts have the power to invalidate a legislative appropriation that violates the provisions of a voter-approved bond measure. There could be no more explicit rebuttal of Sen. Galgiani's contention that the courts have no authority to

even indirectly challenge a legislative appropriation for violation of a bond measure.

3. The Defective Funding Plan Interfered with the Bond Measure's Intended Sequence of Events.

Tos *et al*. agree with Sen. Galgiani that the provisions of §2704.08(c) and (d) constituted a carefully crafted sequence.[8] That sequence requires that the first Funding Plan for any corridor or usable segment thereof for which bond funding is requested, <u>containing specified necessary information and certifications</u>, be provided to the Legislature (and others) at least sixty days prior to submission of an appropriation request for bond funds. Assuming the Legislature approved the appropriation, the Authority was then to prepare a second <u>updated</u> Funding Plan to be reviewed and approved by the Director of Finance prior to any expenditure of bond funds towards construction. (Streets & Highways Code §2704.08 subd. (c) and (d); see also 20 HSR 5125 [Legislative Analyst's analysis of bond measure in Voters' Information Guide].)

When the Authority prepared and submitted a defective first Funding Plan, it meant: 1) that the Legislature did not have the information the voters had intended before deciding to approve the appropriation of bond

[8] However, Sen. Galgiani had little, if anything, to do with crafting that sequence, which was added by the Senate Transportation Committee long after then-Assembly Member. Galgiani had authored the measure's initial language. (Exhibit 2 to Sen. Galgiani's Motion for Judicial Notice, pp. 3-4 [amendments19-23].)

funds for the ICS, and 2) there would not be the proper information to serve as the basis for an updated Funding Plan under §2704.08 subd. (d). Further, the facts underlying the defective Funding Plan were that the appropriation was made prior to completion of all necessary project level environmental clearances for the corridor or usable segment thereof[9] (See, 20 HSR 5192 [Authority's admission that it had not completed all project level environmental clearances, even for just the ICS].), again contrary to the intent of the voters.

4. The Second, Pre-expenditure Funding Plan Would not Suffice to Correct the Deficiencies in the First Funding Plan.

Sen. Galgiani argues that whatever deficiencies there may have been in the first Funding Plan would be corrected by the second, pre-expenditure Funding Plan, making the rescission of the first Funding Plan superfluous and a source of unnecessary delay. (Galgiani Brief at pp. 13, 15-16.) This argument is demonstrably incorrect.

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[9] Sen. Galgiani's brief asserts that the Authority has " …recently completed environmental review …" (Galgiani Brief at p. 16 fn.5.) While the Authority has released a Final Project EIR/EIS for the Fresno to Bakersfield high-speed rail segment, that EIR/EIS has not yet received either certification by the Authority or approval by the Federal Railroad Administration. Even if it had, the Usable Segment identified by the Authority's Funding Plan and confirmed in the Authority's 2012 and 214 Business Plans extends not to Bakersfield, but to the San Fernando Valley. (See, e.g., 27 HSR 7096, 7103 [description and diagram of IOS].) Work on environmental clearance south of Bakersfield has not yet begun.

First, when the appropriation of bond funds was approved without the necessary voter-mandated information, that appropriation was also necessarily defective and contrary to the intent of the voters in approving the bond measure. The second Funding Plan, whatever its content, could not cure that defect. Consequently, as Tos *et al.* argued in the trial court, the proper remedy should have included not only rescission of the defective Funding Plan, but, as in *Shaw, supra*, 175 Cal.App.4th at 602-603, invalidation of the improper and illegal appropriation. (See, 1 HSR 182-183.)

Second, the purpose of the second Funding Plan was not to correct, but to update, the first Funding Plan. (See, 20 HSR 5125.) This can be seen from the Second Funding Plan's requirements for increased detail beyond that contained in the first Funding Plan. Thus, while the first Funding Plan only requires identification of the sources of all funds, and anticipated time of receipt, based on expected commitments, authorizations, agreements, allocations, or other means (§2704.08(c)(2)(D) [emphasis added]), the second Funding Plan requires actual commitments by private parties, and authorizations, allocations or other assurances from government agencies. (§2704.08 (d)(1)(B).) Thus the second Funding Plan requires the Authority to show commitments, authorizations, allocations, or other assurances that demonstrate that the funds for a complete corridor or usable segment thereof are not just expected, but actually assured. While

the first Funding Plan requires ridership, operating revenues, and construction cost estimates, the second Funding Plan requires reports on projected ridership and revenues and the projected cost of construction. Likewise, while the first Funding Plan requires providing expected terms and conditions to leases or franchise agreements to be entered into, the second Funding Plan is require to describe the actual terms and conditions for any agreements for the construction or operation of passenger train service along the corridor or usable segment.

In each case, the second Funding Plan requires additional details beyond what is in the first Funding Plan, consistent with the expectation that more information would be available as the system moved closer to actual construction. In addition, subd. (d) requires an independent expert report to confirm several of the certifications made in the first Funding Plan, with the expectation, again, that as the start of actual construction approached, more could be expected and an independent expert should be able to confirm what the Authority had asserted in its certifications.

Finally, and as the trial court correctly noted, nothing in subd. (d) addresses the first Funding Plan's certification that all project level environmental clearances for the corridor or usable segment had already been completed. This is only natural, as the voters could presume that the certification of prior completion of the environmental clearances, being

easily objectively verified and subjected to challenge if improper, would not need to be checked on further.

Sen. Galgiani argues that the fact that the second Funding Plan, "specifies the inclusion of **a report describing any material changes from the plan submitted pursuant to subsection (c)**" (Galgiani Brief at p.14 fn.4 [emphasis in original]) shows that the voters expected the second Funding Plan to correct any lapses in the first Funding Plan. It shows no such thing. It only indicates that the second Funding Plan was required to call out any material changes (e.g., changes in the routing, location of station, construction costs, funding sources, etc) identified in the first Funding Plan. The purpose of this was not correction of defects in the first Funding Plan, but recognition that plans could change, again consistent with a project moving forward closer to actual construction.

The two Funding Plans most definitely serve different purposes, but the second, more detailed pre-construction Funding Plan eliminates neither the need for the first Funding Plan, nor the need for that plan to be completed properly. In short, the trial court was correct in ordering the rescission of the defective first Funding Plan, with the expectation that a complete and valid first Funding Plan would be prepared and submitted before the Authority moved on to preparing a second Funding Plan.

II. RESPONSE TO BRIEFS OF AMICI CURIAE "VARIOUS BAY AREA TRANSPORTATION AGENCIES" AND OF THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY AND SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS.

Amicus briefs have been filed by both "various Bay Area Transportation Agencies" and by the Los Angeles County Metropolitan Transportation Authority and Southern California Association of Governments (the foregoing collectively, "Transportation Amici"). Since the gist of the two amicus briefs is very much the same, Tos *et al* provide a single response to both briefs.

Both briefs raise essentially two points. The first, a point also raised by Petitioners, is that allowing judicial review of the Committee's "necessary or desirable" determination and requiring that it be supported by evidence will wreak havoc on public agencies throughout the State, exposing them to endless litigation over the validity of bond issuance proceedings. The second is that the Proposition 1A bonds will provide funds for important and badly needed transportation improvements quite apart from the high-speed rail system itself, and that these transportation improvements must be allowed to move forward regardless of any technical defects in how the Authority handles the bond issuance or its Funding Plan.

A. PROVIDING SOME SUPPORTING EVIDENCE, WHETHER SUBSTANTIAL OR NOT, IS NOT A DIFFICULT PROBLEM FOR A RESPONSIBLE PUBLIC AGENCY TO ADDRESS.

Transportation Amici bewail the trial court's ruling that a bond committee's "necessary or desirable" determination be supported by evidence. They claim this will result in an avalanche of frivolous lawsuits aimed at stopping the issuance of bonds. Transportation Amici do not explain how a minimal requirement for evidentiary support, the same required for any quasi-legislative determination, could be so onerous or engender so much litigation. After all, if an agency is concerned about challenges to a bond issuance, it can bring matters to a head by filing a validation action, and if it has concerns about challenges to the "necessary or desirable" determination, it is not particularly difficult to make sure there is some evidence in the record to support that determination. This ought not to be a stumbling block for any agency with enough expertise to prepare a bond for issuance.

B. IF AGENCIES FEEL THE EVIDENTIARY REQUIREMENT IS TOO ONEROUS, THEIR SOLUTION LIES WITH THE LEGISLATURE.

If the Transportation Amici feel that having some evidence to support the determination to issue a bond is too onerous, they can also make their case to the Legislature and ask for a simplification of the protocol, either by eliminating the "necessary or desirable" requirement entirely or by making it clear that it is only a formal requirement. If, as

Transportation Amici contend, the "necessary or desirable" determination is essentially meaningless, it should not be difficult to get the Legislature to remove it. However, so long as the "necessary or desirable" determination remains quasi-legislative, the requirement of evidentiary support also remains unless or until the Legislature explicitly says otherwise.

C. BOND FUNDING FOR VARIOUS RAIL IMPROVEMENTS, APART FROM THE HIGH-SPEED RAIL SYSTEM ITSELF, HOWEVER IMPORTANT, STILL REQUIRES ADHERENCE TO THE BOND MEASURE'S REQUIREMENTS.

The Transportation Amici's briefs' second argument is that the Authority has agreed to provided funding to these agencies, using bond funds, for a variety of non-high-speed rail projects which they argue are of vital importance and therefore must be allowed to move forwards quickly, arguably regardless of any claims of Bond Act noncompliance.

1. Much of the Agencies' Proposed Rail Improvements have not been Properly Funded by the Bond Measure.

As a preliminary question, one must ask whether the funds for the agencies' proposed rail improvements have even been properly provided under the Bond Measure. Proposition 1A's $9.95 billion was divided into two primary portions. Nine Billion dollars was allocated for the planning, engineering, and construction of a California high-speed rail system. (§§2704 subd. (b)(1); 2704.06.) Nine hundred fifty million dollars was allocated:

> to eligible recipients for capital improvements to intercity and commuter rail lines and urban rail systems that provide direct connectivity to the high-speed train system and its facilities, or that are part of the construction of the high-speed train system as that system is described in subdivision (b) of Section 2704.04, or that provide capacity enhancements and safety improvements. (Streets & Highways Code §2704.095 subd. (a).)

Yet, as Amici Curiae Los Angeles County Metropolitan Tranportation Authority and Southern California Association of Governments proudly admit, they have signed a Memorandun of Understanding with the Authority under which the Authority has committed $1 billion of "unallocated" bond funds towards coordinating and connecting with existing Southern California rail corridors. (Amicus Brief at p.3) Similarly, the various Bay Area transportation agencies, in their amicus brief, also claim a portion of Bond Act funds, $600 million, which was appropriated by the Legislature as part of SB 1029. (Amicus Brief at p.6.) Thus the Transportation Amici, together, have obtained commitments from the Authority of $1.6 billion in bond funds towards construction of non-high-speed rail improvements.

As noted, under the Bond Act, nine hundred and fifty million dollars of bond funds were allocated for improvements to conventional rail systems to improve connectivity to the high-speed rail system. The Southern California funds commitment, just in itself, exceeds that amount. Any amount beyond the nine hundred and fifty million dollars would have to

come out of the nine billion dollars specifically committed to the high-speed rail system. That portion, however, has additional restrictions on its use. Not only must it be used for the planning and construction of the high-speed rail system (and not conventional rail improvements), but any commitments towards construction expenditures must comply with the requirements of §2704.08 subd. (c) and (d). None of the expenditure commitments for either the Bay Area or Southern California area are included in the first Funding Plan prepared by the Authority in November 2011, and that is the only Funding Plan that the Authority has prepared. It thus appears, regardless of anything else, that the Transportation Amici have no valid claim to at least a portion of the bond funds that they seek to protect with their briefs.

2. Regardless of the Importance of the Agencies' Improvements, They Must Still Comply with the Bond Act's Requirements.

Article XVI, §1 of the California Constitution, which requires voter approval for any major State indebtedness, including specifically bonds, does not address the relative importance of the improvements to be funded by that indebtedness. In particular, it provides for no exceptions to its requirements for projects of special importance to the State. Thus the provisions of that constitutional section must be fully complied with for *any* project funded by state indebtedness.

Tos et al. do not question that the project for which the Transportation Amici seek Bond Act funding may well be important, perhaps even crucial, to California's future transportation system. That does not, however, provide a license to bypass constitutional requirements. If the Transportation Amici want to access funds provided by the Bond Act, they would be best advised to devote their efforts to seeing that the Authority and the other Petitioners herein properly comply with the Bond Act's requirements.

CONCLUSION

Both Sen Galgiani and the Transportation Amici seek to have the Court accept Petitioners actions as complying with the Bond Act, and more generally with State law. Unfortunately for them, the fact is that the Authority's actions cannot be shoehorned into compliance with either the Bond Measure or the State Constitution. Tos *et al*. therefore respectfully request that the Court deny the Petition and remand the matter to the trial court for further proceedings in accordance with its prior decisions.

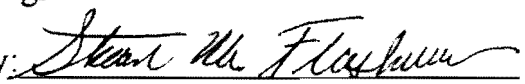
Dated: April 25, 2014

Respectfully submitted,

Michael J Brady

Stuart M. Flashman

Attorneys for Real Parties in Interest
John Tos, Aaron Fukuda, and County of Kings

By: 
Stuart M. Flashman

CERTIFICATE OF COMPLIANCE
[CRC 8.204(c)(1)]

Pursuant to California Rules of Court, rule 8.204(c)(1), I, Stuart M. Flashman, certify that this ANSWER OF REAL PARTIES IN INTEREST JOHN TOS ET AL. TO AMICUS CURIAE BRIEFS OF BAY AREA TRANSIT AGENCIES, L.A. COUNTY MTA, SCAG, AND SENATOR CATHLEEN GALIANI IN SUPPORT OF PETITIONERS contains 5115 words, including footnotes, as determined by the word count function of my word processor, Microsoft Word 2002, and is printed in a 13-point typeface.

Dated: April 25, 2014

Stuart M. Flashman

PROOF OF SERVICE BY MAIL AND ELECTRONIC MAIL

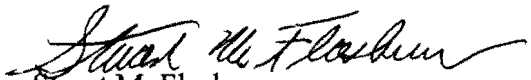
I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the within above-titled action. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On April 26, 2014 I served the within ANSWER OF REAL PARTIES IN INTEREST JOHN TOS ET AL. TO AMICUS CURIAE BRIEFS OF BAY AREA TRANSIT AGENCIES, L.A. COUNTY MTA, SCAG, AND SENATOR CATHLEEN GALIANI IN SUPPORT OF PETITIONERS on the parties listed on the attached service list by placing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in a U.S. mailbox at Oakland, California addressed as shown on said service list.

In addition, on the above-same day, I served the above-same document on the parties indicated with an asterisk on the attached service list by electronic delivery by attaching a copy of said document, converted to "pdf" file format, to e-mails sent to the e-mail addresses shown on the attached service list.

I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on April 26, 2014.



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