

S220926

**SUPREME COURT OF CALIFORNIA**

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**CALIFORNIA HIGH-SPEED RAIL AUTHORITY, *ET AL.*,**

*Plaintiff and Respondent,*

v.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO,**

*Defendant,*

v.

**JOHN TOS, HOWARD JARVIS TAXPAYERS ASSN., *ET AL.*,**

*Real Parties in Interest, Petitioners.*

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After the Denial of a Petition to Rehear a Published Decision  
of the Court of Appeal, Third District (Case No. C075668)

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**REPLY TO RESPONDENTS' ANSWER  
TO THE PETITION FOR REVIEW  
FILED BY HOWARD JARVIS TAXPAYERS ASSN.**

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# I

## **THE STATE’S TERSE ANSWER MISREPRESENTS THE ISSUE PRESENTED AND MISQUOTES THE CONSTITUTION**

Although this Court granted the State’s request to extend the time and expand the word limit for its Answer to Petitions for Review (“Answer”), the State devotes only two paragraphs to the Petition for Review filed by Howard Jarvis Taxpayers Association (“HJTA” or “we”). The Answer ignores the issue presented in the Petition. It instead erects its own version of the issue presented and defends against that instead. Even then, it misquotes the state constitution in doing so. In ruling on HJTA’s Petition, then, this Court should deem all unanswered points and all deceptively answered points as conceded.

The “Issue Presented” in HJTA’s Petition for Review was stated as follows: “Where the Legislature places a bond measure on the ballot for a public project distinctly specified therein and then, after the voters approve it, passes another bill appropriating the bond funds “for a project that has morphed into something materially different from the project approved by the voters” [Slip Op. at 26], may the Court deny validation of the bond sale on the grounds that the materially different project never received voter approval as required by article XVI, section 1 of the state constitution?”

The issue presented by HJTA thus asks, when the evidence shows that the State has already abandoned the project promised to the voters and committed itself to a different project on which they never voted, does Article XVI, section 1 permit the voters to minimize their losses by challenging the State at the creation of debt stage, on the grounds that the debt lacks voter approval, or must they wait, incur the debt, then sue later to enjoin the expenditures?

Article XVI, section 1 provides that the State “shall not, in any manner create any debt ... unless the same shall be authorized ... *for* some single object or work ... distinctly specified therein which ... shall have been submitted to the people and shall have received a majority of all the votes.”

What is it that creates debt? Not the passage of a ballot measure. That only authorizes the creation of a debt. The thing that creates debt is the bond sale. So the State cannot sell bonds “unless the same shall be authorized ... *for* some single object or work ... distinctly specified therein which ... shall have been submitted to the people and shall have received a majority of all the votes.”

Whether these proposed bonds received voter approval, as required by Article XVI, section 1, has been HJTA’s issue since the beginning. We were the first to answer the State’s complaint, and our Fourth Affirmative Defense alleged: “The bonds which are the subject of this action are ... to construct improvements for a project that is substantially different from ... the project distinctly specified in Proposition 1A .... These bonds, therefore, have never been approved by the voters as required by ... the California Constitution.”

That was the focus of our Trial Brief in the Superior Court, our Preliminary Opposition in the Court of Appeal, our Return to the Alternative Writ in the Court of Appeal, and our Petition for Review here.

Despite our consistently raising the defense of voter approval, which is one of the essential elements the State must prove as a prerequisite of incurring debt, the State has ignored the defense, except to dismiss it as a challenge to future expenditures that aren’t at issue in this validation action.

It has done that again here. The Answer avers, “uses of proceeds are *irrelevant* to bond validation because the validation complaint did not attempt to validate any specific use of proceeds.” (Answer at 13, emphasis in orig.)

“Real parties’ challenges to use of bond proceeds are not only irrelevant in the context of the Validation Action, but also premature.” (Answer at 13.)

The State is misrepresenting the issue presented. We are not challenging future “uses of proceeds.” We are raising a defense in a bond validation action—a defense based on the State’s burden of proof. The defense alleges that the State has failed to establish one of the essential elements that it must prove in a bond validation action—the constitutionally required element of voter approval.

Furthermore, the admission that “the validation complaint did not attempt to validate any specific use of proceeds” proves our point. The validation complaint seeks to create debt. And the constitution bars the State from “creat[ing] any debt ... unless the same shall be authorized ... *for* some single object or work ... distinctly specified therein which ... shall have been submitted to the people and shall have received a majority of all the votes.” Because the State has not identified any particular *contrary* use of proceeds, the voters and this Court can logically presume that the State plans to build the project that is on the drawing board today, as detailed in the current Business Plan and as called for in the bill, SB 1029, appropriating these bond proceeds for today’s project.

In response to HJTA’s argument that the language of the constitution permits the voters to challenge the creation of debt, the State misquotes the constitution, then compares our argument to the inaccurate quote, and concludes that our interpretation is unreasonable. It says, “[Real Parties] argue that because the Constitution requires a *bond act* to specify a ‘single object or work’ (Cal. Const., art. XVI, § 1), a validation action should similarly require a showing that the bonds authorized are for that single object or work. ... Real Parties’ argument for review amounts to an assault on validation laws designed

to facilitate ‘speedy, dispositive judgment[s].’” (Answer at 13, emphasis in orig., quoting Slip Op. at 20.)

The problem with this response is that the constitution does not require a “*bond act* to specify a ‘single object or work.’” It prohibits the creation of “any *debt* ... unless the same shall be authorized ... for some single object or work ... distinctly specified therein which ... shall have been submitted to the people and shall have received a majority of all the votes.” As noted, it is not the “bond act” that creates debt. The thing that creates debt is the bond sale, which is what the validation complaint seeks to approve.

It is not unreasonable to ask the State to allege (as in fact it did here<sup>1</sup>) that the debt it seeks to incur is for the single object or work submitted to and approved by the people, and then, if an interested party comes forward, files an answer denying that allegation, and presents evidence calling into question whether the allegation is true, to require the State to show by some modicum of evidence appropriate for a validation action that the allegation is true. While the State argues that our advocating the latter requirement “amounts to an assault on validation laws designed to facilitate ‘speedy, dispositive judgment[s],’” a “speedy, dispositive judgment” is not the *only* purpose of a validation action. Its purpose is a speedy, dispositive judgment holding that the bonds which the State seeks to issue *are valid*. In the case of bonds, that means that they are “for some single object or work ... distinctly specified therein which ... shall have been submitted to the people and shall have

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<sup>1</sup> The Complaint for Validation states, “Plaintiffs request that this Court issue a judgment declaring the validity of: (1) the general obligation bonds or commercial paper notes Plaintiffs have authorized to be issued and sold, for the State, and pursuant to *and consistent with* ... Streets and Highways Code section 2704 et seq. (the ‘Bond Act’) for the purpose of funding construction of a high-speed train system *as authorized in* sections 2704.04 and 2704.06.”

received a majority of all the votes.”

Code of Civil Procedure section 870(a) states: “The judgment ... shall, notwithstanding any other provision of law ... thereupon become and thereafter be forever binding and conclusive, as to all matters therein adjudicated *or which at that time could have been adjudicated*, against the agency and against all other persons, and the judgment shall permanently enjoin the institution by any person of any action or proceeding raising any issue as to which the judgment is binding and conclusive.” (Emphasis added.)

Matters which “could have been adjudicated” in the case of bonds certainly include a contention that the bonds are for a project that never received voter approval. The State argues that HJTA’s claim is premature and should be raised later. But no claim regarding the validity of the *debt* can be raised later. A validation judgment insulates the debt against all future challenges. Even if the State’s argument were correct, it is contrary to the purpose of the validation statute, which is to make the State’s bonds marketable by eliminating the threat of future litigation. “The possibility of future litigation is very likely to have a chilling effect upon potential third party lenders, thus resulting in higher interest rates or even the total denial of credit.” (*Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 843 (quoting *Walters v. County of Plumas* (1976) 61 Cal.App.3d 460, 468.)

It is clear from the wording of Article XVI, section 1 that the State is required to have not just voter approval of a “debt,” but voter approval of a debt “*for some single object or work ... distinctly specified therein.*” They are a package. Proposition 1A proposed the issuance of \$9 billion in bonds for a high speed rail system with certain “distinctly specified” criteria now codified in Streets and Highways Code sections 2704-2704.21. HJTA has detailed in this litigation how today’s project significantly deviates from the criteria

promised to the voters. As the Court of Appeal acknowledged, “[s]ubstantial legal questions loom in the trial court as to whether the high-speed rail project [the State] seeks to build is the project approved by the voters in 2008” (Slip Op. at 3), or whether it is instead “a project that has morphed into something materially different from the project approved by the voters” (Slip Op. at 26).

This is a validation action. The State is the plaintiff. The State has the burden of proof. (Evid. Code § 500). It has the burden to prove that it has the legal authority to sell these bonds. One of the chief elements it must show is that these bonds are for a project that the voters approved as required by the constitution.

The State has made absolutely no attempt in this case to counter HJTA’s evidence in order to satisfy its burden of showing voter approval of this debt/project package. It has instead, at every turn, attempted to unbundle the package by arguing that it only wants the bonds validated, and the Court must postpone to another day any scrutiny of how the bonds will be expended. The Court of Appeal erred when it accepted this argument: “The Attorney General points out that whether or not any particular later expenditure of bond funds would comply with the Bond Act is not relevant to the validity of bond authorization.” (Slip Op. at 30.)

If this logic prevails, the bonds will be sold, and that bell cannot be un-rung. Then, in a future action demonstrating what HJTA has already demonstrated here—that today’s project breaks faith with the voters—the Court will be faced with a dilemma: Should it allow a project to proceed which was never shown to, or approved by the voters as required by the constitution? Or should it halt the project, knowing the State cannot afford the project it originally promised, in which case the taxpayers will have incurred an \$8.6 billion indebtedness for nothing?

Doesn't it make more sense to keep the package of project and bond bundled together, as they were presented to the voters and are linked in the constitution? The State, as plaintiff, should be required to show that these bonds are for a project approved by the voters. Since it has made no such showing, validation of the bonds should have been denied.

The debt of these bonds and the public interest in this project and its litigation is so great that the Court of Appeal's error cannot be overlooked. The only way to correct it is by granting review.

### **CONCLUSION**

For the reasons above, this Court should grant review, reverse the decision of the Court of Appeal, and affirm the judgment denying validation.

DATED: October 2, 2014.

Respectfully submitted,

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### **FONT AND WORD COUNT CERTIFICATION**

I certify that this brief is printed in 13 point Times New Roman font and that, excluding the caption page, tables, signature block, any exhibits, and this certification, it contains 2,050 words.

DATED: October 2, 2014.

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Timothy A. Bittle  
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