IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. _____

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

v.

THE SUPERIOR COURT OF SACRAMENTO COUNTY,
Respondent,

and

JOHN TOS, et al.,
Real Parties-in-Interest

After a Decision of the Court of Appeal,
Third Appellate District
Case No. C075668

Superior Court of Sacramento County
(Case Nos. 34-2011-0113919-CU-MC-GDS and
34-2013-00140689-CU-MC-GDS, Honorable Michael P. Kenny, Judge)

PETITION FOR REVIEW

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QUESTIONS PRESENTED

1. The High Speed Rail Finance Committee (Committee) was charged by statute with deciding whether it was "necessary or desirable" to authorize bonds for the High Speed Rail Project. The Committee found that it was "necessary or desirable," as of a specific date, to authorize bonds in the amount of $8.6 billion, without providing any evidence to show, support, or explain any independent decision-making.

Are courts forbidden from reviewing such a quasi-legislative finding of "necessary or desirable," even under the most lenient "arbitrary and capricious" standard?

2. Cal. Const. art. XVI, § 1, mandates that major state debt may not be incurred "unless" it is to fund a single "object or work" that has been "distinctly specified" and approved by voters.

May the High Speed Rail Authority (Authority) seek to incur debt through the validation of $8.6 billion in bonds for the High Speed Rail project, without demonstrating that the current project design that the bonds would help fund is the same project—the same "object or work"—in terms of outline and promised performance, that voters approved when they authorized bonds?

INTRODUCTION

Real Party/Petitioner First Free Will Baptist Church (Petitioner) respectfully petitions the California Supreme Court for review of the decision of the Court of Appeal in Case Number C075668, Third Appellate District (per Raye, P.J.), insofar as that ruling addressed the validation action, *High Speed Rail Authority v. All Persons Interested* (Superior Court Case No. 34-2013-00140689-CU-MC-GDS), in which Petitioner is a Defendant. A true and correct copy of the final appellate court Slip Opinion (Slip Op.) is attached in the appendix as Exhibit A.

If ever there were a government initiative for which it was crucial to insist on all of the traditional legal requirements for accountability—to the courts, voters, and taxpayers—it is the California High Speed Rail Project, "the largest infrastructure project in the State's history." (*See* Authority's Petition for Extraordinary Writ of Mandate, p. 1.)

The Authority seeks validation of $8.6 billion in bonds for the High Speed Rail Project, but it is simultaneously seeking a loosening of well-settled judicial standards of accountability—a loosening that would subvert the credibility not only of this massive project, but of decision-making on future infrastructure projects, and in other areas of government action, as well.

Specifically, the decision to authorize the bonds was made without any information being provided to the trial court that would explain the factors and

reasoning that informed it. Further, in seeking validation, the Authority has made no effort to demonstrate that the current plans for the High Speed Rail Project are consistent with, and will deliver the promises made by, Proposition 1A (Prop. 1A), the bond measure that voters approved in 2008.

The trial court withheld validation because the agency's failure to be transparent about its decision-making process prevented the court from being able to exercise even the most lenient level of judicial review to ensure that the decision was not made arbitrarily or capriciously.

In overruling the trial court and siding with the Authority, the appellate ruling insulated certain important administrative decisions—specifically, an agency's claim that its quasi-legislative action is "necessary or desirable"—even when no evidence or explanation is offered for the claim, and even if the practical effect of the decision (as with the bond authorization in this case) is to impose a major burden on government budgets and the taxpaying public.

Contrary to the Authority's claim (*id.*), Petitioner's litigation against the validation is not about trying "to block . . . construction" of the High Speed Rail Project. Rather, it is about (1) blocking the Authority—as it spends billions of dollars in taxpayers' money—from evading core legal standards of transparency, accountability, and oversight; and (2) ensuring that the project,

for which debt is incurred that taxpayers must repay, is the same project for which taxpayers voted.

Review of the appellate ruling is called for, to safeguard not just the standards of judicial oversight that it compromises—but also the integrity of the High Speed Rail Project, and the rights of the voters who approved it and the taxpayers who are called upon to fund it.

WHY REVIEW SHOULD BE GRANTED

Rule 8.500 of the California Rules of Court specifies that grounds exist for this Court to order review of a decision of the court of appeal "[w]hen necessary to secure uniformity of decision or to settle an important question of law."

In overturning the trial court and ordering validation of the High Speed Rail bonds, the appellate ruling raises important questions of law that should be reviewed.

First, it raises important questions relating to the quasi-legislative actions of administrative agencies. May such actions—in this case, the Committee's authorization of $8.6 billion in bonds that would encumber California taxpayers with repayment obligations for decades—be arbitrarily immunized from well-settled principles of judicial scrutiny, so courts are deprived of their authority to serve as a check against the possibility of arbitrary or capricious decision-making that can imperil the public interest?

The appellate ruling sets a precedent that undermines standards of meaningful judicial review. It does so by sheltering quasi-legislative actions from even the most lenient review, to the extent an agency is charged with basing its action on a finding that it was "necessary or desirable." Specifically, the ruling applies this new exemption from review to the Committee's finding that, as of May 18, 2013, it was "necessary or desirable" to issue High Speed Rail bonds (Slip Op. 22).

The practical effect of this cordoning off of certain important administrative decisions from judicial review is to compromise the openness and transparency of the bond issuance process generally and the High Speed Rail Project in particular. This can be seen by the fact that the appellate ruling even applies an exemption from judicial review to the Committee's decision as to the *amount* of bonds to be authorized—a decision with direct budgetary consequences for the state and direct impact on the size of taxpayers' repayment obligations over the coming decades.

Because the appellate ruling weakens legal oversight—and does so in the context of a massive public-works project for which it is essential to ensure accountability from the outset—the ruling below should be reviewed by this Court.

Second, this case raises an important question of constitutional law: When legislation has already been approved for appropriating bond proceeds,

and for the contours of the larger project that the proceeds will help fund, may the state have the bonds validated without demonstrating that the current project, as delineated in that legislation, received voter approval—*i.e.*, that it is consistent with the bond ballot measure?

Cal. Const. art. XVI, § 1, requires that major state debt may not be incurred "unless" it will fund an "object or work" that has been "distinctly specified"—and has been approved by voters in the form as "specified." Yet the state did not even attempt, in the validation action underlying the current case, to demonstrate that the current spending plan for the bond proceeds, and the current design of the project they would help fund, is consistent with the bond ballot measure.

Review is appropriate both because this constitutional issue is significant and because the practical stakes are high: It is important to ensure that when debt is incurred, and taxpayers are assigned major long-term repayment obligations, it is for the "distinctly specified" purpose they approved—and not for an as-yet-undeveloped purpose that cannot, at the moment of validation, be clearly "specified."

FACTUAL AND PROCEDURAL BACKGROUND

Proposition 1A (the Bond Act; Prop. 1A), approved by California voters on November 4, 2008, authorized $9.95 billion in state general obligation bonds to initiate construction of a "High Speed Rail" Project to link the San

Francisco Bay Area, Southern California, and the Sacramento/San Joaquin Valley. Cal. Sts. & High. Code § 2704, *et seq*. The Bond Act laid out specific criteria for the bond proceeds and the project. For instance, the High Speed Rail project would feature electric trains capable of revenue operating speeds of 200 miles per hour or greater; guaranteed maximum travel times between major destination cities (such as no more than two hours, 40 minutes between San Francisco and Los Angeles); and achievable time between successive trains of five minutes or less. *Id*. § 2704.09.

In the summer of 2012, the Legislature enacted SB 1029, which appropriates bond proceeds for construction and acquisition of the Initial Operating Segment in the Central Valley. Stats. 2012, ch. 152, §§ 8-9. It also appropriates bond proceeds for projects in commuter corridors of Los Angeles County and the Bay Area. Cal. Sts. & High. Code § 2704.76.

The Bond Act establishes a Committee with authority to "determine the necessity or desirability" of issuing bonds at any particular point in time. *Id*. §§ 2704.12a, 2704.13. In March, 2013, the Committee adopted a resolution authorizing the $8.6 billion in bonds at issue here. Appendix to Authority's Petition for Extraordinary Writ of Mandate, HSR01952 (hereafter identified as HSR and page number). The Authority and the Committee proceeded to file a validation lawsuit. A number of taxpayers, citizens, associations, and public

entities entered the case as defendants to oppose validation, including Petitioner.

In a judgment made final on January 3, 2014, the trial court denied validation, because the Committee's action did not include "substantial evidence" supporting its determination that it was "necessary or desirable" to authorize issuance of $8.6 billion in bonds in March, 2013. HSR00071. The court held that the want of record evidence made it impossible for the action to be reviewed for reasonableness and lack of arbitrariness or capriciousness. *Id*.

Having rejected validation on these grounds, the court declined to rule on other arguments from the opposing parties. *Id*. These included the contention that it had not been shown that SB 1029's appropriations and the project plan it embraces are consistent with the project that voters approved, and that this failure to demonstrate the current project's fidelity to the voters' will violated article XVI, section 1, of the California Constitution, which mandates that major debt may not be incurred unless a specific project or work has been distinctly specified, and approved by voters.

The Authority and the Committee proceeded to file in the above-captioned case, a Petition for Writ of Mandate, asking, among other things, for the trial court to be ordered to validate the bonds.

The appellate court ruled for the Authority and the Committee, effectively overturning the trial court's decision and ordering validation of the bonds. The appellate ruling was filed on July 31, 2014, and became final on the date as indicated by California Rule of Court 8.264(b). The appellate court denied two Petitions for Rehearing, including one filed by Petitioner Church jointly with Petitioner Howard Jarvis Taxpayers Association.

ARGUMENT

I

REVIEW SHOULD BE GRANTED TO DETERMINE WHETHER ADMINISTRATIVE QUASI-LEGISLATIVE ACTIONS CAN BE ARBITRARILY IMMUNIZED FROM JUDICIAL SCRUTINY

The appellate ruling should be reviewed because it creates a precedent that weakens traditional standards of judicial review, by sheltering certain important quasi-legislative decisions from even deferential scrutiny under well-settled norms. In the process, it compromises the accountability of the High Speed Rail Project, and undermines the transparency of the administrative decision-making process generally.

A. The Ruling Below Creates Immunity from Judicial Review for Certain Administrative Actions Merely If the Agency Has Been Charged To Determine Whether Its Action Is "Necessary or Desirable"—Regardless of Whether the Agency Offers Evidence To Support and Explain Its Decision To the Courts and the Public

Under well-settled principles of judicial oversight, the quasi-legislative actions of administrative agencies are accorded great deference, but they are not insulated from judicial review. The ruling below, however, announces that such actions are beyond review to the extent the agency is charged with finding that its action is "necessary or desirable," and the agency makes that finding. Such a finding is nonreviewable, according to the ruling below, whether or not the agency offers evidence to explain its action to the court and the public. (Slip Op. 21.) This potentially broad grant of immunity—an expansive exception to principles of administrative accountability to the courts and the public—would warrant review regardless of the context. But its use to shelter a multi-billion-dollar bond issuance, and a massive public works project, from traditional norms of judicial oversight, makes review especially critical.

1. Under Well-Settled Principles, Courts Review Quasi-Legislative Actions To Ensure They Are Not Arbitrary, Capricious or Unsupported by Evidence

The quasi-legislative actions of administrative bodies receive substantial deference, but well-settled principles of review still require an

examination of agency proceedings to determine whether the decision was "arbitrary, capricious or entirely lacking in evidentiary support." *Morgan v. Community Redevelopment Agency*, 231 Cal. App. 3d 243, 260 (1991) (citation omitted). *See also*, *Stauffer Chem. Co. v. Air Resources Bd.*, 128 Cal. App. 3d 789, 794 (1982) (citation omitted).

The Committee's action in authorizing the issuance of $8.6 billion in general obligation bonds for the High Speed Rail Project was a quasi-legislative decision. (Slip Op. 23). Yet, no "evidentiary support"—*i.e.*, no information about the grounds for the Committee's making that decision—was to be found in the record supplied in the validation action. Aside from the Committee's authorizing resolution itself, the record consisted of only (1) the agenda and minutes for the March 18, 2013, meeting at which the Authority requested the Committee to authorize bonds; (2) the Authority's request for authorization; (3) the Notice and Agenda for the Committee's meeting of the same day; and (4) public comment from authorization opponents. (HSR21-22.)

As the trial court noted, the Committee's resolutions themselves contained only the "bare" assertions of the "necessity and desirability" of authorizing the bonds, but "no explanations of how, or on what basis, it made those findings. Specifically, the findings contain no summary of the factors the Committee considered and no description of the content of any

documentary or other evidence it may have received and considered." (HSR25.)

Therefore, the trial court withheld validation—because it was "not possible for [the Court] to determine, based on the record before it, that the Finance Committee's action was supported by any evidence at the time it was made." (HSR26:3-4.)

The court found the requirement of supporting evidence to be particularly "critical in view of the Finance Committee's role as the ultimate decision-maker on a matter of significant fiscal impact" (HSR31:7-8)—*i.e.,* whether California taxpayers would be assigned the repayment obligation, with interest, for billions of dollars in bonds over a period of decades.

But even if the Committee's action did not carry such a "significant fiscal impact," the trial court's decision was appropriate because it simply applied "an essential legal requirement"—"that [a] quasi-legislative administrative action be supported by evidence in the record." (HSR31: 6-7.) As the trial court explained, "[t]his requirement is essential in order to protect against administrative action that is merely arbitrary or capricious." (HSR00025:7.)

2. Under the Ruling Below, Courts Would Be Forbidden from Reviewing Certain Quasi-Legislative Acts to the Extent They Are Based on an Agency's Mere "Finding"—With or Without Explanatory Evidence—That the Act Is "Necessary or Desirable"

The appellate ruling reversed the trial court's refusal to grant validation, contending that, even though the Committee's action was quasi-legislative (Slip Op. 22), the trial court had no authority to review the particular decision at issue. (Slip Op. 21.) According to the appellate court, the statutory charge under which the Committee was acting allowed "little room for judicial intervention." (Slip Op. 21.) Specifically, Prop. 1A tasked the Committee with deciding whether it was "*necessary or desirable*" to authorize issuance of bonds, "and if so, the amount of bonds to be issued and sold." Cal. Sts. & High. Code § 2704.13 (emphasis added). The determination that an action is "necessary or desirable," according to the appellate ruling, is an exercise in "unencumbered discretion." (Slip Op. 21.) The trial court, by searching for evidence from the Committee to support and explain its "necessary or desirable" decision, was erecting "an intrusive standard" at odds with the "utmost deference" that is due to "a discretionary quasi-legislative act." (Slip Op. 23.)

Although the appellate ruling acknowledged that there are contexts in which bond authorizations are subject to judicial review, "the very specific

determination . . . that the issuance of the bonds [is] *necessary or desirable*" is not one of those "types of challenges." (Slip Op. 22) (emphasis added).

In sum, under the ruling below, when an agency is acting on a statutory charge to consider whether an action is "necessary or desirable," courts are forbidden to review the finding by way of requiring evidence to support or explain it.

3. By Granting Immunity from Review to Certain Administrative Actions Based on an Agency's Mere Assertion That It Is "Necessary or Desirable," the Appellate Ruling Creates an Exception That Is Ungrounded in On-Point Precedent

The appellate court opines that, by rejecting the trial court's requirement of evidence to support the Committee's action, it was "reject[ing] the invitation to embark upon . . . an unwarranted and unwise intrusion into the administrative process." (Slip Op. 24.) Yet it is the appellate ruling itself—its finding that actions are immune to the extent they are based on agency findings that they are "necessary or desirable"—that "embarks upon" a new course.

Indeed, the appellate ruling offers no case that clearly charts the way toward the doctrine it announces. It provides no example where (1) a court has been asked to void, *specifically for lack of evidentiary support*, a quasi-legislative action that an agency finds to be "necessary or desirable"; (2) the agency's finding of "necessity or desirability" does indeed lack evidentiary

support; and (3) the court has nevertheless declined to void it. Certainly none of the three cases cited by the appellate ruling offers an on-point precedent.

First, there is *City of Monrovia v. Black*, 88 Cal. App. 686 (1928), *cited at* slip op. 21. There, the court declined to second-guess the city's contention that bonds were necessary, even though the city had not officially declared in its bond resolution that the proposed improvements would cost more than the city's ordinary annual income. *Id*. at 687-88. However, the *Monrovia* court deferred to the city's declaration of "necessity" not *in spite* of there being no evidence offered that the cost would outstrip ordinary revenue, but *precisely because evidence was available* in the city's own "records" of relevant objective facts—*i.e.*, its income and expenses, allowing anyone a "comparison of the estimated cost with the annual revenue and the expenditures necessary for other purposes." *Id*. at 690.

Perez v. Bd. of Police Comm'rs, cited at slip op. 21, is also, ultimately, unhelpful for the appellate ruling's doctrine. The case involved a challenge to defendant agency's resolution banning labor union membership by police officers. 78 Cal. App. 2d 638, 639 (1947). The Board enacted the resolution pursuant to its authority to determine policies that were "necessary or desirable" for the good order of the police department. *Id*. at 643. However, the challenge was not based on any lack of evidence to support and explain that finding; rather, it was a challenge to the resolution's "wisdom"—or

merits—as a matter of policy. *Id*. at 647. And it was on *that* ground that the court rejected the challenge, noting that policy decisions—questions of a law's "wisdom, propriety or practicability"—are matters that "courts are not concerned with." *Id*. But even while stating that principle, the court reaffirmed that quasi-legislative actions are nevertheless subject to judicial review for "arbitrariness and unreasonableness" *Id*. at 645 (citation omitted)—a proposition fully consistent with the trial court's ruling in the case at bar.

Finally, the slenderest reed of all offered in the appellate ruling is the footnote quoted from *Boelts v. City of Lake Forest* (Slip Op. 21, 22). In *Boelts*, the court's ruling—that a redevelopment amendment was not supported by a showing of required facts—rested on a provision of the law that happened to explicitly specify facts that needed to be demonstrated. 127 Cal. App. 4th 116, 135 (2005). Having thus disposed of the case, the court did not need to, and did *not*, apply any other legal provision, including the provision "speak[ing] of it being 'necessary or desirable' to amend a redevelopment plan." *Id*. at 128 n.13. Therefore, the *Boelts* court's description of that provision is mere dicta; as such, it would be unavailable as a precedent even if the particular passage were clearer and more self-explanatory, rather than being—as the *Boelts* court candidly admits—devoid of any accompanying language to "shed any light on [its] context." *Id*. The appellate court's

holding in this case is a great weight to place on such an ambiguous foundation. Indeed, given the fact that the *Boelts'* passage about a particular statute's "necessary or desirable" language is dicta in a footnote, it is not surprising that Petitioner has not been able to find any ruling, outside of the appellate ruling below, that has even cited to it, let alone relied on it, for any proposition whatsoever.

While the three foregoing cases fail to point toward the doctrine announced by the appellate court, one seminal case the appellate ruling cites (Slip Op. 24) contains core language that firmly points the other way—*i.e.*, supporting the trial court's exercise of review (albeit deferential) of quasi-legislative action:

> "In reviewing such quasi-legislative decisions, the trial court . . . [determines] whether the decision of the agency was arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair." . . . In applying this deferential test, a court "must ensure that an agency has adequately considered all relevant factors, . . ."

Carrancho v. California Air Resources Board, 111 Cal. App. 4th 1255, 1265 (2003) (citations omitted).

The trial court's exercise of deferential, yet meaningful, scrutiny—its requirement for at least some "evidential support" for the Committee's bonds authorization—rests on overwhelming and clear precedents on judicial review for quasi-legislative actions. In contrast, the appellate court's rejection of the trial court's ruling rests on no on-point precedent that exempts findings of

necessity or desirability from scrutiny for supporting evidence. For this reason, the ruling below raises important questions of law and review should be granted.

B. The New Limitation on Review Undermines Transparency and the Public's Interest in Openness on Key Decisions—Such as on the Committee's Determination of the *Amount* of Bonds To Authorize

The Committee is required by Prop. 1A not only to "determine whether or not it is necessary or desirable to issue bonds," but then, "*if* so," to also determine "the *amount* of bonds to be issued and sold," because "it is not necessary that all of the bonds authorized be issued and sold at any one time." Cal. Sts. & High. Code § 2704.13 (emphasis added).

The Committee made both decisions on May 18, 2013, when it determined that it was "necessary or desirable" to issue bonds, and decided to authorize an issuance of $8.6 billion in bonds (out of the $9.95 billion total provided for by Prop. 1A). (HSR2774.)

The Committee offered no supportive evidence to explain or support either decision. But it is the second decision—regarding the amount to authorize; specifically, the choice of $8.6 billion in bonds instead of some lesser amount at that particular point—that arguably has the most direct impact on the state budget and the repayment obligations (with interest) to which taxpayers will be committed over a period of decades. The public interest would be well-served by knowing what considerations and concerns went into

choosing that particular size of a bond issuance. Why did the Committee authorize fully $8.6 billion in bonds, when the Legislature, as of that point, had made appropriations for only about $4.7 billion in bond proceeds? (Slip Op. 13-14.) When the Committee fails to offer any evidence to explain its decision-making, it is effectively taking the public on a train ride through a dark tunnel; there is no meaningful transparency—no sunlight—to illuminate the process for the taxpayers, the people who are arguably most affected by it.

Sunlight—transparency—is what the traditional requirement for evidence to support and explain a quasi-legislative decision is about. While courts don't substitute their judgment for the agency's, the requirement for at least some evidence to support a decision allows the courts (and ultimately, the public) a glimpse into the thinking and considerations that give rise to the decision, so there can be an assurance that decisions are not made in a way that is "arbitrary, capricious or entirely lacking in evidentiary support." *Morgan v. Community Redevelopment Agency*, 231 Cal. App. 3d 243, 260 (1991) (citation omitted).

Because the grant of immunity from review to these important decisions not only rests on sketchy precedential support, but also undermines the public interest in open and responsible government, this Court should grant review.

II

REVIEW SHOULD BE GRANTED TO DETERMINE WHETHER THE STATE MAY VALIDATE BONDS WITHOUT DEMONSTRATING THAT THE PROJECT AS OF TODAY, FOR WHICH BOND PROCEEDS HAVE ALREADY BEEN APPROPRIATED, IS THE SAME PROJECT—THE SAME "OBJECT OR WORK"—THAT VOTERS APPROVED IN 2008

As plaintiff in the validation action for the High Speed Rail bonds, the Authority has the burden of proof. (*See* Evid. Code § 500.) One element that must be satisfied is compliance with Cal. Const. art. XVI, § 1 ("Section 1"), which forbids major state debt from being incurred "unless" it is for "some single object or work . . . as distinctly specified," and "until" voters give their approval for that "single object or work . . . [as] distinctly specified." Further, bond proceeds may be applied "only to [that] specific object." *Id.*

Review is appropriate because the Authority did not even attempt to discharge a threshold constitutional requirement pursuant to Section 1: *i.e.*, to demonstrate that the already enacted legislation to appropriate bond proceeds—and the outlines of the current high speed rail project contained in that plan—represent the same "object or work" that was approved by voters when they enacted Prop. 1A. Moreover, if, as the appellate ruling holds, it is "too early" to evaluate the project of today for consistency with Prop. 1A—because it could dramatically change before bond proceeds are

spent—then it is in fact "too early" to validate the bonds, because debt cannot be incurred "unless" an "object or work," "distinctly specified," is in place.

A. The Current Plans for Bond Proceeds Are Laid Out in SB 1029; They Can and Should Be Measured Against Prop. 1A To Ensure They Amount to the Same "Object or Work" approved by Voters; but the State Failed Even To Attempt To Carry This Burden.

Cal. Const. art. XVI, § 1,mandates that major state debt may not be incurred "unless" it is for "some single object or work . . . as distinctly specified," and that same "single object or work" has been approved by voters.

What is the "single object or work" that the bonds would underwrite if they are validated—and is it the same "single object or work" that voters approved when they enacted Prop. 1A? The Authority did not even address this threshold constitutional question in its validation action; it did not attempt to compare the current plans for the bond proceeds with Prop. 1A's plans. So, it failed to carry its burden, as plaintiff in a validation action, to establish that all legal and constitutional requirements have been satisfied.

In fact, there *is* a current plan, enacted by the Legislature, for spending the bond proceeds, and for the general design of the larger project that the proceeds will help fund. This plan is capable of being measured against Prop. 1A to see if it is consistent with the "single object or work" that voters approved.

Before the Committee authorized issuance of the bonds, the Legislature had already enacted SB 1029 (Stats. 2012, ch. 152) to appropriate proceeds from the bond issuance. SB 1029 lays down clear markers for how the proceeds will be spent and the design of the project that the proceeds will help fund.

These outlines or specifications are revealed, for instance, in the provisions making appropriations "for local assistance . . . payable from the High-Speed Passenger Train Bond Fund" (Stats. 2012, ch. 152, § 1, Provision 5; and § 3) (hereafter, designations are by Section). These provisions embrace the so-called blended design whereby "high speed rail" trains would share tracks with commuter trains in certain urban areas. For example, Section 3, Provision 1, makes funds in Section 3 "[a]vailable for early improvement projects in the Phase 1 blended system . . . ." Second, Section 3, Provision 3, prohibits the use of certain of these funds for any design other than a "blended" design whereby certain tracks are shared by high speed rail trains and commuter trains:

> Any funds appropriated in this item for projects in the San Francisco to San Jose corridor, consistent with the blended system strategy identified in the April 2012 California High-Speed Rail Program Revised 2012 Business Plan, shall not be used to expand the blended system to a dedicated four-track system.

Even if the sources of appropriations money were later to be altered—if, for instance, the money for projects in the San Francisco-San Jose

corridor were ultimately to come from funds other than bond proceeds—the provisions of SB 1029 represent an endorsement of the blended plan as part of the "single object or work" that is being undertaken. So, before bond debt may be incurred, it is necessary to evaluate whether that is the same "object or work" set forth in Prop. 1A. For instance, it should be asked: Can the blended plan deliver the trip times for High Speed Rail that are promised in Prop. 1A? The Authority failed to ask or answer this seminal question, so it failed to carry its burden as a validation plaintiff.

In addition to embracing the "blended system," SB 1029 also specifies, in Section 3, Provision 1, that appropriations for "local assistance" projects must be "consistent with" designated "purposes" that have already been agreed upon, through Memoranda of Understanding with local transportation authorities in both the Bay Area and the greater Los Angeles area.

Again, even if the source of funds for these local projects were later altered, the MOUs themselves are in existence now, and they apparently provide an outline and specifics for projects that are purported to be part of the High Speed Rail Project. Therefore, they can and should be measured against Prop. 1A to see if they represent elements of a genuine High Speed Rail program—constituting the same "object or work" approved by voters—or—whether they are strictly local commuter projects with no organic connection to High Speed Rail.

In sum, the specific guidelines and requirements in SB 1029 create a spending plan and the decisive outlines of a larger project that are capable of being measured against criteria promised to voters in Prop. 1A. Yet the Authority failed even to attempt to show that the SB 1029 plans accord with Prop. 1A. Review is warranted to determine whether bonds can be validated when the bond plaintiff fails to establish that a basic constitutional element has been satisfied.

B. If It Is "Too Soon" To Measure S.B. 1029's Spending Plans and Project Outline Because They Might Change Decisively, Then It Is "Too Soon" To Validate the Bonds, Because No "Single Object or Work" Has Been "Distinctly Specified," as Is Required Before Debt Can Be Incurred

The appellate ruling held that, currently, "we simply cannot determine whether the project will comply with the specific requirements of [Prop. 1A]" because "there is no final funding plan and the design of the [rail project] remains in flux, ..." (Slip Op. 29.)

In fact, as shown above, SB 1029 *does* lay down clear markers as to the outlines of the High Speed Rail Project as currently designed—and there are also specific MOUs with localities, which SB 1029 identifies as providing guidance and direction to aspects of the project. (Section 3, Provision 1.)

However, because additional "reports, approvals, and certifications," along with a final funding plan and other procedural milestones, have yet to occur or be implemented, the appellate court held that litigation over

compliance with article XVI, section 1, should come, if at all, later. (Slip Op. 29-30.) It held that it is "too soon to determine how the Authority will specifically use the bond proceeds." *Id*. 29-30 n.7.

But that reasoning has it backwards: If the project is truly in too much "flux," so that it is "too soon" to measure it for consistency with Prop. 1A (Slip Op. 29), then, in fact, it is "too soon" for the bonds to be validated! This is because article XVI, section 1, does not allow debt to be incurred "unless" a "single object or work" has been "distinctly specified." If the appellate court is correct that no project is in place that can be evaluated at the present time, then Section 1's "unless" requirement hasn't been satisfied. It requires a "single object or work" to be "distinctly specified" *before* debt can be incurred—not sometime afterwards.

The appellate ruling suggests this is not a relevant issue in the current proceedings because the Authority is seeking only to validate the bonds in a general way "for purposes authorized by voters in the Bond Act." (Slip Op. 26 n.6.) But this elevates form over substance; the Authority cannot be allowed to insulate its bond validation from constitutional scrutiny through the mere assertion, the mere promise, that future uses of the bonds won't be unconstitutional. It can't say, "trust us, and let us borrow money on taxpayers' credit now; there'll be a legitimate 'single object or work' *later on*." That kind

of assurance is *no* assurance, when the state constitution requires the project to be specified before debt is incurred.

At issue are fundamental rights of voters and taxpayers. They have the right not to be put on the hook for major state borrowing unless and until the "object or work" for which that debt is being incurred—the project that the proceeds will help fund—is specified and agreed to. Review should be granted, therefore, because the Authority has not carried its burden of proof, as a validation plaintiff, to show that the bonds would fund a clearly specified "single object or work"—and that it is consistent with the "object or work" that voters approved.

JOINDER

Petitioner joins in the issues and arguments presented, on the bond validation action, in the Petitions for Review submitted by Real Parties/Petitioners Tos, et al., and Howard Jarvis Taxpayers Association.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that review be granted in this case, at least to the extent it deals with the bond validation

action, Superior Court Case No. 34-2013-00140689, in which Petitioner is a defendant.

DATED: September ___, 2014.

Respectfully submitted,

MERIEM L. HUBBARD
*HAROLD E. JOHNSON
RALPH W. KASARDA

By _____
HAROLD E. JOHNSON

Attorneys for Petitioner/Real Party-in-Interest First Free Will Baptist Church

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing PETITION FOR REVIEW is proportionately spaced, has a typeface of 13 points or more, and contains 5,704 words.

DATED: September __, 2014.

_____

HAROLD E. JOHNSON

DECLARATION OF SERVICE BY MAIL

I, SUZANNE M. MACDONALD, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California.

I am over the age of 18 years and am not a party to the above-entitled action.

My business address is 930 G Street, Sacramento, California 95814.

On September __, 2014, true copies of PETITION FOR REVIEW were placed in envelopes addressed to:

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which envelopes, with postage thereon fully prepaid,were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this ____ day of September, 2014, at Sacramento, California.

_____
SUZANNE M. MACDONALD