APPEAL No. C075668

IN THE
Court of Appeal
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

CALIFORNIA HIGH-SPEED RAIL AUTHORITY, HIGH-SPEED PASSENGER TRAIN FINANCE COMMITTEE, GOVERNOR EDWARD G. BROWN JR., TREASURER BILL LOCKYER, DIRECTOR OF DEPARTMENT OF FINANCE MICHAEL COHEN and SECRETARY OF THE STATE TRANSPORTATION AGENCY, BRIAN KELLY,

Petitioners,

vs.

THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO,

Respondent.

JOHN TOS, AARON FUKUDA, COUNTY OF KINGS, HOWARD JARVIS TAXPAYERS ASSOCIATION, COUNTY OF KERN, FIRST FREE WILL BAPTIST CHURCH, EUGENE VOIL AND, CITIZENS FOR CALIFORNIA HIGH-SPEED RAIL ACCOUNTABILITY, KINGS COUNTY WATER DISTRICT, and UNION PACIFIC RAILROAD COMPANY

Real Parties in Interest.

Sacramento Superior Court
Case Nos. 34-2011-00113919CUMCGDS; 34-2013-00140689 CUMCGDS
Dept. 31; The Honorable Michael P. Kenny, Judge; Tel: (916) 874-6353

APPLICATION OF THE HON. CATHLEEN GALGIANI, CALIFORNIA STATE SENATOR, FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

[PROPOSED] AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

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Court of Appeal
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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

California Rules of Court, rules 8.208, 8.490(i), 8.494(c), 8.496(c), or 8.498(d)

Court of Appeal Case Caption:

California High Speed Rail Authority, et al.
v.
The Superior court of Sacramento County

Court of Appeal Case Number: C075668

Please check here if applicable:

☒ There are no interested entities or persons to list in this Certificate as defined in the California Rules of Court.

Name of Interested Entity or Person (Alphabetical order, please.)	Nature of Interest
1.	
2.	
3.	
4.	

Please attach additional sheets with Entity or Person Information, if necessary.

Signature of Attorney or Unrepresented Party

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ATTACH PROOF OF SERVICE ON ALL PARTIES WITH YOUR CERTIFICATE

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

Re: *California High Speed Rail Authority, et al. v. Superior Court of Sacramento, et al.;* California Court of Appeal, Third Appellate District, Case No. C075668; (Sacramento County Superior Court Case Nos. 34-2011-00113919-CU-MC-GDS and 34-2013-00140689-CU-MC-GDS)

I am employed in the County of Riverside, State of California. I am over the age of 18 years and not a party to the within action; my business address is: 3750 University Avenue, Suite 250, Riverside, CA 92501-3335.

On April 10, 2014, I served a true copy of the within document described as

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on the interested parties in this action in a sealed envelope addressed as follows:

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(X) **BY MAIL** - I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service with postage thereon fully prepaid at Riverside, California, on the same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 10, 2014, at Riverside, California.

SUMMER DEVORE

SERVICE LIST

Re: *California High Speed Rail Authority, et al. v. Superior Court of Sacramento, et al.*; California Court of Appeal, Third Appellate District, Case No. C075668; (Sacramento County Superior Court Case Nos. 34-2011-00113919-CU-MC-GDS and 34-2013-00140689-CU-MC-GDS)

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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

Re: *California High Speed Rail Authority, et al. v. Superior Court of Sacramento, et al.;* California Court of Appeal, Third Appellate District, Case No. C075668; (Sacramento County Superior Court Case Nos. 34-2011-00113919-CU-MC-GDS and 34-2013-00140689-CU-MC-GDS)

I am employed in the County of Riverside, State of California. I am over the age of 18 years and not a party to the within action; my business address is: 3750 University Avenue, Suite 250, Riverside, CA 92501-3335.

On April 10, 2014, I served a true copy of the within document described as

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

on the Supreme Court of California (350 McAllister Street, #1295, San Francisco, CA 94102-4797) via their electronic filing system at http://www.courts.ca.gov/7423.htm.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 10, 2014, at Riverside, California.

SUMMER DEVORE

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

I.

INTRODUCTION

Pursuant to California Rules of Court 8.200(c), the Honorable Cathleen Galgiani ("Senator Galgiani"), California State Senator and former California State Assemblymember, respectfully seeks leave to file the accompanying amicus curiae brief in support of Petitioners, California High-Speed Rail Authority, High-Speed Passenger Train Finance Committee, Governor Edward G. Brown Jr., Treasurer Bill Lockyer, Director of Department of Finance Michael Cohen, and Secretary of the State Transportation Agency, Brian Kelly (collectively, "Petitioners").

II.

INTEREST OF THE AMICUS CURIAE

Senator Galgiani is a California State Senator representing California's 5th Senate District, and was previously a State Assemblymember representing California's 17th Assembly District. While in the Assembly, Senator Galgiani authored Assembly Bill 3034 ("AB 3034"), which later became Proposition 1A, the Safe, Reliable High-Speed Passenger Train Bond Act (the "Bond Act"). (Stats. 2008, ch. 267; Tab 87, HSR01757-HSR01771 [ballot pamphlet].) California voters approved the Bond Act, in November of 2008, thereby authorizing the state to sell general obligations bonds to fund legislatively authorized expenditures that advance the Bond Act's mission of constructing a high-speed passenger train system in California.

The implementation of the Bond Act, however, has been threatened by the Trial Court's rulings in both *High Speed Rail Authority v. All Persons Interested*, Sacramento Superior Court Case No. 34-2013-00140689, (the "Validation Action") and *Tos, et al. v. California High-*

Speed Rail Authority, et al., Sacramento Superior Court Case No. 34-2013-00113919, (the "*Tos* Action"). Both rulings undermine and misconstrue the intent and purpose of the Bond Act's provisions, and improperly substitute the judgment of the voters, the Legislature and the Bond Act's authors, with that of the Court.

As the Assemblymember who authored and introduced AB 3034 into the Legislature, a Senator, and a California citizen, Senator Galgiani has a vested interest in ensuring that the courts accurately interpret the express provisions of the Bond Act. Where such provisions are unclear, the legislative intent should be used assist the Court in interpreting the legislation and its application. Thus, Senator Galgiani is intimately familiar with the language of this bond measure, the context in which it was enacted, the legislative intent of the Bond Act provisions at issue, and the structure of the Bond Act as a whole.

III.

REASONS FOR ACCEPTING THIS BRIEF

The underlying appeal involves issues of statutory interpretation and legislative intent. As the author of the legislation at issue, Senator Galgiani is intimately familiar with the language of this bond measure, the context in which it was enacted, and the legislative intent of the Bond Act provisions at issue. Thus, her analysis can assist this Court in interpreting and clarifying the Legislature's intent in drafting the statute and the specific provisions at issue. In addition, Senator Galgiani seeks to assist the Court in understanding why the Trial Court's holdings in both the Validation and the *Tos* Actions were in error and should be reversed.

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IV.

CALIFORNIA RULES OF COURT

8.200(C)(3) DISCLOSURE

No person or entity made a monetary contribution or intended to fund the preparation or submission of this brief, other than the amicus curiae or its counsel in the pending action.

V.

CONCLUSION

Given Senator Galgiani's intimate familiarity with the Bond Act provisions in issue and their legislative history, and her interest in the pending matter, both as the author of the legislation involved and as a Legislator, Senator Galgiani respectfully requests that her application for leave to file an amicus brief be granted.

Dated: April 10, 2014

KELLY CRANE LAW LLP
GRESHAM SAVAGE NOLAN & TILDEN

By: _____

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AMICUS CURIAE BRIEF OF THE HON. CATHLEEN GALGIANI, CALIFORNIA STATE SENATOR IN SUPPORT OF PETITIONER

I.
INTRODUCTION

In 1996, the California High Speed Rail Authority ("Authority") was established to develop a high speed train system for the state. The Authority released its first business plan for the construction of high speed rail ("HSR") service for California in 2000, and in 2004, the Authority released a draft environmental impact report for the plan that was later certified in 2005. Thereafter, in 2008, Proposition 1 was prepared by the Legislature and scheduled to be put forth to the electorate to authorize the bonds necessary to fund construction of the HSR. Prior to the election however, the Senate Transportation and Housing Committee issued a "Report on the California High-Speed Rail Authority," raising concerns regarding the need for: (1) an updated business plan; (2) more stringent financial accountability standards, including the utilization of a peer review process; and (3) greater integration of the Authority into the state government. (Request for Judicial Notice ("RJN"), No. 1, Senate Appropriations Committee Fiscal Summary of AB 3034, 7/7/08.)

To address the concerns raised by the Senate Transportation and Housing Committee, Senator Galgiani authored and introduced Assembly Bill 3034 ("AB 3034"), which provided for additional legislative and financial oversight over the HSR's development, appropriations, and expenditures. (See, *id*.; Assem. Bill No. 3034, Stats. 2008, ch. 267.) Thus, AB 3034 included: (i) additional procedures pertaining to the review and preparation of the funding plans, (ii) new restrictions on how the bond proceeds may be utilized, and (iii) a more robust review and approval procedure in which a peer review committee evaluates the feasibility and

reasonableness of the Authority's funding plans, a Finance Committee authorizes the issuance of bonds, and the Legislature appropriates the bond proceeds. (*Id.*; see, RJN, No. 2, Assembly Floor Analysis of AB 3034, 8/9/08.) Subsequently, AB 3034 was enacted by the Legislature and later approved by the voters November 2008 as Proposition 1A, rather than the original Proposition 1, the legislation at issue in this appeal.

II.

ARGUMENT

Statutory construction and the corresponding legislative intent are of critical importance to this appeal. In interpreting ambiguities within a statute, the court's "first task [] is to ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Walnut Creek Manor v. Fair Employment and Housing Commission* (1991) 54 Cal.3d 245, 268 [internal citations omitted].) To do so, the "court must look first to the words of the statute themselves, giving to the language its usual, ordinary import." (*Id*.) Such words must also be "construed in context, keeping in mind the statutory purpose, and [that] statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (*Id*.) In performing such an analysis, "consideration should be given to the consequences that will flow from a particular interpretation." Furthermore, "[b]oth the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent." (*Id*.) If the provisions of a statute remain susceptible to more than one reasonable interpretation, the court may look to maxims of statutory construction and extrinsic aids. (*Mejia v. Reed* (2003) 31 Cal.4th 657, 663; *Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519.)

Here, the Trial Court's rulings in the Validation Action and the *Tos* Action run afoul of both the language and intent of the Bond Act.

A. The Trial Court Misconstrued the Nature of the Finance Committee's Authority and Erroneously Denied the Validation Action

The critical issue raised in the Validation Action was whether the Finance Committee properly authorized the bonds for a portion of the HSR system's construction. In denying the Validation Action, the Trial Court erred in two respects. First, the Trial Court incorrectly expanded the scope of the Finance Committee's legislatively authorized discretion when it concluded that the Finance Committee has the discretion to determine whether issuance of the bonds is "desirable to the State government as a whole, or to the taxpaying public." (Tab 4, Ruling on Submitted Matter, Validation Action, p. 9.) Second, the Trial Court erroneously concluded that the Finance Committee's determination that the bonds are "necessary or desirable" must be supported by substantial evidence in the record.

1. The Finance Committee Has No Discretion to Opine on the General Desirability of the HSR System

Contrary to the Trial Court's assessment of the Finance Committee's responsibilities, the Legislature prescribed a defined, and limited, role for the Finance Committee. (Sts. & Hy. Code § 2704.13.) Specifically, the Finance Committee was established for the express and limited purpose of determining "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 [the Bond Act], and, if so, the amount of bonds to be issued." (*Id*.) In other words, the plain language of the statute is clear that the Finance Committee's role was limited to determining: (i) whether the funds requested by the Authority are necessary or desirable to carry out the purpose of the Bond Act, and (ii) the amount of the bonds to be issued and sold. (Sts. & Hy. Code § 2704.13.) The Legislature never intended for the Committee to have the discretion to determine "whether issuance of the

bonds was desirable to the State government as a whole, or to the taxpaying public, which has an essential interest in the State's finances," as the Trial Court found. (Tab 4, Ruling on Submitted Matter, Validation Action, p. 9.) The overall policy decision determining whether "issuance of the bonds was desirable to the State government as a whole" was already answered by the people of the state, who balanced the overall "desirability" of the HSR system when they approved Proposition 1A.[1] In turn, the Bond Act vested the authority to approve the funding plans and to expend funds with the Legislature and the Director of Finance. (Sts. & Hy. Code §§ 2704.04, 2704.08; see, Assembly Bill 3034, Sec. 8,(a) and (f) [enacted but not codified].) There is nothing in the Bond Act that gives the Finance Committee the authority to balance policy considerations of the type suggested by the Trial Court to make its determination that issuance of the bonds is "necessary or desirable." (See, Sts. & Hy. Code §§ 2704.08, 2704.13.)

The plain language of the statute further provides that in making the "necessary or desirable" determination, the Finance Committee was only to consider: whether the amount of bonds requested is sufficient to "carry out the purposes" of the Bond Act. (Sts. & Hy. Code § 2704.13.) The Finance Committee is not empowered to review, comment upon, or approve the

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[1] The voters made the broad policy determination about the overall merits of a HSR system funded by bonds when they approved Proposition 1A. This is evidenced by several sources in addition to Proposition 1A itself, including but not limited to: (i) Section 13 of AB 3034, which states that "[a]pproval by the voters of the Safe, Reliable High-Speed Passenger Train Bond Act shall constitute approval of a financial plan for purposes of Section 185036 of the Public Utilities Code;" and, (ii) The Prop 1A "Quick Reference Guide" containing the ballot summary, which provides: "A YES vote on this measure means: The state could sell $9.95 billion in general obligations bonds to plan and to partially fund the construction of a high-speed train system in California, and to make such capital improvements to state and local rail services."

funding plan; it is to simply authorized to consider whether the bonds requested are necessary and desirable to "carry out the purpose" of the Bond Act. (See, Sts. & Hy. Code § 2704.13.)

In this respect, the Finance Committee made such a determination and appropriately approved the bonds. Accordingly, the Trial Court's ruling is contrary to the law and the intent of the Legislature.

2. Substantial Evidence was not Required to Support the Finance Committee's "Necessary or Desirable" Determination.

The Trial Court's holding that the Finance Committee's "necessary or desirable" determination was required to be supported by substantial evidence: (i) misconstrues the express terms of the Bond Act; (ii) ignores the Legislature's intent in drafting the Bond Act; and (iii) advances an interpretation that results in providing the Finance Committee with oversight responsibilities that have already been charged to other entities.

A plain reading of the statute shows that neither Section 2704.12 nor Section 2704.13, which establish the Finance Committee and set forth its role relative to the issuance of bonds, contain any requirement that the Finance Committee must make findings or support its determination with substantial evidence in the record. (Sts. & Hy. Code § 2704.13.) In fact, the Bond Act ***imposes no substantive requirements*** upon the Finance Committee in making its "necessary or desirable" determination, nor does it establish any benchmarks that must be met, or specified findings that must be made, before the Finance Committee can find that the issuance of bonds is necessary or desirable. (Sts. & Hy. Code § 2704.13.) Had the Legislature intended to require findings or substantial evidence, the Legislature knows how to do so, and absent any clear requirement, the Legislature's silence is controlling. (See, *CBS Inc. v. PrimeTime 24 Joint Venture* (11th Cir. 2001)

245 F.3d 1217, 1226 ["[w]here Congress knows how to say something but chooses not to, its silence is controlling."].)

Furthermore, given the Finance Committee's limited role, it is clear that the Legislature never intended that the Finance Committee's determination be "supported by substantial evidence," such as would be typically required in quasi-adjudicatory administrative hearings. Rather, the Bond Act is crafted so as to give the Finance Committee's decision making process the broadest discretion, entitling its decisions to substantial deference and the most limited form of judicial review. (*San Francisco Fire Fighters Local 798 v. City and County of San Francisco* (2006) 38 Cal.4th 653, 670; *Carracho v. Cal. Air Resources Bd.* (2003) 111 Cal.App.4th 1255, 1265-1266.) Likewise, the Legislature never intended that the "necessary or desirable" determination be substantive; as explained in *Boelts v. City of Lake Forest* (2005) 127 Cal.App.4th 116, 128, fn. 13, "those words are probably so elastic as not to impose any substantive requirements."[2]

Finally, this conclusion is further supported in considering the roles and responsibilities expressly assigned to the Peer Review Group, the Director of Finance and the Legislature. The Trial Court's interpretation of the Bond Act erroneously creates overlap and role confusion between these entities, and incorrectly assigns the Finance Committee with powers that were reserved in Section 2704.08 to the Director of Finance, the Peer Review Group, and the Legislature. It is these entities, not the Finance Committee, that are tasked with reviewing and commenting upon the funding plan, analyzing the feasibility of the HSR, and in considering the

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[2] "This long history of established meaning is important, because we readily presume that [the Legislature] knows the settled legal definition of the words it uses, and uses them in the settled sense." *CBS Inc., supra*, 245 F.3d at 1223.

"best interests of the State and the People." (See, AB 3034; see, Sts. & Hy. Code §§ 2704.06, 2704.08.)

Contrary to the Trial Court's holding, by properly concluding that the issuance of bond proceeds was "necessary or desirable," the Finance Committee fully and completely performed its statutory duties. The Bond Act did not require, nor did the Legislature intend, for any further determinations to be made by the Finance Committee. Indeed, to require anything further would frustrate the Legislature's intent to have the Finance Committee perform a carefully delineated and circumscribed role, and would permit the Finance Committee to second guess the Legislature and the electorate, a result that the Legislature certainly never intended.

B. The *Tos* Court's Interpretation of the Bond Act was Inconsistent with Plain Language of the Bond Act and the Legislative Intent.

The Trial Court also erred in holding that a Pre-Appropriation Funding Plan pursuant to Section 2704.08(c)(1) is a necessary prerequisite to the approval of a Pre-Expenditure Funding Plan required under 2704.08(d). The reasons for this error are several. First, the Trial Court's holding violates the separation of powers provisions of the California Constitution. Second, the holding frustrates the intent of the Legislature and the voters by proffering an interpretation that would empower judicial interference with a distinctly legislative procedure. Third, it improperly implies a private right of action where none was provided or intended. Lastly, even assuming the existence of a private right of action, the Court erred in ordering the rescission of the approved Pre-Appropriation Funding Plan.

1. The Trial Court's Ruling Violates the Constitutional Principles of Separation of Powers

In establishing the various departments of the California government, Article III, section 3 of the California Constitution provides that the "[p]ersons charged with the exercise of one power may not exercise either of the other [departments' powers] except as permitted by [the] Constitution." Flowing from this is an understanding that departments of the government "should be kept completely independent of the others – Independent… in the sense that the acts of each shall never be controlled by, or subjected, ***directly or indirectly***, to the coercive influence of either of the other departments." (*Steiner v. Superior Court* (1996) 50 Cal.App.4th 1771, 1782-83 [*Emphasis* Added, Citation Omitted].) In deciding whether an action is legislative in nature, the determining issue is not the action's form, but whether the action is properly regarded as being legislative in character and effect. (*Id*. at 1787.) Budgetary functions in particular, have generally been held to be legislative in nature.[3]

In directing the Authority to rescind and redo the Pre-Appropriation Funding Plan, the Trial Court's writ – although judicial in origin – has the ultimate ***legislative effect*** of repealing the Legislature's budgetary decision to appropriate funds in connection with those plans. Although the Trial Court attempts to circumvent this separation of powers issue by narrowing its writ to the Pre-Appropriation Funding Plan, the writ has the unmistakable *effect* of undermining the Legislature's appropriation. It also

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[3] "The budgetary process entails a complex balancing of public needs in many and varied areas with the finite financial resources available for distribution among those demands. It involves interdependent political, social and economic judgments which cannot be left to individual officers acting in isolation; rather, it is, and indeed must be, the responsibility of the legislative body to weigh those needs and set priorities for the utilization of limited revenues available." (*Steiner, supra*, 50 Cal.App.4th at 1788.)

has the *effect* of suggesting that the Legislature used bad judgment – or improperly exercised its legislative discretion – in considering the Pre-Appropriation Funding Plan in its allegedly deficient form.

Such a remedy however, directly interferes with the Legislature's ability to exercise its legislative discretion in reviewing and evaluating budgetary matters, and is tantamount to holding the Legislature accountable for a failure to supervise its own authority. The doctrine of separation of powers specifically proscribes the judiciary from reaching such judgments, and from second guessing the Legislature's exercise of legislative discretion in the performance of uniquely legislative functions. (*Butt v. State of California* (1992) 4 Cal.4th 668, 698; see, *County of San Diego v. State* (2008) 164 Cal.App.4th 580, 594.) Consequently, the Trial Court's determination that perceived deficiencies in the Pre-Appropriation Funding Plan (Section 2704.08(c)) precludes: (a) the Authority from further advancing on the HSR system, and (b) the Legislature from appropriating bond funds, is contrary to the law and is a usurpation of the Legislature's authority. The Trial Court, therefore, committed a reversible error by crafting a remedy that violated constitutional protections against judicial intervention in the legislative processes.

2. The Trial Court's Ruling Interferes with a Carefully Crafted and Comprehensive Legislative Process

Statutes should be construed, whenever possible, so that all may be harmonized and have effect with reference to the whole system of law, so that no part becomes "surplusage." (*DeVita v. County of Napa* (1995) 9 Cal.4th 736, 778-779; *Mejia, supra*, 31 Cal.4th at 663.) Further, courts must assume that the Legislature is aware of existing, related laws and intends to maintain a consistent body of rules. (*Fuentes v. Workers' Compensation Appeal Bd.* (1976) 16 Cal.3d 1, 7.) Here, as discussed *infra*,

the Trial Court's rulings would render portions of the Bond Act mere surplusage.

A contextual reading of the Bond Act clearly illustrates that the funding plans for the HSR were always presumed to be part of a comprehensive legislative scheme. In fact, the Legislature did not intend, or provide, for the creation of successive Pre-Appropriation Funding Plans as the Trial Court's ruling suggests is required. That is why the Legislature required the Authority to obtain approval of a subdivision (c) funding plan before the appropriation of bond proceeds, as well as a subdivision (d) funding plan before the actual ***expenditure*** of bond proceeds. (Sts. & Hy. Code § 2704.08(d).) Thus, the legislative scheme provides for the approval of two different but related plans as part of the overall process.

If the subdivision (c) Pre-Appropriation Funding Plan had to be revised over and over until it was perfect, there would be no need for a second subdivision (d) Pre-Expenditure Funding Plan. The inclusion of the subdivision (d) plan is an explicit recognition that new, and possibly different, information would be needed to supplement or augment the Pre-Appropriation Funding Plan; and further, that the Pre-Appropriation Funding Plan was in no way intended to be a final or conclusive administrative action.

This interpretation is supported by Section 8 of AB 3034, which notes the importance of constructing the HSR system "as quickly as possible." (AB 3034, Section 8 [enacted but not codified].) It is further evidenced by the express terms of subdivision (d), which requires information similar to, but different than, the subdivision (c) funding plan.[4]

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[4] For example the subdivision (d) Pre-Expenditure Funding Plan requires the identification of the corridor or usable segment. As this information is also required for the subdivision (c) Pre-Appropriation Funding Plan, the implication is that the corridor or usable segment might be different from that identified in the first subsection (c) funding plan. Similarly,

This suggests that the Legislature understood that, by the time the ***expenditure*** request was made, there would be material changes from the Pre-Appropriation Funding Plan. To find otherwise would render the subsection (d) report, requiring material funding plan changes to be disclosed, absolutely meaningless, and would subject the Pre-Appropriation Funding Plan to constant litigation and challenges regarding its adequacy. The plain meaning of the statute, and a contextual analysis of the Bond Act, clearly establishes that such a result was not intended by the Legislature; rather, both plans were intended to constitute sub-parts of a single legislative process.

3. No Private Right of Action Exists to Challenge the Contents of the Pre-Appropriation Funding Plan

In determining whether or not a private right of actions exists with respect to a statute, the Court has found that the determining factor is a matter of legislative intent. (*Mabry v. Superior Court* (2010) 185 Cal.App.4th 208, 218-19.) Here, a plain reading of the statute clearly illustrates that the Legislature purposefully sought to insulate itself from judicial review and legal challenges this exact nature. To further this intent, the Legislature included Section 2704.08(i) as an additional safeguard to ensure that its authorization of the bonds could not be overturned. (Sts. &

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the source of funds is required to be identified in both funding plans, again, suggesting that the source might be different in the subdivision (d) funding plan than the source identified in the first subsection (c) funding plan. Additionally, the subdivision (d) funding plan specifies the inclusion of ***a report describing any material changes from the plan submitted pursuant to subsection* (c)**. (Sts. & Hy. Code § 2704.08(d).) This deliberate overlap in contents between the Pre-Appropriation and Pre-Expenditure Funding Plans, as well as the required report detailing material changes between the two, further evidences the Legislature's intent that there not be successive Pre-Appropriation Funding Plans.

Hy. Code § 2704.08(i).) That section provides "No failure to comply with this section shall affect the validity of bonds issued under this chapter." (*Id.*) Once again, had the Legislature intended to create a private right of action, the Legislature knows how to do so, and absent any clear requirement the Legislature's silence is controlling. (*CBS Inc., supra*, 245 F.3d at 1226.)

The Legislative intent to preclude a private right of action is further shown through the Legislature's mandate that the validity of the bonds would not be impacted, even where the Pre-Appropriation Funding Plan is not perfect, or changes are made to the plan, or legal challenges are filed. (Sts. & Hy. Code § 2704.08(i).) Thus, by implying that a private right of action exists, the Trial Court, frustrates, rather than furthers, the Bond Act and the Legislature's intent.

4. Trial Court's Remedy is Inconsistent With the Express Terms of the Bond Act and its Procedural Requirements

Even assuming the Court was accurate in finding that the Pre-Appropriation Funding Plan was deficient, and even further assuming that a private right of action exists to challenge this deficient plan, the Trial Court's choice of remedy of was in error and inconsistent with the Bond Act. As noted above, the Legislature built into the Bond Act a procedural "*cure*," or safeguard, to address necessary changes to the Pre-Appropriation Funding Plan. This safeguard, as described in detail above, is the required preparation of a new, Pre-Expenditure Funding Plan pursuant to subsection (d). Accordingly, the remedy imposed by the Trial Court – to rescind the Authority's approval of the subsection (c) funding plan – is at odds with the express language of the statute and the Legislative intent: to allow for deficiencies to be accounted for, and amendments to be made, within the Pre-Expenditure funding plan.

In consideration of this procedure set forth by the Bond Act, the Authority should be permitted to proceed with the subsection (d) Pre-Expenditure Funding Plan and augment the previous plan to address changes to the proposed HSR or perceived deficiencies in the Pre-Appropriation Funding Plan.[5] There is no justifiable reason to ***redo*** the Pre-Appropriation Funding Plan or to request another appropriation from the Legislature. Thus, the Trial Court's holding to the contrary is inconsistent with the express provisions of Section 2704.08 and the clear legislative intent.

III.

CONCLUSION

Senator Galgiani requests the Court of Appeal reverse the Trial Court's decision in both the Validation and the *Tos* Actions. With respect to the Validation Action, the Trial Court erred by reading into the Bond Act a level of discretion and oversight by the Finance Committee that was neither intended by the Legislature, nor provided for by the relevant code provisions. To the contrary, the discretion that the Trial Court would afford the Committee is directly contrary to the express statutory provisions which deliberately exclude the Committee from having the type of oversight the Trial Court would give it.

With respect to the *Tos* Action, the Trial Court erred by: (1) substituting its judgment for that of the Legislature in determining the

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[5] For example, in line with the recently completed environmental review, the Authority is considering the inclusions of stations in Madera and Tulare, or, alternatively expanding the section of the line that currently stops in Madera and instead extending the line an additional 29 miles to Merced. The completion of the environmental review and the selection of one of these locations for a station addresses two of the perceived "flaws" identified by the Trial Court. Thus, to the extent there were questions about whether the Pre-Appropriation Funding Plan identified a usable segment or corridor, the matter would be resolved by a Pre-Expenditure Funding Plan that proposed a second station.

adequacy of the Pre-Appropriation Funding Plan; and (2) requiring that the Pre-Appropriation Funding Plan be rescinded.

For the foregoing reasons, the Hon. Cathleen Galgiani respectfully requests that the Trial Court be reversed.

Dated: April 10, 2014

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, Rule 8.204 (c)(1))

The text of this brief, including footnotes, consists of 4,639 words as counted by the Microsoft Windows 7 Professional, Word 2010 word-processing program used to generate the brief.

Date: April 10, 2014

Stefanie G. Field

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

Re: *California High Speed Rail Authority, et al. v. Superior Court of Sacramento, et al.;* California Court of Appeal, Third Appellate District, Case No. C075668; (Sacramento County Superior Court Case Nos. 34-2011-00113919-CU-MC-GDS and 34-2013-00140689-CU-MC-GDS)

I am employed in the County of Riverside, State of California. I am over the age of 18 years and not a party to the within action; my business address is: 3750 University Avenue, Suite 250, Riverside, CA 92501-3335.

On April 10, 2014, I served a true copy of the within document described as

APPLICATION OF THE HON. CATHLEEN GALGIANI, CALIFORNIA STATE SENATOR, FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

[PROPOSED] AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

on the interested parties in this action in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

(X) **BY MAIL** - I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service with postage thereon fully prepaid at Riverside, California, on the same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 10, 2014, at Riverside, California.

SUMMER DEVORE

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on the Supreme Court of California (350 McAllister Street, #1295, San Francisco, CA 94102-4797) via their electronic filing system at http://www.courts.ca.gov/7423.htm.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 10, 2014, at Riverside, California.

SUMMER DEVORE