In the Supreme Court of the State of California

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

Petitioners,

v.

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 VOILAND, CITIZENS FOR CALIFORNIA HIGH-SPEED RAIL ACCOUNTABILITY, KINGS COUNTY WATER DISTRICT, and UNION PACIFIC RAILROAD COMPANY,

Real Parties In Interest.

Case No.

Sacramento Superior Court, Case Nos. 34-2011-0113919; 34-2013-00140689
Dept. 31; The Honorable Michael P. Kenny, Judge; Tel: (916) 874-6353

PETITION FOR EXTRAORDINARY WRIT OF MANDATE, APPLICATION FOR TEMPORARY STAY, AND MEMORANDUM OF POINTS AND AUTHORITIES

STAY REQUESTED BY MARCH 1, 2014

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to rules 8.208 and 8.488 of the California Rules of Court, Petitioners California High-Speed Rail Authority, et al. hereby certify, through their undersigned counsel, that there are no interested entities or persons that must be listed in this certificate.

Dated: January 24, 2014

Respectfully submitted,

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INTRODUCTION

California voters approved the sale of $9.95 billion in general obligation bonds to build the largest infrastructure project in the State's history: a high-speed rail system connecting California's major population centers. Beyond serving as an engine of economic growth, high-speed rail will improve the environment by curbing automobile dependency and the need to build new roads and airports, thereby reducing air pollution and the greenhouse gases that are causing global warming.

Since the project's inception, opponents of high-speed rail have tried to block its construction. Now, two rulings of the Sacramento Superior Court—which are otherwise unreviewable as a practical matter—imperil the project by erecting obstacles found nowhere in the voter-approved bond act. These erroneous rulings turn the requirements of the high-speed rail bond act on their head, threaten state and federal funding for the project, and urgently warrant review by this Court in an exercise of its original writ jurisdiction. (Cal. Rules of Court, rule 8.486(a)(1).)

In the first of two companion cases, the trial court refused to validate approximately $8.6 billion in bonds because it found no evidentiary basis for the declaration of the High-Speed Passenger Train Finance Committee (the "Committee") that issuing these bonds was "necessary and desirable." The fact that the court's analysis is unsupported by any case authority signals its error. In fact, the Committee's conclusion that bond issuance is necessary or desirable is not a substantive determination that requires a particular quantum of evidence.

Left undisturbed, this ruling will disrupt the State's ability to finance the high-speed rail system as well as other projects funded with general obligation bonds. Given the trial court's failure to articulate what record might support a determination of necessity or desirability, it will be more difficult for public finance lawyers to deliver the specialized legal opinions

needed to sell bonds. Moreover, the ruling strongly suggests that a specific use for the bond proceeds must be tied to authorizing issuance of bonds—even though the bonds so authorized might not be sold for many years. This would destroy the State's ability to use the bond validation statutes, as intended, to obtain a speedy and final determination of validity. Thus, the challenged ruling impacts not just high-speed rail, but the State's ability to ensure the marketability of all general obligation bonds.

In the second case, opponents sued to stop the High-Speed Rail Authority ("Authority") from using bond proceeds appropriated to begin construction in the Central Valley. Although the trial court rejected claims that the Authority had committed or spent bond proceeds in violation of the bond act, it nevertheless issued a writ. The court directed the Authority to rescind and re-adopt a preliminary funding plan intended solely for the Legislature's consideration in deciding whether to appropriate bond proceeds to build the project. It is flawed for several reasons, not the least of which is that it compels an idle act: it requires the Authority to re-do a plan for an appropriation that has already been enacted. Petitioners also seek a temporary stay of the writ, which will be unreviewable on appeal because the trial court issued it without a final judgment.

The trial court's approach to these issues cripples government's ability to function. The rulings thwart the intent of the voters and the Legislature to finance the construction of high-speed rail, and do so in a manner that has implications for other important infrastructure projects. The Legislature and the voters necessarily vested the Authority and the Committee with the power to make discretionary decisions in building and financing this historic project. For the democratic process to work, the courts must fairly interpret laws in a manner that permits government to accomplish their objectives, rather than adopting cramped constructions that frustrate legislative and voter intent.

Absent review by this Court and a stay of the writ, the future of the high-speed rail system may effectively be determined by two superior court rulings untethered from the law approved by the Legislature and the voters to build it. The statewide importance of this project and the legal issues presented warrant extraordinary review by this Court.

PETITION FOR WRIT OF MANDATE

JURISDICTION

This Court has jurisdiction. (Cal. Const., art. VI, § 10; Code Civ. Proc., § 1085.)

AUTHENTICITY OF EXHIBITS

All exhibits accompanying this Petition are true and correct copies of original documents on file with the respondent court except Tabs 7-9, which are true and correct copies of the original reporter's transcripts of the May 31, 2013 hearing on the petition for writ of mandate and the November 8, 2013 hearing on the remedies issue in *Tos, et al. v. California High-Speed Rail Authority, et al.*, Sacramento Superior Court Case No. 34-2011-00113919 ("*Tos*") and the September 27, 2013 hearing on the bond validation action in *High Speed Rail Authority, et al. v. All Persons Interested*, Sacramento Superior Court Case No. 34-2013-00140689 (the "Validation Action"). The exhibits are incorporated herein by reference as though fully set forth in this petition and are paginated consecutively from page HSR00001 through HSR09538 in the concurrently-filed Appendix of Exhibits. The exhibits are referenced by their tab and, where applicable, by page number (e.g., Tab 1, HSR00001).

PARTIES

1. Petitioners High-Speed Rail Authority and High-Speed Passenger Train Finance Committee are plaintiffs in the Validation Action.

The Authority and the Committee are state agencies. (Pub. Util. Code, § 185012 et seq.; Sts. & Hy. Code, § 2704.12 et seq.) Petitioners the Authority, the Governor, the Treasurer, the Director of the Department of Finance, and the Secretary of the State Transportation Agency are respondents and defendants in *Tos*.

2. Respondent is the Superior Court of California, County of Sacramento.

3. Real Parties in Interest John Tos, Aaron Fukuda, and County of Kings are petitioners/plaintiffs in *Tos*, and also defendants in the Validation Action.

4. Real Parties in Interest Howard Jarvis Taxpayers Association, County of Kern, First Free Will Baptist Church, Eugene Voiland, Citizens for California High-Speed Rail Accountability, and Kings County Water District are defendants in the Validation Action.

5. Real Party in Interest Union Pacific Railroad Company filed a responsive pleading as an interested party in the Validation Action.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

6. Proposition 1A, codified as the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, Streets and Highways Code section 2704 et seq. (the "Bond Act"), authorizes the sale of state general obligation bonds, in a principal amount of up to $9.95 billion, in order to begin construction of a high-speed train system in California. (Sts. & Hy. Code, §§ 2704.04, subds. (b)-(c), 2704.06.) The project itself is much larger, as the Bond Act limits the use of bond proceeds to just fifty percent of construction costs. (*Id.*, § 2704.08, subd. (a).)

7. The Bond Act requires the Authority, at least 90 days before requesting an appropriation of bond funds to begin construction, to submit a funding plan ("first funding plan") to the Director of Finance, a peer review group charged with evaluating the Authority's plans and submitting its

report to the Legislature, and the transportation and fiscal committees of both houses of the Legislature. (Sts. & Hy. Code, § 2704.08, subd. (c)(1); Pub. Util. Code, § 185035, subd. (e).)

8. Even after the Legislature appropriates bond funds for construction, the Authority must meet additional requirements before it can commit or spend appropriated funds. The Authority must approve and submit to the Director of Finance, the peer review group, and the Chairperson of the Joint Legislative Budget Committee a *second* funding plan, which the Director must approve before the Authority may spend or commit bond proceeds for construction. (Sts. & Hy. Code, § 2704.08, subd. (d); Pub. Util. Code, § 185035.)

9. On November 3, 2011, the Authority approved a first funding plan in anticipation of seeking an appropriation to construct two segments of the high-speed rail system in the Central Valley. (Tabs 323, 337.) The funding plan incorporated a draft 2012 business plan setting forth the Authority's implementation strategy. (Tab 323, HSR05176; Tab 324; Pub. Util. Code, § 185033.) The Authority submitted the first funding plan as required in the Bond Act. (See Tab 323, 337; Sts. & Hy. Code, § 2704.08. subd. (c)(1); Pub. Util. Code, § 185035, subds. (a), (c).)

10. On November 14, 2011, Real Parties in Interest John Tos, Aaron Fukuda, and County of Kings filed *Tos*, alleging that the first funding plan violated several provisions of the Bond Act and seeking to stop construction of high-speed rail in the Central Valley as well as to prevent respondents "from selling or approving the sale of Proposition 1A state bonds." (Tab 292, HSR04836.)

11. On April 12, 2012, the Authority adopted a revised 2012 business plan, which it also submitted for review. (Tabs 372, 373.)

12. On July 18, 2012, the Legislature enacted Senate Bill 1029 ("SB 1029"), appropriating $2.609 billion of bond funds and $3.24 billion of

federal grant funds to begin construction in the Central Valley, as described in the revised 2012 business plan. (Stats. 2012, ch. 152, §§ 3, 9.)

13. On March 18, 2013, the Authority adopted a resolution asking the Committee to authorize issuance of all remaining bonds in the amount of $8,559,715,000, for the purposes authorized in the Bond Act. (Tab 109, HSR02048.)

14. To authorize issuance of bonds, the Committee must "determine whether or not it is necessary or desirable to issue bonds authorized" by the Bond Act and, if so, the amount of bonds to be authorized. (Sts. & Hy. Code, § 2704.13.)

15. On March 18, 2013, the Committee adopted resolutions in which it determined "that it is necessary and desirable" to authorize, and therefore authorizing, the issuance of bonds in a principal amount not to exceed $8,599,715,000 "to carry out the purposes set forth in [the Bond Act]." (Tab 108, HSR01955-HSR02038.)

16. The next day, the Authority and the Committee filed the Validation Action, pursuant to Code of Civil Procedure section 860 et seq. and Government Code section 17700, to confirm the validity of the bonds authorized by the Committee. (Tab 189.) Each of the Real Parties in Interest responded to this complaint.

17. On August 16, 2013, the trial court ruled in *Tos* that the Authority abused its discretion in approving the first funding plan because it did not comply with the requirements of Streets and Highways Code section 2704.08, subdivision (c)(2)(D) and (K). (Tab 5, HSR00080-HSR00084.) The court, however, denied a writ to invalidate the appropriation of bond proceeds the Legislature enacted in SB 1029. (*Id.*, HSR00086.) The court questioned whether any remedy was available, and specifically whether a writ invalidating the funding plan should issue. (*Id.*,

HSR00087.) Accordingly, the court requested supplemental briefing. (*Id.*, HSR00088.)

18. On November 25, 2013, the trial court issued a second ruling in *Tos*. (Tab 6.) The court rejected allegations that the Authority had committed or spent bond proceeds in violation of the Bond Act. (*Id.*, HSR00092-HSR00094.) Nevertheless, the court held that a writ should issue to rescind the first funding plan because the preparation and approval of a first funding plan that complies with all of the requirements of Streets and Highways Code section 2704.08, subdivision (c), is a necessary prerequisite to the preparation and approval of the second, subdivision (d) funding plan. (*Id.*, HSR00091-HSR00092.)

19. Also on November 25, 2013, the trial court issued a ruling denying the relief sought in the Validation Action. (Tab 4.) The court withheld validation solely because the Committee's determination that it was "necessary and desirable" to authorize the issuance of bonds "must be [and was not] supported by evidence in the record." (*Id.*, HSR00065, HSR00070.)

20. On January 3, 2014, the trial court entered judgment in the Validation Action. (Tab 1.)

21. The same day, in *Tos* the trial court issued an order granting the petition for writ of mandate and issued a writ of mandate ordering the Authority to rescind the funding plan. (Tabs 2, 3.) No final judgment has been entered in *Tos*, however, because the *Tos* petitioners contend that they are entitled to a civil trial on as yet un-adjudicated taxpayer causes of action. (See Tab 5, HSR00075; Tab 197, HSR02903-HSR02904.) To preserve their right to appeal, the *Tos* respondents asked the court to delay issuing the writ until it is prepared to enter a judgment. (Tab 11.) The *Tos* petitioners opposed the delay and the writ issued without a judgment. (Tabs, 2, 3, 12.)

22. No prior petitions have been filed in either action.

23. Additional factual and procedural history is set forth in the memorandum of points and authorities immediately following the petition.

ISSUES PRESENTED

24. The issues presented by this writ petition are:

a. Whether, in a validation proceeding, a court may withhold validation of bonds despite the Committee's determination that it is "necessary or desirable" to issue bonds, solely for lack of record evidence supporting that determination.

b. Even if so, whether in this case there was sufficient evidence to validate the high-speed rail bonds authorized by the Bond Act and the Committee.

c. Whether a claim lies in mandamus to challenge the adequacy of the Authority's funding plan.

d. Even if so, whether a writ may issue preventing the Authority from spending duly appropriated funds unless and until it rescinds and re-adopts a first funding plan.

APPEAL IS AN INADEQUATE REMEDY AND INJURY TO THE PETITIONERS WOULD BE IRREPARABLE ABSENT IMMEDIATE RELIEF

25. Because appeal is an inadequate remedy and Petitioners will suffer irreparable injury absent immediate intervention by this Court, the writ should be granted.

26. Both decisions are effectively unreviewable on appeal. The issue is time. The Authority is faced with a Hobson's choice: it can pursue appeals that may take years to resolve and incur the exorbitant costs, fiscal and otherwise, that will attend the delays, or accept and comply with the orders, likely mooting an appeal, and attempt to move the project forward on the trial court's and private parties' terms. That is not a real choice

given the responsibility the Authority has to be prudent with public funds, to use federal grant funds before they expire in 2017 (see Tab 442, HSR09372; see also 31 U.S.C. § 1552; 74 Fed.Reg. 29900), and to move the project quickly (Stats. 2008, ch. 267, §§ 8(a), 8(f), 14).

27. In the Validation Action, the Committee may be forced to reauthorize the bonds and start over with a second validation proceeding. But because the trial court has cast doubt upon the procedures by which agencies may authorize and validate general obligation bonds in order to ensure their marketability, the effect of its decision will not be limited to this case. If the Authority does not appeal, the trial court's determinations will threaten the State's ability to finance other voter-approved projects worth tens of billions of dollars—on time, on budget, and as authorized by the voters and the Legislature.

28. The State cannot sell general obligation bonds without either an unqualified opinion of bond counsel or a validation judgment. The trial court's ruling in the Validation Action will make it more difficult for bond counsel to issue an unqualified opinion. The trial court called into question the standards on which bond counsel have relied for decades, without providing an equally reliable alternative. Bond counsel now have no clear standard by which to judge whether record evidence was sufficient to determine that it was "necessary or desirable" to issue general obligation bonds.

29. The trial court's demand for a record also prevents the validation of general obligation bonds issued for any purpose permitted by a bond act. This is how general obligation bonds are authorized when validation is sought solely to remove legal obstacles to their marketability (and not for purposes of validating any specific use of bond proceeds). And even when bonds are authorized to fund a specific piece of the project, and that record is before the finance committee, the trial court's ruling means that the

validation statutes will no longer serve the purpose for which they were enacted—to provide speedy resolution of legal obstacles to issuing bonds—because litigation will be protracted as opponents argue that the record, whatever it is, was inadequate to support authorization and issuance of bonds. The only real relief from the decision of the superior court is a writ overturning it.

30. In passing the Bond Act, the Legislature declared that it is "*imperative that the state proceed quickly* to construct a state-of-the-art high-speed passenger train system to serve major metropolitan areas." (Stats. 2008, ch. 267, § 8(a), italics added.) The high-speed rail system is a critical part of the State's strategy to reduce air pollution and combat climate change. Thus, the Legislature mandated that the system be constructed "*as quickly as possible*" (*id.*, § 8(f), italics added), and declared the Bond Act to be an "urgency statute necessary for the immediate preservation of the peace, health, or safety within the meaning of Article IV of the Constitution" (*id.*, § 14).

31. Despite these declarations of urgency, the trial court's rulings have blocked access to bond funds appropriated by the Legislature for the foreseeable future and cast a cloud of uncertainty over the entire voter-approved project. As a direct result of these two rulings, Congress has initiated hearings and an investigation by the Government Accountability Office in an effort to pressure federal funding partners to withhold billions of dollars in matching federal grants to construct the Central Valley portion of the high-speed rail system, and legislation has been proposed to suspend federal funding until "sufficient non-Federal funds are available." (H.R. No. 3893, 113th Cong., 2d Sess. (2014); Letter to the Hon. Gene Dodaro, Comptroller General, U.S. Government Accountability Office, from Reps. Tom Latham and Jeff Denham, Nov. 26, 2013 [Petitioners' Request for Judicial Notice, Exs. A & B, filed concurrently herewith]; see Sheehan,

Rep. Denham seeks review of high-speed rail grants, Fresno Bee (Nov. 27, 2013), www.fresnobee.com/2013/11/27/3635818/rep-denham-seeks-review-of-high.html; Williams, *California to owe feds $180M for high-speed rail*, Associated Press/Monterey Bay Herald (January 15, 2014), http://www.montereyherald.com/state/ci_24918301/calif-will-owe-180m-high-speed-rail-april; Tate, *Battle of words over high-speed rail erupts on Capitol Hill,* Fresno Bee (January 15, 2014), http://www.fresnobee.com/2014/01/15/3715551/despite-legal-setbacks-officials.html; Lane, *High-speed rail in California runs into a low-speed process,* Washington Post (January 13, 2014), http://www.washingtonpost.com/opinions/charles-lane-high-speed-rail-in-california-runs-into-a-low-speed-process/2014/01/13/4aebd266-7c75-11e3-95c6-0a7aa80874bc_story.html ["Who is more powerful, the president of the United States or Michael P. Kenny of Sacramento?"].

32. If this Court does not issue a stay and accept review now, the trial court's decision in *Tos* will be unreviewable because the writ requiring the Authority to rescind its funding plan issued without a final judgment. (Tabs 2, 3.) Without a stay, the Authority must, within the 60-day return date provided in the writ, choose either to comply with the writ by rescinding the funding plan, which will risk mooting this writ proceeding as well as any eventual appeal of a judgment, or decline to do so and risk sanctions for contempt of court.

BENEFICIAL INTEREST

33. Petitioners have a beneficial interest in this matter. Petitioners have a direct interest in the issuance of the desired writ as parties in the proceedings below.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully pray that this Court:

1. Stay the Order Granting Preemptory Petition for Writ of Mandate and Writ of Mandate, entered in *Tos, et al. v. California High-Speed Rail Authority, et al.*, Sacramento Superior Court Case No. 34-2011-00113919, on January 3, 2014, pending the disposition of this petition.

2. Issue a peremptory or alternative writ of mandate or other appropriate writ directing Respondent Superior Court to vacate its January 3, 2014 order and writ, and August 16, 2013 and November 25, 2013 Rulings on Submitted Matters in *Tos*, and directing the Superior Court to enter an order dismissing Real Parties in Interest John Tos, Aaron Fukuda, and County of Kings' petition for writ of mandate.

3. Alternatively, if a peremptory writ does not issue in the first instance, and in addition to or in lieu of any alternative writ, issue an order directing Respondent Superior Court to show cause why its January 3, 2014 order and writ, and August 16, 2013 and November 25, 2013 rulings should not be vacated and an order dismissing Real Parties in Interest John Tos, Aaron Fukuda, and County of Kings' petition for writ of mandate entered.

4. Issue a peremptory or alternative writ of mandate or other appropriate writ directing Respondent Superior Court of the State of California for the County of Sacramento to vacate its January 3, 2014 judgment and November 25, 2013 Ruling on Submitted Matter in *High-Speed Rail Authority, et al. v. All Persons Interested*, Sacramento Superior Court Case No. 34-2013-00140689, and directing the Superior Court to enter a judgment validating the bonds authorized by the Committee as prayed for in the validation complaint.

5. Alternatively, if a peremptory writ does not issue in the first instance, and in addition to or in lieu of any alternative writ, issue an order directing Respondent Superior Court to show cause why its January 3, 2014

judgment and November 25, 2013 Ruling on Submitted Matter should not be vacated and an order validating the bonds at issue entered.

6. Award Petitioners costs in this action.

7. Award such other relief as may be just and proper.

Dated: January 24, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California

Stephanie Zook

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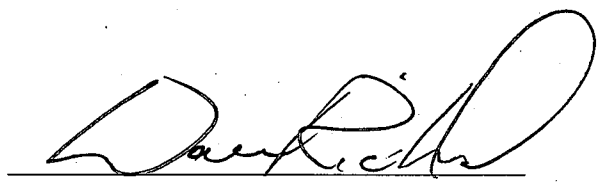
VERIFICATION

I, Dan Richard, am chairman of the Board of Directors of the California High-Speed Rail Authority, a petitioner herein, and am authorized to make this verification on its behalf. I have read the foregoing Petition for Extraordinary Writ of Mandate or Other Appropriate Writ and know its contents. I am informed and believe the matters therein are true and on that ground allege that the matters stated therein are true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 22, 2014, at Sacramento, California.



Dan Richard

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This petition seeks relief in two companion cases in which the superior court misinterpreted the Bond Act and laws governing bond validation. In one action, the Authority and the Committee sought to validate almost $8.6 billion in bonds for the purposes authorized by the Bond Act. The court entered judgment against them after finding there was no record evidence to support the Committee's determination that the issuance of bonds was "necessary and desirable." As demonstrated below, the court erred by substituting its judgment for that of the Committee. In the second action, opponents raised various challenges to the intended use of bond proceeds to build high-speed rail in the Central Valley. The court ruled first that information the Authority submitted to the Legislature in a preliminary funding plan did not, in the court's view, fully comply with the Bond Act, and in a second ruling ordered the Authority to rescind this funding plan. As demonstrated below, the court again erred by substituting its judgment for that of the Legislature, which, despite critiques of the plan, has already appropriated bond proceeds to fund it. The consequences flowing from these rulings threaten to choke off funding for high-speed rail, and similarly implicate other projects funded by general obligation bonds.

II. BACKGROUND

A. Overview of High-Speed Rail

The plan to build a high-speed rail network in California began years before the passage of the Bond Act. In 1996, the Legislature enacted the California High-Speed Rail Act, which established the Authority. (Pub. Util. Code, §§ 185000, 185010, subd. (h), 185020.) The Legislature found that California's network of freeways and airports was insufficient to meet the State's then-current population and mobility needs, and that expanding

that network would be both cost-prohibitive and erode the State's air quality. (*Id.*, § 185010, subds. (a)-(d).) Citing advances in high-speed rail technology and the relative advantages of inter-city rail travel over other modes of transportation, the Legislature declared the development of a high-speed rail system to be a viable and necessary alternative to auto and air travel, and set the goal of constructing such a system by 2020. (*Id.*, subds. (e)-(h).)

In August 2008, the Legislature passed and the Governor signed Assembly Bill 3034. (Stats. 2008, ch. 267.) Section 9 of AB 3034 was the Bond Act, which was placed on the November 4, 2008 General Election ballot as Proposition 1A. (Tab 87, HSR01757-HSR01771 [ballot pamphlet].)

In submitting Proposition 1A to the voters for approval, the Legislature declared that "the continuing growth in California's population and the resulting increase in traffic congestion, air pollution, greenhouse gas emissions, and the continuation of urban sprawl make it imperative that the state proceed quickly to construct a state-of-the-art high-speed passenger train system to serve major metropolitan areas." (Assem. Bill No. 3034, Stats. 2008, ch. 267, § 8(a).) The Legislature found that, among other benefits, high-speed rail will "cost about one-third of what it would cost to provide the same level of mobility and service with highway and airport improvements." (*Id.*, § 8(c).)

The voters enacted Proposition 1A, codified as the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century. (Sts. & Hy. Code, §§ 2704 et seq.) The Bond Act authorizes the issuance and sale of general obligation bonds, in a principal amount of up to $9.95 billion, to begin construction of a high-speed train system in California. (*Id.*, §§ 2704.04, subds. (b), (c), 2704.06.) The Bond Act also created the

Committee for the purpose of authorizing the issuance and sale of these bonds. (*Id.*, § 2704.12.)

To allow the Legislature and other state agencies and officials to exercise oversight, the Bond Act limits the Authority's ability both to request an appropriation of bond funds for construction costs, and to spend funds previously appropriated. These limitations are found in separate provisions requiring the Authority to submit funding plans: the first funding plan (at issue here) is a prerequisite for requesting an appropriation of bond funds (Sts. & Hy. Code, § 2704.08, subd. (c)); the second funding plan is a prerequisite for the Authority to spend bond funds previously appropriated (*id.*, subd. (d)). A peer review group, which includes experts in the engineering, construction, and operation of high-speed rail systems, as well as experts in environmental planning and project finance, is charged with evaluating the Authority's plans and reporting its findings to the Legislature. (Pub. Util. Code, § 185035, subds. (b), (c).)

The Authority must address eleven aspects of planned construction in the first funding plan. (See Sts. & Hy. Code, § 2704.08, subd. (c)(2)(A)-(K).) As relevant here, a first funding plan must include, identify, or certify: "[t]he sources of funds to be invested in the corridor, or usable segment thereof, and the anticipated time of receipt of those funds based on expected commitments, authorizations, agreements, allocations or other means" and that "[t]he authority has completed all necessary project level environmental clearances necessary to proceed to construction." (*Id.*, subd. (c)(2)(D), (K).) The funding plan, however, does not circumscribe the Legislature's authority to appropriate bond proceeds. The Legislature may or may not appropriate bond proceeds, in its discretion, and as is generally the case, may base its decision on whatever considerations and information it deems appropriate. Put differently, the Legislature's

decision to appropriate bond money for high-speed rail need not be based solely on the Authority's first funding plan.

If the Legislature appropriates bond proceeds, prior to committing any funds for construction (and other costs not described in Streets and Highways Code section 2704.08, subdivisions (g) and (h), which set aside funds for non-construction costs), the Authority must approve and submit to the Director of Finance and the Chairperson of the Joint Legislative Budget Committee a *second* funding plan (as well as a report by an independent consultant opining that the proposed construction can be completed as proposed and will meet design specifications). (Sts. & Hy. Code, § 2704.08, subds. (d), (e).) As relevant here, the second funding plan must "identif[y] the sources of all funds to be used and anticipate[] time of receipt thereof based on offered commitments by private parties and authorizations, allocations, or other assurances received from governmental agencies." (*Id.*, subd. (d)(1)(B).) It also must include a report "describing any material changes" from the first funding plan. (*Id.*, subd. (d)(1)(E).) The Authority may not commit or spend bond proceeds on construction until the Director of Finance finds the plan is likely to be successfully implemented as proposed. (*Id.*, subd. (d).)

B. The First Funding Plan and the Appropriation

On November 3, 2011, the Authority approved a first funding plan as a predicate to seeking an appropriation to construct a portion of the high-speed rail system within two identified usable segments of the rail system. (Tabs 323, 337.)

The Authority submitted the funding plan to the transportation and fiscal committees in both houses of the Legislature, the Director of Finance, and the peer review group. (See Tab 337; Pub. Util. Code, § 185035, subds. (a), (c), (e).) The peer review group issued a report critical of the funding plan, to which the Authority responded. (Tabs 350, 351.)

Following submission of the plan, the draft business plan was made available for public comment, and the Authority held public meetings. (See Tabs 334, 345-349, 354-355, 361, 367-368). The Legislature held hearings that included public participation (Tabs 341-342, 369, 393-396), and received analyses by the Legislative Analyst and the Bureau of State Audits (Tabs 339, 340, 359, 392; see Tab 360).

After outreach to and comment from interested parties, legislative hearings, and input from the Legislative Analyst and State Auditor, on April 12, 2012, the Authority adopted a revised 2012 business plan. (Tabs 372, 373; see Tab 377.) The revised plan cut the initial costs of the proposed system by selecting a single segment for initial construction and providing for increased blending of the system with existing commuter rail infrastructure in the Los Angeles and San Francisco regions. (See Tab 373, HSR07052-HSR07054.) This reduced the expected cost of the first phase of the rail system by almost $30 billion. (*Id.*, HSR07054.) The Legislature received the revised 2012 business plan, a corresponding peer review group report, and the Authority's response. (See Tabs 385, 419, 420.)

On July 18, 2012, the Legislature enacted Senate Bill 1029, appropriating $2.609 billion of bond funds and $3.24 billion of federal grant funds to begin construction in the Central Valley. (Stats. 2012, ch. 152, §§ 8-9.) Even when *appropriated*, the Authority still may not *commit* bond funds for construction until it adopts and submits the second funding plan, and the Director of Finance has approved it. (Sts. & Hy. Code, § 2704.08, subd. (d).) Separately, and in addition to these requirements in the Bond Act, the Legislature stipulated that the Authority could spend appropriated funds for construction only after the Department of Finance and the State Public Works Board issued certain approvals, and also required biennial, detailed project update reports for any year in which

bond proceeds were encumbered. (Sen. Bill No. 1029, Stats. 2012, ch. 152, § 9 [Provision 4].)

C. Bond Authorization

A general obligation bond act usually identifies two bodies with different responsibilities for carrying out the bond act. (Gov. Code, § 16724, subd. (b).) One body is the state agency or agencies responsible for planning or building the project or otherwise spending the proceeds, referred to as the "board," which has substantive expertise about the authorized projects. (*Ibid.*) For example, Caltrans is generally responsible for bond-funded highway construction projects. The second body is a finance committee, with public finance expertise, which is responsible for authorizing issuance of the bonds. (*Id.*, §§ 16724, subd. (b), 16722, subd. (d).) The membership of the committee varies but ordinarily includes the highest-ranking state public finance officials: the Treasurer, the Director of Finance, and the Controller. (Declaration of Blake Fowler ("Fowler Decl.") ¶ 3, filed concurrently herewith.)

Each bond act also incorporates by reference the state General Obligation Bond Law ("Bond Law"), which provides a uniform procedure for authorizing the issuance, sale, and repayment of state general obligation bonds. (Gov. Code, § 16721.) The Bond Law assigns separate functions to the board and finance committee. The finance committee is authorized "to cause bonds to be issued by adoption of a resolution or resolutions." (*Id.*, § 16722, subd. (d).) The board is "to request the committee to cause bonds to be issued for the purpose of creating a fund that is to be expended by the board for purposes specified in the act." (*Id.*, subd. (a).) Upon receiving the board's request, the finance committee decides whether the bonds should be issued. Specifically, under the Bond Law, upon request of the public agency, "supported as required in the bond act, the [finance]

committee shall determine the necessity or desirability . . . of issuing any bonds authorized to be issued." (*Id.*, § 16730.)

Here, the Bond Act sets forth no additional requirements for the issuance of high-speed rail bonds. (Sts. & Hy. Code, §§ 2704.11-.13.) It simply provides that the Committee must "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." (Sts. & Hy. Code, § 2704.13, italics added.) On March 18, 2013, the Committee made this determination and authorized the remaining high-speed rail bonds available under the Bond Act. (See Tab 108, HSR01957 [defining "Authorized Amount" to be $8,599,715,000], HSR01961 [determining "that it is necessary and desirable to authorize the issuance and sale of" high-speed rail bonds in the authorized amount], HSR01967.)

D. Marketability of Government Bonds

Due to pending litigation against the Authority, no bonds could be sold to fulfill the appropriation. As set forth below, the pendency of litigation affecting bond validity effectively prevents bond counsel from issuing an unqualified opinion that the bonds are valid and binding obligations of the State, without which bonds are unmarketable. Prospective bond investors rely on an unqualified opinion of bond counsel stating that the State is legally bound to repay the bond debt.

The State cannot legally repay an invalid debt because to do so would be a gift of public funds. (Cal. Const., art. XVI, § 6.) Thus, the mere possibility that government bonds could be found invalid—because they violate debt limitations, were not properly approved by voters, or otherwise—creates uncertainty among prospective investors that makes it difficult to sell government bonds in the financial markets. (Nat. Assn. of

Bond Lawyers, The Function and Prof. Responsibilities of Bond Counsel (3d ed. 2011), p. 4.)

1. Unqualified Opinion of Bond Counsel

To mitigate investor uncertainty and allow government bonds to be successfully marketed, it is standard practice for underwriters or purchasers to obtain an opinion regarding validity of the bonds from bond counsel. (Nat. Assn. of Bond Lawyers, *supra,* at p. 4.) Bond opinions address, among other issues, whether the bonds are valid and binding obligations of the issuer. (*Id.*, p. 10.) These opinions are traditionally "unqualified." (*Id.*, p. 11.) The standard for issuing an unqualified opinion is extremely high. Bond counsel may only render an unqualified opinion regarding the validity of bonds if they are "firmly convinced" or have "a high degree of confidence" that "under the law in effect on the date of the opinion, the highest court of the relevant jurisdiction, acting reasonably and properly briefed on the issues, would reach the legal conclusions stated in the opinion." (*Ibid.*)

Under this exacting standard, with few exceptions not relevant here, the mere pendency of litigation against the project, without any ruling on its merits, will prevent bond counsel from issuing an unqualified bond opinion. Thus, just by filing litigation and without having to prove a case, opponents can effectively block financing and shut down a project. If there are multiple issuances of bonds to fund the project in phases, serial litigation can subject government works to the equivalent of "death by a thousand cuts."

2. Judicial Validation

The Legislature adopted the validation statutes to prevent pending or threatened litigation from impairing a public agency's ability to operate financially. (See *Friedland v. City of Long Beach* (1998) 62 Cal.App.4th

835, 843.) Validation actions are used as an alternative or supplement to a bond counsel opinion. (Nat. Assn. of Bond Lawyers, *supra*, p. 5, fn. 6.) "[T]he validating proceeding is used to secure a judicial determination that proceedings by a local government entity, such as the issuance of municipal bonds and the resolution or ordinance authorizing the bonds, are valid, legal, and binding." (*Friedland, supra*, at p. 842, citation omitted.) Without either an unqualified bond opinion or a judicial determination regarding their validity, bonds cannot be marketed or sold. (See *ibid.* ["Assurance as to the legality of the proceedings surrounding the issuance of municipal bonds is essential before underwriters will purchase bonds for resale to the public"].)

To validate bonds, the finance committee must *authorize their issuance*, but the bonds authorized need not actually be *sold.* (Code Civ. Proc., § 864; Gov. Code, § 17700.) The decision of whether and when to sell bonds previously authorized and validated is delegated to the Treasurer. (Gov. Code, §§ 16754, 16754.3.) The Legislature may also rescind bonds authorized but not yet sold. (Cal. Const., art. XVI, § 1.)

Because it is possible to validate the issuance of bonds without selling them to fund a particular purpose, it is possible to remove barriers to their marketability before a particular use of proceeds has been identified (for example, a contract to build a segment of rail) and bond proceeds need to be committed to fund it. Where, as here, a validation complaint seeks only to validate issuance of bonds, and not future uses of proceeds from the sale of bonds, the determination that bonds are valid is only a function of the legality of the debt. The relevant questions are: Is there a bond act authorizing bonds? Are the bonds stated to be issued for purposes authorized by the bond act? Is the amount authorized consistent with the amount approved by the voters? Did the board request issuance in the manner required by the bond act? If so, the debt is valid, and a validation

judgment entered. (See *Cal. Family Bioethics Council v. Cal. Inst. for Regenerative Medicine* (2007) 147 Cal.App.4th 1319, 1337, 1373.)

Validation actions are in rem proceedings. (Code Civ. Proc., § 860 et seq.) The court acquires jurisdiction by publication of a summons with a detailed description of the matter the public agency seeks to validate. (*Id.*, §§ 861, 861.1.) This description therefore limits the scope of the judgment. Code of Civil Procedure section 870 provides that validation judgments are forever binding and conclusive, but only validate matters for which validation is sought or that could have been adjudicated. A validation judgment limited to the issuance of bonds to fund any purpose authorized by the bond act, as was attempted here, therefore does not preclude later challenges to commitment of bond proceeds for specific projects. Indeed, multiple actions were brought challenging use of proceeds during construction of the Bay Area Rapid Transit System, and none was barred on the basis of bond validity. (See, e.g., *Tooker v. San Francisco Bay Area Rapid Transit Dist.* (1972) 22 Cal.App.3d 643.)

E. The Validation Action

The Committee and the Authority filed the Validation Action to confirm the validity of the newly-authorized high-speed rail bonds.

While an agency can choose to validate particular uses of bond proceeds along with the authorization of bonds, the Authority and the Committee did not. (See Tab 189, HSR02766 [Complaint for Validation, ¶ 19(d) [stating challenges based on use of proceeds will not affect determination of validity]; Tabs 141, 146-149.) Instead, they sought to validate bonds authorized and issued "to carry out the purposes set forth in Sections 2704.04 and 2704.06 of the California Streets and Highways Code" (Tab 108, HSR01961) only to move past any challenges to bond validity, not to obtain a judgment that any particular use of bond proceeds was valid. Thus, challenges to use of proceeds can and are being

adjudicated in separate actions as the Authority identifies and the Legislature appropriates bond proceeds for specific purposes. (See *Clark v. City of Los Angeles* (1911) 160 Cal. 30, 37 [stating allegation of improper use has no impact on validity of bonds].) The validation judgment, had it been entered, would not have precluded legal challenges to any particular use of bond proceeds. It would, however, have permitted bonds to be sold and restored the traditional burden of proof by requiring any plaintiff challenging a particular use of proceeds to prove a case before allowing that challenge to block a project.

Real Parties opposed validation on several grounds.[1] But the trial court denied validation only because it found no record evidence substantiating the Committee's determination that issuance of the bonds was "necessary and desirable." (Tab 4, HSR00071.) This ruling cited no case in which a court has vitiated a finance committee's determination that bond issuance is necessary or desirable. (*Id.*, HSR00070.)

In fact, there was evidence supporting the Committee's determination, but the court discounted it. Specifically, in turn, the court dismissed as insufficient: the Bond Act, the Authority's request to issue bonds, public comments, the expertise of the Committee and its individual members, and matters discussed in closed session. (Tab 4, HSR00067-HSR00071.) The trial court also ignored the resolutions the Committee adopted, except to note that they recited issuance of the bonds was necessary and desirable

[1] Real Parties John Tos, Aaron Fukuda, and County of Kings dismissed from the second amended complaint in *Tos* all allegations that called into question the validity of the issuance of bonds, and agreed to pursue these claims in the Validation Action. (See Tab 137.) Thus, as of May 16, 2013, the *Tos* action only raised challenges to uses of bond proceeds to build high-speed rail in the Central Valley, and all challenges to bond validity were raised in the Validation Action.

without summarizing the factors the Committee considered or describing any evidence the Committee received or considered. (*Id.*, HSR00065.)

F. The *Tos* Action

In the first of two rulings in *Tos,* the trial court found that the Authority abused its discretion in approving the first funding plan because it did not comply with the requirements of Streets and Highways Code section 2704.08, subdivision (c)(2)(D) and (K). (Tab 5, HSR00080-HSR00084.) Specifically, the court held that the funding plan did not properly identify sources of funds for the entire initial operating section or certify that project-level environmental clearances were already complete. (*Ibid.*) The court, however, denied a writ to invalidate the associated appropriation of bond proceeds enacted in SB 1029, finding that the Bond Act did not authorize this remedy for a deficient funding plan. (*Id.*, HSR00086.) The court then questioned whether any remedy was available for a deficient funding plan, and specifically whether a writ invalidating the funding plan should issue, and concluded that "the issuance of a writ of mandate invalidating the funding plan may have real and practical effect in this case *only if* the writ may also invalidate subsequent approvals by the Authority or other respondents." (*Id.*, HSR00087, italics added.) The court asked for supplemental briefing addressing "what subsequent approvals have been made, and whether such approvals involve the commitment of proceeds of bonds or expenditures of bond proceeds within the scope of Section 2704.08, subdivisions (d) or (g)." (*Id.*, HSR00087-HSR00088.)

In its second ruling, the trial court concluded that a writ of mandate directing the Authority to rescind approval of its first funding plan should issue. (Tab 6, HSR00091.) Notably, the court rejected arguments that the Authority made subsequent approvals committing or expending bond proceeds in violation of the Bond Act—which was the question the court had identified as determinative of its authority to issue a writ, and which the

parties had briefed at the court's request. (*Id.*, HSR00092-HSR00093; see Tab 5, HSR00087-HSR00088.) Instead, in a decision apparently at odds with its first ruling, the court held that the preparation and approval of a first funding plan that complies with all of the requirements of Streets and Highways Code section 2704.08, subdivision (c) is a necessary prerequisite to the preparation and approval of the second, subdivision (d) plan. (Tab 6, HSR00091-HSR00092.) The court now reasoned that a fully compliant first funding plan must be a necessary prerequisite to a compliant second funding plan because only the first funding plan requires the Authority to address environmental clearances. (*Ibid.*; see Sts. & Hy. Code, § 2704.08, subd. (c)(2)(K).)

The parties prepared a proposed order and writ at the trial court's direction, but the defendants wrote a letter asking the court to delay issuing the writ until it issues a final judgment, in order to preserve the right of appeal. (Tab 11.) The court declined that request, and on January 14, 2014, issued the writ with a 60-day return. (Tab 3.)[2] Meanwhile, the court continues to consider claims alleged pursuant to Code of Civil Procedure section 526a. A motion for judgment on the pleadings is set for February (see Tab 190), but it is likely that the deadline for the Authority to comply with the writ will expire before a final judgment is entered.

III. STANDARD OF REVIEW

Where, as here, the trial court has abused its discretion by basing its rulings on improper criteria or incorrect legal assumptions, review is de novo. (*Los Angeles Gay and Lesbian Center v. Super. Ct.* (2011) 194 Cal.App.4th 288, 300.)

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[2] Although the writ is signed January 3, it was entered on the court's docket on January 14, 2013, and was served on the Authority on January 17, 2014.

IV. ARGUMENT

A. The trial court erred in refusing to validate the bonds.

Absent allegations of a constitutional or statutory violation, the trial court lacked authority to question the wisdom of the Committee's determination that it was necessary and desirable to authorize bonds.

1. A finance committee's determination that it is "necessary or desirable" to issue bonds is not subject to legal challenge.

The Committee must "determine whether or not it is necessary or desirable to issue bonds." (Sts. & Hy. Code, § 2704.13.) As the Court of Appeal has observed in other contexts, such language imposes no substantive requirement; the conclusion is self-evident when statutory requirements have been met and the body has acted. Consequently, there is no legal basis for second-guessing the wisdom or merits of a determination that a particular action is necessary or desirable.

For example, the statutory requirement that an amendment to a redevelopment plan be "necessary or desirable" is not substantive. (See *Boelts v. City of Lake Forest* (2005) 127 Cal.App.4th 116, 128 & fn. 13.) "[Health and Safety Code] [s]ection 33450 speaks of it being 'necessary or desirable' to amend a redevelopment plan, but doesn't otherwise shed any light on the context of 'necessary or desirable,' and in any event *those words are probably so elastic as not to impose any substantive requirements*." (*Ibid.*, italics added.) Although a redevelopment plan amendment must satisfy certain "substantive requirements" prescribed by community redevelopment laws (*id.* at p. 128), a city's determination that an amendment is "necessary or desirable" is largely immune from judicial review (*id.* at p. 128 & fn. 13; see also Health & Saf. Code, §§ 33450, 33457.1, 33367).

Unlike the redevelopment laws, the Bond Act imposes no substantive requirements on the Committee that limit its discretion in making the required determination that issuance of high-speed rail bonds is necessary or desirable. (Sts. & Hy. Code, § 2704.13.) Accordingly, all that was required under the Bond Act in order for the Committee to validly issue bonds was a request of the board, here the Authority. (See *id.*, § 2704.11, subd. (a), incorporating Gov. Code, § 16730 ["Upon request of the board, supported as required in the bond act, the committee shall determine the necessity or desirability...of issuing any bonds authorized to be issued"].)

Similarly, where a public agency is empowered to adopt rules and regulations it deems necessary or desirable to carry out its mandate, a rule promulgated pursuant to that authority may be challenged on the grounds that it violates constitutional or statutory requirements, but *not* because there is no record evidence demonstrating that the rule is necessary or desirable. As the Court of Appeal explained in *Perez v. Board of Police Commissioners* (1947) 78 Cal.App.2d 638:

> It is well settled that in such circumstances, the question as to whether such a rule is "necessary or desirable" is not a judicial question. The courts are not charged with the responsibility of determining the wisdom of the rule. That question was for the board to determine. And, as the trial judge observed, "*That the board deemed the rule desirable is evidenced conclusively by its adoption.*"

(*Id.* at p. 643, italics added.)

The same reasoning applies here. Absent evidence that the Authority or the Committee violated statutory or constitutional requirements—and there is none—the trial court should have entered a validation judgment in favor of Petitioners. The fact that the Authority requested and the Committee approved issuance of bonds demonstrates its desirability as a matter of law.

This has long been the rule in actions challenging the validity of bond issuances. In *City of Monrovia v. Black* (1928) 88 Cal.App. 686, the governing statute authorized the issuance of bonds only upon a determination by city officials that the cost of the improvement to be funded "will be too great to be paid out of the ordinary annual income and revenue" of the municipality. (*Id.* at p. 688.) There was no statutory requirement that the city make a finding to that effect, or muster evidence, merely that it determine that the cost of the improvement exceeded the city's ability to fund it without an issuance of public debt. Thus, the Court of Appeal held the validity of a bond issuance could not be challenged on the grounds that the city failed to make an explicit finding to that effect. "In the absence of any such requirement in the statute, *the determination of the legislative body that the fact exists on which their power to act depends is sufficiently indicated by their proceeding to act.*" (*Id.* at p. 690, italics added.)

So it is here. Nothing in the Bond Act requires the Committee to make an explicit finding that issuing bonds is "necessary or desirable," let alone to enumerate the "factors" supporting such a finding, or to support such a finding with record evidence. In the absence of such a requirement, the Committee's determination that issuing bonds is necessary or desirable is conclusive for purposes of a bond validation proceeding.

2. The trial court misinterpreted the role of the Finance Committee.

The trial court's decision reflects a fundamental misunderstanding of the role the Committee plays when it authorizes issuance of bonds. The court stated that "[t]he obvious implication . . . is that the voters, in approving Proposition 1A, intended to empower the Finance Committee to serve as an independent decision-maker, protecting the interests of taxpayers by acting as the ultimate 'keeper of the checkbook.'" (Tab 4,

HSR0067.) It went on to conclude that it would "negate the Finance Committee's independent decision-making role in the process" if the Authority's request were alone sufficient to support the Committee's determination. (*Ibid.*) This is neither obvious nor true. There is no statutory requirement that the Committee receive supporting evidence other than the Authority's request or that it review any independent evidence. (Sts. & Hy. Code, § 2704.13.) Nor is there anything in the Proposition 1A ballot pamphlet that would permit this implication. (See Tab 87; HSR01757-HSR01771; *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245-246 [holding where there is ambiguity in a voter-approved initiative, the ballot pamphlet may be used to resolve ambiguities].) It also misunderstands the role of the finance committee in issuing general obligation bonds.

Each bond act distinguishes between, on the one hand, the administration and expenditure of bond proceeds, which is tasked to the "board" (here, the Authority) with the expertise to accomplish the project to be funded, and on the other, the determination of the structure of the bonds to be issued and the timing of their issuance to obtain the proceeds requested by the board, which is tasked to the finance committee with state finance expertise. The trial court did not appreciate the distinct roles of the board and the finance committee, and instead mischaracterized the finance committee as having substantive oversight responsibility for the project, akin to the roles assigned to the Legislature, peer review group, and the Department of Finance. (Sts. & Hy. Code, § 2704.08.) Because of this basic misunderstanding of the Committee's role, the trial court freighted the Committee's determination that issuance is necessary or desirable with additional requirements that do not exist. Nothing in the Bond Act, the Bond Law, or the ballot pamphlet supports this characterization of the Committee's role.

The trial court ruling would turn every finance committee into a fact-finding body, making it difficult for responsible bond counsel to opine that he or she was "firmly convinced" or had "a high degree of confidence" that the evidence presented to the finance committee would be found sufficient. (Nat. Assn. of Bond Lawyers, *supra*, p. 11.) Validation actions would no longer be reserved for resolving "novel or difficult legal questions." (*Id.*, p. 5, fn. 6.)

"The validating statutes should be construed so as to uphold their purpose, i.e., 'the acting agency's need to settle promptly all questions about the validity of its action.'" (*Friedland v. City of Long Beach*, *supra*, 62 Cal.App.4th at p. 842, quoting *Millbrae School Dist. v. Super. Ct.* (1989) 209 Cal.App.3d 1494, 1499.) The trial court's ruling undermines the purpose of the validation statutes by requiring the finance committee to make an evidentiary record and state reasons for its decision that are then subject to court review. This is inconsistent with the letter and spirit of California law.

3. The trial court erred in concluding that there was no evidence in the record supporting the Committee's decision.

Even if the Committee's "necessary or desirable" determination were subject to judicial review, the trial court nevertheless erred in concluding that there was no evidence to support that determination.

The record includes the Bond Act, which authorizes the issuance and sale of bonds and other obligations by the State, in a principal amount of up to $9.95 billion to begin construction of a high-speed train system in California. (Sts. & Hy. Code, §§ 2704.04, subds. (b)-(c), 2704.06.) The fact that the bonds were authorized to be issued for the purposes established in the Bond Act, and upon appropriation by the Legislature, satisfies the requirements of Streets and Highways Code section 2704.13. (Tab 108,

HSR01961.) And as set forth above, the Authority's request was alone sufficient evidence to support that determination. In short, substantial evidence showed that the Authority, which is charged with planning construction and operation of the high-speed rail system and developing a financial plan including necessary bonds (Pub. Util. Code, §§ 185032, 185034 (8)), requested that the Committee authorize issuance of bonds (Tab 109, HSR02048), pursuant to the requirements of the Bond Act (Sts. & Hy. Code, § 2704.11, subd. (a), incorporating Gov. Code, § 16730). This evidence was sufficient to sustain the Committee's determination and validate the issuance of bonds.

4. The trial court erred in concluding that matters considered in closed session were insufficient to support the Committee's decision.

The trial court also erred in concluding that matters considered in closed session could not support the Committee's decision: "Based on this description, it appears most likely to the Court that what was discussed at this closed session was not the desirability or necessity of issuing bonds, but rather the separate and distinct issue of whether the present validation action should be filed." (Tab 4, HSR00069.) This reasoning reflects a misunderstanding of how validation works.

The desirability of issuing bonds and the reasons for seeking a validation judgment are closely intertwined, particularly for contentious projects like high-speed rail. If an agency is facing litigation, it is advantageous to authorize issuance and validate all the bonds authorized by the bond act at once (i.e., for all purposes authorized by the bond act without validating any particular use of proceeds), rather than to file a new validation action each time additional bonds are authorized for a particular

purpose, and risk a halting litigation with each issuance.[3] (See, e.g., Fowler Decl. ¶ 8 [describing instances in which finance committee has authorized full amount of bonds].) Consequently, if in the judgment of the finance committee, a validation action should be filed to remove impediments to the marketability of the bonds, it follows that authorizing issuance of all the bonds is necessary and desirable.[4]

This decision to authorize the issuance of all the outstanding bonds in order to validate them is a litigation strategy decision, which the Bagley-Keene Act Open Meeting Act expressly permits to be made in closed session. (Gov. Code, § 11126, subd. (e)(1).) The animating concern behind this exception to open meeting requirements is that "[p]ublic entities have as great a need for confidential counsel from their attorneys as private litigants and should not be put at a disadvantage in litigation by depriving them of that essential assistance." (*So. Cal. Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 798.) Like any other litigant, public entities must be able to privately engage with their legal counsel in a "frank evaluation" of their options. (*Ibid.*) When a finance committee's reasons for authorizing bonds are inextricably bound up with its decision to initiate a validation action, it

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[3] If the Authority requested issuance of bonds to build a highway or an airport, there would be grounds for withholding validation. But we have found no case in which a court overturned a finance committee's determination that bonds are "necessary or desirable" where the bonds are expressly stated to be authorized to carry out the purposes of the project the voters authorized.

[4] As previously noted, just because all the bonds authorized to be issued are validated does not mean that they will be sold all at once. Decisions about when to sell bonds are separate, subject to different considerations, and left to the Treasurer. Nor does this kind of validation judgment preclude later challenges to specific uses of proceeds. It merely ensures that when the proceeds are needed and Treasurer is ready to sell bonds, those bonds will be marketable.

cannot be the case that to satisfy judicial review it is required to waive privilege and publicly disclose those reasons. Forcing a finance committee to waive privilege would defeat the purpose of Bagley-Keene's litigation exception. Indeed, if the trial court's reasoning were upheld, public agencies would never be able to authorize bonds for the purpose of bringing an action to validate them without waiving privilege.

Validating for litigation strategy reasons is critical to the issuance of bonds for large infrastructure projects, because they are lawsuit magnets. For such projects, losing years to litigation before bonds can be sold is common (as has occurred here). For example, it took more than two years to finally resolve validation actions challenging the issuance of general obligation bonds issued pursuant to Proposition 71, the California Stem Cell Research and Cures Act. (See *Cal. Family Bioethics Council v. Cal. Inst. for Regenerative Medicine*, *supra*, 147 Cal.App.4th at pp. 1319, 1336 [consolidated reverse validation actions filed in 2005 were finally resolved by denial of petition for review in 2007].) The trial court's ruling undermines the State's ability to validate bonds in advance of identifying a particular use of proceeds, so that the bonds can be marketable when use of proceeds are identified and funds need to be committed to move the project forward.

The high-speed rail project may have been able to tolerate a two-year delay in access to bond funds, but the delay it now faces as a result of the trial court's decisions risks the catastrophic, for two reasons. First, the federal grant funds, by their terms, must be matched by the State and must be spent by 2017. (See Tab 442, HSR09372; see also 31 U.S.C. § 1552; 74 Fed.Reg. 29900.) The kind of delays the Authority now faces puts those billions of dollars in jeopardy, because it is not clear that bond proceeds will be available in time to match. Second, opponents of the project have

used the trial court's ruling to fuel political efforts to withhold the federal grants entirely. (H.R. No. 3893, 113th Cong., 2d Sess. (2014).)

For all of the foregoing reasons, a writ should issue instructing the trial court to enter a validation judgment in favor of Petitioners.

B. There were no grounds to issue a writ compelling the Authority to rescind and reissue its first funding plan to begin building high-speed rail in the Central Valley.

The *Tos* writ commands the Authority to rescind its approval of the first funding plan and to adopt a new first funding plan before attempting to access the funds appropriated for construction of the Central Valley high-speed rail project. (Tab 2, HSR00038-HSR00039; Tab 3.) Read, as it must be, in the context of the Bond Act, the trial court's decision has no basis in law or fact, and lacks coherence in several respects.

First, there is no legal basis for a mandamus action challenging the funding plan: as a matter of law, the first funding plan does not exist to benefit private parties; its sole purpose is to inform the Legislature's decision to appropriate or not appropriate bond funds at the Authority's request.

Second, even if there were a legal basis for a writ, on these facts the writ issued is unjustified. The trial court purportedly issued the writ to prevent the commitment or expenditure of bond proceeds in violation of the Bond Act. But the court concluded that there was no evidence to support such a claim. A writ requiring the Authority to prepare a new first funding plan cannot plausibly be justified, as the trial court contended, simply to ensure that the Authority secures environmental clearances before committing or spending bond proceeds for construction.

Third, even if there were grounds for a mandamus action—and there are not—as a remedy, the writ serves no legitimate purpose. The writ compels an idle act: the purpose of the first funding plan was to inform the

Legislature's decision to appropriate funds, the appropriation was made, and the appropriation cannot be changed by a new funding plan. Once the Legislature made its decision, the first funding plan was moot. Compelling the Authority to issue a new plan serves no useful purpose, but it does create confusion and opportunities for mischief. The writ also interferes with the Legislature's authority to appropriate funds: although the trial court ruled that there were no grounds to invalidate the appropriation itself, the writ indirectly interferes with that appropriation by erecting an obstacle to the Authority's access to the appropriated funds that is not found in the Bond Act. For all these reasons, a writ is not an appropriate remedy.

1. There is no legal basis for a mandamus action challenging the adequacy of the Authority's first funding plan.

Even assuming that the Authority failed to adequately address reporting requirements in its first funding plan (which Petitioners do not concede), the trial court never should have entertained a challenge to the adequacy of that plan, because the *Tos* petitioners could not allege a cognizable claim.

The Bond Act restricts the use of bond proceeds in many ways. For example, it prescribes the amount that may be used for environmental studies, planning, and engineering (Sts. & Hy. Code, § 2704.08, subds. (b), (g)), and for administrative costs (*id.*, subd. (h)); it limits the use of bond proceeds to fifty percent of the total cost of construction (*id.*, subd. (a)); it proscribes the use of bond proceeds for operating or maintenance costs (*id.*, § 2704.04, subd. (d)); it determines the corridor on which the first phase of the system must be built (*id.*, subd. (b)(2)), as well as secondary corridors (*id.*, subd. (b)(3)); and it allocates $950 million to pay for capital improvements to certain intercity, commuter, and urban rail systems (*id.*,

§ 2704.095, subd. (a)(1)). If the Authority had violated any of these provisions (and it did not), a writ would lie.

The Bond Act also requires the Authority to prepare a detailed funding plan including, identifying, or certifying to various aspects of its capital construction plan (*id.*, § 2704.08, subd. (c)(2)(A)-(K)), and to submit that plan to the Legislature, the Director of Finance, and the peer review group for evaluation. However, the Bond Act does not permit a challenge to the adequacy of that funding plan that would limit in any way either the appropriation of bond proceeds the Legislature may enact, or the use of bond proceeds appropriated by it to the Authority.

To state a viable claim for breach of a duty in a statute, the statutory duty must be designed to protect against the particular kind of injury the plaintiff has suffered; i.e., a petitioner must show that his or her injury is one of the consequences that the enacting body sought to prevent through enactment of the statutory duty. (Gov. Code, § 815.6; *Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 499.) A writ does not lie to compel compliance here because the funding plan reporting requirements were not enacted to prevent injury to individual landowners or taxpayers like the *Tos* petitioners; they were enacted to ensure meaningful fiscal oversight of development of the high-speed train system, which the Legislature exercises through the power to make or withhold an appropriation. (Sts. & Hy. Code, § 2704.08, subd. (c)(1).)

Similarly, where a statutory scheme imposes no penalty or consequence for breach of a statutory requirement, the statutory duty is directory only, not mandatory, and there is no remedy for noncompliance. (*In re C.T.* (2002) 100 Cal.App.4th 101, 111.) Because there is no penalty or consequence in the Bond Act for a failure to satisfactorily address reporting requirements in the first funding plan, a writ will not lie based on allegations that the funding plan was inadequate.

The trial court recognized this when it concluded in its first ruling that:

> Nothing in Section 2704.08(c)(2), or elsewhere in Proposition 1A, provides that the Legislature shall not or may not make an appropriation for the high-speed rail program if the initial funding plan required by Section 2704.08(c)(2) fails to comply with all the requirements of the statute. Lacking such a consequence for the Authority's non-compliance, *Proposition 1A appears to entrust the question of whether to make an appropriation based on the funding plan to the Legislature's collective judgment.* The terms of Proposition 1A itself give the Court no authority to interfere with that exercise of judgment.

(Tab 5, HSR00086, italics added.)

Drawing on this analysis, the trial court concluded that "*the issuance of a writ of mandate invalidating the funding plan may have real and practical effect in this case* ***only if*** *the writ may also invalidate subsequent approvals* by the Authority or other respondents." (*Id.*, HSR00087, italics and bold added.) The court further concluded that issuing a writ would have no real or practical effect:

> Unless the writ also invalidated the legislative appropriation for the high-speed rail program or subsequent approvals (such as contracts) made in furtherance of the program, issuance of the writ would have no substantial or practical impact on the program. As a matter of general principle, a writ will not issue to enforce a mere abstract right, without any substantial or practical benefit to the petitioner. (See, *Concerned Citizens of Palm Desert v. Board of Supervisors* (1974) 38 Cal.App.3d 257, 270.)

(*Id.*, HSR00085, footnote omitted.) This was a correct statement of the law, supported by authority.

The court lost its compass, however, when it subsequently issued a writ that ignores these principles. The court was "not persuaded" by the evidence that any of the Authority's "subsequent approvals" (construction

contracts or the use of federal grant funds) committed or expended bond proceeds in violation of the Bond Act. (Tab 6, HSR00092-HSR00093.) Yet it issued a writ anyway.

There is no judicial remedy for an inadequate first funding plan. The Bond Act provides its own mechanism for reviewing the adequacy of the funding plan by the Legislature, the Director of Finance, and the peer review group, which worked as intended. (Sts. & Hy. Code, § 2704.08, subd. (c)(1).) The Authority, with the benefit of experts in high-speed rail, as well as financial experts, prepared its initial funding plan. (See Tabs 325-332.) The peer review group prepared its own analysis, and the Legislature considered the information provided by both the Authority and the peer review group, as well as information provided by the Legislative Analyst, the State Auditor, interested parties, and the public. (See Tabs 339-342, 350-351, 359-360, 369, 392-396.)

The absence of a judicial remedy, however, does not mean there will be no repercussions. If the Legislature found the Authority's first funding plan to be inadequate, it could decide not to appropriate the funds requested or to place limitations on the appropriation. But there is no cognizable cause of action for violation of funding plan reporting requirements. In other words, if the *Tos* challengers wanted to stop the Authority from using bond proceeds to build high-speed rail in the Central Valley, they had to allege and prove that the Authority had spent or committed bond proceeds in violation of the Bond Act. As the trial court held, this they failed to do. Accordingly, no writ should have issued.

2. Even if there were a legal basis for a claim, a writ would be unjustified because, as the trial court found, there is no evidence that the Authority spent or committed bond proceeds in violation of the Bond Act.

Not only was there no legal basis for a mandamus claim, there was no factual basis for a writ to issue.

As set forth above, in its first ruling in *Tos*, the trial court found that inadequacies in the first funding plan would not alone support issuance of a writ. (Tab 5, HSR00085.) The court found that the challengers had not established grounds to invalidate the appropriation. (*Id.*, HSR00086-HSR00087.) It went on to consider whether the writ would invalidate subsequent approvals made by the Authority. The court indicated that funds the Authority spent or committed for non-construction purposes specified in Streets and Highways Code section 2704.08, subdivision (g), would not be subject to invalidation (because they do not require a funding plan at all), but noted that the Bond Act otherwise "appears to preclude the Authority from committing or spending bond proceeds on the high-speed rail project until a second funding plan is prepared and approved." (*Id.*, HSR00087.) Accordingly, the court asked the parties to address in supplemental briefing "what subsequent approvals have been made, and whether such approvals involve the commitment of proceeds of bonds or expenditures of bond proceeds within the scope of Section 2704.08, subdivision (d) or (g)." (*Id.*, HSR00087-HSR00088.)

The parties did so, and following hearing, the court concluded that the writ would not invalidate the Authority's subsequent approval of two construction contracts or its use of federal matching funds, as the challengers urged, because *the evidence failed to demonstrate that the Authority had spent or committed bond proceeds in violation of the Bond*

Act. (Tab 6, HSR00092-HSR00093.) As earlier discussed, this finding eliminated any grounds for issuance of a writ.

The court concluded that a writ should nonetheless issue because "[i]n the absence of a valid [Streets and Highways Code, section 2704.08,] subdivision (c) funding plan making the required certification of environmental clearances, the Authority *could* prepare and submit a subdivision (d) funding plan and proceed to commit and spend bond proceeds without ever certifying completion of the necessary environmental clearances." (Tab 6, HSR00092, italics added.) The court apparently concluded that a writ was necessary either to remedy a reporting deficiency or to prevent the possibility of a future deficiency, and then it issued a writ that was overbroad, even on its own terms.

The trial court erred in its analysis. Fundamental principles of fairness should have prevented the court from ordering relief in the absence of evidence that the Authority violated the Bond Act, and as shown above, the Bond Act provides no remedy for a reporting deficiency. And, even if the court concluded that the Bond Act requires the Authority to have project-level environmental clearances in hand earlier than required by state and federal laws (a conclusion with which Petitioners disagree), it was unnecessary to require the Authority to rescind and adopt a new first funding plan, when requiring the Authority to obtain environmental clearances before submitting a second funding plan would have sufficed. The writ was thus wholly unjustified by the evidence.

3. Even if there were a legal and factual basis for a mandamus action, a writ was an inappropriate remedy in this case.

Finally, even if there were evidence to support a cognizable claim in mandamus, in these circumstances, a writ was a wholly inappropriate remedy.

a. The writ should be recalled because it compels an idle act.

In the context of the Bond Act, a writ requiring the Authority to rescind and reissue its first funding plan compels an idle act. Streets and Highways Code section 2704.08, subdivision (c)(1), requires the Authority to submit the first funding plan to the Director of Finance, the peer review group, and the Legislature prior to requesting the initial appropriation. On its face, and properly understood, it is an informational requirement designed to assist the Legislature in its fiscal oversight role. Once an appropriation has been made, the Authority's first funding plan serves no further function. That should have ended the trial court's analysis, and it appeared to be its conclusion in its first ruling. (Tab 5, HSR00085, fn. 31 [citing *Derr v. Brick* (1923) 63 Cal.App. 134, 140 for the proposition that the court should refuse to issue a writ where it would serve no legitimate purpose in the scheme of the law].) Because the Legislature appropriated funds long before the trial court issued its writ, and no grounds were demonstrated to challenge that appropriation—as the trial court expressly found—no purpose would be served by requiring the Authority to prepare, approve, and resubmit to the Legislature a new "first" funding plan. Put differently, because there will not be another request for an initial appropriation to construct high-speed rail in the Central Valley, there is no need for another first funding plan. The writ orders the Authority to engage in a pointless exercise, and thus violates the maxim that the law cannot be used to compel an idle act. (Civ. Code, § 3532.)

Here, the ramifications of ordering an idle act are serious. For example, if it adopts a new first funding plan, the Authority must submit it to the peer review group, which is charged with evaluating all such plans, the peer review group must review the plan and then report its findings to the Legislature. (Pub. Util. Code, §§ 185035, subds. (a), (c), (e).) This will

not only be a tremendous waste of resources, it will be confusing to the Legislature and the public, which might well question the validity of the very appropriation the trial court found unassailable. This kind of confusion has caused Congress to call hearings, initiate investigations by the Government Accountability Office, and has been used to pressure the Authority's federal funding partners to cut off promised funding in the billions of dollars. All of this is costly and the result of error.

b. The trial court erred in concluding that the first funding plan is a necessary prerequisite to the second funding plan.

The trial court would have recognized that a writ would serve no purpose but for its erroneous analysis of the relationship between the first and second funding plans. The court found that a first funding plan that complies with all of the requirements of Streets and Highways Code section 2704.08, subdivision (c), is a "necessary prerequisite" to the preparation and approval of the second funding plan under subdivision (d). (Tab 6, HSR00091.) But as the statutory framework and the Legislature's appropriation make clear, the two funding plans serve different purposes and are *not* interdependent.

Only the second funding plan is tied to the *commitment or expenditure* of bond funds in keeping with the terms and requirements of the Legislature's appropriation. The second funding plan will, as a matter of necessity, be quite different from the pre-appropriation first funding plan because the second funding plan must reflect and implement the specific terms of the Legislature's *appropriation* of bond funds, regardless of how

the program was initially conceived by the Authority in the first funding plan.[5]

For example, the Authority's draft business plan, submitted with the first funding plan, substantially differed from its revised business plan. The revised plan cut the initial costs of the proposed system by selecting a single segment for initial construction and providing for increased blending of the system with existing commuter rail infrastructure. (See Tab 373 HSR07052-HSR07054.) The Legislature considered the revised business plan and other information and analyses developed *after* the first funding plan. (See Tabs 369-370, 374, 385, 392-396, 419-420.) It ultimately appropriated funds on the express condition that they "shall not be used to expand the blended system to a dedicated four-track system." (Sen. Bill No. 1029, Stats. 2012, ch. 152, § 1.) This demonstrates that the interdependence between the first and second funding plans posited by the trial court does not exist. It also concretely illustrates why it is pointless to force the Authority to adopt a new first funding plan.

c. The writ should be recalled because it interferes with the Legislature's exercise of its appropriation authority.

A writ is also an inappropriate remedy in this case because it interferes with the Legislature's duly enacted appropriation of bond

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[5] Planning for a program like the high-speed rail, which will be built over many years, will necessarily change over time, and the Bond Act anticipates these changes. A second funding plan must provide a report "describing any material changes from the plan submitted pursuant to subdivision (c) for this corridor or usable segment thereof." (Sts. & Hy. Code, § 2704.08, subd. (d)(1)(E).) Because this provision expressly contemplates material changes from the first funding plan, it demonstrates that the adequacy of the second funding plan is determined independently of the first.

proceeds by creating an obstacle not found in the Bond Act to the Authority's ability to access those funds as appropriated.

The California Constitution sets forth the fundamental rule that the power of appropriation belongs exclusively to the Legislature. It provides that "[t]he powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." (Cal. Const., art. III, § 3.) "[T]he power to collect and appropriate the revenue of the State is one peculiarly within the discretion of the Legislature." (*City of Sacramento v. California State Legislature* (1987) 187 Cal.App.3d 393, 397, quoting *Myers v. English* (1858) 9 Cal. 341, 349.)

Thus, even when a court determines that the state has failed to comply with constitutional requirements and orders remedial action, it may not order the Legislature to appropriate funds or divert funds from specific purposes and programs to implement the ordered remedial action. (*Butt v. State* (1992) 4 Cal.4th 668, 696, 700-703.) Nor may a court "*nullify a specific and valid exercise* by the Legislature and the Executive of fundamental budgetary powers explicitly entrusted to those branches." (*Id.* at pp. 702-703, italics in original.)

Accordingly, the trial court appropriately determined here that there were no grounds demonstrated to invalidate the appropriation of bond funds. (Tab 5, HSR00086.) And for these same reasons, the court also lacked authority to interfere indirectly with that exercise of judgment by creating an obstacle not found in the Bond Act to the Authority's ability to access the appropriation. The Bond Act limits access to appropriated funds by requiring the Authority to file a second funding plan as provided in Streets and Highways Code section 2704.08, subdivision (d). The court had no authority to augment those requirements.

The trial court lost sight of the purpose of the Bond Act, which is to build a high-speed rail system that will foster the future prosperity of the State. The Bond Act must be reasonably interpreted to achieve that purpose. Instead, the trial court took reporting requirements out of context and construed the Bond Act's fiscal oversight provisions as a straitjacket. Action by this Court is urgently required to avoid compromising the Authority's ability to build the system quickly and economically, as intended by the Legislature and the voters.

V. THIS COURT SHOULD EXERCISE ITS ORIGINAL JURISDICTION.

This Court may appropriately exercise original jurisdiction under article VI, section 10 of the California Constitution when "the issues presented are of great public importance and must be resolved promptly." (*Vandermost v. Bowen* (2012) 53 Cal.4th 421, 453, quoting *County v. Sacramento v. Hickman* (1967) 66 Cal.2d 841, 845; see *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 253.) Matters of statewide concern are particularly suited to this Court's exercise of original jurisdiction. (See *Vandermost v. Bowen*, *supra*, at p. 451 [Court had authority to order relief in original writ proceeding "in light of the statewide importance of the issue presented in the petition"].) For all the foregoing reasons, this is such a case.

VI. THIS COURT SHOULD STAY THE *TOS* WRIT.

The Court should stay the trial court's order and writ in *Tos* pending resolution of this writ proceeding.[6] Absent a stay, the Authority will be required either to refuse to rescind the first funding plan, as the writ orders,

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[6] Petitioners ask that the Court act on the stay request by March 1, 2014, because the Authority must give ten-days notice of a public meeting in order to rescind the first funding plan before the return date for the writ of March 18, 2014.

and risk sanctions, or to rescind the plan and risk mooting this writ proceeding and any appeal of final judgment in the *Tos* case.

Ordinarily, in appeals challenging a trial court judgment granting a petition for writ of administrative mandamus, an appellant's compliance with the writ will moot the appeal. (*MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 214 [city's appeal from a writ ordering it to reconsider mobile home park owner's rent increase application was moot because the city had complied with the writ]; *Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 865-866 [city's appeal from writ requiring it to submit local coastal program to public vote mooted by its compliance with writ].) While Petitioners would argue against such a result on the grounds, for example, that the appeal presents legal issues capable of repetition but likely to evade review, that these are matters of great public importance, and that the dispute is likely to arise again, there can be no assurance that a reviewing court would agree with these arguments.

A stay also is appropriate because failure to stay the trial court's writ and order may effectively deprive Petitioners of part of the relief they seek in this proceeding. (See *People ex rel. San Francisco Bay Conservation & Development Com. v. Town of Emeryville* (1968) 69 Cal.2d 533, 536 [ordering stay because failure to do so "would have imperiled the value of appellant's right of appeal"].)

VII. CONCLUSION

For all the reasons set forth above, this Court should grant the relief prayed for in the Petition.

Dated: January 24, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **PETITION FOR EXTRAORDINARY WRIT OF MANDATE, APPLICATION FOR TEMPORARY STAY AND MEMORANDUM OF POINTS AND AUTHORITIES** uses a 13 point Times New Roman font and contains 13,952 words.

Dated: January 24, 2014

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DECLARATION OF SERVICE BY E-MAIL and OVERNIGHT COURIER

Case Name: ***High-Speed Rail Authority et al. v. John Tos et al.***
No.:

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for overnight mail with **Golden State Overnight (GSO)**. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business.

On January 24, 2014, I served the attached **PETITION FOR EXTRAORDINARY WRIT OF MANDATE, APPLICATION FOR TEMPORARY STAY, AND MEMORANDUM OF POINTS AND AUTHORITIES** by transmitting a true copy via electronic mail, and by placing a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, as shown below. In addition, I served the attached **APPENDIX OF EXHIBITS (VOLUMES 1-37)** by placing a true copy thereof enclosed in sealed boxes, in the internal mail system of the Office of the Attorney General, for overnight delivery, as shown below.

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(Service by overnight delivery of Petition only; no service of Appendix (CRC 4.486(e)(1))

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 24, 2014, at San Francisco, California.

N. Newlin
Declarant


Signature