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Protecting the Rights of America's Small Business Owners

September 30, 2014

VIA OVERNIGHT DELIVERY

Chief Justice Tani Cantil-Sakauye
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102-478

Re: *California High-Speed Rail Authority, et. al. v. Superior Ct. v. John Tos et. al.*
Supreme Court Case No. S220926
Court of Appeal Case No. C075668
***Amicus* Letter Supporting Petition for Review**

To the Honorable Chief Justice and Associate Justices of the Supreme Court of California:

This letter, submitted pursuant to Rule 8.500(g), supports three separate petitions for review submitted respectively by the Howard Jarvis Taxpayers Association, First Freewill Baptist Church and John Tos *et. al.* The National Federation of Independent Business Small Business Legal Center ("NFIB Legal Center") respectfully requests permission to file this amicus curie letter in support of the petitions for review in this matter because it raises an issue of concern for California small business owners. Review is important here because the Court of Appeal decision disavows any role for judicial review of the certification required by law for the issuance of bonds under both the Safe, Reliable High-Speed Train Bond Act, Cal. Sts. & High. Code § 2704 et seq. ("Bond Act") and the State General Obligation Bond Law, Gov. Code §16720 et seq. ("Bond Law").

At the outset we emphasize that the National Federation of Independent Business (NFIB) has taken no position with regard to the ongoing public debate over the propriety of the State's high-speed rail project. NFIB remains entirely agnostic on that issue. Nonetheless, we submit this letter because the case raises an important question as to whether state agencies may incur massive debts, through issuance of bonds, simply by asserting that the requested bonds are "necessary or desirable"—without offering any facts in the record from which a court might objectively judge whether that certification satisfies the rational basis test, or whether it violates the essential precept of administrative law: *i.e.* the principle that administrative decisions *must not be arbitrary or capricious*. We maintain that the Court of Appeal set a dangerous precedent in abdicating any role for judicial review over an action that indebts the State by $8.6 billion dollars. As such, the case raises a truly important issue, which concerns all taxpayers in California—especially for small business owners who already carry disproportionate tax burdens.

ABOUT OUR ORGANIZATION

The NFIB Legal Center is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. NFIB is the nation's leading small business association, representing members in Washington, D.C., and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses.

NFIB represents 350,000 member businesses nationwide, including approximately 23,000 in California. NFIB membership spans the spectrum of business operations, ranging from sole-proprietor enterprises to firms with hundreds of employees. While there is no standard definition of a "small business," the typical NFIB member employs 10 people and reports gross sales of about $500,000 a year. NFIB's membership is a reflection of American small business.

NFIB LEGAL CENTER'S INTEREST IN THIS CASE

The State's high-speed rail project raises many issues that may conceivably divide the small business community. But for most small business owners, the most salient question is whether the plans are economically viable. This is a fair question in light of the fact that the High-Speed Rail Authority is now seeking to validate $8.6 billion dollars in general obligation bonds to go toward financing of the project. As such, the concern for small business taxpayers is whether the State will be able to repay those bonds through revenues generated from the completed project, or whether the State will eventually be forced to recoup those costs by raising taxes. We simply want some basic assurance that small business owners will not be saddled with public debts resulting from this project.

Because we believe it reasonable to assume that the voters wanted such assurances as a condition of authorizing the issuance of bonds for this project, we maintain that the Superior Court was correct in interpreting the Bond Act, and the Bond Law, as requiring something more than a wholly unsubstantiated assertion that the bonds are "necessary or desirable." It is not unreasonable to construe the Bond Act, and the Bond Law, as requiring some basic findings of fact upon which a judge might objectively conclude that there is a basis in reason for the High-Speed Rail Committee to certify that the issuance of bonds was "necessary or desirable." Without any facts in the record, there is no way to justify—even under the most deferential standard—an assertion that bonds should be issued *for any specific dollar amount*. And more fundamentally, there is no basis for assuming that either the voters or the Legislature intended to depart from the general principle that administrative decisions must not be arbitrary or capricious.

The Case Raises an Important Question for the Taxpaying Citizens of California

The arbitrary and capricious standard is not a difficult hurdle for the State to meet. In truth it is almost an embarrassingly low bar. All that is required is that the action must be supported by facts—enough to demonstrate simply that the action in question is rational. But in this case there

were no facts in the record to make any determination one way or the next on that question. Accordingly, we submit that the Superior Court acted in accordance with well-established principles of administrative law in refusing to validate the bonds in question.

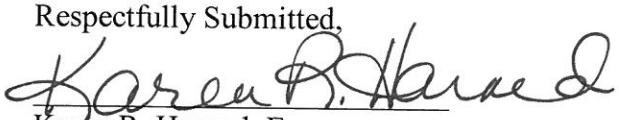
The Court of Appeal took issue with the Superior Court's judgment, apparently operating on the presumption that—in the absence of facts—the High-Speed Rail Committee is free to issue bonds in any amount that the Committee declares "necessary or desirable." The decision said: "An agency's exercise of discretionary legislative powers will be disturbed 'only if the action is so palatably unreasonable as to show an abuse of discretion as a matter of law.'" This is—as the Court of Appeal put it—a "highly deferential test." But, there is simply no way of knowing whether this standard is met without some basic facts in the record.

We submit that, with a matter as important as the issuance of bonds that will indebt Californians by billions of dollars, it is crucial to ensure that the State has followed proper procedures and complied with all required standards. We note that the Bond Law not only requires that the Committee must determine that the issuance of bonds is "necessary or desirable," but it goes on to say the Committee [must] "consider program funding needs, revenue projections, financial market conditions, and other necessary factors in determining the terms for the bonds issued…" This strongly suggests that those considerations must weigh into the Committee's decision to either certify that the issuance of bonds, *in a specific dollar amount*, is—or is not—"necessary or desirable." It is therefore proper to construe the Bond Act and Bond Law as requiring some basic factual findings in support of the certification—a requirement consistent with the generally applicable rule of law that all administrative decisions must be rational. Put simply, we do not think it likely that the voters would have signed a blank check.

CONCLUSION

This Court should grant review to clarify whether there is any role for judicial review of an agency's certification that the issuance of bonds—in any given dollar amount—is "necessary or desirable." Such review is needed to ensure the integrity of the Bond Act, the Bond Law and Article 16 of the State Constitution.

Respectfully Submitted,



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PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in Washington, District of Columbia. My business address is the National Federation of Independent Business, 1201 F St. N.W., Suite 200, Washington, DC 20004.

On September 30, 2014, I served a true and correct copy of the within document described as:

AMICUS LETTER IN SUPPORT OF PETITION FOR REVIEW

on the interested parties in this action as follows:

BY U.S. MAIL: I placed the envelopes for collection and mailing on the date states above, at Washington, D.C., following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in sealed envelopes with postage fully prepaid. The envelopes were addressed as follows:

SEE ATTACHED SERVICE LIST

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

Executed on September 30, 2014, at Washington, D.C.

Valerie Manley

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