

**THOMAS A. RUBIN, CPA, CMA, CMC, CIA, CGFM, CFM**

**2007 Bywood Drive**

**Oakland, California 94602-1937**

**Home Office Telephone/FAX: (510) 531-0624**

**LAUSD: (213) 241-5182 Mobile: (213) 447-6601**

**e-mail: [tarubin@earthlink.net](mailto:tarubin@earthlink.net)**

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Chief Justice Tani Gorre Cantil-Sakauye  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

September 15, 2014

Re: *California High-Speed Rail Authority v. Superior Court (Tos)*, S220926

Dear Chief Justice and Associate Justices of the California Supreme Court:

I write this *amicus curiae* letter in support of the petition for review filed by *Tos et al* from the decision of the Third District Court of Appeal, reversing Judge Michael P. Kenny's *mandamus* decisions against the California High Speed Rail Authority.

I have served as the Chief Financial Officer of the Southern California Rapid Transit District and the Alameda-Contra Costa Transit District, in addition to extensive auditing and consulting work for more than 100 public agencies, primarily in California, but throughout the United States. I have been involved, in various ways, in the planning, issuance, and sale of billions of dollars in municipal bonds, and the audits of billions more.

My four decades of governmental finance experience make me concerned about the impacts that this decision would have on the future of finance of California governmental agencies if it is allowed to stand.

Until this Third District decision, if allowed to stand, there was a long-standing body of statutory and case law in California that all stakeholders – bond issuers, bond buyers, taxpayers, and just plain members of the public – could rely on to very precisely guarantee what they were buying. This decision, however, ignores very specific safeguards that were included in the statewide California High Speed Rail ballot measure that was specifically presented to, and approved by, the voters of this State *via* Proposition 1A in November 2008. If, as a result of this appellate decision, stakeholders cannot rely upon the requirements to be legally binding and enforceable in a court of law -- which was the understanding when the measure was approved by the taxpayers – this will cause uncertainty in the bond market and there will be hell to pay.

Bonds are rated based on risk, as evaluated by the rating agencies based on the underlying facts; in general, the higher the risk, the lower the bond rating and the higher the interest rate, all else equal. Within applicable standards of practice and performance, rating agencies have significant freedom to determine what they should, and must, consider – and the bond market relies upon the rating agencies to take an all-inclusive view of risk, including acting prudently to consider all factors that could impact the value of the bonds. If the rating agencies, based on uncertainty

about whether guarantees and prohibitions are valid and enforceable in California, find that the risk factors have changed, then bond interest rates will increase. Bond coverage ratios – the ratio of funds available to cover annual debt service to annual debt service requirements – will also increase if this decision is allowed to stand. These two factors combined will mean that, for any specified level of debt to be issued, higher annual tax receipts will be required – or, alternatively, for a fixed amount of annual tax, and/or other, revenues, the amount of bonds that can be serviced by this level of tax revenue will decrease.


This will mean that it will cost the taxpayers more to do anything that requires debt to pay for it. For bonds previously sold and outstanding, the higher risk will cause their market value to decline, causing losses to their holders. The financial consequences of this are very serious.

This decision will also make it more difficult for governments to get the permission of the voters to issue debt or approve other funding mechanisms. For example, in 2012, in both Alameda and Los Angeles Counties, there were half-cent sales taxes presented to the voters for transportation improvements – and both were defeated by small fractions of one percent. Both agencies are going to try again to get their voters to authorize these increases, Alameda County this year and Los Angeles likely in 2016.

I can absolutely guarantee that the opponents of these issues will campaign on the higher degree of uncertainty caused by this appellate decision. They will tell the voters that they are at great risk of not getting what they think that they are voting for. This decision gives ammunition to the people who oppose bond measures and other types of tax measures, independent of the merits of any specific measure.

There are very good business reasons for the financial and performance requirements and restrictions that the voters approved in 2008; ignoring them exposes the taxpayers to the high likelihood of paying for a huge construction project that will never be completed, or to paying huge amounts to build it and then finding that they must pay billions more to operate it. These are the reasons that these requirements were placed in Proposition 1A – the high speed rail proponents had extensively surveyed the members of the electorate, knew that there was widespread concern regarding these risks, and determined that the only way to get the ballot measure passed was to provide specific strong and enforceable requirements to ensure the almost \$10 billion in bond funding requested would not be wasted. To change the deal that was entered into between the voters and the State at this late date would not only be a very serious violation of the public trust in and of itself, but would open the opportunity for even larger future violations.

This case raises the troubling issue of whether voters and taxpayers can rely on the plain language requirements written into a bond measure. On the basis of my experience, I ask the Court to grant review of this important case, and consider restoring the sanctity of voter-approved measure provisions.

Sincerely,  
  
Thomas A. Rubin