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12 FOR THE COUNTY OF SACRAMENTO

13 HIGH-SPEED RAIL AUTHORITY and  
14 HIGH-SPEED PASSENGER TRAIN  
15 FINANCE COMMITTEE, for the STATE  
16 OF CALIFORNIA,

17 Plaintiffs,

18 v.

19 ALL PERSONS INTERESTED IN THE  
20 MATTER OF THE VALIDITY OF THE  
21 AUTHORIZATION AND ISSUANCE OF  
22 GENERAL OBLIGATION BONDS TO BE  
23 ISSUED PURSUANT TO THE SAFE,  
24 RELIABLE HIGH-SPEED PASSENGER  
25 TRAIN BOND ACT FOR THE 21st  
26 CENTURY AND THE PROCEEDINGS  
27 AND MATTERS RELATED THERETO,

28 Defendants.

29 KINGS COUNTY WATER DISTRICT,  
30 a California county water district,

31 Cross-Complainant,

32 v.

33 HIGH-SPEED RAIL AUTHORITY, aka  
34 CALIFORNIA HIGH-SPEED RAIL  
35 AUTHORITY, AND ALL PERSONS  
36 INTERESTED IN THE MATTER OF THE  
37 VALIDITY OF THE CONTRACT AWARD  
38 FOR THE DESIGN AND

Case No. 34-2013-00140689

ASSIGNED FOR ALL PURPOSES TO  
HONORABLE MICHAEL P. KENNY,  
DEPARTMENT 31

**DEFENDANT HOWARD JARVIS  
TAXPAYERS ASSOCIATION'S TRIAL  
BRIEF**

Date: September 27, 2013  
Time: 9:00 a.m.  
Dept.: 31  
Judge: Hon. Michael P. Kenny  
Trial Date: September 27, 2013  
Action Filed: March 19, 2013

1 CONSTRUCTION OF CONSTRUCTION )  
2 PACKAGE 1 OF THE CALIFORNIA )  
3 HIGH-SPEED RAIL PROJECT AND )  
4 CERTAIN PROCEEDINGS AND )  
5 MATTERS RELATED THERETO, )

6 Cross-Defendants. )  
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1 **INTRODUCTION**

2 Defendant Howard Jarvis Taxpayers Association, on behalf of its California taxpayer  
3 members ("Taxpayers"), opposes the validation of nearly \$10 billion in new bond debt  
4 proposed by Plaintiffs High-Speed Rail Authority and the High-Speed Passenger Train  
5 Finance Committee for the State of California ("Plaintiffs").

6 As will be shown, the bonds which are the subject of this action are proposed to be  
7 expended by Plaintiffs to construct improvements for a project that is substantially different  
8 from the improvements and the project distinctly specified in Proposition 1A on the  
9 November 2008 General Election ballot. These bonds, therefore, have never been  
10 approved by the voters as required by article XVI, section 1 of the California Constitution.  
11 Additionally, Plaintiffs have not satisfied the statutory conditions that must be met before  
12 bonds may be issued under Proposition 1A and the State General Obligation Bond Law,  
13 therefore the judgment of validation sought by Plaintiffs must be denied.

14 **STATEMENT OF FACTS**

15 In 1993, the Intercity High-Speed Rail Commission was created by Senate  
16 Concurrent Resolution 6 ("SCR 6"). SCR 6 requested that "the Department of  
17 Transportation, under the direction of the Intercity High-Speed Rail Commission . . . prepare  
18 a 20-year high-speed intercity ground transportation plan, as specified, for implementation  
19 beginning in the year 2000." (Sen. Conc. Res. No. 6 (1992-1993 Reg. Sess.), Stats. 1993  
20 res. ch. 56.)

21 In 1996, the Intercity High-Speed Rail Commission was replaced with Plaintiff  
22 High-Speed Rail Authority ("HSRA" or "the Authority"), a state agency created in 1996 by  
23 Senate Bill No. 1420 (1995-1996 Reg. Sess.) ("SB 1420"). SB 1420 required the Authority  
24 to "direct the development and implementation of intercity high-speed rail service that is fully  
25 coordinated with other public transportation services", "prepare a plan for the construction  
26 and operation of a high-speed train network for the state, consistent with and continuing the  
27 work of the Intercity High-Speed Rail Commission, and to submit that plan to the Legislature  
28

1 and the Governor, or to the voters of the state, for approval.” (SB 1420, *supra*.) The system  
2 was to include high-speed electric trains that ran between northern and southern California.

3 Assembly Bill 3034 (2007-2008 Reg. Sess.) (“AB 3034”), which created a method of  
4 funding a high-speed rail system with bond funds, was passed by the California Legislature  
5 in 2008. A portion of AB 3034 was then put before the voters as Proposition 1A in the  
6 November 2008 general election where it was approved by the voters. Proposition 1A  
7 promised the voters a true high-speed rail system with electric trains if voter approval was  
8 obtained.

9 Since 2000, when the Authority released its first business plan, the costs and  
10 amount of time needed to complete the high-speed rail system has varied greatly. “The first  
11 estimate contained in the 2000 Business Plan was \$25 billion with a completion date in  
12 2020.”<sup>1</sup> “[T]hree days after Proposition 1A was approved by California voters, CHSRA  
13 released its 2008 Business Plan estimating the project would cost \$33 billion, with \$12-\$16  
14 billion in federal funds, and a completion date of 2020.”<sup>2</sup> A year later, “the estimate jumped  
15 to \$43 billion, assuming \$17-\$19 billion in federal funds, with a completion date of 2020. In  
16 November 2011, the CHSRA’s Draft 2012 Business Plan had the costs skyrocket to a range  
17 of \$98-\$118 billion, with approximately \$52 billion in federal funds, and a delayed  
18 completion date of 2028.”<sup>3</sup>

19 When the Authority released its Revised 2012 Business Plan with an estimated cost  
20 of \$68 billion (\$42 billion in federal funds) and a projected 2028 completion date, “on its  
21 face, it appear[ed] the CHSRA was able to save \$30 billion in costs, [but] the CHSRA

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22  
23 <sup>1</sup> (Majority Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials,  
24 Summary of Subject Matter re: Subcommittee Field Hearing on “Oversight of California  
25 High Speed Rail”, May 24, 2013 at p. 2, *available at*  
26 [http://transportation.house.gov/sites/republicans.transportation.house.gov/files/documents/2013-05-28-Railroads\\_Hearing\\_SSM.pdf](http://transportation.house.gov/sites/republicans.transportation.house.gov/files/documents/2013-05-28-Railroads_Hearing_SSM.pdf) (last accessed Aug. 12, 2013) (hereafter,  
27 “Summary of Subject Matter”) (Exhibit G to Defendant HJTA’s Request for Judicial Notice in  
28 Support of Trial Brief.)

<sup>2</sup> (*Ibid.*)

<sup>3</sup> (*Ibid.*)

1 essentially revised its plan to a 'blended approach' that did not assume the 200 mph  
2 capable infrastructure from end-to-end, but instead [would] use shared infrastructure in the  
3 North and South ends."<sup>4</sup>

4 The so-called "blended system" is not what the voters approved.<sup>5</sup> Selling Proposition  
5 1A bonds for the proposed blended system will break almost every promise made to the  
6 voters, including promises regarding segregated track, train speed, travel times, ridership,  
7 private construction funding, and self-sustaining operation.

### 8 ARGUMENT

#### 9 I. **THE BONDS AT ISSUE CANNOT BE VALIDATED BECAUSE THEY HAVE NOT** 10 **BEEN APPROVED BY THE VOTERS AS REQUIRED BY THE CALIFORNIA** 11 **CONSTITUTION**

12 Section 1 of Article 16 of the California Constitution provides, in relevant part, that

13 The Legislature shall not, in any manner create any debt or debts . . .  
14 unless the same shall be authorized by law for some single object or  
15 work to be distinctly specified therein which law shall provide ways and  
16 means, exclusive of loans, for the payment of the interest of such debt  
17 or liability as it falls due . . . but no such law shall take effect unless it  
18 has been passed by a two-thirds vote of all the members elected to  
19 each house of the Legislature and until, at a general election or at a  
20 direct primary, it shall have been submitted to the people and shall have  
21 received a majority of all the votes cast for and against it at such  
22 election; and all moneys raised by authority of such law shall be applied  
23 only to the specific object therein stated or to the payment of the debt  
24 thereby created.

25 (Cal. Const., art. XVI, § 1 (emphasis added).)

26 The state constitution, in plain language, requires that the works to be funded by a  
27 bond measure shall be "distinctly specified" in the proposed law presented to the voters,  
28 and that "all moneys raised by authority of such law shall be applied only to the specific

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29 <sup>4</sup> (*Ibid.*)

30 <sup>5</sup> The Authority itself appears to recognize this by stating in its Revised 2012  
31 Business Plan, "If required, a Full Build option for Phase 1 could be completed by 2033 at  
32 an incremental cost of \$23 billion in year-of-expenditure dollars, for a cumulative cost of  
33 \$91.4 billion." (California High-Speed Rail Authority, Revised 2012 Business Plan (April  
34 2012), "Executive Summary", available at  
35 [www.hsr.ca.gov/docs/about/business\\_plans/BPlan\\_2012ExecSum.pdf](http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2012ExecSum.pdf) (last accessed Aug.  
36 12, 2013), p. ES-14.)

1 object therein stated[.]” (*Ibid.*) Such is not the case with the bonds that Plaintiffs seek to  
2 validate.

3 The bonds at issue were approved by the California voters for a specific use: the  
4 creation of a high speed rail system that, *inter alia*, would be able to provide nonstop service  
5 between Los Angeles and San Francisco, and Oakland and Los Angeles with a maximum  
6 nonstop travel time of 2 hours, 40 minutes. Unfortunately, there are numerous provisions  
7 concerning the high speed rail system that the voters agreed to, which are not currently and  
8 will not be met, including but not limited to: not being able to meet required trip times, trains  
9 not being able to travel at 200-220 miles per hour, and a failure to have meaningful  
10 legislative oversight.

11 Simply put, the system that Plaintiffs intend to use the bond funds to create is not at  
12 all what the voters wanted or agreed to. Due to the **substantial** differences between what  
13 the voters wanted, were promised, and, indeed, actually voted on, and what is now being  
14 proffered in substitution, Plaintiffs’ request for validation must be denied as these bonds will  
15 not be used for the “specific object” that was “distinctly specified” in the ballot materials that  
16 the voters agreed to.

17 **A. A Voter-Approved Bond Measure Is Analogous To A Contract Between**  
18 **The Voters And The Agency Proposing the Bond**

19 A voter-approved bond measure is essentially a contract between the state and the  
20 voters, and such relationship has been the subject of numerous California cases. Courts  
21 have generally taken one of two views: some have ruled that the measure is an actual  
22 contract between the voters and public entities, whereas other have found the situation to  
23 be “analogous to contract[.]” (*Associated Students of North Peralta Community College v.*  
24 *Board of Trustees* (1979) 92 Cal.App.3d 672, 677.) The latter appears to have become the  
25 majority view. Regardless, despite the fact that courts may differ as to whether a voter-  
26 approved measure is an actual contract or merely analogous to one, “[w]hatever their view  
27 of the precise legal relationship of entity and electorate, the courts have been consistent in  
28

1 defining the elements which comprise it. All have agreed": (1) "that the statute authorizing  
2 the creation of the bonded indebtedness is presumptively within the knowledge of each  
3 elector"; (2) that "[t]he resolution by which the bonding entity resolves to submit the issue to  
4 the [] electors has also been regarded as part of the 'contract' between the entity and its  
5 electors"; (3) that "[a] third element of the 'contract' is the ballot proposition submitted to the  
6 voters"; and, (4) "[t]he fourth and final element is assent or ratification by the electors[.]" (*Id.*  
7 at pp. 677-678 (internal citations omitted).) In addition, "[e]xtrinsic documents may be added  
8 to the primary elements comprising the relationship." (*Id.* at p. 678.)

9 When reviewing these elements, it is clear that, as will be explained below in this  
10 brief, Plaintiffs' request for validation of the bonds at issue runs into problems with elements  
11 one and three.

12 Presuming, as the first element requires, that the statutes relating to the high speed  
13 rail system, found in California Streets and Highways Code section 2704 et seq., were  
14 within the knowledge of each elector, then the voters' ratification of those statutes was  
15 based on the text of those statutes (element one) as well as the ballot proposition (element  
16 three). That is what the voters gave their assent to: what was before them on the November  
17 2008 ballot, not the current revision that Plaintiffs seek to have Taxpayers finance.

18 **B. Use Of The Bonds Sought To Be Validated By Plaintiffs Does Not**  
19 **Comport With The Promised Uses Of The Bond Funds Found In AB**  
20 **3034 Nor The Ballot Proposition That Was Presented To The Voters**

21 There are a number of differences between how Plaintiffs are currently proposing to  
22 use the bond funds and how voters expect—and the California Constitution requires—that  
23 those funds be spent. If those funds cannot be used in the manner promised to the voters in  
24 order to obtain their approval, then those funds should not be authorized and used for other  
25 purposes.

26 Assembly Bill 3034, which created a method of funding a high speed rail system via  
27 bond funds, was passed by the California Legislature in 2008. Section 9 of AB 3034 was  
28 then put before the voters as Proposition 1A. The voters approved Proposition 1A by a

1 slight margin at the November 2008 general election, and section 2704, et seq. was added  
2 to the California Streets and Highways Code.

3 The Proposition 1A ballot materials stated that if enacted, Proposition 1A would  
4 “[e]stablish[] a clean, efficient, 220 MPH transportation system”<sup>6</sup> and “[p]rovide[] long-  
5 distance commuters with a safe, convenient, affordable, and reliable alternative to driving  
6 and high gas prices”.<sup>7</sup> It also noted that “the state created the California High-Speed Rail  
7 Authority (the authority) to develop an intercity train system that can operate at speeds of  
8 200 miles per hour or faster to connect the major metropolitan areas of California, and  
9 provide service between northern California and southern California.”<sup>8</sup> The ballot materials  
10 also put the relevant portions of the Streets and Highways Code before the voters, and  
11 those sections required, *inter alia*, “[m]aximum nonstop service travel times for each  
12 corridor that shall not exceed the following: [¶] (1) San Francisco-Los Angeles Union  
13 Station: two hours, 40 minutes. [¶] (2) Oakland-Los Angeles Union Station: two hours, 40  
14 minutes. . . .”<sup>9</sup>

15 Clearly, the voters intended to enact a specific project: a high-speed train system  
16 that would feature trains able to operate at a consistent minimum speed of 200 miles per  
17 hour and allowed for travel between Los Angeles and San Francisco in two hours, 40  
18 minutes or less. But these statutorily *mandated* time and speed requirements cannot be  
19 met.

20 **1. The statutorily required train speeds cannot be met.**

21 California Streets and Highways Code section 2704.01 provides the following  
22 definition:

23 \_\_\_\_\_  
24 <sup>6</sup> (Supplemental Voter Information Guide, Gen. Elec. (Nov. 4, 2008), Official Title  
25 and Summary, p. 4.)

26 <sup>7</sup> (*Ibid.*)

27 <sup>8</sup> (*Id.* at p.4 (Legis. Analyst’s analysis of Prop. 1A).)

28 <sup>9</sup> (*Id.* at p. 11 (Text of Proposed Law); see also Cal. Str. & Hwy. Code § 2704.9(b).)

1 (d) "High-speed train" means a passenger train capable of sustained  
2 revenue operating speeds of at least 200 miles per hour where  
conditions permit those speeds.

3 Cal. Str. & Hwy. Code § 2704.01(d). And, the Proposition 1A ballot summary promised the  
4 voters that if passed, Proposition 1A "[e]stablishes a clean, efficient 220 MPH transportation  
5 system." (Supplemental Voter Information Guide, Gen. Elec. (Nov. 4, 2008), Official Title  
6 and Summary, pg. 4 (emphasis added).) In the argument in favor of Proposition 1A, then-  
7 Vice Chair of Plaintiff HSRA, Fran Florez, promised voters that "Proposition 1A will bring  
8 California: □ Electric-powered High-Speed Trains running up to 220 miles an hour on  
9 modern track, safely separated from other traffic generally along existing rail corridors." (*Id.*  
10 at Arguments, pg. 6.)

11 Plaintiffs' high speed rail trains "are supposed to operate at peak speeds of 220 mph  
12 (354 kph). However, such speeds are not attained today anywhere in the world. Indeed,  
13 many trains have been slowed down in recent years for safety and operating reasons."  
14 (Reason Foundation, *infra*, at p. 4.)

15 The world's fastest trains currently "reach peak speeds of 199 mph (320 kph), 21  
16 mph less than 220 mph (354 kph). These speeds are over infrastructure built for 217 mph  
17 (350 kph)." (*Ibid.*) If the world's fastest trains, built to operate on infrastructure for speeds  
18 almost equivalent to what Plaintiffs promised the voters, operate at lesser speeds, how can  
19 Plaintiffs claim that trains built on a "blended system"<sup>10</sup> that will have to compete for track  
20 space with low-speed commuter and freight trains will operate at even faster speeds? By  
21 failing to account for such in its reports, Plaintiff HSRA is, in essence, perpetrating a fraud

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23 <sup>10</sup> In its Revised 2012 Business Plan released in April 2012, Plaintiff HSRA stated its  
24 intention to adopt a "blended system" for the high speed rail. In the Executive Summary of  
25 the Revised 2012 Business Plan, Plaintiff HSRA explains that "[t]he 2012 Business Plan  
26 refers to blended systems and blended operations, which describe the integration of high-  
27 speed trains with existing intercity and commuter/regional rail systems via coordinated  
28 infrastructure (the system) and scheduling, ticketing and other means (operations)." (See  
Cal. High-Speed Rail Auth., Revised 2012 Business Plan (Apr. 2012), p. ES-5 ("What does  
'blended' mean?"), *available at*  
[http://www.hsr.ca.gov/docs/about/business\\_plans/BPlan\\_2012\\_rpt.pdf](http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2012_rpt.pdf) (last accessed July  
31, 2013).

1 on the voters. And, because the Authority refuses to acknowledge basic tenets of  
2 engineering, like the fact that changing to a “blended system” will undoubtedly have an  
3 effect on the speed of the trains, the request for validation of the bonds at issue should be  
4 denied.

5 **2. The statutorily mandated trip time requirements cannot be met.**

6 California Streets and Highways Code section 2704.09 provides, in relevant part,  
7 that:

8 The high-speed train system to be constructed pursuant to this chapter  
9 shall be designed to achieve the following characteristics:

10 (b) Maximum nonstop service travel times for each corridor that shall  
11 not exceed the following:

- 12 (1) San Francisco-Los Angeles Union Station: two hours, 40 minutes.
- 13 (2) Oakland-Los Angeles Union Station: two hours, 40 minutes.
- 14 (3) San Francisco-San Jose: 30 minutes.
- 15 (4) San Jose-Los Angeles: two hours, 10 minutes.
- 16 (5) San Diego-Los Angeles: one hour, 20 minutes.
- 17 (6) Inland Empire-Los Angeles: 30 minutes.
- 18 (7) Sacramento-Los Angeles: two hours, 20 minutes.

19 (Cal. Str. & Hwy. Code § 2704.09(b).) In order to reach these trip times, a true high-speed  
20 rail system is required.

21 According to the Reason Foundation’s<sup>11</sup> in-depth due diligence report on the high-  
22 speed rail system, “it is estimated that the fastest non-stop trains from San Francisco to Los  
23 Angeles over the Phase 1 Blended system would operate at from 3:50 to 4:49 (higher-  
24 speed scenario v. lower-speed scenario). (Reason Foundation, California High-Speed Rail:  
25 An Updated Due Diligence Report (Apr. 11, 2013), p. 7, *available at*  
26 <http://reason.org/studies/show/california-high-speed-rail-report> (last accessed July 29,  
27 2013).)

28 In fact, as pointed out by Californians Advocating Responsible Rail Design

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25 <sup>11</sup> The Reason Foundation “produces respected public policy research on a variety of  
26 issues and publishes the critically-acclaimed Reason magazine.” (REASON FOUNDATION,  
27 Frequently Asked Questions – What is Reason Foundation?, <http://reason.org/about/faq/>  
28 (last accessed July 29, 2013).) “Reason produces rigorous, peer reviewed research and  
directly engages the policy process, seeking strategies that emphasize cooperation,  
flexibility, local knowledge, transparency, accountability and results.” (*Ibid.*)

1 (CARRD), Plaintiff HSRA's shift to a blended system, as opposed to the true high-speed rail  
2 system the voters believed they were voting for, will lower costs but increase travel times.

3 "The most significant change in the Authority's revised Business Plan was the adoption of a  
4 'blended' system. The good news was that it could be less impactful to communities and be  
5 cheaper to construct. The bad news was that it would further compromise travel times  
6 between San Francisco and Los Angeles." (CAARD, The blended system can deliver 2 hour  
7 40 minute travel times: Fact or fantasy?,

8 [http://www.calhsr.com/business-plan/the-blended-system-can-deliver-2-hour-40-minute-trav  
9 el-times-fact-or-fantasy/](http://www.calhsr.com/business-plan/the-blended-system-can-deliver-2-hour-40-minute-travel-times-fact-or-fantasy/) (last accessed July 29, 2013).)

10 The documentation is damning. As CARRD notes, *one of Plaintiff HSRA's own*  
11 *source documents* used in compiling its Revised Draft Revised Business Plan shows that  
12 the *minimum* travel time between Los Angeles and San Francisco is 180 minutes, or three  
13 hours.<sup>12</sup>

14 CARRD has followed the project closely for the past 3 ½ years.  
15 Authority consultants have produced detailed analysis after detailed  
16 analysis of how minor changes to the route would impact travel times.  
17 With no stops at all, the calculations showed that the Authority could  
18 make the time requirement for the full system with not a second to  
19 spare.

18 In March, Caltrain released the final results of a study assessing the  
19 feasibility of a blended system. There was a way to fit high speed rail  
20 trains into a blended schedule, but the travel times would suffer. In the  
21 best case, trains would take about 20 minutes more than previously  
22 assumed to get from San Francisco to San Jose.

21 Even if Caltrain and high speed rail trains were to reach the same  
22 maximum speed, Caltrain makes many local stops over the 50 mile  
23 corridor. This means the average speed between Caltrain and high  
24 speed rail would differ substantially. This limits the capacity of the  
25 corridor and the travel times for high speed rail trains.

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24 <sup>12</sup> (See  
25 <http://www.calhsr.com/wp-content/uploads/2012/04/CARRD-travel-time-inconsistencies.pdf>;  
26 *see also*  
27 [http://www.calhsr.com/wp-content/uploads/2012/06/CARRD-Blended-system-travel-time-do  
28 cumentation1.pdf](http://www.calhsr.com/wp-content/uploads/2012/06/CARRD-Blended-system-travel-time-documentation1.pdf); [source doc title here] at 244, 247, available at  
[http://www.hsr.ca.gov/docs/about/business\\_plans/BPlan\\_2012RidershipModel.pdf](http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2012RidershipModel.pdf) (last  
accessed July 29, 2013).)

1 We were surprised to see no mention of the impact of the blended  
2 system on travel times in the business plan. We were even more  
3 surprised to see a presentation at the April board meeting that claimed  
4 the blended system would deliver a 2 hour 40 minute travel time. Not  
5 only did this defy logic, but the ridership report supporting the business  
6 plan showed that the fastest scheduled trains were going to take 3  
7 hours, which would be consistent with the results from the Caltrain  
8 study.

9 On April 18th, CARRD testified at an Assembly hearing on High Speed  
10 Rail about the inconsistencies in the travel times and asked for  
11 substantiation of the 2 hour 40 minute travel time assertion and  
12 presented copies documenting the discrepancies to the committee and  
13 to California High Speed Rail board members.

14 The Authority declined to provide any analysis backing up the claim that  
15 had been made at their board meeting.

16 Kathy Hamilton of the San Francisco Examiner who witnessed the  
17 altercation at the committee meeting immediately made a Public  
18 Records Request for the documents used to derive the travel times in  
19 the board presentation. By law, the Authority should respond within 10  
20 calendar days.

21 On May 31, 2012 (43 days later), Ms. Hamilton received the following  
22 response:

23 ***"The answer is that no document exists. These were verbal  
24 assertions based on skill, experience, and optimism and so Dan  
25 Richard went with the expertise of the engineers offering these  
26 assertions. I have been informed that a memo is in the process of  
27 being drafted on this very issue and I will provide that to you as  
28 soon as its complete."***

(*Ibid.* (emphasis and quotation marks original).)

Just as Plaintiff HRSA failed to provide Ms. Hamilton with any legitimate  
documentation showing that the 2 hour, 40 minute trip time is plausible, Plaintiff HRSA has  
also failed to show any documentation to this Court that such trip time is possible.<sup>13</sup>

### **C. Changes To The Voter-Approved Bond Measure Must Be Approved By The Voters**

Because bond funds may only be used for the purposes agreed to by the voters, any  
changes to a voter-approved bond measure must be approved by the voters. It is well

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<sup>13</sup> Defendant sought information on this point by way of the discovery process.  
Plaintiffs responded with objections.

1 settled that

2 proceeds of a bond issue may be expended *only for the purpose*  
3 *authorized by the voters in approving issue of the bonds.* Whether the  
4 limitation be deemed to be contractual or of a status analogous to such  
5 relation or a restriction implied by the requirement of popular approval of  
6 the bonds, it does restrict the power of the public body in the  
7 expenditure of the bond issue proceeds, and hence in the nature of the  
8 project to be completed and paid for. *The statutes and ordinances*  
9 *under which the public body acts in submitting the bond issue proposal*  
10 *to the voters must be considered with the ballot proposition in*  
11 *determining the extent of this restriction.*

12 (*Mills v. San Francisco Bay Area Rapid Transit Dist.* (1968) 261 Cal.App.2d 666, 668  
13 (emphasis added).)

14 The Attorney General has also noted that “[t]he Constitution places a voter approval  
15 requirement upon the creation of debt at the state level”<sup>14</sup>, and recognized that “passage of  
16 the Bond Act constitutes the full ‘*approval by the voters* of a financial plan providing the  
17 necessary funding for the construction of a high-speed network,’ which will permit the HSRA  
18 to undertake full-scale implementation of the rail project.” (92 Ops.Cal.Atty.Gen. 35 (2009),  
19 p.7, available at <http://oag.ca.gov/system/files/opinions/pdfs/07-1002.pdf> (last accessed  
20 Aug. 12, 2013) (emphasis added).)

21 Unlike the bond resolution in the *Mills* case, where the resolution contained only a  
22 “statement of the general object and purpose of incurring such indebtedness” and it was  
23 “completely apparent that neither the ballot proposition nor the notice of election specified  
24 the location of any station,” (*Mills v. San Francisco Bay Area Rapid Transit Dist.*, *supra*, 261  
25 Cal.App.2d at p. 669), Proposition 1A was incredibly specific. Given the details accounted  
26 for, the bonds in this case cannot be issued.

27 As in *O’Farrell v. County of Sonoma* (1922) 189 Cal. 343, where a board of  
28 supervisors adopted a resolution which quite specifically provided for construction of a  
four-mile road, the details of Proposition 1A’s requirements “were stated so precisely as to

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<sup>14</sup> (78 Ops. Cal. Atty. Gen. 238, 1995 WL 447990, \*6 n.7 (1995).)

1 be considered obligatory”<sup>15</sup> and therefore, like the defendant board in *O’Farrell*, who was  
2 prohibited from altering the road design, Plaintiffs should not be allowed to have validation  
3 of the bonds at issue unless those bonds will be used to create the high-speed rail system  
4 that the voters approved.

5 In *O’Farrell*, the court found that when contemplating the bond issue in that case, the  
6 defendant board of supervisors “had the statutory right to make its order just as broad, and  
7 just as narrow, and just as specific as it was willing to be bound by, so long as the  
8 provisions of the statute were complied with.” (*O’Farrell v. County of Sonoma, supra*, 189  
9 Cal. at p. 347.) The board of supervisors in *O’Farrell* “could have asked generally for the  
10 consent of the electors to issue bonds . . . for constructing roads . . . , but it did not do so; on  
11 the contrary, it specified road by road, name by name, and length by length, of each piece  
12 of road that was to be constructed.” *Ibid*. The same logic applies in the instant case.

13 Although the Legislature, unlike the local agency in *O’Farrell*, must “distinctly  
14 specif[y]” its proposed works, it could have made the provisions of AB 3034 as narrow or as  
15 broad as it wanted before presenting Proposition 1A to the voters. (Compare Cal. Const.,  
16 art. XVI, § 1 with Cal. Const., art. XVI, § 18). Instead, the Legislature in its “contract” with  
17 the voters decided to make the terms of Proposition 1A very specific. So specific that, as it  
18 stands, Plaintiffs are not able to hold up their end of the “contract.” Ergo, the court should  
19 therefore deny validation of the bonds at issue.

20 As in *O’Farrell* where the court noted that

21 After the contract had been made, it could not be altered by one of the  
22 parties, only, but by all of the parties thereto. When by its order, duly  
23 accepted by the vote of the electors, the length of the road had been  
24 specifically defined, its terminals specifically located, and the cost of the  
25 whole established, these elements became a part of the contract. As to  
26 them the board, acting alone, could not redivide the contract. Neither  
27 could it directly expend the moneys on only a portion of the road. What  
28 it could not do directly it could not do indirectly. Such fact is of the  
utmost importance to the interested parties. It is the only hold the  
taxpayers have for specifically enforcing the contract as made by them.

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<sup>15</sup> (*O’Farrell v. County of Sonoma, supra*, 189 Cal. at p. 348.)

1 (*O'Farrell v. County of Sonoma, supra*, 189 Cal. at p. 349), the same applies here. Justice  
2 demands that validation of the bonds be denied because to allow otherwise would be  
3 tantamount to allowing the unilateral change of the "contract" between the electorate and  
4 those charged with carrying out the "contract" provisions, something that is prohibited by  
5 well-settled principles of contract law.

6  
7 **II. THE VOTERS WERE PROMISED OVERSIGHT OF THE HIGH-SPEED RAIL**  
8 **SYSTEM, AND PLAINTIFFS HAVE FAILED TO COMPLY WITH THE**  
9 **RECOMMENDATIONS MADE BY THOSE CHARGED WITH PROVIDING THAT**  
10 **OVERSIGHT.**

11 The Proposition 1A ballot summary promised voters that the measure "[r]equires that  
12 use of all bond funds is subject to independent audits." (Supplemental Voter Information  
13 Guide, Gen. Elec. (Nov. 4, 2008), Official Title and Summary, p. 4.) It also told voters that

14 *The measure requires accountability and oversight of the authority's use*  
15 *of bond funds authorized by this measure for a high-speed train system.*  
16 *Specifically, the bond funds must be appropriated by the Legislature,*  
17 *and the State Auditor must periodically audit the use of the bond funds.*  
18 *. . . funding plans must also be reviewed by a committee whose*  
19 *members include financial experts and high-speed train experts.*

20 (*Id.* at p. 5 (Analysis by the Legislative Analyst).) As will be shown below, those charged  
21 with providing oversight still have a number of concerns that the Authority has failed to  
22 address. Validation of the bond should be denied because these concerns have not been  
23 taken seriously by Plaintiffs. To do otherwise would turn the so-called "oversight" into a  
24 meaningless subterfuge of rubber stamping.

25 **A. The Legislative Analyst's Office Recommends Against Approving High-**  
26 **Speed Rail Funding.**

27 One of the entities charged with oversight of the high-speed rail project is the  
28 Legislative Analyst's Office (LAO). But, the LAO has determined that the high-speed rail  
project should receive no further funding unless "a series of steps to increase the chance of  
the project being successfully completed" is undertaken. (Cal. Legislative Analyst's Office,  
The 2012-13 Budget: Funding Requests for High-Speed Rail (Apr. 17, 2012), p. 1, *available*

1 at <http://www.lao.ca.gov/analysis/2012/transportation/high-speed-rail-041712.pdf> (last  
2 accessed July 31, 2013) (emphasis added) (Ex. C to Def. HJTA's RJN).)

3 After Plaintiff HSRA released its most recent business plan in April 2012, the LAO  
4 found that

5 HSRA has not provided sufficient detail and justification to the  
6 Legislature regarding its plan to build a high-speed train system.  
7 Specifically, funding for the project remains highly speculative and  
8 important details have not been sorted out. **We recommend the  
9 Legislature not approve the Governor's various budget proposals  
10 to provide additional funding for the project.** However, we  
11 recommend that some minimal funding be provided to continue  
12 planning efforts that are currently underway. Alternatively, we recognize  
13 that the Legislature may choose to go forward with the project at this  
14 time. If so, we recommend the Legislature take a series of steps to  
15 increase the chance of the project being successfully completed.

16 (*ibid.*) No such steps have been undertaken. In fact, the LAO found that “the HSRA has not  
17 provided sufficient detail and justification to the Legislature regarding its plan to build a  
18 high-speed rail system.” (*Id.* at p. 7.) “[M]ost of the funding for the project remains highly  
19 speculative, including the possible use of cap-and-trade revenues; and [] important details  
20 regarding the very recent, significant changes in the scope and delivery of the project have  
21 not been sorted out.” *Id.* If Plaintiffs cannot even put a proper funding plan in place, then the  
22 bonds certainly should not be validated by this court to result in a waste of funds.

23 These concerns are shared by the federal government as well.

24 **B. Federal Officials Are Concerned That Plaintiffs Have Not Identified Any  
25 Matching Funds as Required by Proposition 1A**

26 Proposition 1A requires that

27 [t]he authority shall pursue and obtain other private and public funds,  
28 including, but not limited to, federal funds, funds from revenue bonds,  
and local funds, to augment the proceeds of this chapter.

(Cal. Str. & Hwy. Code § 2704.07.)

29 However, as noted by Jeff Denham, Chairman of the U.S. House of Representatives  
30 Subcommittee on Railroads, Pipelines, and Hazardous Materials at a recent hearing on  
31 oversight of the California high-speed rail project, “While the costs will likely continue to

1 fluctuate, the project has not established any funding sources beyond the \$3.8 billion in  
2 federal tax dollars and the Proposition 1A money.” (Hearing on “Oversight of California High  
3 Speed Rail” (May 27, 2013, Madera, CA), Opening Statement of Chairman Jeff Denham,  
4 *available at* <http://transportation.house.gov/hearing/oversight-california-high-speed-rail>) (last  
5 accessed July 25, 2013) (Exhibit F to Defendant Howard Jarvis Taxpayers Association  
6 (HJTA)’s Request for Judicial Notice (“RJN”)).) Denham further noted that:

7           Of the \$68.4 billion cost, the Authority assumes \$55 billion will come  
8           from public funds, of which \$42 billion will be federal taxpayer dollars.

9           Therefore, the Authority expects an average of more than \$2.5 billion a  
10           year from the federal government to complete this project. This annual  
11           amount is more than Amtrak’s annual appropriations for its entire  
12           system, nationwide.

13           Both the GAO’s recent study of the project and the Peer Review  
14           Group’s review of the 2012 Business Plan have expressed concerns  
15           with the uncertainty of such future funding given the current budgetary  
16           climate.

17           Even the State’s back-up funding plan, to use the cap-and-trade  
18           program, has been recognized as having its own set of challenges,  
19           leading GAO to conclude the funding is uncertain.

20           Furthermore, in 2008, we the voters of California were promised private  
21           sector investment in the project. Now, in 2012, with the project nearly  
22           doubled in cost, there is no private money at the table.

23           Instead the 2012 Business Plan assumes \$13 billion in private sector  
24           investment, but not until 2022 when the initial operating segment is  
25           complete. The plan assumes once the IOS is complete, it will turn a  
26           profit in year one, and so much so that the Authority will be able to sell  
27           an operating concession to raise private funds.

28           (*Ibid.*)

          In addition, Majority Staff for the Subcommittee on Railroads, Pipelines, and  
29           Dangerous Materials found that “even if the CHSRA’s cost estimates are precise and set in  
30           stone, its funding sources are not. . . . of the \$55 billion in public funds for the projects, \$42  
31           billion is expected to come from the federal government, of which CHSRA only has \$3.5  
32           billion.” (Summary of Subject Matter, *supra*, n.1, at p. 3.) “[U]ncertainties about back-up

1 funding create further risks for the project going forward. [¶] Moreover, there is no private-  
2 sector funding committed to the project. . . . Given the questions and uncertainties  
3 regarding the costs of the project, as a whole, it is unclear whether the private sector  
4 funding source will ever be realized.” (*Id.* at p. 4.)

5 The Congressional Government Accountability Office (GAO) agrees with Denham  
6 and the Subcommittee on Railroads, Pipelines, and Hazardous Materials Majority Staff as  
7 well.

8 In its March 2013 report, the GAO noted:

9 The project’s funding, which relies on both public and private sources,  
10 faces uncertainty, especially in a tight federal and state budget  
11 environment. Obtaining \$38.7 billion in federal funding over the  
12 construction period is one of the biggest challenges to completing this  
13 project. In the latter stages, the Authority will also rely on \$13.1 billion in  
14 private-sector financing, but will require more reliable operating cost  
estimates and revenue forecasts to determine whether, or the extent to  
which, the system will be profitable. The Authority’s plan recognizes the  
uncertainty of the current funding environment and is building the  
project in phases. The Authority has also identified an alternative  
funding source. However, that funding source is also uncertain.

15 (GAO, CALIFORNIA HIGH-SPEED PASSENGER RAIL: Project Estimates Could Be  
16 Improved to Better Inform Future Decisions (Mar. 2013) – “What GAO Found”, *available at*  
17 <http://www.gao.gov/assets/660/653401.pdf> (last accessed Aug. 1, 2013) (Ex. H to Def.  
18 HJTA’s RJN.) Thus, Plaintiffs have failed to comply with Streets and Highways Code  
19 section 2704.07 and validation of the bonds should be denied on that basis.

20  
21 **C. The Statutorily-Mandated Peer Review Group Also Begg for Caution  
with Regard to the High-speed Rail Project.**

22 California Public Utilities Code section 185035 requires the Authority to establish an  
23 independent peer review group “for the purpose of reviewing the planning, engineering,  
24 financing, and other elements of the authority’s plans and issuing an analysis of  
25 appropriateness and accuracy of the authority’s assumptions and an analysis of the viability  
26 of the authority’s financing plan, including the funding plan for each corridor required

1 pursuant to subdivision (b) of Section 2704.08 of the Streets and Highways Code.” (Cal.  
2 Pub. Util. Code § 185035.)

3 The peer review group has called for caution with regard to the high-speed rail  
4 project given that it has no concrete sources for the funding required and might need to rely  
5 on a tax to raise funds. The peer review group noted:

6 As of today, the project can count on around \$3 billion in Federal  
7 American Recovery and Reinvestment Act of 2009 (ARRA) grant  
8 funding and \$9 billion in State bonds. Although President Obama has  
9 announced a program for future Federal funding for high-speed rail of  
10 up to \$50 billion, Congress has yet to approve such a program and  
11 prospects for passage in the near term are not clear. Even if California  
12 received this entire amount, the total cost of the project could not be  
13 covered. *As a consequence, funding for the project beyond the Central  
14 Valley segment and the work between San Jose and San Francisco and  
15 in the Los Angeles area is not available from any existing source.*

16 Governor Brown has argued that any shortfall in Federal funding  
17 can be covered from the State’s carbon trading program, which would in  
18 total generate enough funding to pay for at least a major part of the  
19 project if allocated for this purpose. *The 2000 Business Plan for the  
20 Authority suggested an 0.25% sales tax to pay for the entire project. By  
21 rough calculation, a fuel tax of around 25 cents/gallon would also raise  
22 adequate funding. We do not advocate or oppose any of these  
23 measures. The point is that, when the Central Valley segment is  
24 complete and the Authority turns to construction from Bakersfield to the  
25 Palmdale, one or more of these sources (or others) will need to be  
26 developed.*

27 (Subcommittee on Railroads, Pipelines, and Hazardous Materials Field Hearing in Madera,  
28 CA, “Oversight of California High Speed Rail” (May 28, 2013), Statement of Louis S.  
29 Thompson, Chairman of the California High-Speed Rail Peer Review Group, pg. 2

(emphasis added), *available at*

30 [http://transportation.house.gov/sites/republicans.transportation.house.gov/files/documents/2](http://transportation.house.gov/sites/republicans.transportation.house.gov/files/documents/2013-05-28-Thompson.pdf)  
31 [013-05-28-Thompson.pdf](http://transportation.house.gov/sites/republicans.transportation.house.gov/files/documents/2013-05-28-Thompson.pdf), (last accessed Aug. 1, 2013).)

32 The creation of or raising of taxes in order to fund the high-speed rail system is an

1 act that is in direct contrast to what the voters were promised.<sup>16</sup> If the system cannot obtain  
2 the proper funding, the bonds should not be validated.

3 **D. The Authority Has Failed to Fully Implement the State Auditor's**  
4 **Recommendations.**

5 Streets and Highways Code section 2704.04(e) requires that "[t]he State Auditor  
6 shall perform periodic audits of the authority's use of proceeds of bonds authorized  
7 pursuant to this chapter for consistency with the requirements of this chapter." (Cal. Str. &  
8 Hwy. Code § 2704.04(e).)

9 The State Auditor found that

10 In the nearly two years since the issuance of the first report, significant  
11 concerns about funding and contract management persist. Specifically,  
12 in a follow-up report, issued January 2012, the state auditor found that  
13 the program's overall financial situation has become increasingly risky,  
14 in part because the Authority had not provided viable funding  
alternatives in the event that its planned funding does not materialize.  
The Authority's 2012 draft business plan more than doubled its cost  
estimates for phase one of the program to between \$98.1 billion and  
\$117.6 billion, of which only approximately \$12.5 billion has been  
secured.

15 (Cal. State Auditor, Recommendations for Legislative Consideration From Audits Issued  
16 During 2011 and 2012 (Dec. 2012), p. 51 (Ex. B to Def. HJTA's RJN), *available at*  
17 <http://www.bsa.ca.gov/pdfs/reports/2012-701.pdf> (last accessed Aug. 12, 2013).)

18 The State Auditor has also informed the Authority that "it risks delays or an  
19 incomplete system because of inadequate planning, weak oversight, and lax contract

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23 <sup>16</sup> In the Proposition 1A Voter Information Guide, then-Vice Chair of Plaintiff HSRA,  
24 Fran Florez, promised voters "an 800-mile High-Speed Train network that will relieve 70  
25 million passenger trips a year that now clog California's highways and airports—WITHOUT  
26 RAISING TAXES." (Supplemental Voter Information Guide, "Argument In Favor Of  
27 Proposition 1A," p. 6.; see also Streets and Highways Code section 2704.08(c)(2)(J): "The  
28 planned passenger service by the authority in the corridor usable segment thereof will not  
require a local, state, or federal operating subsidy.")

1 management.”<sup>17</sup> Yet, as of January 2013, the State Auditor’s recommendations to “develop  
2 and publish alternative funding scenarios that reflect the possibility of reduced or delayed  
3 funding from the planned sources” that “detail the implications of variations in the level or  
4 timing of funding on the program and its schedule” in order to “ensure that it can respond  
5 adequately to funding levels that may vary from its business plan” have remained  
6 unimplemented in their entirety for at least two years.<sup>18</sup> At a minimum, the Authority should  
7 completely implement the State Auditor’s recommendations before the validation of bonds  
8 is even *considered* by this court.

9 Proposition 1A “required the Authority to identify sources of funds that were more  
10 than merely theoretically possible, but instead were reasonably expected to be actually  
11 available when needed.” (*Tos v. California High-Speed Rail Authority* (Super. Ct.  
12 Sacramento County, 2011, No. 34-2011-00113919), Ruling on Submitted Matter (Aug. 16,  
13 2013) at p. 7). “[T]he identification of funds must be based on a reasonable present  
14 expectation of receipt on a projected date, and not merely a hope or possibility that such  
15 funds may become available.” (*Id.* at pp. 7-8). All of those charged with oversight of the  
16 high-speed rail system agree with the *Tos* court: actual, concrete sources of funding must  
17 be identified. As long as the oversight promised to the voters in exchange for their approval  
18 of Proposition 1A is being denied because Plaintiffs simply refuse to accept and adhere to  
19 the recommendations of those charged with that oversight, validation of the bonds should  
20 be denied.

21 ///

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23  
24 <sup>17</sup> (Cal. State Auditor, Recommendations Not Fully Implemented After One Year, p.  
25 16 – Table 2: Recommendations More than One Year Old That Are Still Not Fully  
26 Implemented (Audits Issued Between November 2006 and October 2011) (Ex. A to Def.  
HJTA’s RJN).)

26 <sup>18</sup> (*Ibid.*)

1 **III. PRINCIPLES OF STATUTORY CONSTRUCTION REQUIRE THAT THE BONDS**  
2 **NOT BE VALIDATED.**

3 The rules of statutory construction require that this court does not grant Plaintiffs'  
4 request to validate the bonds at issue because of a failure to comply with the requirements  
5 of the governing statutes found in the Streets and Highways Code. There is one exception  
6 to this, but since the shortcomings that Plaintiffs face fall under several sections of the  
7 Streets and Highways Code, and not within the one exception the Legislature granted, the  
8 canons of *expressio unius est exclusio alterius* and the "plain meaning rule" require that  
9 bonds not be validated.

10 **A. The Canons of *Expressio Unius Est Exclusio Alterius* and the Plain**  
11 **Meaning Rule Require That Validation of Bonds Be Denied.**

12 Under the canon of *expressio unius est exclusio alterius*, "where exceptions to a  
13 general rule are specified by statute, other exceptions are not to be presumed unless a  
14 contrary legislative intent can be discerned." (*Mountain Lion Foundation v. Fish & Game*  
15 *Com.* (1997) 16 Cal.4th 105, 116.)<sup>19</sup> In addition, the "plain meaning rule" requires that "[a]  
16 statute should always be so construed as to give a sensible and intelligent meaning to every  
17 part so as to make every provision thereof valid and effective." (*In re Haines* (1925) 195 Cal.  
18 605, 621.)

19 In the entirety of AB 3034, there is but one section where the validity of bonds issued  
20 under the bill's provisions is mentioned. Found in California Streets and Highways Code  
21 section 2704.08, subdivision (i) states:

22 (i) No failure to comply with this section shall affect the validity of  
the bonds issued under this chapter.

23 (Cal. Str. & Hwy. Code § 2704.08(i).) By explicitly stating that the failure to comply with  
24

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25 <sup>19</sup> (See also 2A Sutherland, *Statutory Construction* (7th ed. 2009) § 30:22, pp.  
26 152-154) ("Where the legislature has made specific exemptions, the courts must presume  
no others were intended."))

1 section 2704.08, the natural implication is that failure to comply with any of the other  
2 statutes enacted under section 9 of AB 3034 *should* definitely affect the validity of the bonds  
3 issued under the chapter. Therefore, contrary to Plaintiffs' assertions that validity of the  
4 bonds and the use of the bonds' proceeds are unrelated, the Legislature appears to have  
5 deemed them related.<sup>20 21</sup>

6 Streets & Highways Code section 2704.08 deals with how the proceeds of the bond  
7 funds are to be used. The remaining provisions of that chapter deal with legislative intent,  
8 availability of funds, the characteristics of the high-speed train system, refunding of bonds,  
9 and more.

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11 <sup>20</sup> (See, e.g., Plaintiffs' Complaint for Validation at 6:5-9 ("Any challenges (included  
12 pending challenges) based on uses of proceeds of the Bonds, Notes, or Refunding Bonds  
13 will not affect the determination of validity of the Bonds, Notes, and any Refunding Bonds to  
14 be issues and sold, or the determination of validity of any contracts related to the issuance  
15 and sale of the Bonds, Notes, or Refunding Bonds."); see also Plaintiffs' Opening Trial Brief  
16 in Support of Validation Judgment at 1:12-17 ("Although the *bonds and resolutions at issue*  
17 *are unquestionably valid*, Plaintiffs anticipate that Defendants will argue that bond  
proceeds will be spent on a project that is allegedly different from the project specified in  
Proposition 1A on the November 4, 2008 General Election Ballot. Leaving the merits of  
these claims aside, Plaintiffs do not seek to validate the use of the bond proceeds, only the  
bonds themselves. Any challenges to how the bond proceeds can be spent may be brought  
later and have no impact on this validation action."))

18 <sup>21</sup> Also, as noted in *California Commerce Casino, Inc. v. Schwarzenegger* (2007) 146  
19 Cal.App.4th 1406, 1410, where the plaintiffs challenged the constitutionality of an assembly  
20 bill where the Legislature ratified amended gaming compacts between five Native American  
21 tribes and the State of California, matters "which could have been adjudicated in a validation  
22 action, such matters—including constitutional challenges—must be raised within the  
23 statutory limitations period in section 860 et seq. or they are waived." (*California Commerce*  
24 *Casino, Inc. v. Schwarzenegger* (2007) 146 Cal.App.4th 1406, 1432 (internal quotation  
25 omitted).) "[A] validation action implements important policy considerations. A central theme  
26 in the validating procedures is speedy determination of the validity of the public agency's  
27 action. . . . A key objective of a validation action is to limit the extent to which delay due to  
28 litigation may impair a public agency's ability to operate financially." (*Id.* at 1420-1421  
(internal citation and quotation marks omitted).) And, given that "[a] validation action also  
serves to fulfill the important objective of facilitat[ing] a public agency's financial transactions  
with third parties by quickly affirming their legality[, because] [t]he fact that litigation may be  
pending or forthcoming drastically affects the marketability of public bonds[.]" (*Id.* at p. 1421  
(internal citation and quotation marks omitted).) It therefore follows that claims with regard  
to the expenditure of bond proceeds should be brought during the time period found within  
the validation statutes in order to be timely.

1 Looking carefully at the choice of words used by the Legislature in 2704.08(i), it is  
2 clear that the Legislature intended for a failure to comply with other sections of the chapter  
3 that section 2704.08 is a part of to affect the validity of the bonds at issue.

4 Again, section 2704.08, subdivision (i) states:

5 (i) No failure to comply with *this section* shall affect the validity of  
6 the bonds issued under this chapter.

7 (Cal. Str. & Hwy. Code § 2704.08(i) (emphasis added).) “It is evident [] that the Legislature  
8 knows how to create such an exception when one is intended.” (*Mountain Lion Foundation*  
9 *v. Fish & Game Com.*, *supra*, 16 Cal.4th at p. 116.) The Legislature could have worded this  
10 exemption much differently had it intended to extend the protections to bond validity given a  
11 failure to comply with more than just section 2704.08. For example, section 2704.08(i) could  
12 have read:

13 “No failure to comply with this chapter shall affect the validity of the  
14 bonds issued under this chapter”,

15 or

16 “No failure to comply with this section or any of the other provisions of  
17 this bill shall affect the validity of the bonds issued under this chapter”,

18 but it doesn’t. Instead, the Legislature *deliberately* chose the wording that it did. Thus, in  
19 order for a failure to comply with AB 3034’s provision to *not* effect the validity of the bonds  
20 at issue, that failure to comply must be with one or more of section 2704.08’s provisions.  
21 Unfortunately for Plaintiffs, however, as shown above in this brief, the failures to comply  
22 with AB 3034 are plentiful and encompass more than section 2704.08’s requirements.

23 In addition, by deliberately using the *past* tense of “issue” in subsection (i) as  
24 opposed to the present or future tense in subdivision (i) (“No failure to comply with this  
25 section shall affect the validity of the bonds issued under this chapter”), it follows that  
26 bonds which have not yet been issued, such as the ones Plaintiffs seek to validate,  
27 *would* be affected not only by a failure to comply with the remainder of the applicable  
28

1 sections of the Streets and Highways Code, but also by a failure to comply with section  
2 2704.08's requirements, and only those bonds which had *already been issued* would remain  
3 unaffected.

4 Plaintiffs may argue that *expressio unius est exclusio alterius* should not apply  
5 because the rule "is inapplicable where its operation would contradict a discernible and  
6 contrary legislative intent." (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 195 (citations  
7 omitted). But the intent of the legislature was made abundantly clear by their stated  
8 exemption and word choice in section 2704.08(i), their failure to include any other  
9 exemptions, and the level of specificity used in Proposition 1A and the statutes it enacted.<sup>22</sup>

10 Since the Legislature and the voters required that the bond funds are "to be used for  
11 carrying out the purposes of this chapter,"<sup>23</sup> and those purposes have not and cannot be  
12 met, the validation of those bonds should be denied.

13 ///

14 ///

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17  
18 <sup>22</sup> It should also be noted that the legislature also fully intended for the high-speed  
19 rail system to be completed no later than the end of the year 2020. Section 8(f) of California  
20 Assembly Bill 3034 provides that "[i]t is the intent of the Legislature that the entire  
21 high-speed train system shall be constructed as quickly as possible in order to maximize  
22 ridership and the mobility of Californians, and *that it be completed no later than 2020[.]*" AB  
23 3034, § 8(f) (emphasis added). As recently as May 27, 2013, it was clear that this would not  
24 happen. Jeff Durham, Chairman of the United States House of Representatives  
25 Subcommittee on Railroads, Pipelines, and Hazardous Materials stated that "at the time of  
26 Proposition 1A, the project was estimated to cost \$33 billion and be completed by 2020.  
27 Since then the project has undergone significant fluctuations in cost and completion date to  
28 a high in 2011 of \$98 billion with a completion date of 2033, and now back down to \$68.4  
billion with a completion date of 2028." Subcommittee on Railroads, Pipelines, and  
Hazardous Materials Field Hearing in Madera, CA, "Oversight of California High Speed Rail"  
(May 28, 2013, Madera, CA), Opening Statement of Chairman Jeff Denham, *available at*  
<http://transportation.house.gov/hearing/oversight-california-high-speed-rail>) (last accessed  
July 25, 2013) (Ex. F to Def.'s Req. for Judicial Notice.)

<sup>23</sup> (Cal. Str. & Hwy. Code § 2704.10(a).)

1  
2 **CONCLUSION**

3 For all of the foregoing reasons, Defendant Howard Jarvis Taxpayers Association  
4 respectfully requests that the court decline to validate the bonds at issue, dismiss the  
5 complaint, in its entirety, with prejudice, and enter judgment against Plaintiffs and in favor of  
6 Defendant and Taxpayers.

7  
8 Dated: August 21, 2013

9  
10 Respectfully submitted,

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15 

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1 **PROOF OF SERVICE**

2 SACRAMENTO COUNTY SUPERIOR COURT

3 I, Cindy Perez, declare:

4 I am employed in the County of Sacramento, California. I am over the age of 18 years,  
5 and not a party to the within action. My business address is: 921 11<sup>th</sup> Street, Suite 1201,  
6 Sacramento, California 95814. On August 21, 2013 I served the foregoing document described  
7 as: **DEFENDANT HOWARD JARVIS TAXPAYERS ASSOCIATION'S FIRST SET OF**  
8 **SPECIAL INTERROGATORIES TO PLAINTIFF HIGH-SPEED RAIL AUTHORITY** on  
9 the interested parties below, using the following means:

10  
11 **SEE ATTACHED SERVICE LIST**

12  
13            **BY UNITED STATES MAIL** I enclosed the document in sealed envelopes or  
14 packages addressed to the respective addresses of the parties stated above and  
15 placed the envelopes for collection and mailing, following our ordinary business  
16 practices. I am readily familiar with the firm's practice of collection and  
17 processing correspondence for mailing. On the same day that correspondence is  
18 placed for collection and mailing, it is deposited in the ordinary course of business  
19 with the United States Postal Service, in a sealed envelope with postage fully  
20 prepaid at Sacramento, California.

18 X  
19 **BY OVERNIGHT MAIL** I enclosed the document in sealed Federal Express  
20 envelopes addressed to the respective addresses of the parties stated above and  
21 placed the envelopes at a Federal Express drop off location.

20 X  
21 **(STATE)** I declare under penalty of perjury under the laws of the State of  
22 California that the above is true and correct.

23 Executed on August 21, 2013, at Sacramento, California.

24  
25 Cindy Perez  
26 Print Name of Person Executing Proof

24  
25   
26 Signature

1  
2 **SERVICE LIST**  
3

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