Case No. S272563

In the Supreme Court of the State of California

JOHN TOS, ET AL.,
Plaintiffs and Appellants,

v.

STATE OF CALIFORNIA, ET AL.,
Defendants and Respondents.

Third Appellate District, Case No. C089466
Sacramento County Superior Court, Case No. 34-2016-00204740
The Honorable Richard K. Sueyoshi, Judge

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

In 2008, the Legislature submitted for voter approval Proposition 1A, which created the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (the "Bond Act"). The voters passed the measure, which authorized almost $10 billion in bonds to fund the initial planning and construction of the State's high-speed rail system. This massive, transformative infrastructure project necessarily must be planned and built in parts over the long term, with extensive legislative and executive oversight of the use of bond proceeds.

The Bond Act provides that, before committing bond proceeds for construction, the California High-Speed Rail Authority must submit to the Director of Finance a report by an independent consultant indicating, among other things, that each bond-funded segment, if completed, would be "suitable and ready for high-speed train operation." (Sts. & Hy. Code, § 2704.08, subd. (d)(2)(B).)[1] Assembly Bill 1889, passed by the Legislature in 2016, clarified the meaning of that previously undefined phrase to include projects that would allow high-speed train operation "after additional planned investments are made," provided that "passenger train service providers will benefit from the project in the near-term." (*Id.*, § 2704.78.)

Appellants assert that the "suitable and ready" provision bars the State from making any stepwise progress in building the

[1] All statutory citations are to the Streets and Highways Code unless otherwise indicated.

system through construction that will not immediately and on its own accommodate high-speed rail. Based on this strained reading, they further contend that AB 1889 impliedly repealed the Bond Act in part, and thereby violated article XVI, section 1 of the California Constitution, by effectively changing the "single object" of the Bond Act and diverting bond funds for an alien purpose. The trial court, and the Court of Appeal, in a unanimous, published opinion, disagreed.

While appellants do not expressly state the asserted grounds for review, they appear to contend that this Court should intervene to settle an important question of law and to secure uniformity of decision. (See Cal. Rules of Court, rule 8.500(b)(1); see Pet. 11-15) As discussed in more detail below, however, the Court of Appeal's decision is clear, considered, and correct.

Proposition 1A was enacted "to initiate the construction of a high-speed train system" in California. (Sts. & Hy. Code, § 2704, subd. (a).) As the Court of Appeal correctly held, based on both the text of the Bond Act and the ballot materials for Proposition 1A, that is the "single object or work" approved by the voters. (Cal. Const., art. XVI, § 1.) Against that standard, AB 1889 is fully consistent with the Bond Act and poses no constitutional problems.

The Court of Appeal also correctly rejected appellants' contentions that the "suitable and ready" provision was central to voter approval of Proposition 1A, and that AB 1889 abrogated a critical restraint on the use of bond proceeds. The Voter Information Guide's summary and analysis of Proposition 1A for

the voters' review did not mention the "suitable and ready" provision, let alone endorse appellants' interpretation of it. And as the Court of Appeal recognized, the Legislature's clarification of the provision through AB 1889 was consistent with Proposition 1A's purpose, and did no violence to the mandatory, multi-step planning and review process approved by the voters.

The Court of Appeal's construction of the Bond Act's "single object" was straightforward, and its analysis fits well within this Court's article XVI precedents, which recognize that where, as here, the object of a bond act is broadly described, courts will not read in additional restrictions not contemplated by the voters. The petition for review should be denied.

BACKGROUND

I. THE BOND ACT'S AUTHORIZATION OF CONSTRUCTION OF THE HIGH-SPEED RAIL SYSTEM

The Bond Act authorizes construction of a high-speed rail system in California, one of the largest public works projects in the State's history, and the issuance of $9.95 billion in general obligation bonds to partially fund the planning and initial construction on the system. (Stats. 2008, ch. 267 [Assem. Bill No. 3034], § 9, codified at § 2704 et seq.)

The express purpose of the Bond Act is to "*initiate the construction of a high-speed train system* that connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim, and links the state's major population centers . . . ." (§ 2704.04, subd. (a), italics added.) The Bond Act authorizes funding for "(A) planning and engineering for the high-speed

train system and (B) capital costs." (§ 2704.04, subd. (b)(1).)[2] It allocates $950 million in bond proceeds to be administered by the California Transportation Commission. These funds may be used to fund capital improvements to intercity, commuter, and urban rail systems that provide direct connectivity to the high-speed rail system, are part of the high-speed rail system, or will provide capacity enhancements and safety improvements. (§ 2704.095; see AB 1889, § 1, subds. (b) & (d).) The High-Speed Authority is responsible for administering the remaining $9 billion in bond proceeds. (§§ 2704.04, 2704.08.)

The Bond Act also sets out various design characteristics for the system, including, among other things, operating speeds (§ 2704.09, subd. (a)); travel times between various potential stations (§ 2704.09, subd. (b)); total number of stations (§ 2704.09, subd. (d)); system alignment requirements (§ 2704.09, subd. (g)); minimization of urban sprawl and impacts on the natural environment (§ 2704.09, subd. (i)); and preservation of wildlife corridors. (§ 2704.09, subd. (j).)

The High-Speed Rail Authority is responsible for planning, designing, building, and ultimately operating the State's high-speed rail system using Bond Act funds and other funding sources. (§§ 2704.01-2704.06; Pub. Util. Code, §§ 135030-

[2] Capital costs include those related to the acquisition of interests in real property and rights of way; acquisition and construction of tracks, structures, power systems and stations; acquisition of rolling stock and related equipment; costs of environmental impact mitigation; and related capital facilities and equipment. (§ 2704.04, subd. (c).)

135034.) The Bond Act imposes certain limits on the Authority's use of bond proceeds. For example, it generally limits bond funding to no more than 50 percent of the total cost of construction of a corridor or usable segment of the system. (§ 2704.08, subd. (a).) It limits the amount used for "environmental studies, planning, and preliminary engineering activities" to 10 percent of the total bond proceeds. (§ 2704.08, subd. (b).) No more than 2.5 percent of bond proceeds may be used for administrative purposes. (§ 2704.08, subd. (h).) And bond proceeds may not be used for "operating or maintenance costs of trains or facilities." (§ 2704.04, subd. (d).)

The Bond Act also provides for extensive legislative and executive oversight. Before the Authority may seek an *appropriation* of bond proceeds, it must submit to the Legislature, the Governor, and a peer review group a preliminary funding plan. (§ 2704.08, subd. (c); Pub. Util. Code, § 185035, subds. (a), (c).) Before the Authority may *spend* bond proceeds, it must submit a final funding plan to the Director of Finance, the Chairperson of the Joint Legislative Budget Committee, and the peer review group. (§ 2704.08, subd. (d)(1); Pub. Util. Code, § 185035, subds. (a), (c).)[3] If the Director of Finance finds that the project is likely to be successfully implemented as proposed in

[3] The Bond Act allows the Authority to spend 10 percent of the bond proceeds on certain activities, including administrative and preliminary planning activities, without submission of a funding plan. (§ 2704.08, subds. (g), (h).)

the final funding plan, the Authority may commit bond proceeds for construction or property acquisition. (§ 2704.08, subd. (d).)

The phrase "suitable and ready for high-speed train operation" appears twice in the Bond Act: first in section 2704.08, subdivision (c), which provides a list of eleven topics to be addressed in the Authority's preliminary funding plan (*id.*, subd. (c)(2)(H)), and then in section 2708.08, subdivision (d). Specifically, along with its final funding plan for a project, the Authority must provide the Director of Finance a consultant's report indicating, among other things, that the corridor or segment can be completed, and, if completed, "*the corridor or usable segment thereof would be suitable and ready for high-speed train operation.*" (*Id.*, subd. (d)(2)(B)), emphasis added.)

II. THE RELATED FEDERAL GRANTS

Under the Bond Act, the High-Speed Rail Authority was required to "procure and obtain" other funds, including federal funds. (§ 2704.07.) In 2009 and 2010, the Authority applied for and received $3.5 billion in federal grants earmarked for construction of a portion of the system in the Central Valley, to be matched by state funds. (Resp't Appx. 2:489-561, 3:568-657.)

III. THE SENATE BILL 1029 APPROPRIATION FOR HIGH-SPEED RAIL

In 2011, the Authority submitted a preliminary funding plan for construction of the Central Valley segment. (See App't Appx. 3:784[4]; *California High-Speed Rail Authority v. Superior Court*

[4] Citations to the appellate record are to either the Appellants' Appendix or the Respondents' Appendix, and are set (continued…)

(2014) 228 Cal.App.4th 676, 690-691 (*CHSRA*).) In response, the Legislature appropriated approximately $8 billion in bond proceeds for high-speed rail. (Stats. 2012, ch. 152 [Sen. Bill No. 1029].) This included approximately $2.6 billion for the Central Valley segment (*id.*, § 9.), thereby supplementing (and partially matching) the federal grant funds. SB 1029 also included approximately $819 million for connectivity projects to be administered by the California Transportation Commission. (SB 1029, §§ 1, 2; § 2704.095, subd. (a)(1), (2).) Finally, SB 1029 included an appropriation of $1.1 billion for early improvements in the "bookends," which are portions of the high-speed rail system in the Los Angeles area and on the San Francisco-San Jose Peninsula that will be shared with conventional passenger-rail service. (*Id.*, § 3).

IV. THE LEGISLATURE'S CLARIFICATION OF THE BOND ACT IN ASSEMBLY BILL 1889

Effective January 1, 2017, the Legislature enacted AB 1889, adding Streets and Highways Code section 2704.78. (Stats. 2016, ch. 744, § 2; see App't Appx. 3:881.) AB 1889 clarified the meaning of the previously undefined phrase "suitable and ready for high-speed train operation." (*Id.*, §§ 1, subds. (g), (k); 2, subd. (a).) It provides that, for projects for which appropriations were made in SB 1029, "suitable and ready for high-speed train operation" means that the "project . . . would enable high-speed

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(…continued)

out by volume and page number (e.g., App't Appx. 1:100 or Resp't Appx. 3:567).

trains to operate immediately or after additional planned investments are made on the corridor or useable segment thereof and passenger train service providers will benefit from the project in the near-term." (§ 2704.78.)

The Legislature's intent in enacting AB 1889 was to clarify that projects that are part of constructing California's high-speed rail system are not disallowed from using Bond Act funds because they might serve traditional rail in the interim period before high-speed rail is operational. AB 1889 allows eligible high-speed rail projects to "proceed to construction in the near-term to provide economic benefits, create jobs and advance safer, cleaner rail transportation," and to "enable passenger service providers to begin using the improvements . . . while additional work is completed to enable high-speed train service." (Stats. 2016, ch. 744, § 1, subds. (g), (h).) The Legislature also hoped to avert or mitigate subsequent litigation and possible further delay of the high-speed rail project, and, if needed, "to provide a court with additional understanding of the intent of the Legislature when appropriating Prop. 1A funds." (App't Appx. 4:901-903.)

STATEMENT OF THE CASE

I. THE SUIT CHALLENGING AB 1889 AND THE HIGH-SPEED RAIL AUTHORITY'S FINAL FUNDING PLANS

In late 2016, the High-Speed Rail Authority approved two final funding plans for capital improvements to be submitted to the Director of Finance on January 1, 2017 (the effective date of AB 1889). One was for construction on the Central Valley

segment that the State was already building in compliance with the terms of its federal grants.[5] The other was to fund electrification of the San Francisco-San Jose rail corridor, which will enable Caltrain to abandon its current diesel trains and operate quieter, cleaner, and faster trains in the short term (see App't Appx. 644); ultimately that corridor will be a blended part of the high-speed rail system in which both conventional and high-speed trains will share the electrical system, track, stations, and other facilities. (See § 2704.77.)

In December 2016, appellants filed this case as a civil action for declaratory and injunctive relief challenging the constitutionality of AB 1889, as well as attacking the High-Speed Rail Authority's Central Valley and San Francisco-San Jose Peninsula funding plans. (App't Appx. 1:14.)

On March 15, 2017, after filing an amended pleading, appellants sought a temporary restraining order and preliminary injunction to enjoin the Authority's use of bond proceeds on the Central Valley and Peninsula projects, contending that AB 1889 was unconstitutional on its face. (Resp't Appx. 1:0005-0009, 0010-0022.) The trial court refused to issue either a temporary restraining order or a preliminary injunction. (*Id.*, 1:130, 4:0976.)

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[5] Work in the Central Valley segment began in 2013 using federal grant monies and other non-bond funds. (See App't Appx. 1:261, ¶ 73; see *id.* 1:255, ¶¶ 38-39.) One of the federal grants, for $2.5 billion, was made pursuant to the American Recovery and Reinvestment Act of 2009 and had to be spent by September 30, 2017. (See Resp't Appx. 2:489.)

It recognized that article XVI, section 1 requires that proceeds from bonds be applied "only to the specific object" stated in the relevant bond act. (*Id.*, 4:0974.) It held, however, that the "'single object or work' specified in Prop 1A was primarily the general construction of a high-speed train system," and that AB 1889 does not deviate from this object because "[t]he stated goal remains the construction of a high-speed train system." (*Id.*, 4:0975.)

On March 15, 2017, the same day that appellants moved for a temporary restraining order and preliminary injunction, respondents demurred to the amended complaint. The trial court sustained the demurrer, with leave to amend, holding that appellants' challenge to the Authority's funding plans should have been asserted as writ claims, and that their cause of action for declaratory relief "based on the alleged facial unconstitutionality of [AB 1889], lacks a justiciable controversy unless it is also tethered to the challenged Funding Plans and the threatened illegal expenditure of public funds under those plans." (App't Appx. 1:232.) However, the funding plans were not final when the action was first filed, or even when the first amended complaint was filed. (*Ibid.*)[6] In sustaining the demurrer, the

[6] In March 2017, the Director of Finance approved the Authority's final funding plan for the Central Valley, where work had been underway since 2013 using non-bond funds. (See App't Appx. 1:261; see *id.*, 1:255.) As of May 2017, when the Second Amended Petition and Complaint was filed, the Director of Finance had not yet approved the second final funding plan. (See *id.*, 1:261.)

trial court held that "whether the construction project described in a funding plan will result in a usable segment that is 'suitable and ready for high-speed train operation' is at base only an educated estimation," and that "the phrase "suitable and ready for high-speed train operation' is only a metric" in the administrative process. (*Ibid*.)

Appellants filed a Second Amended Petition and Complaint in May 2017, adding writ claims in response to the trial court's ruling on the demurrer (App't Appx. 1:243), and later moved for judgment on the pleadings on their claim for a judicial declaration that AB 1889 is facially unconstitutional. (*Id*. 3:631.) On October 31, 2018, the trial court (which had assigned the case to a new judge) denied the motion.

The trial court held that the "central question" raised by appellants' constitutional challenge is "whether AB 1889 impliedly repealed Proposition 1A by making 'substantial changes in the scheme or design which induced voter approval.'" (App't Appx. 5:1221, quoting *Veterans of Foreign Wars v. State of California* (1974) 36 Cal.App.3d 688, 693-694 (*VFW*).) It answered that question in the negative, holding that AB 1889 "does not truncate the project . . . or divert funds to a tenuously connected separate project . . . or otherwise make a substantial change to the scheme or design which induced voter approval." (App't Appx. 5:1222.) In particular, "AB 1889 did not modify the high-speed rail project from '(1) pre-construction activities and construction of a high-speed rail system in California, and (2) capital improvements to passenger rail systems that expand

capacity, improve safety, or enable train riders to connect to the high speed rail system.'" (*Ibid*, quoting from the Official Voter Information Guide, App't Appx. 3:766.) The trial court also found no basis to conclude that the meaning and understanding of the "suitable and ready" provision offered by Appellants was the only possible one. (*Ibid*.)

Appellants conceded that their remaining claims challenging the Authority's funding plans necessarily assumed that AB 1889 is facially unconstitutional. (App't Appx. 5:1186, 1209.) To facilitate appellate review of that question, the parties agreed to a stipulated judgment. (*Ibid*.)

II. THE COURT OF APPEAL'S DECISION

The Court of Appeal affirmed in a unanimous published decision. The court started by acknowledging that, under article XVI, section 1, bond proceeds can be "applied only to the 'specific object' of the authorizing law." (Slip Op. 3.) It then went on to construe the "single object or work" of the Bond Act as "(1) the initial planning and construction of a high-speed train system under (2) a 'mandatory multistep process to ensure the financial viability of the project,' which we described in [*CHSRA*, *supra*], our prior opinion on the Bond Act, as a 'financial straitjacket.'" (Slip Op. 3, citation omitted.) Against that standard, the Court concluded that AB 1889 does not violate article XVI, section 1, because it "furthered the construction of the high-speed train system by investing in improvement of existing rail lines, which after additional investment would be shared with high-speed

rail," and the "multistep planning and review process in section 2704.08, subdivision (d), remained intact." (Slip Op. 3.)

Turning first to the "specific object" of the Bond Act, the Court of Appeal noted, as did the trial court on two separate occasions, that it is "*set forth broadly* in section 2704.04, subdivision (a), 'to initiate the construction of a high-speed train system,'" with the caveat in section 2704, subdivision (d), that bond proceeds "shall not be used for any operating or maintenance costs of trains or facilities." (Slip Op. 13, italics added.) "In sum, under section 2704.04, the 'specific object' of the Bond Act is to fund initial construction of a high-speed train system but not pay the cost of operating or maintaining trains or facilities." (*Ibid.*)

This broad, flexible construction of the Bond Act's "single object," the Court continued, was bolstered by the Official Voter Information Guide for Proposition 1A, which "similarly described the bond issue broadly" as providing bonds to "'establish high-speed train service,'" as well as the accompanying analysis by the Legislative Analyst, which informed the voters that "'this measure authorizes the state to sell $9.95 billion in general obligation bonds to fund (1) pre-construction activities and construction of a high-speed passenger train system in California . . . .'" (Slip Op. 15-16.) The Court further noted that, while the Legislative Analyst referred broadly to required "accountability and oversight of the authority's use of bond funds," "[t]his analysis does not enumerate or refer to the subjects specified in section 2704.08, subdivision (c) and (d), *let*

alone mention or allude to the phrase 'suitable and ready for high-speed train operation on which the Tos parties rely." (*Id*. at 17, italics added.) Based on the materials provided to the voters, the court concluded that "[t]he vote was not taken to endorse every detail of the construction and financial planning process." (*Id*. at 21.)

Consistent with the "voters' intent" (Slip Op. 6 fn. 3) to broadly approve bonds for the initiation of construction, the court noted that Supreme Court cases explicating article XVI, section 1 have held that the "specific object" of a bond act may be viewed as a "broad plan that embraces matters reasonably germane to the plan." (Slip Op. 13, citing *Metropolitan Water Dist. v. Marquardt* (1963) 59 Cal.2d 159 (*Marquardt*).) In this regard, it noted *Marquardt*'s holding that the question whether a bond act is for a "single object or work" is analogous to whether it embraces one "subject" under article IV, section 24, which "must be construed liberally so as to uphold legislation all parts of which are reasonably germane . . . ." (*Id*. at 13-14, citing *Marquardt*, *supra*, 59 Cal.2d at 172-173, 175.)

Applying this framework to AB 1889, the Court concluded that the statute "[p]lainly does not" violate article XVI, section 1. (Slip Op. 14.) Under AB 1889, "the high-speed train system shares corridors and segments with existing commuter train systems. Such corridors and segments are improved in preparation for high-speed rail, while at the same time providing immediate benefits to the passengers currently using them." (*Ibid*.) This approach is "'germane' to the 'specific object' of the

Bond Act, i.e., the plan for initial construction of a high-speed train system. By the same token, [AB 1889] is germane to the plan of the Bond Act." (*Id.* at 14-15.) "The near-term benefits of improving existing rail lines to provide economic benefits, create jobs, and provide safer and cleaner transportation, while additional work is completed on high-speed train service, is consistent with the 'single work or object' of Proposition 1A." (*Id.* at 21-22.)

Meanwhile, the Court disagreed with appellants' contention that the suitable-and-ready provision was central to the scheme approved by the voters, or that it was abrogated by AB 1889. The phrase "suitable and ready for high-speed train operation," on which appellants rely, was not mentioned in the Official Voter Information Guide, and was also "undefined in the Bond Act" itself. (Slip Op. 15.) Moreover, nothing in [AB 1889] relieved the Authority of its duty to submit the funding plan required by section 2704.08, subdivision (d), to the Director of Finance or eliminated the requirement that [the] plan be informed by the work of one or more independent financial services firms, financial consulting firms, or other consultants . . . ." (*Id.* at 22.) Thus, the Court of Appeal held that AB 1889 did not "constitute an escape from the 'financial straitjacket.' The multistep planning and review process in section 2704.08, subdivision (d), remained in place." (*Id.* at 3.)

For these same reasons, the Court further held that AB 1889 did not effect an "implied partial repeal" of the Bond Act. (Slip Op. 22-25.) Whereas an implied repeal only occurs where "the

two acts are so inconsistent that there is no possibility of concurrent operation," AB 1889 "furthered the initial construction of the high-speed rail system," while the "'suitable and ready for high-speed train operation' condition . . . continued to be subject to the independent consultant review and reporting process . . . ." (*Id.* at 23-24, internal quotations and citation omitted.)

Finally, the Court stated that, even assuming that AB 1889 conflicts with "the Tos parties' interpretation" of the suitable and ready provision, "'there are many cases in which the courts have broadly construed the purpose of the relevant bond acts to allow projects to proceed that would appear to be at odds with, or beyond the scope of, the articulated purpose of the act or the description of the project on the ballot.'" (*Id.* at 15, 16, quoting *CHSRA*, *supra*, 228 Cal.App.4th at pp. 701-702.) Of particular relevance in this case, "[t]he courts have been particularly attuned to the fluidity of the planning process for large public works projects. The Supreme Court has allowed substantial deviation between the preliminary plans submitted to the voters and the eventual final project . . . ." (*Ibid.*, citing *Cullen v. Glendora Water Co.* (1896) 113 Cal. 503, 510; *Mills v. S.F. Bay Area Rapid Transit Dist.* (1968) 261 Cal.App.2d 666, 669.) Compared to the large-scale public works projects at issue in those cases, "'[t]he development of a high-speed rail system for the State of California is even more complex" (*ibid.*, quoting *CHSRA*, *supra*, 228 Cal.App.4th at p. 703), which counsels against unduly strict application of the single purpose

requirement. (*Ibid.*, citation omitted.) In this regard, the Court found it relevant that case law from Iowa and New York, the states from which California borrowed the "single object or work" requirement, similarly supports "the principle that a bond law may be altered without violating article XVI, section 1." (Slip Op. 19-21, citations omitted.) The Court of Appeal also noted that the Bond Act itself "acknowledges the need for fluidity in providing for application of bond proceeds to as-yet unidentified 'other related capital facilities and equipment' and such other purposes related to the [enumerated purposes], for the procurement thereof, and for the financing or refinancing thereof, as may be set forth in a statute hereafter enacted." (*Id.* at 23, quoting § 2704.04, subd. (c).)

REASONS TO DENY THE PETITION

I. THERE IS NO REASON FOR THIS COURT TO REVISIT THE BOND ACT INTERPRETATION ISSUES CAREFULLY CONSIDERED AND CORRECTLY DECIDED BY THE COURT OF APPEAL

As discussed above, the Court of Appeal's decision turned on its determination that the "single object" of the Bond Act is set out broadly as the initiation of construction of the high-speed rail system under a mandatory, multi-step planning process. This holding was fully consistent with the key indicia of voter intent: the Bond Act's express statement of purpose in section 2704, subdivision (a), and the ballot materials presented to the voters who approved it. (See *Santos v. Brown* (2015) 238 Cal.App.4th 398, 410, 427; *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.App.4th 1010, 1038; *Knight v. Superior Court* (2005) 128 Cal.App.4th 14, 23.) The decision below

involved a straightforward construction of the Bond Act, based on its express statement of purpose and the ballot materials, including the Legislative Analyst's broad description of the purpose of the bond issuance and the attendant accountability and oversight mechanisms. There is no reason for this Court's further review.

The Court of Appeal's conclusion that AB 1889 is consistent with the Bond Act's "single object" is also strongly supported by the Bond Act's operative terms. Numerous provisions specifically anticipate interim use by conventional rail. For example, the Bond Act provides that, in selecting a usable segment, the Authority shall use criteria including not only "the need to test and certify trains operating at speeds of 220 miles per hour," but also "*the utility of those . . . usable segments . . . for passenger train services other than high-speed train service that will not result in any unreimbursed operating or maintenance cost to the authority*." (§ 2704.08, subd. (f), emphasis added.)

The Bond Act likewise earmarks $950 million in bond proceeds for "capital improvements to *intercity and commuter rail lines and urban rail systems . . . that are part of the construction of the high-speed train system as that system is described in subdivision (b) of Section 2704.04*, or that provide capacity enhancements and safety improvements." (§ 2704.095, subd. (a)(1), emphasis added.) Twenty percent of this amount is allocated to state-supported intercity rail service, like Caltrain. (*Id*., subd. (a)(2).)

And, in describing the required contents of the independent consultant's report, the Bond Act refers to both "high-speed train operation" and "passenger train service"; specifically, the report shall indicate that, upon completion of the project described in the final funding plan, "one or more *passenger service providers* can begin using the tracks or stations for passenger train service," and "the planned *passenger train service* to be provided by the authority, or pursuant to its authority, will not require an operating subsidy." (§ 2704.08, subd. (d)(2)(C), (D), emphasis added.)[7]

These provisions demonstrate that both the Legislature and the voters understood that: (1) a project of this magnitude will be developed over time; (2) bond funds may be used to construct improvements to conventional rail that will in the future connect to or be shared with the high-speed rail system; and (3) for some period of time before the commencement of high-speed operations, segments of the high-speed rail system may be used to provide conventional passenger-rail service.

The Court of Appeal's conclusion that the "suitable and ready" provision was not material, let alone central, to voter approval was similarly unremarkable and amply supported by both the ballot materials and the operative terms of the Bond

[7] That passenger train service providers can begin using either the tracks *or* the stations provides further confirmation that the Bond Act contemplates interim use by conventional rail providers, which might be able to use the track but might not be able to use the stations immediately "upon completion," for example because of lack of platform height compatibility.

Act. (See *Santos v. Brown*, *supra*, 238 Cal.App.4th at pp. 409-410 [where the statutory language of a bond measure is ambiguous, the court will consider the ballot materials, including the ballot summary and the Legislative Analysist's evaluation, and may consider the arguments presented in support of or in opposition to the measure]; *Knight v. Superior Court*, *supra*, 128 Cal.App.4th at p. 23.)

The Legislature drafted the summary of the Bond Act presented to voters (see *Howard Jarvis Taxpayers Assn. v. Bowen* (2011) 192 Cal.App.4th 110, 116), and presumably included in that summary the information it deemed most important to the voters. Yet that summary omits any suggestion that the "suitable and ready" provision is a central element of the Bond Act, much less that bond funds would only be spent if and when there are sufficient funds available to construct a complete, fully operational segment of the high-speed rail system, as appellants contend. The official summary describes the general benefits of a high-speed rail system in California, stating that "at least 90% of these bond funds shall be spent for specific construction projects, with private and public matching funds required," and adding that "use of all bond funds is subject to independent audits." (App't Appx. 3:765.) The summary also told voters that a "YES vote" means that "[t]he state could sell $9.95 billion in general obligation bonds, to plan and to partially fund the construction of a high-speed train system in California, and to make capital improvements to state and local rail services." (*Id.*, 3:764.) There

is no mention of any specific engineering or other technical requirements, much less the "suitable and ready" provision.

The Legislative Analyst's evaluation in the Voter Guide also did not provide assurances that bond funds would be spent only if there were sufficient funds to construct a fully operational high-speed rail segment. Instead, it explains that "bond funds may be used for environmental studies, planning and engineering of the system, and for capital costs such as acquisition of rights-of-way, trains, and related equipment, and construction of tracks, structures, power systems, and stations," and it cautions that additional sources of funding necessary to build the system had yet to be identified. (App't Appx. 3:766; *ibid*. [noting the Authority's 2006 estimate of $45 billion to construct the entire system].)

The language and structure of the Bond Act itself provide further support for the Court of Appeal's holding. The only references to "suitable and ready" are found in further subdivisions of section 2704.08. Among a laundry list of eleven subjects to be discussed in a preliminary funding plan, the Authority must "include, identify or certify" that "[t]he corridor or usable segment" proposed in the plan "would be suitable and ready for high-speed train operation." (§ 2704.08, subd. (c)(2)(H).) And, one of five subjects to be addressed in the independent consultant's report submitted with a final funding plan is whether "the corridor or usable segment thereof would be suitable and ready for high-speed train operation" if completed as proposed. (§ 2704.08, subd. (d)(2)(B).) Nowhere does the Bond

Act give the term any particular prominence. Thus, appellants' theory about the supposed centrality of the "suitable and ready" provision runs counter to the principle that "the drafters of legislation 'do[ ] not, one might say, hide elephants in mouseholes.'" (*California Redevelopment Ass'n v. Matosantos* (2011) 53 Cal.4th 231, 260-261, quoting *Whitman v. American Trucking Assns., Inc.* (2001) 531 U.S. 457, 468.)

Accordingly, the Court of Appeal found no support for appellants' contention that the "suitable and ready" provision created "specific voter expectations," much less that voters saw it as a crucial part of a "financial straitjacket."[8] (Petition, pp. 9-10, 17, 19, 29.) Indeed, the "financial straitjacket" that features so prominently in the Petition derives not from the Bond Act, but from the Court of Appeal's earlier decision in *CHRSA*, *supra*, which also was authored by Presiding Justice Raye.[9] Thus, there is no basis for this Court to review the Court of Appeal's determination that AB 1889 did not "constitute an escape from the 'financial straitjacket.'" (Slip Op. 3.)[10]

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[8] The Bond Act itself suggests that the specific requirements of section 2704.08, while plainly informing the oversight of the project by the legislative and executive branches, were not mission critical: section 2704.08, subdivision (i), expressly provides that "[n]o failure to comply with this section shall affect the validity of the bonds issued under this chapter."

[9] Justices Raye and Robie signed the unanimous decisions in both this case and the *CHSRA* case.

[10] Appellants argue that the suitable and ready provision represented a concerted "effort [by the Legislature] to convince voters that the bond funds would actually produce, if not a full-

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II. THE COURT OF APPEAL BROKE NO NEW GROUND IN FAITHFULLY APPLYING THIS COURT'S ARTICLE XVI PRECEDENT

Appellants' further contention that voter approval is required any time the Legislature amends or clarifies a "material provision" or "significant term" in a bond act misreads this Court's precedents. (Petition, pp. 8, 33; *id*. at p. 15 [arguing that voter approval is required whenever changes are made to the "prescriptive terms" of a bond act.])

As an initial matter, the Court of Appeal did not hold that AB 1889 conflicts with the Bond Act, or even with the "Tos parties' interpretation" of it. (Slip Op. 15.) Rather, it noted that the phrase "suitable and ready" for high-speed train operation is undefined in the Bond Act, and was not a material, prescriptive term that was important to voter approval. It then went on to state that, "[e]ven adopting" appellants' reading of it (*ibid*.), article XVI, section 1 does not prohibit any and all legislative alterations to a bond act. (*Id*. at 16, 18-21.) This was an

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high-speed rail system, at least one or more usable functional segments." (Petition, pp. 37-38.) The argument is based largely on then-Governor Schwarzenegger's Budget, May Revision 2008-2009 relating to the Bond Act ("May Revise"). However, the May Revise is not even part of the legislative history of the Bond Act, and contains only a brief reference to an early draft version of the Bond Act, so its relevance is slight or non-existent. (*Knight v. Superior Court, supra*, 128 Cal.App.4th at p. 24, fn. 4; *Rossi v. Brown* (1995) 9 Cal.4th 688,700 fn. 7.) Regardless, the Court of Appeal concluded that AB 1889 was consistent with the May Revise. (See Slip. Op. 15 fn. 6.)

unremarkable application of Supreme Court precedent. (*Id.*, citing *Cullen v. Glendora Water Co.*, *supra*, 113 Cal. 503, 510, and *Mills v. S.F. Bay Area Rapid Transit Dist.*, *supra*, 261 Cal.App.2d 666.)

Contrary to appellants' suggestion, this Court has never held that, in determining whether an amendment to a bond act violates article XVI, section 1, courts must strictly adhere to "every word, phrase, and sentence in the [bond act]." (Petition, p. 38.) Rather, the court's task is to determine whether, after the amendment, bond proceeds are still being "'applied only to the specific object' of the authorizing law." (Slip Op. 3, quoting Cal. Const. art. XVI, § 1.) The Court of Appeal correctly observed that article XVI, section 1 "does not prohibit alterations of a bond law approved by the voters for a complex public works project," so long as those alterations do not "divert funds from, interfere with, or destroy 'the single object or work . . . distinctly specified' in the law." (*Ibid.*)[11] And here, as discussed above, the Court of Appeal

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[11] Similarly, the Court of Appeal did not agree with appellants that AB 1889 "rolled together the actual planning and construction of high-speed rail 'useable segments' with making improvements to connecting conventional intercity, commuter, and mass transit rail lines/system, even though the latter had received a separate and far smaller allocation of bond funding ($950 million) under Section 2704.095 for that very purpose." (Petition, p. 32.) Rather, the Court of Appeal said it "*may be argued*" that is the case (Slip Op. 18, italics added), but did not squarely decide the question one way or the other given the Supreme Court's admonition that the "authority to issue bonds is not so bound up with the preliminary plans . . . that the proceeds of a valid issue of bonds cannot be used to carry out a modified

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held that AB 1889 is fully consistent with the Bond Act's broadly stated "single object or work" to initiate construction of the system subject to a mandatory, multi-step planning process.

The Court of Appeal's related holding, that an implied repeal only occurs where the Legislature makes "substantial changes in the scheme or design which induced voter approval," was similarly straightforward and unremarkable. (Slip Op. 22, citing *VFW, supra,* 36 Cal.App.3d 688; *O'Farrell v. County of Sonoma* (1922) 189 Cal.3d 343 (*O'Farrell*).) So, too, was its holding that *VFW*, *supra*, and *O'Farrell*, *supra*, are distinguishable on their facts. *O'Farrell* involved the construction and completion of a four-mile long road, which "bears no resemblance to a complex public works project like the high-speed train system"; unlike the project in *O'Farrell*, the Bond Act "did not specify project details but rather acknowledged in section 2704.04, subdivision (c), that additional related capital equipment and facilities and purposes would be funded with bond proceeds as the project progressed." (Slip Op. 24.) *VFW*, *supra*, presented a stark conflict between the bond act at issue and subsequent legislation. The Legislature sought to appropriate bond proceeds to an "alien purpose," i.e., to fund the operating expenses of maintaining county veterans' services offices, instead of creating a fund to help veterans acquire their own farms and homes, as specified in the bond act

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plan if the change is deemed advantageous." (*Ibid*., quoting *Cullen v. Glendora Water Co., supra*, 113 Cal.3d 503.) This, too, was an unremarkable application of settled law.

at issue in that case. (36 Cal.App.3d at p. 694.) In sharp contrast, AB 1889's definition of "suitable and ready for high-speed operation" is "not 'so inconsistent that there is no possibility of concurrent operation' with the Bond Act generally or 2704.08, subdivision (d), in particular." (Slip Op. 24, quoting *VFW*, *supra*, 36 Cal.App.3d at p. 694.) AB 1889 "furthered the initial construction of the high-speed rail system by funding investments in improvement of existing train systems that would be shared with the high-speed train system, while additional work is completed to enable high-speed train service"; further, the "expanded 'suitable and ready for high-speed train operation' condition . . . continued to be subject to the independent consultant review and reporting process required by [the Bond Act]." (*Ibid*.)

Appellants' further reliance on *Peery v. City of Los Angeles* (1922) 187 Cal 753, is similarly misplaced. (See Petition, pp. 13-14.) That decision, which was based on provisions concerning municipal bonding (*id.* at pp. 758-759), held that voters were prejudiced when, after assuring voters that the maximum annual interest on the bonds would be 4-½ half percent, a city tried to sell bonds bearing interest in excess of 6 percent—nearly 50 percent more than the voters had approved. (*Id*. at pp. 760-761.) AB 1889 does not increase the amount of the State's indebtedness, and appellants do not contend otherwise. Further, the interest rate at issue in that case is nothing like the Bond Act's suitable and ready provision, which was (a) undefined, and (b) unmentioned in the ballot materials. (See Slip Op. 17

[holding that the Legislative Analyst's analysis does not "enumerate or refer to the subjects specified in section 2704.08, subdivision (c) or (d), let alone mention or allude to the phrase 'suitable and ready for high-speed train operation"].)

Finally, according to appellants, the Court of Appeal wrongly assumed that the "single object or work" of "any large project could only be generally defined," and that this "ignored the potential for even a large project to include *material requirements relied upon by voters*." (*Id.*, p. 39, italics in original.) Not so. As an initial matter, the Court of Appeal correctly held, based on its review of the ballot materials, that the voters were not asked to endorse every detail of the scheme, and that the suitable and ready provision was not even mentioned in the ballot materials, let alone central to their consideration. It also correctly held that the Bond Act's "single object or work" was broadly stated, not simply because the high-speed rail project is a large, fluid public works project, but because the Bond Act itself expressly states its overriding purpose in broad terms, and because the ballot materials presented to the voters did the same. The Court of Appeal did not somehow create new law exempting all large public works projects from article XVI, section 1's constraints; rather, it simply disagreed with appellants' strained construction of the Bond Act and the ballot materials presented to the voters.

CONCLUSION

The petition for review should be denied.

February 22, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **ANSWER TO PETITION FOR REVIEW** uses a 13 point Century Schoolbook font and contains **6,905** words.

February 22, 2022

ROB BONTA
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/S/ *SHARON L. O'GRADY*
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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: ***Tos, John, et al. v. California High-Speed Rail Authority***
Case No.: **S272563**

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. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier

On February 22, 2022, I electronically served the attached **ANSWER TO PETITION FOR REVIEW** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on February 22, 2022, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Honorable Richard K. Sueyoshi
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Sacramento, CA 95814

Clerk of the Court
Third Appellate District,
California Court of Appeal
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Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on February 22, 2022, at San Francisco, California.

M. Mendiola	M. Mendiola
Declarant	Signature

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