

**CALIFORNIA COURT OF APPEAL
THIRD APPELLATE DISTRICT**

JOHN TOS *et al.*

Appellants

v.

STATE OF CALIFORNIA *et al.*

Respondents

Sacramento County Superior Court Case Number 34-2016-00204740
on appeal from the final judgment of Hon. Richard Sueyoshi
Additional judges: Hon. Michael P. Kenny, Hon Raymond M. Cadei

**APPELLANTS' MOTION FOR CALENDAR
PREFERENCE**

Stuart M. Flashman, SBN 148396 Law Offices of Stuart M. Flashman 5626 Ocean View Drive Oakland, CA 94618-1533 Tel. / fax: (510) 652-5373 e-mail: stu@stuflash.com	Michael J. Brady, SBN 40693 1001 Marshall Street, Ste 500 Redwood City, CA 94063- 2052 Telephone: (650) 364-8200 Facsimile: (650) 780-1701 e-mail: mbrady@rmkb.com
Attorneys for Appellants JOHN TOS, QUENTIN KOPP, TOWN OF ATHERTON, PATRICIA LOUISE HOGAN-GIORNI, ANTHONY WYNNE, COMMUNITY COALITION ON HIGH-SPEED RAIL, TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, and CALIFORNIA RAIL FOUNDATION	

Pursuant to California Rule of Court 8.240, Appellants John Tos *et al.* hereby move the Court to grant calendar preference to scheduling oral argument in the above-entitled case.

Calendar preference is requested on two bases: First, Code of Civil Procedure § 1062.5 grants calendar preference to the trial of actions for declaratory relief. While that section is silent on calendar preference for appeals of such actions, presumably the same principle that the Legislature used to give calendar preference to the trial of such actions would also apply to their appeal.

Secondly, and more urgently, this case, and specifically this appeal, involves determining the constitutionality of Streets & Highways Code § 2704.78, which purports to clarify the meaning of the phrase “suitable and ready for high-speed train operation” as it is used in Streets & Highways Code § 2704.08 subsections (c) and (d); portions of Proposition 1A, a general obligation bond act approved by California voters in November 2008.

On December 6, 2019, California State Assembly Speaker Anthony Rendon and Assemblywoman Susan Eggman co-wrote an opinion piece published simultaneously in several California newspapers. That article advocated having the Legislature repurpose the remaining unappropriated Proposition 1A bond funds to make incremental improvements in existing conventional commuter rail lines in the two “bookend” segments delineated

in the legislative appropriation of bond funds made in 2012 by SB 1029. A copy of that article is attached as Exhibit A to the Declaration of Stuart M. Flashman, included herewith. On January 6, 2020, California State Assembly Member Tom Lackey introduced a bill, AB 1848, that would partially implement that purpose by appropriating \$4 billion of the remaining Prop. 1A bond funds, authorized for high-speed rail planning and construction, for use by the Southern California Regional Rail Authority to fund improvements to the Metrolink commuter rail system.

The bill explicitly uses the same “clarifying” definition of “suitable and ready for high-speed train operation” as first used in Streets & Highways Code § 2704.78, thereby expanding the use of that definition well beyond the appropriation made in 2012 by Senate Bill 1029. A copy of that bill is attached as Exhibit B to the Declaration of Stuart M. Flashman included herewith.

The Rendon/Eggman article, and more specifically the bill just introduced by Assembly Member Lackey, indicate that the Legislature is currently considering “doubling down” on its 2016 action in approving AB 1889. It would therefore be especially timely for this Court to render its decision on the constitutionality of AB 1889, prior to the Legislature taking action that might require further legal challenges to legislative action, and the potential illegal and unconstitutional expenditure of bond funds in reliance on unconstitutional legislation.

Based on the above considerations, Appellants respectfully request that, pursuant to Rule of Court 8.240, the Court grant calendar preference to scheduling oral argument in this appeal.

Dated: January 19, 2020

Respectfully submitted,

Michael J. Brady
Stuart M. Flashman

Attorneys for Appellants John Tos et al.

By: /s/ Stuart M. Flashman

DECLARATION OF STUART M. FLASHMAN

I, Stuart M. Flashman, hereby declare as follows:

1. I am a member in good standing of the California State Bar and authorized to practice in California. I am one of two attorneys representing the Appellants in this case and this appeal and have been so since the case's inception. I have personal knowledge of the facts stated in this appeal and would be competent to testify as to them if called as a witness.
2. Because of my long-standing interest and involvement in the activities of the California High-Speed Rail Authority and its projects, I subscribed several years ago, through Google News, to receive daily updates on published news articles relating to high-speed rail.
3. I first became aware of the publication of the opinion piece co-written by California State Assembly Speaker Anthony Rendon and

Assembly Member Susan Eggman when a link to it, along with a very brief summary, showed up, very shortly after its publication date of December 6, 2019, in my daily Google News summary of recently published news articles on high-speed rail.

4. Upon seeing the item, I went to the linked article and downloaded it directly from the website of the Modesto Bee newspaper, where it had been published.

5. Attached hereto as Exhibit A is a true and correct copy of the text of that article, as downloaded directly from the website of the Modesto Bee Newspaper.

6. On January 12, 2020, in my daily update of high-speed rail news articles from Google News, I saw a link to an article in the Antelope Valley Press referencing a just-introduced bill in the California State Assembly on high-speed rail. Following the link, I found an article about AB 1848, a bill that had just been introduced by Assembly Member Tom Lackey. The article indicated that the bill would reallocate high-speed rail funding from the Central Valley to Southern California, where it would be used to make capital improvements to the Metrolink commuter rail service to approve that service's efficiency and increase its ridership.

7. Going to the Legislature's official website, I located and downloaded the text of AB 1848.

8. Attached hereto as Exhibit B is a true and correct copy of the text of AB 1848, as downloaded directly from the California Legislature's official website.

I declare under penalty of perjury under the laws of the State of California that the facts stated in this declaration are true and correct.

Executed this Nineteenth day of January 2020 at Oakland, California.


Stuart M. Flashman
Stuart M. Flashman

Exhibit A

This Valley train vision makes more sense than high-speed rail

By Anthony Rendon and

Susan Talamantes Eggman

December 06, 2019 08:38 AM

Our districts are 350 miles apart. One is in California's largest urban region. The other embraces a rapidly changing and urbanizing piece of California's heartland.

Our constituents see very different landscapes, but we see eye-to-eye on one important piece of their future: We need to improve the state's passenger rail system.

We have to do it so that people can conveniently get around California — without sitting for hours in traffic jams and without worsening the current climate crisis.

Conveniently. That's the key.

We're not into browbeating Californians out of their cars. We want to give them a better alternative, and we think the best way to do that is a tweak to the current plan by the High-Speed Rail Authority (HSRA).

The plan developed by our Assembly colleagues is a way to help more Californians sooner, but we need to get more Californians on board.

We want to save some of the funds currently aimed at electrification and some smaller aspects of the HSRA plan. We can use those dollars to bolster rail where it is needed most.

The San Joaquin Valley would still get a higher-speed passenger line, up to 125 mph.

With the savings, we could connect that line to others so people could have a one-seat ride — no need to transfer — from Bakersfield through Modesto to the Bay Area, or to Sacramento.

Some are leery of using some funds for improving MetroLink. Boosting that line is appropriate because the Los Angeles region has some of the greatest pent-up demand for rail service.

Freeing up funds could also benefit projects like Valley Link, which is designed to provide a link from the ACE Train in Lathrop through the Altamont Pass to BART in Dublin/Pleasanton.

We hear stories of the supercommuters who spend hours driving through jams in each direction, going from homes in the north part of the Valley to the Bay Area for jobs. The HSRA plan does little for those people. It provides no direct connection.

At the very least, our plan would connect the line from the southern end of the San Joaquin Valley to stations served by Valley Link or the ACE Train, depending on where they are traveling.

Does this mean we're giving up on high-speed rail through California? Absolutely not.

Valley Link's slogan is "Connecting people, housing, and jobs." We believe that a long-distance line will connect more people and lead to more housing and jobs in the San Joaquin Valley than the current plan.

It will quickly put millions of people in train seats in Southern California, in the San Joaquin Valley, and in the Bay Area. Quickly, because the convenience of getting from home to jobs on unimpeded rails will be obvious to would-be passengers.

That's what will sell investors and developers on the concept of upgrading to a full high-speed line on a route that will already be there, and will already have customers.

This is not a plan that robs Peter to pay Paul. This is a plan for investing already approved funds in a way that will provide enough dividends to make both happy — and spread the advantages of rail travel across California.

Not just southeast LA County and the northern San Joaquin Valley, but everywhere in between, and extending beyond those points on both ends.

Anthony Rendon, California Assembly speaker, represents southeast Los Angeles County. Assemblywoman Susan Eggman's district is based in San Joaquin County, and she is running for a state Senate district that includes north Stanislaus County. Both are Democrats.

Exhibit B

ASSEMBLY BILL

No. 1848

Introduced by Assembly Member Lackey

January 6, 2020

An act relating to high-speed rail, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1848, as introduced, Lackey. High-speed rail: Metrolink commuter rail system.

The California High-Speed Rail Act creates the High-Speed Rail Authority to develop and implement a high-speed rail system in the state. The Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A at the November 4, 2008, general election, provides for the issuance of \$9,000,000,000 in general obligation bonds for high-speed rail purposes and \$950,000,000 for other related rail purposes.

This bill would appropriate \$4,000,000,000 of those bond revenues to the Southern California Regional Rail Authority to fund improvements to the Metrolink commuter rail system. The bill would require those improvements to support blended operation with high-speed trainsets upon completion of specified phases of the high-speed rail system, and would require that infrastructure upgrades funded by this appropriation make the corridor or usable segment thereof suitable and ready for high-speed train operation.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Metrolink operates the nation’s third largest commuter rail
4 system, based on its 536 total route miles, and serves six southern
5 California counties, which cumulatively have a population of
6 21,500,000 people—over one-half of California’s total population.

7 (b) Approximately 15,000,000 people live within five miles of
8 one of Metrolink’s 62 rail stations, which are located throughout
9 southern California.

10 (c) Nearly 12,000,000 passengers rode Metrolink’s commuter
11 rail system during its 2018–19 fiscal year.

12 (d) Metrolink annually eliminates, on average, 130,000 metric
13 tons of greenhouse gas (GHG) emissions and 335,080,746 vehicle
14 miles traveled (VMT) from area roadways.

15 (e) Eighty-one percent of weekday Metrolink passenger trips
16 are work-related, which reduces traffic volume by up to 28 percent
17 during the peak hour in the peak direction on parallel freeways
18 such as Interstate Route 5, Interstate Route 10, State Route 57,
19 U.S. Route 101, State Route 134, Interstate Route 215, and
20 Interstate Route 710, which are some of the most congested
21 roadways in the nation.

22 SEC. 2. (a) The sum of four billion dollars (\$4,000,000,000)
23 is hereby appropriated from the High-Speed Passenger Train Bond
24 Fund, which is created pursuant to Section 2704.05 of the Streets
25 and Highways Code, to the Southern California Regional Rail
26 Authority to fund improvements to the Metrolink commuter rail
27 system consistent with Chapter 20 (commencing with Section
28 2704) of Division 3 of the Streets and Highways Code.

29 (b) The Legislature finds and declares that the goal of this
30 appropriation is to help reduce rail passenger commute times by
31 50 percent or more by January 1, 2028, along the following rail
32 corridors:

33 (1) The City of Palmdale to the Los Angeles Union Station, via
34 the City of Santa Clarita and Newhall.

35 (2) The City of Riverside to the Los Angeles Union Station, via
36 the Cities of Corona, Fullerton, and Buena Park.

37 (3) The City of Oceanside to the Los Angeles Union Station,
38 via the City of Irvine.

1 (c) These improvements shall support blended operation with
2 high-speed trainsets upon completion of Phase 1 and Phase 2 of
3 the high-speed rail system described in Chapter 20 (commencing
4 with Section 2704) of Division 3 of the Streets and Highways
5 Code.

6 (d) (1) Infrastructure upgrades funded by this section shall make
7 the corridor or usable segment thereof suitable and ready for
8 high-speed train operation.

9 (2) For purposes of this subdivision, “suitable and ready for
10 high-speed train operation” means that the corridor or usable
11 segment thereof will enable high-speed trains to operate
12 immediately or after additional planned investments are made on
13 the corridor or useable segment thereof, and passenger train service
14 providers will benefit from the project in the near-term, consistent
15 with Section 2704.78 of the Streets and Highways Code.

O