MICHAEL J. BRADY (SBN 40693)
1001 MARSHALL STREET, STE. 500
Redwood City, CA 94063-2052
Telephone (650) 364-8200
Facsimile: (650) 780-1701
Email: mbrady@rmkb.com

LAW OFFICES OF STUART M. FLASHMAN
STUART M. FLASHMAN (SBN 148396)
5626 Ocean View Drive
Oakland, CA 94618-1533
TEL/FAX (510) 652-5373
Email: stu@stuflash.com

EXEMPT FROM FEES PER GOVERNMENT CODE §6103

Attorneys for Plaintiffs John Tos, Quentin Kopp, Town of Atherton, County of Kings, Morris Brown, Patricia Louise Hogan-Giorni, Anthony Wynne, Community Coalition on High-Speed Rail, Transportation Solutions Defense and Education Fund, and California Rail Foundation

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

JOHN TOS, QUENTIN KOPP, TOWN OF ATHERTON, a municipal corporation, COUNTY OF KINGS, a subdivision of the State of California, MORRIS BROWN, PATRICIA LOUISE HOGAN-GIORNI, ANTHONY WYNNE, COMMUNITY COALITION ON HIGH-SPEED RAIL, a California nonprofit corporation, TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, a California nonprofit corporation, and CALIFORNIA RAIL FOUNDATION, a California nonprofit corporation,

Plaintiffs

vs.

CALIFORNIA HIGH SPEED RAIL AUTHORITY, a public entity, BOARD OF DIRECTORS OF THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY, and DOES 1-20 inclusive,

Defendants

No. 34-2016-00204740

Entitled to calendar precedence under C.C.P. § 526a

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

Date:	March 17, 2017
Time:	1:30 PM
Department:	54
Action filed:	December 13, 2016
Trial Date:	Not Yet Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CALIFORNIA CASES

CALIFORNIA STATUTES

CALIFORNIA CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

INTRODUCTION

Plaintiffs John Tos, Quentin Kopp, Town of Atherton, County of Kings, Morris Brown, Patricia Louise Hogan-Giorni, Anthony Wynne, Community Coalition on High-Speed Rail, Transportation Solutions Defense and Education Fund, and California Rail Foundation (hereinafter, "Plaintiffs") seek this Court's Temporary Restraining Order to prevent Defendants California High-Speed Rail Authority ("CHSRA") and the Board of Directors of the California High-Speed Rail Authority (the foregoing, collectively, "Defendants") from illegally and improperly expending funds authorized by Proposition 1A ("Prop. 1A"), a $9.95 billion 2008 California general obligation bond measure. That measure authorized $9 billion for construction of a California high-speed rail system.

In writing Prop. 1A, the Legislature included multiple safeguards to assure that the money would not be misused. The Third District Court of Appeal, in *California High-Speed Rail Authority v. Superior Court ("High-Speed Rail Auth.")* (2014) 228 Cal.App.4th 676, 706, characterized those provisions as "a financial straitjacket."

Perhaps because of those safeguards, up until now CHSRA has not attempted to access those funds for construction. During the 2016 legislative session, however, the Legislature approved and the Governor signed a bill, AB 1889, that loosened those safeguards. The Legislature called that change a clarification. (AB 1889 Sect. 1(k) [Exhibit B to Plaintiffs' Request for Judicial Notice ("Plaintiffs RJN") at p. 2.].) Plaintiffs, however, allege that the change was an unconstitutional attempt by the Legislature to materially alter the terms of the bond measure without getting the voters' approval of that change.

Now, relying on AB 1889, CHSRA has approved two funding plans to expend Prop. 1A bond funds on rail construction. One of those two plans, for construction of a "Central Valley Segment," has received final approval by the California Director of Finance, freeing CHSRA to commit and expend the bond funds on constructing that segment.

This application for a Temporary Restraining Order seeks to "freeze" the use of those funds to maintain the status quo until the Court can determine whether AB 1889 is constitutional, and therefore whether a funding plan relying on it can validly allow CHSRA to commit and expend Prop. 1A bond funds on rail construction.

STATEMENT OF FACTS

I. PROPOSITION 1A AND ITS LIMITATIONS ON BOND FUND USE

In August 2008, the Legislature passed and the Governor signed AB 3034.[1] That measure included within it as Section 9 a $9.95 billion general obligation bond act, Prop. 1A, to be placed on the November 2008 general election ballot. Prop. 1A added a new Chapter 20 to Division 3 of the Streets & Highways Code. In November, the voters narrowly approved Prop. 1A.

Of particular note for this case was Prop. 1A's addition of Streets & Highways Code § 2704.08. That section requires CHSRA to prepare and approve two "funding plans" before it may access bond funds for use towards constructing any part of the high-speed rail system. The section sets multiple requirements that the funding plans must satisfy. In particular, it requires that when construction of a "Usable Segment"[2] being proposed in a funding plan is complete, the segment must be "suitable and ready for high-speed train operation."

The first, preliminary, funding plan for a usable segment, described in subsection (c), requires that CHSRA certify that the requirement will be met. The second, final, funding plan, described in subsection (d), must describe in detail what will actually be constructed, including costs, sources of funds, and the terms and conditions of any agreements associated with the construction of the segment or its operation for passenger train service on the segment. CHSRA is then required to contract with an independent expert to review and evaluate the funding plan in a

[1] The full text of AB 3034 (including the text of Streets & Highways Code § 2704.08) is attached as Exhibit A to Plaintiffs' Request for Judicial Notice ("Plaintiffs' RJN"), submitted herewith.

[2] A usable segment is defined in § 2704.01(g) of the bond act as a portion of a corridor that includes at least two stations.

written report, which must confirm, among other things, that the usable segment, if completed as proposed, would be suitable and ready for high-speed train operation.

II. AB 1889

After the passage of Prop 1A, CHSRA was approached by multiple entities seeking to use bond funds on their projects. In particular, CHSRA and the Peninsula Corridor Joint Powers Board ("PCJPB"), which operates the Caltrain commuter rail line on the San Francisco Peninsula, discussed cooperating so that both Caltrain and CHSRA's high-speed rail trains could use the Caltrain tracks in a so-called "blended system." Those discussions led to an agreement that CHSRA would provide funding for electrifying the Caltrain tracks, on the condition that the electrified tracks be compatible with CHSRA's later-to-be-added high-speed rail trains. There was one problem. The electrified Caltrain tracks would not yet be "suitable and ready for high-speed train operation." Hence Caltrain electrification, on its own, could not qualify to use Prop. 1A high-speed rail construction funds.

During the 2016 legislative session, PCJPB and CHSRA came up with what appeared to be an elegant solution – to "clarify" the language of Prop. 1A and modify the meaning of "suitable and ready for high-speed train operation." The vehicle for this "clarification" was AB 1889. (Exhibit B to Plaintiffs' RJN.) That bill added Streets & Highways Code Sect. 2704.78, providing that a segment built using funds appropriated based on CHSRA's first preliminary funding plan would be suitable and ready for high-speed train operation if the construction

> …would enable high-speed trains to operate immediately *or after additional planned investments are made on the corridor or usable segment thereof* and passenger train service providers will benefit from the project in the near term. [emphasis added]

Not only would this allow CHSRA to fund Caltrain electrification; it would also allow CHSRA to build a "usable segment" that would not be truly suitable and ready for high-speed rail operation until much later, so long as a passenger train service provider could use it in the interim.

III. THE DECEMBER 2016 FUNDING PLANS

After the passage of AB 1889, CHSRA prepared two final funding plans: one for PCJPB's electrification project and the other for a "Central Valley Segment." The latter would run slightly more than 100 miles, from Madera to Shafter, roughly paralleling Highway 99. (See, Exhibit C to Plaintiffs' RJN at pp. 6-8 [maps showing segment].) It would include only two "stations" – the minimum number required under Prop. 1A for a usable segment – one at "Kings/Tulare" and one in Fresno. (*Id*.) Like the Caltrain tracks, the segment would be electrified, including a power source, and would have signaling and communications infrastructure. (*Id*. at p. 9.) It would not, however, include any actual trains,[3] nor would it actually be used for any high-speed train service – i.e., operation. Instead, it would eventually (once trains were obtained) be used as a "test track" to see whether CHSRA's plan for operating trains at speeds above 200 mph would actually work. (*Id.* at p. 2.) In the meantime, it could *potentially* be connected to Amtrak's existing San Joaquin conventional rail tracks to provide a new, upgraded track segment. (*Id.* at pp. 4, 10.)

IV. APPROVAL OF THE CENTRAL VALLEY FUNDING PLAN.

On January 3, 2017, after the January 1, 2017 effective date for AB 1889, CHSRA transmitted the two finalized funding plans to Mr. Michael Cohen, Director of the California Department of Finance, as well as to the Legislature's Joint Legislative Budget Committee. (See, Exhibit A to Declaration of Stuart Flashman in Support of Application for Temporary Restraining Order and Order to Show Cause re Preliminary Injunction ("Flashman Decl."). On March 3, 2017, almost exactly sixty days later, Mr. Cohen sent CHSRA a letter approving the Central Valley Segment Funding Plan. (Exhibit D to Plaintiffs' Request for Judicial Notice.)[4] With that letter,

[3] Funding for trains was not included in the Funding Plan (Exhibit C to Plaintiffs' RJN at p. 4), as that would require matching funds for the bond funds, and such funds were not available.

[4] At the same time, Mr. Cohen sent CHSRA a letter deferring action on the Caltrain electrification funding plan, as the Federal Transit Administration ("FTA") had deferred action on a $650 million grant for that project, and without the federal grant, the project was not fully funded, as required by Prop. 1A.

CHSRA is now free to begin committing and expending Prop. 1A bond funds on construction of the Central Valley Project.

STANDARD OF REVIEW

A Temporary Restraining Order ("TRO") is meant to maintain the *status quo ante* until the court can more fully review a request for a preliminary injunction. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group, 2006) ¶ 9:555 p. 9(II)-16.) In determining whether or not to issue a TRO, the court considers both legal and factual issues. On the legal side is the question of whether the party seeking a TRO has shown a reasonable likelihood of success on the merits. This includes evaluating the strength of the plaintiffs' legal claims. (*See, e.g., Salsedo v. California Dept. of Parks and Recreation* (2009) 175 Cal.App.4th 1510, 1517 [claim that lawsuit could not succeed on the merits because an indispensible party was not named].) In addition, the plaintiff must show that a legal remedy would be inadequate. (*Fonteno v. Wells Fargo Bank, N.A.* (2014) 228 Cal.App.4th 1358, 1380 [legal remedy of damages inadequate when real property involved].) Beyond that, however, the other factors involved – irreparable harm to the plaintiffs and that the balance of harms favors the plaintiffs – allow the court a considerable amount of discretion. However, given the short amount of time generally involved in a TRO, the balance tips more strongly in favor of issuing a TRO if the defendants cannot show serious short-term harm, because maintaining the status quo for a short time period will generally not harm the defendant greatly, while allowing it to change will often result in great harm to the plaintiffs.

ARGUMENT

I. THE TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ARE NECESSARY TO PREVENT IRREPARABLE HARM.

As explained above, the approval of the Central Valley Segment Funding Plan by the Director of Finance was the last obstacle standing in the way of CHSRA beginning to make commitments for and expend Prop. 1A bond funds towards construction of that project. As the Funding Plan itself makes clear, CHSRA intends to expend roughly $2.6 billion of bond funds on

the Central Valley Segment. (Exhibit C to Plaintiffs' RJN at p. 12, "Exhibit B-1.) The Declaration of William H. Warren in Support of Ex Parte Application for Temporary Restraining Order and Order to Show Cause re Preliminary Injunction ("Warren Decl.") and exhibits A-C attached thereto make clear that CHSRA has committed itself to expending large sums of Prop. 1A funds on constructing the project, starting in April 2017. In order to do that, CHSRA will have to begin almost immediately to sign contracts committing those funds to various construction contractors.

The funds authorized by Prop. 1A constitute a limited store of public funds that has been committed by California voters to a specific purpose. The use of these funds is restricted by the "financial straitjacket" included in the bond measure. If CHSRA, its officers, employees, agents, and those working in concert with them are not prevented from committing and expending these funds, they will begin to disappear, and will no longer be available for use as the voters intended. This would be a significant and irreparable harm; especially given that the voters approved these funds on the premise that they would be spent to build a high-speed rail system *that would satisfy the specific requirements spelled out in the measure*.

The law is very clear that once the voters approve a bond measure, the bond proceeds may only be used for the purposes the voters intended, as defined by the terms of the bond measure. (*O'Farrell v. County of Sonoma* (1922) 189 Cal. 343, 348-349; *Peery v. City of Los Angeles* (1922) 187 Cal. 753, 767-769; *High-Speed Rail Auth., supra,* 228 Cal.App.4th at p. 701; *Veterans of Foreign Wars v. State of California* (1974, Third Appellate Dist.) 36 Cal.App.3d 688, 692.) The only way the terms of the bond measure can be altered is by returning to the voters. (*O'Farrell, supra*, 189 Cal. at p. 348.)

In approving Prop. 1A, the voters approved creation of a fund for construction of the high-speed rail system as laid out in the measure. The voters, and any California taxpayer, are entitled to a temporary restraining order, and injunction, to preserve that fund against its dissipation by unauthorized use. (*Trickey v. City of Long Beach* (1951) 101 Cal.App.2d 871 [action under § 526a seeking to block transfer of funds from a trust fund to city's general fund was proper]; *See, Lofton*

v. Wells Fargo Home Mortgage (2014) 230 Cal.App.4th 1050, 1055 [trial court properly issued temporary restraining order to preserve funds placed at risk in action].)

II. A LEGAL REMEDY WOULD BE INADEQUATE, AND WOULD RESULT IN A MULTITUDE OF SUITS.

Defendants may argue that neither a TRO nor injunction is needed, because Plaintiffs have an adequate legal remedy by seeking to recover the funds, or unwind the contracts, even in the absence of injunctive relief. However, the cases are clear that such a legal remedy is inadequate. (*Heckmann v. Ahmanson* (1985) 168 Cal.App.3d 119, 136 [claim for damages not adequate substitute for protecting funds involved from misappropriation].) Further, attempting to invalidate or "undo" multiple contracts would involve a multiplicity of suits, which is contrary to the statutory intent. (Code of Civil Procedure § 526(a)(6); *Steinmeyer v. Warner Cons. Corp.* (1974) 42 Cal.App.3d 515, 520.)

III. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS.

Perhaps the most important of the factors involved in deciding whether to issue a temporary restraining order or preliminary injunction is whether the plaintiffs are likely to prevail on the merits of the case. Obviously, it makes no sense for the court to grant interim relief to a plaintiff if it is clear the plaintiff will ultimately lose the case. Here, however, the basic issue involved is a purely legal one that can be evaluated based solely on uncontestable evidence. On that central legal issue – the constitutionality of the Legislature's enactment of AB 1889, Plaintiffs believe that there can be little question that the Legislature, in enacting that statute, violated Article XVI Section 1 of the California Constitution.

A. PLAINTIFFS' FACIAL CHALLENGE TO THE CONSTITUTIONALITY OF AB 1889 IS PROPERLY BROUGHT THROUGH DECLARATORY RELIEF, RATHER THAN MANDAMUS.

Defendants have already indicated that they intend to file a demurrer to this case, based on the argument that it may only be brought though a mandamus challenge to the approval of the two funding plans involved. Defendants are simply wrong. This is not an "as applied" challenge

arguing that a statute is unconstitutional in its specific application. (*See, Tejon Real Estate, LLC v. City of Los Angeles* (2014) 223 Cal.App.4th 149, 155 [as applied constitutionality challenge properly brought through administrative mandamus].) While this case is brought in the context of CHSRA's attempt to use AB 1889 as the basis for approving two funding plans, what is at issue is a fundamental disagreement between Plaintiffs and CHSRA over the facial constitutionality of that statute. Such a facial challenge is properly brought through declaratory relief. (*Id.* [citing *Agins v. City of Tiburon* (1979) 24 Cal.3d 266, 272-273].)

B. PLAINTIFFS' ACTION FOR INJUNCTIVE RELIEF UNDER CODE OF CIVIL PROCEDURE SECT. 526a IS LIKEWISE PROPERLY BROUGHT, RATHER THAN REQUIRING A MANDAMUS CLAIM.

Defendants apparently also believe that, because the illegal expenditures involved here occur after the approval of the Central Valley Segment Funding Plan, they can also only be challenged via mandamus. Defendants are again wrong.

In *Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 819, the plaintiff had not only challenged (via mandamus) the city's enactment of utility users tax but also its collection of that tax under Code of Civil Procedure § 526a. The Supreme Court held that as to the enactment of the tax, the statute of limitations on a mandamus challenge had already run, and consequently the dismissal of that cause of action was proper.

As to the violation of § 526a through the collection of the tax, however, the court held that each time the city collected money under the allegedly illegal tax, a new cause of action under both mandamus and § 526a accrued. Similarly here, the approval of the funding plans may be properly challenged via mandamus, but the allegedly illegal expenditures in reliance on an approved funding plan may be challenged separately under § 526a.

Nor does the fact that an action in mandamus to challenge the approval of the funding plan might be proper mean that other types of claims may not be brought under § 526a.

> Section 526a permits a taxpayer action "to obtain a judgment ... restraining and preventing any illegal expenditure" of public funds. While such language clearly encompasses a suit for injunctive relief, taxpayer suits have not been limited to

> actions for injunctions. Rather, in furtherance of the policy of liberally construing section 526a to foster its remedial purpose, our courts have permitted taxpayer suits for declaratory relief, damages and mandamus. To achieve the "socially therapeutic purpose" of section 526a, "provision must be made for a broad basis of relief. Otherwise, the perpetration of public wrongs would continue almost unhampered." (*Van Atta v. Scott* (1980) 27 Cal.3d 424, 449-450 [footnotes omitted]; *see also, Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 29 [suits under § 526a " …provide a general citizen remedy for controlling illegal governmental activity."].)

C. AB 1889 IS FACIALLY UNCONSTITUTIONAL FOR VIOLATION OF ARTICLE XVI SECTION 1 OF THE CALIFORNIA CONSTITUTION.

AB 1889 established a new section under Chapter 20 of the Streets & Highways Code. Subsection (a) of that new section, Section 2704.78, reads as follows:

> (a) For purposes of the funding plan required pursuant to subdivision (d) of Section 2704.08, a corridor or usable segment thereof is "suitable and ready for high-speed train operation" if the bond proceeds, as appropriated pursuant to Senate Bill 1029 of the 2011–12 Regular Session (Chapter 152 of the Statutes of 2012), are to be used for a capital cost for a project that would enable high-speed 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. [Emphasis added.]

As approved by California's voters, Streets & Highways Code § 2704.08 included in both subsections (d) and (e) a requirement that, "the corridor or usable segment thereof would be suitable and ready for high-speed train operation." Specifically, in subsection (d), the report on each final funding plan to be prepared for CHSRA by an independent consultant was to indicate that:

> (A) construction of the corridor or usable segment thereof can be completed as proposed in the plan submitted pursuant to paragraph (1), (B) if so completed, the corridor or usable segment thereof would be suitable and ready for high-speed train operation …

The meaning of these provisions seems abundantly clear. The consultant's report was to indicate that the corridor or usable segment could be completely constructed as proposed in the final funding plan, and, if so constructed, it would *[at that point]* be suitable and ready for high-speed train operation. While "at that point" was not explicitly part of the provision, any reasonable voter, reading the provision, would understand it to be necessarily implied.

The clause states that a segment must be "suitable *and* ready for high-speed train

operation," The use of both "suitable" and "ready" is significant. They are not synonymous, but complementary. Suitable means suited for – i.e., designed for the use of high-speed trains. Ready, by contrast, means just that – immediately available for high-speed train use.[5] AB 1889 modified that provision to indicate that the usable segment would be considered "suitable and ready for high-speed train operation" even if it would not be ready (and perhaps not even suitable) until after there had been additional planned investments made in the usable segment.

In determining the meaning of a voter-approved ballot measure, the same principles apply as for the interpretation of a statute:

> Yet the same basic rules of statutory construction apply to statutes enacted by the voters as to statutes passed by the Legislature. [] We must look to the plain language of the statute to determine the intent of the electors []; but the words of the statute are given their ordinary meaning in the context of the statute as a whole and in light of the entire statutory scheme []. (*High-Speed Rail Auth., supra*, 228 Cal.App.4th at p. 708. [citations omitted])

In interpreting the meaning of Sec. 2704.08, it is paramount to ascertain the will of the voters. (*Id.*) As that court had noted, the provisions of Sect. 2704.08 (c) and (d) had been intended, both by the Legislature that wrote them and by the voters who enacted them, to act as a "financial straitjacket" to constrain the ability of CHSRA to use the bond funds. Based on that meaning of the measure's provisions, the voters clearly intended that the provisions be stringently enforced, in order to ensure the financial viability of the project. (*Id*. at p. 706.)

What the Legislature did, in enacting AB 1889, was to figuratively loosen the bonds of the financial straitjacket to give CHSRA more "wiggle room" in designing and approving a usable segment. Yet the clear language of Sect. 2704.08 (c) and (d) provided for no such wiggle room.

It is well established that a legislative body has great discretion in deciding on the terms of a bond measure it places on the ballot; but once that measure has been approved by the voters, those terms are binding. They cannot be changed without the consent of both parties – i.e., by

[5] Webster's New College Dictionary (1995) gives a primary definition of: "Prepared or available for service or action."

asking the voters to ratify the proposed change in the terms. (*O'Farrell, supra,* 189 Cal. at p. 348.) Consequently, the Legislature's action in enacting AB 1889 was patently and facially unconstitutional in violating Article XVI Section 1 of the California Constitution.

D. BUT FOR AB 1889, THE CENTRAL VALLEY SEGMENT COULD NOT QUALIFY FOR CONSTRUCTION FUNDING FROM PROP. 1A.

Defendants will likely argue that even if AB 1889 is facially unconstitutional, the Funding Plan for the Central Valley Segment remains valid and not subject to injunction because it does not rely upon AB 1889 to satisfy the requirements of Prop. 1A. The evidence says otherwise.

The Central Valley Segment Funding Plan makes no mention of AB 1889; nor does Mr. Cohen's letter approving that Funding Plan. (Plaintiffs' RJN, Exhibits C and D) Mr. Cohen's letter does not even mention Prop. 1A's requirement that a usable segment, if completed in accordance with the Funding Plan, be suitable and ready for high-speed train operation. The Funding Plan itself goes one step further and baldly asserts that the Central Valley Segment <u>will</u> be suitable and ready for high-speed train operation. (Plaintiffs' RJN, Exhibit C at pp. 2, 5.) However it presents no supporting evidence; because there is none.

The independent consultant's report of the Central Valley Segment Funding Plan (Exhibit B to Flashman Decl.) is more honest. At p. iv of the report, under Key Terms and Definitions, it explicitly states that "suitable and ready" is defined by the terms of AB 1889. At page 32, in a section entitled, "Suitable and Ready for High-Speed Train Operation," it states:

> On completion of the project, the usable segment will be *suitable for testing of high-speed trains*. The implementation of the *additional investments required by the Authority to begin high-speed train operations*, such as completion of the remaining portion of the Valley to Valley Line between San Jose and Madera, are planned and accounted for in the 2016 Business Plan – an approach confirmed in the June 8, 2012 Office of Legislative Counsel Letter. [Emphasis added.]

Thus, the consultant's report concludes that the Central Valley Segment will be suitable for <u>testing</u> high-speed rail trains, but only after additional investments by CHSRA would it be ready "to begin high-speed train operations." The report properly distinguishes between testing and operation of high-speed rail trains. Only the latter would satisfy Prop. 1A.

Even CHSRA's Funding Plan acknowledged that the Central Valley Segment, when fully constructed, would only be a test track – to test the feasibility of the proposed high-speed rail operation. (Exhibit C to Plaintiffs' RJN at pp. 2, 4, 9. 11, 15, 16; per Streets & Highways Code § 2704.01(d), high-speed rail is defined as operating at over 200 miles per hour in revenue service.) The consultant's report, and even the Funding Plan itself, thus confirm that but for the provisions of AB 1889, the Central Valley Segment would not be suitable and ready for high-speed train operation.

In desperation, Defendants may point to the Legislative Counsel's 2012 analysis of the Central Valley Segment.[6] (See, Consultant Report at p. 32, footnote 27; see also, Funding Plan at pp. 9-10 [quoting from Legislative Counsel's letter].) The Legislative Counsel's opinion may help determine the Legislature's intent when that opinion was before the Legislature when it made its decision, (*Martinez v. The Regents of the University of California* (2010) 50 Cal.4th 1277, 1289), but it is the intent of the voters that matters here, and that is for the Courts to determine, especially when the Legislative Counsel's opinion, written years after the voters approved Prop. 1A, flies in the face of the plain meaning of Prop. 1A's words.

> We examine the words of the statute, giving them a plain and commonsense meaning, the entire substance of the statute, and consider the statutory framework as a whole. [] Where the statutory language in dispute is clear and unambiguous, there is no need for construction and we should not indulge in it. [] (*Brewer Corp. v. Point Center Financial, Inc.* (2014) 223 Cal.App.4th 831, 842. [internal citations omitted])

E ANY EXPENDITURE OF BOND FUNDS IN RELIANCE ON THE VALIDITY OF AB 1889 WOULD BE AN ILLEGAL EXPENDITURE OF PUBLIC FUNDS SUBJECT TO INJUNCTION UNDER § 526a.

As explained above, it is clear that AB 1889 unconstitutionally attempted to effect a post-election change in the terms of Proposition 1A. It follows that an expenditure of public funds that would violate Proposition 1A's requirements except for AB 1889 would be an illegal expenditure

[6] Then called the Initial Construction Segment and not identified as a usable segment.

of public funds. Under Code of Civil Procedure § 526a, such an illegal expenditure can be enjoined. (*Van Atta, supra,* 27 Cal.3d at p. 450.)

IV. THE BALANCE OF HARMS FAVORS PLAINTIFFS.

In determining whether to issue an injunction, the court weighs two basic factors: the likelihood that the plaintiffs will prevail on the merits and the balance of harms that will be suffered by the parties, depending on whether the injunction is issued or not. (*Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.* (2016) 6 Cal.App.5th 1178, 1183.) These two factors "operate on a sliding scale: '[T]he more likely it is that [the party seeking the injunction] will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue.' " (*Id.*)

While Defendants may claim that they will be harmed by a preliminary injunction, or even a temporary restraining order, by being unable to use bond funds to continue to pay for construction, at this point Defendants have other funds that may be used. According to Defendants' own Funding Contribution Plan of December 31, 2016, Defendants still have a balance of over $100 million in ARRA grant funds, as well as several hundred million dollars of Greenhouse Gas Reduction Fund ("GHGRF") cap & trade auction proceeds upon which to draw. (See, Warren Decl., ¶¶ 11, 13, 14.) However, if Defendants were allowed to continue to commit and expend bond funds on the Central Valley Segment, that money would be lost beyond recovery, permanently damaging the ability of CHSRA to construct the project that the voters intended. (*Id.*, ¶ 15.)

CONCLUSION

For all of the above reasons, Plaintiffs' application for issuance of a temporary restraining order against Defendants, their employees, officers, agents, and those working in concert with them should be granted, and the Court should issue an order to show cause why a preliminary injunction should not issue.

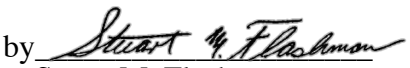
Dated: March 12, 2017

Respectfully submitted,

Michael J. Brady

Stuart M. Flashman

Attorneys for Plaintiffs

by 
Stuart M. Flashman