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EXEMPT FROM FEES PER GOVERNMENT CODE §6103

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

JOHN TOS, *et al*,
Petitioners and Plaintiffs
vs.
THE STATE OF CALIFORNIA *et al.*,
Respondents and Defendants

No. 34-2016-00204740

Assigned for all purposes to Dept. 28, Hon. Richard Sueyoshi

PETITIONERS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS ON FIRST CAUSE OF ACTION

[Code of Civil Procedure §1060]

Date:	October 26, 2018
Time:	11:00 AM
Department:	28
Judge:	Hon. Richard Sueyoshi
Action filed:	December 13, 2016
Trial Date:	Not Yet Set

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INTRODUCTION

Petitioners and Plaintiffs John Tos, Quentin Kopp, Town of Atherton, County of Kings, Patricia Louise Hogan-Giorni, Anthony Wynne, Community Coalition on High-Speed Rail, Transportation Solutions Defense and Education Fund, and California Rail Foundation (hereinafter, "Petitioners") file this motion seeking the Court's declaratory judgment that AB 1889 and Streets & Highways Code Section 2704.78[1], which it enacted, are facially unconstitutional. AB 1889 violates Article XVI Section 1 of the California Constitution by attempting to partially repeal, without voter approval, provisions of a California general obligation bond measure that were integral to the scheme that induced California voters to enact the measure.

The bond measure in question, approved by the voters as Proposition 1A ("Prop. 1A") in the November 2008 general election[2], authorized the sale of $9.95 billion of bonds to help finance the planning and construction of a high-speed rail system in California. Unlike many bond measures, which give the agency involved great discretion in how the bond proceeds may be used, Prop. 1A placed numerous detailed substantive and procedural restrictions on the spending of bond funds towards construction of that system or purchase of associated equipment and land. Those provisions were placed in the measure by the Legislature, at the suggestion of the Governor, precisely to give voters confidence that if they approved the measure, the bond funds would not be wasted.

The specific and restrictive provisions of Prop. 1A stand in stark contrast to the more general provisions of most bond measures, like the measure involved in *Tooker v. San Francisco Bay Area Rapid Transit Dist.* (1972) 22 Cal.App.3d 643. In *Tooker*, the bond measure placed before the voter, while generally describing a rapid transit system connecting San Francisco, via an underwater transbay tube, with Downtown Oakland and other parts of the East Bay, specified neither individual stations nor whether the line would be underground or above ground at any particular point. Consequently, when BART was sued over changes to details of the system,

[1] Unless otherwise indicated, all statutory references herein are to the Streets & Highways Code.

[2] The bond measure had originally been intended for the November 2004 ballot as Prop. 1 (approved in 2001-2002 session as SB 1856), but was twice delayed due to budgetary concerns. (See, Petitioners' Request for Judicial Notice in Support of Motion for Judgment on the Pleadings ["Petitioners' RJN"] ¶ 1 and Exhibit A.)

which had been described in a preliminary report but were not specified in the bond measure itself, the lawsuit was rejected. (*Id.* at pp. 649-650; *accord, Mills v. S. F. Bay Area Rapid Transit Dist.* (1968) 261 Cal.App.2d 666, 669; *Associated Students of North Peralta Community College v. Board of Trustees* (1979) 92 Cal.App.3d 672 [challenge to bond measure for community college failed because bond measure itself did not commit board of trustees to building four campuses].) The situation here is quite different; the restrictive terms were included within the bond measure itself.

The Third District Court of Appeal characterized the stringent restrictions of Prop. 1A as a "financial straitjacket." (*California High-Speed Rail Authority v. Superior Court (CHSRA v Sup. Ct.)* (2014) 228 Cal.App.4th 676, 706.) As the Court noted, "[T]he voters designed a financing program to ensure that construction of a segment would not begin until potential financial or environmental obstacles were cleared." (*Id.* at p. 710.)

Long after Prop. 1A had been placed on the ballot and approved by the voters, during the 2016 legislative session, the Legislature approved AB 1889, a bill that materially loosened Prop. 1A's tight restrictions. Those changes were improper, amounting to a "bait and switch." They essentially partially repealed important Prop. 1A provisions and consequently required, but did not get, the approval of California voters.

In Prop. 1A, the voters had required that before Respondent and Defendant California High-Speed Rail Authority ("Authority") could use appropriated bond funds towards construction of a high-speed rail corridor or usable segment,[3] it needed to prepare and approve a "detailed funding plan" ("Final Funding Plan") for that segment, including providing its total cost, identifying committed funding sources sufficient to complete its construction, projecting its expected ridership and revenue, and other details. (§ 2704.08(d).)

The Authority was also required to provide for the preparation of one or more reports, based on the Final Funding Plan. The report(s), prepared by independent financial consultants. would confirm not only that the segment could be completed as proposed in the Final Funding Plan, but, in addition, that if so completed, it would be suitable and ready for high-speed train

[3] Prop. 1A defined a "usable segment" of a high-speed rail corridor as a segment containing at least two stations. (§ 2704.01(g).)

operation. (*Id*.) The Authority was then required to approve the reports and forward them to those involved in making the final approval decision on the expenditures.

This scheme implemented Governor Schwarzenegger's intent, expressed in his May 2008 budget revision, of showing the voters that bond money would not be spent on construction until it could be objectively demonstrated, through expert reports, that there were sufficient funds available to fully construct an operational high-speed rail segment.

In enacting AB 1889, the 2016 Legislature went beyond its proper powers by attempting to unilaterally change the meaning of Section 2704.08(d) from what voters had understood and relied upon in approving the measure. The Governor and the *2008* Legislature had drafted the language of that subsection and placed it on the ballot with the expressed intent of inducing the voters' approval. Petitioners therefore ask the Court to declare that AB 1889 is invalid because it violates the provisions of Article XVI, Section 1 by attempting a partial repeal of the bond measure's provisions.

STATEMENT OF MATERIAL FACTS

I. PROPOSITION 1A.

In 2008, the Legislature, after making extensive amendments (see, Petitioners' RJN, ¶ 2 and Exhibit B [legislative history of AB 3034]), approved AB 3034, placing on the ballot a $9.95 billion general obligation bond measure to help fund the planning and construction of a California high-speed rail system, and associated connecting transportation systems.[4] (Petitioner's RJN, ¶ 3 and Exhibit C.)

As initially introduced in February 2008, the bill was similar to the previously approved Prop. 1[5] and was a relatively simple and general bill updating that prior measure. (Petitioners' RJN, ¶ 4 and Exhibit D; compare with Exhibit A.) However, subsequently, in May of 2008 and pursuant to Article IV, Sect. 12 of the State Constitution, the Governor submitted to the Legislature his May revision to the State Budget. (*See, Professional Engineers in California Government v. Schwarzenegger* (2010) 50 Cal.4th 989, 1010 [description of general procedure for

[4] The measure provided $9 billion for the high-speed rail system (§ 2704.06), and $950 million for "connectivity" projects, which need not directly involve high-speed rail. (§ 2704.095.)

[5] See footnote 2 *ante*.

submittal and passage of state budget]; *City of Scotts Valley v. County of Santa Cruz* (2011) 201 Cal.App.4th 1, 38 [referencing Governor's annual May submittal to Legislature of revisions to budget].) In that revision, the Governor indicated that the administration would be proposing amendments to the High-Speed Rail Bond Act then pending before the Legislature to address concerns the administration had about the planning and construction of the high-speed rail system. The amendments would assure voters that the bonds would result in construction of one or more *operable* high-speed rail segments. (Petitioners' RJN, ¶ 5 and Exhibit F.)

Subsequently, and in line with the statements in the May budget revision, on June 26, 2008, the bill was extensively amended in the Senate Transportation and Housing Committee. (Petitioners' RJN, ¶ 6 and Exhibits G – I [respectively, bill as amended, committee report following June 26th amendments, and comparison of amended bill with AB 3034 as introduced].) In particular, the amendments added several new and restrictive provisions to the measure for enactment by the voters.

The restrictive provisions added as subdivisions (c) and (d) of Section 2704.08 (see, Petitioners' RJN, Exhibit I) required the Authority to prepare two separate and successive funding plans for each corridor or usable segment thereof that the High-Speed Rail Authority proposed to build using bond funds: one before bond funds were appropriated for construction (Subsection (c)) and a second before those funds could be committed or expended on construction (subsection (d)). The new provisions included numerous specific requirements that needed to be met by the funding plans. The Legislature further required that the second, and more detailed, Final Funding Plan (subsection (d)) be reviewed by one or more independent financial analyst(s) who were to confirm in one or more written reports that the plan met a series of stringent requirements. The report(s), along with the funding plan, had to then be reviewed by the Director of Finance prior to his giving final approval, allowing construction expenditures. As the Court of Appeal noted in *CHSRA v. Sup. Ct., supra*, 228 Cal.App.4th at p.713, the Final Funding Plan fulfilled a role analogous to that of a Final Environmental Impact Report in providing the ultimate decision maker, the Director of Finance, "with the most important and expansive information necessary to make a final determination whether the high-speed rail project is financially viable." These amendments were

included in what was finally passed by the Legislature, signed by the Governor, and placed on the ballot as Prop. 1A.[6]

The Legislative Analyst's analysis of the ballot measure, also placed before the voters, touted that, with the new requirements, the measure "requires accountability and oversight of the authority's use of bond funds authorized by this measure for a high-speed train system.") (Petitioners' RJN, ¶ 7 and Exhibit J at p. 5 [analysis, top of column 2].) The argument in favor of the measure, also placed before the voters and signed by the vice chair of the Authority, went even further, emphasizing that the measure required, "Public oversight and *detailed independent review of financing plans*." (*Id.* at. 6, column 2 [emphasis added].) In the November election, the voters approved the bond measure.

II. THE PRELIMINARY FUNDING PLAN AND SUBSEQUENT LITIGATION.

In November 2011, the Authority prepared and approved a Preliminary Funding Plan, purportedly pursuant to § 2704.08(c). The Preliminary Funding Plan identified two alternative usable segments, designated as Initial Operating Segments ("IOS"), to be funded using Prop. 1A bond funds. (Petitioner's RJN, ¶ 8 and Exhibit K.) One of the two alternative segments, extending from San Jose to Bakersfield via Pacheco Pass and Fresno, was designated as "IOS-North." The other, running from Merced through Palmdale and the Tehachapi Mountains to the San Fernando Valley,[7] was designated as "IOS-South."[8]

In April 2012, the Authority approved a Revised 2012 Business Plan ("Business Plan") that outlined how the Authority intended to implement its high-speed rail system. (See, Petitioners' RJN, ¶ 10 and Exhibit M thereto.) The Business Plan specified that IOS-South would be implemented. (*Id.* at pp. ES-7, ES-13.)

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[6] The ballot materials included a label, title, and summary that the Legislature itself wrote. See, *Howard Jarvis Taxpayers Assn. v. Bowen* (2011) 192 Cal.App.4th 110 [Legislature exceeded its authority and violated terms of a voter-enacted initiative by itself preparing the title and summary of Prop. 1A and prohibiting the Attorney General from modifying them].

[7] The exact southern terminus of the segment was not specified in the Preliminary Funding Plan.

[8] See Exhibit M to Petitioners' RJN at p. 2-18 [map showing areas involved, and specifically IOS-South].

In July 2012, based on the Preliminary Funding Plan and Revised 2012 Business Plan submitted by the Authority, the Legislature enacted SB 1029 as a "trailer" bill to the 2012 budget.[9] SB 1029 appropriated $2.6 billion of Prop. 1A high-speed rail bond funds, along with $3.2 billion of federal grant funds, to construct an initial construction segment ("ICS") within IOS-South, plus another $1.1 billion of bond funds towards constructing projects in the "bookend" segments of the high-speed rail system.[10] (Petitioners' RJN, ¶ 9 and Exhibit L.) The bill also appropriated additional Prop. 1A bond funds for design and engineering work and for connectivity projects, but neither of these were subject to the requirements of § 2704.08(c) or (d).

Shortly after the approval of the Preliminary Funding Plan, Petitioners and Plaintiffs John Tos and Kings County, along with one additional plaintiff, filed suit challenging the approval of the Preliminary Funding Plan and asking the Court to enjoin any expenditures under that plan. (*John Tos et al. v. California High Speed Rail Authority et al*., Sacramento County Superior Court Case # 34-2011-00113919 [*"Tos I"*].) After the passage of SB 1029, the complaint was amended to also challenge the appropriation of funds based on the Funding Plan.[11]

The lawsuit contended that the Preliminary Funding Plan violated two mandatory provisions of § 2704.08(c). First, it did not identify the sources of all funding needed to complete the usable segment, and second, it did not (and could not) certify that all environmental clearances necessary to begin construction had been completed. While the trial court ruled in favor of the petitioners, holding that the Preliminary Funding Plan was invalid and must be redone, the court of appeal, on writ review of that decision, reversed. (*CHSRA v. Sup. Ct., supra,* 228 Cal.App.4th 676.) The court of appeal held that while the Preliminary Funding Plan was palpably defective, the Legislature's action in appropriating funds did not violate Prop. 1A. The court also held that, because the Preliminary Funding Plan was only an interlocutory and preliminary step in the

[9] The budget itself needed to be approved by June 15th. (Calif. Constit., Article IV § 12(c)(3).)

[10] The "bookend" segments were defined by memoranda of understandings entered into by the Authority with the Metropolitan Transportation Commission and Southern California transit agencies. They consist of the northern and southern terminal segments of the Phase I system, which stretches between San Francisco and Los Angeles and Anaheim. (§ 2704.04(b)(2).) The "bookends" extend north from San Jose to San Francisco and south from the southern terminus of IOS-South to Anaheim. (Petitioners' RJN, Exhibit M at p. ES-1.)

[11] The case was consolidated with another case challenging the issuance of bonds under Prop. 1A.

process of authorizing actual expenditure of bond funds on construction, its failure to meet Prop. 1A's requirements was not reviewable. Rather, any challenge for noncompliance with Prop. 1A's requirements must await the preparation and approval of a Final Funding Plan under § 2704.08(d). (*Id.* at p. 713.) The court noted that:

> But it is the second and final funding plan, like the final EIR, that will provide the ultimate decision maker with the most important and expansive information *necessary* to make the final determination whether the high-speed rail project is financially viable. The Authority now has a clear, present, and mandatory duty to include or certify to all the information required in subdivision (d) of section 2704.08 in its final funding plan and, together with the report of the independent financial consultant, to provide the Director of the Department of Finance *with the assurances the voters intended that the high-speed rail system can and will be completed as provided in the Bond Act*. (*Id.* [emphasis added].)

III. CALTRAIN ELECTRIFICATION AND AB 1889.

Caltrain is a public commuter rail line that runs between San Francisco and San Jose along the San Francisco Peninsula. It is governed by the Peninsula Corridor Joint Powers Board ("Caltrain Board"), whose members are appointed by various jurisdictions along its route. (Public Utilities Code § 99234.7 (Stats. 1989, Ch. 1283, Sec. 3) [authorizing Caltrans to negotiate with railroads along the Peninsula to provide passenger rail service]; see also, Revenue and Taxation Code § 7286.65 [allowing Caltrain Board to submit a transportation sales tax measure to voters within its jurisdiction].) Currently, Caltrain's trains are drawn by diesel locomotives. For many years, the Caltrain Board had desired to convert the line to electrified operation. Not only would this make the trains quieter and reduce local air pollution, but it would also make their acceleration faster, potentially allowing more train service.

The Authority also seeks to run its high-speed rail line within the same right-of-way as Caltrain. In 2012 the Authority proposed sharing not only the right-of-way, but also Caltrain's tracks. This so-called "blended system" would require not only electrification, but also signal and grade crossing safety upgrades and major track improvements to run high-speed rail trains, but those improvements could also benefit Caltrain's operations. (See, Petitioners' RJN ¶ 10 and Exhibit M [excerpts from California High-Speed Rail Authority Revised 2012 Business Plan, esp. pp. ES-2 [Caltrain electrification], ES-4 to ES-5 [early investments in upgrading Caltrain service], ES-10 [advance investments in {conventional} regional and local rail systems], and pp. 2-1 to 2-3, 2-11, and 2-21 to 2-23 [early investments to upgrade existing {conventional rail} services]; see

also Petitioners' RJN ¶ 11 and Exhibit N [Memorandum of Understanding for early investment in Peninsula Corridor ("MOU"), esp. at p. 2, 5th -7th whereas clauses – explaining that improvements will upgrade and modernize Caltrain service].)

To incentivize Caltrain's cooperation, the Authority also offered it a major financial inducement. By itself, Caltrain had been unable to fully fund electrification. The Authority offered Caltrain $706 million of Prop. 1A bond funds for its electrification project[12], so long as the electrification was compatible with its use by high-speed rail trains. (Petitioners RJN, ¶ 11 and Exhibit N at p. 4 of 6.)

There remained one large problem – the requirements of Prop. 1A and SB 1029. SB 1029 had included $1.1 billion for the Authority to construct projects in the "bookends," which included the Caltrain right-of-way. However, use of bond funds for Caltrain's electrification project would, under SB 1029, require the Authority to prepare and approve a Final Funding Plan for the San Francisco – San Jose segment involved in the electrification. (See Exhibit L to Petitioners' RJN at p. 3, Sec. 3, ¶ 5.) That would require the Authority to demonstrate that it had available or committed[13] all the funding needed to produce a segment that would be, when constructed according to the funding plan, "suitable and ready for high-speed train operation." Unfortunately, SB 1029 had already committed all of the Authority's federal grant funds, and a good portion of its Prop 1A construction funds, to the Central Valley portion of the high-speed rail route. There were simply not sufficient funds available (including bond funds and required matching funds) to also complete a San Francisco to San Jose high-speed rail segment. In addition, SB 1029 also required completion of all environmental clearances necessary to begin construction. While Caltrain's electrification project had completed its environmental review, environmental review of the Authority's San Francisco – San Jose high-speed rail segment had barely begun.

[12] Of the $706 million, $106 million would be Prop. 1A "connectivity" funds (§ 2704.095), while $600 million would be high-speed rail construction funds, requiring a Funding Plan under § 2704.08(d). The Federal Transit Administration, and other state, regional, and local funding sources, would provide additional funding. (See, Petitioners' RJN, ¶ 11 and Exhibit N [MOU, table on p. 5 of 6].)

[13] Commitments could be in the form of agreements with private parties and/or authorizations, allocations, or other assurances from public agencies. (§ 2704.08 (d)(1)(B).)

AB 1889 offered an apparently simple solution to these problems. It added a new section to the Streets & Highways Code, § 2704.78. That section "clarified" the meaning of the phrase "suitable and ready for high-speed train operation" in § 2704.08 (d) of Prop. 1A, as it applied to the projects funded by SB 1029. As relevant, the new language was 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]

Despite objections by several of Petitioners (see, SAP ¶ 61; see also Exhibit P to Petitioners' RJN at p. 5 [Assembly floor analysis of AB 1889, referencing Petitioner and Plaintiff Transportation Solutions Defense and Education Fund's objection that the bill was unconstitutional]) the bill was nevertheless approved by the Legislature and signed by the Governor. (See, Petitioners' RJN, ¶ 12 and Exhibit O [statute as chaptered].) Shortly thereafter, the Authority began to prepare and approve Funding Plans in reliance on AB 1889's provisions. (SAP ¶¶ 63, 72, 78; Respondents' and Defendants' Amended Answer ["RAA"], ¶¶ 63, 72, 78.)

IV. THE CURRENT LITIGATION

The current litigation was filed in December of 2016 as an action for injunctive and declaratory relief, concurrent with the Authority Board's approval of Final Funding Plans for two "usable segments" – a Central Valley Segment and a San Francisco – San Jose Peninsula Segment.[14] A First Amended Complaint was filed at the end of January, updating the factual claims. The Authority demurred to the complaint, and the demurrer was granted with leave to amend. A Second Amended Petition and Complaint was filed in May, adding two claims in mandamus as well as adding the State of California and other parties as defendants. Later, in response to the threat of demurrer, several defendants and some of the claims were voluntarily dismissed. The Director of Finance filed an answer, but The State demurred to the declaratory relief claim and the Authority demurred to the claim for injunctive relief under Code of Civil

[14] Under the Funding Plans, neither segment was proposed to initiate high-speed rail passenger service without further (currently unfunded) improvements, not included in the Funding Plans.

Procedure § 526a, for illegal and wasteful expenditure of public funds. The State's demurrer was overruled, but the Authority's demurrer was granted without leave to amend. Eventually all parties answered and Petitioners proposed this motion to speed and facilitate the action's adjudication.

STANDARD OF REVIEW

Declaratory relief (Code of Civil Procedure §1060 et seq.) is an appropriate manner to seek a legal determination of the facial constitutionality of a statute. (*Agins v. City of Tiburon* (1979) 24 Cal.3d 266, 272-273; *Communities for a Better Environment v. State Energy Resources Conservation & Development Com.* (2018) 19 Cal.App.5th 725, 734-735.)

The facial challenge to the constitutionality of AB 1889 presents a pure issue of statutory interpretation. The Court must determine the intent of voters in enacting § 2704.08(d) as part of Prop. 1A, and whether AB 1889 is consistent with that intent or, conversely, whether it attempts to repeal provisions that induced voter approval of Prop. 1A. (*Veterans of Foreign Wars v. State of California ("VFW")* (1974) 36 Cal.App.3d 688, 693.) Because the issues involved are those of statutory interpretation, the Court exercises its independent judgment. (*Shaw v. People Ex Rel. Chiang* (2009) 175 Cal.App.4th 577, 595.) However, the Court's consideration of the constitutionality of AB 1889 is done in the context of the broad power of the Legislature and the deference due it in determining a statute's constitutionality. Constitutional limitations on the Legislature's powers are therefore to be construed narrowly. If the statute can be found, by any reasonable interpretation, to not violate a constitutional provision, it must be found valid. Only if the statute clearly violates a constitutional prohibition may it be held unconstitutional and invalid. (*Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1255; *see also, CHSRA v. Sup. Ct., supra*, 228 Cal.App.4th at p. 715.)

In determining the meaning of the words of a ballot measure, the Court uses the same standard used for determining the meaning of any other statute:

> 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. (*CHSRA v. Sup. Ct., supra*, 228 Cal.App.4th at p. 708 [citations omitted].)

It is the language of the measure, as approved by the voters, and the language in the statute placing the measure on the ballot, that constitute the terms of the "contract" between the

government and the voters. Those terms govern how the bond proceeds may be spent. (*Monette-Shaw v. San Francisco Bd. of Supervisors* (2006) 139 Cal.App.4th 1210, 1215, 1218.)

If the measure's meaning is not clear on its face, the Court may resort to all of the usual tools of statutory construction. These, of course, include the ballot materials placed before the voters. (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 16 [Indicia of voter intent "include the analysis and arguments contained in the official ballot pamphlet."].) But, in addition, it is presumed, in the absence of evidence to the contrary, that the electorate shared the drafters' (i.e., here, the Legislature's and Governor's) expressed intent and their understanding of the measure. (*Rossi, supra,* 9 Cal.4th , at p. 700 fn. 7; *accord, People v. Hazelton* (1996) 14 Cal.4th 101, 123.) Consequently the legislative history of a measure placed on the ballot by the Legislature can also be helpful in ascertaining the Legislature's, and hence the voters', intent.

ARGUMENT

I. PRINCIPLES OF COMPLIANCE WITH ARTICLE XVI SECTION 1.

Article XVI Section 1 of the California Constitution defines the requirements for bond measures in California. Originally adopted in 1879, the article requires voter approval for any debt of more than $300,000 created by the Legislature.[15] In placing such a bond measure before the voters, the Legislature must specify "some single object or work" and provide for the payment of interest and repayment of principal within fifty years. Importantly, once the debt is incurred, the approved measure may not be repealed until the debt has been fully repaid. The section also requires that the funds obtained "shall be applied only to the specific object therein stated" or to payment of the debt created.

Two key decisions of the California Supreme Court, *O'Farrell v. County of Sonoma* (1922) 189 Cal. 343; and *Peery v. City of Los Angeles* (1922) 187 Cal. 753, have defined the duties and limitations placed on the legislative body that places a bond measure on the ballot. Both decisions concluded that once a bond measure has been approved by the voters, its terms cannot be substantively changed without getting the voters' ratification of the changes. (*O'Farrell, supra*, 189 Cal. at p. 348; *Peery, supra*, 187 Cal. at p. 767; *accord, VFW, supra,* 36 Cal.App.3d at p. 696

[15] The section includes an exception for debt created due to war or insurrection.

[Legislature may not appropriate funds originating in a voter-approved bond act for an "alien purpose" not approved by the voters].)

However, the more specific question is, what constitutes a substantive change in the terms of a bond act? *O'Farrell* and *Peery,* as well as other subsequently decided bond measure cases, provide guidance. In *Peery*, the Supreme Court held that selling bonds at a discount, rather than at par value, violated the bond act's terms because it effectively changed the interest rate from what had been promised to the voters. (*Peery, supra*, 187 Cal. at at p. 755.)

In *O'Farrell,* the voters had been promised that the bonds ($85,000 worth) would build a roadway from Sebastopol to Freestone, for a total distance of 4.0 miles. (*O'Farrell, supra*, 189 Cal. at 345.) After the measure's passage, when the project estimates were prepared, it turned out that the bond proceeds would only fund 1.93 miles of road.[16] Consequently, there was not enough money to build the entire four miles. The Board of Supervisors therefore unilaterally, and without placing the change before the voters, reduced the length of the roadway segment to only 1.93 miles. A lawsuit followed. The Supreme Court held that reducing the roadway's length, even if over the same route, did not conform to what had been promised to the voters in the measure. (*O'Farrell, supra*, 189 Cal. at p. 347.)

In *VFW*, likewise, the court of appeal rejected the Legislature's appropriation of funds from a voter-approved revolving Veterans' Farm and Home Purchase Fund to fund operation of county veterans' offices, even though those offices would benefit the same veterans intended to be benefited by the bond act. The court noted:

> The constitutional injunction against later repeal of the bond law aims to prevent the Legislature from making substantial changes in the scheme or design which induced voter approval. (*VFW, supra*, 36 Cal.App.3d at p. 693.)

The court found the appropriation was not a use proposed to the voters, and on which voters relied in approving the measure, and hence was improper. (*Id.* at p. 694.) On the other hand, as noted earlier, in *Tooker*, while a preliminary report had identified specific stations and configurations, the bond measure placed before the voters did *not* include those details.

[16] The original proposal had not take into account that there were large hills along the alignment that needed to be graded, which would take more money. (*Id.* at p. 346.)

Consequently, BART was free to make changes in station locations and track configurations without further voter approval.

More generally, as was stated in *O'Farrell, supra*, 189 Cal. at p. 347:

> When the defendant board was contemplating a bond issue on the sixteenth day of April, 1919, *it had the statutory right to make its order just as broad, and just as narrow, and just as specific as it was willing to be bound by, so long as the provisions of the statute were complied with*. … … When, in the order, it specified Sebastopol to Freestone, four miles, designating the point of beginning and the point of the ending, any question of discretion as to division or subdivision into sections was, as to these elements, exercised once and for all and as a finality. [Emphasis added]

Thus, while the legislative body preparing the bond act has total discretion, within constitutional and statutory limits, to delineate the terms of the bond measure; once it presents the measure to the voters for approval, it is bound by the terms it presented, and upon which the voters relied in approving the measure. Or, putting it in the terms expressed in *VFW*, the legislative body may not later substantially change the scheme or design that induced voter approval.

II. AB 1889 MADE SUBSTANTIVE CHANGES TO THE SCHEME THAT INDUCED VOTER APPROVAL OF PROP. 1A.

A. The Language of § 2704.08(d) and its meaning.

Obviously, Prop. 1A, unlike the measure at issue in *O'Farrell*, had not proposed a bond sufficient to build the entirety of the high-speed rail system. Its amount would only build a portion of the system, even when matched by other funds, [17] as required under Prop. 1A.[18] The Authority's and Legislature's answer to the voters was that the system would be built in subunits of "usable segments," which, individually, would have more affordable costs. Each usable segment would include at least two stations along a high-speed rail corridor. (§ 2704.01(g).)

As noted earlier (see p. 6 supra), AB 3034, which specified the language for Prop. 1A, was amended extensively in the Senate Transportation and Housing Committee. Those amendments

[17] In 2006, the Authority had estimated the cost of the entire system as "about $45 billion." (Petitioners' RJN, Exhibit J at p.5 [Legislative Analyst's analysis of Prop. 1A].) Even when matched, the $9 billion would be less than half of that.

[18] See, § 2704.08(a) [bond funds may not pay more than 50% of construction costs for any segment].

were prompted by the Governor's concern with voter skepticism about the measure.[19] The Legislature expected there to be major investment from the federal government and private parties, which would complete funding for the system. (See, Measure Summary [Election Quick Reference Summary at p. 3, Exhibit J to Petitioners' RJN]; § 2704.07 [requires Authority to seek other public and private funding]; see also Exhibit M to Petitioners' RJN at pp. ES-12, ES-17 [Authority strategy for funding system construction].) Especially during a recession, voters needed assurance that the major bond funding being requested would not end up being wasted on a fantasy project. Consequently, the Legislature added § 2704.08(c) and (d), which require preparation of two successive Funding Plans, and approval of the second, Final Funding Plan by the Director of Finance, prior to the Authority committing any bond proceeds for construction or acquisition of equipment or real property for a proposed corridor or usable segment. That same language was included in the final measure placed on the ballot and approved by the voters.

Subsection (d) of Section 2704.08 requires that the second, pre-expenditure, Final Funding Plan include many of the same items as the first, pre-appropriation, Preliminary Funding Plan. However, given that its focus is actual expenditure of bond funds to build a usable segment, its requirements are more detailed. Thus, for example, while the Preliminary Funding Plan requires identifying the sources of all funds to be invested in the corridor or usable segment being proposed for construction, based on *expected* commitments, etc., the Final Funding Plan requires a similar listing, but based on *offered* commitments, etc. The Final Funding Plan is expected to demonstrate that commitments have actually been offered, and therefore can be relied upon, rather than just being expected. In other words, the Authority has to show it is assured of sufficient funding to complete construction of the usable segment.

Of equal importance, while the Preliminary Funding Plan requires the Authority to certify that various requirements have been met, the Final Funding Plan requires one or more independent consultants to prepare separate report(s) that confirm, based on the Funding Plan and its associated materials, that these requirements will actually be met. As the report to the Governor by the Office of Planning and Research prior to the Governor's signing the bill indicated, the intent of this

[19] The Governor, and the Legislature, would have been aware that a major recession was underway.

provision is that the independent expert's report "verifies that the Authority's plans are well founded." (Exhibit Q to Petitioners' RJN at p. 10.) Thus the independent expert's report, which also requires the Authority's approval, provides an additional level of review and oversight prior to the Authority's expenditure of bond funds. (See also, Exhibit J to Petitioners' RJN at p. 6 [ballot argument in favor of measure, column 2, 1st bullet point].)

These protective provisions of subsections (c) and (d), and particularly those of subsection (d), address the concern raised in the Governor's May 2008 Budget Revision that the Bond Act amendments assure the voters that, "all funding needed *to provide service* on that portion of the system is secured." (Exhibit F to Petitioners' RJN [emphasis added].)

For purposes of the constitutionality of AB 1889, there is one key phrase in § 2704.08(d). That phrase states one of the items that the independent consultant's report is required to address, namely to confirm that:

> …if so completed [as proposed in the Final Funding Plan being submitted], the corridor or usable segment thereof would be suitable and ready for high-speed train operation, …

This motion places two questions before the Court: 1) whether this phrase was a substantial part of the scheme or design that induced voter approval of Prop.1A, and 2) if so, whether the meaning of this phrase, as it was understood by the voters who approved Prop. 1A, was substantively changed by the passage of AB 1889. Only if the answer to both questions is "Yes" would the Legislature's enactment of AB 1889 without voter ratification violate Article XVI Section 1.

1. The meaning of "suitable and ready for high-speed train operation" is clear on its face and is not subject to "clarification."

In determining the meaning of language in a statute, the starting point is the words of the statute. If those are clear, the court should go no further.

> It is well established, however, that legislative intent should not be resorted to where a statute is clear on its face. In determining legislative intent, courts look first to the words of the statute itself: if those words have a well-established meaning, as we hold they do here, there is no need for construction and courts should not indulge in it. (*Greb v. Diamond Internat. Corp.* (2013) 56 Cal.4th 243, 256 [internal quotation marks omitted].)

Here, the plain meaning of "suitable and ready for high-speed train operation" would have been clear on its face to the average voter. It joins two phrases: 1) suitable for high-speed train

operation, and 2) ready for high-speed train operation. The first phrase straightforwardly indicates that the usable segment being built would, when constructed in accordance with the funding plan, be appropriate for high-speed train use. Thus, for example, it would need to have appropriate grades, curves, electrical supply, signals and other safety systems, etc. to allow high-speed[20] train use. The second phrase says that once construction was complete under the funding plan, it would be ready for high-speed train operation – i.e., no further work would be needed for a high-speed train to begin operation.

While AB 1889 asserted that it "clarifies" the meaning of this phrase (Exhibit P to Petitioners' RJN [AB 1889, as chaptered, Sec. 1(k)]), it did not identify any ambiguity reasonably subject to multiple interpretations that required clarification. (See, Petitioners' RJN, Exhibit P at pp. 2-3 [explaining that without the bill, bond funds might not be usable unless funds were available to fully construct a usable segment capable of immediate high-speed train operation].) Thus, in 2016 the Legislature was aware that the § 2704.08(d) appeared, on its face, to require full funding for a functional high-speed rail segment before bond funds could be committed to its construction.

While the bill's author, and the 2016 Legislature itself, may not have liked this provision, the Legislature may not attempt to modify the plain meaning of a voter-approved measure under the guise of "clarifying" its provisions. (*Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1261 [Legislature's stated purpose of "clarifying" initiative's provisions did not withstand scrutiny; rather, Legislature had improperly modified initiative's provisions].)

2. Even if there were an ambiguity, the legislative history of AB 3034 makes the phrase's meaning clear.

Even if, arguendo, the phrase "suitable and ready for high-speed train operation" contained a latent ambiguity, the legislative history of the measure confirms what the voters would have understood. Subsections (c) and (d) of § 2704.08 were added by the Senate Transportation and Housing Committee. (Petitioners' RJN, Exhibits G-I.) This is also where and when the specified phrase was inserted. The amendments implemented part of the Governor's May revision to the

[20] Prop. 1A defined a high-speed train as "a passenger train capable of sustained revenue operating speeds of at least 200 mile per hour where conditions allow." (§ 2704.01(d).

2008-2009 budget, as transmitted to the Legislature. (Petitioners' RJN, Exhibit F.) In that message, the Governor explicitly stated:

> The Administration will be proposing amendments to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century to ensure an appropriate balance between assuring that expenditures of the bond funds will result in operational high-speed rail services and providing the flexibility needed to attract federal and local government, as well as private sector, participation in funding, constructing, and operating the system. The following changes to the bond legislation are being proposed. … …
>
> - Before any construction or equipment purchase contracts can be signed for a portion of the system, there must be a complete funding plan that provides assurance that all funding needed to provide service on that portion of the system is secured. (*Id.* at pp. 27-28.)

The addition of the specified phrase, and indeed of the entirety of subsection 2704.08(d), was clearly intended to implement the Administration's proposed amendment. That intent is also clear in the various analyses of the bill presented to the Legislature as the bill moved forward. For example, the Committee Report for the Senate Housing and Transportation Committee stated that the bill, as amended, would require that the independent consultant indicate that, "when completed, the segment would be ready for high-speed service." (Petitioners' RJN, Exhibit H at p. 5, ¶ 22.b.)

Respondents and Defendants (hereinafter, "Defendants") will likely argue that the Court should consider AB 1889 in determining the meaning of the phrase, "suitable and ready for high-speed train operation" in Prop. 1A. While AB 1889, in Section 1(g) (h), and (k) declares the [2016] Legislature's intent that AB 1889 is consistent with the 2012 legislative appropriations under SB 1029 and with Prop 1A, those declarations are irrelevant to the constitutionality of the bill.

It is the intent of the 2008 Legislature, which drafted Prop. 1A and submitted it to voters for approval, that is relevant to interpreting Prop. 1A and determining whether AB 1889 is consistent with the bond measure's voter-enacted provisions. (*Rossi*, *supra,* 9 Cal.4th , at p. 700 fn. 7.) That intent is evidenced in the legislative history of AB 3034. The statement of the Legislature some eight years later can be given little, if any, weight.[21] (*See, Thomsen v. City of Escondido*

[21] This is particularly true given the impact of term limits on the California Legislature's composition.

(1996) 49 Cal.App.4th 884, 893-894 [later city ordinance claiming to clarify definition of tenant in initiative measure, instead impermissibly broadened scope of definition]; *see also, General Electric Co. v. Gilbert* (1976) 429 U.S. 125, 142 [declining to give any weight to interpretation of a statute issued eight years after statute's enactment].) Likewise, while the 2012 Legislature, in enacting SB 1029, may have felt that the requirements of § 2704.08(d), as applied to a "bookends" project, should have a different meaning than otherwise specified in Prop. 1A, it had no more authority to redefine, post voter enactment, the requirements of those voter-enacted provisions than did the 2016 Legislature.

B. The provisions of § 2704.08(d), and specifically the requirement that segments funded by Prop. 1A funds be suitable and ready for high-speed train operation, were added to induce voter approval.

Proposition 1A was a collaborative effort between the Legislature, the Governor, and the Authority. AB 3034, the legislation that placed Prop. 1A on the ballot, was introduced in February 2008 by then Assemblywoman Galgiani at the behest of the Authority. (See Exhibit E to Petitioners' RJN at p. 3 [indicating that the Authority is the bill's sponsor]). However, during its consideration by the Legislature, it received extensive input and amendments from the Authority, other legislators, and the Governor.

In particular, the language contained in § 2704.08(c) and (d), and specifically the language requiring that a usable segment proposed in a Funding Plan (whether preliminary or final) be suitable and ready for high-speed train operation, was added by amendment in the Senate Transportation and Housing Committee, after the Legislature had received the Governor's May budget revision. (Petitioners' RJN, Exhibit F [Excerpt from Governor's May budget revision addressing Authority's budget appropriation and proposed amendments to bond measure]; Exhibits G-I [AB 3034 as amended June 26th in Senate Transportation and Housing Committee; Committee's bill analysis of AB 3034; comparison of AB 3034 as introduced and after Senate Transportation & Housing Committee amendments].) That budget revision (just prior to AB 3034's consideration by the Senate, see Petitioners' RJN, Exhibit B), specifically noted the administration's intent to amend the bond measure. The amendments would assure voters that, for any segment being proposed for construction using bond funds, "all funding needed to provide

service on that portion of the system is secured." Subsection 2704.08(d) neatly addressed that concern.

The August 2008 enrolled bill report on AB 3034, done by the Governor's Office of Planning and Research after the bill had been approved by the Legislature and moved to the Governor's desk for his consideration, again reflects that same concern. (Petitioner's RJN, ¶ 12 and Exhibit Q.) The report recommended that the Governor sign the bill (*Id.* at p. 1). In so doing, it emphasized the importance of the two Funding Plans as part of a review process for the Authority's proposed construction of Usable Segments. (*Id.* at pp. 5-6.) It pointed out that AB 3034 required, "that adequate funding for each segment is available *before* their construction." (*Id.* at p. 9 [emphasis added].) This coincides with the proposed amendments referenced in the Governor's May budget revision.

A letter to the Governor from the then-Chair of the Authority's Board of Directors, Petitioner and Plaintiff Quentin L. Kopp, (Exhibit R to Petitioners' RJN) echoed those points, noting that, as amended, the bill "contains requirements and private sector incentives explicitly characterized by you through your staff as indispensible." The letter also emphasized that AB 3034 was not "the usual legislative measure." In addition to being "a bond underpinning bill," it "also clarifies and strengthens responsible consummation of the project." (*Id.*) In other words, the added provisions were intended to reassure the voters that the project would result in working high-speed rail segments, not some lesser consolation prize. Judge Kopp went on to warn the Governor that, "…failure to enact A.B. 3034 [which would leave the prior Proposition 1 on the ballot] will jeopardize voter approval of Proposition 1 and the project you have lauded publicly and sincerely." It could hardly be made clearer that Judge Kopp, who, as the Authority's chair, would have been following the measure closely, felt that AB 3034's added provisions were crucial in gaining voters' support for the bond measure.

As the court of appeal noted in *CHSRA v. Sup. Ct., supra*, 228 Cal. App.4th at p. 706, the ballot language of Prop. 1A makes it clear that in § 2704.08(c) and (d), the voters intended to place the Authority in a "financial straitjacket" that would enforce the financial viability of the project. The legislative history of AB 3034, as well as the language in the Legislative Analyst's analysis of the measure, (included in the voters' Quick Reference Guide [Exhibit J to Petitioners' RJN at p. 5] and referencing both the Preliminary and Final Funding Plans as provisions requiring

accountability and oversight of the Authority's use of bond funds) confirm that the provisions of § 2704.08(c) and (d) were intended to provide assurance to voters that they would be funding a *working* high-speed rail system, not a boondoggle or a stranded asset.[22] (*See, CHSRA v Sup. Ct., supra*, 228 Cal.App.4th at pp. 709, 710-711.) This was specifically true of the requirement that the Funding Plans and independent consultant's report assure that any usable segment using Prop 1A bond funds for its construction would, once construction under the funding plan was complete, be suitable and ready for high-speed train operation – i.e., immediately able to provide high-speed train service. Since the Legislature added these provisions to induce voter approval, it is presumed that the voters shared that understanding. (*Rossi, supra*, 9 Cal.4th at p. 700 fn. 7.) That understanding was also reflected in the comments in Judge Kopp's letter. (*Galanty v. Paul Revere Life Ins. Co.* (2000) 23 Cal.4th 368, 381 fn.24 [letters to governor recommending approval of bill indicated contemporaneous public opinion and were therefore relevant to the court's interpretation of bill's language].) Thus, any legislation that would substantively weaken the protections included in § 2704.08(d) – i.e., the scheme that induced voter approval – would, unless ratified by the voters, be a prohibited partial repeal of Prop. 1A. (*VFW, supra,* 36 Cal.App.3d at p. 693.)

C. AB 1889 changed and weakened the requirements of § 2704.08(d).

As noted earlier, AB 1889 was proposed to allow Prop. 1A high-speed rail construction funds to be used to construct the Caltrain electrification project. Under SB 1029, a Final Funding Plan was required for any project in the "bookends" of the San Francisco to Los Angeles Phase I high-speed rail line, including the San Francisco – San Jose segment used by Caltrain. The Final Funding Plan was required to demonstrate, among other things, that the proposed construction would result in a usable segment that was "suitable and ready for high-speed train operation." As already explained, the Caltrain electrification project could not meet that requirement. AB 1889 slid around the requirement by "clarifying" the meaning of that phrase. While the 2008 Legislature had intended, and the voters understood, that § 2704.08(d) required that a segment constructed pursuant to a Final Funding Plan would be immediately available for high-speed train

[22] A stranded asset is an asset whose worth is less that a balance sheet would indicate, due to obsolescence, loss of utility, or other factors reducing the asset's actual value.

service, § 2704.78, enacted by AB 1889, effectively eviscerated the requirement by providing that the segment could also be suitable and ready for high-speed train use "*after additional planned investments are made on the corridor or useable segment thereof* ."

What did this mean? It meant that the Authority no longer needed to show that it had sufficient funds available to build a segment that would, as completed under the Funding Plan, support high-speed rail service. Instead, all it needed to show is that "passenger train service providers will benefit from the project in the near-term." As for high-speed rail, at some unspecified future time, with additional investments that might perhaps have been planned but almost certainly had not been fully funded, it would then have a segment that would be suitable and ready for high-speed train operation. (See, Exhibit P to Petitioners RJN at p. 4, 5th paragraph [early investments in bookends would immediately benefit existing commuter rail service, although high-speed rail trains would not run "until sometime in the future."].) That, however, is not the scheme that the 2008 Legislature had put on the ballot and that induced voters to approve the measure.

Defendants may argue that as long as the objective of the Legislation continued to be the eventual construction of a high-speed rail system, the "object" intended to be funded by the bond measure had not been substantively changed, and hence no further voter approval was needed. However, the question is not simply whether the measure, as modified, still aimed to eventually build a high-speed rail system. Rather, it is whether the scheme or design that induced voter approval remained the same as when the voters approved it. As has been explained, that scheme included a promise that if bond funds were used to construct a usable segment, that segment would, *at that point*, be usable and ready to be put in service *for high-speed rail*.

With the passage of AB 1889, that was no longer the case. Any segment, no matter how short and how incomplete, could use Prop. 1A construction funds so long as it would benefit an existing passenger rail service and was a part of a larger segment that, when and if it was eventually completed, could then function as a usable segment carrying high-speed trains.

Providing benefit to existing passenger rail service, like paying off prior transportation bond debts or keeping veteran services offices open, might well be a beneficial and important benefit. However, as in *Shaw* and *VFW*, *supra*, it was not what voters intended Prop. 1A bond funds to be used for when they approved the measure in 2008. Without a guarantee of full funding

and final environmentally-cleared plans, there could be no assurance that the larger segment would *ever* be completed and put into service. The legislation therefore undercut one of the central components of the "financial straitjacket" that the voters had relied upon in approving the measure. After AB 1889, the voters were no longer guaranteed of the high-speed rail system's financial viability, or that the funds they were agreeing to provide would not be squandered constructing projects that were inoperable for high-speed trains.

III. THE DEFENSES AGAINST DECLARATORY RELIEF ARE UNAVAILING.

Defendants have raised numerous defenses in this action. However, many of those defenses (e.g., Third, Fourth, Sixth, and Seventh Defenses) are inapplicable to the claim for declaratory relief.[23] Under the law and the demonstrated facts, the remaining defenses must also fail.

A. The Claim for Declaratory Relief States a Viable Cause of Action and an Actual Controversy.

Defendants "Second" Defense[24] claims that the Petition, and every cause of action, fail to state a claim on which relief may be granted. They also claim (Fifth Defense) that the petition presents no actual controversy or justiciable question. Yet in its First Amended Answer (¶ 89), the Authority admits that it continues to presume the validity of AB 1889 and to defend its validity. Defendants also fail to deny that the Authority, through its Board Chair, has defended the validity of AB 1889.[25] While the State asserts it has taken no position on the validity of AB 1889, this Court has held, against a demurrer, that it is a proper party to the declaratory relief cause of action.

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[23] Because declaratory relief on the constitutionality of a statute involves no claims for damages or liability, the 6th and 7th defenses do not apply. Nor is discretion a defense, as there is no discretion to enact an unconstitutional statute. (*People v. Superior Court* (1975) 13 Cal.3d 430, 446.) Nor is good faith a defense against unconstitutionality of a statute. (*See, e.g., Rockwell v. Superior Court* (1976) 18 Cal.3d 420, 446 [unconstitutional capital punishment statute not saved by Legislature's good faith in enacting it].)

[24] Defendants identify no First Defense in either of their answers.

[25] While Defendants state (¶ 86) that they have insufficient information to admit or deny the truth of the allegations in that paragraph of the SAP, by failing to explicitly deny those allegations, they admit them. (Code of Civil Procedure § 431.20(a); *Hennefer v. Butcher* (1986) 182 Cal.App.3d 492, 504.)

In the SAP, and in this memorandum, Petitioners have laid out facts supporting a claim for declaratory relief on the invalidity of AB 1889. In doing so, Petitioners have rebutted the Defendants' Second and Fifth Defenses.

B. Under the Circumstances of this Case, Declaratory Relief is both Necessary and Proper.

Defendants assert (Ninth Defense) that the Court should deny relief because under all of the circumstances of this case, it is not necessary and proper. As was stated in *Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 648:

> [D]eclaratory relief is designed in large part as a practical means of resolving controversies, so that parties can conform their conduct to the law and prevent future litigation.

Here, the Authority admits (FAA ¶ 89) that it intends to continue to rely on the validity of AB 1889 until such time as the courts have definitively held it unconstitutional. Until such a determination is made, challenges to individual funding plans' approvals based on not meeting the requirements of § 2704.08(d) would continue. As was well explained in *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1556-1557, while it would be possible to seek a writ of mandate every time the agency made a decision based on its disputed statutory interpretation, declaratory relief is strongly favored, based on judicial economy. In addition, the Court's ruling on the unconstitutionality of AB 1889 would provide useful guidance to the Authority, the Legislature, and Petitioners, on the meaning of § 2704.08(c) and (d) so that those parties can conform their conduct accordingly.

C. If Declaratory Relief is otherwise Appropriate, the fact that granting it might cause harm to the public is immaterial.

Defendants assert (Tenth Defense) that even if declaratory relief might otherwise be appropriate, it should be denied because its determination would "cause severe harm to the public, while providing no substantial benefit to petitioners." There is no basis in law for such a defense.

It is true that, in considering whether to grant a preliminary injunction, the court should balance the benefits of the injunction against the harm it might cause, as well as the public interest. (See, e.g., *Butt v. State of California* (1992) 4 Cal.4th 668, 678; *Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1473 [injunction blocking expenditure of funds on Lake Tahoe water quality projects would risk harm to the public

interest].) However, there is no such doctrine regarding the granting of declaratory relief. To the contrary, declaratory relief has been granted even in cases where the challenged statutory construction provided a clear public benefit.

For example, in *Shaw, supra*, 175 Cal.App.4th at p. 587, petitioners sought declaratory relief, as well as mandamus and injunctive relief. They claimed that the Legislature had violated a voter-approved bond initiative measure's requirement that amendments must further the initiative's purpose of promoting transportation planning and mass transit. (*Id.* at pp. 592-594.)

The challenged amendments were appropriations diverting money in or destined for the initiative-created Public Transportation Trust Account to a variety of other funds and uses. Those uses included paying off debt from prior transportation bond measures, reimbursing the general fund for past transportation bond debt payments, funding transportation of developmentally disabled persons to regional centers for vocational training, and funding home-to-school transportation of public school students. (*Id*. at p. 592.) The court acknowledged that the diversions addressed valid and, indeed, important functions that benefitted the public interest. (*Id*. at p. 608.) Nevertheless, the court concluded that the Legislature's actions were invalid because they violated the voters' intent. It directed the trial court to enter a declaratory judgment declaring those appropriations invalid. (*Id*. at p. 616.)

Other bond cases, while not specifically brought for declaratory relief, support the same principle. In *VFW, supra*. for example (36 Cal.App.3d at p. 692), bond funds designated to a revolving loan fund for veterans were, instead, being used to pay the cost of keeping county veteran services offices open. There can be no question that these offices provided useful, and perhaps necessary, services to veterans, including helping indigent veterans file welfare claims, pursuing federal veterans' benefits, and arranging for veterans' funerals. (*Id*. at p. 694.) Cutting off their funding, in all likelihood shutting them down, would cause harm to the veterans served by those offices – perhaps far surpassing any benefit from protecting the veterans home and farm loan fund. Nevertheless, because funding veteran services offices was not a purpose set forth in the bond measure approved by the voters, the court of appeal held that it was improper and

unauthorized.[26] By contrast, Petitioners have found no published California decision where declaratory relief was denied based on severe damage to the public. There is no such defense.

D. Both Atherton and Kings County have standing to bring the declaratory relief claim; and even if not, the remaining plaintiffs would still prevail.

In their eighth defense, Defendants assert that Atherton and Kings County lack standing. The SAP adequately alleges that Atherton and Kings County, and their citizens and property, will be harmed by the continued application of AB 1889. (SAP ¶¶ 14, 15.) That harm provides adequate standing. (*Coral Construction, Inc. v. City & County of San Francisco* (2004) 116 Cal.App.4th 6, 16-17.) In addition, both plaintiffs have standing under the public duty exception (*Green v. Obledo* (1981) 29 Cal.3d 126, 143 [public duty exception provides standing for both mandamus and declaratory relief]) in that the SAP alleges that the Defendants have a duty to properly follow the provisions of Prop. 1A, and the enactment and enforcement of AB 1889 violate that duty. (SAP ¶¶ 84-87, 89.)

However, even if the Court were to rule that Atherton and Kings County lacked standing, Defendants have not challenged the standing of the other plaintiffs to bring the declaratory relief claim, and therefore the claim would still be before the Court. In short, the defense of lack of standing for two out of ten plaintiffs is of no consequence.

CONCLUSION

Before placing it on the ballot, the 2008 Legislature extensively modified AB 3034 from its author's original language. The modifications were intended to assure voters that their money would not be wasted – that before bond funds were used for construction of a segment, the process would assure adequate funding, and a financially viable plan, to produce a segment that was suitable and ready to operate as a high-speed rail segment. The voters relied on those modifications and the overall scheme, which was touted in the ballot handbook, in approving the bond measure.

[26] Because of technical deficiencies in the complaint, the case was remanded to the trial court, where the plaintiff was invited to file an amended complaint with more appropriate defendants and remedies. (*VFW, supra*, 36 Cal.App.3d at p. 697.)

AB 1889 was designed to weaken the extensive protections provided within Prop. 1A. That would have been permissible, *IF* the voters had been presented with and agreed to the change. However, the 2016 Legislature did not put AB 1889 before the voters for ratification. In failing to do so, the Legislature ran afoul of Article XVI Section 1 of the California Constitution because AB 1889, as enacted, represented a partial repeal of the bond measure's provisions. As a consequence, this Court should find that AB 1889 is facially unconstitutional and void.

Dated: July 12, 2018

Respectfully Submitted

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by 
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