S272563

IN THE SUPREME COURT OF CALIFORNIA

JOHN TOS *et al.*,

Petitioners

v.

THE STATE OF CALIFORNIA *et al.*

Respondents

After a Decision of the Court of Appeal
Third Appellate District
Case Number C089466
Sacramento County Superior Court Case Number 34-2016-00204740
On appeal from the final judgment of Hon. Richard Sueyoshi
Additional judges: Hon. Michael P. Kenny, Hon Raymond M. Cadei

PETITION FOR REVIEW

Stuart M. Flashman, SBN 148396
Law Offices of Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
Telephone and fax: (510) 652-5373
e-mail: stu@stuflash.com

Michael J. Brady, SBN 40693
191 Forest Lane
Menlo Park, CA 94025
Telephone: (650) 207-5737
email:
Michael.alamo1836@gmail.com

Attorneys for Petitioners
JOHN TOS, HON. QUENTIN KOPP, TOWN OF ATHERTON, PATRICIA LOUISE HOGAN-GIORNI, ANTHONY WYNNE, COMMUNITY COALITION ON HIGH-SPEED RAIL, TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, and CALIFORNIA RAIL FOUNDATION

CERTIFICATION OF INTERESTED PARTIES

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
PURSUANT TO CALIFORNIA RULES OF COURT, RULE 8.488

Petitioners JOHN TOS *ET AL*. are not aware of any other entity or person that has a financial or other interest in the outcome of the proceedings that Appellants reasonably believe the justices should consider in determining whether to disqualify themselves under Canon 3E of the Code of Judicial Ethics.

DATED: January 6, 2022

LAW OFFICES OF STUART M. FLASHMAN

MICHAEL J. BRADY

Attorneys for Petitioners John Tos *et al.*

By: /s/ Stuart M. Flashman

TABLE OF CONTENTS

TABLE OF AUTHORITIES

California Cases

California Statutes

REQUEST FOR REVIEW

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE OF THE STATE OF CALIFORNIA, AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Plaintiffs/Petitioners John Tos, *et al.* (hereinafter, "Plaintiffs") respectfully petition the California Supreme Court for review following the decision of the Court of Appeal in Case Number C089466, Third Appellate District (per Presiding Justice Raye). The Court of Appeal filed its decision on November 30, 2021, and the decision became final on December 30, 2021, after Plaintiffs' Petition for Rehearing had been summarily denied.

The Court of Appeal affirmed in full the judgment of the trial court denying all relief to the Plaintiffs. A true and correct copy of the final Slip Opinion is attached in the appendix hereto as Exhibit A.

QUESTION PRESENTED

Could the Legislature unilaterally amend an already voter-approved $9 billion general obligation bond measure intended to fund high-speed rail construction to eviscerate a material provision in the measure that mandated and restricted how and when funds could be used, without violating the prohibition within Article XVI Section 1 of the California Constitution against partial repeal of a bond measure prior to full repayment of the bonds?

INTRODUCTION AND SUMMARY OF ARGUMENT

This case involves the California Legislature's action to effectively negate specific restrictive conditions and requirements in a voter-approved state general obligation bond measure long after the measure's approval by the voters. The question before the Court is whether that action, taken without voter ratification, violated Article XVI Section 1 of the California Constitution. The Court of Appeal's published decision held that the Legislature could, without seeking voter approval, amend and render ineffective those requirements and restrictions.

Under existing case law governing the amendment of such voter-approved bond measures, the voters' expectations for the measure, and the voters' understanding of the meaning and effect of the terms in the measure are considered key. If the measure is written in general terms, and the amendment leaves those terms unchanged, voter approval is unnecessary. If, however, the measure's terms are specific enough to create specific voter expectations, violating those expectations requires voter ratification of the change.

The Court of Appeal's decision made the tacit assumption that bond measures for large long-term projects, by their very nature, *must* be considered general in their definition of the measure's single object or work. Hence, they are *always* subject to post-passage modification by the Legislature without voter approval. Current case law precedents, including decisions of this Court, are impliedly to the contrary. That implication needs to be made explicit.

A measure's inclusion of specific and restrictive terms, intentionally inserted by the Legislature to entice the voters' approval of the measure, signals to the courts that those terms must either be enforced as written, or their modification approved by the voters. Review should be accepted to correct the Court of Appeal's damaging error.

At issue here is a 2008 ballot measure, Proposition 1A, providing nine billion dollars toward the construction of a California high-speed rail system that voters, in the long run, expected to serve and connect major population centers of the state. Unlike many bond measures for large projects, however, Proposition 1A's terms went well beyond generalities. Those terms included detailed *restrictions and requirements* addressing both the nature of the system to be built and required standards restricting when and how bond funds could be used. Both the restrictions and requirements were intended to assure skeptical voters that bond funds could be counted on to produce functional high-speed rail segments. This same Court of Appeal, in an earlier case, *California High-Speed Rail Authority v. Superior Court ("CHSRA v. Sup. Ct.")* (2014) 228 Cal.App.4th 676, described those standards as a "financial straitjacket." The court noted that they were intended by the Legislature that authored them, and presumably by the voters who approved them, "to ensure the financial viability of the project." (*Id.* at p. 706.)

Eight years after the voters approved Prop. 1A, the Legislature stepped in to enact AB 1889, which greatly relaxed the standards that the measure (and

the voters) had established. Both the trial court and the appellate court upheld those changes, made without further voter approval. Both courts ruled that, so long as the eventual "object" of the measure remained initiating construction of a high-speed train system, the Legislature had not violated the Constitution.

Petitioners assert those decisions were wrong. While a high-speed rail system is indubitably a very large project, that does not mean that specific promises made to voters in a bond measure to fund its construction can be brushed aside. Allowing such an open-ended interpretation would not only disrespect the voters' understanding of what the Legislature had promised them in the measure, it would also undermine the voters' trust in the Constitutional provision, and its limitations on the Legislature's ability to amend a voter-approved measure.

If voters can no longer trust the state's government to obey the dictates of the Constitution and promises contained in voter-approved measures, the foundations of California state finances, and indeed of California state government, will be profoundly damaged.

WHY REVIEW SHOULD BE GRANTED

The Court's intervention is necessary in this case to correct a published decision that contradicts this Court's binding precedents. It is also needed to clarify a point of law that the case raises for the first time – a point highlighted by the Court of Appeal's decision.

Article XVI section 1 of the California Constitution governs the issuance of bonds to cover state indebtedness beyond $300,000. The relevant provisions of that section are set forth in the margin herein.[1]

Since the time of its adoption, California courts, including this Court, have issued many decisions interpreting its provisions, and those of other analogous general fund bond provisions under California law. In this case, the Court of Appeal, contrary to this Court's binding precedents, allowed the Legislature, post-voter approval, to essentially negate a material provision of the bond measure without voter ratification of the

---

[1] The Legislature shall not, in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars ($300,000), except in case of war to repel invasion or suppress insurrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within 50 years of the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged, … but no such law shall take effect unless it has been passed by a two-thirds vote of all the members elected to each house of the Legislature and until, at a general election or at a direct primary, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by authority of such law shall be applied only to the specific object therein stated or to the payment of the debt thereby created. Full publicity as to matters to be voted upon by the people is afforded by the setting out of the complete text of the proposed laws, together with the arguments for and against them, in the ballot pamphlet mailed to each elector preceding the election at which they are submitted, and the only requirement for publication of such law shall be that it be set out at length in ballot pamphlets which the Secretary of State shall cause to be printed… (Originally adopted in 1879, it has been amended several times since then, but the relevant portions have remained unchanged.)

change. The decision would establish an unwarranted and confusing exception to this Court's clear precedents. That exception should be rejected.

Two decisions by this Court, *O'Farrell v. County of Sonoma* (1922) 189 Cal. 343 and *Peery v. City of Los Angeles* (1922) 187 Cal 753, make clear that bond proceeds may only be expended for the "single object or work to be distinctly specified therein," as authorized by the voters. (*Accord, Veterans of Foreign Wars v. State of California ("VFW")* (1974) 36 Cal.App.3d 688, 693-694 [use of Veteran Farm and Home Building Fund to maintain county veteran offices amounted to partial repeal of prior bond act, in violation of Article XVI Section 1].)

As was noted in *O'Farrell, supra*, when deciding on the measure to place before the voters, the legislative body could "…make its order just as broad, and just as narrow, and just as specific as it was willing to be bound by." However, once the measure had been placed on the ballot, " … 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." (*O'Farrell, supra*, 189 Cal. at p. 347.) Specific material terms and promises placed in the bond measure, once set down and accepted by the voters, could no longer be substantially changed without returning to those voters.

Similarly in *Peery*, once the City had specified a maximum interest rate at which bonds would be offered, it could not offer a higher interest

rate without first getting voter approval for the higher rate. (*Peery, supra*, 187 Cal. at p. 767.)

However, there is another line of cases that acknowledge that when a measure's terms are more general, as is often the case for large public works projects, voters do not expect the details of the project to remain as described in the measure. For example, a measure providing funding to construct a statewide water system, including numerous facilities, could be described generally without violating the requirement that the bond be for a single object, distinctly specified. (*Metropolitan Water Dist. v. Marquardt* ("*Marquardt*") (1963) 59 Cal.2d 159.) Likewise, even when another water storage project included a specifically described dam to be included in it, that dam's design could be changed when it could not meet standards later set by the state engineer. (*City of San Diego v. Millan ("Millan")* (1932) 127 Cal. App. 521.)

The courts below asserted that, because the Prop. 1A's title and summary, and Section 2704.04 within the Bond Act, stated that it was intended to *initiate* the construction of a high-speed train system, but neither those general statements nor the Legislative Analyst's analysis of the Bond Act in the Voter's Handbook addressed the specific restrictions (§2704.08(d)) that the measure placed on using bond funds, those specific restrictive terms must be considered immaterial, and the Legislature could,

post-approval, eviscerate them without getting voter approval for the change. (See, attached slip opinion at p. 13.)

Plaintiffs, however, believe that the relationship between the size of the project and the specificity of a bond measure is not so simple. It is up to the Legislature that crafted the measure to determine the balance between size and specificity in a measure (see, *O'Farrell, supra*, 189 Cal. at p. 347), and that balance, once proposed to and accepted by the voters, cannot be modified at the whim of a future legislature.

Plaintiffs agree that when a bond measure only identifies a project in general terms, even if those include descriptive terms, but does not *prescribe* requirements for or restrictions on the use of the bond funds, the Legislature can make changes within those general terms without further voter approval. Where however, as here, the bond measure, regardless of the project's size, includes specific binding terms and promises presented to and approved by the voters that require or restrict how the bond funds may be used in the future project, changing those *prescriptive* terms violates Article XVI Section 1 unless the change is ratified by the voters. It does not matter whether those terms are called out in ancillary materials provided to the voters. The language of the measure itself, unless ambiguous, controls.

FACTUAL AND PROCEDURAL HISTORY

I. THE HIGH-SPEED RAIL AUTHORITY, PROPOSITION 1A, AND DEFENDANTS' HISTORY OF NONCOMPLIANCE WITH THAT MEASURE'S REQUIREMENTS

A. THE HIGH-SPEED RAIL AUTHORITY

In 1996, the Legislature established the Authority to direct the development and implementation of intercity high-speed rail service within California. (Publ. Util. Code §185030.) To that end, the Authority was directed to prepare a plan for the construction and operation of a high-speed train network for the state, and was exclusively granted authorization and responsibility for planning, constructing, and operating that system, and all passenger rail service with speeds exceeding 125 miles per hour. (Publ. Util. Code §185032)

B. THE BOND ACT

A California High-Speed Rail bond measure had first been proposed for the 2004 ballot. However, the Legislature took it off the ballot, delaying it until 2006. (Chapter 71, Statutes of 2004.) In 2006, it was again removed from the ballot, and, under Chapter 44, Statutes 2006, postponed to the 2008 election. Initially, it was to be Proposition 1 on the November 2008 ballot. However the Legislature, after extensive discussion, debate, and revisions, removed Proposition 1 and instead approved and placed on the ballot Proposition 1A, "The Safe, Reliable High-Speed Passenger Train Bond Act for the Twenty-First Century" (Streets & Highways Code §§2704

et seq. "Prop. 1A" or "Bond Act"). (See Appellants Appendix Vol.III at p. 763 [Secretary of State letter explaining substitution of Proposition 1A for Proposition 1].) As this record indicates, the Legislature had major trepidations about voter passage of the bond measure. (See Appellants' Appendix Vol. III pp. 738-749 [staff report of Senate Transportation and Housing Committee].) As will be explained further below, this provoked the Senate Transportation Committee to add provisions designed to reassure the voters that bond funds would not be frittered away, but would result in completion of functional high-speed rail segments. The voters subsequently narrowly approved the Bond Act.

As described above, Prop. 1A included restrictive provisions (§2704.08(c) and (d)) and required features (§2704.09) for the future high-speed rail segments and system to be built using bond funds. Those terms constituted the "financial straitjacket" referred to in *CHSRA v. Sup. Ct., supra.* The legislative history of the Bond Act makes clear that the Legislature placed those terms in the measure, with the concurrence of the Governor, to convince skeptical voters that "expenditure of the bond funds will result in operational high-speed rail services … ." (3 AA 712 [Governors May 2008 budget message to Legislature].) These provisions went far beyond the general elements and description for *beginning* construction of a high-speed rail system that the trial court and Court of Appeal decisions at issue herein identified as amounting to the "single

object or work … specifically described." Instead, they pointedly called for construction *and completion* of one or more "usable segments" that would be "suitable and ready for high-speed train operation."

C. THE PRELIMINARY FUNDING PLAN AND APPROPRIATION

In 2011, the Authority prepared and approved a Preliminary Funding Plan pursuant to §2704.08(c). That funding plan called for appropriating roughly $2.7 billion of bond funds, along with federal matching funds, to build an initial construction segment consisting of 113 miles of conventional rail track. In addition, the appropriation would provide funding for projects within the "bookend" segments – the areas closest to the San Francisco and Los Angeles termini of Phase I of the high-speed rail system.[2]

The funding plan was challenged over its compliance with Prop. 1A. In *CHSRA v. Sup. Ct., supra*, 228 Cal.App.4th at p. 716, the Third District Court of Appeal held that the preliminary funding plan and its associated appropriation, while not entirely compliant with the Bond Act, were not final actions subject to legal challenge. In other words, the lawsuit was "too early." The Court of Appeal left for later legal determination whether any eventual final funding plan(s) would be found compliant and/or constitutional.

---

[2] See *CHSRA v. Sup. Ct., supra*, 228 Cal.App.4th at p. 691.

II. THE LEGISLATURE'S PASSAGE OF AB 1889.

Four years after the 2012 appropriation, the Authority had still taken no action to initiate construction using the bond funds. This delay presumably reflected the Authority's awareness of the restrictions that Subsection 2704.08(d) placed on initiating construction spending and the continued lack of sufficient funds to complete a functional usable segment.

In 2016, the Legislature stepped in, with the Authority's support, to pass AB 1889. That law loosened the strictures of Subsection 2704.08(d)'s "financial straitjacket" and made it easier for the Authority to authorize construction using the appropriated bond funds. The bill's early draft would have made the Authority's determinations under §2704.08(d) "final and conclusive" – i.e., not subject to legal challenge. When constitutional objections were raised to that provision, it was modified to its current form, which states in the relevant codified portion (see, AB 1889, as chaptered, Appellant's Appendix at Vol. III, pp. 881-883):

> (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. (Streets & Highways Code §2704.78(a).)

III. THE 2017 FUNDING PLANS AND LEGAL CHALLENGE THERETO.

Immediately upon AB 1889 becoming effective in January 2017, the Authority gave final approval to two final funding plans – one for a "Central Valley Segment" and one for a San Francisco – San Jose Peninsula Corridor Segment. The former authorized construction of a high-speed rail segment running from Madera to Shafter, with stations in Kings County and Fresno.[3] The latter authorized expenditure of $600 million of high-speed rail bond funds towards the electrification of Caltrain's conventional commuter rail line. Plaintiffs promptly filed a legal challenge to these actions, and to the constitutionality of AB 1889.[4]

IV. HISTORY OF THE CASE

As initially filed in December 2016, the case included causes of action for declaratory relief under Code of Civil Procedure §1060 as to the facial constitutionality of AB 1889 and injunctive relief for threatened illegal expenditure of public funds under Code of Civil Procedure §526a. After a demurrer was sustained with leave to amend, the case was amended

[3] The Funding Plan did not call for initiation of commercial service, only for the segment's use as a test track. Nor did it identify available funds to complete even that segment.

[4] Since then, the Authority has prepared several more final funding plans, including two that would replace single isolated grade crossings on existing commuter rail lines with grade separations on those lines. The petition/complaint was amended to also add declaratory relief as to application of AB 1889 to these funding plans to its claims.

(Second Amended Petition and Complaint) to include claims for traditional and administrative mandamus and for declaratory relief as to the approvals for the final funding plans.

The trial court sustained a demurrer against the injunctive relief claim without leave to amend but overruled other demurrers and motions to strike. Petitioners filed a motion for judgment on the pleadings, which was denied. In its ruling, the trial court made clear it found no merit in any of Petitioners' contentions. Consequently, to allow the matter to be quickly and finally decided on appeal, Petitioners and Respondents stipulated to entry of judgment against Petitioners. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 400.)

On appeal, the case was fully briefed, and the trial court judgment was sustained in a unanimous published opinion. Petitioners sought rehearing under Government Code §68081 on the grounds that the court had, without allowing an opportunity for response on the issue, relied on case law from other jurisdictions to justify its decision (see slip opinion at pp. 19-21), but that petition was summarily denied.

ARGUMENT

I, THE LEGISLATURE'S ENACTMENT OF AB 1889 VIOLATED ARTICLE XVI SECTION 1 ON ITS FACE.

A. STANDARD OF REVIEW

The acts of the Legislature come with a strong presumption of constitutionality. (*Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th

1243, 1253.) Further, under the rule of deference to legislative interpretation of the California Constitution, because that Constitution acts as a limitation on, rather than a grant of power to the Legislature, its restrictions are to be construed narrowly. (*California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171, 175.)

All that having been said, while the courts must give due deference to the Legislature in its determination of constitutionality of a statute, whether express or implied (*Estate of Henry* (1944) 64 Cal.App.2d 76, 83), finding a statute unconstitutional on its face is necessary if it is not possible to construe the statute in a way that avoids its constitutionally problematic aspects. (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180-181 [statute not facially unconstitutional where it could be interpreted in a way that avoided constitutional infirmities]; see also, *Amwest Surety Ins. Co., supra*, 11 Cal.4th at p. 1252 ["Unless conflict with a provision of the state or federal Constitution is clear and unquestionable, we must uphold the Act."]; but see, *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 343 [law may be facially unconstitutional even though it might be constitutionally applied in a small subclass of cases].)

In addition, where, as here, a California constitutional provision has been repeatedly and consistently interpreted in a certain manner, the weight of precedent strongly supports continuing that interpretation, even at the cost of finding a legislative enactment unconstitutional as being

inconsistent with that interpretation. (See, *American Academy of Pediatrics, supra*, 16 Cal.4th at p. 327 [Consistent court interpretations of California Constitutional provisions should be followed unless they would conflict with a controlling interpretation of the federal constitution].)

Beyond the issues involving constitutionality, this case focuses on the interpretation of Proposition 1A, AB 1889, and Article XVI Section 1 of the California Constitution. All of these are purely legal issues that are reviewed *de novo*. (*Brookside Investments, Ltd. v. City of El Monte* (2016) 5 Cal.App.5th 540, 548 fn.4; *People v. Sherow* (2015) 239 Cal.App.4th 875, 879.) Consequently, neither the trial court's decision nor any of defendants' determinations are entitled to deference.

B. UNDER ARTICLE XVI SECTION 1, ANY POST-APPROVAL AMENDMENT TO A BOND MEASURE THAT WOULD MATERIALLY CHANGE THE "SINGLE OBJECT OR WORK TO BE DISTINCTLY SPECIFIED THEREIN" MUST BE APPROVED BY THE VOTERS.

California case law, including opinions of this Court, provides abundant analysis of the provisions of Article XVI section 1 and of similar provisions governing voter-approved bond measures under California law. As a general rule, once the voters have approved a general obligation bond, the implementing agency must follow the dictates contained in the measure. (*Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314, 340.)

Two of this Court's decisions, although neither involves a statewide general obligation bond measure, reinforce that same point. Those cases are *O'Farrell, supra*, (189 Cal. at p. 347) and *Peery, supra*, (187 Cal. at p. 767). Both say that once a bond measure has been placed on the ballot and approved by the voters, any subsequent amendment to the measure that would materially alter the "single object or work [to be] distinctly specified therein" must also be approved by the voters. This rule has variously been characterized as a consequence of the bond measure constituting a contract between the government and the voters (see, e.g., *Islais Co., Ltd. v. Matheson* (1935) 3 Cal.2d 657, 662 [provisions of voter approved bond measure constituted a contract whose term could not be subsequently impaired without approval of the parties]; see also, *Peery, supra*, 187 Cal. at p. 767), or alternatively a "quasi-contract" with the same effect. (*Id.*)

The more difficult question is when does a subsequent amendment alter the "single object or work" sufficiently to require that the change be ratified by the voters. The case law provides significant guidance on this question.

In both *O'Farrell* and *Peery*, the ballot measure included directions or requirements specifying what the voters expected and required to happen under the approved bond measure. In *O'Farrell*, the bond funds were designated to construct a specific roadway of a specific length along a specific right of way between specific endpoints. (*O'Farrell, supra*, 189

Cal. at p. 345.) In *Peery*, the ballot measure had identified a maximum interest rate of 4.5% for the bonds as sold. (*Peery, supra*, 187 Cal. at p. 755.)

In both cases, the issuer, after the measure's approval by the voters, proposed to change the terms. In *O'Farrell*, when construction bids for the roadway came in high, the county proposed to shorten the length of the road to be constructed. (*Id.* at p. 346.) In *Peery*, when only part of the bonds had been sold successfully, the city proposed to use its authority under a later-enacted state statute to sell the remaining unsold bonds at a subpar discount, resulting in an effective interest rate of 6%. (*Peery*, *supra*, 187 Cal. at p. 755.) In both cases, this Court ruled that the post-election changes to the terms of the bond measure amounted to a partial repeal of the measure prior to the full repayment of the debt, in violation of the constitutional provision.

As here, in *Peery* the defendant city argued that the terms setting maximum interest rate were "not an essential or mandatory part of said statute, nor one upon which the voters were required to exercise their election." (*Id*. at p. 761.) This Court disagreed. It held that the material terms upon which the voters approved the bond must remain in effect. (*Id*. at p. 763.) Similarly, in *O'Farrell*, this Court held that once the voters had approved a certain amount of bonds to construct a certain amount of

roadway, that agreement could not be changed except with the concurrence of the voters. (*O'Farrell, supra*, 189 Cal. at p. 348.)

By contrast, in *Metropolitan Water Dist. v. Marquardt* ("*Marquardt*") (1963) 59 Cal.2d 159, referenced in the court of appeal's decision[5], a state general obligation bond had been passed to fund construction of a State Water Resources Development System. (*Id*. at p. 171.) The system was to have numerous enumerated components "and certain additional facilities." The enumerated components included the Oroville Dam, together with other dams and reservoirs upstream of that dam, an aqueduct system, a system of levees, control structures, *etc*. in the San Joaquin Delta as well as drainage and electrical generation facilities. (*Id.* at pp. 171-172.) In short, it was a monumental project.

The primary challenge in the lawsuit was whether the bond measure violated the "single subject rule" (Article IV section 24) that a ballot measure may only deal with a single subject. (*Marquardt*, *supra*, 59 Cal.2d at pp. 171-173.) This Court readily concluded that the complex of facilities funded by the bond constituted a single system and a single subject. (*Id*. at p. 173.)

The challenge also included a similar claim that the bond measure violated Article XVI section 1 by not being for "a single object or work to be distinctly specified therein." This Court again disposed of that

[5] Slip Opinion at p. 13.

argument, pointing out that the broad, general terms of the measure sufficed to define an object, distinctly specified:

> …the matters embraced by the bond act are germane to one plan, and the obligations created are for a "single object." Under these circumstances it is apparent that specification of a plan in broad and general terms will be sufficient to meet the requirement of section 1 of article XVI that the object be "distinctly specified" in the act … (*Id.* at p. 175.)

Perhaps somewhat more similar to this case is *City of San Diego v. Millan ("Millan")* (1932) 127 Cal. App. 521, also cited by the Court of Appeal in support of its decision (slip opinion at p. 25). That case, like *Marquardt,* also involved construction of a multi-component water supply project. (*Millan, supra,* 127 Cal.App. at pp. 523-524.) Unlike *Marquardt,* however, the project in *Millan* included a description of a dam to be constructed as part of the project as an "arched, gravity section, masonry type." (*Id.*)

Unfortunately for the city involved (San Diego), between the time the bond was passed by the voters and the time the dam was to be built, the Legislature enacted a statute requiring that the State Engineer approve plans for any new dam to be built. (*Id.*) When the state engineer reviewed the plans for the dam, he rejected the arched gravity section masonry dam in favor of an earth-filled rock embankment dam. (*Id.*) The City then held a special election and received approval to use proceeds from the sale of the bonds to build the different dam type at the same location. (*Id.* at p. 525.)

Nonetheless, the City treasurer refused to sign the warrant allowing the funds to be used. A lawsuit followed. (*Id.*)

The treasurer argued that because the bond measure had described a particular type of dam, only that type of dam could be built with the bond funds. (*Id*.) The court rejected that argument. First, it noted that the dam would be at the same location, would cost no more, and would fulfill the same function as that described in the bond measure. (*Id*. at p. 534.)

Perhaps more importantly, the court noted that the change in dam type was the result of the Legislature exercising its police powers to protect lives and property, and that such police powers would override any conflicting contractual rights. (*Id.* at pp. 534-535.)

Here, however, there is no evidence that AB 1889 was enacted as an exercise of the state's police power to protect lives and property. Further, as the court in *Millan* noted, while the bond measure had identified the type of dam to be built, that was simply a part of the general description of the project, and the different dam type neither cost more nor deviated materially in its location, purpose, or effect from what had been described in the bond measure. The *Millan* court concluded that the change to the dam was not material in the context of the overall water project and did not need voter approval. (*Id*. at p. 536.) As explained below, the same cannot be said here.

C. THE PROVISIONS OF §2704.08(d), AS A MANDATORY RESTRICTION ON THE USE OF BOND FUNDS FOR CONSTRUCTION, WERE A MATERIAL TERM IN THE SINGLE OBJECT OR WORK, DISTINCTLY SPECIFIED, ENACTED BY THE BOND ACT.

Subsection 2704.08(d) requires that, prior to using bond funds toward construction, the Authority prepare and approve a final funding plan including specified information, and then obtain a supporting report from one or more independent consultants determining the proposed segment's compliance with various requirements of the subsection, including that, if completed in accordance with the final funding plan, the corridor/segment would be "suitable and ready for high-speed train operation."

This provision, which *CHSRA v Sup. Ct., supra*, 228 Cal.App.4th at p. 713, identified as the central element in the Bond Measure's "financial straitjacket," operates analogously to a safety interlock on a machine. If the available evidence indicates to the independent consultant(s) that the segment to be constructed, once completed pursuant the final funding plan, would <u>not</u> meet the subsection's requirements, including supporting operation of high-speed trains, the consultant(s) could not make the required determinations. Consequently, the Director of Finance could not approve expending bond funds for the construction.

Putting this provision in Prop. 1A was analogous to the action, in *O'Farrell, supra*, of the Sonoma County Board of Supervisors in specifying the precise start-point, end-point, routing, and cost of the 4.0-mile roadway

segment in order to gain voter approval. (*O'Farrell, supra,* 189 Cal. at p. 345.) In *O'Farrell*, having specified how long the segment to be funded would have to be, and having had that restriction approved by the voters, the Supervisors ended "any question of discretion as to division or subdivision into sections." (*Id.* at p. 347.) Dividing up the roadway, and building only a shortened segment, had not been approved by the voters.

Similarly here, voters had been promised that initiating construction using bond funds would depend on having the full funding needed to complete, per the final funding plan, a usable segment that would be "suitable and ready for high-speed train operation."

Contrary to the Court of Appeal decision, that promise did not need to be called out in the title and summary or the Legislative Analyst's explanation. It was evident in the plain language of Subsection 2704.08(d).[6] Once Prop. 1A was approved, neither the Authority nor the Legislature could later divide up construction of the corridor or usable segment so that having a segment capable of high-speed train operation would have to await "additional planned investments" to the segment. Yet that is exactly what AB 1889 purported to authorize.

---

[6] Unlike some long and complicated measures, where voters would need to request a full copy of the measure, Prop. 1A was printed in its entirety in the Supplemental Voters' Information Guide that every voter received. (Appellants' Appendix, Vol. III, pp. 771-774.)

D. SECTION 2704.78 EFFECTIVELY NEGATED THE RESTRICTIONS CONTAINED IN SUBSECTION 2704.08(d).

By redefining the meaning of "suitable and ready for high-speed train operation" so that the segment to be completed under the funding plan need not actually support high-speed train operation, Section 2704.78 essentially eliminated the "safety interlock" on construction. Under Section 2704.78, all the segment would need to do to satisfy Subsection 2704.08(d) was to provide benefit to an existing conventional rail passenger service, while leaving the door open for later "additional planned investments" in the segment – i.e., future capital improvements – that would *then* allow high-speed train operation. Yet there is nothing to say that those investments would ever be funded, let alone be actually completed.

By enacting Section 2704.78, the 2016 Legislature effectively, and intentionally, rescinded the restrictions the voters had enacted in Subsection 2704.08(d) – restrictions voters presumably relied upon in approving the measure. As specific examples, for the two funding plans whose approvals were challenged in this litigation, the independent consultant, interpreting the phrase "suitable and ready for high-speed train operation" in accordance with Section 2704.78, as directed by the Authority, found that, in spite of there not being sufficient funding available under either funding plan to complete construction of a high-speed train usable segment, the segments

would be "suitable and ready for high-speed train operation." That, based on the evidence available then (and even now) was demonstrably false.[7]

E. DESPITE AB 1889'S ELIMINATING A KEY TERM IN THE SINGLE OBJECT OR WORK DISTINCTLY SPECIFIED IN PROP. 1A, THE COURT OF APPEAL'S DECISION HELD THAT IT HAD NOT RESULTED IN A PARTIAL REPEAL OF THE MEASURE AND HENCE DID NOT VIOLATE ARTICLE XVI SECTION 1.

Based on language in the title and summary attached to Prop. 1A and in the Legislative Analyst's analysis included in the Supplemental Voters' Information Guide (Appellants' Appendix, Vol. III, pp. 765-766.), along with a short paragraph from a preliminary section of the Bond Act (§2704.04(a)), the Court of Appeal's opinion defined the single object or work involved in the Bond Act as "initiating" construction of a high-speed rail system. (Slip Opinion at p. 13.) It also rolled together the actual planning and construction of high-speed rail "usable segments" with making improvements to connecting conventional intercity, commuter, and urban mass transit rail lines/systems (slip Opinion at pp. 17-18), even though the latter had received a separate and far smaller allocation of bond funding ($950 million) under Section 2704.095 for that very purpose. The opinion tied that conflation to the Authority's adoption of a "blended system" combining conventional and high-speed service in one unified

[7] The only component of the Peninsula Corridor segment to be completed would be electrification to allow Caltrain's rail cars to run on the tracks at conventional rail speeds. With then-available funding, the Central Valley Segment could provide neither electrification nor tracks.

system. However, the very concept of a blended system did not arise until several years after the Bond Act's passage.[8] It therefore could not have been a factor in the voters' minds in deciding whether to approve Prop. 1A. In any case, neither AB 1889, nor the Legislature's 2012 appropriation of bond funds, could unilaterally modify the clearly stated restrictions on the use of bond funds contained in the Bond Measure itself.

In short, the Court of Appeal accepted the *post hoc* rationalizations contained in AB 1889's legislative findings (Appellants' Appendix Vol. III at pp. 881-882) to allow AB 1889 to survive scrutiny. Yet those findings did not and could not modify the Bond Act's material restrictive provisions or, by legislative fiat, make AB 1889 consistent with them.

II. THE COURT OF APPEAL'S DECISION DISRUPTS THE CONSISTENT LINE OF CASES REQUIRING VOTER APPROVAL FOR ANY POST-APPROVAL AMENDMENT TO A BOND MEASURE THAT SIGNIFICANTLY CHANGES A MATERIAL TERM OF THE MEASURE.

As noted above, California cases involving post-election amendment of a general obligation bond measure have fallen into one of two main categories. In one category are measures that provide voters with detailed specifications or requirements, *placed in the measure to convince voters to support the measure*, that a reasonable voter would expect to be followed. (E.g., *O'Farrell, supra*; *Peery, supra*; *VFW, supra*.) In such cases,

[8] See *CHSRA v. Sup. Ct., supra*, 228 Cal.App.4th at p. 691.

changing any of those specifications or requirements would necessitate returning to the voters for ratification of the changes.

The other category consists of measures where the project or object of the bond is described only generally, and the implementing agency is allowed broad discretion in deciding how the project or object will be accomplished. This includes, for example, *Marquardt, supra*; *Mills v. S.F. Bay Area Rapid Transit Dist.* (1968) 261 Cal.App.2d 666 [bond measure itself only generally described outline of rail system and possible station locations, allowing agency to deviate from using locations identified outside the measure itself]; see also *Tooker et al. v S.F. Bay Area Transit Dist.* (1972) 22 Cal.App.3d 643 [same]; *Holloway v. Purcell* (1950) 35 Cal.2d 220, 224 [State Highways Act did not specify locations of state highways being funded so as to require voter approval for location changes]; *East Bay Mun. Util. Dist. v. Sindelar* (1971) 16 Cal.App.3d 910 [voter-approved bond act's provisions did not include promises made in publicity or election campaign materials or representations of public officials, and agency was not bound by such promises]; *Assoc. Students of North Peralta Community College v. Board of Trustees* (1979) 92 Cal.App.3d 672 [arguments included in ballot handbook were not part of the measure before the voters and did not bind the agency to views expressed therein – only the measure itself and the agency's resolution placing it on the ballot bind the agency].)

In such cases, where the project was defined only generally and without specific mandatory provisions designed to induce voter support, the agency retained broad discretion in implementing the measure within its broad definition to make changes without returning to the voters.

Likewise, in *Cullen v. Glendora Water Co.* (1896) 113 Cal. 503, also cited by the Court of Appeal (Slip opinion at p. 18), the court agreed that a bond measure placed on the ballot by an irrigation district to fund providing land and facilities for distributing irrigation water within the district was valid even though it provided *no* plan for those facilities. Again, given the extreme generality of the bond measure's description, a change in the size of the project that would not increase the amount of the bond did not require returning to the voters.

As for *Millan, supra*, the Legislature's action in support of public health and safety would override any contractual obligation to build a specific dam type[9], but in any case, the identification of the dam type in the measure was more a description than a prescription or mandate. Hence, the agency was not bound by the descriptive terms used in the bond measure, so long as the dam's characteristics complied with the voters' expectations for meeting the measure's functional requirements.

[9] It is not at all clear that defining the type of dam made voters any more likely to support its construction.

The Court of Appeal, in its decision, also had recourse to several cases from Iowa and New York State, jurisdictions whose constitutions contained provisions asserted to be analogous to those of Article XVI section 1. (Slip opinion at pp. 19-21.) But those cases, like the California cases described above, also involved changes to details of projects that had only been described generally in the voter-approved bond measures (i.e., a World War II veterans' benefit in Iowa, a statewide canal system in New York).

None of these cases involved a large project whose bond measure nonetheless included specific requirements or restrictions, inserted by the measure's authors to induce voter support, on how the bond funds could be used. The Court of Appeal asserted that Prop. 1A, like the bond measures in the New York and Iowa cases, involved a single object or work that was only generally defined. Therefore, changes to the specifics of that object – i.e., the high-speed rail system – did not require voter approval. (Slip Opinion at p. 21.) In doing so, the Court of Appeal tacitly assumed that any bond measure for a large project, like the New York State canal system or the California High-Speed Rail System, must, *by its very nature*, be only generally defined and therefore subject to change within that broad definition without the need for voter approval. (See, slip opinion at p. 18.)

The Court of Appeal discounted the provisions of Subsection 2704.08(d) as being a "detail of the construction and financial planning

process" that was not part of what the voters endorsed. (Slip opinion at p. 21.) However, as in *Peery, supra*, the provisions of §2704.08(d), and of §2704.09, like the maximum interest rate allowed on the Los Angeles bonds, are far more than just descriptive terms or details of the financial planning process. They are material and mandatory terms in the "contract" between the voters and the public entity, placed in the measure by the Legislature as part of the "consideration" intended to induce voter approval.

Subsection 2704.08(d) placed stringent restrictions on when and how bond funds could be used toward construction, and Section 2704.09 amounted to a quality control checklist of items that needed to be satisfied in the completed system. While neither the title and summary nor the Legislative Analyst's report included any mention of, for example: Section 2704.09's restriction on the maximum number of stations within the system (§2704.09(d)); its prohibition on a station between Gilroy and Merced (*Id.*); its setting a minimum headway between successive trains of no more than five minutes (§2704.09(c)); or its maximum nonstop service travel times between various station pairs (§2704.09(b)); all of these were clear *mandatory* requirements for the completed system, and eliminating any of them would have indubitably required voter ratification. The same is also true of the restrictions contained in Subsection 2704.08(d). All of these provisions were likewise part of the Legislature's effort to convince voters that the bond funds would actually produce, if not a full high-speed rail

system, at least one or more usable functional segments of high-speed rail that would justify the expenditure of such large sums of money. Yet, according to the Court of Appeal's decision, none of these amounted to a material term tying down the "single object or work distinctly specified in the measure" and none required voter ratification for their modification or removal.

Under the canons of statutory construction, a court should attempt to accord significance to every word, phrase, and sentence in the statute. (*Carmack v. Reynolds* (2017) 2 Cal.5th 844, 849-850.) Those same principles apply equally to the interpretation of ballot measures. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037.) The Court of Appeal's interpretation of the Bond Act, and of the effect AB 1889 had on the meaning of the Act, flew in the face of these basic principles of statutory interpretation by essentially writing out of the Bond Act the self-evident significance of Subsection 2704.08(d) and of the entirety of Section 2704.09. Such a cavalier approach to post-approval changes to a bond measure runs counter to the basic premise of Article XVI Section 1, that once a bond measure had been placed on the ballot, its material terms were locked in unless released *by the voters*.

For more than 100 years, California courts, including this Court, have been consistent in their interpretation of Article XVI Section 1. However, the issue presented by this case has not, until now, come before

the Court. The Court of Appeal's assumption that any large project could only be generally defined ignored the potential for even a large project to include material *requirements relied upon by voters*. Those requirements in Prop. 1A are part and parcel of the object or work distinctly defined in the measure. Consequently, changing those requirements needed voter approval.

The Court of Appeal's assumption disrupts California's up to now consistent set of precedents for interpreting Article XVI Section 1. If allowed to stand, it will sow unnecessary confusion in the interpretation of this important constitutional section for future large bond measures and more generally in the interpretation of bond measures and other voter-approved measures. It will also signal to the Legislature that it need not be concerned about what it promises voters in bond measures for large projects. It can later retract those promises without any consequence. For this reason as well, the Court should accept review of this case.

CONCLUSION

Almost one hundred years ago, this Court set clear parameters on when post-election changes to a bond measure would require voter ratification. The Court of Appeal's decision here would muddy those parameters and would start California's courts, its agencies, and its Legislature, down a slippery slope of deciding how big and complex a project needed to be to eliminate the need for voter ratification. This Court

should not send California's government down that slope. For all the above reasons, Plaintiffs' Petition for Review should be granted.

Dated: January 6, 2022

Respectfully submitted,

Michael J Brady

Stuart M. Flashman

Attorneys for Petitioners John Tos *et al.*

By: ___/s/Stuart M. Flashman_____
Stuart M. Flashman

CERTIFICATE OF COMPLIANCE
[CRC 8.204(c)(1)]

Pursuant to California Rules of Court, rule 8.204(c)(1), I, Stuart M. Flashman, certify that this PETITION FOR REVIEW OF PETITIONERS JOHN TOS, QUENTIN KOPP, TOWN OF ATHERTON, PATRICIA LOUISE HOGAN-GIORNI, ANTHONY WYNNE, COMMUNITY COALITION ON HIGH-SPEED RAIL, TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, AND CALIFORNIA RAIL FOUNDATION contains 7,752 words, including footnotes, as determined by the word count function of my word processor, Microsoft Word for Mac 2011, and is printed in a 13-point typeface.

Dated: January 6, 2022

/s/ Stuart M. Flashman
Stuart M. Flashman

Exhibit A

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

JOHN TOS et al., Plaintiffs and Appellants, v. STATE OF CALIFORNIA et al., Defendants and Respondents.	C089466 (Super. Ct. No. 34-2016-00204740-CU-WM-GDS)

APPEAL from a judgment of the Superior Court of Sacramento County, Richard Sueyoshi, Judge. Affirmed.

Law offices of Stuart M. Flashman, Stuart M. Flashman; and Michael J. Brady for Plaintiffs and Appellants.

Xavier Becerra and Rob Bonta, Attorneys General, Thomas S. Patterson, Assistant Attorney General, Paul Stein and Sharon L. O'Grady, Deputy Attorneys General, for Defendants and Respondents.

Appellants John Tos et al. (Tos parties) appeal from a judgment that section 2704.78 of the Safe, Reliable High-Speed Train Bond Act for the 21st Century (Bond

Act) (Sts. & Hy. Code, § 2704 et seq.) does not violate the state debt provision of the California Constitution set forth in article XVI, section 1.[1]

Subdivision (d) of section 2704.08 of the Bond Act, approved by the voters in 2008 as Proposition 1A, requires an independent financial report indicating, among other things, that each corridor or segment of a corridor of the high-speed train system, if completed according to a "detailed funding plan" (§ 2704.08, subd. (d)(1)), would be "suitable and ready for high-speed train operation."[2] (§ 2704.08, subd. (d)(2)(B).) Section 2704.78, subdivision (a), passed by the Legislature in 2016 but not submitted to the voters, provides that "[f]or 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 . . . 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."

---

[1] All undesignated statutory references are to the Streets and Highways Code.

[2] The Bond Act does not define this phrase, but does define the following terms:

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

"(e) 'High-speed train system' means a system with high-speed trains and includes, but is not limited to, the following components: right-of-way, track, power system, rolling stock, stations, and associated facilities.

"(f) 'Corridor' means a portion of the high-speed train system as described in Section 2704.04. [For example, the "corridor" between San Francisco and Los Angeles. (§ 2704.04, subd. (b)(2).)]

"(g) 'Usable segment' means a portion of a corridor that includes at least two stations." (§ 2704.01.)

Article XVI, section 1 of the California Constitution requires state debt over $300,000 to be authorized by a law approved by two-thirds of the Legislature and a majority of the voters. This provision also requires that state debt be "for some single object or work to be distinctly specified therein" and the proceeds "applied only to the specific object" of the authorizing law. (Cal. Const., art XVI, § 1.) The law is "irrepealable until the principal and interest thereon shall be paid and discharged . . . ." (*Ibid.*) The Tos parties contend the meaning of "suitable and ready for high-speed train operation" set forth in section 2704.78, subdivision (a), constituted an implied partial repeal of the Bond Act in violation of section 1 of article XVI of the California Constitution.

We disagree. This constitutional provision does not prohibit alterations of a bond law approved by the voters for a complex public works project, like the high-speed train system, which do not divert funds from, interfere with, or destroy the "single object or work . . . distinctly specified" (Cal. Const., art. XVI, § 1) in the law. Section 2704.78 did not do so. The "single object or work" of the Bond Act was (1) the initial planning and construction of a high-speed train system under (2) a "mandatory multistep process to ensure the financial viability of the project," which we described in *California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th 676 (*Rail Authority*), our prior opinion on the Bond Act, as a "financial straitjacket." (*Rail Authority*, at p. 706.) Section 2704.78 furthered the construction of the high-speed train system by investing in improvement of existing rail lines, which after additional investment would be shared with high-speed rail under the "blended systems" approach, while providing benefits to passengers in the near term. Nor did section 2704.78 constitute an escape from the "financial straitjacket." The multistep planning and review process in section 2704.08, subdivision (d), remained intact.

The judgment will be affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

We need not repeat the description of the Bond Act, its history, overall structure and initial implementation, which we set forth in *Rail Authority, supra*, 228 Cal.App.4th at pages 684-693. Lead petitioner in this case, John Tos, was also the lead petitioner in *Rail Authority* and the parties are well familiar with the background of the Bond Act and our opinion in *Rail Authority.*

This case concerns subdivision (d)(2) of section 2704.08, the final step in the series of plans and reports required by section 2704.08 to appropriate and expend bond proceeds for the capital costs of a high-speed train corridor or usable segment thereof.

The first step, subdivision (c) of section 2704.08, requires the California High-Speed Rail Authority (Authority), prior to a request to appropriate bond proceeds, to submit a "detailed funding plan" to the Legislature and Governor. (§ 2704.08, subd. (c)(1).) This report must have been previously submitted to the Director of Finance, a peer review group, and multiple legislative committees. (*Ibid.*) Section 2704.08, subdivision (c)(2), specifies the 11 subjects that the plan must "include, identify, or certify," beginning with "[t]he corridor, or usable segment thereof, in which the authority is proposing to invest bond proceeds," and ending with "[t]he authority has completed all necessary project level environmental clearances necessary to proceed to construction." (§ 2704.08, subd. (c)(2)(A), (K).) One of the 11 specified subjects is that "[t]he corridor or usable segment thereof would be suitable and ready for high-speed train operation." (§ 2704.08, subd. (c)(2)(H).)

The second step, subdivision (d)(1) of section 2704.08, requires the Authority, prior to expenditure of bond proceeds for a corridor or usable segment, to submit a "detailed funding plan" to the Director of Finance and Joint Legislative Budget Committee. (*Rail Authority, supra*, 228 Cal.App.4th at p. 688.) Subdivision (d)(1) specifies six subjects to be included in the plan beginning with "identif[ying] the corridor or usable segment thereof, and the estimated full cost of constructing the corridor or

usable segment thereof" and ending with "terms and conditions associated with any agreement proposed to be entered into by the authority and any other party for the construction or operation of passenger train service along the corridor or usable segment thereof." (§ 2704.08, subd. (d)(1)(A), (F).)

The third and final step, subdivision (d)(2) of section 2704.08, requires the Authority also to submit to the Director of Finance and Joint Legislative Budget Committee "a report or reports, prepared by one or more financial services firms, financial consulting firms, or other consultants, independent of any parties, other than the authority, involved in funding or constructing the high-speed train system . . . ." The report or reports must "indicat[e]" five subjects, the first two of which concern us here: "(A) construction of the corridor or usable segment thereof can be completed as proposed in the plan submitted pursuant to paragraph (1), [and] (B) if so completed, the corridor or usable segment thereof would be suitable and ready for high-speed train operation." (§ 2704.08, subd. (d)(2)(A), (B).)

The meaning of "suitable and ready for high-speed train operation" set forth in section 2704.78 can be traced to the "Revised 2012 Business Plan" (revised business plan) adopted by the Authority in mid-April 2012. As noted in *Rail Authority*, the Authority is required to " 'prepare, publish, adopt, and submit to the Legislature, not later than January 1, 2012, and every two years after, a business plan.' " (*Rail Authority, supra*, 228 Cal.App.4th at p. 689, citing Pub. Util. Code, § 185033, former subd. (a), as amended by Stats. 2009, ch. 618, § 1.) The Authority certified the preliminary funding plan required by section 2704.08, subdivision (c), two days after issuing a "Draft 2012 Business Plan" in 2011. (*Rail Authority*, at p. 690.)

After a peer review group to the Legislature outlined weaknesses in the preliminary funding plan and draft business plan (*Rail Authority, supra*, 228 Cal.App.4th at p. 690), the Authority adopted the revised business plan in mid-April 2012. (*Id.* at p. 691.) Among other things, "the revised business plan introduced a 'blended systems'

approach that integrates high-speed rail with existing commuter lines in various urban areas. The revised business plan states: 'Passengers will have more options, faster travel times, and greater reliability and safety. . . . [¶] Benefits will be delivered ***faster*** through the adoption of the blended approach and through investments in the bookends. Across the state, transportation systems will be improved and jobs will be created through the implementation of those improvements.' " (*Id.* at p. 691.)[3]

In 2016, the Legislature passed Assembly Bill No. 1889 (2015-2016 Reg. Sess.), enacting section 2704.78, effective January 1, 2017. (Stats. 2016, ch. 744, § 2.) Section 1 of the statute explained that the impetus for section 2704.78 was the blended systems approach introduced in the revised business plan:

"(c) In 2012, the High-Speed Rail Authority released the Revised 2012 Business Plan, which called for near-term investments in northern and southern California, known

---

[3] We deferred ruling on respondent's request for judicial notice of a 2012 letter opinion from Legislative Counsel asking whether the revised business plan complied with Proposition 1A. The trial court denied the request without explanation. We grant it. The Legislative Counsel opined that a 130-mile segment with some but not all of the features needed for high-speed rail operation met the requirement of "suitable and ready for high-speed train operation." The Legislative Counsel reasoned: "Because, in our view, the bond act authorizes interim use of a facility constructed with bond act funds by conventional diesel-operated passenger train service, imposing a requirement to construct the usable segment with features that may not be needed for a number of years, such as electrification, could be determined to be an unreasonable result. Moreover, because it could be many years before these features could be put to use, including them immediately could lead to degradation of the electric catenary lines and related facilities and result in a waste of government funds." (Ops. Cal. Legis. Counsel, No. 1211030 (June 8, 2012) High-Speed Rail, p. 15.) However, "a *post hoc* expression of the Legislative Counsel's opinion of what the Legislature meant when it adopted [the statute] . . . is only as persuasive as its reasoning." (*Grupe Development Co. v. Superior Court* (1993) 4 Cal.4th 911, 922; *Mundy v. Superior Court* (1995) 31 Cal.App.4th 1396, 1404.) In this case, it is the voters' intent that we seek to effectuate. (*Santos v. Brown* (2015) 238 Cal.App.4th 398, 409.) Moreover, notwithstanding the Legislative Counsel's opinion, the Legislature subsequently enacted section 2704.78 to explicitly provide an expanded definition of "suitable and ready for high-speed train operation."

as the 'Bookends,' which would enable high-speed trains to share infrastructure with existing passenger rail service providers as part of a blended system, and is consistent with Proposition 1A. [¶] . . . [¶]

"(g) It is the intent of the Legislature, in appropriating funding for initial investments, that these projects should proceed to construction in the near-term to provide economic benefits, create jobs, and advance improved, safer, and cleaner rail transportation and that these initial investments are consistent with and further the goals of Proposition 1A.

"(h) Consistent with Proposition 1A, these early investments will enable passenger train service providers to begin using the improvements on a corridor or useable segment thereof while additional work is completed to enable high-speed train service.

"(i) Furthermore, it is the intent of the Legislature that nothing in this act relieves the High-Speed Rail Authority from its duties under Proposition 1A, including the submission to the Director of Finance of the plan required pursuant to subdivision (d) of Section 2704.08 of the Streets and Highways Code.

"(j) As established in Proposition 1A, the required plan shall be informed by the work of one or more independent financial services firms, financial consulting firms, or other consultants, pursuant to paragraph (2) of subdivision (d) of Section 2704.08 of the Streets and Highways Code.

"(k) This act clarifies that early investments in the Bookends and elsewhere along the system . . . which will ultimately be used by high-speed rail trains, are consistent with the intent of the Legislature in appropriating funding and is consistent with Proposition 1A." (Stats. 2016, ch. 744, § 1.)

Section 2704.78 provides in relevant part: "(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 . . . 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.

"(b) In each report prepared pursuant to Sections 185033 and 185033.5 of the Public Utilities Code, the authority shall include information describing the use of bond proceeds appropriated . . . demonstrating that the investments made are consistent with the authority's current business plan and advance the development of the Phase I blended system as described in the business plan." (§ 2704.78.)

On December 13, 2016, the Tos parties filed a complaint for declaratory and injunctive relief challenging, inter alia, the constitutionality of Assembly Bill No. 1889 and thus section 2704.78. After a series of demurrers and amended complaints, on July 16, 2018, the Tos parties filed a motion for judgment on the pleadings on the cause of action in their second amended complaint for a declaration that Assembly Bill No. 1889 is unconstitutional and invalid.

The trial court denied the motion, finding that "[Assembly Bill No.] 1889 did not impliedly repeal Proposition 1A by making 'substantial changes in the scheme or design which induced voter approval.' (*Veterans of Foreign Wars v. State of California* (1974) 36 Cal.App.3d 688, 693-694.)" Deeming this result dispositive of all their claims, the Tos parties and respondents State of California et al. stipulated to entry of judgment pursuant to *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 402, to seek review from this court on the constitutional validity of Assembly Bill No. 1889 and section 2704.78.[4]

---

[4] The parties agree they entered into the stipulated judgment because all of the Tos parties' claims depended on a determination that Assembly Bill No. 1889 is unconstitutional. The stipulated judgment is thus appealable under the exception in *Norgart* to the general rule that consent judgments are not appealable except where " 'consent was merely given to facilitate an appeal following adverse determination of a

DISCUSSION

Standard of Review

The Tos parties' constitutional challenges are to section 2704.78 as written. "In such a case we do not defer to the superior court's ruling; we independently interpret the law to determine whether or not it is constitutional." (*Griffith v. City of Santa Cruz* (2012) 207 Cal.App.4th 982, 990, citing *Rental Housing Owners Assn. of Southern Alameda County, Inc. v. City of Hayward* (2011) 200 Cal.App.4th 81, 89-90; *Vo v. City of Garden Grove* (2004) 115 Cal.App.4th 425, 433 ["Constitutional issues are always reviewed de novo"]; see also *California Advocates for Nursing Home Reform v. Smith* (2019) 38 Cal.App.5th 838, 864; *People v. Health Laboratories of North America, Inc.* (2001) 87 Cal.App.4th 442, 445 ["The interpretation of a statute and the determination of its constitutionality are questions of law"]; *B.M. v. Superior Court* (2019) 40 Cal.App.5th 742, 748 (*B.M.*).)

" 'In considering a facial challenge to a statute, we uphold the statute unless its unconstitutionality plainly and unmistakably appears; all presumptions favor its validity.' " (*Hess Collection Winery v. Agricultural Labor Relations Bd.* (2006) 140 Cal.App.4th 1584, 1595-1596, citing *City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 10-11; *Pryor v. Municipal Court* (1979) 25 Cal.3d 238, 253-255.) Statutes are presumed to be constitutional and " 'will be given a construction consistent with validity if at all possible.' " (*Persky v. Bushey* (2018) 21 Cal.App.5th 810, 818.) " ' "Invalidating legislation is serious business," ' and we cannot construe a statute 'contrary to legislative intent merely to eliminate a potential constitutional conflict.' " (*Ibid*.) "A challenge to the facial constitutionality of a statute cannot be sustained unless the statutory terms 'inevitably pose a present total and fatal conflict with applicable

---

critical issue.' " (*Norgart v. Upjohn Co., supra*, 21 Cal.4th at p. 400; *Wilshire Ins. Co. v. Tuff Boy Holding, Inc.* (2001) 86 Cal.App.4th 627, 634, fn. 6 ["The stipulated judgment, made to hasten appeal rather than settle the dispute, is appealable"].)

constitutional prohibitions.' " (*Ibid.*, citing *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 181.)

"We also bear in mind the well-established separation of powers principle that '[c]ourts should exercise judicial restraint in passing upon the acts of coordinate branches of government; the presumption is in favor of constitutionality, and the validity of the legislation must be clear before it can be declared unconstitutional.' [Citation.] Legislative findings are entitled to ' "great weight" ' and ' "will be upheld unless they are found to be unreasonable and arbitrary." ' " (*B.M., supra*, 40 Cal.App.5th at pp. 748-749; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1252 (*Amwest*).)

Our inquiry also involves interpretation of section 2704.08, subdivision (d), passed by initiative. "Statutes adopted by the voters must be construed liberally in favor of the people's right to exercise their reserved powers, and it is the duty of the courts to jealously guard the right of the people by resolving doubts in favor of the use of those reserved powers." (*Rail Authority, supra*, 228 Cal.App.4th at p. 708.) "The voters as well as the bondholders have an interest in the continued integrity of voter-ratified bond proposals." (*Ibid.*) "Yet the same basic rules of statutory construction apply to statutes enacted by the voters as to statutes passed by the Legislature. [Citation.] We must look to the plain language of the statute to determine the intent of the electors [citation]; 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." (*Ibid.*) To determine the intent of an initiative statute, "we may also look to the ballot materials in support of its passage." (*B.M., supra*, 40 Cal.App.5th at p. 753; *Amwest, supra*, 11 Cal.4th at p. 1256; *People v. Superior Court* (*K.L.*) (2019) 36 Cal.App.5th 529, 535.)

Finally, since the Tos parties' assertion that section 2704.78 is unconstitutional rests on article XVI, section 1 of the California Constitution, "[w]e must examine the text of that constitutional provision, applying the same general principles as those on which statutory construction is based." (*Persky v. Bushey, supra*, 21 Cal.App.5th at p. 818.)

" 'The aim of constitutional interpretation is to determine and effectuate the intent of those who enacted the constitutional provision at issue. [Citation.] To determine that intent, we begin by examining the constitutional text, giving the words their ordinary meanings.' " (*Ibid.*) " ' "If the language is clear, there is no need for construction. [Citation.] If the language is ambiguous, however, we consider extrinsic evidence of the enacting body's intent." ' " (*Greene v. Marin County Flood Control & Water Conservation Dist.* (2010) 49 Cal.4th 277, 290, quoting *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037.)

Constitutionality of Section 2704.78

The Tos parties contend that cases interpreting and applying article XVI, section 1 of the California Constitution "make clear that once the voters have been presented with and approved such a bond measure; the Legislature may not make 'substantial changes in the scheme or design which induced voter approval.' "[5] As we will discuss further, the

---

[5] Article XVI, section 1 of the California Constitution provides in relevant part: "The Legislature shall not, in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars ($300,000), except in case of war to repel invasion or suppress insurrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within 50 years of the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged, and such law may make provision for a sinking fund to pay the principal of such debt or liability to commence at a time after the incurring of such debt or liability of not more than a period of one-fourth of the time of maturity of such debt or liability; but no such law shall take effect unless it has been passed by a two-thirds vote of all the members elected to each house of the Legislature and until, at a general election or at a direct primary, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by authority of such law shall be applied only to the specific object therein stated or to the payment of the debt thereby created. Full publicity as to matters to be voted upon by the people is afforded by the setting out of the complete text of the proposed laws, together with the arguments for and against them, in the ballot

Tos parties quote a passage from *Veterans of Foreign Wars v. State of California, supra*, 36 Cal.App.3d 688 (*Veterans*), in which the appellate court concluded that the Legislature violated article XVI, section 1 when it appropriated funds for the expenses of maintaining county veterans' service offices from the proceeds of bonds approved by voters to finance farm and home acquisition for veterans. (*Veterans*, at p. 695.)

The Tos parties also cite in support of this proposition our opinion in *Rail Authority*, where we said: "It is true that a bond act approved by the voters can, by its terms, limit the purposes for which the bond proceeds can be spent. (*O'Farrell v. County of Sonoma* (1922) 189 Cal. 343, 348-349 (*O'Farrell*).) 'Whether the limitation be deemed to be contractual [citation] or of a status analogous to such relation [citation] or a restriction implied by the requirement of popular approval of the bonds [citation], it does restrict the power of the public body in the expenditure of the bond issue proceeds, and hence in the nature of the project to be completed and paid for.' (*Mills v. S.F. Bay Area Rapid Transit Dist.* (1968) 261 Cal.App.2d 666, 668 (*Mills*).) More importantly, article XVI, section 1 of the California Constitution requires that the works funded by a bond measure shall be 'distinctly specified' in the measure presented to the voters, and that any bonds to be issued as authorized by the bond act approved by the voters 'shall be applied only to the specific object therein stated.' " (*Rail Authority, supra*, 228 Cal.App.4th at p. 701.)

Thus, we focus on whether the expanded meaning of "suitable and ready for high-speed train operation" in section 2704.78 violates the requirement in article XVI, section

---

pamphlet mailed to each elector preceding the election at which they are submitted, and the only requirement for publication of such law shall be that it be set out at length in ballot pamphlets which the Secretary of State shall cause to be printed. The Legislature may, at any time after the approval of such law by the people, reduce the amount of the indebtedness authorized by the law to an amount not less than the amount contracted at the time of the reduction, or it may repeal the law if no debt shall have been contracted in pursuance thereof." (Cal. Const, art. XVI, § 1.)

1 of the California Constitution that the works funded be "distinctly specified" in the bond measure and funds be applied to that "specific object." Respondents argue that "specific object" of the Bond Act is set forth broadly in section 2704.04, subdivision (a), "to initiate the construction of a high-speed train system . . . ." In addition, section 2704.04, subdivision (d), sets forth one specific prohibition on the use of bond funds: "Proceeds of bonds authorized pursuant to this chapter shall not be used for any operating or maintenance costs of trains or facilities." In sum, under section 2704.04, the "specific object" of the Bond Act is to fund initial construction of a high-speed train system but not pay the cost of operating or maintaining trains or facilities. To the extent that section 2704.78 is consistent with this "specific object," the statute does not violate article XVI, section 1 of the California Constitution.

Metropolitan Water Dist. v. Marquardt (1963) 59 Cal.2d 159 (*Marquardt*) supports the interpretation of "specific object" as a broad plan that embraces matters reasonably germane to the plan. In *Marquardt*, a bond act added sections to the Water Code " 'relating to provision for the development of water resources of the State' " by providing funds through the sale of bonds. (*Id.* at p. 171.) The Water Code section added by the bond act enumerated various facilities to be funded, including the Feather River dam and reservoir, an aqueduct system to deliver water to various parts of the state, various facilities to conserve and transfer water in the Sacramento-San Joaquin Delta, facilities for removing drainage water from the San Joaquin Valley, facilities for the generation and transmission of electrical energy, water development facilities in local areas, and other facilities deemed necessary to supply water in the Delta. (*Id.* at pp. 171-172.)

The primary challenge to this bond act was that it violated section 24 of article IV of the California Constitution that "every act shall embrace but one subject and that subject shall be expressed in the title." (*Marquardt, supra*, 59 Cal.2d at p. 171.) The court held that section 24 of article IV "must be construed liberally so as to uphold

legislation all parts of which are reasonably germane, and a provision which is auxiliary to and promotive of the main purpose of the act or has a necessary and natural connection with that purpose is germane within this rule." (*Marquardt*, at pp. 172-173.) "[T]he general purpose of a statute being declared, the details provided for its accomplishment will be regarded as necessary incidents." (*Id.* at p. 173, citing *Perry v. Jordan* (1949) 34 Cal.2d 87, 92-93.)

The court also considered whether the act authorizing $1.75 billion in bonds violated section 1 of article XVI of the California Constitution. The court held that it did not, analogizing the question whether the bond act was for a " 'single object or work' " as these words are used in section 1 of article XVI to the question whether the bond act embraces one " 'subject' " under section 24 of article IV. (*Marquardt, supra*, 59 Cal.2d at p. 175.) The court held "the matters embraced by the bond act are germane to one plan, and the obligations created are for a 'single object.' " (*Ibid.*) "Under these circumstances it is apparent that specification of a plan in broad and general terms will be sufficient to meet the requirement of section 1 of article XVI that the object be 'distinctly specified' in the act . . . ." (*Id.* at p. 175.)

Under the reasoning in *Marquardt*, the broad and general statement that the purpose of the Bond Act is to initiate construction but not operation of a high-speed train system is the "single object or work distinctly specified" against which the question whether section 2704.78 violates section 1 of article XVI is measured. Plainly, section 2704.78 does not. As the Legislative findings for section 2704.78 indicate, the statute was enacted in furtherance of the blended system approach introduced in 2012 in the revised business plan. (Stats. 2016, ch. 744, § 1, subd. (c); *Rail Authority, supra*, 228 Cal.App.4th at p. 691.) Under the blended systems approach, the high-speed train system shares corridors and segments with existing commuter train systems. Such corridors and segments are improved in preparation for high-speed rail, while at the same time providing immediate benefits to the passengers currently using them. The blended

systems approach is "germane" to the "specific object" of the Bond Act, i.e., the plan for initial construction of a high-speed train system. By the same token, section 2704.78 is germane to the plan of the Bond Act.

The Tos parties maintain that "suitable and ready for high-speed train operation" can only mean (1) that the segment must be "suitable" for high-speed train operation with the "track structure, slope limits, curvature limits, power supply, signaling equipment, etc. appropriate to allow a high-speed train to operate safely and reliably," and (2) "ready" such that "even if the *design* of the system were suitable for high-speed train operation, if some part of the design had not yet been implemented—e.g., the signaling system had not been installed or properly tested and certified, the segment would still not be prepared or available, and hence not ready for high-speed train operation." In short, according to the Tos parties, this phrase mandates complete construction of, and only of, a corridor or segment upon which a high-speed train could immediately travel at speeds up to 200 miles (at least for the length of that corridor or segment).[6]

Even adopting the Tos parties' interpretation of the phrase "suitable and ready for high-speed train operation," which is undefined in the Bond Act, as not extending to the

---

[6] We granted the Tos parties' request for judicial notice of the text of bills, legislative committee reports, and the Governor's Budget, May Revision 2008-09 relating to the Bond Act, all of which were judicially noticed by the trial court. Our review of these materials indicates that the funding plans required by section 2704.08, subdivisions (c) and (d), were a significant feature of Assembly Bill No. 1889. The Tos parties point to the statement in the Governor's budget revision that "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" as support for restricting all bond funds to construction of immediately operational high-speed rail. However, the Governor's budget revision also called for amendments to the bond bill to "ensure an appropriate balance between assuring 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 "blended system" approach and section 2704.78 strike that balance.

expanded meaning in section 2704.78, we noted in *Rail Authority*, that there are "many cases in which the courts have broadly construed the purpose of the relevant bond acts to allow projects to proceed that would appear to be either at odds with, or beyond the scope of, the articulated purpose of the act or the description of the project on the ballot." (*Rail Authority, supra*, 228 Cal.App.4th at pp. 701-702.) We cited as an example *East Bay Mun. Util. Dist. v. Sindelar* (1971) 16 Cal.App.3d 910 (*East Bay*), where the voters authorized bonds to fund a 10-year water development project in the East Bay in 1958 and the court issued a peremptory writ of mandate to compel the treasurer to issue additional bonds in 1970 to finance the project. (*Rail Authority*, at p. 702.) Even though "the construction of the water system was complete and the language of the promotional materials for the ballot measure represented that the construction program would end within 10 years and no additional bonds would be issued or sold, the court found the bond proposition had been submitted to the voters 'in broad and general terms.' " (*Ibid*.)

Here, the Official Voter Information Guide for Proposition 1A similarly described the bond issue broadly. The guide stated in the official title and summary portion that the Bond Act "[p]rovides for a bond issue of $9.95 billion to establish high-speed train service linking Southern California counties, the Sacramento/San Joaquin Valley, and the San Francisco Bay Area." (Voter Information Guide, Gen. Elec. (Nov. 4, 2008) Official Title and Summary of Prop. 1A, p. 4 (Voter Information Guide).) The guide also contained analysis by the Legislative Analyst that "[t]his measure authorizes the state to sell $9.95 billion in general obligation bonds to fund (1) pre-construction activities and construction of a high-speed passenger train system in California, and (2) capital improvements to passenger rail systems that expand capacity, improve safety, or enable train riders to connect to the high-speed train system." (Voter Information Guide, *supra*, Analysis of Prop. 1A by the Legis. Analyst, p. 5.)

Analysis by the Legislative Counsel of the funding process is also relatively broad: "The measure requires accountability and oversight of the authority's use of bond funds

authorized by this measure for a high-speed train system. Specifically, the bond funds must be appropriated by the Legislature, and the State Auditor must periodically audit the use of bond funds. In addition, the authority generally must submit to the Department of Finance and the Legislature a detailed funding plan for each corridor or segment of a corridor, before bond funds would be appropriated for that corridor or segment. The funding plans must also be reviewed by a committee whose members include financial experts and high-speed train experts. An updated funding plan is required to be submitted and approved by the Director of Finance before the authority can spend the bond funds, once appropriated." (Voter Information Guide, *supra*, Analysis of Prop. 1A by the Legis. Analyst, p. 5.)

This analysis does not enumerate or refer to the subjects specified in section 2704.08, subdivision (c) and (d), let alone mention or allude to the phrase "suitable and ready for high-speed train operation" on which the Tos parties rely. We noted in *Rail Authority* that *East Bay* quoted "the rationale" of *Clark v. Los Angeles* (1911) 160 Cal. 317, 320, that " ' "[t]he purpose for which . . . [bond] . . . elections are required is to obtain the assent of the voters to a public debt, to the amount, and the object proposed. The amount must, of course, be stated on the ballot; the general purpose must be stated with sufficient certainty to inform the voters and not mislead them, as to the object intended; but the details of the proposed work or improvement need not be given at length in the ballot." ' " (*Rail Authority, supra*, 228 Cal.App.4th at pp. 702-703; *East Bay, supra*, 16 Cal.App.3d at p. 919.)

However, the Tos parties point out that the Legislative Analyst states in the guide that $9 billion is allocated to develop the high-speed train system and the remaining $950 million to improve the capacity or safety of other passenger rail systems or allow passengers to connect to the high-speed train system. (Voter Information Guide, *supra*, Analysis of Prop. 1A by the Legis. Analyst, p. 5; see also §§ 2704.04, subd. (b) [$9 billion in net bond proceeds for planning, engineering and capital costs of high-speed

train system], 2704.095 [$950 million in net bond proceeds for intercity, commuter and urban rail lines that connect to high-speed train system, are part of the high-speed train system, or provide capacity enhancements and safety improvements].) It may be argued the blended system approach adopted in the revised business plan and reflected in section 2704.78, subdivision (a), changes that allocation to allow expenditure of all $9.95 billion in bond proceeds on the projects set forth in both sections 2704.04, subdivision (b), and 2704.095.

On that score, we explained in *Rail Authority*: "The courts have been particularly attuned to the fluidity of the planning process for large public works projects. In fact, the Supreme Court has allowed substantial deviation between the preliminary plans submitted to the voters and the eventual final project, admonishing: '[T]he authority to issue bonds is not so bound up with the preliminary plans as to sources of supply upon which the estimate is based that the proceeds of a valid issue of bonds cannot be used to carry out a modified plan if the change is deemed advantageous.' (*Cullen v. Glendora Water Co.* (1896) 113 Cal. 503, 510.) Similarly, the court broadly construed the purpose of the proposition approving the Bay Area Rapid Transit District and sanctioned the relocation of one of the terminal stations. The court wrote, 'Obviously, the statutes, the notice of election and the ballot proposition itself contemplate a broad authority for construction of a three-county rapid transit system. In the wide scope of this substantial transit project, the deviation of 1 1/2 miles in location of a single station is but a minor change in the tentative plan which was relied upon only to forecast feasibility of the project as a whole.' (*Mills*[*v. S.F. Bay Area Rapid Transit Dist.*]*, supra*, 261 Cal.App.2d at p. 669.)" (*Rail Authority, supra*, 228 Cal.App.4th at p. 703.)

Significantly, we observed, "The development of a high-speed rail system for the State of California is even more complex than a regional water or transportation system." (*Rail Authority, supra*, 228 Cal.App.4th at p. 703; see also Note, *State Water Development: Legal Aspects of California's Feather River Project* (1960) 12 Stan.

L.Rev. 439, 458 ["when the components of a large-scale development project have reasonable economic and engineering interdependence the courts should not strictly apply the single purpose requirement"].)

Further, we find support for the principle that a bond law may be altered without violating the "single object or work" requirement from the history of the California Constitution and construction by the courts of Iowa and New York, the states from which California borrowed this constitutional provision. "As a matter of history it is well known that our Constitution is in many respects copied from that of Iowa. Upon motion of Mr. Gwin, the Constitution of Iowa was adopted by the Constitutional Convention as a basis for ours, for the reason, as stated by him, that it was one of the latest and shortest." (*Bourland v. Hildreth* (1864) 26 Cal. 161, 257 (dis. opn. of Sanderson, C.J.); Browne, Rep. of the Debates in Convention of Cal. on Formation of the State Const. (1850) p. 24 (Debates of Convention).) Mr. Gwin in fact printed a copy of the Iowa Constitution for the members of the convention to use to draft the California Constitution at the Monterey convention in 1849. (Debates of Convention, *supra*, at p. 24.)

The brief debate in the California convention on adopting the state debt provision from the Iowa Constitution concerned what the amount of the debt limitation requiring a vote of the people should be in light of the amount in the Iowa Constitution ($100,000) and a similar provision in the New York Constitution ($1 million), settling on $300,000. (Debates of Convention, *supra*, at pp. 165-166.) The article adopted remains much unchanged from that time to the amended Constitution adopted by the state in in 1879 to the present day, including the requirement that the "single object or work" of the bond measure "be distinctly specified" and the money raised be applied to that "specific object." (Debates of Convention, *supra*, at p. 166; Constitution of the State of California Annotated (1946) p. 1270.)

In *Knorr v. Beardsley* (1949) 240 Iowa 828 [38 N.W.2d 236] (*Knorr*), the plaintiff contended that the Iowa Constitution was violated when an act adopted by the voters

authorizing issuance of $85 million in bonds to pay service compensation to World War II veterans was amended to appropriate $50 million from a surplus in the state's general fund and limit the bond authorization to $35 million. (*Knorr, supra*, 38 N.W.2d at pp. 239, 240, 241.) The plaintiff relied, inter alia, on a number of sections of the Iowa Constitution regarding state indebtedness, which contained the " 'single work or object . . . distinctly specified' " and " 'specific object' " nearly identical to the language found in section 1 of article XVI of the California Constitution. (*Knorr*, at p. 242.)

The Iowa court held that the amendment did not change the single object of the bond act. (*Knorr, supra*, 38 N.W.2d at p. 246.) The court observed that the Iowa Constitution drew liberally from and followed closely the New York constitutional provision regarding state debts. (*Knorr*, at p. 246.) Under this provision, the New York Legislature had authorized large indebtedness in the establishment and maintenance of the Erie Canal. (*Ibid*.) When later legislation provided alterations in canal routes, injunctions were sought on the ground that this legislation "was an attempt to amend the earlier statutes which had been approved by the voters, without submitting the amendment to voters." (*Ibid*.) The injunctions were denied in each case. (*Ibid.*)

The *Knorr* court noted that, in the last of these opinions, the New York court explained that the vote to contract indebtedness " 'was not taken for the purpose of specifically and in detail indorsing the plans for the canal, but rather to authorize the contracting of indebtedness in behalf of the State for the single specified work of improving the canals of the State.' " (*Knorr, supra*, 38 N.W.2d at p. 246, italics omitted, quoting *Kibbee v. Lyons* (1922) 195 N.Y.S. 563, 566.) "As the construction of the Barge Canal progressed, and the needs to accomplish its purpose were developed, such changes became necessary. But, regardless of the changes in detail, the 'single work or object' for which the indebtedness of the state was authorized was being carried out and the public moneys borrowed expended thereon. The Legislature, without a vote of the people, had not the power to amend the Barge Canal Act in such manner as to divert these state funds

to a work other than the single work or object contemplated when the Barge Canal Act was approved; but it could amend the act and the plans for the canal in any respect which did not so divert the funds or interfere with or destroy that 'single work or object.' " (*Kibbee*, at p. 566.) The New York court held that the legislature had the power to decline to build a particular spur of the Erie Canal that was no longer necessary or useful and "that the abandonment of this part of the work is not a radical or fundamental change from the single work or object for which the moneys of the State were appropriated . . . ." (*Kibbee*, at p. 568; *Knorr*, at p. 247; see also *People ex rel. Jordan v. Wotherspoon* (1916) 157 N.Y.S. 923, 925 ["The change in the route of the canal . . . is not a radical or fundamental one. There was no attempt to divert the moneys to some other work. It applied to the single work or object of building the Barge canal, and simply changed the location from an impractical route to one that the authorities deem to be a more suitable one"].)

The reasoning of the courts in Iowa and New York applies here. As the ballot materials show, the voters approved bonds to initiate construction of a high-speed train system under a multistep financing process requiring a preliminary plan for appropriation of funds and final plan for expenditure of funds. This was the "single object or work" of Proposition 1A. The vote was not taken to endorse every detail of the construction and financial planning process. By 2012, when the revised business plan was adopted, it was determined that the " 'blended systems' approach that integrates high-speed rail with existing commuter lines in various urban areas" would give passengers " 'more options, faster travel times, and greater reliability and safety,' " " '[b]enefits will be delivered ***faster***,' " and " '[a]cross the state, transportation systems will be improved and jobs will be created through the implementation of those improvements.' " (*Rail Authority, supra*, 228 Cal.App.4th at p. 691.) The near-term benefits of improving existing rail lines to provide economic benefits, create jobs, and provide safer and cleaner transportation,

while additional work is completed on high-speed train service, is consistent with the "single work or object" of Proposition 1A. (Stats. 2016, ch. 744, § 1, subds. (g), (h).)

Significantly, as the Legislature found in enacting section 2704.78, nothing in the statute relieved the Authority of its duty to submit the funding plan required by section 2704.08, subdivision (d), to the Director of Finance or eliminated the requirement that plan be informed by the work of one or more independent financial services firms, financial consulting firms, or other consultants pursuant to subdivision (d)(2) of section 2704.08. (Stats. 2016, ch. 744, § 1, subds. (i), (j).)

We conclude section 2704.78 is consistent with the "single object or work" of the Bond Act approved by the voters as Proposition 1A and thus does not violate section 1 of article XVI of the California Constitution.[7]

Veterans and O'Farrell

The Tos parties rely on *Veterans, supra*, 36 Cal.App.3d 688 and *O'Farrell v. County of Sonoma, supra*, 189 Cal. 343 (*O'Farrell*). Both are distinguishable and neither is sufficient to invalidate section 2704.78, enacted in the context of a complex public works project like the high-speed train system.

This court's opinion in *Veterans* involved a bond act approved by the voters to create a fund to aid veterans in the acquisition of and payments for farms and homes. (*Veterans, supra*, 36 Cal.App.3d at p. 693 & fn. 3.) The Legislature began appropriating $500,000 annually from the fund to pay the operating expenses of maintaining county veterans' services offices. (*Id.* at p. 692.) In *Veterans*, we focused on the language in

---

[7] In *Rail Authority*, real party in interest First Free Will Baptist Church contended that the revised business plan including the blended system approach demonstrated "that the high-speed rail system to be built is not the same project approved by the voters." (*Rail Authority, supra*, 228 Cal.App.4th at p. 704, fn. 7.) We rejected this contention as "too soon to determine how the Authority will specifically use the bond proceeds." (*Ibid.*) The Tos parties did not renew that contention in this case.

section 1 of article XVI of the California Constitution that a bond law " 'shall be irrepealable until the principal and interest [of the bonds] shall be paid and discharged.' " (*Veterans*, at p. 693.) We concluded "[t]he 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." (*Ibid.*) Analogizing to the principle that where a later statute that supersedes or substantially modifies an earlier statute, the former by implication partially repeals the latter, we said, "When part of a fund wholly committed by statute is later appropriated to an alien purpose, the appropriation necessarily causes a partial repeal by implication." (*Id.* at p. 694.) However, we cautioned that " '[Repeals by implication] will occur only where the two acts are so inconsistent that there is no possibility of concurrent operation, or where the later provision gives undebatable evidence of an intent to supersede the earlier . . . .' " (*Ibid.*)

Here, the Bond Act was not a relatively simple proposition as in *Veterans*. Proceeds from the Bond Act funded a large and complex public works project including: construction of tracks, structures, power systems, stations and other related facilities and equipment; acquisition of rolling stock; mitigation of environmental impacts; and relocation of displaced property owners and occupants. (§§ 2704.04, subd. (c), 2704.09.) Like the water system in *Marquardt, supra*, 59 Cal.2d 159 and *Cullen v. Glendora Water Co., supra*, 113 Cal. 503 and the transit system in *Mills v. S.F. Bay Area Rapid Transit Dist., supra*, 261 Cal.App.2d 666, "courts have been particularly attuned to the fluidity of the planning process" in allowing deviations from such bond propositions submitted to the voters. (*Rail Authority, supra*, 228 Cal.App.4th at p. 703.) Indeed, section 2704.04, subdivision (c), acknowledges the need for fluidity in providing for application of bond proceeds to as-yet unidentified "other related capital facilities and equipment" and "such other purposes related to the [enumerated purposes], for the procurement thereof, and for the financing or refinancing thereof, as may be set forth in a statute hereafter enacted."

Moreover, the blended systems approach introduced in the revised business plan in 2012 and reflected in section 2704.78 is not " 'so inconsistent that there is no possibility of concurrent operation' " with the Bond Act generally or 2704.08, subdivision (d), in particular. (*Veterans, supra*, 36 Cal.App.3d at p. 694.) Section 2704.78 furthered the initial construction of the high-speed rail system by funding investments in improvement of existing train systems that would be shared with the high-speed train system, while additional work is completed to enable high-speed train service. (Stats. 2016, ch. 744, § 1, subds. (g), (h).) Moreover, the expanded "suitable and ready for high-speed train operation" condition, as defined in section 2704.78, subdivision (a), continued to be subject to the independent consultant review and reporting process required by subdivision (d)(2) of section 2704.08. In other words, prior to expenditure of bond proceeds on an existing system, the expenditure would be subject to evaluation whether it improved a shared system while additional work is completed for high-speed train service and passenger providers benefited in the near-term.

We conclude that section 2704.78 did not effect an implied partial repeal of the Bond Act.

O'Farrell is factually inapposite to this case. In *O'Farrell*, the ballot proposition described the exact scope of the road that was to be constructed with bond funds. (*O'Farrell, supra*, 189 Cal. at pp. 347-348.) The court concluded that the county did not have discretion to build only a part of the road. (*Ibid.*) As noted, the Bond Act did not specify project details but rather acknowledged in section 2704.04, subdivision (c), that additional related capital equipment and facilities and purposes would be funded with bond proceeds as the project progressed. The project in *O'Farrell*, construction of a single four-mile road, bears no resemblance to a complex public works project like the high-speed train system. In addition, subsequent cases have not found *O'Farrell* to bar reasonable changes in executing projects financed by bonds. (See, e.g., *Sacramento-Yolo Port Dist. v. Rodda* (1949) 90 Cal.App.2d 837, 840 [when the authority proposing the

bond issue "has not confined itself to an absolutely definite and inflexible plan of construction and expenditure by the proposal submitting the bond issue, and has proceeded free from fraud and in good faith in accordance with such broad program, there is no reason why it cannot be permitted to carry on the improvement to the extent of the funds available"]; *City of San Diego v. Millan* (1932) 127 Cal.App. 521, 530 [substituting types of dams funded by bond issue].)

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

RAYE, P. J.

We concur:

BLEASE, J.

ROBIE, J.

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

MAILING LIST

Re: Tos et al. v. State of California et al.
C089466
Sacramento County
No. 34201600204740CUWMGDS

Copies of this document have been sent by mail to the parties checked below unless they were noticed electronically. If a party does not appear on the TrueFiling Servicing Notification and is not checked below, service was not required.

Stuart M. Flashman
Law Offices of Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533

Michael J. Brady
Ropers, Majeski, Kohn & Bentley
1001 Marshall Street
Redwood City, CA 94063

Sharon Louise O'Grady
Office of the State Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

✓ Honorable Richard K. Sueyoshi
Judge of the Sacramento County Superior Court
720 Ninth Street
Sacramento, CA 95814

PROOF OF SERVICE BY MAIL OR ELECTRONIC SERVICE

I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the within above titled action. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On January 6, 2022, I served the within PETITION FOR REVIEW on the party listed below by placing a true copy thereof, enclosed in a sealed envelope with first class mail postage thereon fully prepaid, in a United States Postal Service mailbox at Oakland, California, addressed as follows:

Hon. Richard Sueyoshi
c/o Clerk, Sacramento County Superior Court
720 – 9th Street
Sacramento, CA 95814

In addition, on the above-same day, I also served electronic versions of the above-same document, upon counsel for the parties to this appeal, and on the California Third District Court of Appeal, as a pdf file through the California Supreme Court's electronic filing vendor, Imagesoft TrueFiling.

I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on January 6, 2022.

/s/ Stuart M. Flashman