

IN THE CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT - DIVISION TWO

HOWARD JARVIS TAXPAYERS ASSOCIATION, et al.,  
Plaintiffs/Appellants,

v.

THE BAY AREA TOLL AUTHORITY, et al.,  
Defendants/Respondents,

and

RANDALL WHITNEY,  
Plaintiff/Appellant,

v.

METROPOLITAN TRANSPORTATION COMMISSION,  
Defendant/Respondent.

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On Appeal From San Francisco County Superior  
Court  
Trial Court Case No. CGC-18-567860  
and Case No. CPF-18-516276  
The Honorable Ethan P. Schulman

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**RESPONDENTS' APPENDIX  
VOLUME I**

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Consolidated  
Court of Appeal Case Nos. A157598 and A157972

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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO  
3 HONORABLE ETHAN P. SCHULMAN, JUDGE PRESIDING  
4 DEPARTMENT NO. 302

5 ---oOo---

6 JARVIS TAXPAYERS ASSOCIATION, et  
7 al,

8 Plaintiffs,

9 vs.

No. CGC-18-567860

10 BAY AREA TOLL AUTHORITY, et al.,

11 Defendant.  
12 \_\_\_\_\_/

13  
14 Reporter's transcript of proceedings

15 date of

16 April 3, 2019

17  
18  
19  
20 A P P E A R A N C E S

21  
22 For the Plaintiff:  
23 TIMOTHY BIDDLE, Attorney at Law

24 For Defendant California Legislature:  
25 ROBIN JOHANSEN, Attorney at Law

26 For Defendant Bay Area Toll Authority  
27 MICHAEL WEED, Attorney at Law

28 Reported by: Anthony C. Vaughn - CSR No. 6185

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1 April 3, 2019

A.M. Session

2 ----oOo----

3 THE COURT: Is anybody here on anything other than  
4 the Howard Jarvis Taxpayers Association matter?

5 Other than the people over here. Welcome to the  
6 students from the School of the Epiphany.

7 Counsel's appearances, please.

8 MS. JOHANSEN: Good morning, Your Honor, Robin  
9 Johansen on behalf of the California legislature.

10 MR. WEED: Good morning, Your Honor, Michael Weed on  
11 behalf of Bay Area Toll Authority.

12 MR. BIDDLE: Good morning, Your Honor, Timothy Biddle  
13 on behalf of the Howard Jarvis Taxpayers Association and  
14 the other plaintiffs.

15 THE COURT: Mr. Biddle, you have my tentative rulings  
16 as to both causes of action. I think if I read the  
17 tentative -- if I read the emails correctly, that you're  
18 challenging only the tentative ruling as to the claim  
19 against the legislature but not the rulings as to the  
20 claim against the Bay Area Toll Authority, but I may have  
21 that wrong.

22 MR. BIDDLE: That is correct, Your Honor.

23 THE COURT: Okay.

24 MR. BIDDLE: We're challenging -- may I approach the  
25 dais?

26 THE COURT: Of course.

27 MR. BIDDLE: We're challenge -- we're not challenging  
28 the Court's decision that the toll increase was imposed by

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1 the State. It was not imposed by the Bay Area Toll  
2 Authority, so I imagine that excuses the Bay Area Toll  
3 Authority from the case, and we won't need to hear from  
4 Mr. Weed.

5 We do contest the tentative rulings relating to  
6 whether or not a two-thirds vote of the legislature was  
7 required under Article 13(a) for the legislation, Senate  
8 Bill 595, to pass on to the governor for his signature.

9 And if I may address the Court's tentative rulings?

10 THE COURT: Certainly.

11 MR. BIDDLE: So not necessarily for the Court's  
12 benefit but perhaps for the benefits of the -

13 THE COURT: We're all educating one another.

14 MR. BIDDLE: All right. Article 13(a), Section 3  
15 contains a definition of what a tax is in California. And  
16 that definition was added to the Constitution in 2010 by  
17 Proposition 26. And it basically says that any exaction  
18 of money from the citizens by the government is a tax.  
19 But it provides five exceptions. The first three of those  
20 exceptions contain a reference to the levy being based on  
21 reasonable costs.

22 And then there's two more exceptions. Exception  
23 number 4 is for entrance to or use of public property. Or  
24 the sale or lease of public property.

25 And then the fifth exception is for things like  
26 fines, penalties and other criminal charges.

27 The issue in this case centers around that fourth  
28 exception, the one for entrance to or use of state

1 property, because the toll is collected at the entrance to  
2 the State owned bridges. That section of the  
3 Constitution, Article 13(a), Section 3 that contains the  
4 definition of a tax also has one last provision at the  
5 bottom, subsection (d). And that's the provision that  
6 places a ceiling on the amount that a fee can be and also  
7 requires a nexus between the fee and the thing that is  
8 being collected for. Because if a fee exceeds that  
9 ceiling, if it's too high, if it's more than necessary to  
10 cover the government's costs or if it contains no nexus,  
11 if there's no relationship between the fee and the  
12 expenditure of the fee, in other words if there's no nexus  
13 between what you're collecting the fee for, like entrance  
14 to a bridge or entrance into a park, and what the money is  
15 being spent on, if either one of those elements is  
16 missing, then a fee can become a tax.

17 In other words, its exception in that list of five  
18 exceptions can be forfeited. And even though it might on  
19 its face qualify for one of those exceptions, if it's too  
20 high or if there's no nexus, then that fee can become a  
21 tax, and we're back to requiring two-thirds approval.

22 THE COURT: Let me, if I may, in line with our  
23 educational function here. Let me stop you and ask one  
24 question and provide an example that may be helpful.

25 MR. BIDDLE: Yes, Your Honor.

26 THE COURT: The question is this: So I take it from  
27 what you just said that you don't contest that these tolls  
28 are, in fact, charges imposed for entrance to or use of



1 State property within the meaning of the fourth exception.

2 The only question then is does the reasonable cost  
3 restriction that you've just described apply.

4 Am I right on that?

5 MR. BIDDLE: That is correct, Your Honor.

6 THE COURT: So just again for the benefit of our  
7 audience, so let's take an easy one. If we look at the  
8 second exception, a charge imposed for a specific  
9 government service or product provided directly which does  
10 not exceed the reasonable costs to the State of providing  
11 the service or product.

12 So for example, we all turn the tap at home and water  
13 comes out. Hopefully clean water. And that's provided by  
14 our local water districts.

15 I suppose if a water district were one day to wake up  
16 and say, you know what, we would like to raise a lot of  
17 money and for reasons that have really nothing to do with  
18 the water system. We're going to start charging \$1,000 a  
19 gallon.

20 Somebody could, and you would, challenge that charge  
21 and say, wait a second, what are the reasonable costs of  
22 providing the water? They're not \$1,000 a gallon. And --  
23 it's the second point that you made -- there's no  
24 relationship between the charge that the water district is  
25 trying to charge here and what they're doing. They want  
26 to use this money for something else entirely. So that  
27 would be an illegitimate tax even though within the terms  
28 of the exemption it falls within the exemption.

1 Fair example?

2 MR. BIDDLE: That is a great example.

3 THE COURT: Everybody with me?

4 So now we get to the problem. Your problem. Which  
5 is the "reasonableness" language, as you said, appears in  
6 three of the five exceptions. It doesn't appear in the  
7 fourth and the fifth. And the fourth is the one we're  
8 talking about.

9 MR. BIDDLE: Correct.

10 THE COURT: So that's the first problem.

11 And then the second problem is even if the Court were  
12 to somehow believe it were appropriate to import the  
13 reasonableness requirement into those exceptions on their  
14 face, and I think you acknowledge this, it wouldn't make  
15 sense to do so at least as to a portion of the fourth  
16 exemption and all of the fifth exception.

17 So for example, a fine, penalty or other monetary  
18 charge. I'll give another homely example.

19 I'm driving along after having paid a toll, I'm  
20 driving along in my car. I'm alone in my car, and I drive  
21 into the carpool lane, right? And I get pulled over by  
22 the CHP, and they give me a ticket, and that amount of  
23 this ticket is staggering. Isn't it something like \$671  
24 or something? It's wildly high last time I checked.

25 That amount has no relation to the reasonable costs  
26 of sending the CHP officer out on 101 to patrol the  
27 highways or the reasonable costs of providing the car pool  
28 lane, whatever you might think the underlying activity is.

1 Nor do we say that the government has to keep a cap on  
2 that amount. Indeed, presumably the higher those tickets  
3 are, the less likely people are to violate the traffic  
4 laws. Right? So there's a reason that the fine is so  
5 high because we don't want people to violate those carpool  
6 lane restrictions.

7 So how do you get around that problem?

8 MR. BIDDLE: Well, Your Honor --

9 THE COURT: The two problems:

10 Number one, there's no reasonableness language in the  
11 fourth and fifth exceptions.

12 And number two, it wouldn't make sense, at least as  
13 to one and a half of those exemptions, to import that  
14 language, even if I felt it was within my power to do so.

15 MR. BIDDLE: Even, again mostly for the benefit of  
16 the students; we are privileged in the State of California  
17 to have what's called the people's power of initiative  
18 where the people have reserved for themselves the power to  
19 write their own laws when they feel like the legislature  
20 or their local elected officials are not passing laws that  
21 the people want.

22 But because we have that power, we frequently end up  
23 with propositions on the ballot, initiatives on the  
24 ballot, that have been written by people who are not  
25 legislative counsel. So they don't have the same refined  
26 syntax, the same polished use of the English language that  
27 you might expect in a law -- in a bill that's been written  
28 by legislative counsel for the legislature to vote on.

1           And because of that reality the California courts  
2           have developed several tools that help in construing these  
3           voter written initiatives, like Prop 26. which was the one  
4           that put this definition of tax in our constitution --

5           THE COURT: Well, before you go to that, let me ask:  
6           Aren't those tools essentially the same tools that we use  
7           to construe legislation when it's passed by the  
8           legislature? We start with the plain meaning of the  
9           initiative or the legislation. If there's an ambiguity,  
10          perhaps we go to legislative history, which in this case  
11          of the initiative is often the ballot pamphlet and the  
12          arguments in the ballot pamphlet. And perhaps we look at  
13          the larger circumstances and context.

14          But it's the same tools, and we don't apply those  
15          tools differently simply because initiatives are not  
16          authored by legislators. Indeed, since a number of years  
17          ago most of our legislators are not lawyers anymore.  
18          That's changed over time. And there's some argument that  
19          they're not a heck of a lot more sophisticated than the  
20          folks who create the initiatives.

21          MR. BIDDLE: They do have one advantage that the  
22          voters don't have, and that's that they do have  
23          legislative counsel to write their bills for them.

24          THE COURT: Sure. But the essential point of my  
25          question is don't we apply essentially the same  
26          principles?

27          MR. BIDDLE: Yes. But one that I think probably  
28          applied more to initiatives than the courts need to apply

1 to legislative bills is the tool that says we will apply  
2 the terms of the initiative except where doing so would  
3 produce an absurd result. Because sometimes a mistake is  
4 made in the way something is written so that if the Court  
5 were to apply it mechanically, if it were to apply it  
6 strictly, it would produce an absurd result. And that's  
7 one of the rules of construction that we are going to have  
8 to wrestle with this morning with this motion.

9 But if I could back up just for a second and take the  
10 Court's tentative rulings in order:

11 The first issue that plaintiffs have contested, or I  
12 should say the first tentative ruling that plaintiffs have  
13 contested is this idea that because the first three  
14 exceptions to a tax contain a reference to reasonable  
15 costs, we can't -- and the fourth exception doesn't  
16 contain a similar reference to reasonable costs -- we  
17 can't apply that subsection (d), the one that provides the  
18 ceiling and the nexus, we can't apply that to the fourth  
19 exception without turning the reference to reasonable  
20 costs in the first three sections into surplusage. Which  
21 by the way, is another tool that the Court uses to  
22 construe initiatives.

23 THE COURT: Right.

24 MR. BIDDLE: And plaintiff's objection to that piece  
25 of the tentative ruling is based on our concern that in  
26 order to avoid a minor surplusage, a minor redundancy in  
27 the way Prop. 26 is written, the Court will actually be  
28 creating a much greater surplusage and a much more harmful

1 surplusage.

2 And let me explain:

3 Subsection (d), the section that has the ceiling on  
4 the nexus contains three requirements:

5 It says that the State must show that its levy is not  
6 a tax. In other words, the State must identify one of  
7 those five exceptions.

8 Second, the State must show that its levy taken as a  
9 whole doesn't collect more revenue than is necessary to  
10 cover the reasonable costs of the governmental activity.

11 But there's a third requirement. The third  
12 requirement is the State must show that its levy is fairly  
13 allocated based on each payer's burden on or benefit from  
14 the governmental activity. So there's that third  
15 independent requirement in subsection (d).

16 Now, that third requirement of a fair allocation  
17 based on burden and benefit does not appear anywhere in  
18 the first three exceptions. The first three exceptions  
19 have a reference to reasonable costs, but nowhere do they  
20 contain a reference to a fair allocation based on burden  
21 and benefits.

22 THE COURT: No, but the third clause you're referring  
23 to uses the phrase "those costs." And I take that to  
24 refer back to the second clause which talks about the  
25 reasonable costs of the governmental activity.

26 Those are really one in the same, aren't they?

27 MR. BIDDLE: They are. They are. And we want to  
28 apply all of subsection (d) to the fourth exception.

1 Plaintiff's point is that by focusing only on the  
2 words "reasonable costs" and saying that because the first  
3 three exceptions contain a redundant reference to  
4 reasonable costs, that means that subsection (d) applies  
5 only to the first three exceptions, is error. And it  
6 renders that whole third requirement of subsection (d)  
7 surplusage.

8 THE COURT: Let me interrupt you. I understand the  
9 argument, but then there's yet another problem.

10 If you would have me disregard the rule against  
11 surplusage and read in a reasonableness requirement, your  
12 position, as I understand it, is you would only have me  
13 read it into the first clause of exemption 4 but not the  
14 second clause, and you wouldn't have me read it into the  
15 fifth exception.

16 And that's a very odd way of construing any kind of  
17 language, whether it's statutory or initiative language.

18 MR. BIDDLE: Well, that result is produced by the  
19 rule of construction that we were talking about earlier,  
20 which is you don't apply it where it would produce absurd  
21 results. And plaintiffs concede that it would produce an  
22 absurd results to apply subsection (d) to the fifth  
23 exception, the fines, penalties and criminal exceptions.

24 And we concede that it would produce an absurd  
25 results to apply it to the second half of the fourth  
26 exception, the exception for sales and leases of State  
27 property.

28 But we've cited a case in our brief, City of San

1 Diego versus Shapiro, and I believe that it also has cases  
2 cited within it that refer to yet another rule of  
3 construction, another tool that the Court must employ when  
4 construing a constitutional provision. And that rule is  
5 that the Court must give effect to every part of an  
6 initiative so far as it is possible to do so. So far as  
7 it is possible to do so, the Court make give effect to  
8 every piece, every part of an initiative.

9 So what plaintiffs are saying is that it is possible  
10 for the Court to give effect to subsection (d), to the  
11 first half of the fourth exception. It can -- the Court  
12 can apply subsection (d) to the first half of the fourth  
13 exception.

14 Now, the State has argued that that would do violence  
15 to the syntax of the fourth exception and that we're  
16 asking you to rewrite the fourth exception. And we  
17 vigorously disagree.

18 I've brought in -- it's convenient that I brought in  
19 this visual aid.

20 THE COURT: You lost your audience.

21 MR. BIDDLE: They slipped out so quietly, I didn't  
22 realize they were gone. I was still talking like a  
23 teacher. Now I'll talk like a lawyer.

24 This is the fourth exception.

25 THE COURT: Right.

26 MR. BIDDLE: And the point we're trying to make is  
27 that the fourth exception is composed of two lists.  
28 There's this first half that refers to a charge for



1 entrance to or use of State property.

2 Then there's an "or," a comma and an "or" right in  
3 the middle separating that first list from the second  
4 list, which is the purchase or lease of state property.

5 Now, the State has ridiculed me for pointing out this  
6 "or" because it says in the fifth exception there's also  
7 an "or." That fifth exception is for fines, penalties and  
8 other criminal exactions, and if we're going to make a big  
9 deal about the "or" then that means that subsection (d)  
10 must apply to half of that fifth exception.

11 That's not true, Your Honor. Because the fourth  
12 exception also contains other "ors." This "or" in here  
13 separates items on a list, just like this "or" separates  
14 items on a list. Just like the "or" in the fifth  
15 exception separates items in a list.

16 But this middle "or" separates two lists. It's much  
17 different.

18 THE COURT: And I agree with that. I don't see where  
19 it gets you. There are two disjunctive clauses in  
20 exemption 4. There's a single list of three possible  
21 items in exemption 5. But I don't see how it helps you.

22 MR. BIDDLE: Here's the importance. If the Court's  
23 obligation is to give effect to every part of Prop. 26 so  
24 far as possible, and if the Court agrees with me about the  
25 structure of that sentence, then the Court has to agree  
26 that it is possible to apply subsection (d) to the first  
27 half of that exception.

28 And if the Court doesn't apply subsection (d) to the

1 first half, then it's not applying subsection (d) so far  
2 as possible.

3 THE COURT: All right, I see the argument. I  
4 understand it.

5 MR. BIDDLE: But the other nuance to that is if the  
6 Court doesn't apply subsection (d) to the first half then  
7 it's creating an equally absurd result because now there's  
8 no nexus requirement, there's no ceiling on what the State  
9 can charge people to cross bridges and enter parks and  
10 what it can use that money for.

11 And certainly Proposition 26 would be turned on its  
12 head if it was interpreted to create for the first time  
13 some freedom from ceilings and nexuses that were always  
14 required by the law prior to Proposition 26.

15 And that brings me to my last argument, and this is  
16 the last piece of the tentative rulings that we've  
17 contested.

18 We argued in our brief that the case law that existed  
19 prior to Proposition 26 would have held this to be a tax,  
20 not a fee, because the money is not being used for the  
21 bridges or for motorists. The money that's being  
22 collected by the toll increase is going to subsidize  
23 public transit that the motorists who pay the toll are not  
24 using.

25 And the Court's response to that in the tentative  
26 ruling was that we cannot invoke the Pre-26 case law  
27 because Proposition 26 supplanted that case law.

28 Your Honor, honestly I wish that were true, but it is

1 not true. The courts of appeal in published opinions and  
2 our Supreme Court have said several times since  
3 Proposition 26 was passed that they have to read  
4 Proposition 26 consistently with the pre-26 case law  
5 because they view 26 as an effort to codify the pre-26  
6 case law.

7 And I can give --

8 THE COURT: Codify it or clarify it. Isn't that what  
9 the Schmeer case stands for? What Schmeer says is, look,  
10 there has been a lot of litigation about the distinction  
11 between a fee and a tax, and this is getting confusing and  
12 the lines are unclear. And in effect Proposition 26 now  
13 sharpens up those boundaries and tells us what we're  
14 looking for.

15 And what we're looking for here is -- so pointing  
16 back to a particular pre-Prop. 26 case may or may not be  
17 useful in answering the question in this case. It may  
18 give us some background. We can go all the way back to  
19 Prop. 13 and read about the whole history here. It gives  
20 us to context, but it doesn't answer the question of  
21 statutory construction that's before us.

22 Isn't that fair?

23 MR. BIDDLE: I don't know that it is.

24 THE COURT: All right.

25 MR. BIDDLE: Let me give you citations to two  
26 California Supreme Court cases that talked about  
27 Proposition 26 codifying the prior case law.

28 One is City of San Buenaventura versus United Water

1 Conservation District, 2017 case, and the cite is 3 CA  
2 5th, 1191. And the jump page where that discussion occurs  
3 is 1210.

4 The second case is California Building Industry  
5 Association versus State Water Resources Control Board, a  
6 2018 case at 4 CA 5th, 1032. And the jump page is 1050.

7 The point the plaintiffs are trying to make is that  
8 if the Supreme Court interprets Proposition 26 as largely  
9 codifying the pre-26 case law, it would be inconsistent to  
10 construe Prop. 26 as creating a new loophole for user fees  
11 for entrance to or use of State property whereby they  
12 don't need to be related at all to actual costs, they  
13 don't need to have any nexus related to the payers'  
14 burdens or benefits when the pre-26 law did require those  
15 things.

16 The voter -- the voter information guide that was  
17 provided to the voters in the ballot pamphlet told them  
18 over and over again that Prop. 26 was designed to close  
19 loopholes.

20 THE COURT: It didn't refer, did it, because the  
21 parties haven't told me that it did, and I went looking  
22 and I couldn't find anything. It didn't refer  
23 specifically to this exemption or to bridge tolls or  
24 anything of that sort. So we don't have any direct  
25 guidance in that form of legislative history.

26 MR. BIDDLE: That's true. There are word limits on  
27 what everybody can say in the ballot pamphlet, except for  
28 the legislative analysts, I think. They can ramble on.

1 But it did talk about the misuse of fees where the  
2 revenues from fees were being used for other purposes.  
3 And that's what's going on here. Motorists, are being  
4 charged in order to subsidize public transportation that  
5 the motorists aren't using.

6 THE COURT: Of course the State's response to that is  
7 that's one way of characterizing it. Another way of  
8 characterizing it is that these bridge tolls are being  
9 used to improve other forms of public transcript and  
10 thereby reduce congestion on the bridge.

11 MR. BIDDLE: Of course, and those are factual  
12 questions.

13 THE COURT: By improving ferry services and bus  
14 service and adding lanes in some cases on freeways where  
15 there's bad congestion, as we all know. So if we had to  
16 get to a nexus issue, I suppose that's the nexus.

17 MR. BIDDLE: Which is a factual question that we're  
18 not dealing with here on these motions for judgment on the  
19 pleadings.

20 THE COURT: My only point was there are different  
21 ways -- as with many issues there are different ways of  
22 framing the issue.

23 MR. BIDDLE: Absolutely. I'm just making the point  
24 that there was a general discussion about the misuse of  
25 fee revenue in the ballot materials, and the voters were  
26 told over and over that Prop. 26 was going to close  
27 loopholes. So it would be inconsistent, the plaintiffs  
28 believe, with the intent of the voters to interpret Prop.

1 26 to open up a new loophole. And that's what the  
2 tentative decision does.

3 And with that I will let the other side rebut me.

4 THE COURT: Ms. Johansen, I have an 11 o'clock  
5 calendar, which is why the room is starting to fill up. I  
6 don't anticipate that it will take more than -- I don't  
7 know how long it will take.

8 [Discussion off the record.]

9 THE COURT: Probably no more than 15 or 20 minutes at  
10 most.

11 So what I would like to do is have you start your  
12 argument. I will then interrupt you at 11:00, if I may,  
13 deal with those matters and invite you all to either watch  
14 or go out in the hallway or whatever you would like, and  
15 then resume as soon as I've completed the calendar.

16 MS. JOHANSEN: Thank you, Your Honor. Robin Johansen  
17 on the behalf of the California legislature.

18 I don't know that we will take all that much time,  
19 Your Honor.

20 I believe that -- I want to start with Mr. Biddle's  
21 argument about an absurd result and say I don't think it's  
22 absurd to think that the drafters and the voters who  
23 passed Prop. 26 would want to exclude or make an exception  
24 for bridge tolls.

25 We don't know why they wrote it the way they did. We  
26 do know they put 'entrance into or use of State property"  
27 in the same sentence as they did "lease or sale." So they  
28 see those things as very much connected. When you have

1 five different subparts and one of them is a sentence that  
2 has both of those two things in them, then I think If  
3 we're going to talking with canons of construction, we  
4 should can talk about that old favorite *noscitur a sociis*,  
5 "a think is known by the company it keeps."

6 And yes, entrance to or use of state property is in  
7 the same sentence, the same subparagraph as sale or lease  
8 of state property.

9 THE COURT: So putting aside the compliment I'm about  
10 to give you for your Latin pronunciation, which I can't  
11 hope to equal, how does that canon help us construe the  
12 exception here?

13 MS. JOHANSEN: It does because when we look at that  
14 subparagraph, we're saying sale or lease of State property  
15 is, in the minds of the drafters and the voters, in the  
16 same category as entrance to or use of State property.

17 These are the things that the drafters chose to group  
18 together. And Mr. Biddle's suggestion that the Court  
19 could actually sever half of that and apply subsection (d)  
20 in his view to just a half of it is something I've never  
21 heard before. I've never seen a court do anything like  
22 that before.

23 THE COURT: Nor have I.

24 MS. JOHANSEN: And the absurd result argument, I  
25 think we have to say why might they have done it the way  
26 they did.

27 First, I have to say these were not inexperienced  
28 people who wrote Prop. 26. My understanding is that it

1 was written by lawyers, who are very accomplished lawyers.  
2 And what they were doing here, I think, was --

3 THE COURT: Wasn't the Howard Jarvis Taxpayers  
4 Associate a primarily proponent of Prop. 26?

5 MR. BIDDLE: But not a drafter.

6 THE COURT: Okay.

7 MS. JOHANSEN: So I think what's going on here is  
8 anyone who has ever crafted an initiative knows how hard  
9 it is to avoid unforeseen consequences. And I think  
10 that's what they were trying to do to the best of their  
11 ability.

12 And what they were trying to do here is think about  
13 State property in terms of sale of lease, but also  
14 entrance to or use of, do we really want the legislature  
15 to have to get a two-thirds vote in order to be able to  
16 hike the tolls on the bridges or to raise the park fees  
17 when there may be safety reasons for having to do those  
18 things? In other words, they're saying is this really  
19 worth it to put that at risk.

20 And what they're also thinking about, quite frankly,  
21 as someone who has actually drafted initiatives before, is  
22 they're thinking about do we want to give our opponents  
23 arguments against us. We want to try to keep that as  
24 clean as we possibly can.

25 So that's my understanding of why they might have put  
26 that in there as they did. It is not absurd to think that  
27 they would have done that.

28 I realize we are now at the 11 o'clock hour, Your



1 Honor, so I'm happy to submit.

2 I don't want to cut either of you off. If I may  
3 interrupt you to handle what I hope will be a relatively  
4 brief calendar, and we'll see you in a little while.

5 MS. JOHANSEN: Thank you.

6 [Recess taken.]

7 THE COURT: Recalling Howard Jarvis Taxpayers  
8 Association versus Bay Area Toll Authority, et al.

9 All right, Ms. Johansen, I think we interrupted you.

10 MS. JOHANSEN: Thank you, Your Honor.

11 THE COURT: You were on the "absurdity" point.

12 MS. JOHANSEN: The absurdity point.

13 THE COURT: Let's move on from absurdity.

14 MS. JOHANSEN: I think the other point that needs to  
15 be made here is subsection (d) and what that means and to  
16 what it applies.

17 And subsection (d) is a burden of proof section. It  
18 describes who has the burden, and then it goes on to  
19 describe what that burden is.

20 But what you have to look at in the structure of  
21 Section 3 is when is that burden about the reasonable  
22 costs and the allocation proportionality applicable.

23 THE COURT: So your argument, if I may, is the clause  
24 that says the State bears the burden of proving that the  
25 amount is no more than necessary to cover the reasonable  
26 costs of the governmental activity, that that clause  
27 applies -- I should read into that clause, in effect,  
28 where another provision of this section imposes a

1 requirement that those costs be reasonable in amount.

2 MS. JOHANSEN: I think that's basically right, Your  
3 Honor.

4 THE COURT: It wasn't very elegantly phrased, but I  
5 think you got my point.

6 MS. JOHANSEN: Yes. When we have placed that  
7 burden -- the drafters are saying, the voters are saying,  
8 we have placed that burden, that showing in one of the  
9 five exceptions, then here's who bears it. But the  
10 original provision -- and Mr. Biddle was talking about how  
11 there are three subparts in subsection (d) -- the first  
12 part says the state bears the burden of proving that a  
13 levy, charge or other exaction is not a tax.

14 Okay, fine.

15 But then when subsection (b) has an exception that  
16 includes that reasonable cost requirement, this is what it  
17 means: That it's no more than necessary to cover the  
18 reasonable costs of the government activity. And that's  
19 the manner in which the costs are allocated.

20 So the reasonable costs requirement in those first  
21 three subsections includes those two concepts, that it's  
22 no more than is necessary to cover the costs, but still  
23 whenever you're looking at something that is going to be  
24 paid by more than one entity, more than one person, you  
25 have to talk about, well, how are those costs allocated.  
26 And that's what Section (d) does.

27 But not for the last two. In other words, how could  
28 you possibly say when you're talking about purchase,

1 rental or lease of state property that the costs are  
2 reasonably allocated? Or how could you say, as the Court  
3 I believe used in one of its examples, about the HOV  
4 lanes, how could you say that that's reasonably allocated?

5 I would add to that that when we're looking at that  
6 particular subsection 5 about fines or penalties, those  
7 really are not related at all to reasonable costs.  
8 They're for deterrent. They're to keep us safe.

9 And this goes back to my original point about charges  
10 imposed for entrance to or use of State property. The  
11 bridges have to be kept safe too. And whatever the  
12 drafters were doing, I don't think it's absurd to suggest  
13 that they didn't want either a two-thirds vote requirement  
14 or to place the burden on the State of proving that they  
15 were reasonable costs. They wrote it differently. I  
16 think we have to accept the fact that they wrote it  
17 differently.

18 Mr. Biddle and his clients cannot accept that fact.  
19 But there it is. And I think the final point is, yes, as  
20 to the common law before Prop. 26, I think everyone  
21 acknowledged, the courts over and over again acknowledged  
22 that that area of the law was a mess, frankly. That it  
23 was very hard to tell the difference between a fee and a  
24 tax, and the courts were constantly having to revisit that  
25 question.

26 Prop. 26 is a watershed in that it tries to sort  
27 everything out. So the pre-Prop. 26 case law that  
28 Mr. Biddle has cited --

1 MR. BIDDLE: Can you refer to us as plaintiffs and  
2 not by name?

3 MS. JOHANSEN: I apologize.

4 That plaintiffs have cited.

5 The pre-Prop. 26 case law is very clear when you look  
6 at -- it's certainly the one case that I happen to have  
7 with me that Mr. Biddle did cite, plaintiff cited, and  
8 that is the City of Buenaventura. It was clear how we are  
9 not deciding Prop. 26 here. That is not what the Court  
10 was deciding. It was deciding -- I'm sorry in  
11 Buenaventura it was deciding Prop. 26, but in the footnote  
12 7 the Court makes clear that it was not viewing Prop. 26  
13 as repeating everything that was in its earlier case,  
14 Sinclair, which everyone pretty much says prompted Prop.  
15 26.

16 Unless the Court has further questions I will say  
17 that we believe that the Court's tentative ruling is  
18 correct, and we ask the Court to adopt it.

19 THE COURT: Thank you.

20 MR. BIDDLE: Thank you, Your Honor.

21 Briefly I would like to capitalize on some things the  
22 State just said, which is that subsection (d) is a burden  
23 of proof section. It shifts the burden of proof to the  
24 State and then explains what the bearer must prove.

25 And so if that's the way we're going to look at  
26 subsection (d), then it is -- it's one piece. If  
27 subsection (d) doesn't apply to the fourth exception, then  
28 the State need not even prove that its levy is not a tax

1 because that is part of subsection (d).

2 In fact, the State doesn't have to prove anything.  
3 The burden of proof wouldn't shift to the State if  
4 subsection (d) didn't apply to the fourth exception.  
5 Unless we divide that sentence, subsection (d), which the  
6 State keeps tell us we cannot do. We can't divide  
7 sentences.

8 But the State --

9 THE COURT: I've certainly never seen a situation,  
10 whether in the context of construing an initiative or a  
11 statute where a Court in effect sliced and diced language  
12 and said, well, we're going to import this language to  
13 this subdivision of a paragraph but only to the second  
14 clause and not to the first clause.

15 That would be a very odd type of statutory  
16 interpretation. I've got to tell you I've read hundreds  
17 and hundreds of statutory interpretation cases, and I've  
18 never seen anything remotely like that.

19 MR. BIDDLE: Well, Your Honor, plaintiffs have not  
20 had the opportunity to brief that question, and we would  
21 welcome to opportunity to do that research to see if any  
22 published appellate decision has ever divided a sentence  
23 in half and applied a provision to part of it and not to  
24 all of it. But I'm not ready to concede that it's never  
25 been done. And there's a first time for lots of things.

26 THE COURT: Fair enough.

27 MR. BIDDLE: And this seems like a case where it's  
28 crying out to be done because the Court is basically faced

1 with a quandary, at least in plaintiff's view, where **it**  
2 **would produce an absurd result to apply subsection (d) to**  
3 **the second half of the sentence but it would produce an**  
4 **equally absurd result to not apply it to the first half of**  
5 **the sentence.**

6 THE COURT: And why would it be absurd not to apply  
7 to the first half of the sentence? That's that part I  
8 don't understand. Is this from your sort of fanciful  
9 hypothetical of a \$100 park entrance fee or \$100 bridge  
10 toll?

11 MR. BIDDLE: Fanciful or not, the fact is if  
12 subsection (d) does not apply to the first half of  
13 subsection (4) then there is no ceiling because it's  
14 subsection (d) that provides the ceiling in amount. And  
15 there's also then no nexus requirement.

16 **So it's an absurd result because the result is that**  
17 **Prop. 26 now becomes a sword for the government. In other**  
18 **words, it opens up a new loophole because it becomes a**  
19 **sword for the government to charge whatever it wants and**  
20 **spend the money on whatever wants, even though it wasn't**  
21 **allowed to do that before Prop. 26, rather than**  
22 **Proposition 26 being the shield that voters intended it to**  
23 **be for taxpayer protection.**

24 THE COURT: Okay.

25 MR. BIDDLE: And then the last thing, Your Honor, is  
26 just I wanted to continue to hammer this point that the  
27 appellate courts have admonished the courts of California  
28 that in construing voter initiatives they should apply

1 every part, they should give effect to every part to the  
2 extent possible. So far as possible. And it is possible  
3 without doing violence to the syntax of that sentence to  
4 apply subsection (d) to the first half of that sentence.

5 THE COURT: Thank you.

6 Here's what I propose to do. First of all, so the  
7 morning need not have been in vain for Mr. Weed, do you  
8 have a proposed order, sir, that repeats my tentative  
9 ruling as to your client?

10 MS. JOHANSEN: We did email it last evening, so you  
11 should have it.

12 THE COURT: So I'm going to sign that order.

13 With respect to the claim against the legislature, I  
14 think Mr. Biddle has cited a couple of cases to me this  
15 morning that were not cited in the briefing. Unless I'm  
16 wrong, I don't think did the City of San Buenaventura case  
17 was cited nor was the 2018 case, I think that was the  
18 California Building Industry Association case. And what I  
19 would like to do is take a look at those cases and the  
20 point they were cited for, which is the extent to which  
21 Prop. 26 either codified or clarified pre-Prop. 26 case  
22 law on this important distinction between a fee and a tax.

23 So I'm going to -- as to the motion in relation to  
24 the legislature, I'm going to take the matter under  
25 submission.

26 I will ask counsel to leave me a proposed order if  
27 you have one. And also to email me one electronically in  
28 the event that I need to change any of the text in light

1 of what I see. And I can promise you a ruling shortly.  
2 But in fairness I do want to take a look at those cases.

3 MR. BIDDLE: Thank you, Your Honor.

4 MS. JOHANSEN: Your Honor, I do not have a proposed  
5 order with me, and we will certainly email it to you.

6 THE COURT: Fine.

7 MS. JOHANSEN: I would like an opportunity to at  
8 least look at those cases myself. I have Buenaventura  
9 with me today. I do not have Building Association with  
10 me. And I would like an opportunity to at least address  
11 those.

12 THE COURT: Let me suggest this to both reduce the  
13 burdens on counsel and on the Court.

14 If a review of those cases changes my mind with  
15 respect to the tentative, I will give all parties notice  
16 and an opportunity to submit further briefly.

17 MS. JOHANSEN: Thank you.

18 THE COURT: If it does not, I will -- at least in  
19 terms of the overall direction of the ruling. It may  
20 change some of the nuance or some of wording, but I take  
21 it as long as my ruling is still in your client's favor,  
22 that wouldn't be the end of the world, and I wouldn't need  
23 further briefly on that.

24 MS. JOHANSEN: Correct, Your Honor.

25 THE COURT: So that's the way we'll handle it.

26 And if you do email it to me and I get it in Word  
27 form, that way I can always edit language if need be.

28 And I can promise a ruling, as I say, fairly



1 promptly.

2 MS. JOHANSEN: Thank you, Your Honor.

3 THE COURT: Thank you all very much. And thank you  
4 for being so accommodating to our visiting eighth graders.  
5 I think it's fair to say this is a more interesting, at  
6 least from the standpoint of an eight grader, more  
7 interesting case than the usual fare of a law and motion  
8 calendar here. And I'm sure they appreciated your efforts  
9 to be clear and to lay it all out. And I certainly did.  
10 Thank you.

11 MR. BIDDLE: Thank you for taking so much time.

12 ----oOo----

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CERTIFICATE OF REPORTER

I, Anthony C. Vaughn, Certified Shorthand Reporter, Certificate Number 6185, do hereby certify that I was the Official Court Reporter assigned to the herein captioned case; that I reported in shorthand the proceedings and subsequently caused said shorthand to be prepared into English.

I further certify that the foregoing is a full, true and correct reflection of the proceedings had in the herein-captioned case.

July 16, 2019

\_\_\_\_\_  
Anthony C. Vaughn, CSR

Document received by the CA 1st District Court of Appeal.

1                   IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 2                   IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO  
 3                   BEFORE THE HONORABLE ETHAN P. SCHULMAN, JUDGE PRESIDING  
 4                   DEPARTMENT NO. 302

**CERTIFIED  
 TRANSCRIPT**

6 **RANDALL WHITNEY,**

7                   Petitioner,

No. CPF 18-516276

8                   **VS.**

9 **METROPOLITAN TRANSPORTATION**  
 10 **COMMISSION and DOES 1 through,**  
 11 **40 inclusive,**

11                   Defendants.

12 \_\_\_\_\_/

13                   REPORTER'S TRANSCRIPT OF PROCEEDINGS

14                   TUESDAY, JUNE 11, 2019

17 **A P P E A R A N C E S**

18 **For the Petitioner:**

19                   **RANDALL WHITNEY,**  
 20                   **In Propria Persona**

21 **For the Defendants:**

22                   **GLYNN & FINLEY, LLP**  
 23                   **BY: James M. Hanlon**  
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28 **OFFICIAL REPORTER: MARIA A. TORREANO, CSR #8600, CRR, RMR, CCRR**

Respondents' Appendix

Document received by the CA 1st District Court of Appeal.

1 June 11, 2019

10:18 a.m.

2 P R O C E E D I N G S

3 THE COURT: Line 1, Whitney versus Metropolitan  
4 Transportation Company.

5 MR. HANLON: Good morning, Your Honor. James Hanlon for  
6 the Metropolitan Transportation Commission.

7 MR. WHITMAN: Good morning, Your Honor. Randall Whitney,  
8 plaintiff.

9 THE COURT: Good morning, Mr. Whitney.

10 So I'm -- this is quite unusual, but I am going to note,  
11 for the record, that the Court received yesterday an e-mail  
12 that was ill-advisedly sent to it by Timothy Bittle, the  
13 Director of Legal Affairs for the Howard Jarvis Taxpayers  
14 Association.

15 It was directed to Mr. Whitney but copied to the Court as  
16 well as to opposing counsel. And it purports to give  
17 Mr. Whitney, in effect, legal advice as to the argument that he  
18 intends -- that he is to present this morning on this matter,  
19 and refers to the possibility that the Howard Jarvis Taxpayers  
20 Association may take over the case on appeal, presumably after  
21 an anticipated adverse ruling from this court.

22 Ordinarily, I would -- well, first of all, I thought many  
23 years ago we had all learned the dangers of *Reply to All*, but  
24 evidently Mr. Bittle didn't.

25 And ordinarily I wouldn't say anything about this because  
26 I tend to try at least to be fairly diplomatic, and I would  
27 just chalk this up to experience and disregard it.

28 I'm here, as I indicated earlier, to decide matters on

1 their merits, not to take advantage of people who make  
2 mistakes.

3 That said... and we may get into this as we hear argument  
4 this morning, I have a serious concern about this  
5 communication.

6 That is because in a prior action brought by the Howard  
7 Jarvis Taxpayers Association against the California State  
8 Legislature and the Bay Area Toll Authority, BATA, the Court  
9 has already ruled on the precise claims that are raised in  
10 Mr. Whitney's petition, or at least very nearly the same  
11 claims. And Mr. Bittle and his client, so far as I'm aware,  
12 have not filed an appeal from that ruling.

13 I read this communication, and in particular some of the  
14 advice that Mr. Bittle gives Mr. Whitney, as a deliberate  
15 attempt to circumvent that failure to appeal and, in effect, to  
16 get a second bite at the apple at the same issues in a  
17 different lawsuit.

18 And I view that as illegitimate. That's my view.

19 Now, that said... as I say, we're here to talk about the  
20 merits of the claims. And the Court's tentative ruling  
21 addresses those and is not based on Mr. Bittle's e-mail, which,  
22 of course, I received after the tentative ruling was made  
23 public.

24 But I don't want to ignore the fact that it's there  
25 because I think it is -- it's part of the pertinent background  
26 of this case.

27 So, that said, Mr. Whitney, you have not only the Court's  
28 two prior rulings in favor of the California State Legislature

1 and the Bay Area Toll Authority, you have my tentative ruling  
2 in this case, which raises the same claims but against the  
3 Metropolitan Transportation Commission, or MTC. Happy to hear  
4 any argument you'd like to present.

5 MR. WHITNEY: Thank you, Your Honor. I did receive the  
6 same and I understand the Court's concern.

7 I have communicated with the Howard Jarvis Group on this  
8 case, communication in asking for clarity about their case and  
9 what direction they're going; so I... I don't know, the  
10 mistake -- I won't address the mistake made by that attorney,  
11 but I'd want you to know that I have pled this case myself and  
12 I... it's a very passionate issue to me.

13 And I feel like I'm Kevin Durant, coming into the game  
14 with a hobbled ankle, as I try to convince you and persuade you  
15 that there's a reason why this matter should be debated in  
16 front of twelve jurors.

17 And I bring that up that this is similar to a delayed  
18 demurrer. And we're not talking about the merits of the case;  
19 we're talking about was it pled sufficiently.

20 I would ask the Court to reconsider its tentative ruling  
21 and look at this -- it's a 13A versus 13C debate. I understand  
22 that. It's hinging on the word *impose*.

23 I've reviewed the... the *Webb versus Riverside* case that  
24 the Court cited;

25 I've reviewed the *Cannabis* Supreme Court rulings, both the  
26 for and against;

27 I also reviewed the *Jacks versus Santa Barbara* case. And  
28 really... it gets down to the word *imposed* and how the word

1 *imposed* is translated.

2 I agree that the Legislature enacted SB 595, but I also  
3 believe that MTC imposed RM3.

4 The words *enact* and the words *impose* are defined  
5 differently in Black's Law library --

6 THE COURT: Well -- before we get to that argument, one  
7 pervasive problem in your argument here is confusing the  
8 Metropolitan Transportation Commission, or MTC, with a Bay Area  
9 Toll Authority, or BATA.

10 What... those two are different legal entities. They  
11 share a board of directors apparently, but they are different  
12 legal entities;

13 They have different functions;

14 And they have different roles set forth in SB 595.

15 So when you argue that MTC imposed the bridge toll  
16 increase, that's simply incorrect.

17 MR. WHITNEY: But we did debate this issue in this  
18 courtroom prior to your arrival. That debate was on who was  
19 the correct party.

20 Judge Kahn, I believe, is the one who ruled that the MTC  
21 is the correct party in this matter; so we've gone through that  
22 debate.

23 I did not want to get lost in the weeds on the debate of  
24 whether this was MTC or whether this was BATA.

25 I believe that a jury can determine that, based on  
26 knowing -- of these same commissioners, the ones who dropped  
27 the gavel and... turned the meeting over to a new agenda to  
28 discuss this. They're the same people; they're the same

1 parties.

2 I would like to actually to ask for an oral leave of... a  
3 leave to amend the petition, to allow me to bring the petition  
4 action against the board of the MTC, because I believe it's the  
5 same individuals.

6 Your Honor, I think this is really --

7 THE COURT: Hold on one sec. Let's stop there.

8 The fact that two different entities share a common board  
9 of directors does not make them the same entity.

10 Somebody can sit on the board of Oracle Corporation and  
11 also sit on the board of an affiliated corporation, but those  
12 corporations are distinct legal entities.

13 They may well be doing business in different sectors of  
14 the economy;

15 They have different employees;

16 They have different legal obligations. And the same thing  
17 is true of public entities.

18 These are two public entities that have distinct  
19 functions.

20 I will certainly take judicial notice of the fact, indeed  
21 it's laid out right in the... in the Legislative counsel's  
22 digest, SB 595, that the two entities have the same board of  
23 directors, but no purpose would be served in my granting you  
24 leave to amend because of what I've been saying, that they are  
25 different entities with different functions.

26 And I take... you know, the -- when the Legislature says  
27 "authority" in SB 595, it means BATA, B-A-T-A.

28 When it says the MTC, it refers separately to the MTC, and



1 it gives those two entities different functions.

2 So the real bottom line here is, you can plead anything  
3 you want but I can take judicial notice, and have, of the  
4 legislation and of the controlling statutes. And the  
5 allegations can't overcome those.

6 MR. WHITNEY: But I believe I would have the right to  
7 amend that petition to add that party. That would be a  
8 supplement --

9 THE COURT: Well, what purpose would that serve? If you  
10 were to add BATA, I have already granted BATA judgment on the  
11 pleadings as to these claims. So where would that get you  
12 anyway?

13 MR. WHITNEY: To debate the word and the use of the word  
14 *imposed* and how that's different from the word *enactment*.

15 The enactment of SB 595, that began the legislation;  
16 that's the introduction of the legislation.

17 The imposition of that was that the legislation gave MTC  
18 and/or BATA, or just BATA, it gave them the authority; it gave  
19 them discretion. They then had to seek out a vote.

20 If --

21 THE COURT: Well, it required them to hold a vote. And it  
22 then required the authority to impose the increase, if approved  
23 by the voters of the nine counties. I think it was nine.

24 It gave BATA discretion only with respect to the amount of  
25 the increase.

26 MR. WHITNEY: But, Your Honor, the legislation owns those  
27 bridges. They have the authority to go ahead and just give  
28 BATA or MTC, or both, they have the authority to just say,

1 *raise the bridge toll. Move it from zero to three, or*  
2 *somewhere in between.*

3 They sought a vote. They wanted to protect the initiative  
4 of being able to vote. That's what *Cannabis* was all about, was  
5 protecting that initiative.

6 The context of the word *imposed* was... was simply -- the  
7 Supreme Court said, *we don't want to limit; we want to broaden*  
8 *the definition; we want to be allowed.*

9 *Cannabis* got into the collection of the tax. That's not  
10 what we're talking about here. We're just talking about which  
11 entity imposed that tax -- that toll.

12 THE COURT: Well, look. Either the Legislature imposed  
13 it, enacted it, as I've indicated;

14 Or, if we take your theory, BATA did.

15 BATA's not a party to this lawsuit; so it kind of doesn't  
16 matter.

17 MR. WHITNEY: But I can include them very easily, amend my  
18 petition to do that.

19 THE COURT: No, you can't. No, that request is denied,  
20 sir, for the reasons I stated.

21 MR. WHITNEY: Okay.

22 THE COURT: Anything else?

23 MR. WHITNEY: Just that this is a debate about 13A versus  
24 13B. I believe 13C applies.

25 THE COURT: All right.

26 MR. HANLON: Unless the Court has questions, I submit,  
27 Your Honor.

28 THE COURT: I don't.

1 Do you have a proposed order that restates the tentative?

2 MR. HANLON: I do, Your Honor.

3 MR. WHITNEY: So, Your Honor, just to ask again: The  
4 leave to amend the petition to allow -- to add the additional  
5 party of the board of MTC, I don't know if I made that  
6 properly, but has that been properly brought to the Court?

7 THE COURT: To add the board of MTC as individuals?

8 MR. WHITNEY: As individuals, as additional parties. I  
9 would like to make that oral motion to the Court.

10 THE COURT: How would that affect your ability to prevail  
11 on the merits here? What does it have to do with anything?

12 MR. WHITNEY: For my appeal rights.

13 THE COURT: Well, that's what Mr. Bittle advised you.  
14 Denied.

15 MR. HANLON: Thank you, Your Honor.

16 MR. WHITNEY: I reviewed the proposed order.

17 THE COURT: Thank you, both.

18 (10:31 a.m.)  
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28



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

HOWARD JARVIS TAX PAYERS  
ASSOCIATION et al.,

Plaintiffs and Appellants,

v.

THE BAY AREA TOLL AUTHORITY  
et al.,

Defendants and Respondents.

A157598

(San Francisco County  
Super. Ct. No. CGC18567860)

RANDALL WHITNEY

Plaintiff and Appellant,

v.

METROPOLITAN TRANSPORTATION  
COMMISSION,

Defendant and Respondent.

A157972

(San Francisco County  
Super. Ct. No. CPF18516276)

**BY THE COURT:**

Respondents' unopposed motion to augment the record on appeal filed on October 11, 2019, is granted and the record on appeal in the above-entitled case is deemed augmented to include the April 3, 2019 and June 11, 2019 reporter's transcripts, which are attached to the motion.

Date: 11/01/2019

**Miller, J.**

Acting P.J.

ACTING PRESIDING JUSTICE

Document received by the CA 1st District Court of Appeal.