IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

JOHN TOS, et al.,

Plaintiffs and Appellants,

v.

STATE OF CALIFORNIA, et al.,

Defendants and Respondents.

Case No. C089466

Sacramento County Superior Court, Case No. 34-2016-00204740
The Honorable Richard K. Sueyoshi, Judge

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INTRODUCTION

In 2008, the voters approved Proposition 1A, which created the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (the "Bond Act" or "Act"). Appellants contend that Assembly Bill 1889, passed in 2016, impliedly repealed the Bond Act in part, and thereby violated article XVI, section 1 of the California Constitution. This contention fails.

Proposition 1A, which authorizes the issuance of $9.95 billion in bonds, was enacted "to initiate the construction of a high-speed train system" in California. (Sts. & Hy. Code, § 2704, subd. (a).) That is the "single object or work" approved by the voters. (Cal. Const. art. XVI, § 1.) It also requires extensive legislative and executive oversight of the use of bond proceeds. AB 1889 does not change the "single object" of the Bond Act, divert bond funds for an alien purpose, or roll back required oversight.

Before committing bond funds to construction, the California High-Speed Rail Authority must present a "detailed funding plan" to the Director of Finance and the Chairperson of the Joint Legislative Budget Committee, together with a report by an independent consultant indicating, among other things, that, if completed, the segment would be "*suitable and ready for high-speed train operation*." (Sts. & Hy. Code, § 2704.08, subd. (d)(2)(B), emphasis added.)[1] AB 1889 clarifies this previously undefined phrase to mean, for purposes of a 2012 appropriation, that bond funds may be used 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." (§ 2704.78, subd. (a).) That definition is consistent with the Bond Act's purpose and operative terms, as well as the

[1] All statutory cites are to the Streets and Highways Code unless otherwise indicated.

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materials presented to the voters who approved it. As two separate judges previously held, it by no means effects a partial repeal of the scheme that induced voter approval. Under AB 1889, bond funds must still be used for the "specific object" authorized by Proposition 1A: the initial planning and construction of a high-speed rail project in California.

Appellants try, but fail, to demonstrate that the "suitable and ready" provision, which the trial court described as a "metric in the administrative process," was of critical importance to the voters. Contrary to their theory, there was no mention of the "suitable and ready" provision in the Voter Guide, and Appellants cite no other evidence supporting their claim that it was critically important to the voters.

Appellants also fail to show that AB 1889 is inconsistent with the terms of the Bond Act, let alone that it goes so far as to constitute an implied repeal. Contrary to their arguments, the Bond Act expressly anticipates a period in which high-speed rail improvements may be used as test tracks, or for conventional passenger-train service, and that such interim use before the commencement of high-speed operation is permissible, so long as it does not require an operating subsidy from the Authority.

Instead of addressing these problems, Appellants contend the Legislature had no authority to clarify the term "suitable and ready," because it is already clear on its face. In the same breath, however, they supply their own detailed definition of the phrase, effectively conceding that it is not clear on its face. More fundamentally, Appellants ignore the governing legal standard in this case, which is not whether the Legislature had authority to clarify or amend the Bond Act, but whether AB 1889 impliedly repeals the Bond Act. As the trial court correctly held, it does not.

As set forth in more detail below, the Court should affirm the judgment and hold that AB 1889 is constitutional as a matter of law.

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STATEMENT OF THE CASE

I. BACKGROUND

A. The Bond Act

The Bond Act authorizes construction of a high-speed rail system in California, which is expected to be one of the largest public works projects in the State's history, and the issuance of $9 billion in general obligation bonds to partially fund the initial segments of the system. (Stats. 2008, ch. 267 [Assem. Bill No. 3034], § 9, codified at § 2704 et seq.)

The stated purpose of the Bond Act is to *initiate* construction of a high-speed rail system:

> It is the intent of the Legislature by enacting this chapter and of the people of California by approving the bond measure pursuant to this chapter to initiate the construction of a high-speed train system that connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim, and links the state's major population centers . . . .

(§ 2704.04, subd. (a).)

The Bond Act authorizes funding for "(A) planning and engineering for the high-speed train system and (B) capital costs." (§ 2704.04, subd. (b)(1).)[2] It also sets out characteristics that the high-speed train system should be designed to achieve, including, among other things, operating speeds (§ 2704.09, subd. (a)); travel times between various potential stations (§ 2704.09, subd. (b)); total number of stations (§ 2704.09, subd. (d)); system alignment requirements (§ 2704.09, subd. (g)); minimization of urban sprawl and impacts on the natural environment

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[2] Capital costs include those related to the acquisition of interests in real property and rights of way; acquisition and construction of tracks, structures, power systems and stations; acquisition of rolling stock and related equipment; costs of environmental impact mitigation; and related capital facilities and equipment. (§ 2704.04(c).)

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(§ 2704.09, subd. (i)); and preservation of wildlife corridors. (§ 2704.09, subd. (j).)[3]

The Bond Act imposes certain limits on the Authority's use of bond funds. For example, it generally limits bond funding to no more than 50 percent of the total cost of construction of a corridor or usable segment of the system. (§ 2704.08, subd. (a).) It limits the amount used for "environmental studies, planning, and preliminary engineering activities" to 10 percent of the total bond proceeds. (§ 2704.08, subd. (b).) And no more than 2.5 percent of bond proceeds may be used for administrative purposes. (§ 2704.08, subd. (h).)

The Bond Act also provides for extensive legislative and executive oversight. Before the Authority may seek an *appropriation* of bond proceeds, it must submit to the Legislature, the Governor, and a peer review group a preliminary funding plan. (§ 2704.08, subd. (c); Pub. Util. Code, § 185035, subds. (a), (c).) Before the Authority may *spend* bond proceeds, it must submit a final funding plan to the Director of Finance, the Chairperson of the Joint Legislative Budget Committee, and the peer review group. (§ 2704.08, subd. (d)(1); Pub. Util. Code, § 185035, subds. (a), (c).)[4] It also must submit to those same persons an independent

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[3] The Bond Act allocates $950 million in bond funds to be administered by the California Transportation Commission. These funds may allocated to eligible recipients for capital improvements to intercity, commuter, and urban rail systems that either provide direct connectivity to the high-speed rail system, are part of the system, or will provide capacity enhancements and safety improvements ("connectivity projects"). (§ 2704.095; see AB 1889, § 1, subds. (b) & (d).) The Authority is responsible for administering the remaining $9 billion in bond proceeds. (§§ 2704.04, 2704.08.)

[4] The Bond Act allows the Authority to spend bond proceeds on certain activities without submission of a funding plan. Specifically, up to 7.5 percent of bond proceeds may be spent on environmental studies,

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consultant's report or reports. (§ 2704.08, subd. (d)(2).) If, after receiving any communication from the Joint Legislative Budget Committee, the Director of Finance finds that the project is likely to be successfully implemented as proposed in the final funding plan, the Authority may commit bond funds for construction or property acquisition. (§ 2704.08, subd. (d).)

The phrase "suitable and ready for high-speed train operation" appears twice in the Bond Act: first in section 2704.08, subdivision (c), which provides a list of eleven topics to be addressed in the Authority's preliminary funding plan (§ 2704.08, subd. (c)(2)(H)), and then in section 2708.08, subdivision (d). Specifically, along with its final funding plan, the Authority must provide the Director of Finance a consultant's report indicating that:

> (A) construction of the corridor or usable segment thereof can be completed as proposed in the plan submitted pursuant to paragraph (1), (B) *if so completed, the corridor or usable segment thereof would be suitable and ready for high-speed train operation,* (C) upon completion, one or more passenger service providers can begin using the tracks or stations for passenger train service, (D) the planned passenger train service to be provided by the authority, or pursuant to its authority, will not require operating subsidy, and (E) an assessment of risk and the risk mitigation strategies proposed to be employed.

(§ 2704.08, subd. (d)(2), emphasis added.)

B. The Senate Bill 1029 Appropriation

In 2011, the Authority submitted a preliminary funding plan for construction of a high-speed rail segment in the Central Valley. (See App't

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planning, and preliminary engineering activities, as well as various activities relating to property acquisition, rights of way, and mitigation of environmental impacts (§ 2704.08, subd. (g)), and 2.5 percent of proceeds may be used for administrative purposes.

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Appx. 3:784; *California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th 676, 690-691 ("*CHSRA*").) In 2012, the Legislature appropriated approximately $8 billion in bond proceeds for high-speed rail. (Sen. Bill No. 1029, Stats. 2012, ch. 152.) This appropriation included approximately $2.6 billion in bond funds for construction in the Central Valley. (*Id*., § 9.) SB 1029 also included approximately $819 million for connectivity projects to be administered by the California Transportation Commission. (SB 1029, §§ 1, 2; § 2704.095, subd. (a)(1), (2).) Finally, SB 1029 included an appropriation of $1.1 billion for early improvements in the "bookends," which are portions of the high-speed rail system in the Los Angeles area and on the San Francisco-San Jose Peninsula that will be shared with conventional passenger-rail service. (*Id.*, § 3).

C. Assembly Bill 1889

Effective January 1, 2017, the Legislature enacted AB 1889, adding Streets and Highways Code section 2704.78. (Stats. 2016, ch. 744, § 2, a copy of which is App't Appx. 3:881.) AB 1889 clarified the meaning of the previously undefined phrase "suitable and ready for high-speed train operation." (*Id.* §§ 1, subds. (g), (k); 2, subd. (a).) It provides that, for projects for which appropriations were made in SB 1029, "suitable and ready for high-speed train operation" means that the "project . . . 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." (§ 2704.78.)

The Legislature's intent in enacting AB 1889 was to allow eligible projects to "proceed to construction in the near-term to provide economic benefits, create jobs and advance safer, cleaner rail transportation," and to "enable passenger service providers to begin using the improvements . . .

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while additional work is completed to enable high-speed train service." (AB 1889, § 1, subds. (g), (h).) The Legislature also hoped to avert or mitigate subsequent litigation and possible further delay of the high-speed rail project, and, if needed, "to provide a court with additional understanding of the intent of the Legislature when appropriating Prop. 1A funds." (App't Appx. 4:901-903.) [5] AB 1889 also provides guidance to the Authority and its independent consultants, who might otherwise be uncertain about what "suitable and ready" means.

II. THE FINAL FUNDING PLANS

The Authority subsequently submitted two final funding plans for capital improvements, one for construction in the Central Valley, and one for electrification along the San Francisco-San Jose rail corridor, which will be used by Caltrain in the short term, and ultimately used by both conventional and high-speed rail trains. In March 2017, the Director of Finance approved the Authority's final funding plan for the Central Valley, where work had been underway since 2013 using non-bond funds. (See Second Amended Petition and Complaint, ¶ 73, App't Appx. 1:261, ¶ 73; see *id.*, 1:255, ¶¶ 38-39.) As of May 2017, when the Second Amended Petition and Complaint was filed, the Director of Finance had not yet approved the second final funding plan. (See *id.*, ¶¶ 72-73, App't Appx. 1:261.)

III. THE SUPERIOR COURT PROCEEDINGS

Appellants originally filed this case in December 2016 as a civil action for declaratory and injunctive relief challenging the constitutionality

[5] Citations to Appellants' Appendix are by volume and page number, (e.g., App't Appx. 1:100). Respondent's Appendix picks up where Appellants' Appendix leaves off, beginning with volume 6, page 1254 (e.g., Resp't Appx. 6:1290).

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of AB 1889, as well as attacking the Authority's Central Valley and San Francisco-San Jose Peninsula funding plans. (App't Appx. 1:14.)

A. The Preliminary Injunction Motion

On March 15, 2017, after filing an amended pleading, Appellants sought a temporary restraining order and preliminary injunction to enjoin the Authority's use of bond proceeds on the Central Valley and Peninsula projects, contending that AB 1889 is unconstitutional on its face. (Resp't Appx. 6:1257-1258, 1262-1276.)[6] The trial court refused to issue either a temporary restraining order or a preliminary injunction. (*Id.*, 6:1382, 8:2222.)

In denying the motion for preliminary injunction, the trial court held that Appellants had not demonstrated a likelihood of success on their constitutional challenge to AB 1889. (*Id.*, 8:2221.) The trial court recognized that Article XVI, section 1 requires that proceeds from bonds be applied "only to the specific object" stated in the relevant bond act. (*Id.*, 8:2220.) It found, however, that the "'single object or work' specified in Prop 1A was primarily the general construction of a high-speed train system," and that AB 1889 does not deviate from this object because "[t]he stated goal remains the construction of a high-speed train system." (*Id.*, 8:2221.)[7]

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[6] Appellants' opening brief contains no mention of their failed motion for preliminary injunction, and Appellants' Appendix similarly failed to include either the judge's order denying the motion or any of the papers filed in connection with the motion. These documents are contained in Respondents' Appendix.

[7] The court also held that "an injunction could significantly harm the State and the public interest." (Respondent Appx. 8:2221.)

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B. The Demurrer

On March 15, 2017, the same day that Appellants moved for a temporary restraining order and preliminary injunction, Respondents demurred to the amended complaint. The trial court sustained the demurrer, with leave to amend, holding that Appellants' challenge to the Authority's funding plans should have been asserted as writ claims, and that Appellants' cause of action for declaratory relief "based on the alleged facial unconstitutionality of [AB 1889], lacks a justiciable controversy unless it is also tethered to the challenged Funding Plans and the threatened illegal expenditure of public funds under those plans." (App't Appx. 1:232.) In so doing, the court found that "whether the construction project described in a funding plan will result in a usable segment that is 'suitable and ready for high-speed train operation' is at base only an educated estimation," and that "the phrase "suitable and ready for high-speed train operation' is only a metric" in the administrative process. (*Ibid.*) The cause of action for declaratory relief could not be tethered to a funding plan because the funding plans were not final when the action was first filed, or even when the first amended complaint was filed. (*Ibid.*)

C. The Motion for Judgment on the Pleadings

Appellants subsequently filed a Second Amended Petition and Complaint in May 2017, adding writ claims in response to the trial court's ruling on the demurrer. (App't Appx. 1:243.) The Second Amended Petition and Complaint also added the Director of Finance and other parties. (*Ibid.*)

The Authority and the State of California demurred to the cause of action for injunctive relief, and the trial court sustained the demurrer without leave to amend. (App't Appx., 2:577.) Then, on July 16, 2018, Appellants moved for judgment on the pleadings on their claim for a

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judicial declaration that AB 1889 is facially unconstitutional. (App't Appx. 3:631.) On October 31, 2018, the trial court (which had assigned the case to a new judge) denied the motion.

The trial court held that the "central question" raised by Appellants' constitutional challenge is "whether AB 1889 impliedly repealed Proposition 1A by making 'substantial changes in the scheme or design which induced voter approval.'" (App't Appx. 5:1221, quoting *Veterans of Foreign Wars v. State of California* (1974) 36 Cal.App.3d 688, 693-694 ("*VFW*").) It answered that question in the negative, holding that AB 1889 "does not truncate the project . . . or divert funds to a tenuously connected separate project . . . or otherwise make a substantial change to the scheme or design which induced voter approval." (App't Appx. 5:1222.) In particular, "AB 1889 did not modify the high-speed rail project from '(1) pre-construction activities and construction of a high-speed rail 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 rail system.'" (*Ibid*, quoting from the Voter Information Guide, App't Appx. 3:766.) The trial court also found no basis to conclude that the meaning and understanding of the "suitable and ready" provision offered by Appellants was the only possible one. (*Ibid*.)

D. The Stipulated Judgment

Appellants conceded that their remaining claims challenging the Authority's funding plans assumed that AB 1889 is unconstitutional. (App't Appx. 5:1186, 1209.) Accordingly, Appellants proposed, and Respondents agreed to, a stipulated judgment so that this Court could decide that critical issue. (*Ibid*.)

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STATEMENT OF APPEALABILITY

The trial court entered its stipulated judgment on May 2, 2019. (App't Appx. 5:1209.) This appeal was timely filed on May 3, 2019.

The stipulated judgment disposed of all causes of action and is therefore final and appealable. (*Hensley v. San Diego Gas & Electric Co.* (2017) 7 Cal.App.5th 1337, 1343-1344; Civ. Proc. Code § 904.1, subd. (a)(1).) In denying Appellants' motion for judgment on the pleadings, the trial court ruled that AB 1889 was valid and constitutional as a matter of law. (See App't Appx. 5:1188.) Recognizing that they could not prevail on their remaining claims in the face of that ruling, and that further proceedings in the trial court would have been wasteful, Appellants consented to judgment to facilitate an immediate appeal. (App't Appx. 5:1189.) Accordingly, this case falls within the well-established exception to the general rule that consent judgments are not appealable, where "consent was merely given to facilitate an appeal following adverse determination of a critical issue." *Norgart v. Upjohn Co* (1999) 21 Cal.4th 383, 400; *Villano v. Waterman Convalescent* (2010) 1881 Cal.App.4th 1189, 1198.)

STANDARD OF REVIEW

Because Appellants stipulated that their challenges to the Authority's final funding plans fail unless the Court holds that AB 1889 is unconstitutional on its face (App't Appx. 5:1188-1189, 1193), this appeal presents an issue of law subject to de novo review. (*People ex rel. Lockyer v. Shamrock Foods Co*. (2000) 24 Cal.4th 415, 432.) In a facial challenge to the validity of a statute, the Court confines its analysis to the "text of the measure itself, not its application to the particular circumstances of an individual." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084, citation omitted.) Further, the Court must presume that the statute is valid

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"unless its unconstitutionality clearly, positively, and unmistakably appears." (*People v. Falsetta* (1999) 21 Cal.4th 903, 912-913.)

This deference and presumption of validity afforded all legislative acts arise because the California Legislature "may exercise any and all legislative powers which are not expressly . . . denied to it by the [California] Constitution." (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691.) Any doubt about the Legislature's power to act in a given case "should be resolved in favor of the Legislature's action." (*Ibid*.)

The general rules that guide interpretation of a statute enacted by the Legislature apply also to measures enacted by the voters. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 978.) The court's primary task is to determine the voters' intent. (*Id*. at pp. 978-979.)

ARGUMENT

I. APPELLANTS' FACIAL CHALLENGE TO THE CONSTITUTIONALITY OF AB 1889 UNDER ARTICLE XVI, SECTION 1 OF THE CALIFORNIA CONSTITUTION FAILS.

The trial court correctly held that AB 1889 is constitutional as a matter of law. Contrary to Appellants' arguments, Article XVI, Section 1 of the California Constitution does not preclude any and all legislative modifications to a voter-approved bond act. Rather, the Legislature has authority to pass such laws, so long as the later-enacted statute does not repeal the bond act in whole or in part. Far from repealing Proposition 1A, AB 1889 makes no change to the "single object . . . specified therein" (Cal. Const. art. XVI, § 1), and is fully consistent with Proposition 1A's express purpose and operative terms, as well as the ballot materials presented to the voters who approved it.

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A. Article XVI, Section 1 Allows the Legislature to Amend a Bond Act So Long As the Amendment Does Not Implicitly Repeal It by Altering Its Single Object or Substantially Changing Its Scheme or Design.

The starting point for analyzing Appellants' constitutional challenge is Article XVI, section 1 of the California Constitution, which requires the Legislature to obtain voter approval before incurring indebtedness in excess of $300,000. This provision requires that such debts be authorized "for some single object or work to be distinctly specified therein," and that proceeds raised by covered bonds be applied "only to the specific object therein stated or to the payment of the debt thereby created." (Cal. Const., art. XVI, § 1; see *Metropolitan Water Dist. of Southern Cal. v. Marquardt* (1963) 59 Cal.2d 159, 174-175.)

Contrary to Appellants' repeated suggestion,[8] this does not mean the Legislature lacks authority to make any changes to a voter-approved bond measure. Rather, the Legislature can modify a bond measure that was proposed by the Legislature and ratified by the voters so long as the modification does not impliedly repeal it by making "substantial changes in the scheme or design which induced voter approval," such as by appropriating funds for "an alien purpose." (*VFW*, *supra*, 36 Cal.App.3d at pp. 693-694. Partial repeals "will occur only where the two [statutes] 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." (*Id*. at p. 694, citation omitted.)

As this Court explained long ago, while the Legislature may not impair bond obligations, it retains broad authority to amend bond acts:

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[8] See Opening Brief, pp. 1, 43, 45 (arguing variously that the Legislature may not "change the terms" of the measure, "attempt to modify the design" of a subsection, or "change the bond measure's substantive provisions").

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> The laws under which public bonds are issued become a part of the contract between the bondholders and the issuing authority, and no change in these laws may be permitted to impair the bond obligation. [Citations.] *The bar against impairment does not calcify the bond law beyond all possibility of amendment. The contract obligation is not impaired unless the alteration in the law deprives the bondholders of a substantial right or remedy*. If, despite a change in the law, the bondholders may enforce their rights no less effectually than before; if there has been no encroachment upon *valuable* contractual rights, then the obligations of the contract have not been impaired. [Citations.]

(*State School Bldg. Finance Committee v. Betts* (1963) 216 Cal.App.2d 685, 691, emphasis added.).

Indeed, the ability to amend and modify bond acts may be essential to large public works projects. Acknowledging the "fluidity of the planning process for large public works projects," this Court has recognized that the "authority to issue bonds is not so bound up with the preliminary plans . . . that the proceeds of a valid issue of bonds cannot be used to carry out a modified plan if the change is deemed advantageous." (*CHSRA*, *supra*, 228 Cal.App.4th at p. 703, quoting *Cullen v. Glendora Water Co.* (1896) 113 Cal. 503, 510.) In fact, even absent a statutory change to a bond act itself, "[t]here are . . . many cases in which the courts have broadly construed the purpose of the relevant bond act 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." (See *id*. at pp. 701-02.)

Thus, it is settled law that changes to bond acts are generally permissible, so long as they do not impliedly repeal the fundamental scheme or design that induced voter approval. (See *VFW*, *supra*, 36 Cal.App.3d at p. 695 ["I]f later legislation does not encroach upon valuable rights, the bondholders' contract has not been impaired"]; *City of Redding v. Holland* (1946) 75 Cal.App.2d 178, 181, 185-86 [holding that bond act was

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not invalid because of conflict in statutory language where the defect did not cause prejudice to taxpayers]; *City of San Diego v. Millan* (1932) 127 Cal.App. 521, 534 [holding that bond act was not violated where substantial change in type of dam to be constructed did not place additional burden on taxpayers].) (Cf. *El Dorado Irr. District v. Browne* (1932) 216 Cal 269, 272 [holding that irrigation district's change in construction plan that postponed construction of a new reservoir and instead enlarged an existing one did not violate the bond statute].)

B. AB 1889 Does Not Implicitly Repeal the Bond Act.

Measured against this standard, Appellants' challenge under Article XVI, section 1 to AB 1889 is meritless. The definition added by AB 1889 does not implicitly repeal the Bond Act. [9]

1. AB 1889 does not alter the "single object" of the Bond Act.

In the first place, under AB 1889, bond funds must still be used for the "specific object" of the Bond Act—"to *initiate* construction of a high-speed train system." (§ 2704.04, subd. (a), emphasis added.) In denying

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[9] Appellants have never suggested that AB 1889 prejudices voters or bondholder or deprives them of a substantial right or remedy independent of Article XVI, section 1. Nor can they: with respect to capital outlays, AB 1889 requires that bond funds be used to build projects that will become part of the high-speed train system, that is, 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." (§ 2704.78, subd. (a).) Indeed, before the trial court Appellants conceded that the project described in the San Francisco-San Jose Peninsula funding plan would be immediately beneficial, "mak[ing] trains quieter and reduc[ing] local air pollution" as well as making "acceleration faster, potentially allowing more train service." (App't Appx. 3:644.)

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Appellants' motion for judgment on the pleadings, the trial court expressly recognized this fact:

> AB 1889 did not change the single object or work that is being funded with the bond funds. AB 1889 did not modify the high-speed rail project from "(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."

(App't Appx. 5:1222, quoting from the Voter Information Guide, App't Appx. 3:766.) And, in denying Appellants' earlier motion for a preliminary injunction, a different judge came to the same conclusion:

> [T]he "single object or work" specified in Prop. 1A was primarily the general construction of a high-speed train system. Neither the language nor stated intent of §2704.78 facially clashes with, abandons, or repeals the "single object or work" specified in Prop. 1A. The stated goal remains the construction of a high-speed train system.

(Resp't Appx. 8:2221.)

2. AB 1889 is consistent with the purpose and terms of the Bond Act, and therefore does not substantially change the scheme or design of the Act.

Appellants provide no reason to doubt the trial court's analysis. Indeed, Appellants do not directly address it. Instead, Appellants proffer their own interpretation of the "suitable and ready" provision, and then argue that AB 1889 conflicts with it. Specifically, they argue that bond proceeds can only be used on segments that, upon completion, will be "prepared or available" to run high-speed trains, and that it is not enough that conventional rail service providers may use the system in the near-term. (Opening Brief, p. 35.) The argument fails because it ignores both the express purpose of the Bond Act and its operative terms, which clearly contemplate interim use by conventional passenger rail.

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First, AB 1889 is fully consistent with the Bond Act's express statement of legislative purpose—to initiate construction of a high-speed train system—which is entitled to significant weight in construing the Bond Act. (See *Santos v. Brown*, (2015) 238 Cal.App.4th 398, 410, 427; *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.App.4th 1010, 1038.) Appellants do not—and cannot—contend that AB 1889 changes the characteristics of the systems to be constructed (§ 2704.09), the tasks to be funded (§ 2704.04, subds. (b)(1) & (c)), the percentage of the costs that may be funded with bond proceeds (§ 2704.08, subds. (a), (b), (g) & (h)) or the matching funds that must be provided (§ 2704.08, subd. (a).) The nature of the contemplated program remains the same.

AB 1889 is also fully consistent with numerous provisions of the Bond Act that specifically anticipate interim use by conventional rail. For example, the Bond Act provides that, in selecting a usable segment, the Authority shall use criteria including not only "the need to test and certify trains operating at speeds of 220 miles per hour," but also "*the utility of those . . . usable segments . . . for passenger train services other than high-speed train service that will not result in any unreimbursed operating or maintenance cost to the authority*." (§ 2704.08, subd. (f), emphasis added.) The Bond Act likewise earmarks $950 million in bond funds for "capital improvements to *intercity and commuter rail lines and urban rail systems* that provide direct connectivity to the high-speed train system and its facilities, or *that are part of the construction of the high-speed train system as that system is described in subdivision (b) of Section 2704.04*, or that provide capacity enhancements and safety improvements." (§ 2704.095,

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subd. (a)(1), emphasis added.) Twenty percent of this amount is allocated to state-supported intercity rail service, like Caltrain. (*Id*., subd. (a)(2).)[10]

And, in describing the required contents of the independent consultant's report, the Bond Act refers to both "high-speed train operation" and "passenger train service"; specifically, the report shall indicate that, upon completion of the project described in the final funding plan, "one or more *passenger service providers* can begin using the tracks or stations for passenger train service," and "the planned *passenger train service* to be provided by the authority, or pursuant to its authority, will not require an operating subsidy." (§ 2704.08, subd. (d)(2)(C), (D), emphasis added.)[11]

These provisions demonstrate that both the Legislature and the voters understood that (1) a project of this magnitude will be developed over time, (2) bond funds may be used to construct improvements to conventional rail that will in the future connect to or be shared with the high-speed rail system, and (3) for some period of time before the commencement of high-

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[10] Appellants incorrectly accuse the trial court of confusing the $950 million earmarked in the Bond Act for connectivity projects (see *supra* fn. 3; SB 1029, §§ 1, 2; § 2704.095, subd. (a)(1), (2)), with the $9 billion in bond proceeds administered by the Authority and governed by sections 2704.04 and 2704.08. (See Opening Brief, p. 46-47.) The trial court's decision does not support Appellants' argument. In the cited passage, the court simply concluded that Appellants' cited authorities were distinguishable, and that AB 1889 did not violate the single object or work requirement. (App't Appx. 5:1222, quoting the Voter Guide, App't Appx. 3:766.)

[11] That passenger train service providers can begin using either the tracks *or* the stations provides further confirmation that the Bond Act contemplates interim use by conventional rail providers, which might be able to use the track but might not be able to use the stations immediately "upon completion," for example because of lack of platform height compatibility.

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speed operations, segments of the high-speed rail system may be used to provide conventional passenger-rail service.[12]

Thus, far from impliedly repealing the design and scheme presented to the voters, AB 1889 is fully consistent with it.

3. Neither *VFW* nor the other authority invoked by Appellants suggest that AB 1889 implicitly repeals the Bond Act.

AB 1889 is also a valid exercise of legislative authority when measured against the case law cited by Appellants.

In *VFW*, *supra*, a bond act established a state-sponsored farm and home loan program for California veterans. (36 Cal.App.3d at p. 691.) The Legislature later began appropriating $500,000 annually from the bond fund to defray the expenses of maintaining county veterans' service offices. (*Id*. at p. 692.) These offices were not connected to the loan program; at most the offices might receive inquiries and refer veterans to the nearest state office administering the program. (*Id*. at p. 695.) In a challenge to the annual appropriation, this Court held that the diversion of bond proceeds to pay salaries and other expenses associated with county veterans' services offices partially repealed the bond act by implication because the diversion to an unrelated use violated the act's objective of raising money for loans to veterans. (*Id*. at p. 693.)

As the trial court correctly held, *VFW* is easily distinguishable. In sharp contrast to the subsequent appropriations in *VFW,* AB 1889 does not

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[12] Moreover, the Bond Act itself suggests that the specific requirements of section 2704.08, while plainly informing the oversight of the project by the legislative and executive branches, were not mission critical: section 2704.08, subdivision (i) expressly provides that "[n]o failure to comply with this section shall affect the validity of the bonds issued under this chapter."

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"divert the funds to a tenuously connected separate project . . . or otherwise make a substantial change to the scheme or design which induced voter approval." (App't Appx. 5:1222.) As a consequence, unlike the legislation in *VFW,* "AB 1889 did not release the Authority from its obligation to spend the subject funds on the voter-approved high-speed rail project." (*Ibid*.)

The other cases cited by Appellants are similarly distinguishable. In *O'Farrell v. County of Sonoma* (1922) 189 Cal. 343, 347-348, the voters approved a bond to build a roadway from Sebastopol to Freestone, which it expressly stated would have a distance of four miles. When the county subsequently tried to change its plans and use the proceeds of the bond to build a roadway of less than half the length, the Supreme Court held that it could not do so under a statute requiring that bond proceeds be used for the purpose for which the bond was issued. (*Id*. at pp. 346-348.) As the trial court held, this case is clearly distinguishable because, unlike in *O'Farrell*, "the language in AB 1889 does not truncate the project" or otherwise change the object of the Bond Act. (App't Appx. 5:1222.) *Peery v. City of Los Angeles* (1922) 187 Cal 753, is similarly inapposite: that decision, which was based on provisions concerning municipal bonding (*id.* at pp. 758-759), held that voters were prejudiced when, after assuring voters that the maximum annual interest on the bonds would be 4-½ half percent, a city tried to sell bonds bearing interest in excess of 6 percent—nearly 50 percent more than the voters had approved. (*Id*. at p. 760-761.)

In sum, Appellants have failed to show that AB 1889 alters the object of the Bond Act, substantially changes the scheme or design that induced voter approval, or otherwise implicitly repeals the Act in violation of Article XVI, section 1.

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C. Appellants' Assertions Concerning the Central Importance of the "Suitable and Ready" Provision Defined by AB 1889 Are Baseless.

Unable to show that AB 1889 changes the object of the Bond Act or makes any substantial changes to its scheme or design, Appellants argue that the "suitable and ready" provision is a "key restrictive term in the Act," and one of the "central elements of the 'scheme or design that induced voter approval'." (Opening Brief, p. 33.) From that, they conclude that AB 1889 effected such a substantial change to the Bond Act that it constitutes a partial repeal. (*Id*., p. 51.) Their arguments are contradicted by the language and structure of the Bond Act as well as the ballot materials provided to the voters.

1. The language and structure of the Bond Act contradict Appellants' assertions.

In addition to the problems with their argument discussed above, Appellants' theory about the supposed centrality of the "suitable and ready" provision runs counter to the principle that "the drafters of legislation 'do[ ] not, one might say, hide elephants in mouseholes.'" (See, e.g., *California Redevelopment Ass'n v. Matosantos* (2011) 53 Cal.4th 231, 260-261, quoting *Whitman v. American Trucking Assns., Inc*. (2001) 531 U.S. 457, 468.) The only references to "suitable and ready" are buried in two sub-sub-subdivisions of section 2704.08. Among a laundry list of eleven subjects to be discussed in a preliminary funding plan, the Authority must "include, identify or certify" that "[t]he corridor or usable segment" proposed in the plan "would be suitable and ready for high-speed train operation." (§ 2704.08, subd. (c)(2)(H).) And, among five subjects to be addressed in the independent consultant's report submitted with a final funding plan is an indication that "the corridor or usable segment thereof would be suitable and ready for high-speed train operation" if completed as

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proposed. (§ 2704.08, subd. (d)(2)(B).) Nowhere does the Bond Act give the term any particular prominence.

As the trial court correctly noted when it sustained the Authority's demurrer to the first amended complaint, "whether the construction project will result in a usable segment that is 'suitable and ready' for high-speed train operation' is at base only an educated estimation to be made in and through the administrative process," and "neither §2704.08 nor any other provision of Prop. 1A provides any remedy or penalty" for failure to achieve that result. (App't Appx. 1:232; see also *ibid*. [concluding that "the phrase 'suitable and ready for high-speed train operation' is only a metric in the administrative process"].)

2. The ballot materials do not refer to the "suitable and ready" provision.

The ballot materials also belie Appellants' assertions concerning the importance of the "suitable and ready" provision.[13] The Legislature drafted the summary of the Bond Act presented to voters (see *Howard Jarvis Taxpayers Assn. v. Bowen* (2011) 192 Cal.App.4th 110, 116), and presumably included in that summary the information it deemed most important to the voters. Yet that summary omits any suggestion that the "suitable and ready" provision is a central element of the Bond Act, much less that bond funds would only be spent if and when there are "sufficient funds available to construct the full segments . . . capable of providing service." (Opening Brief, p. 26.)

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[13] Where the statutory language of a bond measure is ambiguous, the court will consider the ballot materials, including the ballot summary and the Legislative Analyst's evaluation, and may consider the arguments presented in support of or in opposition to the measure. (*Santos v. Brown*, *supra*, 238 Cal.App.4th at pp. 409-410); *Knight v. Superior Court* (2005) 128 Cal.App.4th 14, 23..)

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The official summary describes the general benefits of a high-speed rail system in California, stating that "at least 90% of these bond funds shall be spent for specific construction projects, with private and public matching funds required," and adding that "use of all bond funds is subject to independent audits." (Official Voter Information Guide ("Voter Guide"), App't Appx. 3:765.) The summary also told voters that a "YES vote" means that "[t]he state could sell $9.95 billion in general obligation bonds, to plan and to partially fund the construction of a high-speed train system in California, and to make capital improvements to state and local rail services." (*Id*., 3:764.) There is no mention of any specific engineering or other technical requirements, much less any "suitable and ready" requirement.

Thus, in denying Appellants' motion for judgment on the pleadings, the trial court observed that the ballot materials given the voters do not contradict the definition added in AB 1889:

> nothing in the documentation that was before the voters at the time of consideration of Proposition 1A clearly prohibits or contradicts the language of AB 1889. As for the general financial restrictions and requirement of funding plans, including the provision for consultant reports cited by Petitioners, none of these provisions define "suitable and ready for high-speed train operation" so as to require the sole conclusion that voter intent was and could only be the meaning and understanding proffered by Petitioners. . . . [T]he specific language, "suitable and ready for high-speed train operation," was not defined for the voters. . . .

(App't Appx., 5:1222.) A different judge reached a similar conclusion in denying Appellants' motion for preliminary injunction:

> The weight of the information and analyses provided to the voters explained that Prop. 1A funds would only be appropriated and used to construct a high-speed train system and in lesser part to fund capital projects that improve other passenger rail systems. The voters were informed that the bond funds may be used for a broad array of purposes including environmental studies,

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> planning and engineering of the system, and for capital costs such as acquisition of rights-of-way, trains, and related equipment, and construction of tracks, structures, power systems, and stations. . . .

(Resp't Appx. 8:2221.)

Appellants are also wrong in arguing that the "suitable and ready" provision is critical to "implement[ing] the 'oversight and accountability' touted in the Legislative Analyst's analysis of the measure." (Opening Brief, p. 36, quoting Voter Guide, App't Appx. 3:766-767). The Legislative Analyst's analysis does not suggest that the "suitable and ready" requirement was material, let alone *central*, to the voters' approval of the measure. The Bond Act contains detailed provisions for oversight of the Authority by the Legislature and others, just as the Voter Guide states, but none of those provisions was changed by AB 1889.[14]

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[14] Appellants analogize to mandamus proceedings in cases brought to enforce the requirements of the California Environmental Quality Act ("CEQA"), and assert that only if both the "[final] funding plan and the independent consultant's report(s) . . . met the requirements of Section 2704.08(d) was the Director of Finance authorized to consider giving a final approval." (Opening Brief, p. 29.) That misstates the role of the Director of Finance. Section 2704.08, subdivision (d), provides: "The Director of Finance shall review the plan . . . and, after receiving any communication from the Joint Legislative Committee, *if the director finds that the plan is likely to be successfully implemented as proposed*, the authority may enter into commitments to expend bond funds . . . and accept offered commitments from private parties." (Section 2704.08, subd. (d), emphasis added.)

Broader oversight of the project is provided by the Legislature and others. (See §§ 2704.06, 2704.08, subds. (c) & (d); Pub. Util. Code §§ 185033, 185035-185036.) For example, the appropriation in SB 1029 includes additional review and oversight by the State Public Works Board; performance criteria approval by the Department of Finance and the State Public Works Board; the submission of biannual project update reports approved by CalSTA to both houses of the Legislature; and the submission of additional reports, also approved by the Secretary of CalSTA, to the

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Appellants' attempt to inflate the importance of the consultant's report and the "suitable and ready" provision in particular by arguing they were "crucial restraining straps in the Act's financial straitjacket" used to "convince skeptical voters," (Opening Brief, pp. 30, 32; see *id*., pp. 33-34), likewise fails. The Voter Guide does not even mention the consultant's report, much less the "suitable and ready" provision. (See App't Appx. 3:762-770.)[15] Rather, the "financial straitjacket," a phrase that comes out of this Court's decision in *CHSRA*, consists of the "mandatory multistep process to ensure the financial viability of the project." (*CHSRA*, 228 Cal.App.4th at p. 706; see *supra*, Statement of the Case, Section I.A [describing oversight of the Authority's funding plans and use of bond funds].) That process was left unchanged by AB 1889.[16]

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Senate Committee on Transportation and Housing, the Assembly Committee on Transportation, and the Senate and Assembly budget committees. (SB 1029, § 9, App't Appx. 4:812-816; see *CHSRA*, *supra*, 228 Cal.App.4th at pp. 710-711.) AB 1889 changed none of this.

[15] Although the voter materials refer to "a committee whose members include financial experts and high-speed train experts" (App't Appx., 3:766), this reference is to the peer review committee required under Public Utility Code, section 185035, subds. (a), (c), (d), not the independent consultant described in section 2704.08, subdivision (d).

[16] Appellants repeatedly cite *CHSRA*, *supra*, 228 Cal.App.4th 676, as ostensible support for sundry assertions. (See Opening Brief, passim.) This Court in *CHSRA* recognized, however, that "[t]he scope of our decision is quite narrow." (*Id*. at p. 684.) *CHSRA* considered whether the appellants in that case were entitled to a writ of mandamus because of alleged deficiencies in the Authority's preliminary funding plan under section 2704.08, subdivision (c), and whether the trial court erred in refusing to validate the issuance of bonds. (*Id*. at 684, 715.) That decision did not interpret section 2704.08, subdivision (d), or address what the Legislature intended by the "suitable and ready" language. And this Court was careful not to
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Finally, the Legislative Analyst's evaluation in the Voter Guide does not assure that bond funds will be spent only if there are sufficient funds to fully construct an operational high-speed rail segment, as Appellants claim. (See Opening Brief, pp. 25, 30.) Instead, it warns that the Authority's 2006 estimate of the cost of the entire system was $45 billion, cautions that "[w]hile the authority plans to fund the construction of the proposed system with a combination of federal, private, local, and state money, no funding has yet been provided," and states:

> The bond funds may be used for environmental studies, planning and engineering of the system, and for capital costs such as acquisition of rights-of-way, trains, and related equipment, and construction of tracks, structures, power systems, and stations. However, bond funds may be used to provide only up to one-half of the total construction cost of each corridor or segment of corridor. The measure requires the authority to seek private and other public funds to cover the remaining costs. The measure also limits the amount of bond funds that can be used to fund certain preconstruction and administrative activities.

(Voter Guide, App't Appx. 3:766.)

In sum, the Voter Guide does not support Appellants' contention that the voters thought that the "suitable and ready" provision was an important part of the Bond Act, much less that they viewed it as a crucial part of a "financial straitjacket."

3. The May Revision to the Governor's January budget does not support Appellants either.

Appellants' principal argument about the importance of the "suitable and ready" provision is based not on the language of the Bond Act as a whole, or even on the Voter Guide, but rather on then-Governor

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forecast how it would rule concerning "any future use of bond funds." (228 Cal.App.4th at p. 703.)

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Schwarzenegger's Revised Budget Summary for the January 2008 proposed budget ("May Revision Summary"). (See Opening Brief, pp. 25-26.) However, the May Revision Summary is not even part of the legislative history of the Bond Act, and contains only a brief reference to an early draft version of the Bond Act. Therefore, it is not relevant to interpreting the legislative intent behind the Bond Act. Moreover, its language does not support Appellants' argument; in order to make the document fit their theory of unconstitutionality, Appellants construct a chain of speculative and unwarranted inferences about it.

As noted above (see *supra* fn. 12), in construing a voter-approved bond act, the ballot materials provided to voters are the only "evidence" of legislative intent normally considered. (*Knight*, *supra*, 128 Cal.App.4th, p. 25, fn. 4 [stating that ballot materials are the only extrinsic evidence that may be considered]; *Rossi v. Brown* (1995) 9 Cal.4th 688,700 fn. 7 [stating that "the intent of the drafters may be considered by the court if there is reason to believe that the electorate was aware of that intent," and "*in the absence of other indicia of voter intent such as ballot arguments*," the Court may presume "that the drafters' intent and understanding of the measure was shared by the electorate," emphasis added].) Because the ballot materials are available in this case, resort to legislative materials is not warranted. That alone would sufficient reason to disregard the May Revision Summary, but here, Appellants are not even relying on the legislative history of the Bond Act itself; instead, they are invoking an excerpt from an 84-page a report by the Governor that merely mentions the Bond Act. (See Opening Brief, pp. 25-26, 30.) Moreover, Appellants are not proffering the extrinsic evidence to resolve an ambiguity—indeed, they assert there is no ambiguity. Instead, they are trying to use the May Revision Summary to show that the "suitable and ready" provision was *important* to the voters. (Opening Brief, pp. 25-26, 30, 33, 54-55.)

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However, none of Appellants' cited authorities (see *id*., p. 40) suggests such a determination can be based on materials that were *never shown to the voters*.

Compounding these problems, Appellants are asking the Court to not only accept their interpretation of the May Revision Summary, but also to make a number of speculative assumptions about it. This is improper. (See *Apple, Inc. v. Superior Cour*t (2017) 18 Cal.App.5th 222, 241 [holding that a court may take judicial notice of the existence of a document and its contents, but not of "the truthfulness of its contents or the interpretation of statements contained therein, if those matters are reasonably disputable"]; *Richtek USA, Inc. v. uPI Semiconductor Cor*p. (2015) 242 Cal.App.4th 651, 659-660, [to the same effect].)

Appellants cite statements in the May Revision Summary that "[t]he Administration will be proposing amendments to the [Bond Act]" with the goal of ensuring an "appropriate balance between assuring that expenditure of bond funds will result in operational high-speed rail services and providing the flexibility" to attract federal, local government and private sector participation, and that "[b]efore any construction or equipment purchase can be signed for a portion of the system, there must be a complete funding plan that provides assurance that all funding needed to provide service on that portion of the system is secured." (App't Appx. 4:1073-1074.) But the May Revision Summary refers simply to "service," not "high-speed train service." (*Ibid*.) And it does not mention, much less contain a definition of, "suitable and ready." (*Ibid.*; see App't Appx. 5:1222.) Thus, the language of the May Revision Summary does not actually support Appellants' interpretation of it.

Nevertheless, Appellants ask the Court to infer from this reference to "service" without any mention of the "suitable and ready" provision both that (1) the "suitable and ready" provision was a key component of

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revisions that the administration planned to propose; and (2) the Legislature accepted those revisions as proposed and shared the Governor's supposed intent to make the "suitable and ready" provision critically important—*even though the Legislature's own title and summary makes no mention of that provision*. (Opening Brief, p. 25-26.) Finally, Appellants implicitly urge the Court to infer that the voters were somehow aware of and shared that purported intent. This stacking of inference upon inference upon inference is nonsense, and the trial court correctly rejected it. (See App't Appx. 5:1222.)

Appellants' own cited authority makes clear that material describing the "anticipated contents of a forthcoming amendment to a bill, is not admissible as an indication of the Legislature's intent in ultimately enacting the measure." (*Lungren v. Deukmejian*, *supra*, 45 Cal.3d at p. 742; see *id*. at p. 743. Accord *People v. Castro* (1985) 38 Cal.3d 301, 312 [rejecting as evidence of voter intent reports of a legislative committee, reasoning that because the documents were not included in the voters' pamphlet "we can only speculate on the extent to which the voters were cognizant of them."].) Moreover, any intent that may be expressed in the May Revision Summary is that of the Governor, not the Legislature. Appellants cite no authority, and Respondents are aware of none, that statements by the Governor about yet-to-be proposed amendments to a bill are admissible to show the legislative intent behind the ultimately-enacted statute. (Cf. *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 377-378 ["As a general rule, in construing a statute we do not consider the motives or understanding of the author of a bill or of individual legislators who voted for it."].)[17]

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[17] The trial court did not find relevant this or the other "legislative history" materials Appellants cited in their motion for judgment on the pleadings. (App't Appx. 5:001222 & fn. 2.)

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Even if the changes made to the Bond Act as it made its way through the legislative process were relevant, the legislative history would not support Appellants' position. It shows that nearly all of section 2704.08, subdivisions (c) and (d), changed between the initial version of the bill introduced on February 11, 2008 and the June 22, 2008 version that Appellants speculate resulted from the Governor's intervention. (Compare App't Appx. 3:699 [proposed § 2704.08, subd. (d), as of February 2008]with *id*., 3:687-688 [§ 2704.08, subd. (d) as enacted].) At most, this suggest that a significant feature of the Bond Act was the administrative and legislative oversight contained in the Bond Act, including the multi-layered oversight in section 2704.08, subdivisions (c) and (d). Nothing in this history suggests that the "suitable and ready" metric was centrally important to the Legislature, much less the voters. Appellants' assertion that AB 1889 is a "bait and switch" (Opening Brief, pp. 53-54) is meritless.[18]

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[18] If the Court considers extrinsic evidence beyond the ballot materials, it should consider the Legislative Counsel Bureau opinion issued in June of 2012, just before the Legislature appropriated the bond funds, the use of which is at issue in this litigation. (See Motion for Judicial Notice filed herewith.) That opinion interpreted the "suitable and ready" requirement in a manner entirely consistent with AB 1889. (App't Appx. 4:1029.) The Legislative Counsel analyzed the Authority's preliminary funding plan for the Central Valley, the precursor to the Central Valley Funding Plan at issue here. Although that plan lacked electrification and other elements needed to run high-speed trains on the segment, the Legislative Counsel concluded that the segment contemplated in the plan would be "suitable and ready for high-speed train operation." (*Ibid.*) The Legislative Counsel reasoned that requiring the Authority immediately to construct elements that will not be used for conventional passenger use in the short term could create waste, as unused elements degrade over time. (App't Appx, 4:1029.) The Legislative Counsel's opinions concerning a statute, "though not binding, are entitled to great weigh

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II. APPELLANTS' ARGUMENT THAT THE LEGISLATURE HAD NO AUTHORITY TO CLARIFY AB 1889 FAILS.

In addition to failing to show any implied repeal violating Article XVI, section 1, Appellants fail to show that AB 1889 improperly defined "suitable and ready."

A. The Legislature Has Broad Authority to Amend Statutes and Define Their Meaning Even When the Language Is Clear.

Appellants assert that AB 1889 was improper because Legislative clarification of a statute is "neither necessary nor allowable" where the meaning of the statute is clear. (Opening Brief, pp. 34, 50 [citing *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735-37].) That is wrong. The Legislature had authority to enact AB 1889 whether or not the language defined by AB 1889 was clear.

The Legislature has plenary power to pass any law it deems necessary, subject only to constitutional limitations. Thus, the Legislature generally can amend the Bond Act any way that it wants, so long as it does not violate Article XVI, section 1 or some other constitutional provision in doing so. Appellants' contention that when a statute is clear on its face clarification is not "necessary" is totally unsupported and irrelevant. It is for the Legislature to decide whether clarification is "necessary." Thus, whether AB 1889 merely clarified or amended the Bond Act is not relevant. What matters is whether AB 1889 impliedly repealed the Bond Act, which, as shown above, it did not.

Lungren v. Deukmejian, *supra*, cited by Appellants, does not support their argument. That case did not involve a legislative attempt to clarify an

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when courts attempt to discern legislative intent." (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 939.)

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existing statute; and it does not address the Legislature's ability to do so, much less stand for the proposition that the Legislature lacks the power to clarify a statute that appears plain on its face. Indeed, contrary to Appellants' suggestion, the Court concluded that "the 'plain meaning' rule [of statutory construction] *does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose*." (45 Cal.3d at p. 735, emphasis added.)

Appellants' reliance on *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, and *Foundation for Taxpayer & Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354, is similarly misplaced. Neither supports Appellants' contention that "the Legislature may not attempt to modify the plain meaning of a voter-approved bond measure under the guise of 'clarifying' its provisions." (See Opening Brief, p. 50.) Both cases addressed Proposition 103, a voter initiative that forbade any amendment by the Legislature "except to further its purposes." (*Amwest*, *supra*, at p. 1250; *Foundation for Taxpayer & Consumer Rights*, *supra*, 132 Cal.App.4th at p. 1360, fn. 1.) In both cases, the court held that the later-enacted statute was an amendment, not a clarification, *and that the amendment did not further the purpose of the initiative*. (*Amwest*, *supra*, at p. 1265; *Foundation for Taxpayer & Consumer Rights*, *supra*, at p. 1366.) Indeed, in *Foundation for Taxpayer & Consumer Rights v. Garamendi*, *supra*, the court held that the later-enacted statute *conflicted* with "a fundamental purposes of Proposition 103." (*Id*. at 1371.)[19] These cases are

[19] Two other cases cited by Appellants likewise involved initiatives. In the first case, *Howard Jarvis Taxpayers Association v. Newsom* (2019) 39 Cal.App.5th 158, 162), the court held that a statute allowing local governments to provide public funding for political campaigns directly conflicted with a primary purpose of a voter initiative that prohibits public funding of political campaigns. In the second, *Mobilepark West*

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plainly inapposite because the Bond Act is subject to Article XVI, section 1's prohibition against implied repeals, which is much more limited than the standard applied in Appellants' cases (see *ante*, Section I.A), and because there is no conflict between AB 1889 and the purposes of the Bond Act (see *ante,* Section I.B.)

Thus, whether not AB 1889 merely clarified an ambiguous term of the Bond Act, it is nonetheless constitutional under Article XVI, section 1, because it constitutes only a small modification to the Act, and not a substantial change that implicitly repeals the Act.

B. The Phrase "Suitable and Ready for High-Speed Train Operation" Is Not Clear on its Face, as Appellants Concede by Proposing Their Own Detailed Definition of its Meaning.

Finally, Appellants' challenge to AB 1889 fails on its own terms because, contrary to their contentions, nothing in the language of the Bond Act is inconsistent with the Legislature's decision to clarify the meaning of "suitable and ready" in AB 1889.

The trial court so held:

> Considering that neither the ballot material provided to the voters, nor the text of Proposition 1A itself, defined "suitable and ready for high-speed train operation," the Court finds that such language was properly subject to clarification by the Legislature through AB 1889.

(App't Appx. 5:1221.) Although the Bond Act defines other terms (§ 2704.01), as the trial court observed, the phrase "suitable and ready" is not defined, and AB 1889 fills that gap. Its definition of "suitable and

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Homeowners Assn. v. Escondido Mobilepark West (1995) 35 Cal.App.4th 32, 40, 43, the court addressed a voter proposition containing no provision for amendment, so the issue before the court was whether a later-enacted city council ordinance was in fact an amendment or merely a clarification.

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ready for high-speed train operation" reflects the principle of incrementalism implicit in the Bond Act, and necessary to build a public works project of this scope.

Appellants maintain that the language of the Bond Act is clear and fixed, but then contradict themselves by offering their own interpretation of its meaning, arguing that "suitable" means that a "segment must have a track structure, slope limits, curvature limits, power supply, signaling equipment, etc. appropriate to allow a high-speed train to operate safely and reliably." (Opening Brief, p. 35.) Appellants further argue that "ready" means "prepared or available to run high-speed trains." (*Ibid.*)[20] The mere fact that Appellants felt constrained to offer interpretations expanding on the terse language of the Act undermines their suggestion that this language is plain and not in need of clarification.[21] The trial court correctly rejected Appellants' argument:

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[20] This interpretation is similar but not identical to the one Appellants proffered to the trial court in support of their motion for judgment on the pleadings. (See App't Appx., p. 000653.) And, in support of their failed motion for preliminary injunction, Appellants argued yet another version, i.e., that the court should insert into subdivision (d) the phrase "at that point" before "be suitable and ready," and that "ready" meant "immediately available for high-speed train use." (Resp't Appx. 6:1274-1275.)

[21] It also should be noted, that contrary to basic rules of statutory interpretation, Appellants do not address the overall structure of the Bond Act. (*Larkin v. Workers' Comp. Appeals Bd.* (2015) 62 Cal.4th 152, 160; *Santos v. Brown*, *supra*, 238 Cal.App.4th at p. 410.) Nor do they take into account any of the other features of the Bond Act discussed in Section I.B. Instead, Appellants focus on section 2704.08, subdivisions (c) and (d), in isolation. (See Opening Brief, pp. 34-36 [discussing only subdivisions (c) and (d) of section 2704.08, with merely an *ipse dixit* statement about the "Act's overall structure"]; *id.*, p. 39 [arguing, without citation, that "the underlying purpose of the Act was to provide money to build a full high-speed rail system"].)

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> The court is not persuaded that the language "suitable and ready for high-speed train operation" is subject only to the specific meaning and understanding proffered by Appellants, that such interpretation is the only understanding that voters reasonably could have had, and that such specific meaning must also have induced voter approval.

(App't Appx 5:1221.)

III. APPELLANTS ARE NOT ENTITLED TO A TRANSFER FROM THE GENERAL FUND OR AFFIRMATIVE DECLARATORY RELIEF.

Appellants argue that the Court should rule in their favor on the merits of Respondent's affirmative defenses, grant declaratory relief, and order the Director of Finance to "restore" to the high-speed rail bond fund the "funds improperly diverted" as a result of AB 1889, and to do so "by way of an offsetting transfer from the general fund." (Opening Brief, p. 57; see *id.*, pp. 59-60.) The Court need not reach these remedial issues because, as shown in Sections I and II above, Appellants' constitutional arguments fail. In any event, Appellants are not entitled to the relief they seek.

First, Appellants' request for the transfer of money to the general fund has been waived because it was not properly raised in the trial court. The only relief Appellants sought in their claim for declaratory relief was a judicial declaration that AB 1889 is "invalid and void, and that neither [the Authority] nor its BOARD may rely upon AB 1889 in preparing or approving any future Funding Plan." (App't Appx. 1:268.)[22]

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[22] In the Petition, Appellants purported to add as defendants the "members of the BOARD" of the Authority and sought to recover from them personally funds spent toward "preparation or approval of improper/noncompliant Funding Plans." (See App't Appx. 1:268.) Appellants subsequently dismissed all of the members in their individual capacities as well as the related allegations and this prayer for relief. (*Id.*, 1:274-275.)

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Second, even if AB 1889 were held invalid, it would not follow that the Central Valley and Peninsula funding plans violate the Bond Act. The only issue in this appeal is the facial validity of AB 1889, as challenged in Appellants' claim for declaratory relief, not the validity of the funding plans pursuant to which bond proceeds are being spent.

Third, there is no support for Appellants' contention (see Opening Brief, p. 57) that an "offsetting transfer from the general fund" would be required. In their cited case, *National Asian American Coalition v. Newsom* (2019) 33 Cal.App.5th 993, monies in a special settlement fund provided by a third party was unlawful diverted "in contravention of the purposes for which that special fund was established. (33 Cal.App.5th at p. 1023). The court concluded that the funds were "in law still in the [special fund]" (*Id.* at p. 1023.) There is no such unlawful appropriation here. Indeed, this Court in *CHSRA* specifically held that the SB 1029 appropriation was *lawful* and refused to invalidate it. (228 Cal.App.4th at p. 715.)

Finally, Appellants' declaratory relief cause of action seeks an equitable remedy, and there are factual issues that must be resolved by the trial court before Appellant's entitlement to such a remedy may be determined. "Whether a determination is proper in an action for declaratory relief is a matter within the trial court's discretion . . . and the court's decision to grant or deny relief will not be disturbed on appeal unless it be clearly shown . . . that the discretion was abused." (*Abbate v. County of Santa Clara* (2001) 91 Cal.App.4th 1231, 1239, quoting *Application Group, Inc. v. Hunter Group, Inc.* (1998) 61 Cal.App.4th 881, 892–893. See Code Civ. Proc. § 1061 ["The court may refuse to exercise the power [to grant declaratory relief] in any case where its declaration or determination is not necessary or proper at the time under all the circumstances."]. Accord *Cota v. County of Los Angeles* (1980) 105 Cal.App.3d 282, 292 [affirming trial court denial of declaratory and

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injunctive relief in part because of the potential for severe harm to the public].)

The principle that a court has discretion to deny declaratory relief is consistent with the related tenet that courts have discretion to deny mandamus. (See *CHSRA*, *supra*, 228 Cal.App.4th at p. 707 [holding that a "writ is not available to enforce abstract rights . . . [or] to command futile acts with no practical benefits," and that a writ will not lie "in the absence of prejudice."]; *Associated Students of North Peralta Community College v. Board of Trustees* (1979) 92 Cal.App.3d 672, 680-681 [noting that a writ of mandamus requiring defendants to keep open a campus was not proper where there were neither funds available nor a need for the campus].)

Thus, even if Appellants were somehow to show AB 1889 unconstitutional, this matter should be remanded to the trial court to address in the first instance Respondents' affirmative defenses, as well as whether Appellants are entitled to a writ of mandate setting aside the Central Valley Funding Plan or the Peninsula Funding Plan in light of this Court's ruling on AB 1889. (See *ibid*.)

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment of the Superior Court.

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Dated: December 20, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S BRIEF uses a 13 point Times New Roman font and contains 11,271 words.

Dated: December 20, 2019

XAVIER BECERRA
Attorney General of California

/S/ SHARON L. O'GRADY

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Deputy Attorney General
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DECLARATION OF ELECTRONIC SERVICE AND U.S. MAIL

Case Name: ***John Tos, et al. v. State of California, et al.***

No.: **C089466**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence.

On December 20, 2019, I electronically served the attached **RESPONDENTS' BRIEF; RESPONDENTS' APPENDIX (3 VOLUMES)** by transmitting a true copy via this Court's TrueFiling system,

Stuart M. Flashman
Attorney at Law
Email: stu@stuflash.com
Attorney for Plaintiffs and Appellants John Tos, et al.

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In addition, on the above-same day, I also placed a true copy of **RESPONDENTS' BRIEF** thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

The Honorable Richard K. Sueyoshi
Sacramento County Superior Court
Gordon D. Schaber Courthouse
720 Ninth Street, Department 28
Sacramento, CA 95814-1398

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 20, 2019, at San Francisco, California.

Susan Chiang	*/s/ Susan Chiang*
Declarant	Signature

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