

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' OPPOSITION TO APPLICATION FOR  
LEAVE TO FILE *AMICI CURIAE* BRIEF**

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Consolidated  
Court of Appeal Case Nos. A157598 and A157972

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## OPPOSITION TO APPLICATION OF *AMICI CURIAE*

On February 7, 2020, several putative *amici curiae* filed an application for leave to file an *amici curiae* brief (Application), along with the proposed brief (*Amici* Brief). Respondents Bay Area Toll Authority (BATA) and Metropolitan Transportation Commission (MTC) respectfully submit this opposition to the Application. For the reasons discussed below, the Court should deny the Application and reject the *Amici* Brief.

First, on November 20, 2019, the Court granted calendar preference in these consolidated appeals with respect to scheduling oral argument and issuance of the Court's decision. As the Court recognized, calendar preference is warranted in these appeals because the projects to be funded by the challenged toll increase revenues, projects that will benefit over 7 million people in the Bay Area, have been in limbo since July 2018 due to these lawsuits. Granting leave to file the *Amici* Brief would necessarily frustrate the purpose of calendar preference and cause additional, unnecessary delay. Although the *Amici* Brief fails to raise any relevant or compelling new issues, if the Application is granted Respondents' would nonetheless have to respond to the substance of the *Amici* Brief to ensure a complete

record. Doing so would result in further delay and defeat the calendar preference that the Court granted based on good cause.

Second, as demonstrated in the proposed *Amici* Brief, *Amici* could have been involved in this litigation from the outset but chose not to participate. In fact, one of the *Amici* (Transportation Solutions Defense and Education Fund) claims to have written “the legal memo that led to the filing of the instant case.” (Application, p. 6.) *Amici* also claim to have “worked together as a diverse coalition of environmentalists and taxpayer advocates in an effort to defeat Regional Measure 3 (“RM3”) on the June 2018 ballot.” (*Id.*, pp. 5-6.) No doubt, *Amici* from the beginning have been fully and acutely aware of the toll increase and the issues in these lawsuits, and have been capable of asserting any and all of the legal challenges they and Appellants contend render the toll increase invalid. (See *Amici* Brief, p. 17.) For nearly two years, *Amici* chose to take no action; they should not now be allowed to inject themselves into these proceedings, at the latest possible moment,<sup>1</sup> and thereby create unnecessary and

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<sup>1</sup> In addition to choosing not to participate in the trial court proceedings, *Amici* waited until the last possible day, 14 days after Appellants filed their reply brief, to seek leave as *amici* in these appeals.

unwarranted delay in the determination of these appeals.

Lastly, the proposed *Amici* Brief offers no help to the Court in determining these appeals. *Amici* primarily focus on the purported “nexus requirements” that they, like Appellants, contend apply to the toll increase under California Constitution, article XIII A (and article XIII C). (See, e.g., *Amici* Brief, pp. 11-16, 18-19, 25-26.) As a central issue in the cases, the parties have naturally briefed that issue thoroughly to the Court. *Amici*, like Appellants, also contend that the trial court’s decision was contrary to *Amici*’s view of the “overall purpose of the Proposition 26 constitutional amendment[.]” (*Id.*, p. 16 [trial court decision “turned that purpose on its head”]; *compare* Appellants’ Opening Brief, p. 37 [“The trial court’s ruling is a perversion of Proposition 26...”].) Of course, the only issue in these cases is what the constitution as amended by Proposition 26 says, not what *Amici* or Appellants believe Proposition 26 was intended to accomplish. *Amici*’s other arguments are either irrelevant or unintelligible. (See *Amici* Brief, pp. 19-20 (irrelevant “deference” argument); pp. 20-22 [irrelevant, untimely “election defect” argument]; p. 23 [unintelligible “hidden feature” “cap on tolls” argument]; pp. 23-25 [irrelevant “goalposts” and “legislative overreach”

arguments].) In short, Amici's various iterations of why the toll increase is allegedly unconstitutional, as well as Amici's unsupported factual conclusions (see, e.g., *Amici* Brief, pp. 12-14, 16-17, 19-20), add nothing to what is already before the Court and will not assist the Court in determining these appeals. Cal. R. Ct. 8.200(c).

For all these reasons, Respondents respectfully request that the Court deny the Application for leave to file the *Amici* Brief.

Dated: February 10, 2019

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