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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

JOHN TOS; QUENTIN KOPP; TOWN OF ATHERTON, a municipal corporation; COUNTY OF KINGS, a subdivision of the State of California; PATRICIA LOUISE HOGAN-GIORNI; ANTHONY WYNNE, COMMUNITY COALITION OF HIGH-SPEED RAIL, a California nonprofit corporation; TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, a California nonprofit corporation; and CALIFORNIA RAIL FOUNDATION, a California nonprofit corporation,

Petitioners and Plaintiffs,

v.

THE STATE OF CALIFORNIA, CALIFORNIA HIGH SPEED RAIL AUTHORITY, a public entity, BOARD OF DIRECTORS OF THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY in their individual and official capacities, JEFF MORALES, in his official capacity as Chief Executive Officer of the California High-Speed Rail Authority, MICHAEL COHEN, in his official capacity as Director of the Department of Finance of the State of California, and DOES 2-20 inclusive,

Respondents and Defendants.

Case No. 34-2016-00204740

RESPONDENTS' OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS

Date: October 26, 2018
Time: 11:00 a.m.
Dept: 28
Judge: Hon. Richard K. Sueyoshi
Trial Date: Not Yet Set

Action Filed: December 13, 2016

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INTRODUCTION

Petitioners' motion seeks a declaration that Assembly Bill 1889 ("AB 1889") is unconstitutional on its face. The motion is meritless.

AB 1889 provides a limited definition of a previously undefined phrase in the high-speed rail Bond Act, an expansive act that sets forth a structure for the use of proceeds from the sale of bonds ("bond funds" or "bond proceeds") to begin development of a high-speed rail system in California. AB 1889 provides that the phrase "suitable and ready for high-speed train operation" means, in the context of a 2012 legislative 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." That definition is entirely consistent with the Bond Act and the materials presented to the voters who approved the Bond Act.

Petitioners' motion asks the Court instead to find that the "suitable and ready" provision means that bond funds may not be spent on construction "until it could be objectively established through expert reports, that there were sufficient funds available to fully construct an operational high-speed rail segment," and to hold that AB 1889 constitutes such an extreme departure from the Bond Act that it is a partial repeal of the Act. To get to that conclusion, petitioners' motion heavily relies on extrinsic evidence never disclosed to the voters, and improperly asks the Court to draw unwarranted inferences from the material. The Court can and should hold that AB 1889 is constitutional on its face, and issue a declaration to that effect.

But even if the Court were to accept petitioners' view that AB 1889 is unconstitutional, petitioners are not as a matter of law entitled to declaratory relief. Petitioners have not rebutted respondents'[1] defense that declaratory relief in favor of petitioners is not necessary or proper at this time because of the potential for severe harm to the public interest that might result from a

[1] Director of Finance Michael Cohen is not named as a respondent on the First Claim for declaratory relief. For purposes of this Opposition, "respondents" refer to the California High-Speed Rail Authority (the "Authority") and the State of California.

judgment invalidating AB 1889. As such, further proceedings would be necessary before any declaratory or other equitable relief could be granted.

BACKGROUND

I. THE SAFE, RELIABLE HIGH-SPEED PASSENGER TRAIN BOND ACT FOR THE 21ST CENTURY AND THE 2012 APPROPRIATION

A. The Bond Act.

In 2008, the voters approved Proposition 1A, the "Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century" (the "Bond Act"). The Bond Act authorized construction of a high-speed rail system in California (expected to be one of the largest public works project in California'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 Sts. & Hy. Code, § 2704 et seq.)[2] The Bond Act permits the High-Speed Rail Authority to use bond funds for various purposes. (§ 2704.04, subd. (b)(1)(B).)

Generally, before the Authority can seek an appropriation of bond funds, it must approve and submit to the Legislature and the Governor a preliminary funding plan. (§ 2704.08, subd. (c).) Then, before the Authority may spend bond funds, it must approve and submit a detailed pre-expenditure funding plan to the Director of Finance, the Chairperson of the Joint Legislative Budget Committee, and a statutorily-mandated peer review group. (§ 2704.08, subd. (d)(1); Pub. Util. Code, § 185035, subds. (a), (c), (d).) The Authority also must submit to those same persons an independent consultant's report reviewing the plan. (§ 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 capital costs. (§ 2704.08, subd. (d).) Thus, the Bond Act provides for significant legislative and executive branch oversight of the high-speed rail program.

[2] Unless otherwise indicated, further statutory cites are to the Streets and Highways Code.

B. Senate Bill 1029.

In 2012, in response to a preliminary funding plan approved by the Authority for high-speed rail construction in the Central Valley, the Legislature appropriated approximately $8 billion. (Sen. Bill No. 1029, Stats. 2012, ch. 152.)[3] As relevant here, that appropriation included approximately $2.6 billion of bond funds for construction in the Central Valley. (*Id.*, § 9.) SB 1029 also included approximately $819 million for capital improvement projects to intercity and commuter rail lines and urban rail systems, funds that are 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," the portions of the high-speed rail system in the Los Angeles area and on the San Francisco and San Jose Peninsula in which high-speed rail will share infrastructure and facilities with conventional passenger rail service. (*Id.*, § 3).

C. AB 1889.

Effective January 1, 2017, the Legislature enacted Assembly Bill No. 1889, adding Streets and Highways Code section 2704.78. (Assem. Bill No. 1889, Stats. 2016, ch. 744, § 2.)[4] AB 1889 clarified the meaning of previously undefined statutory language providing that, upon completion, certain projects approved under section 2704.08, subdivision (d) will be "suitable and ready for high-speed train operation." (*Id.* §§ 1, subds,(g), (k), 2, subd. (a).) Specifically, section 2704.78, subdivision (a) 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."

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[3] A copy of SB 1029 is attached Exhibit L to Petitioners' Request for Judicial Notice ("Pet. RJN").

[4] A copy of AB 1889 is attached as Exhibit O to Pet. RJN.

II. THE CENTRAL VALLEY FUNDING PLAN AND THE PENINSULA FUNDING PLAN

In March, 2017, in accordance with section 2704.08, subdivision (d), the Director of Finance approved a final funding plan for the Authority to use bond funds to pay for a project in the Central Valley, where work had been underway since 2013 using non-bond funds. (See Second Amended Petition and Complaint ("SAP"), ¶ 73.) In May 2017, the Director of Finance approved a second plan to fund a project on the San Francisco Peninsula rail corridor that will allow electric Caltrain passenger rail service. Once that project is completed, both Caltrain and high-speed trains would be able to run trains on that corridor. (Respondents' Request for Judicial Notice ("Respondents' RJN"), Exhibit A at p. 2.) Thus, this project is necessary for providing electric high-speed rail service on the corridor. (See §§ 2704.76, 2704.77; Petitioners' Memorandum of Points and Authorities in Support of Motion for Judgment on the Pleadings ("Pet. Brief), p. 11; Pet. RJN, Exh. M, p. 2-2.)

III. PRIOR PROCEEDINGS IN THIS ACTION

This action was filed as a civil action challenging the constitutionality of AB 1889, as well as attacking the Authority's Central Valley and Peninsula Funding Plans. (ROA #1.) On March 15, 2017, petitioners sought a temporary restraining order and preliminary injunction seeking to enjoin the Authority's use of Proposition 1A bond funds on the grounds that petitioners were likely to succeed on their claim that AB 1889 was unconstitutional on its face. (ROA ## 20, 23-28.) Judge Cadei denied the application for temporary restraining order (ROA # 33) and later denied petitioners' noticed motion for a preliminary injunction (ROA # 64). Judge Cadei held that petitioners had not demonstrated a likelihood of success on their constitutional challenge to AB 1889. (*Id.* at p. 10.) Judge Cadei further held that, even if petitioners had been able to do show likelihood of success, "an injunction could significantly harm the State and the public interest." (*Ibid.*) Petitioners did not appeal that decision.

The Court also sustained the Authority's demurrer to the First Amended Complaint, with leave to amend, finding that petitioners' challenge to the Authority's funding plans should have been asserted as writ claims, and that petitioners' 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." (ROA # 66, p. 3.) Judge Cadei reasoned:

> [W]hether 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 to be made in and through the administrative process. If at the completion of a Prop. 1A funded construction project, the result is not a segment that is "suitable and Ready for high-speed train operation," neither §2704.08 nor any other provision of Prop. 1A provides any remedy or penalty. In short, the phrase "suitable and ready for high-speed train operation" is only a metric in the administrative process.

(*Ibid.*)

Petitioners then filed the SAP, adding writ claims and additional parties, including the Director of Finance. (ROA # 70.) The Authority and the State of California demurred to the SAP. In February 2018, the Authority's demurrer to petitioners' Second Claim, seeking injunctive relief, was sustained without leave to Amend. (ROA # 165.)

LEGAL STANDARD

Under Code of Civil Procedure section 438, subdivision (c)(1)(B), a plaintiff may move for judgment on the pleadings on the grounds "that the complaint states facts sufficient to state a cause of causes of action against he defendant and the answer does not state facts sufficient to constitute a defense to the complaint." A motion for judgment on the pleadings is decided on the same standard that applies to a demurrer. All material facts that are properly pled are deemed true, but not contentions, deductions, or conclusions of fact or law. (*Mack v. State Bar of California* (2001) 92 Cal.App.4th 957, 961.) Additionally, the court may consider matters that may be judicially noticed. (*Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651 (2015); *Barker v. Hull* (1987) 191 Cal.App.3d 221, 224.) All reasonable inferences are drawn in favor of the non-moving party. (*Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 551; *see Kruss v. Booth* (2010) 185 Cal.App.4th 699, 727.)

When considering acts of the Legislature, courts must presume that a statute is valid "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.) All doubts as to 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, 979.) The court's primary task is to determine the voters' intent. (*ibid.*) Finally, courts "will not decide constitutional questions where other grounds are available and dispositive of the issues of the case." (*Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 66. Accord, *Stone Street Capital, LLC v. California State Lottery Com'n* (2008) 165 Cal.App.4th 109, 118.)

ARGUMENT

I. THE BOND ACT DOES NOT VIOLATE THE CONSTITUTIONAL REQUIREMENT OF A SINGLE OBJECT OF WORK OR EFFECT A SUBSTANTIAL CHANGE IN THE SCHEME OR DESIGN THAT INDUCED VOTER APPROVAL.

The starting point for analysis of a bond act is Article XVI, section 1 of the California Constitution, which provides that the Legislature must obtain voter approval before incurring indebtedness in excess of $300,000, and do so in a measure "for some single object or work to be distinctly specified therein." (See *Metropolitan Water Dist. of Southern Cal. v. Marquardt* (1963) 59 Cal.2d 159, 172-173.) Judge Cadei determined that AB 1889 does not cause the Bond Act to violate this constitutional requirement, and petitioners do not dispute that determination. (See Pet. Brief, p., p. 15.)

Petitioners obliquely appear to dispute the further requirement of Article XVI, section 1, that bond funds be "applied to the specific object" stated in the Bond Act. (See Pet. Brief, pp. 15, 25.) They are incorrect. The Legislature may amend a bond measure that is proposed by the Legislature and ratified by the voters without constitutional limitation so long as the amendment does not impliedly repeal the bond act by making "substantial changes in the scheme or design which induced voter approval" of the bond measure, such as by appropriating funds for "an alien purpose." (*Veterans of Foreign Wars v. State of California* (1974) 36 Cal.App.3d 688, 693-694 ("*VFW*"); see Cal. Const., art. XVI, § 1.) For example, in *VFW*, the Legislature diverted bond proceeds designated for a veterans' farm and home purchase program to pay salaries and other

expenses associated with county veterans' service offices. (36 Cal.App.3d at p. 692.) The Court of Appeal held that diversion of bond proceeds to a use unrelated to the loan program was a partial repeal by implication of the bond act. (See *id.* at p. 693.) Here, AB 1889 made no change to the purpose for which bond funds are used. With respect to capital outlays, the funds must 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).)

In ruling on petitioners' motion for preliminary injunction, Judge Cadei concluded that AB 1889 did not violate Article XVI, section 1:

> [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.

(ROA # 64, p. 10.) The Court's ruling is consistent with relevant case law.[5] In *California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th 676, 703 ("*CHSRA*"), the Court of Appeal recognized the "fluidity of the planning process for large public works projects."

> [T]he Supreme Court has allowed substantial deviation between the preliminary plans submitted to the voters and the eventual final project. [...] '[T]he 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.'

(*Ibid.*, quoting *Cullen v. Glendora Water Co.* (1896) 113 Cal. 503, 510; see also *City of San Diego v. Millan* (1932) 127 Cal.App. 521, 536 [holding that bond act providing for construction of arched masonry dam was not violated by legislatively-mandated design change to an earth-filled rock embankment dam].) Here, the bond funds are being used for the single object of the Bond Act—the planning, engineering and capital costs of a high-speed rail system.

[5] Judge Cadei's decision, made in the context of a motion for preliminary injunction, is not binding on the Court, but may be considered for its persuasive value. Petitioners' motion makes no attempt to explain why Judge Cadei's decision was wrong.

Other courts, too, have recognized that the determining factor is whether the change would be beneficial, or instead would result in prejudice to the voters or bondholders. (See *San Bernardino County v. Way* (1941) 18 Cal.2d 647, 665-66; *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 reservoir and instead enlarged an existing one did not violate the bond statute]; *Board of Sup'rs of Placer County v. Rechenmacher* (1951) 105 Cal.App.2d 39, 43; *City of Redding v. Holland* (1946) 72 Cal.App.2d 178, *City of Redding v. Holland* (1946) 75 Cal.App.2d 178, 181, 185-86. Cf. *State School Bldg. Finance Committee v. Betts* (1963) 216 Cal.App.2d 685, 691 ["The contract obligation is not impaired unless the alteration in the law deprived the bondholders of a substantial right or remedy.")

Importantly, neither the SAP nor the petitioners' motion suggests any prejudice that would render AB 1889 unconstitutional in all its applications (as required in a facial challenge). Rather, petitioners *concede* that electrification of the Caltrain corridor will be beneficial, "mak[ing] trains quieter and reduc[ing] local air pollution," making the trains faster and "potentially allowing more train service." (Pet. Brief, p. 11.) That project will become a part of the high-speed rail system, because the Caltrain and high-speed rail must share tracks, infrastructure, and facilities in the Caltrain corridor. (§§ 2704.76, 2407.77.)[6] Putting in electrification now allows it to be put to beneficial use immediately by Caltrain and then later by high-speed rail, instead of having the work delayed while construction costs inevitably increase. (See, e.g., *Williams v. City of Stockton* (1925) 195 Cal. 743, 756.) Proceeding in this way will benefit rather than prejudice the voters.

Petitioners' own cited authorities illustrate, rather than conflict with, this principle. In *O'Farrell v. County of Sonoma* (1922) 189 Cal. 343, 345-47, voters were promised that bonds would be sufficient to complete the entirety of a specific roadway, and the voters plainly were prejudiced when it turned out that the bond funds could not build even half of it. In *Peery v. City of Los Angeles* (1922) 187 Cal 753, 755, the voters were assured that the maximum annual

[6] Under section 2704.77, the Authority must implement a "blended system" described in the Authority's Revised 2012 Business Plan; which calls for electrification of the Caltrain corridor for use by both Caltrain and high-speed trains. (See Pet. RJN, Exhs. J, p. 5; M, p 2-2 "[I] some cases, a blended approach means early construction of facilities that ultimately will be incorporated into the high-speed rail system." (*Id.* at pp. ES-2, ES-8, ES 13.)

interest on the bonds would be 4 ½ half percent, and the challenged bond sale called for interest in excess of 6 percent—nearly 50 percent more than the voters had approved. The bond funds in *VFW, supra*, 36 Cal.App.3d, p. 694-695, were diverted to local veterans' offices that, with a possible "negligible exception," had no relationship to the veterans' loan program for which the bonds had been approved. The *VFW* court emphasized that 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.) Measured against petitioners' own cited case law, AB 1889 is a valid exercise of legislative authority. Indeed, AB 1889 merely made explicit what Prop 1A already allowed.

II. PETITIONERS' ARGUMENT THAT AB 1889 IS FACIALLY UNCONSTITUTIONAL AS A PARTIAL REPEAL OF THE BOND ACT IS MERITLESS.

Petitioners' argument that AB 1889 is invalid on its face relies on an incorrect statutory analysis. Their statutory analysis is fundamentally flawed because it: (1) fails to consider the statutory scheme as a whole, including but not limited to the express statement of intent in the Bond Act to "initiate," not complete, construction of a high-speed rail system, and (2) relies on "evidence" of legislative intent that was not put before the voters, and therefore is entitled to no or little weight.

A. The Language of the Bond Act Does Not Support Petitioners' Position.

Petitioners argue that in approving the Bond Act, the Legislature and the voters were laser-focused on not allowing bond funds to be spent on construction "until it could be objectively established through expert reports, that there were sufficient funds available to fully construct an operational high-speed rail segment." (Pet. Brief, p. 4.) Petitioners argue the Legislature intended to lure the voters into approving the Bond Act by including section 2704.08's "suitable and ready" requirement in the statute. (Pet. Brief, p. 7.)[7] From that, petitioners infer that

[7] Petitioners also argue that the Governor intended to lure voters by drafting section 2704.08. (Pet. Brief, p. 7). However, there is no competent evidence (much less judicially noticeable facts) that the Governor drafted that language. That is sheer speculation. (See *post*, Section II.D.2.) Petitioners also cite no authority for their implicit proposition that gubernatorial

AB 1889 effected such a substantial change to the Bond Act that it constitutes a partial repeal of the Bond Act.

Petitioner give lip service to the first principle of statutory construction, which is: "'If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters).'" (*Moore v. Superior Court* (2004) 117 Cal.App.4th 401, 406, quoting *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735; see Pet. Brief, p. 19.) But petitioners erroneously examine section 2704.08, subdivisions (c) and(d) in isolation. An analysis of the language of a statute requires that the Court examine, not just the text of the provision at issue, but the structure of the statutory scheme of which it is a part. (*Larkin v. Workers' Comp. Appels Bd.* (2015) 62 Cal.4th 152, 160; *Santos v. Brown* (2015) 238 Cal.App.4th 398, 410.) The courts give particular consideration to any statements of purpose and intent contained in the statute itself. (See *Santos v. Brown*, *supra*, 238 Cal.App.4th at p. 427; *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.App.4th 1010, 1038.)

Here, nothing in the language of the Bond Act suggests that the "suitable and ready' requirement was particularly important to the Legislature or to the voters. Significantly, the statement of legislative intent in the Bond Act itself states:

> 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, including Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego consistent with the authority's certified environmental impact reports of November 2005 and July 9, 2008

(§ 2704.04, subd. (a), emphasis added.) Subdivisions (b) through (d) of section 2704.04, which generally describe the use of bond funds, also fails to support petitioners' argument. The only prohibition expressed in section 2704.04 is that bond funds "shall not be used for any operating or maintenance costs of trains or facilities." (§ 2707.04, subd. (d).)

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intent is even tangentially relevant.

Although the Bond Act defines other terms (§ 2704.01), the phrase "suitable and ready" is not defined. The only references to it are buried in two sub-sub-subdivisions of section 2704.08. Among a laundry list of eleven subjects to be covered 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 the provisions relating to the Authority's final funding plan, is a provision for a report by an independent consultant, that includes a finding that "the corridor or usable segment thereof would be suitable and ready for high-speed train operation" if completed as proposed. (§ 2704.08, subd. (d)(2)(B).) Judge Cadei concluded that "the phrase 'suitable and ready for high-speed train operation' is only a metric in the administrative process." (ROA # 66, p. 3.)

AB 1889's definition of "suitable and ready" reflects the principle of incrementalism implicit in the Bond Act, and necessary to build a public works project of this scope. In crafting the Bond Act, the Legislature recognized, and in approving the Bond Act the voters understood, that for some period of time, segments of the high-speed rail system may be used by conventional passenger rail. For example, the Bond Act provides that, in selecting a usable segment, the Authority shall use criteria including "the need to test and certify trains operating at speeds of 220 miles per hour," and "*the utility of those . . . usable segments . . . for passenger train service 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.) Thus, the Legislature anticipated a period in which high-speed rail service will not yet have begun, but the high-speed rail improvements would be used as test tracks, or for conventional passenger train service, and that such interim use is permissible so long as the Authority will not have to financially support it.

Additionally, section 2704.08 refers to both "high-speed train operation" and "passenger train service," the latter term in subdivision (d)(2)(C), immediately following the "suitable and ready for high-speed train operation" provision. This part of subdivision (d)(2) states that the consultant report shall indicate that, upon completion of the project described in the 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 and operating subsidy." (§ 2704.08, subd. (d)(2)(C), (D), emphasis added.) Moreover, the provision that the passenger train service providers would begin using either the tracks **or** the stations suggests a contemplated interim use by conventional rail, which may not be able to use the stations immediately "upon completion," for example because of lack of platform height compatibility. [8]

All of this intertwines with another important provision of the Bond Act. Section 2704.095 provides that $950 million in bond funds are earmarked for conventional passenger rail. Specifically, section 2704.095, subdivision (a)(1) provides for 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. (Emphasis added.) Twenty percent of this amount is allocated to state supported intercity rail service, like Caltrain. (*Id.*, subd. (a)(2).)

Petitioners do not address the overall structure of the Bond Act or any of the individual features discussed above. Instead they argue that the phrase "suitable and ready" is unambiguous and therefore not subject to clarification. (Pet. Brief, pp. 19-20.) But petitioners then proceed to supply their own "clarification," to wit, that "it would need to have appropriate grades, curves, electrical supply, signals and other safety systems, etc., to allow high-speed train use," and that "once construction were complete under the funding plan it would be ready for high-speed train operation – i.e., no further work would be needed for a high-speed train to begin operation." (Pet.

[8] Petitioners also argue that there is a meaningful distinction between the sources-of-fund provision in section 2704.08, subdivision (c)(2)(D), which refers to "expected commitments, authorizations, agreements, allocations, or other means," and the corresponding provision in subdivision (d)(1)(b), which refers to "offered commitments by private parties, and authorization, allocations or other assurances received from government agencies." (Pet. Brief, p. 18.) Petitioners focus on the "offered commitments" language and argue that in the final funding plan the Authority must demonstrate "that commitments have actually been offered." (*Ibid.*) It is unclear why petitioners assume this would be relevant to whether AB 1889 is a valid amendment to the Bond Act, since AB 1889 does not change this provision. But the "offered commitments" reference is to funding from ***private parties***, which is but one potential funding source.

Brief, p. 20.) Petitioners fail to cite any support for their own proffered clarification. But more importantly, this motion does not turn on whether AB 1889 simply clarifies section 2704.08, subdivision (d) or amends it.[9] In order to prevail, petitioners must, but cannot, demonstrate that AB 1889 so substantially changes the Bond Act as to constitute a partial repeal.

In short, the statutory text and structure of the Bond Act as a whole reflect an intent to use bond funds to begin construction of California's high-speed rail system. The Bond Act recognizes that a project of this magnitude will be developed over time, and that significant components will include improvements to conventional rail that will in the future connect to or be shared with the high-speed rail system. And the Bond Act expressly contemplates interim use of parts of the high-speed rail system by conventional passenger rail service. AB 1889 is entirely compatible with that structure and promotes the purposes and goals of the Bond Act.

B. The Ballot Materials Do Not Support Petitioners' Argument.

Petitioners also get the next step of the analysis wrong. Where the statutory language is ambiguous, the court will consider the ballot materials, including the ballot summary and the Legislative Analysist's evaluation, and arguably 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 12.)[10] Other "evidence" of legislative intent normally is not considered. (*Knight*, *supra*, 128 Cal.App.4th, p. 25 & fn. 4 [holding that ballot materials are the only extrinsic evidence that may be considered].) Petitioners not only contend that evidence other than the ballot materials provided to the voter may be considered, but they also treat ballot materials and other legislative history as though they were of equal importance. (See Pet. Brief, p. 15.) And, in their actual analysis, petitioners jumble together all of disparate pieces and ay out a chain of speculative inferences in an attempt to make the legislative history fit their theory of unconstitutionality. (See, e.g., Pet. Brief, pp. 17-18 [mixing together a discussion

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[9] While the Legislature's finding that a statute is simply a clarification of prior law is not binding on this Court, it is entitled to "due consideration." (*Western States Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244; *Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 590, fn. 13.)

[10] See footnote 11 below.

of the language of section 2704.08, subdivision (d), with citation to and/or arguments based on the Voter Guide, the legislative history of AB 3034, the Authority's 2012 Revised Business Plan, and the Governor's interim budget report].) The discussion below attempts to sort out petitioners' disparate arguments.

1. The Ballot Materials Emphasize That Bond Funds Would Be Used for Planning, Engineering and Initial Construction.

This motion could be decided on the basis of the text of the Bond Act itself, but the ballot materials provide further support for AB 1889's validity, and stand in contradiction to petitioners' argument that voters were induced to approve the Bond Act because of the addition of the "suitable and ready" provision.

First, as petitioners note, the Legislature drafted the official title and summary to the Bond Act. (Pet. Brief, p. 9 fn. 6; *Howard Jarvis Taxpayers Assn. v. Bowen* (2011) 192 Cal.App.4th 110, 127-128.) Presumably, it included in that summary the information it deemed most important to the voters. Yet that summary omits any suggestion that bond funds would only be spent when and if there are "sufficient funds available to fully construct an operational high-speed rail segment." (Pet. Brief, p. 7.) The official summary describes the general benefits of a high-speed rail system in California, states that "at least 90% of the bond funds shall be spent for specific construction projects, with private and public matching funds required," and adds that "use of all bond funds is subject to independent audits." (Official Voter Information Guide ("Voter Guide"), Pet. RJN, Exh. J, p. 4.)[11] The voters were told 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.*, p. 3.) There is no mention of any specific engineering or other technical requirements.

[11] The Voter Guide Quick Reference Guide Summary similarly, states that the measure would approve bonds funds, 90% of which would be "spent for specific projects," with matching funds required. (*Id.* at p. 3.)

The Legislative Analyst's evaluation in the Voter Guide also does not support petitioners' position. It specifically warns that the Authority's 2006 estimate of the cost of the entire system was $45 billion, and 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." (Voter Guide, p. 5.) It does not assure, as petitioners contend, that bond funds will be spent only if there are sufficient funds to "fully construct an operational high-speed rail segment," as petitioners claim (Pet. Brief, p. 7.) Instead, it states:

> The bond funds may be used for environmental studies, planning and engineering of he 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.

(*Id,* p. 5.)[12]

In ruling that petitioners had not shown a probability of success on the merits of their declaratory relief claim, Judge Cadei considered both the ballot materials and text of the Bond Act:

> 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, 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. In short, the "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"

[12] Two courts of appeal have held that ballot arguments contained in a voter guide are not relevant to determining voter intent. (*Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Unified School District* (2006) 139 Cal.App.4th 1356, 1397; *Associated Students of North Peralta Community College v. Bd. of Trustees of Peralta Community College Dist.* (1979) 92 Cal.App.3d 672, 678-679 ("*Associated Students*").) But even if considered, the Voter Guide ballot arguments add nothing to petitioners' claims. The arguments against the measure explicitly warned voters that approval of the Bond Act did not assure success. (See Voter Guide, pp. 3, 6.) The arguments in favor extolled the benefits of the high-speed rail system once completed, but did not claim that the measure guarantees construction of the system, or even a fully operational segment of the system. (See *id.* at pp. 6-7.)

specified in Prop. 1A. The stated goal remains the construction of a high-speed train system.

The court concludes that Plaintiffs have not shown a probability of success in establishing §2704.78 necessarily conflicts with the "single object or work" "distinctly specified" in Prop. 1A, or that the new law makes "substantial changes in the scheme or design which induced voter approval" that effectively repeal Prop. 1A in violation of article XVI Section 1 of the California Constitution.

(ROA # 64, p. 10.) Petitioners do not even acknowledge—let alone refute—the Court's analysis, which is compelling and fully consistent with the Bond Act and applicable law.

In short, the ballot materials support the conclusion that AB 1889 is a valid exercise of legislative authority and is not an unconstitutional partial repeal of the Bond Act.

2. Petitioners' Arguments Misconstrue the Voter Guide.

Petitioners ignores the Voter Guide's statements emphasizing the incremental nature of constructing a high-speed rail system, and the fact that bond funds will jump-start the program but not assure completion. Instead, petitioners exclusively focus on a handful of statements referring to financial accountability and oversight. Thus, petitioners argue that Legislative Analyst "touted" that "the measure 'requires accountability and oversight of the use of bond funds'" and that the argument in favor of the measure "emphasized that the measure required, 'Public oversight and *detailed independent review of financing plans.*'" (Pet. Brief, p. 9, quoting Voter Guide, pp. 5-6, emphasis in original; see *id.* at pp. 23-24, citing Voter Guide, p. 6.) However, these statements do not support petitioners' position. 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.***[13]

[13] At least 90 days before the Authority may request an appropriation of funds for construction, it must submit a preliminary funding plan to the Director of Finance, to the peer review group, to "policy committees with jurisdiction over transportation matters, and [to] the fiscal committees in both houses of the Legislature." (§ 2704.08, subd. (c)(1).) After the Authority submits its funding plan to the Legislature, the Legislature must decide whether to appropriate funds and the Governor must decide whether to sign or veto the appropriation. (See *CHSRA*, *supra*, 228 Cal.App.4th at pp. 713-714; SB 1029.) Before the Authority may actually expend bond funds, it must submit a second, final funding plan to the Director of Finance, to the Chairperson of the Joint Legislative Budget Committee, and to the peer review group. (*Id.*, § 2704.08, subd. (d); Pub. Util. Code, § 185035, subds. (a), (c)-(e).) The plan also must include one or more reports by independent consultants. (*Id.*, § 2704.08, subd. (d).) After receiving any

It is this multi-step structure of oversight to which the Court of Appeal in *CHSRA* was referring when it stated: "[T]he voters clearly intended to place the Authority in a financial straitjacket by establishing a mandatory multistep process to ensure the financial viability of the project." (228 Cal.App.4th at p. 706.) This multi-step oversight process remains intact. Petitioners' arguments based on the Voter Guide should be rejected.

C. Petitioners' Argument Based on an Assembly Floor Report on AB 1889 Lacks Merit

Petitioners make the novel argument that the legislative history of AB 1889 implies its own unconstitutionality. They note a single sentence in an Assembly floor analysis, which petitioners "interpret" as "explaining that without the bill, bond funds might not be usable unless funds were available to construct a fully usable segment capable of immediate high-speed train operation," and from this petitioners extrapolate that the Legislature "was aware that the [sic] § 2704.08 appeared, on its face, to require full funding for a functional high-speed rail segment before bond funds could be committed to its construction." (Pet. Brief, p. 20, emphasis in original.)

The floor report is irrelevant because it was not before the voters when they approved the Bond Act. (See *Lorenzo Valley Community Advocates for Responsible Education*, *supra*, 139 Cal.App.4th at p. 1397; *Associated Students*, *supra*, 92 Cal.App.3d at pp. 678-679.) Moreover, it is not susceptible to petitioners' interpretation. Read in context, the report does not express the Legislature's interpretation of the Bond Act, but rather the Legislature's aspiration that enacting AB 1889 might avert or mitigate subsequent litigation and possible further delay of the high-

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communication from the Joint Budget Committee, the Director of Finance must determine whether that final funding plan is likely to be successfully implemented as proposed, and only if the Director of Finance does so may the Authority proceed to spend bond funds on construction. (§ 2704.08(d)(2).) AB 1889 does not change any of these oversight requirements.

In addition to these requirements specific to the funding plan, the Authority is required to submit to the Legislature bi-annual business plans. (Pub. Util. Code, § 185033.) The Legislature also is authorized to impose conditions and criteria on the Authority's use of bond funds. (§ 2704.06.) Indeed, in its 2012 appropriation, the Legislature imposed numerous conditions on the Authority's use of funds. (See SB 1029, §§ 3, subds. 6-9; 9, subds. (2), (4).)

speed rail project. The report, recognizing that the SB 1029 appropriation of bond funds required that the monies be encumbered by June 30, 2018,[14] states:

> This bill would *explicitly* allow for expenditure of bond funds in the near term for projects that benefit passenger train service without providing funding for investments in a usable segment that would be necessary for the immediate operation of high-speed trains. Absent this bill, these funds *may not* be available for project expenditures prior to expiration of the June 30, 2018, encumbrance limitation tied to the previous appropriation of bond funds.
>
> * * *
>
> . . . [B]ased on experience with [preliminary] Funding Plan (c), it is likely that the merits of Funding Plan (d) will be litigated. If there is litigation, the Authority's ability to use the bond proceeds for the high-speed rail project and the Bookends will likely be delayed until the litigation is resolved.
>
> When the Authority submits a [final] Funding Plan (d) for the Caltrain project, or any other corridor or usable segment. . . ., [it] is likely to face litigation. This bill could serve to provide a court with additional understanding of the intent of the Legislature when appropriating Prop. 1A funds. . . .

(Report, pp. 2-5, emphasis added.) Thus, the document suggests that in enacting AB 1889, the Legislature hoped to avoid or mitigate the adverse effects of litigation, not, as petitioners contend, because the Legislature understood the Bond Act "to require full funding for a functional high-speed rail segment before bond funds could be committed to its construction."[15]

D. Petitioners' Reliance on Other Extrinsic Evidence is Misplaced

Petitioners' ask the Court to take judicial notice of several other documents petitioners claim is relevant legislative history for AB 3034, including, among other materials, an excerpt from an interim budget report, a letter urging the Governor to sign AB 3034, and an enrolled bill memorandum prepared by an agency with no role in the high-speed rail program or its oversight. This "evidence" adds nothing. First, these materials are not admissible, much less persuasive, to show voter intent, since they were not presented to the voters. Second, the documents on their face do not support petitioners' position.

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[14] The deadline was recently extended to June 30, 2022 in Senate Bill No. 840. (Stats. 2018, ch. 29, § 2.00, items 2665-491, 2665-492, p. 183.)

[15] Petitioners' arguments are internally inconsistent. One the one hand, they argue that the Assembly Report on AB 1889 in 2016 is evidence of what the Bond Act, enacted in 2008, means. (Pet. Brief, p. 20.) Yet on the very next page petitioners argue that "the statement of the Legislature some eight years later [expressed in AB 1889] can be given little, if any, weight." (*Id.* at p. 21.) If legislation itself (i.e., AB 1889) is entitled to little weight in construing the Bond Act, an underlying Assembly floor report should be entitled to none.

1. The extrinsic evidence is irrelevant.

Courts generally do not consider legislative history or other evidence not presented to the voters. *See Santos v. Brown*, *supra*, 238 Cal.App.4th at p. 426. See *Associated Students*, 92 Cal.App.3d at pp. 677-679 [holding that only the statute, the school district resolution, and the ballot proposition were relevant to voter intent in approving a bond measure, other documents will not be considered unless effectively incorporated by reference into the measure].)[16]

In the context of voter-approved bond measures, the intent of legislators cannot be equated with voter intent. *Associated Students*, *supra*, 92 Cal.App.3d at pp. 679-680. The cases sometimes discuss legislative history as being *consistent with* the court's construction. For example, in *Rossi v. Brown* (1995) 9 Cal.4th 688, 693, the case on which petitioners' rely for their contention that the legislative history of AB 1334 should be considered as evidence of voter intent, the court held that the constitutional and charter provisions at issue in that case were unambiguous, so "there is no need to look beyond the words of these documents," but the available history nonetheless supported the Court's conclusion. *See Santos v. Brown*, *supra*, 238 Cal.App.4th at p. 426. Here, petitioners are not simply using legislative history as background, but instead ask the Court to decide what the voters thought was ***important*** when they approved the Bond Act, and to do so based on documents that the voters never received. The Court should decline to do so.

2. Even if considered, the documents for which petitioners seek judicial notice do not support their position.

Most of petitioners' extrinsic evidence is not appropriately subject to judicial notice.[17] But petitioners' arguments based on that evidence fail even if the Court were to consider it.

While the court may take judicial notice of the existence of a document and its contents, it may not take judicial notice of "the truthfulness of its contents or the interpretation of statements

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[16] In *Associated Students*, the court held that the bond act did not require construction of four college campuses, even though, prior to the election there was "considerable publicity" indicating an intent to build four campuses, and "all interested parties fully expected that four campuses would be built." (92 Cal.App.3d at pp. 675, 681.)

[17] See Respondents' Objections to Pet. RJN, filed herewith.

contained therein, if those matters are reasonably disputable. (*Apple, Inc. v. Superior Court* (2017) 18 Cal.App.5th 222, 241; see *Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 660 (2015).) And the court may not convert a hearing on a motion for judgment on the pleadings into a contested evidentiary proceeding "through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable." (*Unruh-Haxton v. Regents of University of California* (2008) 162 Cal.App.4th 343, 365; see *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 115.)

Petitioners' motion spins a tale based on their subjective interpretation of various documents that were not put before the voters. Petitioners' tale starts with a four-page excerpt from an 84 page interim budget report by then-Governor Schwartzenegger, which mentions a future amendment that his administration intended to propose "to ensure 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.[18] The report states 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 secure." (Pet. RJN, Exh. F, p. 28.) Notably, the report refers simply to "service," not "high-speed train service." (*Ibid.*) Ignoring that subtlety, petitioners ask the Court to infer that the administration actually followed up on the interim budget report and proposed revisions to the Legislature's amendments, that the "suitable and ready" provision was a key component, and that the Legislature accepted those revisions as proposed and shared the Governor's expressed intent, including that the "suitable and ready" provision was critically important—even though the Legislature's own title and summary makes no mention of that provision. Finally, petitioners ask the Court to infer that the "suitable and ready" requirement was in fact of critical importance to the voters. This bootstrapping of inference upon inference upon inference is nonsense.

[18] Petitioners previously sought judicial notice of this document in support of their opposition to the Authority's demurrer to petitioners' First Amended Complaint. (ROA # 42.) Judge Cadei sustained respondents' objection to the document. (See ROA ## 49, 66, p. 1.)

Even if the Court *were* to consider the changes made to AB 3034 as it made its way through legislative sausage-making, the legislative history supports a conclusion that the key 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), not the "suitable and ready" metric. The legislative history shows that ***nearly all of section 2704, subdivisions (c) and (d)***, changed between the initial version of the bill introduced on February 11, 2008 and the June 22, 208 version that petitioners claim was the result of the Governor's intervention. (Compare Pet. RJN, Exh. D with *id.*, Exh. G.) There is no basis for concluding from this history that a single phrase, buried in two sub-sub-subdivisions of a lengthy statute, was significant even to the Legislature, much less the voters.

E. If the Court Considers It Appropriate to Look Beyond the Ballot Materials, It Should Consider the Legislative Counsel's Opinion.

The Court's examination of extrinsic evidence generally should go no further than the ballot materials, since those are the materials the voters had before them when approving the Bond Act. If the Court disagrees and considers the documents submitted by petitioners, it also 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. That opinion interpreted the "suitable and ready" requirement in the context of the Bond Act as a whole and in a manner entirely consistent with AB 1889. (Respondents' RJN, Exh. 2 [Legislative Counsel Opinion (June 8, 2012)], p. 15.) The Legislative Counsel analyzed the Authority's preliminary funding plan for the Central Valley, which was the precursor to the Central Valley Funding Plan at issue in this litigation. That funding plan did not include electrification and other elements needed to run high-speed trains on the segment, yet the Legislative Counsel concluded that that earlier plan met the Bond Act requirement for being "suitable and ready for high-speed train operation." (*Ibid.*) Thus, if resort to extrinsic evidence not presented to the voters is to be had, the Legislative Counsel's opinion should be considered. (See *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 939 ["Opinions of the Legislative Counsel, though not binding, are entitled to great weight when courts attempt to discern legislative

intent."]; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 35.)

In sum, for all the reasons discussed above, petitioners' constitutional challenge to AB 1889 fails as a matter of law.

III. PETITIONERS ARE NOT ENTITLED TO A DECLARATORY JUDGMENT IN THEIR FAVOR AS A MATTER OF LAW BECAUSE RESPONDENTS' AFFIRMATIVE DEFENSES RAISE FACTUAL ISSUES THAT PRECLUDE SUCH RELIEF.

Code of Civil Procedure section 1060 provides a mechanism whereby a party may seek a declaration as to its rights and duties with respect to another, and "the court may make a binding declaration of those rights and duties." (*Coruccini v. Lambert* (1952) 113 Cal.App.2d 486, 489.) This mechanism allows a plaintiff to obtain a declaratory judgment, even where the declaration is unfavorable to the plaintiff. (*Id.* at p. 490; *C. Dudley De Velbiss Co. v. Kraintz* (1951) 101 Cal.App.2d 612.) To the extent petitioners are entitled to a declaration of their rights and duties as to the constitutionality of AB 1889, the Court should declare the statute to be a valid legislative enactment. (See *Coruccini v. Lambert*, *supra*, 113 Cal.App.2d at p. 489; *C. Dudley De Velbiss Co. v. Kraintz*, *supra*, 101 Cal.App.2d 612. See also Code Civ. Proc. § 438, subd. (b)(2).)

However, if declaratory relief in favor of petitioners were otherwise warranted, and it is not for the reasons described in Sections I and II above, respondents' affirmative defenses should preclude judgment on the pleadings in petitioners' favor. The Authority's Ninth and Tenth Defenses assert that declaratory relief in petitioners' favor should be denied because a ruling that AB 1889 is facially unconstitutional is not necessary or proper at this time, and it could cause "severe harm to the public while providing no substantial benefit to petitioners." These defenses raises factual issues that cannot be resolved on a motion for judgment on the pleadings.[19]

[19] Petitioners also argue that, absent a declaration as to the validity of AB 1889, petitioners would have to seek a writ of mandate every time the Authority made a decision in reliance of AB 1889. (Pet. Brief, p. 27.) Petitioners' assumption that the Authority is likely to issue a series of future funding plans that will necessarily rely on AB 1889 is not supported by the allegations of the SAP as admitted by the Authority's Amended Answer. AB 1889 provides a definition of "suitable and ready" applicable to the appropriation approved in SB 1029 in 2012. Only about $425 million from that appropriation remains unallocated; those funds must be spent in the Los Angeles area, (See SB 1029, § 3, subd. 1; Pet. RJN, Exh. N, p. 5), and well may be allocated in a single funding plan. The specter of a string of future funding plans triggering future multiple future lawsuits is unlikely, and the "suitable and ready" metric appropriately should be decided in

An action for declaratory relief is an equitable claim, which the court may exercise its discretion to deny. "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; *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."].)

The principle that a court has discretion to deny declaratory relief is consistent with the related tenet that courts have discretion to deny mandamus. For example, in *CHSRA*, the Court of Appeal overturned a writ issued by the trial court that had ordered the Authority to withdraw and redo its preliminary funding plan for the Central Valley. The Court expounded on the basic principles: 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." (*CHSRA*, *supra*, 228 Cal.App.4th, p. 707; see *County of San Diego v. State* (2008) 164 Cal.App.4th 580, 593 [recognizing that "issuance of a writ of mandate is not necessarily a matter of right, but rather lies within the discretion of the court."]. Accord *Cota v. County of Los Angeles* (1980) 105 Cal.App.3d 282, 292 [affirming trial court denial of declaration and injunctive relief on part because of the potential for severe harm to the public].) The analogy to mandamus proceedings is especially apt here, where the Court has already concluded that "the phrase 'suitable and ready for high-speed train operation' is only a metric in the administrative process," and that "the declaratory relief action is integral to and dependent upon the challenge to [the Authority's] administratively formulated Funding Plans." (ROA # 66, p. 3.) If the Court is not prepared to issue a declaration that AB 1889 is facially constitutional, it should defer any decision on petitioners' claim for declaration until the merits hearing on petitioners' writ petition.

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the context of one or more final funding plans.

The consequences that might flow from a declaratory judgment invalidating AB 1889 are unclear. In adopting AB 1889, however, the Legislature intended to provide the courts with "an additional understanding of the intent of the Legislature when appropriating Prop. 1A funds," so as to reduce the potential negative consequences of litigation challenging the Authority's funding plans, including the potential that the "Authority's ability to use the bond proceeds for the high-speed rail project" would be delayed until the litigation is resolved. (Petitioners' RJN, Exh. P, pp. 205.)[20] This and other potentials for harm to the public should be factually evaluated by the Court before exercising its discretion to grant declaratory relief.

CONCLUSION

Respondents respectfully submit that the only declaratory relief that could be entered on this motion would be a declaration upholding the constitutionality of AB 1889. A declaration invalidating AB 1889 would require that the Court consider the potential for severe harm to the public from such a judgment, a fact-driven inquiry not appropriate for resolution on a motion for judgment on the pleadings.

Dated: August 30, 2018

Respectfully Submitted,

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[20] The Authority does not concede that AB 1889 is necessary for the challenged funding plans to be found compliant with the Bond Act.

DECLARATION OF SERVICE

Case Name: **Tos, John, et al. v. California High-Speed Rail Authority (Tos II)**

No.: **34-2016-00204740**

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; my business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004.

On August 30, 2018, I served the attached **RESPONDENTS' OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS** by placing a true copy thereof enclosed in a sealed envelope with the **GOLDEN STATE OVERNIGHT**, addressed as follows:

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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 August 30, 2018, at San Francisco, California.

Susan Chiang
Declarant

Signature

SA2016104863