

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

<b>DATE/TIME</b>	<b>February 16, 2018, 10:00 a.m.</b>	<b>DEPT. NO</b>	<b>28</b>
<b>JUDGE</b>	<b>HON. RICHARD K. SUEYOSHI</b>	<b>CLERK</b>	<b>E. GONZALEZ</b>
<b>JOHN TOS, et al.,</b>  <b>Petitioners and Plaintiffs,</b>  <b>v.</b>  <b>THE STATE OF CALIFORNIA, et al.,</b>  <b>Respondents and Defendants.</b>		<b>Case No.: 34-2016-00204740</b>	
<b>Nature of Proceedings:</b>		<b>STATE OF CALIFORNIA’S DEMURRER, CALIFORNIA HIGH-SPEED RAIL AUTHORITY’S DEMURRER AND MOTION TO STRIKE, PETITIONERS’ MOTION TO BIFURCATE</b>	

The following shall constitute the Court’s tentative ruling on the various motions scheduled to be heard in this matter by the Court on Friday, February 16, 2018 at 10:00 a.m. in Department 28. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

In the event that a hearing is requested, oral argument shall be limited to no more than 20 minutes per side.

Any party desiring an official record of this proceeding shall make arrangements for reporting services with the Clerk of the Department where the matter will be heard not later than 4:30 p.m. on the day before the hearing. The fee is \$30.00 for civil proceedings lasting under one hour, and \$239.00 per half day of proceedings lasting more than one hour. (Local Rule 1.12(B) and Government Code § 68086.) Payment is due at the time of the hearing.

**STATE OF CALIFORNIA’S DEMURRER**

**I. Factual and Procedural Background**

Respondent, State of California, has filed the instant demurrer on the basis that the only cause of action seeking relief against it is the first cause of action for declaratory relief, and the State is not a proper party to the cause of action. Respondent contends the only allegations in the Second Amended Petition (hereinafter, the “SAP”) pertaining to it are found in paragraphs nine

and ten, identifying the State as including actions taken by the Legislature, including the Legislature's decision to enact AB 1889. The SAP alleges that enacting AB 1889 was unconstitutional on its face as violative of Article XVI Section 1 of the California Constitution.

## **II. Standard**

A defendant may demur to the entire complaint or any of the causes of action within it. (Code Civ. Proc., § 430.50(a).) In reviewing the sufficiency of a complaint against a demurrer, the trial court considers the properly pleaded material facts and matters that may be judicially noticed and tests their sufficiency. (*Cedar Fair, L.P. v. County of Santa Clara* (2011) 194 Cal.App.4th 1150, 1158-59.) A court should not sustain a demurrer unless the complaint, liberally construed, fails to state a cause of action on any theory. Doubt in the complaint may be resolved against plaintiff and facts not alleged are presumed not to exist. (*Kramer v. Intuit, Inc.* (2004) 121 Cal.App.4th 574, 578.) In reviewing a demurrer, the Court will not "assume the truth of contentions, deductions or conclusions of fact or law and may disregard allegations that are contrary to the law or to a fact of which judicial notice may be taken." (*Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 493.)

## **III. Discussion**

The State argues it is not generally a proper party as to which relief may be granted in a declaratory relief action contesting the constitutionality of a statute. (See *State v. Superior Court* (1974) 12 Cal.3d 237, 255)(finding a cause of action concerning constitutionality of an act on its face did not establish a right to declaratory relief against the State.) The State contends the Authority has been named in, and is a proper party to the action, but that the State has no responsibility for implementing the Bond Act or for complying with funding plan requirements. Further, the State contends it has no legal interest in the constitutionality of its statutes.

The State also cites to *Serrano v. Priest* (1976) 18 Cal.3d 728, 752 for the proposition that state officials charged with administering a statute are proper defendants in a constitutional challenge, instead of the Governor and Legislature.

Petitioners counter that *State* is distinguishable because although the State had been named as a party, the petition did not contain any allegations establishing a right to declaratory relief against it. Petitioners assert paragraphs 87 and 88 of the SAP allege an actual controversy between Petitioners and the State, making the State a proper party to the action. These paragraphs provide,

“87. PETITIONERS are informed and believe and on that basis allege that CALIFORNIA also asserts that AB 1889 and § 27045.78 [sic] are valid legislative enactments.

88. PETITIONERS, on the other hand, assert that AB 1889 and Streets & Highways Code § 2704.78 violate Article XVI Section I of the California Constitution.”

Petitioners then cite to a number of cases in which the State was a defendant in a declaratory relief action concerning the validity of a statute. (See, e.g., *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327; *City of Cerritos v. State of California* (2015) 239 Cal.App.4th 1020.)

The Court finds the State has not demonstrated that it is a patently improper Defendant. The Court does not find *Serrano* controlling as the State insists, as *Serrano* involved the determination of whether the State was an indispensable party such that it *had* to be joined for the case to proceed. Here, the issue is not whether the State *must* be a party, but whether the SAP is subject to demurrer because Petitioners identified it as such. The Court finds it is not. Cases cited by Petitioners demonstrate that the State may be a party to statutory challenges on the basis of constitutionality.

**IV. Conclusion**

The demurrer is **OVERRULED**. Respondent shall file and serve a responsive pleading within thirty days of the entry of the Court’s order.

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In the event that this tentative ruling becomes the final ruling of the Court, the Court’s minute order will be effective immediately. No formal order or other notice is required. (Code Civ. Proc. § 1019.5; CRC Rule 3.1312.)

**CALIFORNIA HIGH-SPEED RAIL AUTHORITY’S DEMURRER**

**I. Factual and Procedural Background**

Respondent California High-Speed Rail Authority (hereinafter, the “Authority”) has filed the instant demurrer to the SAP on the basis that the allegations of the second cause of action fail to state facts sufficient to constitute a cause of action because, “the Authority’s administrative decisions can only be challenged by petition for writ of mandamus.” (Ntc., p. 6.)

The SAP’s second cause of action is for injunctive relief pursuant to Code of Civil Procedure section 526a. Petitioners allege the Authority has expended public funds toward the preparation and approval of Funding Plans in reliance on the validity of AB 1889, and that the CV Segment Funding Plan has been approved and \$1.25 billion of Prop 1A bond funds have been sold for use in the CV Segment’s construction. (SAP, ¶¶ 92-94.) Petitioners further allege these expenditures are illegal and must be enjoined in light of AB 1889’s unconstitutionality. (SAP, ¶¶ 96-100.)

Petitioners consequently seek to enjoin the Authority from expending any Prop. 1A bond funds towards the implementation of the Funding Plans already approved, and from expending

any public funds toward the completion of funding plans currently in progress that rely on AB 1889. (SAP, ¶ 105.)<sup>1</sup>

Prior to the filing of the SAP, the Court sustained the Authority's demurrer to the FAP, and gave leave to amend "in accord with the court's ruling on the demurrer with regard to the issue of ripeness and the nature of the claim asserted as being one in mandamus." The FAP had sought a preliminary injunction and permanent injunction preventing the Authority from expending any public funds toward the approval of a Funding Plan that relies on AB 1889 for purported compliance with the requirements of Prop 1A. The Authority's demurrer contended that this cause of action failed because any such challenge had to be brought in the form of a petition for writ of mandamus, not a civil complaint seeking injunctive relief pursuant to Code of Civil Procedure section 526a.

The Court held,

[a]t its core, Plaintiffs' second cause of action is necessarily a challenge to [the Authority's] administratively formulated Funding Plans, based upon the contention that those plans are infected with the alleged unconstitutional loosening of statutory plan requirements embodied in new § 2704.78...Consequently, the action framed by the FAC is one that must be adjudicated in mandamus, and should be construed as such."

Petitioners subsequently filed the SAP, and the Authority filed the instant demurrer.

## **II. Standard**

A defendant may demur to the entire complaint or any of the causes of action within it. (Code Civ. Proc., § 430.50(a).) In reviewing the sufficiency of a complaint against a demurrer, the trial court considers the properly pleaded material facts and matters that may be judicially noticed and tests their sufficiency. (*Cedar Fair, L.P. v. County of Santa Clara* (2011) 194 Cal.App.4th 1150, 1158-59.) A court should not sustain a demurrer unless the complaint, liberally construed, fails to state a cause of action on any theory. Doubt in the complaint may be resolved against plaintiff and facts not alleged are presumed not to exist. (*Kramer v. Intuit, Inc.* (2004) 121 Cal.App.4th 574, 578.) In reviewing a demurrer, the Court will not "assume the truth of contentions, deductions or conclusions of fact or law and may disregard allegations that are contrary to the law or to a fact of which judicial notice may be taken." (*Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 493.)

## **III. Discussion**

Code of Civil Procedure section 526a provides that an action to obtain a judgment, restraining and preventing any illegal expenditure of funds of a county, town, city or city and county of the state, may be maintained against any officer thereof.

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<sup>1</sup> The SAP also contains causes of action for writs of mandamus, and declaratory relief. The Authority has not demurred to these causes of action.



