

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

<b>DATE/TIME</b>	<b>October 26, 2018, 11:00 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>PETITIONERS' MOTION FOR JUDGMENT ON THE PLEADINGS</b>	

The following shall constitute the Court's tentative ruling on the motion for judgment on the pleadings, which is scheduled to be heard in this matter by the Court on Friday, October 26, 2018 at 11:00 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, subject to questions by the Court.

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.

**I. Factual Background**

The Legislature enacted the California High-Speed Rail Act in 1996. (Pub. Util. Code, § 185000, et seq. (hereinafter, the "Rail Act").) The Rail Act created the High-Speed Rail Authority (hereinafter, the "Authority") (Pub. Util. Code § 185012) and tasked it with developing and implementing an intercity high-speed rail service (hereinafter, the "HSR system"). (Pub. Util. Code §§ 185030, 185032.)

In 2008, Proposition 1A was placed before California voters to enact the “Safe, Reliable High-Speed Passenger Train Bond Act for the 21<sup>st</sup> Century.” The Official Voter Information Guide for November 4, 2008 summarized the decision whether to enact Proposition 1A as,

[t]o provide Californians a safe, convenient, affordable, and reliable alternative to driving and high gas prices; to provide good-paying jobs and improve California’s economy while reducing air pollution, global warming greenhouse gases, and our dependence on foreign oil, shall \$9.95 billion in bonds be issued to establish a clean, efficient high-speed train service linking Southern California, the Sacramento/San Joaquin Valley, and the San Francisco Bay Area, with at least 90 percent of bond funds spent for specific projects, with private and public matching funds required, including, but not limited to, federal funds, funds from revenue bonds, and local funds, and all bond funds subject to independent audits?” (Pet. RJN, Exh. J.)

The Official Voter Information Guide further indicated that a “yes” vote meant “[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.” A “no” vote meant, “[t]he state could not sell \$9.95 billion in general obligation bonds for these purposes.” (*Id.*) The description of Proposition 1A and arguments for and against it were followed by “an Overview of State Bond Debt.” (*Id.*)

The Voter Information Guide includes a bullet-point list in the “Official Title and Summary” section concerning the proposed Bond Act. This list includes, among others,

- Establishes a clean, efficient 220 MPH transportation system.
- Improves existing passenger rail lines serving the state’s major population centers.
- Provides that at least 90% of [the] bond funds shall be spent for specific construction projects, with private and public matching funds required, including but not limited to, federal funds, funds from revenue bonds, and local funds.
- Requires that use of all bond funds is subject to independent audits. (*Id.* at 4.)

In the “Analysis by the Legislative Analyst” section, there is a subdivision titled “Proposal” (*Id.* at 5.) The introduction to this section provides,

This measure authorizes the state to sell \$9.95 billion in general obligation bonds to fund (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.

...

The measure requires accountability and oversight of the authority’s use of bond funds authorized by this measure for a high-speed train system. Specifically, the

bond funds must be appropriated by the Legislature, and the State Auditor must periodically audit the use of the bond funds. In addition, the authority generally must submit to the Department of Finance and the Legislature a detailed funding plan for each corridor or segment of a corridor, before bond funds would be appropriated for that corridor or segment. The funding plans must also be reviewed by a committee whose members include financial experts and high-speed train experts. An updated funding plan is required to be submitted and approved by the Director of Finance before the authority can spend the bond funds, once appropriated. (*Id.* at 5.)

California voters approved Proposition 1A (also referred to herein as the “Bond Act.”) (Streets and Highways Code §§ 2704, *et seq.*<sup>1</sup>) The Bond Act is in Division 3 of the Streets and Highways Code, which Division concerns the “Apportionment and Expenditure of Highway Funds.”

The Bond Act identifies requirements the high-speed rail system must meet prior to receipt of the funds, including that the high-speed rail system “shall be designed to achieve the following characteristics...

(b) Maximum nonstop service travel times for each corridor that shall not exceed the following:

- (1) San Francisco-Los Angeles Union Station: two hours, 40 minutes.
- (2) Oakland-Los Angeles Union Station: two hours, 40 minutes.
- (3) San Francisco-San Jose: 30 minutes...

(c) Achievable operating headway (time between successive trains) shall be five minutes or less...

(g) In order to reduce impacts on communities and the environment, the alignment for the high-speed train system shall follow existing transportation or utility corridors to the extent feasible and shall be financially viable, as determined by the authority.” (§ 2704.09.)

The Authority must prepare, publish, adopt, and submit to the Legislature, a business plan, which they must review and resubmit every two years. (Pub. Util. Code § 185033.) Before committing appropriated bond funds to construction, the Authority must approve and submit a detailed funding plan concerning the specific corridor or usable segment, to the Director of Finance, the peer review group established pursuant to section 185035 of the Public Utilities Code, and the policy committees with jurisdiction over transportation matters and the fiscal committees in both houses of the legislature. (§ 2704.08.)

Pursuant to section 2704.08, subdivision (c)(2)(H) the funding plan must certify that “the corridor or usable segment thereof would be suitable and ready for high-speed train operation.” This language is reiterated in subdivision (d) requiring the Authority to have obtained a “a report

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<sup>1</sup> All further statutory references are to the Streets and Highways Code, unless otherwise indicated.

or reports, prepared by one or more financial services firms, financial consulting firms, or other consultants, independent of any parties, other than the authority, involved in funding or constructing the high-speed train system, indicating that... (B) if so completed, the corridor or usable segment thereof would be suitable and ready for high-speed train operation.”

In 2014, The Third District Court of Appeal issued a ruling on Petitioners’ challenge in a separate lawsuit concerning the Authority’s issuance of a preliminary funding plan pursuant to section 2704.08, subdivision (c). (*California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th 676, 684.) In directing the superior court to vacate the writ of mandate, the Court noted, “[a]lthough we agree with the Tos real parties in interest that the 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... [the] challenge to the preliminary funding plan was too late to have any practical effect...” (*Id.* at 706.) Further discussing the intent of the voters, the court provided, “the voters designed a financing program to ensure that construction of a segment would not begin until potential financial or environmental obstacles were cleared.” (*Id.* at 710.)

The Third District did not analyze the language “suitable and ready for high-speed train operation” as part of its ruling in *California High-Speed Rail Authority*.

In 2016 the Legislature passed AB 1889. It added section 2704.78, and provides in subdivision (a),

For purposes of the funding plan required pursuant to subdivision (d) of Section 2704.08, a corridor or usable segment thereof is “suitable and ready for high-speed train operation” if the bond proceeds, as appropriated pursuant to Senate Bill 1029 of the 2011-12 Regular Session (Chapter 152 of the Statutes of 2012), are to be used for a capital cost 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.

Shortly thereafter, the Authority began to prepare and approve Funding Plans. The first cause of action of the Second Amended Petition seeks declaratory relief that AB 1889, and consequently Streets & Highways Code section 2704.78 is unconstitutional. Petitioners have filed the instant motion for judgment on the pleadings on the first cause of action to “determine the constitutionality and validity of AB 1889, enacting California Streets & Highways Code section 21704.78.” (Notice, p. 1.)

## **II. Legal Standard**

The grounds for a motion for judgment on the pleadings “shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice.” (Code Civ. Proc., § 438(d).) The standard of review for a motion for judgment on the pleadings is essentially the same as a demurrer. (*County of Orange v. Association of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th 21, 32.) In considering a motion for judgment on the

pleadings, the Court accepts the complaint's properly pleaded factual allegations as true and gives them liberal construction. (*Ibid.*)

This facial challenge to the constitutionality of a statute requires the Court to determine the intent of the voters in passing Proposition 1A, and whether AB 1889 is consistent with that intent. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 979.) To do so, the Court must engage in statutory interpretation, which is an issue of law on which the court exercises its independent judgment. (See, *Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1082.) "Ascertaining the will of the electorate is paramount." (*Cal. High-Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th 676, 708.) "Statutes adopted by the voters must be construed liberally in favor of the people's right to exercise their reserved powers, and it is the duty of the courts to jealously guard the right of the people by resolving doubts in favor of the use of those reserved powers." (*Id.*)

However, whether a statute is enacted by the voters or passed by the Legislature, the same basic rules of statutory construction apply. (*Id.*) The starting point for the task of interpretation is the wording of the statute itself, because these words generally provide the most reliable indicator of legislative, or elector, intent. (See, *Murphy v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.) The language used in a statute is to be interpreted in accordance with its usual, ordinary meaning, and if there is no ambiguity in the statute, the plain meaning prevails. (See, *People v. Snook* (1997) 16 Cal.4th 1210, 1215.) The court should give meaning to every word of a statute if possible, avoiding constructions that render any words surplus or a nullity. (See, *Reno v. Baird* (1998) 18 Cal.4th 640, 658.) Statutes should be interpreted so as to give each word some operative effect. (See, *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390.)

Beyond that, the Court must consider particular statutory language in the context of the entire statutory scheme in which it appears, construing words in context, keeping in mind the nature and obvious purpose of the statute where the language appears, and harmonizing the various parts of the statutory enactment by considering particular clauses or sections in the context of the whole. (See, *People v. Whaley* (2008) 160 Cal.App.4th 779, 793.)

When considering acts of the Legislature, courts must presume that a statute is "constitutional unless its unconstitutionality clearly, positively, and unmistakably appears; all presumptions and intendments favor its validity." (*People v. Falsetta* (1999) 21 Cal.4th 903, 913.)

### **III. Discussion**

#### **A. Requests for Judicial Notice**

There is dispute between the parties as to whether the only relevant evidence is that which was *before the voters* at the time they ratified Proposition 1A, or whether the Court may also consider the intent of the Legislature that wrote and approved Proposition 1A for placement on the ballot. In support of their contention that evidence of such intent is relevant and appropriate for the Court's consideration, Petitioners cite to *Rossi v. Brown* (1995) 9 Cal.4th 688,

FN 7. In footnote no. 7, the California Supreme Court noted that when construing initiative measures, 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* [citation] and we have often presumed, in the absence of other indicia of the voters’ intent such as ballot arguments [citation] or contrary evidence, that the drafters’ intent and understanding of the measure was shared by the electorate. [citations] The historic context in which a measure is drafted is also relevant...”

Respondents argue the Court “may consider ballot summaries and arguments in determining the voters’ intent and understanding of a ballot measure.” (*Santos v. Brown* (2015) 238 Cal.App.4th 398, 409.) Respondents argue consideration of other materials is improper as such material is irrelevant to the determination of voter intent. (*Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Unified School District* (2006) 139 Cal.App.4th 1356, 1397 (providing that the court should consider the statute, resolution, and ballot proposition to determine voter intent).) Respondents also cite to *Knight v. Superior Court* (2005) 128 Cal.App.4th 14, FN 4, wherein the Third District Court of Appeal provided that a declaration of one of the drafters of an initiative measure was not “persuasive as to voter intent, and the ballot arguments are the only proper extrinsic aid that can be considered on the subject.”

The Court notes that in *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197, the California Supreme Court held that for provisions adopted by initiative, “ambiguities may be resolved by referring to the ballot summary, the arguments and analysis presented to the electorate, and the *contemporaneous construction* of the Legislature.” (*Id.* at 203 (citing *Amador Valley Joint Union High Sch. Dist. v. State Bd. Of Equalization* (1978) 22 Cal.3d 208, 245-46).) The Court finds that the cases Respondents cite do not contradict this principle. While declarations of *individual* drafters, or purported legislative intent composed *subsequent* to adoption are not admissible and/or relevant (see *C-Y Development Co. v. City of Redlands* (1982) 137 Cal.App.3d 926, 932-33) *contemporaneous* indicia of legislative intent is relevant as indicated by the California Supreme Court in *Los Angeles County*.

With this in mind, the Court has received and reviewed Petitioners’ request for judicial notice, as well as Respondents’ objections. The Court finds the judicial notice is appropriate as to Exhibits B, C, D, E, F, G, H, I, J, O, and P. The request is **GRANTED** as to these documents, and **DENIED** as to the remaining documents. Respondents have also filed a request for judicial notice, and Petitioners have filed objections. The Court finds judicial notice is appropriate as to Exhibit 4. The request is **GRANTED** as to that exhibit, and **DENIED** as to the remaining documents.

B. Article XVI, section 1

Petitioner alleges AB 1889 violates Article XVI, section 1 of the California Constitution. Section 1 provides,

The Legislature shall not, in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars (\$300,000), except in case of war to repel invasion or suppress insurrection, unless the same shall

be authorized by law **for some single object or work to be distinctly specified** therein which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due...but no such law shall take effect unless it has been passed by a two-thirds vote of all the members elected to each house of the Legislature and until, at a general election or at a direct primary, it shall have **been submitted to the people** and shall have received a majority of all the votes cast for and against it at such election; and **all moneys** raised by authority of such law shall be applied **only to the specific object therein stated** or to the payment of the debt thereby created. (Emphasis added.)

In *Veterans of Foreign Wars v. State of California* (1974) 36 Cal.App.3d 688, the voters enacted a measure providing for the issuance of bonds to “provide farm and home aid for veterans.” (*Id.* at 691.) Subsequent to the issuance of the bonds, the Legislature appropriated funds annually to defray county expenses of maintaining county veterans’ service offices. (*Id.* at 692.) Plaintiffs argued this appropriation was inconsistent with the purpose of the act and violated article XVI, section 1 of the California Constitution. (*Id.*)

The Court of Appeal agreed with Plaintiffs, and found that the intent of the voters was that the funds would be used solely for the farm and home building program. The court noted that the constitutional provision was designed to prevent the Legislature “from making substantial changes in the scheme or design which induced voter approval.” (*Id.* at 693.) Such a change would impliedly repeal an important feature of the voter-approved scheme.

When part of a fund wholly committed by statute is later appropriated to an alien purpose, the appropriation necessarily causes a partial repeal by implication...The maintenance of county veterans’ service offices is a function alien to the veterans’ farm and home acquisition program...it is possible that county service offices receive inquiries which they refer to the nearest office of the Division of Farm and Home Purchases. With that negligible exception, no relationship between the veterans’ farm and home program and the county veteran service offices is apparent. (*Id.* at 694-95.)

In *O’Farrell v. County of Sonoma* (1922) 189 Cal. 343, the plaintiff sought an injunction on the basis that the voters had approved bonds to build a roadway that would total 4.0 miles. (*Id.* at 345.) However, the funds approved could only finance 1.93 miles, and the County was planning to proceed with this shortened distance, using the subject bond funds. (*Id.*) The California Supreme Court held that the County did not have the right to so change the project, absent consent from the voters. (*Id.* at 348.) The court noted that every elector had the right to presume that the road would be constructed in its entirety, “not one end, or the other end, or any part or portion - - but the whole.” (*Id.*)

### C. AB 1889 and the Bond Act

Petitioners argue that AB 1889 did not “clarify” the meaning of “suitable and ready for high-speed train operation” but instead made substantial changes in the design that had induced

voter approval, in violation of Article XVI, section 1. (See *VFW*, 36 Cal.App.3d at 693.) First, Petitioners argue the meaning of this phrase is clear on its face, and not subject to any purported “clarification” provided by AB 1889. Petitioners contend, “[t]he first phrase straightforwardly indicates that the usable segment being built would, when constructed in accordance with the funding plan, be appropriate for high-speed train use...it would have appropriate grades, curves, electrical supply, signals and other safety systems, etc. to allow high-speed train use. The second phrase says that once construction was 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.” (Memo., p. 20.) Petitioners contend that although AB 1889 claims to “clarify” the phrase, it did not identify any ambiguity reasonably subject to multiple interpretations that required clarification.

Petitioners then argue that even if there were an ambiguity in the Proposition 1A language, the legislative history supports a finding that AB 1889 contradicts its terms. Among other documents, Petitioners cite to “the Governor’s May revision to the 2008-2009 budget, as transmitted to the Legislature” wherein the Governor provided that language was to be added to the bond act to require a complete funding plan providing assurance that all funding needed to provide service on that portion of the system is secured. (Memo., p. 21)(citing Pet. RJN, Exh. F.)

Respondents argue the key issue is whether AB 1889 made a change to the purpose for which bond funds are used. Respondents contend that the “single object or work” remains the general construction of a high-speed train system. Unlike in *VFW* or *O’Farrell*, Respondents argue, the general nature and object of the project remains unchanged. With regard to the specific language, “suitable and ready for high-speed train operation” Respondents argue the Court must examine, “not just the text of the provision at issue, but the structure of the statutory scheme of which it is a part.” (Oppo., p. 17.)

Respondents cite to the declaration of legislative intent in the Bond Act, codified in section 2704.04, subdivision (a),

It is the intent of the Legislature by enacting this chapter and of the people of California by approving the bond measure...to initiate the construction of a high-speed train system...

Respondents contend subdivisions (b) through (d) do not prohibit the language provided by AB 1889, and that the only “prohibition” is that bond funds “shall not be used for any operating or maintenance costs of trains or facilities.” Respondents assert 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.” (Oppo., p. 18.)

It is incorrect that the only restrictions provided by Proposition 1A were that the funds be used to construct an amorphous high-speed rail project, and that funds “shall not be used for any operating or maintenance costs of trains or facilities.” As the Third District Court of Appeal



already noted, “the 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.” (*California High-Speed Rail Authority* 228 Cal.App.4th at 706.) The Legislature in drafting Proposition 1A, and the voters in enacting it, were clearly concerned about potential squandering of funds, and the viability of a very ambitious high-speed rail project.

However, the Court must presume that a statute is “constitutional unless its unconstitutionality clearly, positively, and unmistakably appears; all presumptions and intendments favor its validity.” (*People v. Falsetta* (1999) 21 Cal.4th 903, 913.) Giving due consideration to this presumption, the Court finds Petitioner has failed to demonstrate sufficiently that AB 1889 violates Article XVI, section 1. Indeed, this case is clearly distinct from the type of issues in *O’Farrell* and *VFW*, in that here, AB 1889 did not change the single object or work that is being funded with the bond funds. AB 1889 does 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.” (Pet. RJN, Exh. J, p. 5.)

The Court acknowledges that one arguable interpretation, as Petitioners offer, may be that the language, “if so completed, the corridor or usable segment thereof would be suitable and ready for high-speed train operation,” requires a segment to be ready for high-speed travel immediately upon completion of that particular segment. However, such arguable interpretation is not dispositive of the issue. As mentioned above, AB 1889 is presumed to be constitutional and “all presumptions and intendments favor” AB 1889’s validity. In this regard, the Court agrees with Respondent that the phrase “suitable and ready for high-speed train operation” is not specifically defined in Proposition 1A. Further, the statutory scheme anticipates that construction will occur piecemeal, and that it will require pre-construction activities as well as capital improvements to passenger rail systems. Because Proposition 1A contemplates that the project is of a large scale that will be constructed over a period of time, the Court finds that “suitable and ready for high-speed train operation” was reasonably subject to clarification by the Legislature through AB 1889.

AB 1889 provides,

For purposes of the funding plan required pursuant to subdivision (d) of Section 2704.08, a corridor or usable segment thereof is “suitable and ready for high-speed train operation” if the bond proceeds, as appropriated pursuant to Senate Bill 1029 of the 2011-12 Regular Session (Chapter 152 of the Statutes of 2012), are to be used for a capital cost 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.

Paramount is the consideration of voter intent and whether AB 1889 “clearly, positively, and unmistakably” violates this intent.” (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 979; *People v. Falsetta* (1999) 21 Cal.4th 903, 913.) In this regard, the AB 1889 language does not

release the Authority from its obligation to spend the subject funds on the voter-approved high-speed rail project. This language does not truncate the project (as in *O’Farrell*) or divert the funds to a tenuously connected separate project (as in *VFW*). 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. Therefore, the Court finds that Petitioners have not demonstrated sufficiently under applicable law that AB 1889 is “clearly, positively, and unmistakably” unconstitutional.<sup>2</sup>

#### **IV. Conclusion**

For the aforementioned reasons, Petitioners’ Motion for Judgment on the Pleadings on the first cause of action for declaratory relief is **DENIED**.<sup>3</sup>

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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.)

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<sup>2</sup> While the Court does not find relevant the numerous “legislative history” documents Petitioners repeatedly cite as evidence that the voters intended Proposition 1A to proscribe AB 1889’s language, even considering these documents the Court finds Petitioners have failed to demonstrate sufficiently a constitutional violation.

<sup>3</sup> In light of this ruling, the Court will not address Respondents’ arguments that Petitioners are otherwise not entitled to declaratory relief.