

Attached is the 27-page filing made by the state this afternoon to the 3<sup>rd</sup> District Court of Appeal for its expedited review of two lower court rulings regarding high-speed rail.

Several passages are highlighted below:

“If the Authority were to forgo appellate review, the trial court’s decision would remain problematic for other general obligation bond-funded projects.” (Page 3)

“A trial court ruling calling into question established procedures used by state finance committees to authorize the issuance of general obligation bonds is alone sufficient to make it more difficult for bond counsel to issue unqualified bond opinions.” (Pages 3-4)

“Forcing the Authority to litigate the validity of the trial court’s rulings in separate appellate proceedings will likely take years, which could be disastrous for both the high-speed rail project and others like it.” (Page 7)

“...while courts should not validate bonds that would violate the constitutional debt limit ... a court may not refuse to validate issuance of bonds *solely* for lack of evidence supporting a finance committee’s determination that issuance of bonds is ‘necessary or desirable.’” (Page 14)

“What Real Parties suggest – and what the trial court did – was to write into the Bond Act substantive requirements that do not exist, and that the voters did not approve.” (Page 16)

“Real Parties do not meaningfully address the practical consequences of the trial court’s ruling in the Validation Action. Instead, they dismiss these as ‘a trivial concern.’ ... This is a convenient but wholly inadequate response to a decision that would effect a substantial change to a public finance system that has been allowing the State to access financial markets for decades, without providing any real alternative.” (Page 20)

Questions? 323-0648.

- H.D.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

**CALIFORNIA HIGH-SPEED RAIL  
AUTHORITY et al.,**

Petitioners,

v.

**THE SUPERIOR COURT OF  
SACRAMENTO COUNTY,**

Respondent,

**JOHN TOS et al.,**

Real Parties in Interest.

Case No. C075668

Sacramento County Superior Court  
Case Nos. 34-2011-00113919CUMCGDS, 34-2013-00140689CUMCGDS  
The Honorable Michael P. Kenny, Judge

**PETITIONERS' REPLY TO PRELIMINARY  
OPPOSITION OF REAL PARTIES IN INTEREST  
STAY REQUESTED BY MARCH 1, 2014**

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## INTRODUCTION

Both the public importance of the legal issues at stake and the inadequacy of appeal as a remedy for the superior court's legal errors make this Petition appropriate for the exercise of this Court's original writ jurisdiction. Real Parties in Interest do not seriously dispute either the importance and novelty of the issues presented, or the harm that Petitioners<sup>1</sup> will likely suffer if review is delayed. Instead, they argue that review by appeal would be as fast as by writ, though their own case authority confirms that an appeal of the validation judgment could take years, and though they recognize that the trial court's writ in *Tos* is not now and may never be appealable. They also engage in misdirection by arguing that the high-speed rail project faces other impediments, while failing to address the damage done and the uncertainty created by the trial court's rulings. None of their arguments respond to the point that the issues joined in the Petition are appropriate for extraordinary review, notwithstanding that an appealable order has been entered in the Validation Action.

The responses to the Petition demonstrate vividly why this Court's intervention is urgently required. On one side are state officials charged with implementing a decision made by the Legislature and the voters to initiate a historic infrastructure project in the public interest. On the other are a collection of special interests singularly focused on their opposition to that decision, who address the State's concerns as though they were trivial. But the high-speed rail project and the State's ability to issue and validate general obligation bonds—for this as well as other projects important to the State's future prosperity—are weighty matters with far-reaching

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<sup>1</sup> Petitioners are the Governor, the Treasurer, the Director of the Department of Finance, the Secretary of the State Transportation Agency, the High-Speed Rail Authority ("Authority"), and the High-Speed Passenger Train Finance Committee ("Committee").

implications that demand this Court's rigorous consideration. Where, as here, the stakes are high and the risks are great, the Court should grant extraordinary review.

### **WRIT REVIEW IS APPROPRIATE**

#### **I. THE PETITION RAISES ISSUES OF STATEWIDE PUBLIC IMPORTANCE WELL-SUITED TO MANDAMUS REVIEW.**

Real Parties first argue that this Court should dismiss the Petition because an appealable judgment has been entered in *High Speed Rail Authority, et al. v. All Persons Interested*, Sacramento Superior Court Case No. 34-2013-00140689 (the "Validation Action"). But where the issues are of great public importance and merit prompt resolution, "well-settled principles" counsel in favor of exercising original writ jurisdiction. (*Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 219, citing *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 580 and *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841, 845.) Matters of statewide concern, like this one, are particularly well-suited to resolution by extraordinary writ. (*Vandermost v. Bowen* (2012) 53 Cal.4th 421, 453; see *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 253.) The public importance of this case cannot seriously be disputed, and Real Parties do not try.

Nor do Real Parties dispute that the trial court's decisions are unprecedented. They neither point to any case in which a court has questioned a finance committee's determination that issuing general obligation bonds is necessary or desirable, nor do they identify any legal authority supporting the writ issued in *Tos, et al. v. California High-Speed Rail Authority, et al.*, Sacramento Superior Court Case No. 34-2011-00113919 ("*Tos*"). That writ, which is not an appealable order, requires the Authority to engage in an idle act that interferes with the Authority's access to bond funds appropriated by the Legislature, creates public confusion

about the validity of that appropriation, and has been used to undermine the Authority's relationships with its federal funding partners, putting billions of federal dollars at risk. Together, the rulings in *Tos* and the Validation Action are causing the project significant delays that will, at a minimum, drive up project costs and frustrate the intent of the voters and the Legislature to build the project as soon as possible.

Real Parties also fail to grapple with the fact that the trial court's decision in the Validation Action casts substantial doubt on public finance procedures that have been in use since at least the enactment of the state General Obligation Bond Law (Gov. Code, § 16720 et seq.) more than 60 years ago. This is precisely the kind of circumstance—an issue of first impression with far-reaching implications—that warrants review by extraordinary writ. (*Rodrigues v. Superior Court* (2005) 127 Cal.App.4th 1027, 1032 [“writ review of an appealable order is appropriate where it is necessary to resolve an issue of first impression promptly and to set guidelines for bench and bar”], citations omitted; *Elden v. Superior Court* (1997) 53 Cal.App.4th 1497, 1504 [writ review permissible where petition raises “novel issue of law”].)

The trial court's decision in the Validation Action has implications for other infrastructure projects. If the Authority were to forgo appellate review, the trial court's decision would remain problematic for other general obligation bond-funded projects. Real Parties' answer to this is non-responsive. In a footnote, they argue that the trial court's decision would not be binding in other bond validation actions. (Preliminary Opposition of Real Party Howard Jarvis Taxpayers Assn. (“Howard Jarvis Opposition”), p. 2, fn. 2.) While true in the sense that the trial court's order does not create a rule of law that is binding on other courts, this side-steps the real-world consequences of the trial court's decision. A trial court ruling calling into question established procedures used by state finance

committees to authorize the issuance of general obligation bonds is alone sufficient to make it more difficult for bond counsel to issue unqualified bond opinions. The standard for issuing an unqualified bond opinion is extremely high. (See Nat. Assn. of Bond Lawyers, *The Function and Prof. Responsibilities of Bond Counsel* (3d ed. 2011), p. 11.) Under this standard, such a ruling does not require precedential force to draw the attention of bond counsel, complicate the long-standing public finance framework for issuing and validating state general obligation bonds, and make it more difficult for the State to access the financial markets. The trial court not only questioned a determination that the public finance profession has long accepted as a routine procedural step not subject to challenge, but set no standard for what might constitute sufficient “evidence” to support a finance committee determination that issuance of bonds is necessary or desirable where the object is to validate all of the bonds. Real Parties do not meaningfully confront the consequences of this decision.

**II. REAL PARTIES DO NOT (AND CANNOT) SHOW THAT APPEAL IS AN ADEQUATE REMEDY, OR THAT ABSENT THIS COURT’S REVIEW PETITIONERS ARE NOT AT RISK OF IRREPARABLE HARM.**

Real Parties challenge the exercise of this Court’s original writ jurisdiction with an assortment of arguments, some of them contradictory, that appeal is an adequate remedy, or that Petitioners face no risk of irreparable harm. These arguments lack merit.

**A. It Takes Years to Resolve Appeals of a Validation Judgment, But a Petition Can Be Decided in a Few Months.**

Real Parties contend that because the judgment entered in the Validation Action is both immediately appealable and entitled to calendar preference (Code Civ. Proc., § 867), review by extraordinary writ offers no

advantages and is therefore unnecessary. (Preliminary Opposition of Real Parties in Interest John Tos et al. (“Tos Opposition”), pp. 1, 13-14; Howard Jarvis Opposition, pp. 1-2.) This is incorrect. The very authority cited by Real Parties, *Blue v. City of Los Angeles* (2006) 137 Cal.App.4th 1131, demonstrates the inaccuracy. In that case, an expedited appeal from a validation judgment took one and a half years from the trial court’s entry of judgment to the conclusion of the appellate proceedings. (*Id.* at pp. 1131, 1139 & fn. 7.) Similarly, it took more than two years to finally resolve validation actions involving bonds issued under Proposition 71. (*California Family Bioethics Council v. California Inst. for Regenerative Medicine* (2007) 147 Cal.App.4th 1319, 1319, 1336.) When there is a risk of harm associated with the passage of time, calendar preference on appeal does not compare favorably to a writ proceeding. Were an alternative writ to issue, briefing on the merits could be completed in two months, and a decision issued soon after that.<sup>2</sup>

Real Parties also suggest that the time to final resolution of the Validation Action is unimportant because reversal of the trial court’s judgment would not result in a declaration of validity, but only a remand to the trial court for consideration of “other theories raised by Real Parties under which the bonds could be deemed invalid.” (Howard Jarvis Opposition, p. 3.) This is unlikely. Those “other theories” addressed not the validity of bond issuance, but *uses of bond proceeds* and other matters not at issue in the Validation Action. (Tabs 69, 70, 73, 74, 77, 78, 81, 82.) The trial court was clear that “[i]ssues regarding the use of proceeds are

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<sup>2</sup> Because this Court may not decide whether to consider the merits of the Petition until after the February 18, 2014 deadline to file an appeal of the Validation Action, the Attorney General may file a notice of appeal to preserve the rights of the Authority and the Committee in the event the Petition is denied.

separate from the issue raised in this validation action, which is whether the bonds were properly authorized” (Tab 4, HSR00055); “[t]he issue before the Court in this validation proceeding is *strictly limited to whether the Finance Committee’s determination that issuance of bonds was necessary and desirable* as of March 18, 2013 is supported by any evidence in the record” (Tab 4, HSR00070, italics added). Because there are no other theories related to bond validation that have not been addressed by the trial court, there would be no cause for a remand.<sup>3</sup>

Both the need for immediate relief and judicial economy are compelling arguments in favor of reviewing in a single writ proceeding the trial court’s rulings in these related cases. The writ in *Tos* issued without a final judgment, and there may not be an appealable order for several months or more, so review by writ is the only meaningful avenue of review. And the trial court’s decisions are two sides of the same coin. They require interpretation of the same law (Proposition 1A, codified as the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, Streets and Highways Code, section 2704 et seq. (the “Bond Act”)) and each in their own way stands as an impediment to the high-speed rail project. In *Tos*, the trial court placed a barrier not found in the Bond Act between the Authority and the Legislature’s appropriation of bond proceeds for construction; and in the Validation Action, the trial court’s failure to

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<sup>3</sup> The trial court did not consider evidence not before the Committee which defendants proffered in the Validation Action to show that bond issuance was *unnecessary* or *undesirable*. (Tab 4, HSR00070.) But there could be no remand to allow the trial court to consider such evidence. Even assuming the trial court’s analysis was correct that the Committee’s decision was reviewable as a quasi-legislative action (Tab 4, HSR00055), evidence not before the Committee or in existence at that time would not be admissible to challenge its determination. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 567, 575-576.)

validate the bonds will make it impossible to sell bonds to fulfill that appropriation when the time comes to do so. This Court should cut through this knot at once. Forcing the Authority to litigate the validity of the trial court's rulings in separate appellate proceedings will likely take years, which could be disastrous for both the high-speed rail project and others like it.

**B. Real Parties Do Not Address the Irreparable Harm That the Trial Court's Rulings Are Causing.**

Real Parties further claim that immediate relief is unnecessary to prevent irreparable harm because it is too late for the "spring bond sale" (Tos Opposition, pp. 2, 14-15), and, in any event, because the Authority is unable to spend bond proceeds unless and until it has adopted another funding plan under Streets and Highways Code section 2704.08, subdivision (d) (Preliminary Opposition of Real Parties in Interest Kings County Water District and Citizens for California High-Speed Rail Accountability to Petition for Extraordinary Writ of Mandate ("Water District Opposition"), pp. 8-9). These arguments rest on an unsupported assumption that if the Authority cannot both sell and spend bond proceeds imminently, then the project is moribund, and any harm associated with delayed review will not matter. Meanwhile, Real Parties leave unaddressed the real harm identified in the Petition, specifically, that the rulings have triggered concerted efforts to cut off federal funding for the project, are blocking the Authority from accessing state bond funds that were appropriated to begin construction in the Central Valley, and are causing delays that will drive up project costs and frustrate the intent of the voters and the Legislature to build the project as soon as possible.

As described in the resolutions adopted by the Committee when it authorized issuance of the bonds, it was never the intention to sell all the bonds authorized at once. (Tab 108, HSR01961-HSR01962, HSR01968.)

The point is that whether or not bonds could be *sold* in the spring of 2014, validation must occur as quickly as possible so that bonds may be sold as necessary, and so that litigation challenging uses of bond proceeds can be heard, but cannot prevent work from moving forward until the merit of a case is proven by a preponderance of evidence. An appeal (or, alternatively, reauthorization of the bonds followed by another protracted validation action before the same trial court) would guarantee that no bonds could be sold for many years. With or without a sale of bonds, a validation judgment ensuring their marketability when needed will significantly improve the Authority's ability to function financially, and provide meaningful reassurance to federal funding partners that the State will be able to match federal funds.

Similarly, Real Parties fail to address the argument that immediate writ relief is needed to eliminate the obstacles to appropriated bond funds erected by the trial court's writ in *Tos*, which requires the Authority to issue a new first funding plan (to no discernible end), before the Authority can adopt a second funding plan. To be sure, the Authority can and will issue a compliant second funding plan on an expedited timetable, when and if this Court clears a path by ordering the superior court to recall the writ.

**C. The Notion That Petitioners Manufactured Urgency in the Validation Action Is Both Baseless and Implausible.**

Alternatively, Real Parties argue that even if urgency exists, it stems not from the trial court's erroneous rulings, but from Petitioners' delay in seeking to access bond funds. Such claims are demonstrably without merit. As a threshold matter, Real Parties contradict one another; while some say Petitioners could and should have authorized all the bonds soon after passage of Proposition 1A (before there was any construction funding plan) because "there is nothing that requires that bonds be issued at any particular time once issuance is authorized" (*Tos* Opposition, pp. 15-16), others

suggest that the Validation Action failed for lack of evidence that all \$8.599 billion in bond proceeds were “needed in the immediate future” (Water District Opposition, pp. 6-7).

In fact, after painstakingly preparing a business plan and funding plan, the Authority sought and received an appropriation of bond proceeds in July 2012, and initiated the Validation Action within nine months of responding to the Second Amended Complaint in *Tos*. The Authority requested and the Committee authorized issuance of bonds at the appropriate time in light of project timelines, funding deadlines, and other factors, chief among them the Authority’s need to authorize issuance of all the remaining bonds in order to validate them once it became clear that the *Tos* case would not be dismissed on demurrer. The continued pendency of the *Tos* action, additional threats of litigation, and the uncertainty they engendered, made apparent that in order to sell bonds and keep the project moving forward, the bonds would have to be validated before particular uses for the proceeds had been identified. (See Petition, pp. 33-35.)

**D. The Assertion That Petitioners Delayed Resolution of the *Tos* Case by Filing Meritorious Motions Is Unconvincing.**

Real Parties also blame Petitioners for delaying resolution of the *Tos* case. Specifically, they contend that Petitioners caused a six-month delay in the proceedings by filing a demurrer that was *sustained*. (*Tos* Opposition, p. 22; Tab 293.) But filing a meritorious motion is not a dilatory tactic.

In the same vein, Real Parties complain about Petitioners’ “unwillingness to allow a trial on the Declaratory Relief and Code of Civil Procedure §526a action to move forward and continued insistence that the entire case be heard as a writ proceeding based on an administrative record . . . .” (*Tos* Opposition, p. 22.) The *Tos* defendants were then and

are now moving to prevent a trial on those claims, not because they wish to delay the proceedings, but because they want the proceedings *to end*, and a final judgment to issue. As the Authority has explained in its pending motion for judgment on the pleadings (Tab 191), the *Tos* plaintiffs have no right to a trial on their declaratory relief claims, or to present any evidence outside the administrative record. (See, e.g., *Western States Petroleum Assn. v. Superior Court*, *supra*, 9 Cal.4th at pp. 574-576, 578-579 [prohibiting admission of extra-record evidence to contradict evidence upon which an agency based its quasi-legislative decision]; *Nathan H. Schur, Inc. v. City of Santa Monica* (1956) 47 Cal.2d 11, 14, 17-18 [trial court erred in allowing extra-record evidence in a Code of Civil Procedure section 526a challenge to agency actions].) It is the *Tos* plaintiffs' insistence on a civil trial (to resolve disputed facts that could, and should, have been presented to and resolved by the Authority) that is now delaying resolution of the *Tos* case. (See Tabs 191, 197, HSR02908-HSR02909.)

Real Parties' suggestion that Petitioners moved to consolidate the two cases for purposes of delay is equally unconvincing. (See *Tos* Opposition, p. 22.) First, by moving to consolidate the two actions the Authority sought to *speed* resolution of the Validation Action by allowing it to be heard on the same date scheduled for the *Tos* trial. (See Tab 167, HSR02551.) And there were in fact no delays caused by the motion to consolidate. Meanwhile, Real Parties tried on several occasions to delay the Validation Action, including by seeking to stay the trial. (Tabs 43, 51, 60.) Second, at that time consolidation was required by law. Until the *Tos* plaintiffs agreed to dismiss all claims challenging the validity of the bonds (see Tab 137), both cases raised issues about bond validity (as reflected in the trial court's ruling relating the two cases). (Tab 181.) Those overlapping challenges to the validity of the bonds required consolidation. (Code Civ. Proc., § 865.)

**E. Real Parties Implicitly Admit That Compliance With the *Tos* Writ Risks Mooting an Appeal.**

The Petition described how, because the *Tos* writ issued (over objection) without a final judgment, the Authority is left with a Hobson's choice of preserving the right to appeal by defying the writ and risking sanctions, or complying and potentially mooting an appeal of the writ. (Petition, pp. 11, 47-48.) Petitioners also demonstrated that compliance with the writ would deprive Petitioners of part of the relief they seek, i.e., relief from having to rescind the initial funding plan. (*Id.*, p. 48.) Real Parties do not address the latter argument, and the contentions advanced against the former argument amount to a tacit admission that if the Authority complies with the writ before final judgment is issued, an appeal could be dismissed as moot.

Real Parties do not dispute that the writ issued in the *Tos* action is now unappealable. Instead, they argue that the two cases Petitioners cite, *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, and *Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, are inapposite because in each case the agency was ordered to take specific action that had been sought by plaintiffs which addressed plaintiffs' concerns, and that "a reversal on appeal could not 'unring the bell.'" (*Tos* Opposition, p. 19.) This argument fails, however, to distinguish these cases; instead it demonstrates that they are controlling here—the Court has ordered the Authority to take the specific action of rescinding the first funding plan, and once the

Authority has done so, as the trial court has ordered, it cannot “unring” that bell.<sup>4</sup>

Real Parties also rely on cases that are inapposite because they do not address whether voluntary compliance with a writ moots an appeal. For example, they argue that this case is “much more similar” to *Los Angeles International Charter High School v. Los Angeles Unified School District* (2012) 209 Cal.App.4th 1348. (Tos Opposition, p. 19.) That case, however, did not involve an appeal by a party that had voluntarily complied with a writ. The school district complied with a writ requiring it to offer school facilities to plaintiff, and did *not* appeal. (209 Cal.App.4th at p. 1353.) The petitioner opposed the school district’s return of the writ, arguing that the district had not in fact complied. (*Ibid.*) The petitioner, not the school district, appealed from the trial court’s decision that the district had complied with the writ. (*Ibid.*) Indeed, the court noted that, in electing to comply with the writ, the school district had waived its right to appeal from the judgment, and stated the general rule:

When the trial court issues its judgment granting a preemptory writ, the respondent has two choices: to appeal that judgment or to comply with it. If the respondent elects to comply with the writ, it waives its right to appeal from the judgment granting the writ petition.

(*Id.* at p. 1354.) The mootness issue arose in that case not as a result of the school district’s compliance with the writ, but because the school year had

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<sup>4</sup> Real Parties also contend that *MHC Operating Limited Partnership v. City of San Jose*, *supra*, 106 Cal.App.4th 204, and *Building a Better Redondo, Inc. v. City of Redondo Beach*, *supra*, 203 Cal.App.4th 852 “were not situations where plaintiff’s complaint could be predicted to recur.” (Tos Opposition, p. 19.) To the extent this concedes that the issues raised in the Petition are likely to recur, that is an argument for, not against, addressing the merits of the Petition.

ended; the court concluded that because the issue was likely to arise annually, the appeal was not moot. (*Ibid.*)

To be clear, Petitioners do not concede that, should the Authority comply with the writ, an appeal of the writ following a final judgment ultimately entered in *Tos* would be moot. Petitioners would vigorously argue against such a result. But there is a substantial risk, one that Real Parties' arguments implicitly acknowledge, that this Court could disagree and hold that the case is moot, and therefore non-justiciable. (See *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1572-1573.) The courts lack subject matter jurisdiction over cases in which there is no justiciable controversy, including disputes that have become moot. (*Housing Group v. United Nat. Ins. Co.* (2001) 90 Cal.App.4th 1106, 1111-1112; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2013) ¶ 3.123.35.) The need to avoid this risk justifies the exercise of this Court's original writ jurisdiction.

**F. Real Parties Have Not Been Prejudiced or Deprived of Due Process.**

Real Parties suggest that they have been deprived of due process and a "meaningful opportunity to respond" by having to file preliminary oppositions within ten days. (See *Water District Opposition*, p. 3.) Yet, this is precisely the amount of time prescribed by rule 8.487(a)(1) of the California Rules of Court.

Real Parties were served with the Petition and the record on January 24, including an electronic courtesy copy of the Petition served by email. Although they complain they did not receive an electronic copy of the record (*Water District Opposition*, p. 3), the rules of court do not require Petitioners to provide one, and Real Parties have yet to ask Petitioners' counsel for one. Under rule 8.487(a)(1) and the Supreme

Court's order transferring the Petition to this Court, Real Parties always had until February 3 to file their preliminary oppositions.

Real Parties also assert that Petitioners assembled 10,000 pages of "selected records." (Water District Opposition, pp. 2-3.) Belying their complaint, Real Parties fail to identify a single document missing from the Appendix of Exhibits. It includes virtually every filing in both the Validation Action and *Tos*, as well as the entire administrative record before the High-Speed Rail Authority.

**A VALIDATION JUDGMENT SHOULD HAVE BEEN ENTERED  
IN THE STATE'S FAVOR.**

**I. ALTHOUGH MANY ASPECTS OF THE VALIDITY OF BONDS ARE  
SUBJECT TO JUDICIAL SCRUTINY, THE DETERMINATION  
THAT ISSUANCE IS "NECESSARY" OR "DESIRABLE" IS A  
CONCLUSION THAT IS NOT REVIEWABLE.**

The Petition does not argue that the validity of bond authorization is not subject to judicial review, that a bond finance committee can or should approve every request for bond authorization as a matter of course, or that courts must validate every authorization of bonds for which validation is sought. Accordingly, Real Parties' contentions in response to these straw man arguments are just distractions.

Rather, Petitioners maintain that, while courts should not validate bonds that would violate the constitutional debt limit, or that were authorized in violation of the governing bond act, a court may not refuse to validate issuance of bonds *solely* for lack of evidence supporting a finance committee's determination that issuance of bonds is "necessary or desirable." While other aspects of bond authorization are reviewable, and may in some circumstances require an administrative record, the determination at issue here is a conclusion that is self-evident and not reviewable. (See *Perez v. Bd. of Police Comrs.* (1947) 78 Cal.App.2d 638,

643 [“That the board deemed the rule desirable is evidenced conclusively by its adoption”]; *City of Monrovia v. Black* (1928) 88 Cal.App. 686, 690 [“In the absence of any such requirement in the statute, the determination of the legislative body that the fact exists on which their power to act depends is sufficiently indicated by their proceeding to act”].)<sup>5</sup>

Real Parties miss this important distinction in *Boelts v. City of Lake Forest* (2005) 127 Cal.App.4th 116, between findings that are reviewable in a validation action, and conclusions that are not. That case was a reverse validation action challenging the validity of an amendment to a redevelopment plan. (*Id.* at p. 125.) The court of appeal held that the community redevelopment laws required a redevelopment plan amendment to satisfy certain “substantive requirements.” (*Id.* at p. 128; see also Health & Saf. Code, §§ 33457.1, 33367.) For example, a statute required a legislative body to make a finding that the project area was blighted, and required that finding to be “based on clearly articulated and documented evidence.” (Health & Saf. Code, § 33367, subd. (d).) These findings were subject to the substantial evidence standard of review. (*Boelts v. City of Lake Forest, supra*, 127 Cal.App.4th at p. 134.) At the same time, the statutory requirement that an amendment to a redevelopment plan be “necessary or desirable” was *not* substantive and therefore was *not* subject to judicial review in the validation action. (*Id.* at p. 128 & fn. 13.)

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<sup>5</sup> Real Parties do not address let alone distinguish *Perez*. They contend that *City of Monrovia* is off point because it involved an absence of findings rather than an absence of evidence. (See Tos Opposition, p. 26.) In fact, the two go hand in hand. In *City of Monrovia*, the court issued a writ ordering the city clerk to take steps required to issue the bonds. (88 Cal.App. at p. 691.) There were both no findings in the record, and no evidence. Neither was relevant because the determination of the legislative body that the costs would be too great to be paid out of the city’s ordinary income and revenues (the fact on which their power to issue depended) was sufficiently indicated by the fact it had acted. (*Id.* at p. 690.)

Similarly, where, as here, a bond act provides only that the finance committee must determine whether it is necessary or desirable to issue bonds (see Sts. & Hy. Code, § 2704.13) and does not impose any “substantive requirements” such as findings based on clearly articulated and documented evidence, the determination that issuance is necessary and desirable is not reviewable by any court.

For these reasons, Real Parties’ reliance on *Poway Royal Mobilehome Owners Assn. v. City of Poway* (2007) 149 Cal.App.4th 1460 is inapposite. (See Howard Jarvis Opposition, pp. 6-7.) In *Poway*, the substantial evidence standard of review applied because a hearing was required by statute. (149 Cal.App.4th at pp. 1479, 1482.) In contrast, the Bond Act does not require the Committee to conduct a hearing or to make findings.

Petitioners complied with every requirement found in the Bond Act for issuing bonds. The Bond Act could have, but does not, contain any substantive requirements for the Committee’s authorization; it only requires the Committee to “determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Sections 2704.06 and 2704.095 and, if so, the amount of bonds to be issued and sold.” (Sts. & Hy. Code, § 2704.13.) What Real Parties suggest—and what the trial court did—was to write into the Bond Act substantive requirements that do not exist, and that the voters did not approve.

Real Parties seize on the statutory terms “or not” and “amount.” (See Tos Opposition, p. 27; Howard Jarvis Opposition, p. 3.) But these terms only illustrate the Committee’s discretion. The fact that the Committee had the discretion *not* to authorize bonds does not mean it had insufficient evidence *to* authorize bonds. Identical language is found in other bond acts as well, and courts have validated those bonds without

investigating the basis for the finance committee's determination. (See *California Family Bioethics Council v. California Inst. for Regenerative Medicine, supra*, 147 Cal.App.4th at pp. 1336-1337, 1373 [validating bonds authorized by finance committee under Health and Safety Code section 125291.45].)

Real Parties contend that in the absence of an administrative record demonstrating evidence for its conclusion that issuance of bonds was necessary and desirable, we must assume that the Committee merely rubber-stamped the Authority's request. (See Tos Opposition, p. 17; Water District Opposition, p. 5.) But they have it backwards; courts must presume a public body properly exercised its discretion, not that it failed to exercise its discretion. (See Evid. Code, § 664 ["It is presumed that official duty has been regularly performed"].) What Real Parties really seem to be saying is that the Committee should have deliberated longer before voting to authorize issuance, and should have articulated the evidence it considered and the reasons for its authorization of bonds, so that the court could somehow divine the thought process of each Committee member and satisfy itself that they acted independently. But none of this is required by the Bond Act or even realistic. A court may not review the reasons behind the Committee's determination that bond authorization was desirable because that is a conclusion drawn from the existence of the Bond Act and compliance with the requirements contained therein for issuance of bonds. Although it is not always the case, in this case those requirements were minimal. Because the Committee was authorizing the bonds provided for in the Bond Act, in the manner provided therein, and to be sold only when appropriations became available—and those were the facts before them—its decision to do so was sufficiently supported and purely discretionary.

**II. EVEN ASSUMING EVIDENCE WAS REQUIRED TO SUPPORT THE COMMITTEE'S DETERMINATION, THE COMMITTEE HAD SUFFICIENT EVIDENCE BEFORE IT.**

Even if the trial court was correct that there must be evidence to support the Committee's determination that issuance of bonds is necessary or desirable, it erred in concluding that there was no such evidence. Real Parties essentially concede this point. (See Howard Jarvis Opposition, p. 3 ["the Finance Committee considered no evidence *other than* the Rail Authority's bare request"], italics added.) What the trial court and Real Parties really contend is that the Committee needed *additional* evidence of some kind. But this requirement is not found in the Bond Act; under the terms of the Bond Act, the Committee had all the evidence it needed to authorize the bonds.

There is no requirement in the Bond Act that the Authority submit to the Committee anything more than its request. (Sts. & Hy. Code, §§ 2704.11, subd. (a), incorporating Gov. Code, § 16730 ["Upon request of the board, supported as required in the bond act, the committee shall determine the necessity or desirability . . . of issuing any bonds authorized to be issued"], 2704.13 [requiring no support for Authority's request].) The request contained all the information that the Committee needed to authorize bonds for validation—the fact that the Authority was requesting the authorization of bonds as authorized by the Bond Act and only for purposes authorized by the Bond Act. (Tab 109, HSR02048.) The Committee also had before it a draft resolution detailing the authorization of the bonds and the structure of the eventual sales, including that the amount of bonds sold would not exceed the appropriation authorized by the Legislature. (Tab 108, HSR01961 ["determin[ing] that it is necessary and desirable to authorize the issuance and sale of [bonds] . . . provided further that the principal amount of Obligations other than Refunding Notes issued

and sold shall not exceed the appropriation authorized by the Legislature as required by the Act”].)

There likewise is no requirement in the Bond Act that there be a “showing that all of these bond proceeds were needed in the immediate future.” (See Water District Opposition, pp. 6-7.) Indeed, this would contravene the purpose of Code of Civil Procedure section 860 et seq. (the “Validation Statutes”) because it would prevent a public agency from validating bonds in advance of its need for funds. (See *Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 843 [“A key objective of a validation action is to limit the extent to which delay due to litigation may impair a public agency’s ability to operate financially”].)

The Committee also conducted a closed session to discuss initiating litigation. (Tab 108, HSR01953.) Real Parties contend without legal support that considering evidence supporting bond authorization in closed session would have violated open meeting laws. (See Tos Opposition, p. 27, fn. 12.) They do not address the argument that the decision to authorize the issuance of all the outstanding bonds in order to validate them is a litigation strategy decision, which the Bagley-Keene Act Open Meeting Act expressly permits to be made in closed session. (Gov. Code, § 11126, subd. (e)(1).) A finance committee must vote to authorize the bonds in open session, but is permitted in closed session both to hear privileged information bearing on litigation strategy reasons for authorizing issuance, and to authorize a validation action.

### **III. THE TRIAL COURT’S RULING SIGNIFICANTLY IMPACTS FUTURE BOND AUTHORIZATIONS AND IMPEDES THE PURPOSE OF THE VALIDATION STATUTES.**

Real Parties do not meaningfully address the practical consequences of the trial court’s ruling in the Validation Action. Instead, they dismiss these as “a trivial concern.” (See Tos Opposition, p. 17.) This is a

convenient but wholly inadequate response to a decision that would effect a substantial change to a public finance system that has been allowing the State to access financial markets for decades, without providing any certain alternative. Real Parties also fail to resolve the apparent conflict between the trial court's analysis and the purpose of the Validation Statutes—prompt determination of the validity of a public agency's action (*Community Youth Athletic Center v. City of National City* (2009) 170 Cal.App.4th 416, 427)—demonstrating that they fail to appreciate the important public purpose that these laws serve.

### **THE *TOS* WRIT WAS ISSUED IN ERROR.**

#### **I. THE PETITION DOES NOT CHALLENGE THE TRIAL COURT'S CONCLUSION THAT THE FIRST FUNDING PLAN DID NOT COMPLY WITH ALL THE REQUIREMENTS OF STREETS AND HIGHWAYS CODE SECTION 2704.08, SUBDIVISION (C).**

Real Parties devote most of their discussion of the merits of the *Tos* decision to opposing an argument not raised in the Petition. Specifically, Real Parties argue that the trial court properly concluded that the Authority's first funding plan did not satisfy the requirements of Streets and Highways Code section 2704.08, subdivision (c). (*Tos* Opposition, pp. 29-30.) While Petitioners do not concede that the funding plan violated Streets and Highways Code section 2704.08, subdivision (c), Petitioners assume this is correct for purposes of the Petition. (Petition, p. 37.) Petitioners maintain that, notwithstanding any infirmity in the funding plan, the trial court erred in issuing the writ. Real Parties' arguments that the first funding plan violates the Bond Act are thus irrelevant to the issues raised in the Petition.

## **II. THE TRIAL COURT ERRED IN ISSUING THE WRIT REQUIRING RESCISSION OF THE FIRST FUNDING PLAN.**

Even assuming the trial court was correct in concluding that the Authority's first funding plan did not comply with Streets and Highways Code section 2704.08, subdivision (c), issuance of the writ was error for several reasons:

- There is no legal remedy for alleged deficiencies in the first funding plan. The process for testing the adequacy of a first funding plan is a political one left to the Legislature, not a judicial one.
- Even if there were a legal basis for a writ, there were no facts to support its issuance because the trial court found that the Authority had not committed bond funds in violation of the Bond Act. Further, in the absence of any such violation, rescission of the funding plan cannot be justified simply to ensure that the Authority secures environmental clearances before committing or spending bond proceeds for construction.
- Issuance of the writ was improper because, as a remedy, the writ serves no legitimate purpose:
  - The writ compels an idle act and creates confusion, because, once made, the appropriation cannot be changed by a new funding plan.
  - The writ is based on the trial court's erroneous conclusion that the first funding plan was a necessary prerequisite to the second funding plan.
- The writ interferes with the Legislature's exercise of its appropriation authority.

Of these, Real Parties respond only to the argument that there is no legally cognizable claim based on a non-compliant first funding plan, and to the argument that the trial court erred in holding that a compliant first funding plan was a necessary prerequisite to the second funding plan required by Streets and Highways Code section 2704.08, subdivision (d). The remaining arguments, any one of which demonstrates the error of the writ, Real Parties leave unanswered.

**A. There Is No Cognizable Cause of Action to Challenge the First Funding Plan.**

The *Tos* Real Parties do not address the legal argument that there is no cognizable cause of action to challenge an inadequate funding plan. Instead, they argue—without legal authority—that the requirements of the funding plan are subject to judicial review because they were placed before and approved by the voters, and that the ballot pamphlet and ballot arguments “trumpeted to the voters the financial protections that would be provided by the Funding Plan. (20 HSR 5125, 5126.)” (*Tos Opposition*, p. 28.) But, even assuming that the Bond Act is unclear and therefore warrants reference to the ballot pamphlet (it does not) (see *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization*, *supra*, 22 Cal.3d at pp. 245-246), the ballot pamphlet for Proposition 1A does not support Real Parties’ argument. The analysis of the Legislative Analyst does not discuss any requirement of the funding plans, but rather emphasizes that the plans are subject to review by the Department of Finance, the Legislature, and the peer review group. The Legislative Analyst explained the multiple levels of review and oversight built into the Bond Act, but this is political, not judicial oversight. The analysis did not set any expectation that Real Parties would be allowed to test the preliminary funding plan against their own interpretation of the Bond Act—especially after an appropriation has been enacted:

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.

(Tab 319, HSR05125.) The argument in favor of Proposition 1A likewise does not suggest that there is any cause of action—or sanction—for deficiencies in the first funding plan. It states, in relevant part:

Proposition 1A will protect taxpayer interests.

- Public oversight and detailed independent review of financing plans.
- Matching private and federal funding to be identified BEFORE state bond funds are spent.

(*Id.*, HSR05126.)

That political oversight promised to the voters has been delivered and judicial oversight is not appropriate. The Legislature considered the first funding plan, review and criticism of that plan from many sources, and then exercised its independent authority to appropriate specific funds for detailed, prescribed expenditures. Nothing in the ballot pamphlet suggests—much less states—that a private party can seek judicial review to challenge whether the Authority's first funding plan would satisfy all of the requirements of Streets and Highways Code section 2704.08, subdivision (c), but it did promise there would be specific review of that plan by the

peer review group and the State Auditor—which promise was fulfilled.<sup>6</sup> (Tabs 350, 351, 359, 360, 370, 419, 420.) Nothing in the ballot pamphlet suggests that a failure to comply with funding plan reporting requirements is actionable.

Moreover, Real Parties fail to come to terms with the tension between the trial court’s conclusion that although it could not invalidate the appropriation, it could nevertheless effectively second-guess the Legislature’s decision to appropriate funds by invalidating the funding plan on which the request for an appropriation was based. That tension cannot be resolved; the trial court impermissibly substituted its judgment for that of the Legislature.

Real Parties further argue that “the Authority . . . acknowledges that the voters had to be induced to pass Prop. 1A by the multiple financial protection provisions that were included, and seems to imply that part of this inducement was the protective requirements in the funding plans,” and that this somehow contradicts Petitioners’ argument that there is no cognizable cause of action based on an inadequate funding plan. (Water District Opposition, p. 8.) Not so. The requirements set forth in Streets and Highways Code section 2704.08, subdivision (c), provide important information for analyses of that plan by the peer review group, the State Auditor, and the Legislature and by setting out the plan publicly, also allow the public generally to comment and present arguments to the Legislature about why it should or should not appropriate funds. This is a

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<sup>6</sup> The cases on which Real Parties rely, *O’Farrell v. Sonoma County* (1922) 189 Cal. 343, *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577, and *Jenkins v. Williams* (1910) 14 Cal.App. 89, are inapposite. These cases stand for the unremarkable proposition that when the voters approve a specific dollar amount of bonds for a specific purpose they cannot be used for a different purpose.

fundamentally political process in which, despite opposition, the Legislature chose to approve the requested appropriation—a process entirely consistent with the Bond Act.<sup>7</sup> (Petition, pp. 37-47.)

**B. The Trial Court’s Conclusion That a Compliant First Funding Plan Is a Necessary Prerequisite to a Second Funding Plan Was Error.**

Real Parties contend that the trial court correctly linked the first and second funding plans, but they do not squarely address the Petition’s legal argument that the two are necessarily unrelated. Instead, they simply observe that the court “came to this conclusion taking into account the language of the measure itself, as well as the language contained in the Voter Information Guide,” citing the trial court’s November 25, 2013 ruling. (Tos Opposition, p. 31.) In fact, the trial court’s ruling omits any mention of the ballot pamphlet, or indeed the voters’ intent. (Tab 6.) The *only* rationale it offered was this statement:

The conclusion that the subdivision (c) funding plan is a necessary prerequisite to the subdivision (d) funding plan is supported by the fact that only the first funding plan is required to make the critical certification that the Authority has completed “all necessary project level environmental clearances necessary to proceed to construction”. (See, Streets and Highways Code section 2704.08(c)(2)(K).)

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<sup>7</sup> Real Parties’ further argument that the Court should not vacate the writ because the Authority must still adopt a second funding plan that identifies funding (Water District Opposition, pp. 8-9) is beside the point. As provided in the Bond Act, there are many steps to be taken before the Authority can spend bond funds for construction. That cannot justify inserting a new requirement, not found in the Bond Act. Indeed, this argument implicitly supports Petitioners’ position that there are safeguards built into the Bond Act that adequately protect the voters’ interest, rendering the trial court’s writ unnecessary.

(Tab 6, HSR00091-HSR00092.) As the Petition shows, this analysis does not survive scrutiny, and Real Parties' bare observation offers nothing to bolster the analysis.

Real Parties also argue that the writ was justified because funding plan requirements are intended to ensure there are sufficient committed funds and environmental clearances. (Water District Opposition, p. 7.) But, as the trial court recognized and Real Parties acknowledge, the Bond Act requires that financing be addressed in the second funding plan. (Sts. & Hy. Code, § 2704.08, subd. (d); see Water District Opposition, pp. 8-9.) Even if there were a cognizable cause of action to challenge the funding plan (which there is not), and even if there were facts to support issuance of a writ (which there are not), Real Parties do not attempt to justify a writ requiring the Authority to undertake the arduous task of putting together an entirely new funding plan ostensibly just to ensure the existence of environmental clearances.

## CONCLUSION

For all of these reasons, as well as the reasons set forth in the Petition and accompanying memorandum of points and authorities, this Court should exercise its jurisdiction to hear the Petition and grant the relief prayed for therein.

Dated: February 10, 2014

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that the attached **PETITIONERS' REPLY TO PRELIMINARY  
OPPOSITION OF REAL PARTIES IN INTEREST** uses a 13 point  
Times New Roman font and contains 7,876 words.

Dated: February 10, 2014

KAMALA D. HARRIS  
Attorney General of California

A handwritten signature in cursive script that reads "Stephanie Zook".

STEPHANIE F. ZOOK  
Deputy Attorney General  
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**DECLARATION OF SERVICE BY E-MAIL and OVERNIGHT COURIER**

Case Name: *California High-Speed Rail Authority, et al. v. The Superior Court of Sacramento County, et al.*

Case No.: **C075668**

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: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for overnight mail with the Golden State Overnight courier service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business.

On February 10, 2014 I served the attached *Petitioners' Reply to Preliminary Opposition of Real Parties in Interest Stay Requested by March 1, 2014* by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

**SEE ATTACHED SERVICE LIST**

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 February 10, 2014, at Sacramento, CA.

\_\_\_\_\_  
L. Carnahan  
Declarant

\_\_\_\_\_  
*L. Carnahan*  
Signature

**SERVICE LIST**

Case Name: **CALIFORNIA HIGH-SPEED RAIL AUTHORITY, et al. v.  
THE SUPERIOR COURT OF SACRAMENTO COUNTY, et al.**

Case No.: **C075668**

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