IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

No. C075668

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

v.

THE SUPERIOR COURT OF SACRAMENTO COUNTY,
Respondent,

and

JOHN TOS, et al.,
Real Parties in Interest

Petition for Writ of Mandate and Stay of Judgment
After a Judgment by the Superior Court of Sacramento County
(Case Nos. 34-2011-0113919-CU-MC-GDS and
34-2013-00140689-CU-MC-GDS, Honorable Michael P. Kenny, Judge)

REAL PARTY IN INTEREST FIRST FREE WILL BAPTIST CHURCH'S RETURN TO ALTERNATIVE WRIT BY ANSWER AND MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITION FOR EXTRAORDINARY WRIT OF MANDATE

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

California Rules of Court 8.208, 8.490(i), 8.494(c), 8.496(c), or 8.498(d)

Court of Appeal Case Caption:

California High Speed Rail Authority, et al. v.
The Superior Court of Sacramento County

Court of Appeal Case Number: C075668

Please check here if applicable:

☒ There are no interested entities or persons to list in this Certificate as defined in the California Rules of Court.

Name of Interested Entity or Person (Alphabetical order, please.)	Nature of Interest
1.	
2.	
3.	

Please attach additional sheets with Entity or Person Information, if necessary.

HAROLD E. JOHNSON

March 14, 2014

Printed Name: Harold E. Johnson
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Party Represented: Real Party in Interest
First Free Will Baptist Church

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ANSWER OF REAL PARTY FIRST FREE WILL BAPTIST CHURCH TO ALTERNATIVE WRIT OF MANDATE AND PETITION FOR EXTRAORDINARY WRIT

Real Party in Interest First Free Will Baptist Church (hereafter, "Church") answers Petitioners' Petition for Extraordinary Writ of Mandate (hereafter, "the Petition"), insofar as the Petition arises from and addresses *High Speed Rail Authority v. All Persons Interested*, Superior Court Case No. 34-2013-00140689, in which Church is a defendant.

ADMISSIONS AND DENIALS

Petitioners' Introduction

The unnumbered paragraphs set forth in Petitioners' Introduction are statements, characterizations, opinions, contentions, and/or conclusions of fact and law. Church alleges that no response is required. To the extent that a response is required, and to the extent the Introduction deals with the *High Speed Rail Authority* validation case, Church NEITHER ADMITS NOR DENIES all statutory references, which speak for themselves, and Church DENIES all other allegations. To the extent the Introduction deals with *Tos, et al. v. California High Speed Rail Authority, et al.,* (hereafter, "*Tos*"), Sacramento Superior Court Case No. 34-2011-00113919, Church NEITHER ADMITS NOR DENIES the allegations, because Church was not a party to that case.

Jurisdiction

Church NEITHER ADMITS NOR DENIES the constitutional and Code of Civil Procedure provisions cited in the Jurisdiction paragraph, as they speak for themselves. However, Church DENIES that this case meets the applicable tests for issuance of an extraordinary writ.

Numbered paragraphs

Church admits or denies the allegations of the Petition's numbered paragraphs as follows:

1. Church ADMITS Paragraphs 1, 2, 3, 4, 11, 16, 20, 22, 28, and 33.

2. Church DENIES Paragraphs 25, 26, 27, 28, and 29.

3. Church ADMITS Paragraph 5, except to the extent it suggests Real Party in Interest Union Pacific Railroad did not make itself a Defendant in the Validation Action by filing a responsive pleading at the trial court.

4. Church NEITHER ADMITS NOR DENIES Paragraph 6, because it recounts provisions of the Bond Act, which provisions speak for themselves.

5. Church NEITHER ADMITS NOR DENIES Paragraph 7 & 8, because they recount provisions of the Bond Act and the Public Utilities Code, which provisions speak for themselves.

6. Church NEITHER ADMITS NOR DENIES Paragraph 9, to the extent it recounts the first funding plan, the draft 2012 business plan, and provisions of the Bond Act and Public Utilities Code, which documents and statutory provisions speak for themselves; but Church DENIES any contention that the first funding plan conformed with the requirements of the Bond Act and the Public Utilities Code.

7. Church NEITHER ADMITS NOR DENIES Paragraph 10, because it recounts filings in *Tos*; those filings speak for themselves and Church was not a party to that case.

8. Church NEITHER ADMITS NOR DENIES Paragraph 12, to the extent it recounts provisions of Senate Bill 1029, which provisions speak for themselves; but Church DENIES any contention that Senate Bill 1029 appropriates funds in a way that is authorized by the Bond Act.

9. Church NEITHER ADMITS NOR DENIES Paragraph 13, to the extent it recounts the March 18, 2013, resolution of the Committee; but Church DENIES any contention that the resolution complied with the Bond Act.

10. Church NEITHER ADMITS NOR DENIES Paragraph 14, because it recounts provisions of the Bond Act, which provisions speak for themselves.

11. Church NEITHER ADMITS NOR DENIES Paragraph 15, to the extent it recounts the Committee resolution, because the resolution speaks for

itself; but Church DENIES any contention that the resolution complies with the Bond Act.

12. Church NEITHER ADMITS NOR DENIES Paragraph 17, because it recounts the trial court's first ruling, holdings, and request for further briefing in *Tos*. The first ruling, holdings, and request for further briefing speak for themselves, and Church was not a party in *Tos*.

13. Church NEITHER ADMITS NOR DENIES Paragraph 18, because it recounts the trial court's second ruling and holdings in *Tos*; the ruling and holdings speak for themselves, and Church was not a party in *Tos*.

14. Church NEITHER ADMITS NOR DENIES Paragraph 19, to the extent it recounts the trial court's ruling and holding in the Validation Action, which ruling and holding speak for themselves. But Church DENIES any contention that the trial court disposed of the other causes of action against the validity of the bonds; in fact, the trial court reserved judgment on those other causes of action.

15. Church NEITHER ADMITS NOR DENIES Paragraph 21, because it recounts trial court rulings in *Tos* and filings by the *Tos* petitioners; those rulings and filings speak for themselves, and Church was not a party to the *Tos* litigation at the trial court.

16. Church ADMITS Paragraph 23 to the extent it recites that the Petition is followed by a memorandum of points and authorities; but Church

Denies any allegation in that memorandum that the bonds are legally and constitutionally valid or that the trial court erred in its ruling that withheld validation of the bonds.

17. Church NEITHER AFFIRMS NOR DENIES Paragraph 30, because it recites provisions of the Bond Act, which provisions speak for themselves.

18. Church NEITHER AFFIRMS NOR DENIES Paragraph 31, because it references congressional legislation and a congressional letter, and newspaper articles, all the texts of which speak for themselves.

19. Church NEITHER AFFIRMS NOR DENIES Paragraph 32, because it deals with the trial court's ruling in the *Tos* case, of which Church was not a party at the trial court.

ISSUES PRESENTED

20. Church ADMITS Paragraph 24(a) to the extent that it acknowledges the trial court found no record evidence to support the Committee's determination; but Church DENIES that the trial court's ruling was based "solely" on the lack of record evidence for the Committee's determination.

21. The Church contends that, instead of Petitioner's characterization in Paragraph 24(a), the issue presented is whether a court may

validate bonds that have not been issued in conformity with the Bond Act and other applicable statutes.

22. Church ADMITS Paragraph 24(b) to the extent that it acknowledges that the trial court found insufficient evidence to demonstrate that the Committee did not act arbitrarily or capriciously in making its determination.

23. Church contends that another issue presented is whether bonds may be validated when the proceeds would not be used for the project and purposes approved by voters.

24. Church contends that another issue presented is whether the Authority advocating bond validation has the burden of demonstrating that its proposed use of bonds proceeds will conform with the project and purposes approved by voters.

25. Church NEITHER AFFIRMS NOR DENIES Paragraph 24(c), because it arises from the *Tos* case, of which Church was not a party at the trial court.

26. Church NEITHER AFFIRMS NOR DENIES Paragraph 24(d), because it arises from the *Tos* case, of which Church was not a party at the trial court.

AFFIRMATIVE DEFENSES

REAL PARTY'S
FIRST AFFIRMATIVE DEFENSE

(Adequate remedy at law is available to Petitioners)

The facts and issues in *High Speed Rail Authority v. All Persons Interested* do not meet the legal standard required for review by way of extraordinary writ. Petitioners have an adequate remedy at law.

REAL PARTY'S
SECOND AFFIRMATIVE DEFENSE

(Failure to state a Cause of Action)

The Petition does not state facts that are sufficient to constitute a cause of action upon which relief may be granted.

REAL PARTY'S
THIRD AFFIRMATIVE DEFENSE

(Trial court acted within its discretion)

The Trial Court's judgment, withholding validation, was within the court's proper discretion, was legally correct, and should not be disturbed.

REAL PARTY'S
FOURTH AFFIRMATIVE DEFENSE

(Violation of an essential legal requirement for administrative actions)

In a failure to comply with an essential legal requirement for quasi-legislative administrative actions, there was an absence of record evidence to support the decision that it was "necessary or desirable" to issue the bonds in this case.

REAL PARTY'S
FIFTH AFFIRMATIVE DEFENSE

(Violation of Cal. Const. art. XVI, § 1)

Petitioners failed to carry their burden of proof, pursuant to Cal. Const. art. XVI, § 1, to show that current plans and appropriations for use of the bond proceeds are consistent with the project approved by voters.

Real Party currently has insufficient information on which to form a belief as to additional, as yet unstated, defenses that may be available to it. Real Party reserves herein the right to assert additional affirmative defenses that may be revealed to it.

PRAYER

WHEREFORE, Real Party, CHURCH, prays that:

1. this Court discharge the alternative writ;

2. this Court deny the Petition;

3. this Court affirm the trial court's decision not to validate the bonds at issue in *High Speed Rail Authority v. All Persons Interested*, on the grounds relied on by that court and/or on other grounds.

4. Petitioners take nothing and be granted none of the relief for which the Petition prays;

5. Real Party CHURCH recover costs of suit, including reasonable attorney fees; and

6. for such other or further relief as this Court deems just and proper.

DATED: March 14, 2014.

Respectfully submitted,

MERIEM L. HUBBARD
HAROLD E. JOHNSON
RALPH W. KASARDA

By _____
HAROLD E. JOHNSON

Attorneys for Real Party in Interest
First Free Will Baptist Church

VERIFICATION

I, Harold E. Johnson, declare as follows:

I am one of the attorneys for Real Party in Interest. I have read the foregoing Return to Alternative Writ By Way of Answer and know its contents. The facts alleged in this return are within my own knowledge and I know them to be true. Because of my familiarity with the rulings and facts pertaining to the trial court's proceedings, I, rather than any officer of Real Party in Interest, verify this return.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on March 14, 2014, in Sacramento, California.

HAROLD E. JOHNSON

MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

Real Party First Free Will Baptist Church is a church in Bakersfield, California, that also maintains a school and an outreach program. The health and viability of all of these programs and ministries are threatened by the possibility that the route of the High Speed Rail project will be sited near the Church's property.

The Church's members and leaders are taxpayers of California, and the Church is a party in the validation action, *High Speed Rail Authority v. All Persons Interested*, but not in *Tos, et al. v. California High Speed Rail Authority, et al.* This Return is submitted by the Church on the sole issue of the validation action.

The California High Speed Rail project is a massive undertaking and the $8.6 billion in bonds at issue in this case would encumber taxpayers for decades. Yet Petitioners seek to win judicial approval for the bonds (1) without even deferential review of a key panel's decision-making that gave the go-ahead to issuing them; and (2) without a demonstration to the court that current plans for spending the proceeds are consistent with the project that voters approved.

This attempt to speed the project past checkpoints of accountability flouts legal and constitutional doctrine. The trial court properly withheld validation because there needed to be record evidence to support the decision that it was "necessary" or "desirable" to issue the bonds—and there was none. Even without that fatal defect, validation is still not permissible, because Petitioners did not meet their burden to show that the bond proceeds, under current plans and appropriations for the project, will be used in conformity with voters' intent, as required by Cal. Const. art. XVI, § 1.

In any case, a writ of mandate is an inappropriate vehicle for challenging the trial court's ruling. Its use here could set a precedent for arbitrarily transforming the "extraordinary" expedient of writ relief into an ordinary one—at least in the context of validation actions.

For these reasons, Real Party respectfully requests that this Court discharge the alternative writ of mandate on file in this action and deny the Petition.

II

FACTUAL BACKGROUND

Proposition 1A ("the Bond Act"), approved by California voters on November 4, 2008, authorized the issuance of $9.95 billion in state general obligation bonds to initiate construction of a "High Speed Rail" project to link the San Francisco Bay Area, Southern California, and the Sacramento/San

Joaquin Valley. Cal. Sts. & High. Code § 2704, *et seq*. By its express terms, the Bond Act laid out specific criteria and features for the bond proceeds and the project. For instance, no more than $950,000,000 of bond proceeds would go toward expenses for non-high-speed rail commuter lines (and would be intended to promote commuter "connectivity" with the High Speed Rail project). *Id.* § 2704.095. As for the High Speed Rail project itself, it would feature electric trains capable of operating speeds of 200 miles per hour or greater; guaranteed maximum travel times between major destination cities (such as no more than two hours, 40 minutes between San Francisco and Los Angeles); and achievable operating headway (time between successive trains) of five minutes or less. *Id.* § 2704.9.

The Bond Act required the High Speed Rail Authority ("the Authority") to submit a detailed funding plan for capital costs three months or more before requesting appropriation of bond proceeds for any one corridor of the project. *Id.* § 2704.08(c)(1). In November, 2011, the Authority produced a Funding Plan that it claimed to be in conformance with this requirement, and an accompanying Draft 2012 Business Plan with details on construction, financing, and operation of the project. Exhibits accompanying the Petition, Tabs 323, 334, 337, 345-59, 362-68. However, without consulting voters again, in November, 2012, the Authority unveiled a second plan—the Revised 2012 Business Plan—that dramatically altered the previous business plans and

the structure of the entire project. Tabs 372, 373, 377. For instance, it introduced a "Blended Plan" approach that integrates high speed rail with existing commuter lines in targeted urban areas. Tab 373, HSR67652-HSR07054.

In the summer of 2012, the Legislature enacted Senate Bill 1029, which appropriates $2.61 billion of Proposition 1A bond proceeds for construction and acquisition of the Initial Operating Segment in the Central Valley. Stats. 2012, ch. 152, §§ 8-9. This legislation also appropriated $1.1 billion in Proposition 1A bond proceeds for projects in commuter corridors of Los Angeles County and the Bay Area. Cal. Sts. & High. Code § 2704.76.

The Bond Act establishes a High Speed Rail Finance Committee with authority to "determine the necessity or desirability" of issuing bonds at any particular point in time. *Id.* §§ 2704.12(a), 2704.13. In March, 2013, the Committee adopted a resolution authorizing issuance of the $8.6 billion in bonds at issue here. HSR01952. The Authority and the Committee proceeded to file a validation lawsuit. HSR02760. A number of taxpayers, citizens, associations, and public entities entered the case as defendants to oppose validation, including First Free Will Baptist Church. HSR00014.

In a judgment made final on January 3, 2014, the trial court denied validation, based on its finding that there was not evidence in the record to support the Committee's determination that it was "necessary or desirable" to

authorize issuance of $8.6 billion in bonds as of March 18, 2013. HSR00002, HSR00031. The Court held that the want of record evidence made it impossible for the Committee's action to be reviewed for reasonableness and lack of arbitrariness or capriciousness, even under the most deferential standard. HSR00016, HSR00031.

Having rejected validation on these grounds, the court declined to rule on other arguments from the opposing parties. HSR00031. These included the contention that the Revised 2012 Business Plan and Senate Bill 1029's bond appropriations are not consistent with the project that voters approved and therefore violate Article XVI, Section 1, of the California Constitution, requiring voter approval for major state borrowing, including for the specific project to be funded. HSR01498, HSR01503, HSR01515, HSR01516.

The Authority and the Committee, as Petitioners, have now filed the above-captioned case, a Petition for Writ of Mandate, asking, among other things, for the trial court's ruling to be vacated and that the trial court be ordered to validate the bonds. Petition at 12-13.

III

STANDARD OF REVIEW

Writ relief is "hard to get" and rare. *Omaha Indemnity Co. v. Superior Court*, 209 Cal. App. 3d 1266, 1272 (1989). In order to be excused from the normal appellate process and obtain a writ from an appellate court overturning

a superior court ruling, a petitioner must show that she is subject to unusual circumstances such as (1) lacking "an adequate means, such as a direct appeal, by which to attain relief," and (2) facing "harm or prejudice in a manner that cannot be corrected on appeal." *Id.*

Matters of law, such as the trial court's holding that record evidence is required to review the quasi-legislative action of an administrative agency, are reviewable *de novo*. *Dolan-King v. Rancho Santa Fe Ass'n*, 81 Cal. App. 4th 965, 974 (2000). In reviewing a trial court's finding that a quasi-legislative administrative action was not supported by evidence to show that it was not "arbitrary or capricious," the appellate court will affirm the finding if substantial evidence supports it. *Poway Royal Mobilehome Owners Ass'n v. City of Poway*, 149 Cal. App. 4th 1460, 1478-79 (2007). Furthermore, on "foundational matters of fact," the trial court's findings can be "conclusive on appeal if supported by substantial evidence." *Lewin v. St. Joseph Hospital of Orange*, 82 Cal. App. 3d 368, 387 (1978).

Appellate review of questions of constitutional law is *de novo*. *See, e.g., State ex rel. Pension Obligation Bond Comm. v. All Persons Interested*, 152 Cal. App. 4th 1386, 1407 (2007). If this Court were to vacate the trial court's ruling on the record evidence question, yet elect not to return the case to the trial court for consideration of the other arguments and, instead, directly rule on the argument based on Cal. Const. art. XVI, § 1, this Court should

apply the *de novo* standard to that argument. Section 1 requires voter approval for major state indebtedness—and for the specific purposes for which the debt is incurred. If bonds are proposed to be used for a project other than voters intended, invalidation is an appropriate remedy. 92 Ops. Cal. Atty Gen. 1, 11 (2009).

IV

ARGUMENT

A. Writ Relief Is Not the Appropriate Vehicle for This Case

1. Petitioners' Arguments Would, by Extension, Potentially Transform the Writ Remedy from "Extraordinary" into an Ordinary Expedient for Validation Actions

The issuance of a writ of mandate at the appellate level is a form of "*extraordinary* relief," and courts of appeal are "normally reluctant" to grant such petitions. *See, e.g.*, *City of Half Moon Bay v. Superior Court*, 106 Cal. App. 4th 795, 802-03 (2003) (emphasis added). Accordingly, such relief is appropriate only when unusual, *extraordinary*, circumstances are in play, such as when "the party seeking the writ lacks an adequate means, such as a direct appeal, by which to attain relief," or "the petitioner will suffer harm or prejudice in a manner that cannot be corrected on appeal." *Id.* at 803.

However, the political and legal time pressures that Petitioners recount in their request for a writ are not, in fact, unique or extraordinary—in the context of validation actions. Therefore, to hold that the urgent circumstances

in this case warrant writ relief would set a precedent for using writs as a common vehicle for appellate review in validation actions—in effect, transforming, at least in the validation context, what is meant to be an "extraordinary" remedy into an ordinary one.

To begin with, Petitioners have the avenue of "direct appeal" available. Validation judgements by trial courts are appealable (Cal. Civ. Proc. Code § 870(b)), and appellate courts are authorized to give them calendar preference. *Blue v. City of Los Angeles*, 137 Cal. App. 4th 1131, 1139 (2006); Cal. Civ. Proc. Code § 867.[1]

But Petitioners argue that "irreparable harm" would flow from following this customary appellate process. Writ review is required, Petitioners argue, because

> 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.

Petitioners' Reply to Preliminary Opposition of Real Parties in Interest (hereafter, "Reply brief") at 8.

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[1] Petitioners have filed a Notice of Appeal of the trial court's validation judgment in the *High Speed Rail Authority v. All Persons Interested* case, and the appeal has been given the case number at the Third District Court of Appeal, of C075932.

Absent a remedy through the writ process, Petitioners warn, there will be significant harm to "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." *Id.*

The problem with invoking this parade of horribles as justification to be exempted from the normal (and, for validation cases, the normally *expedited*) appellate process, is that, although the specific facts are different from case to case, in a broad sense the challenges faced here are not "extraordinary," not dissimilar in principle from the political and legal scenarios surrounding many validation actions. Validation actions *often* involve projects that confront ongoing obstacles of a political or legal nature, or are of such public importance that legal finality is needed "as quickly as possible." For instance, in *Pension Obligation Bond Comm.*, at issue was the Legislature's proposal to float state general obligation bonds in order to pay for a major component of California's funding obligations—up to $960 million of the state's employer pension costs for a single budget year. 152 Cal. App. 4th at 1395-96. Given the budgetary exigencies at stake, there was clearly a need for legal proceedings to move "as quickly as possible;" but state officials did not translate that need into a request to be exempted from the appellate process (with calendar preference) that is normal for validation actions. When

the trial court declined to validate the bonds, the state proceeded by way of appeal, not through a petition for extraordinary writ. *Id.*

Indeed, the Legislature fashioned the validation procedures, including its appellate component, with full cognizance that validation actions often entail urgency and need a streamlined litigation framework:

> [T]he validation statutes have placed great importance on the need for a single dispositive final judgment. The validating statutes should be construed so as to uphold their purpose, i.e., "the acting agency's need to settle promptly all questions about the validity of its action." . . . 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.

Friedland v. City of Long Beach, 62 Cal. App. 4th 835, 842-43 (1998) (citations omitted).

> A validation action fulfills a second important objective, which is to facilitate a public agency's financial transactions with third parties by quickly affirming their legality. "The fact that litigation may be pending or forthcoming drastically affects the marketability of public bonds."

Id. at 843 (citations omitted).

The Legislature recognized that "a prompt validating procedure" for bonds or other financial instruments or transactions was necessary so as not to "impair [a] public agency's ability to operate and carry out its statutory purpose." *Graydon v. Pasadena Redevelopment Agency*, 104 Cal. App. 3d 631, 646 (1980).

Given this acknowledgment of a need for expedited procedures, the Legislature could have designated writ procedures as the prime pathway for appealing trial court validation judgments. For instance, in Public Records Act cases a petition for extraordinary writ has been made the exclusive mode of appellate review, and this is precisely because of a need to "speed" the process forward. *Powers v. City of Richmond*, 10 Cal. 4th 85, 89, 112 (1995). But for validation actions, the Legislature's response to the need for relatively quick finality was to allow calendar preference for validation cases. *Blue*, 137 Cal. App. 4th at 1130; Cal. Civ. Proc. Code § 867. Prerogative writs, then, in this legal context as in most others, were left as what courts recognize as an exceptional and rare departure from the normal appellate process. *Omaha Indemnity Co. v. Superior Court*, 209 Cal. App. 3d 1266, 1272 (1989). But what the Legislature has chosen not to do statutorily, Petitioners would, in essence, encourage to be done judicially, through arbitrary expansion of the use of prerogative writs.

Although the scale may be grander, the dilemmas and challenges that confront the High Speed Rail project are not inconsistent with political and legal hurdles—and corresponding need for finality—in many projects and financing arrangements that are subject to validation actions. Therefore, proceeding by writ of mandate in this case would risk transforming the litigation framework for validation actions in a way that's not sanctioned by

statute—by turning an "extraordinary" route for review into an ordinary expedient. This Court should decline to travel that route, discharge the alternative writ, and deny the Petition.

B. Validation Was Correctly Withheld Due To Lack of Evidence To Support the Finance Committee's Action

The Finance Committee that is tasked with determining "whether or not it is necessary or desirable to issue bonds" for the High Speed Rail project (Cal. Sts. & High. Code § 2704.13) authorized the $8.6 billion in bonds that are the subject of this case without complying with an essential legal requirement: That this quasi-legislative administrative action be supported by evidence in the record.

This is what the trial court determined, and why it declined to validate the bonds. HSR00032. Because the trial court's ruling was correct—and is itself supported by substantial evidence—this Court should, in essence, affirm it, by discharging the alternative writ and denying the Petition for Writ of Mandate.

Petitioners argue that the trial court had no business examining the Committee's decision to authorize the bonds. Petitioners contend that the Committee's determination that issuance is "necessary or desirable" is a "self-evident" conclusion that is "not reviewable." But Petitioners are unable to buttress this claim with on-point precedents. Their citations speak merely to the truism that courts may not second-guess the *substance* of quasi-legislative

administrative actions. As put by *Perez v. Bd. of Police Comm'rs*, 78 Cal. App. 2d 638, 643 (1947), *cited in* Petition at 29, courts "are not charged with the responsibility of determining the wisdom" of a public agency's determination that a rule is "necessary or desirable." Thus, in *Perez*, the court declined to require record evidence to establish the desirability of a board resolution against allowing police officers to join a union. *Id.* In *City of Monrovia v. Black*, the court declined to second-guess the city's official contention that the issuance of bonds was necessary because the proposed improvements could not be otherwise funded. 88 Cal. App. 686, 690 (1928), *cited in* Petition at 30. And in *Boelts v. City of Lake Forest*, the court stated that the words, "necessary or desirable," as a statutory requirement for initiating a redevelopment amendment, "are probably so elastic as not to impose any substantive requirements." 127 Cal. App. 4th 116, 128 (2005), *cited in* Petition at 28.

Yet there is another purpose for reviewing an agency's quasi-legislative action and the record evidence behind it: To ensure the integrity of the *process* that yielded the decision. This purpose is consistent with a celebrated observation of the U.S. Supreme Court: "It is rudimentary administrative law that discretion as to the substance of the ultimate decision does not confer discretion to ignore the required procedures of decisionmaking." *Bennett v. Spear*, 520 U.S. 154, 172 (1997).

Indeed, this is the purpose for which the trial court below sought—in vain—for record evidence to support the Finance Committee's decision in order "to protect against any administrative action that is merely arbitrary or capricious." HSR00025. This is a legally sanctioned—indeed, legally required—purpose for judicial review of quasi-legislative actions. As stated in *Poway Royal Mobilehome Owners Ass'n v. City of Poway*, the "scope of judicial review" of a quasi-legislative action encompasses "substantial evidence review." It is

> [l]imited to the record before the [government body]; it is an examination of the proceedings before the entit[y] to determine if [its] *actions* were arbitrary, capricious, or entirely lacking in evidentiary support. The trial court reviews the decision-making *process* of the [government body] and does not conduct its own evidentiary hearing . . . .
>
> On appeal, we . . . examine the administrative record to determine whether substantial evidence supports the trial court's findings.

149 Cal. App. 4th at 1478-79 (citations omitted) (emphasis added).

Notably, the *Poway* case affirms this judicial authority—to conduct a substantial evidence review of quasi-legislative decisions—in a case that is on-point with this one: *i.e.*, litigation over *a validation action on proposed bonds. Id.* at 1460. Petitioners try to escape the force of this precedent by focusing on the fact that in the *Poway* case, the bonds were being issued pursuant to a statute that specifically required a hearing. Reply Brief at 16. But the actual language of the *Poway* decision sets forth the substantial evidence rule in a

much broader way, so that it applies to quasi-legislative decisions regardless of whether there are specific statutory instructions about the nature of the required process. There must be "[a]ssurance as to the legality of the *proceedings* surrounding the issuance of . . . bonds," and that means an assurance that agency "actions were [not] arbitrary [or] capricious." *Id.* at 1478-79 (emphasis added). In other words, the rule against arbitrariness and capriciousness is a legal standard of proper process all by itself, regardless of whether there is a statutory framework that spells out specific procedural steps for the decision making. Moreover, the Bond Act underscores that the Finance Committee has a discretionary and independent decision-making role—implying that its decision should be made responsibly and not arbitrarily—by vesting in it the crucial yes-or-no decision, "whether or not" issuing bonds is "necessary or desirable." Cal. Sts. & High. Code § 2704.13.

Even with "decisions when the agency was not required to hold an evidentiary hearing," a court still must review its action as to whether it was "arbitrary, capricious, or lacking in evidentiary support." This involves seeking substantial evidence to determine such matters of process as whether "an agency has adequately considered all relevant factors." *McGill v. Regents of University of California*, 44 Cal. App. 4th 1776, 1785-86 (1996) (citations omitted), and whether the decision was "procedurally unfair." *Lewin v. St. Joseph Hospital of Orange*, 82 Cal. App. 3d 368, 387 (1978).

Because the record was devoid of "substantial evidence" to help answer this question—*i.e.*, because it was inadequate to allow the Trial Court to determine whether the Finance Committee "considered all relevant factors," or acted capriciously, tantamount to coin-tossing and abdicating the responsible exercise of discretion—the trial court correctly declined to validate the bonds.

In reviewing that decision, this Court will uphold it if it is supported by "substantial evidence." *Poway*, 149 Cal. App. 4th at 1479. Moreover, there can be "foundational matters of fact with respect to which the trial court's findings would be conclusive on appeal if supported by substantial evidence." *Lewin*, 82 Cal. App. 3d at 387. Certainly there is "substantial evidence" to support the trial court's finding of a *lack* of substantial evidence in the record by which to assess whether the Finance Committee's action in authorizing issuance of the bonds was considered or capricious. In essence, the record consists merely of documents evidencing the Finance Authority's request that the Finance Committee decide to issue the bonds, and the Finance Committee's prompt compliance with that request by passing a resolution to authorize issuance of them. HSR00021. As the trial court accurately described the record, there is no description or record of how the Finance Committee arrived at its decision to issue the resolutions—"no summary of the factors the Finance Committee considered and no description of the content of

any documentary or other evidence it may have received and considered." HSR00065.

Petitioners suggest, tautologically, that the mere fact that the resolutions were issued provides all the evidence the court needs that the issuance was not arbitrary or capricious. Reply brief at 17. But the Evidence Code section they cite—§ 664 (presuming "that official duty has been regularly performed")—if relevant at all in this context, does not require judicial rubber-stamping of administrative decisions, but merely imposes on "the party against whom it operates the burden of proof as to the nonexistence of the presumed fact." *California Advocates for Nursing Home Reform v. Bonta*, 106 Cal. App. 4th 498, 505 (2003). Here, that burden—if indeed applicable—is easily met, because the record speaks for itself through its clear lack of evidence related to the process and deliberations that led to the Finance Committee's action. Here, it is simple to prove a negative, because the negative proves itself.

Because courts are authorized to require substantial evidence in reviewing quasi-legislative actions by administrative agencies—and because there is "substantial evidence" for the trial court's finding that there was *no* such record evidence supporting the Finance Committee's resolutions—this Court should uphold the trial court's judgment, by discharging the alternative writ and denying the Petition for Writ of Mandate.

C. Petitioners Have Not Met Their Constitutional Burden To Show That Bond Proceeds, Under Current Appropriations Plans and Project Design, Will Be Used for the Purpose Approved by Voters

Even if this Court were to vacate the trial court's judgment that there was no record evidence to support the Finance Committee's decision to authorize issuance of the bonds, a writ to order validation of the bonds still should *not* issue. Rather, the case would need to go back to the trial court for consideration of the other challenges to the bonds that have so far gone unaddressed. Because the trial court's ruling on the substantial evidence issue was sufficient to decide the validation question on its own, the trial court explicitly withheld judgment on the other arguments against validation, finding it "unnecessary to address or resolve any of [those] arguments." HSR00031. Those other arguments that defendants advanced against validation included opposition based on Cal. Const. art. XVI, § 1 (hereafter, "Section 1"), requiring voter approval for major state borrowing. For instance, it was argued that bonds must not be validated unless it is established that they have been approved by voters *and that the current plans for spending the proceeds accord with what was promised to voters*. HSR01516.

However, if this Court were to vacate the trial court's ruling on the substantial evidence question, and still decide against transferring the case back to the trial court, this Court should rule on its own that validation is impermissible because Section 1 has not been complied with. Specifically, the

Authority has not met its burden, pursuant to Section 1, of showing that currently articulated plans for spending the bonds' proceeds comply with the project and purposes that voters approved when they enacted Proposition 1A.

As noted, Section 1 requires voter approval not just for major state debt, but also, simultaneously, *for the specific project that the debt is intended to underwrite*. The debt proposal must be submitted to and enacted by voters, 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." Cal. Const. art. XVI, § 1 (emphasis added).

Petitioners concede that a government entity, when bringing a validation action for bonds, has a burden of demonstrating to the court that, among other things, the bonds "would [not] violate the constitutional debt limit" (*i.e.*, Section 1). Reply brief at 14. But this "debt limit" is more than a guarantee that "the amount authorized [must be] consistent with the amount approved by voters," to quote the Petition at 23. It is also a mandate that the proceeds of the proposed bonds be used only for the "specific object" that voters have approved. Yet, even though legislation has already been enacted to appropriate proceeds from the bonds that are subject to the validation action here, Petitioners did not attempt to demonstrate in the trial court litigation that the appropriations in this legislation conform with voters' intent in authorizing the bonds. Phrased differently, the question that Petitioners did not address:

While voters approved bonds for a High Speed Rail project, did they approve the project in the form for which appropriations have now been authorized? If the current design of the project and the appropriations for it are significantly different from the project set forth in Proposition 1A, then voter approval has not been obtained and the bonds "would violate the constitutional debt limit."

An appropriations measure, Senate Bill 1029, has already been enacted, relating to disbursement of some of the proceeds from the bonds that are the subject of the validation action. Among its appropriations provisions: $1.1 billion for expenditures in the San Francisco Bay Area and Southern California, in conformance with Memoranda of Understanding in both regions:

> Of the one billion one hundred million dollars ($1,100,000,000) appropriated pursuant to Item 2665-104-6043 of Section 2.00 of the Budget Act of 2012, six hundred million dollars ($600,000,000) shall be allocated solely for purposes of the [San Francisco Bay Area's] Metropolitan Transportation Commission Memorandum of Understanding, as approved by the High-Speed Rail Authority on April 12, 2012, in High-Speed Rail Authority Resolution 12-11, and five hundred million dollars ($500,000,000) shall be allocated for purposes of the Southern California Memorandum of Understanding, as approved by the High-Speed Rail Authority on April 12, 2012, in High-Speed Rail Authority Resolution 12-10.

Cal. Sts. & High. Code § 2704.76.

These appropriations, apparently for or to be spent in conjunction with local transportation agencies, raise the question of whether bond proceeds are being used for a permissible purpose and a voter-approved project.

Proposition 1A limited the spending of bond proceeds for local, commuter, non-"High Speed Rail" projects, to $950,000,000—and expenditures within that context still must be directly related to the High Speed Rail project; specifically, the $950,000,000 is restricted for use on "intercity and commuter rail lines and urban rail systems" for purpose of "connectivity" with the High Speed Rail system. Cal. Sts. & High. Code § 2704.095. Therefore, the question presents itself: Does the $1.1 billion allocated in the provision above represent an expenditure on local projects that exceeds the amount that voters approved in Proposition 1A—and to that extent, transforms the High Speed Rail project into a financing plan for local commuter agencies, projects, and programs? Even to the extent they are within Proposition 1A's $950,000,000 limit for local, "connectivity" expenditures, do the appropriations *in fact* serve that purpose, or is bond money being committed for essentially local commuter projects that have no clear and organic connection to a future High Speed Rail system? Neither of these questions can be answered without reference to the Memoranda of Understanding (MOUs) that are cited in the appropriations provision. Yet Petitioners did not present any arguments to the trial court, in the validation proceeding, as to how or why any plans and provisions of the MOUs accord with a true High Speed Rail plan—the plan approved by voters—as opposed to providing funding for merely local commuter projects, even perhaps as a form of currying favor with local politicians.

As a practical matter, it is wise policy to use the validation procedure to ensure that any current, contemporaneous plans for the appropriations of bond proceeds are consistent with the project approved by voters; this prevents the sale of bonds for purposes that could be invalidated later, and safeguards taxpayers from being put on the hook to retire bonds whose proceeds would be in limbo.

But as a constitutional matter, it is *imperative* that these considerations be part of the validation process. If a project outline and/or appropriations plan is already in place when bonds are brought for validation, the court must measure those plans against the project that was approved by the electorate. And the burden is on the government agency that has brought the validation action to demonstrate that the funding plans are constitutionally valid—*i.e.*, that they are consistent with what voters approved. This is the only way to comprehensively ensure—at the time of validation—that the bonds do not, in the Petition's words, "violate the debt limit."

The Attorney General has averred that, if bonds are brought forward for a validation proceeding, and if a plan is *already in place* to use the proceeds for a project that was not approved by voters, "invalidation of the bond issues" is an appropriate remedy. 92 Ops. Cal. Atty Gen 1, 11 (2009). The Attorney General's opinion cites, among other cases, *Pension Obligation Bond Comm.*,

152 Cal. App. 4th at 1406-07, which enforced Section 1, the "debt limit," against an effort to validate bonds without voter approval.

In accord is *California Statewide Cmtys. Dev. Auth. v. All Persons Interested*, 40 Cal. 4th 788 (2007). Although dealing with another kind of alleged legal/constitutional violation in the use of bond proceeds, this case also demonstrates that a court must consider the legality of any current plan for spending the proceeds, as part of the validation judgment. In *California Statewide Cmtys. Dev. Auth.*, a validation action was used as the forum for determining whether the earmarked use of the bonds' proceeds would violate either Cal. Const. art XVI, § 5 (prohibiting "aid of any . . . sectarian purpose" or "help to support any school . . . controlled by any . . . sectarian denomination)," or the First Amendment. 40 Cal. 4th at 799, 807.

Also, in *Morgan Hill Unified School Dist. v. Amoroso*, 204 Cal. App. 3d 1083 (1988), the court refused to validate bonds whose proceeds would be used illegally, because the lease and school construction project for which they were earmarked was invalid.

Seeking to insulate the High Speed Rail bonds from a review, in the validation action, of whether the proceeds will be used in an unconstitutional way, Petitioners attempt to rely on *Clark v. City of Los Angeles.* But to no avail. In that case, there was no doubt, at the time the court was considering the validity of the proposed bonds, that their proceeds were to be used

exclusively for the *same infrastructure project* approved by voters—*i.e.*, infrastructure "works" for generating power. As to the *possibility* that the power generated by those works might, at a later time, be put to a use that was not authorized by voters or would be otherwise contrary to law, the court noted that separate litigation could be launched against such misuse "at that time"—*i.e.*, if it were, at some point, to become formal policy and a reality. 160 Cal. 30, 37 (1911). In contrast, the case at bar involves a question in real time, going to the heart of the very structure of High Speed Rail Project: Will the bond proceeds, under the *plans and appropriation provisions currently in place*, be used for the *same infrastructure project* that voters approved when they enacted Proposition 1A? Petitioners have a constitutionally prescribed burden to show that, under current plans and appropriation provisions, the proceeds *will* be used as prescribed by Proposition 1A—but Petitioners have not even attempted to carry that burden.

Because Petitioners failed to carry their burden of proof, failing to demonstrate or even address whether a key requirement of Cal. Const. art. XVI, § 1 has been complied with, the alternative writ should be discharged, the Petition for Writ of Mandate should be denied, and validation of the bonds should be withheld.

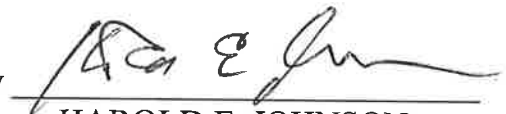
CONCLUSION

For the foregoing reasons, Real Party First Free Will Baptist Church respectfully requests that the Court discharge the alternative writ of mandate on file in this action and deny the Petition.

DATED: March 14, 2014.

Respectfully submitted,

MERIEM L. HUBBARD
HAROLD E. JOHNSON
RALPH W. KASARDA

By 
HAROLD E. JOHNSON

Attorneys for Real Party in Interest
First Free Will Baptist Church

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing **REAL PARTY IN INTEREST FIRST FREE WILL BAPTIST CHURCH'S RETURN TO ALTERNATIVE WRIT BY ANSWER AND MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITION FOR EXTRAORDINARY WRIT OF MANDATE** is proportionately spaced, has a typeface of 13 points or more, and contains 7,252 words.

DATED: March 14, 2014.

HAROLD E. JOHNSON

DECLARATION OF SERVICE

I, Suzanne M. MacDonald, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 930 G Street, Sacramento, California 95814.

On March 14, 2014, true copies of **REAL PARTY IN INTEREST FIRST FREE WILL BAPTIST CHURCH'S RETURN TO ALTERNATIVE WRIT BY ANSWER AND MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITION FOR EXTRAORDINARY WRIT OF MANDATE** were placed in envelopes addressed to:

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which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

Also, on March 14, 2014, an electronic copy of the foregoing was filed with the Clerk of the Court for the Supreme Court of California through the appellate e-filing system.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 14th day of March, 2014, at Sacramento, California.

Suzanne M. MacDonald

SUZANNE M. MACDONALD