

1 MICHAEL J. BRADY (SBN 40693)  
2 1001 MARSHALL STREET, STE. 500  
3 Redwood City, CA 94063-2052  
4 Telephone (650) 364-8200  
5 Facsimile: (650) 780-1701  
6 Email: [mbrady@rmkb.com](mailto:mbrady@rmkb.com)

7 LAW OFFICES OF STUART M. FLASHMAN  
8 STUART M. FLASHMAN (SBN 148396)  
9 5626 Ocean View Drive  
10 Oakland, CA 94618-1533  
11 TEL/FAX (510) 652-5373  
12 Email: [stu@stuflash.com](mailto:stu@stuflash.com)

EXEMPT FROM FEES PER  
GOVERNMENT CODE §6103

13 *Attorneys for Plaintiffs John Tos, Quentin Kopp,*  
14 *Town of Atherton, County of Kings, Morris Brown,*  
15 *Patricia Louise Hogan-Giorni, Anthony Wynne,*  
16 *Community Coalition on High-Speed Rail,*  
17 *Transportation Solutions Defense and Education Fund,*  
18 *and California Rail Foundation*

19 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
20 **IN AND FOR THE COUNTY OF SACRAMENTO**

21 JOHN TOS, QUENTIN KOPP, TOWN OF  
22 ATHERTON, a municipal corporation,  
23 COUNTY OF KINGS, a subdivision of the State  
24 of California, MORRIS BROWN, PATRICIA  
25 LOUISE HOGAN-GIORNI, ANTHONY  
26 WYNNE, COMMUNITY COALITION ON  
27 HIGH-SPEED RAIL, a California nonprofit  
28 corporation, TRANSPORTATION SOLUTIONS  
29 DEFENSE AND EDUCATION FUND, a  
30 California nonprofit corporation, and  
31 CALIFORNIA RAIL FOUNDATION, a  
32 California nonprofit corporation,  
33 Plaintiffs

34 vs.

35 CALIFORNIA HIGH SPEED RAIL  
36 AUTHORITY, a public entity, BOARD OF  
37 DIRECTORS OF THE CALIFORNIA HIGH-  
38 SPEED RAIL AUTHORITY, and DOES 1-20  
39 inclusive,  
40 Defendants

No. 34-2016-00204740 Filed 12/13/16

VERIFIED FIRST AMENDED  
COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF

[Code of Civil Procedure §§ 526a, 1060]

1 As causes of action against Defendant CALIFORNIA HIGH-SPEED RAIL AUTHORITY  
2 (“CHSRA”) and the Board of Directors of CHSRA (“BOARD”), Plaintiffs JOHN TOS (“TOS”),  
3 QUENTIN KOPP (“KOPP”), TOWN OF ATHERTON (“ATHERTON”), COUNTY OF KINGS  
4 (“COUNTY”), MORRIS BROWN (“BROWN”), PATRICIA LOUISE HOGAN-GIORNI  
5 (“GIORNI”), ANTHONY WYNNE (“WYNNE”), COMMUNITY COALITION ON HIGH-  
6 SPEED RAIL (“CC-HSR”), TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION  
7 FUND (“TRANSDEF”) and CALIFORNIA RAIL FOUNDATION (“CRF” and the foregoing,  
8 collectively, “PLAINTIFFS”) hereby allege as follows:

9 **INTRODUCTION**

10 1. This action challenges the constitutionality of AB 1889, a statute enacted in the 2015-2016  
11 Legislative session that added § 2704.78<sup>1</sup> to the California Streets & Highways Code. § 2704.78  
12 purports to “clarify” a provision of Street & Highways Code § 2704.08(d). However, § 2704.08  
13 was enacted by the voters of California in November 2008 as part of the Safe, Reliable High-Speed  
14 Passenger Train Bond Act for the Twenty-First Century, designated on the ballot as Proposition  
15 1A (hereinafter, “Prop. 1A”). Prop. 1A was a 9.9 billion dollar California general obligation bond  
16 measure intended to assist in funding the construction of a high-speed rail system in California,  
17 under the auspices of CHSRA. PLAINTIFFS allege that the enactment of § 2704.78 violated the  
18 California Constitution in that, rather than clarify, it attempted to materially change the terms of a  
19 voter-approved bond measure without gaining voter approval for the change, in violation of Article  
20 XVI Section 1 of the California Constitution. PLAINTIFFS ask the Court to declare AB 1889, and  
21 specifically §2704.78 facially unconstitutional and therefore void.

22 2. In addition, PLAINTIFFS allege that CHSRA has been, is, and intends to continue  
23 expending public funds in reliance on the validity of AB 1889, and specifically of § 2704.78, and  
24 that, if § 2704.78 is unconstitutional and invalid, such expenditures are illegal in that they violate

25 \_\_\_\_\_  
26 <sup>1</sup> Unless otherwise specified, all statutory references are to the California Streets & Highways Code.

1 provisions of Prop. 1A, as enacted by the voters.

2 3. PLAINTIFFS seek this Court's declaratory judgment under Code of Civil Procedure §  
3 1060 that the Legislature's enactment of § 2704.78 is unconstitutional and void. PLAINTIFFS  
4 also seek injunctive relief under Code of Civil Procedure § 526a to halt CHSRA's illegal,  
5 improper, wasteful, and unconstitutional use of public funds and to require CHSRA to restore to  
6 the State Treasury all funds involved in these illegal, improper, and/or wasteful expenditures.  
7 PLAINTIFFS also seek their costs of suit and their reasonable attorneys' fees under Code of Civil  
8 Procedure § 1021.5 or other applicable authority in pursuing this legal action in the public interest.

9 **PARTIES**

10 4. Plaintiffs JOHN TOS, QUENTIN KOPP, MORRIS BROWN, PATRICIA LOUISE  
11 HOGAN-GIORNI, and ANTHONY WYNNE are California citizens, voters and taxpayers who,  
12 during the preceding year, have paid taxes to the State of California that would be used to repay  
13 and/or pay interest on the funds that PLAINTIFFS allege are being and/or will be illegally and  
14 unconstitutionally used by CHSRA. Under Code of Civil Procedure § 526a, they have standing to  
15 seek relief against CHSRA.

16 5. In addition, Plaintiff QUENTIN KOPP is a former State Senator, retired judge, and former  
17 chair of the Board of Directors of Defendant CHSRA. As such, KOPP, as a State Senator, was the  
18 author of the legislation establishing defendant CHSRA, and, as chair of its Board of Directors,  
19 had a major role in the preparation of Prop. 1A. He desires to defend the intent of California's  
20 voters in enacting Prop. 1A as it was written and placed on the ballot and to protect it from later  
21 unconstitutional modification.

22 6. Plaintiff TOWN OF ATHERTON is a municipal corporation, organized and existing under  
23 the general laws of the State of California. ATHERTON has a direct and beneficial interest in  
24 seeing that funds of the State of California are not used illegally and unconstitutionally.  
25 ATHERTON would also be directly and adversely affected by the illegal expenditures at issue

1 herein in that funds would be expended by CHSRA on projects that would harm AHERTON and  
2 its citizens.

3 7. Plaintiff COUNTY OF KINGS is a political subdivision of the State of California,  
4 organized and existing under the laws of the State of California. COUNTY has a direct and  
5 beneficial interest in seeing that funds of the State of California are not used illegally and  
6 unconstitutionally. COUNTY would also be directly and adversely affected by the illegal  
7 expenditures at issue herein in that funds might be expended by CHSRA on projects that would  
8 harm COUNTY and its citizens.

9 8. Plaintiffs COMMUNITY COALITION ON HIGH-SPEED RAIL, CALIFORNIA RAIL  
10 FOUNDATION, and TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND  
11 are California nonprofit corporations organized and existing under the laws of the State of  
12 California. They, and/or their members, have paid taxes to the State of California during the  
13 preceding year. In addition, each of these plaintiffs has a direct and beneficial interest in seeing  
14 that the Constitution and laws of the State of California are obeyed. In addition, each of these  
15 plaintiffs, and their members, would be directly and adversely affected by the illegal expenditures  
16 at issue herein in that the funds would be expended by CHSRA on projects that would directly  
17 harm their interests.

18 9. Defendant CALIFORNIA HIGH-SPEED RAIL AUTHORITY is an agency existing within  
19 the executive branch of the State of California. As such, CHSRA has a mandatory duty to follow  
20 the California Constitution. CHSRA is governed by a nine-member Board of Directors  
21 (“BOARD”)

22 10. The BOARD OF DIRECTORS OF THE CALIFORNIA HIGH-SPEED RAIL  
23 AUTHORITY is the governing body of CHSRA. It is responsible for approving or authorizing all  
24 expenditures by CHSRA and for ensuring that CHSRA obeys the California Constitution and its  
25 statutes, including specifically voter-approved bond measures. BOARD was responsible for  
26 giving its approval to and authorizing its chief executive officer to give his final approval to two

1 funding plans purportedly prepared pursuant to § 2704.08(d) for two purportedly usable segments  
2 of the high-speed rail system, but whose compliance with § 2704.08(d) is entirely dependent on the  
3 validity of § 2704.78.

4 11. PLAINTIFFS are unaware of the true names and capacities of Defendants DOES 1 through  
5 20, inclusive, and therefore sue those Defendants under fictitious names. PLAINTIFFS will  
6 amend their Complaint to show their true names and capacities when the Defendants have been  
7 identified and their capacities ascertained. Each of the Defendants is the agent, employee, or both  
8 of every other Defendant, and each performed acts on which this action is based within the course  
9 and scope of such Defendant's agency, employment, or both. PLAINTIFFS are informed and  
10 believe, and therefore allege, that each Defendant is legally responsible in some manner for the  
11 events and actions referred to herein.

#### 11 **GENERAL ALLEGATIONS**

12 12. PLAINTIFFS have exhausted their administrative remedies. Some of the PLAINTIFFS or  
13 their authorized representatives submitted oral and/or written comments to the Legislature prior to  
14 the enactment of AB 1889 warning of its unconstitutionality. Those same PLAINTIFFS or their  
15 authorized representatives also submitted a written letter to CHSRA, through the chair of its board  
16 of directors, as well as to other public officials involved with the handling of Prop 1A bond funds,  
17 shortly after the final legislative passage of AB 1889 warning them of the unconstitutionality of  
18 AB 1889 as approved. A true and correct copy of that letter is attached hereto as Exhibit A and is  
19 incorporated herein by this reference. Those same PLAINTIFFS or their authorized  
20 representatives also provided oral comments to the BOARD at its public hearing on approving the  
21 two above-mentioned funding plans on December 13, 2016. Those comments warned the BOARD  
22 of the unconstitutionality of AB 1889 and the impropriety of relying upon it to approve the two  
23 funding plans and the expenditures that they intended to undertake pursuant to those funding plans.

24 13. PLAINTIFFS have no plain, speedy or adequate remedy in the ordinary course of law.  
25 Unless this Court grants the requested relief, AB 1889 will continue to be considered a valid  
26 statute and CHSRA's illegal expenditures in reliance on that invalid statute will continue.

1 14. If CHSRA is not enjoined from moving forward on its illegal, improper, wasteful, and  
2 unconstitutional expenditures and from undertaking acts in furtherance thereof, PLAINTIFFS will  
3 suffer irreparable harm for which there is no adequate remedy at law in that CHSRA will have  
4 violated the express intent of California's voters in approving Prop. 1A and will have expended  
5 those public funds inappropriately and illegally on projects that are not qualified for those  
6 expenditures under Prop. 1A's requirements, thereby misusing and wasting those funds in  
7 violation of the will of California's voters.

### 8 **BACKGROUND**

9 15. In 1996, the Legislature, in a bill authored by Plaintiff KOPP, created CHSRA and charged  
10 it with directing and implementing an intercity high-speed rail service within California, including  
11 specifically preparing a plan for the construction and operation of a high-speed rail network.  
12 CHSRA was granted the exclusive right to plan, construct, and operate all rail facilities operating  
13 at speeds in excess of 125 miles per hour.

14 16. In 2008, the Legislature enacted and the voters approved Prop. 1A, a \$9.9 billion general  
15 obligation bond act, to help CHSRA fund construction of a high-speed rail system. The bond  
16 measure included \$9 billion specifically allocated for the planning and construction of the high-  
17 speed rail system.

18 17. Prop. 1A included numerous conditions and requirements that had to be met in order for  
19 the bond funds to be used, especially for construction activities.

20 18. The Legislature was presumably aware of Governor's Schwarzenegger's May 2008 Budget  
21 Message, in which he stated, in regard to the proposed California high-speed rail system, that  
22 "Before any construction or equipment purchase contracts can be signed for a portion of the  
23 system, there must be a complete funding plan that provides assurance that all funding needed to  
24 provide service on that portion of the system is secured."

25 19. The Legislature was also aware, as shown by the Legislative Analyst's analysis of Prop. 1A in  
26 the Supplemental Voter Quick-Reference Guide for the November 2008 election, that voters needed  
27 assurance that there would be accountability and oversight of CHSRA's use of the bond proceeds.







1 be spent on construction activities for either bookend segment, CHSRA must prepare and have  
2 approved a second funding plan for that segment in accordance with § 2704.08(d).

3 29. In the northern bookend segment, the 2012 appropriation included approximately \$706  
4 million<sup>2</sup> to assist Caltrain in funding its electrification project, which was intended to also provide  
5 electric power for an eventual San Jose – San Francisco high-speed rail segment. This was  
6 confirmed by a series of memoranda of understandings between the Peninsula Corridor Joint  
Powers Board (“PCJPB”), Caltrain’s governing body, and CHSRA.

7 30. In 2015, the PCJPB certified an Environmental Impact Report for its electrification project  
8 and approved the project, which was projected to cost roughly \$2.1 billion. Even with the \$705  
9 million contribution from CHSRA, the electrification project was not fully funded.

10 31. While the electrification would provide a power source for a future high-speed rail line be-  
11 tween San Jose and the 4th and King Street San Francisco Caltrain station, even at its completion,  
12 it would not result in a segment that would be “suitable and ready for high-speed train operation,”  
nor otherwise satisfy the requirements set by Prop. 1A, except if §2704.78 is found valid.

### 13 **THE TOS V. CHSRA LITIGATION**

14 32. In November of 2011, CHSRA approved a “first funding plan” for a usable segment, which  
15 it defined as running either from San Jose to Bakersfield (“IOS – North”), or from Merced to the  
16 San Fernando Valley (“IOS – South”).

17 33. Shortly after that initial approval, TOS, COUNTY, and other plaintiffs filed suit against  
18 CHSRA as well as numerous California state officials, challenging that approval as being in  
19 violation of Prop. 1A and the California Constitution and involving the illegal expenditure of  
public funds.

20 34. The case was assigned to Judge Michael Kenny in Sacramento County Superior Court.

21 35. In April, 2012, CHSRA approved a Revised 2012 Business Plan. That Business Plan  
22 identified the IOS to be completed as IOS – South.

23 36. In July 2012, at the request of CHSRA and based on its first Funding Plan and the Revised 2012  
24 Business Plan, the Legislature appropriated funds towards the construction of CHSRA’s IOS, as well as

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25 <sup>2</sup> \$600 million was allocated from Prop 1A high-speed rail construction funds, while \$106 million  
26 was appropriated from Prop. 1A “connectivity” funds – to improve transit facilities connecting to  
the high-speed rail system.

1 funds to be used for improvements to the “bookend” segments of the Phase I high-speed rail system. The  
2 latter appropriation was not supported by a first Funding Plan, but was conditioned on the preparation  
3 and approval of a second Funding Plan for each usable segment involved, as well as completion of all  
4 project-level environmental clearances necessary to proceed with construction.

5 37. In May of 2013, the allegations of noncompliance with the requirements of § 2704.08(c) of  
6 CHSRA’s first Funding Plan for its IOS were heard in the trial court. In November of that same  
7 year, the trial court issued its ruling that CHSRA’s first Funding Plan was inadequate and invalid  
8 and ordered the rescission of CHSRA’s approval of that plan.

9 38. CHSRA filed a petition for writ of mandate with the California Supreme Court challenging  
10 the trial court’s ruling on this and other related matters. That petition was transferred to the Third  
11 District Court of Appeal. The Third District Court of Appeal ordered full briefing, and after  
12 briefing and oral argument, granted the petition, holding that the approval of a first Funding Plan  
13 was not a final action subject to legal challenge, and that only approval of a final second Funding  
14 Plan could be subjected to legal challenge.

#### 15 **AB 1889**

16 39. During the summer of 2016, the PCJPB convinced State Assembly Member Mullin to  
17 amend AB 1889, a bill he had authored that had already passed the Assembly, to replace its body  
18 with new language purporting to modify provisions of Prop. 1A by adding a new section to the  
19 Streets & highways Code, § 2704.78.

20 40. As first proposed by PCJPB and Assembly Member Mullin, the bill would have made  
21 conclusive CHSRA’s determination that a corridor or usable segment thereof would be suitable  
22 and ready for high-speed train operation. As a result, not only would a second funding plan’s  
23 review by an independent expert under § 2704.08(d) become a nullity, but the funding plan, once  
24 approved by CHSRA, would not be subject to judicial review.

25 41. An attorney representing several of the plaintiffs herein submitted a letter to the Senate  
26 Transportation Committee, which was considering the amended bill, pointing out that the bill  
27 attempted to materially modify the terms of Prop. 1A, requiring that it be ratified by California  
28 voters before it could become effective.

1 42. The Senate Transportation Committee nonetheless approved the bill, which then went to  
2 the Senate Appropriations Committee. That Committee, however, voted to place the bill in the  
3 suspense file, preventing it from moving forward to the Senate floor.

4 43. Assembly Member Mullin then further amended AB 1889 so that, rather than make  
5 conclusive CHSRA’s approval of a usable segment as “suitable and ready for high-speed train  
6 operation”, it purported to “clarify” the meaning of that phrase. Instead of requiring that the usable  
7 segment be suitable and ready for high-speed train operation when construction pursuant to the  
8 funding plan was complete, the requirement that the segment be suitable and ready for high-speed  
9 train operation would be satisfied if, at some later date, it would become suitable and ready for  
10 high-speed train operation after further improvements had been funded and constructed.

11 44. The revised bill was removed from the suspense file and brought to the Senate floor for  
12 consideration.

13 45. The attorney representing several of the plaintiffs herein then submitted a second letter,  
14 directed to the author of the Senate floor analysis of the bill, pointing out that the revised bill also  
15 materially altered the requirements approved by the voters in Prop. 1A, and therefore also needed  
16 to be placed before the California voters.

17 46. Nevertheless, and despite strong objections from some senators, the bill was approved by  
18 the Senate, then reapproved by the Assembly, and signed by the Governor.

### 19 **THE DECEMBER 2016 FUNDING PLANS**

20 47. In the Fall of 2016, CHSRA began preparation of two second Funding Plans, purportedly  
21 pursuant to § 2704.08(d).

22 48. On or about December 8, 2016, CHSRA released to the public two draft second Funding  
23 Plans, one for what it called the “Central Valley Segment” (“CV Segment”) and one for what it  
24 called the “San Francisco to San Jose Peninsula Corridor” (“SF-SJ Corridor”).

25 49. The CV Segment is defined in its Funding Plan as extending from approximately adjacent  
26 to the Madera Amtrak station to Poplar Avenue in Shafter. It would include two stations, Fresno  
27 and Kings/Tulare<sup>3</sup>, and would include electrification. Roughly this same segment had previously

28 <sup>3</sup> The Kings/Tulare station had only been “proposed” in the certified EIR for this section.

1 been identified in the Revised 2012 Business Plan as the ICS. It had not, however, been called a  
2 usable segment at that time.

3 50. In fact, at an open Board meeting session in or about 2011, a Deputy Attorney General  
4 opined that, because high-speed train operation on that section would require a public subsidy, it  
5 could not qualify for Prop. 1A bond funding under § 2704.08.

6 51. The Funding Plan for the CV Segment asserts that, when completed, the CV Segment  
7 would be suitable and ready for high-speed train operation. However, the Funding Plan does not  
8 propose actual operation of this segment for high-speed rail service. Instead, it would only serve as  
9 a “test track” to test the feasibility of running high-speed trains on the track. Consequently, it  
10 could not and cannot be called suitable and ready for high-speed train operation. The Funding  
11 Plan also indicated that, if completion of the IOS was delayed, the CV Segment could, with  
12 additional capital outlay, be utilized by Amtrak for its San Joaquin service. In this and other  
13 respects, the CV Segment would only qualify for the use of Prop. 1A funds for its construction if §  
14 2704.78 was found legally valid.

15 52. The Funding Plan for the SF-SJ Corridor proposes to use \$600 million of Prop. 1A high-  
16 speed rail construction bond funds towards completion of the Caltrain electrification project. That  
17 project, when fully completed, would, for a variety of reasons, still not be “suitable and ready for  
18 high-speed train operation.” In fact, it would not be a segment of the high-speed rail system at all,  
19 but an improvement to PCJPB’s Caltrain conventional rail commuter line that would only become  
20 a segment of the high-speed rail system after funding and construction of major additional  
21 improvements whose environmental review has not even commenced. CHSRA’s rationale for  
22 approving the SF-SJ Corridor Funding Plan as being compliant with the requirements of §  
23 2704.08(d) was entirely dependent on the validity of AB 1889 and § 2704.78.

24 53. The two Funding Plans were approved by the BOARD at its December 13th meeting. At  
25 that same meeting, the BOARD authorized CHSRA’s Chief Executive Officer (“CEO”) to finalize  
26 both Funding Plans after January 1, 2017, when AB 1889 becomes effective, and submit them to  
27 the Director of Finance for his consideration and approval. The CEO gave final approval to both  
28 Funding Plans on or about January 3, 2017 and forwarded both plans to the California Director of  
29 Finance for his consideration and possible approval, as called for in § 2704.08(d).

30 54. At such point as the Director of Finance gives his final approval to the two Funding Plans,  
which PLAINTIFFS are informed and believe will occur some time on or before approximately

1 March 4, 2017, PLAINTIFFS are informed and believe and on that basis allege that CHSRA will  
2 begin to encumber and expend Prop. A bond funds on construction pursuant to its two Funding  
3 Plans and in reliance on the validity of § 2704.78. If § 2704.78 is not, in fact, legal, but violates  
4 Article XVI Section 1 of the California Constitution, those expenditures, and all of CHSRA’s  
5 expenditures for the preparation and approval of the two funding plans, have been and will be  
improper and illegal.

6 **CHARGING ALLEGATIONS**

7 **FIRST CAUSE OF ACTION – DECLARATORY RELIEF**  
8 (Violation of Article XVI Section 1 of the California Constitution)

9 55. PLAINTIFFS reallege and incorporate by this reference the allegations contained in  
Paragraphs 1 through 54 of this complaint.

10 56. Once the voters approved Prop. 1A on the November 2008 ballot, its provisions became  
11 law and binding on all California agencies, including CHSRA.

12 57. Under Article XVI Section I of the California Constitution, any state general obligation  
13 bond measure, once approved by the voters, may only have its terms materially changed if the  
change is also ratified by the California voters.

14 58. PLAINTIFFS assert that AB 1889, and specifically Streets & Highways Code § 2704.78,  
15 although it purports to “clarify” the provisions of § 2704.08, in reality materially changes the  
16 requirements for Funding Plans prepared pursuant to § 2704.08 by allowing Prop. 1A bond funds  
17 to be expended on a segment of the proposed high-speed rail system even though, at the  
18 completion of construction pursuant to the funding plan, the segment would not be suitable and  
ready for high-speed train operation.

19 59. PLAINTIFFS further assert that, by materially changing the terms of a voter-approved  
20 California general obligation bond measure without having that change ratified by California  
21 voters, AB 1889, and specifically Streets & Highways Code § 2704.78 violates Article XVI  
22 Section 1 of the California Constitution, and that the statute is therefore unconstitutional and void.

23 60. CHSRA has publicly asserted, through the chair of its BOARD, that AB 1889 and §  
24 2704.78 are valid legislative enactments that it may rely upon in approving Funding Plans for its  
high-speed rail system.

25 61. PLAINTIFFS seek this Court’s judicial declaration as to the validity of AB 1889 and §  
26 2704.78 and of the parties’ rights, responsibilities, and duties pursuant to that declaration.

**SECOND CAUSE OF ACTION – INJUNCTIVE RELIEF**

Code of Civil Procedure §526a – illegal expenditure of public funds

62. PLAINTIFFS reallege and incorporate by this reference the allegations of paragraphs 1-61 inclusive.

63. CHSRA has been and is continuing to expend public funds towards the preparation and approval of Funding Plans in reliance on the validity of AB 1889.

64. Once the two Funding Plans now under consideration have been approved by the Director of Finance, which PLAINTIFFS are informed and believe and on that basis allege will happen within the next month to month and a half, PLAINTIFFS are informed and believe and on that basis allege that CHSRA will begin to encumber and expend Prop. 1A bond funds towards the construction of the projects proposed in the two Funding Plans.

65. Because AB 1889 attempts to materially alter the provisions and requirements of Prop. 1A, a voter-approved general obligation bond measure of the State of California, without the approval of California voters, it violates Article XVI Section 1 of the California Constitution.

66. Any Funding Plan that must rely on the provisions of AB 1889 to meet the requirements of §2704.08(d) is, in fact, invalid and in violation of the provisions of Prop. 1A.

67. Therefore, any expenditure of public funds towards the preparation or approval of such a Funding Plan, and any expenditure of Prop. 1A funds to implement such a plan is an illegal expenditure of public funds that may be enjoined under Code of Civil Procedure §526a.

68. Further, under Code of Civil Procedure § 526a, any California taxpayer may sue to seek that funds that have been illegally or improperly spent be restored to the State Treasury.

69. Accordingly PLAINTIFFS seek this court’s temporary restraining order, preliminary injunction and permanent injunction to bar CHSRA from expending any public funds towards the completion or approval of funding plans that rely on § 2704.78 for their validity, or from expending any Prop. 1A bond funds towards their implementation. PLAINTIFFS further seek this Court’s order that any Prop. 1A bond funds that have already been illegally spent by CHSRA in reliance on the validity of § 2704.78 be repaid and restored to the California State Treasury so that they may be used properly and in accordance with the voters’ intent.

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4 **FURTHER CLAIMS**

70. At such time as the Director of Finance may grant formal approval to either or both of the Funding Plans at issue herein, PLAINTIFFS reserve the right to supplement this complaint by adding claims for mandamus challenging such approvals.

5 **WHEREFORE**

PLAINTIFFS pray for relief as follows:

6 1. For this Court’s declaratory judgment that AB 1889 violates Article XVI Section 1 of the  
7 California Constitution and is therefore invalid and void.

8 2. For this Court’s temporary restraining order, preliminary injunction, and permanent  
9 injunction preventing CHSRA from expending any public funds toward the approval of a Funding  
10 Plan that relies on AB 1889 to find compliance with the requirements of Prop. 1A.

11 3. For this Court’s temporary restraining order, preliminary injunction, and permanent injunction  
12 preventing CHSRA from expending any Prop. 1A high-speed rail construction bond funds towards the  
13 construction of any and all projects based on a second Funding Plan that relies upon AB 1889 to find  
14 compliance with the requirements of Streets & Highways Code §2704.08(d).

15 4. For the recovery and restoration to the California State Treasury of any funds that CHSRA  
16 has illegally, improperly, or wastefully spent towards the preparation or approval of  
17 improper/noncompliant Funding Plans, and of any Prop. 1A funds illegally spent to implement or  
18 in reliance upon such improper and/or illegal Funding Plans.

19 5. For an award of attorneys’ fees to PLAINTIFFS in the public benefit under Code of Civil  
20 Procedure §1021.5 or any other applicable provision.

21 6. For PLAINTIFFS’ costs of suit herein.

22 7. For such other and further relief as the Court may find just and proper.

23 January 30, 2017

24 Michael J. Brady  
25 Stuart M. Flashman  
26 Attorneys for PLAINTIFFS

by *Stuart M. Flashman*

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VERIFICATION

I, Quentin Kopp, am a plaintiff in this action. I have read the foregoing complaint and am familiar with the matters alleged therein. All of the facts stated therein are true of my own knowledge, except as to matters alleged based on information and belief, and as to such matter I am informed and believe that the matters stated therein are true. 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 January 30, 2017 at San Francisco, California.

---

*Quentin Kopp*



# **Exhibit A**

Law Offices of  
**Stuart M. Flashman**  
5626 Ocean View Drive  
Oakland, CA 94618-1533  
(510) 652-5373 (voice & FAX)  
e-mail: [stu@stufash.com](mailto:stu@stufash.com)

September 23, 2016

Hon. Michael Cohen, Director of  
Finance  
California Department of Finance  
State Capitol, Room 1145  
Sacramento, CA 95814

Re: Legality of approving a Final Funding Plan for the California High-Speed Rail Authority pursuant to Streets & Highways Code Section 2704.08(d).

Dear Mr. Cohen,


I am writing to you on behalf of my clients: the Transportation Solutions Defense and Education Fund, the California Rail Foundation, and the Community Coalition on High-Speed Rail, in the wake of the Legislature's recent passage of Assembly Bill 1889. That bill purports to "clarify" language contained in California Streets & Highways Code §2704.08, which was approved by California voters in November 2008 as part of Proposition 1A, the Safe, Reliable, High-Speed Passenger Train Bond Act for the Twenty-First Century.

While AB 1889 has not yet been signed by the Governor, I wanted to put you on notice that, as my clients have already indicated to the Legislature during its consideration of the bill, the bill violates Article XVI, Section 1 of the California Constitution. It does so by materially changing the terms of Proposition 1A after its approval by the voters without referring that change to the voters for their ratification.

I expect that, assuming the Governor does not veto the bill because of its unconstitutionality, once it is signed, the California High-Speed Rail Authority plans to prepare, approve, and send to you for your approval, one or more Final Funding Plans, as described in Streets & Highways Code §2704.08(d), for your consideration and approval. I also expect that the funding plan(s) will rely on AB 1889 in determining that the usable segment(s) involved will be, when the construction proposed in the funding plan is complete, "suitable and ready for high-speed train operation." However, that assertion will be fraudulent and contrary to the voters' intent when they approved Proposition 1A.

The meaning of the language in question in §2704.08 was abundantly clear when it was presented to the voters. The Legislature may not, after the fact, attempt to "clarify" that language in a way that fundamentally alters the expressed voters' intent. Consequently, my clients will be filing an action for declaratory and injunctive relief challenging the validity of AB 1889. You will be named as a respondent and defendant in that suit, as your approval of the funding plan(s) would be a necessary step towards the illegal expenditure of the bond funds, and the lawsuit will seek to enjoin that approval, as well as other steps that would involve or lead to the illegal expenditure of public funds. Please feel free to contact me if you need more information.

Most sincerely

  
Stuart M. Flashman

cc: J. Brown, Governor  
J. Chiang, State Treasurer  
B. Yee, State Controller  
Assembly Member K. Mullin  
B. P. Kelly, Secretary of State Transportation Agency  
D. Richard, Chair, California High-Speed Rail Authority Board  
J. Hartnett, General Manager, Caltrain