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16 Executive Director of California Transit Association;
17 and California Transit Association, a nonprofit corporation

18 SUPERIOR COURT OF CALIFORNIA
19 COUNTY OF SACRAMENTO

20 JOSH SHAW, Taxpayer and Executive Director of)
21 California Transit Association, and the)
22 CALIFORNIA TRANSIT ASSOCIATION, a)
23 nonprofit corporation,)
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Case No. 07CS 01179

**PETITIONERS' OBJECTION TO
STATEMENT OF DECISION**

vs.

JOHN CHIANG, California State Controller and)
MICHAEL C. GENEST, California Director of)
Finance, in their official capacity,)
Respondents.)

Date: January 29, 2008
Time:
Dept: 20
Judge: Hon. Jack Sapunor

Pursuant to California Rules of Court section 3.1590 this Statement of Objection is filed in response to the court's Proposed Statement of Decision issued January 29, 2008 in the above captioned matter.

1 **I. Does Revenue and Taxation Code Section 7102(e) Give the Legislature**
2 **Unfettered Discretion to Divert Revenues Required to be Deposited in the**
3 **Public Transportation Account by Section 7102(a) for Any Government Purpose?**

4 Petitioners respectfully object to the court's interpretation that Revenue and Taxation Code
5 section 7102(e)¹ authorizes the Legislature to redirect for any government purpose revenues that would
6 otherwise be required to be deposited in the Public Transportation Account (PTA). The Court's
7 interpretation is totally inconsistent with prior actions of the Legislature. Why would the Legislature
8 have placed Proposition 2 on the ballot, restricting the ability of the Legislature to borrow funds from
9 the PTA, if the Legislature thought it had the power to simply divert the money for general government
10 purposes before it goes into the PTA? Why would the Legislative Analyst in describing Proposition 2
11 to the voters state:²

12 Under *current law*, revenues from the sales tax on diesel fuel and part of
13 the sale tax on gasoline *must be deposited in the Public Transportation*
14 *Account for use only for public transportation and transportation*
15 *planning purposes*. Currently, these funds may be loaned to the State
16 General Fund. Loans must be repaid with interest. (Emphasis added.)

16 If the court's interpretation is correct, the Legislature's placement of Proposition 2 on the ballot
17 inflicted a classic hoax on the voters. The amendment language in Public Utilities Code section
18 99310.5(c) and Revenue and Taxation code section 7102(e), both added by Proposition 116, are
19 identical. The court correctly construes section 99310.5(c) to preclude any amendments that would
20 permit funds in the PTA to be used for purposes other than transportation planning or mass
21 transportation purposes. However, the court concludes that the provisions in section 7102(e) would
22 not preclude any amendments circumventing the transfer requirements of section 7102(a), an integral
23 part of the Public Transportation Account and one of the two principal purposes of section 7102.

24 Prior to Proposition 116 there were no amendment provisions to section 7102. This meant the
25 Legislature could amend section 7102 in any manner it chose. After amendment by proposition 116,
26 section 7102 contained only two subdivisions addressing the distribution of revenues: subdivision (a)

27 ¹ Previously section 7102(d).

28 ² Pet. Appx., Exh. 2 [Bate p. 11]

1 distributing revenues to the PTA, and subdivision (b) distributing revenues to the General Fund.³
2 Proposition 116 preserved the Legislature's amendment power but conditioned it on two-thirds vote
3 and the requirement that the power be exercised consistent with and further the "purposes" of the
4 section. There would be no need to require that any amendment further the purpose of the General
5 Fund. Support of any government program would further the purpose of the General Fund. However,
6 requiring that amendments dealing with the transfer of revenues to the PTA must further the purpose
7 of the trust fund would serve a significant purpose. The court gives no effect to this purpose and
8 concludes the singular purpose of section 7102 is simply to distribute sales and use tax revenues for
9 any government purpose. Under this interpretation, the requirement that any amendments be
10 consistent with and further the purposes of section 7102 becomes meaningless because the single
11 purpose adopted by the court embraces the universe of General Fund governmental programs. In
12 effect, all that Proposition 116 practically achieved was to require a two-thirds vote of the Legislature
13 to amend section 7102.

14 While the court correctly observes there are no ballot summaries, arguments or analysis
15 discussing the trust fund, the court's conclusion that the trust language itself is not sufficient to
16 overcome the presumption of constitutionality of the Legislature's action ignores 1) the statutory
17 scheme; i.e., the integrated nature of the trust and its source of funds, and 2) the Legislature's
18 subsequent action placing Proposition 2 on the ballot. The trust Fund was created by Public Utilities
19 Code section 99310.5. The decision recognizes that section 99310.5(c) would not permit the trust
20 fund to be used for purposes other than transportation planning or mass transportation purposes. The
21 trust nature of the PTA is referenced in Revenue and Taxation Code section 7102(a). While voter
22 intent can never be proven with absolute certainty, it is reasonable to conclude that the reasonable
23 expectation of the voters was that as the revenues identified in section 7102(a) are the only basis for
24 the trust's existence and that as transfer of those revenues to the PTA is an integral part of the trust
25 obligation, then any amendment that would divert revenues from the PTA for general government
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28 ³ Pet. Appx., Exh. 1 [Bate p. 10]

1 purposes would be inconsistent with the creation of the trust fund and the mechanism for funding the
2 trust fund.

3 Under the court's interpretation, the Public Transportation Account becomes largely irrelevant.
4 Going forward, the issue of using PTA revenues for past and current debt service on any bond issue, or
5 providing transportation to schools and vocational rehabilitation could be avoided simply by not
6 depositing any PTA revenues in the PTA. Under the court's broad interpretation of section 7102(e),
7 the obligation of the Director of Finance and the Board of Equalization to identify PTA revenues could
8 be eliminated entirely.

9 The question that must be addressed is whether it is reasonable to assume the voters would
10 have created a trust fund and the mechanism for funding it but permit the Legislature to destroy it. The
11 court avoids this issue by declaring the language to be clear on its face. For the reasons stated above,
12 we disagree that section 7102 has only one purpose that need be considered in any amendment. A
13 recent decision of the California Supreme Court is instructive on the need, where possible, to construe
14 initiative language in a manner that upholds the reasonable expectation of the voters even though that
15 expectation is not expressly documented in ballot arguments or official analyses.⁴ In 1911 the
16 Legislature submitted two measures to the voters. One conferred on the Legislature plenary power
17 over legislation dealing with the then California Railroad Commission, the successor to the Public
18 Utilities Commission. The other measure conferred on the people of the state the power of initiative
19 and referendum. Both measures were adopted by the voters.

20 In 2005, Proposition 80 qualified for the November 2005 General Election ballot. Proposition
21 80 would have made various changes in the powers of the Public Utilities Commission. A judicial
22 challenge was filed in the Court of Appeal for the Third District challenging the power of the people
23 through the initiative process to usurp the plenary power conferred on the Legislature in 1911 over the
24 Public Utilities Commission. The pertinent language of the 1911 measure (ACA No. 6) conferred on
25 the Legislature:

26 "plenary power, *unlimited by other provisions of this constitution*, but
27 consistent with this article, to confer additional authority and jurisdiction

28 ⁴ *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020.

1 upon the commission, to establish the manner and scope of review of
2 commission action in a court of record, and to enable it to fix just
3 compensation for utility property taken by eminent domain."
(Emphasis added.)⁵

4
5 A unanimous panel of the Court of Appeal found the above quoted language unambiguous and
6 ordered the measure off the ballot. Upon the filing of a petition for review, the Supreme Court
7 immediately ordered the measure to be placed on the ballot and held further proceedings in abeyance
8 until after the election. The measure failed but the court took up whether the above language
9 precluded the use of the initiative power in any circumstance where the powers of the California Public
10 Utilities Commission were involved. There were no ballot pamphlets, ballot arguments or official
11 summaries to provide guidance for the court. The court ultimately concluded:

13 When the October 10, 1911, election is viewed as a whole, *it appears*
14 *most improbable that* - at the same election in which the voters
15 overwhelming approved a far-reaching measure incorporating a broad
16 initiative power as part of the California Constitution - they intended
17 without any direct or explicit statement to this effect, to limit the use of
the initiative power by virtue of the language in ACA No. 6. (Id. at 1042;
Emphasis added.)

18 Similarly, when the voters approved Proposition 116, it is improbable they intended that the
19 trust, for all practical purposes, could be destroyed by the amendment provisions in section 7102(e).
20 The obvious purpose of Proposition 116 was to create a protected revenue source for transportation
21 planning and mass transportation purposes. The purpose of the caveat that any amendment be
22 "consistent with and further the purposes of this section" was to protect the revenue source by *limiting*
23 the power of the Legislature to amend section 7102. Instead, the proposed decision gives the
24 Legislature and the Administration unfettered discretion to destroy the dedicated source of funding that
25 Propositions 116 and 2 were intended to protect.

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⁵ Id. at 1037.

1 The people have no real protection from the actions of the Legislature or the Administration
 2 other than through their exercise of the initiative power and in seeking relief from the courts when
 3 laws enacted by initiative have been violated, as has occurred here. We believe the court’s expansive
 4 interpretation of section 7102(e) severely encroaches on the peoples reserved power of initiative. As
 5 stated in *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d
 6 208, 219 “It is a fundamental precept of our law that, although the legislative power under our
 7 constitutional framework is firmly vested with the Legislature, ‘the people reserve to themselves
 8 powers of initiative and referendum.’ [Citation omitted.] It follows from this that ‘[the] power of
 9 initiative must be liberally construed . . . to promote the democratic process.’” [Citation omitted.] See
 10 also *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 241: “... as we so very recently acknowledged in
 11 *Amador*, it is our solemn duty jealously to guard the sovereign people’s initiative power, ‘it being one
 12 of the most precious rights of our democratic process. (Id. At p. 248)’ Consistent with prior precedent,
 13 *we are required to resolve any reasonable doubts in favor of the exercise of this precious right.*”
 14 (Italics original.)

15 In *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1255-1256 the Supreme Court
 16 expressed concern that if drafters of initiative measures perceive that amendment provisions are
 17 largely unenforceable, they will leave them out with the result that minor technical glitches can only be
 18 corrected by a vote of the people. This statement is clear recognition that the Court considers
 19 amendment provisions a serious and constructive part of the initiative process.

20 **II. Is School Busing a Mass Transportation Purpose?**

21 The court concludes that mass transportation includes “special services” which, according to
 22 the court’s proposed decision, includes school busing. The court cites to Petitioner’s Exhibit 12, 49
 23 U.S.C. § 5302(a)(7), (10), and Public Utilities Code §§ 99238 and 99401.5. Petitioner’s Exhibit 12 is
 24 the California Department of Transportation’s definition of “Mass Transportation,” which expressly
 25 excludes school buses:

26 MASS TRANSPORTATION

27 Mass Transportation by bus, or rail, or other conveyance, either publicly or
 28 privately owned, which provides to the public general or special service[d]

1 on a regular and continuing basis. *Does not include school buses*, charter,
2 or sightseeing service. See also “Public Transportation.” (Emphasis
added.)

3 Title 49 U.S.C § 5302(a)(7) excludes school buses from mass transportation:

4 (7) Mass Transportation. The term “mass transportation” means
5 transportation by a conveyance that provides regular and continuing
6 general or special transportation to the public but *does not include school*
7 *bus*, charter, or sightseeing transportation. (Emphasis added.)

8 Title 49 U.S.C. § 5302(a)(10) defines “public transportation” as mass transportation. Thus, public
9 transportation does not include school buses.

10 A fair reading of Public Utilities Code §§ 99238 and 99401.5 indicates that specialized services
11 refer to paratransit type programs, not school buses. For example, section 99401.5(b)(1) requires that
12 the local transportation planning agency make an annual assessment of
13

14 “the size and location of identifiable groups likely to be transit dependent
15 or transit disadvantaged, *including but not limited to, the elderly, the*
16 *handicapped, including individuals eligible for paratransit and other*
17 *special transportation services* pursuant to Section 12143 of Title 42 of
18 the United States Code (the Americans With Disabilities Act of 1990 (42
U.S.C. Sec. 12101 et seq.)), and persons of limited means, including but
not limited to, recipients under the CalWORKs program. (Emphasis
added.)

19 Section 99238 requires each planning agency to provide for the establishment of a social
20 services transportation advisory council whose responsibilities, among others, are to identify the need
21 for “specialized transportation services.” (Subdivision (c)(1).) This term generally refers to services
22 for seniors and the handicapped. (See Vehicle Code § 9107(d), exempting van pool vehicles providing
23 “specialized transportation services” to seniors and the handicapped from weight fees, and Revenue
24 and Taxation Code section 10789(a), exempting vehicles providing “specialized transportation
25 services” to seniors and the handicapped from specified license fees.)
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1 In sum, not only are school buses expressly precluded from the cited mass transportation
2 definitions in Petitioners' Exhibit 12 and 49 U.S.C. § 5302, the term "specialized transportation
3 services" in Public Utilities Code §§ 99238 and 99401.5 refers generally to special transportation of
4 the elderly and handicapped, not school buses.
5

6 **CONCLUSION**

7 For the reasons stated above, petitioners respectfully object to the proposed Statement of
8 Decision and request the Court to consider these objections in preparing and issuing its Statement of
9 Decision.
10

11 Dated: February ____, 2008

Respectfully Submitted,

Nielsen, Merksamer, Parrinello,
Mueller & Naylor, LLP

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16 Richard D. Martland
17 Attorneys for Petitioners
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