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In the Supreme Court of the State of California

**JOSH SHAW, Taxpayer and Executive
Director of California Transit Association;
and the CALIFORNIA TRANSIT
ASSOCIATION, a nonprofit corporation,**

Petitioners,

v.

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

Respondents.

Case No. S175357

Third Appellate District, Division Three, Case No. C058479
Sacramento County Superior Court, Case No. 07CS01179
The Honorable Jack Sapunor, Judge

REPLY IN SUPPORT OF PETITION FOR REVIEW

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INTRODUCTION

Far from demonstrating why this Court should not grant review of the Court of Appeal's decision invalidating \$1.26 billion of appropriations of gasoline sales tax revenue in the 2007–2008 fiscal year, plaintiffs' Answer demonstrates precisely why this Court's review is warranted. Plaintiffs' sole argument as to why the Court of Appeal's decision should be allowed to stand is that the decision implicates an additional \$3 billion in gasoline sales tax in the last two fiscal years alone. Given the state's fiscal crisis, of which even plaintiffs take note, the fact that the Court of Appeal's decision implicates such a significant amount of state funds illustrates the statewide importance of the issues presented in the petition for review and why it should be granted.

REASONS FOR GRANTING REVIEW

As respondent argued in its petition for review, the Court of Appeal's decision impairs the Legislature's ability to appropriate billions of dollars of gasoline sales tax revenue, and threatens to further destabilize the state's budget process. Indeed, plaintiffs themselves recognize the "extraordinary nature" of the issues presented to this Court. (Plaintiffs' and Appellants' Answer to Petition for Review (Answer) at 1.) Respondent Department of Finance readily admits that because of the "enormous fiscal problem" facing California over the past two years (Answer at 1), the Legislature found it necessary to transfer \$1.766 billion in spillover revenues in the 2008–2009 fiscal year to the Mass Transportation Fund, as well as an additional \$1 billion in the current fiscal year. (Answer at 2–3.) This Court is no doubt aware of the difficulty the Legislature faced in filling a more than \$24 billion deficit in the current fiscal year, a deficit that forced the Governor to declare a fiscal emergency and to call the Legislature into

special session. (Stats. 2009, Assembly Bill 4X 1).¹ Adding an additional \$1.3 billion to that deficit (and billions more in subsequent fiscal years) constitutes an issue of statewide importance that warrants review by this Court. Plaintiffs do not attempt to argue otherwise.

Moreover, plaintiffs offer no argument to show that the Legislature's actions were invalid. As is evident from the Petition for Review, the Legislature properly amended Revenue and Taxation Code section 7102 to transfer spillover revenues from the Retail Sales Tax Fund to the Mass Transportation Fund. Plaintiffs do not suggest that the text of any statute or constitutional provision prohibits the Legislature from transferring spillover revenues to the Mass Transportation Fund as opposed to the Public Transportation Account, and there is no such provision. Rather, plaintiffs can only point vaguely to Propositions 1 16 and Proposition 2, neither of which specifically prohibits the actions taken by the Legislature in this case.

While respondent believes that review is warranted in this case, in the alternative, respondent requests that this Court order depublication of the decision below. Contrary to the assertion by plaintiffs, depublication would not permit respondent to continue to use spillover revenues in the manner that was found illegal by the lower court's opinion. (Answer at 5–6.) Respondent would still be bound by the Court of Appeal's decision with

¹ That effort is the subject of two court proceedings over the Governor's use of his line item veto authority to close an additional \$489 million gap even after the Legislature passed the revised budget. (*St. John's Well Child and Family Center et al. v. Schwarzenegger et al.*, Case No. A125750 (1st App. Dist.); *Steinberg v. Schwarzenegger, et al.*, CPF-09-509721 (Super. Ct. S.F. City and County).) If permitted to stand, the Court of Appeal's decision would presumably require the Legislature and Governor to find an additional \$1.3 billion in funds to balance the budget in the 2009–2010 fiscal year.

respect to the specific issues decided by that court under principles of *res judicata*. (Cal. Rules of Court, rule 8.1115(b)(1); *Pollock v. Univ. of Southern Calif.* (2003) 112 Cal.App.4th 1416, 1421 fn. 1.) Rather, respondent requests depublication so that the errors made in the opinion below do not impact the Legislature's authority with respect to the state budget in other areas or other initiative statutes.²

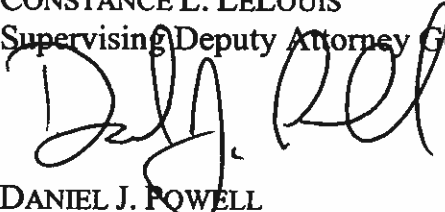
CONCLUSION

The decision below concerns important issues of statewide importance, implicating billions of dollars in state funds and numerous transportation programs. The Court should grant the Petition for Review.

Dated: August 31, 2009

Respectfully submitted,

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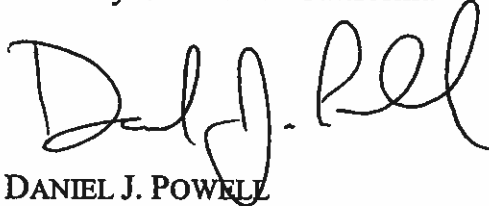
² Plaintiffs further request that if review is granted, the Court issue an order prohibiting the Department of Finance from implementing legislation that would transfer funds from the Retail Sales Tax Fund to the Mass Transportation Fund. Such a request is improper in an Answer to a Petition for Review.

CERTIFICATE OF COMPLIANCE

I certify that the attached REPLY IN SUPPORT OF PETITION FOR REVIEW uses a 13 point Times New Roman font and contains 609 words.

Dated: August 31, 2009

EDMUND G. BROWN JR.
Attorney General of California

A handwritten signature in black ink, appearing to read "D. J. Powell". The signature is written in a cursive, flowing style with a large initial "D" and "P".

DANIEL J. POWELL
Deputy Attorney General
Attorneys for Respondent
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *Shaw, Josh, et al. v. John Chiang, et al.*

Case No: S175357

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 31, 2009, I served the attached **REPLY IN SUPPORT OF PETITION FOR REVIEW** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 31, 2009, at San Francisco, California.

Susan Chiang

Declarant



Signature