No. A155098

In the Court of Appeal
First Appellate District, Division One
State of California

SF Urban Forest Coalition,

Petitioner, Appellant,

v.

San Francisco County Transportation Authority, et al.,

Respondents.

Appeal from the Judgment of the
Superior Court, County of San Francisco
The Hon. Harold Kahn, Presiding
Superior Court Case No. CPF-18-516020

Appellant's Opening Brief

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CERTIFICATE OF INTERESTED ENTITIES
UNDER CALIF. RULES OF COURT, RULE 8.208

On behalf of SF Urban Forest Coalition, there is no entity or person that must be listed on this certificate under Rule 8.208.

Dated: February 26, 2019

By _____/s/_____

Charles K. Seavey
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I. STATEMENT OF THE CASE

On January 24, 2018, Appellant San Francisco Urban Forest Coalition filed a Petition for Writ of Mandamus and a Memorandum of Points and Authorities (together, "Petition") against Respondents San Francisco County Transportation Authority ("SFCTA") and the City and County of San Francisco. (A.A. 06.)[1]

The Petition sought (1) disclosure of certain withheld public records by the SFCTA and (2) a judicial declaration that the SFCTA was subject to the San Francisco Sunshine Ordinance ("Sunshine Ordinance"). (San Francisco Administrative Code, Chapter 67.)

After Appellant obtained disclosure by SFCTA of the public records it sought, Appellant voluntarily dismissed that part of the action pertaining to such disclosure. Respondents then asserted that such partial dismissal rendered Appellant's request for a judicial declaration moot and that the entire mandamus action should be dismissed. (A.A. 209.) Appellant disagreed. (A.A. 186.)

The Superior Court considered this question of mootness in a separate hearing on April 25, 2018. The Superior Court agreed with Appellant on this question and found, in an Order issued on the same day, that the declarative relief issue was not moot. (A.A. 252.)

On May 8, 2018, the Superior Court held a hearing on the question of declarative relief sought by Appellant. Following that hearing, the Superior Court denied the relief, stating during oral argument that: "This is an issue of first impression. The court of appeal may disagree and see things differently." (Transcript at 5:9-10.) The Superior Court's Order at-issue stated:

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1 "A.A." refers to the Appellant's Appendix filed herewith.

> The portions of SFUFC's first and second causes of action seeking declaratory relief that the San Francisco County Transportation Authority is subject to the San Francisco Sunshine Ordinance lack merit. The SFCTA is an agency of the State of California and thus is exempt from a local ordinance such as the Sunshine Ordinance.
>
> (Order Denying Petition for Writ of Mandamus at lines 3-6, May 8, 2018, Case No: CPF-18-516020, San Francisco Superior Court ("Order At-Issue").) (A.A. 273.)

The Superior Court entered its judgment dismissing the Writ of Mandamus with prejudice on May 23, 2018. (A.A. 271.) A Notice of Entry of Judgment was filed and served on Petitioner on May 30, 2018. (A.A. 268.) On July 18, 2018, Appellant timely filed its Notice of Appeal of the judgment dismissing action. (A.A. 276.)

II. Statement of Appealability

Petitions for extraordinary writs, such as petitions for writs of mandate, are special proceedings. (Code Civ. Proc., § 1067, et seq.) A judgment in a special proceeding is the final determination of the rights of the parties therein. (Code Civ Proc § 1064.) Therefore, an order granting or denying a petition for an extraordinary writ constitutes a final judgment for purposes of an appeal. (*Public Defenders' Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403, 1405.)

III. Question Presented

In November 1989 with Proposition B and in November 2003 with Proposition K, the voters of the City and County of San Francisco agreed to tax themselves for limited time periods with the requirement that the City and County's use of the tax revenues so generated be limited to and defined by the terms of the Transportation Expenditure Plan detailed in each of the two Propositions. Proposition B also created, and Proposition K extended

the life of, a "county transportation authority" called the San Francisco County Transportation Authority whose sole purposes were limited to utilizing the proceeds of the new local sales tax, issue bonds, and apply all the resulting funds to the specific local projects mandated in the respective Transportation Expenditure Plans.

The question presented to this Court is whether this San Francisco County Transportation Authority is an agency of the State of California exempt from the charter provisions, ordinances and laws of the City and County of San Francisco, or a local agency subject thereto?

IV. Standard of Review

This appeal presents questions of law and should be reviewed *de novo.* (*Redevelopment Agency v. County of Los Angeles* (1999) 75 Cal.App.4th 68, 74.)

V. Statement of Facts

A. The City and County of San Francisco is a charter city.

The San Francisco City Charter provides as follows (emphasis added):

> SEC. 1.100. NAME AND BOUNDARIES.
>
> The City and County of San Francisco shall continue as a consolidated City and County with such boundaries as are prescribed by law, pursuant to this Charter and the laws of the State of California.
>
> SEC. 1.101. RIGHTS AND POWERS.
>
> The City and County of San Francisco may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in this Charter. The City and County may make and enforce within its limits all local police, sanitary and other ordinances and

> regulations. The City and County may appear, sue and defend in all courts in all matters and proceedings.
>
> All rights and powers of a City and County which are not vested in another officer or entity by this Charter shall be exercised by the Board of Supervisors.

San Francisco's powers as a "charter city" supersede any "charter county" powers that conflict with those of the City of San Francisco, pursuant to Article VI, Section 6(b) of the California Constitution which provides:

> A charter city and county is a charter city and a charter county**. Its charter city powers supersede conflicting charter county powers.** (**Emphasis** added.)

Section 131005 of the California Public Utilities Code similarly defines a County to mean and include:

> "County" includes a city and county and means any of the nine San Francisco Bay area counties listed in Section 66502 of the Government Code.

B. State versus local as defined in the California Public Records Act.

In 1968 California enacted the California Public Records Act, Cal. Gov. Code § 6250, et seq. ("CPRA"). The CPRA distinguished between "local agency" and "state agency" as follows:

> **"Local agency" includes a** county; city, whether general law or chartered**; city and county**; school district; municipal corporation; district; political subdivision; **or any board, commission or agency thereof**; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952. (**Emphasis** added.)

. . . .

> "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(*Id.* at §§ 6252(a) and 6252(f)(1).)

The CPRA stated that cities, counties and other local agencies may adopt requirements providing greater access than "the minimum standards" set forth in the CPRA:

> Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

(*Id.* at § 6253 (e).)

C. Creation of the Metropolitan Transportation Commission.

In 1970 the California legislature created the Metropolitan Transportation Commission by enacting Cal. Gov. Code §66502. In 1971 the legislature deliberately amended the section to add: "as a local area planning agency and not as a part of the executive branch of the state government." The section, with the amendment in boldface, provided:

> There is hereby created**, as a local area planning agency and not as a part of the executive branch of the state government,** the Metropolitan Transportation Commission to provide comprehensive regional transportation planning for the region comprised of the **City and County of San Francisco** and the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma.

D. The Bay Area County Traffic and Transportation Funding Act.

The Bay Area County Traffic and Transportation Funding Act, California Public Utilities Code Section 131000, et seq. (the "Act") was enacted in 1986. In its preamble, the Act stated that "the counties and cities within the nine-county San Francisco Bay area wish to collectively develop and implement, ***on a county-by-county basis***, near-term local traffic and transportation projects." (*Id.* at § 131001(c) [**emphasis** added].)

It further stated that "***each of the nine counties*** in the San Francisco Bay area should be provided the opportunity to review and determine whether there is a need for the development and implementation of a county transportation expenditure plan that goes significantly beyond current federal, state, and local funding." (*Id.* at §131001(d) [**emphasis** added].)

And the preamble concluded: "Therefore, it is in the public interest to allow ***the voters in any county*** in the nine-county San Francisco Bay area ***to either create a county transportation authority or to authorize the commission [Metropolitan Transportation Commission] to implement a retail transactions and use tax*** for the purpose of funding a local transportation expenditure plan showing a need for the proceeds from that tax." (*Id.* at § 131001(e) [**emphasis** added].)

Chapter Five of the Act, "County Transportation Authority," began: "Upon approval of a retail transactions and use tax at an election conducted pursuant to Chapter 3 (commencing with Section 131100) in a county with an adopted county transportation expenditure plan that includes a provision for the creation of a county transportation authority, ***the authority shall be created at that election***." (*Id.* at § 131240 [**emphasis** added].)

Chapter Five continued: "The county transportation authority shall consist of the members who are ***elected officials as specified*** in the county transportation expenditure plan or ***in the retail transactions and use tax ordinance*** and shall be appointed by ***each constituent local government***

within 45 days after the authority is created." (*Id.* at § 131241(a) [**emphasis** added].)

The Act required that "Any tax revenue generated pursuant to this chapter ***shall*** be expended in the ***county of origin*** . . . ." (*Id.* at § 131100(b) [**emphasis** added].)

It further stated: "The county transportation authority shall determine the use of the net revenues derived from the imposition of the retail transactions and use tax ***in conformance with the priorities established in the adopted county transportation expenditure plan***." (*Id.* at § 131301 [**emphasis** added].)

It required: "All allocations of revenues derived from the adoption of a retail transactions and use tax ordinance in a county ***shall be consistent with the priorities established by its county transportation expenditure plan***." (*Id.* at § 131101 [**emphasis** added].)

It emphasized that "any county transportation authority, in administering the adopted county transportation expenditure plan and imposing the retail transactions and use tax, ***shall have only those powers necessary for those purposes***." (*Id.* at § 131057(a) [**emphasis** added].)

It stated: "A county transportation authority ***shall close its affairs and be terminated within 180 days after the completion of the projects listed in the county transportation expenditure plan*** and upon retirement of all the bonds authorized to be issued pursuant to this division." (*Id.* at § 131280 [**emphasis** added].)

E. 1989: The voters of San Francisco approve "Proposition B: Sales Tax for Transportation."

At the Consolidated Municipal Election of November 7, 1989, Proposition B was submitted to and approved by the voters of the City and County of San Francisco, pursuant to which they approved a ½% sales tax,

created the SFCTA and adopted the City and County of San Francisco Transportation Expenditure Plan. (Request for Judicial Notice ("RJN" Exhibit A.)

Neither Proposition B, nor the Transportation Expenditure Plan submitted to the voters of San Francisco in November 1989, states or implies that the SFCTA would be "an agency of the State of California and thus… exempt from a local ordinance such as the Sunshine Ordinance." (Order At-Issue, quoted *supra*.) (A.A. 273.) Instead, the approval of Proposition B resulted in the addition of Article 14 to Part III of the San Francisco Municipal Code.

Proposition B begins as follows:

> ORDERING SUBMISSION OF AN ORDINANCE BY THE BOARD OF SUPERVISORS CALLING AND PROVIDING FOR A SPECIAL ELECTION TO BE HELD ON NOVEMBER 7, 1989 TO BE CONSOLIDATED WITH THE GENERAL ELECTION FOR THE PURPOSE OF SUBMITTING TO THE VOTERS ***AN ORDINANCE ADDING ARTICLE 14 TO PART III OF THE MUNICIPAL CODE OF THE CITY AND COUNTY OF SAN FRANCISCO PROVIDING FOR THE CREATION OF THE SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY*** FOR THE IMPOSITION OF A ONE-HALF OF 0NE PERCENT TRANSACTIONS AND USE TAX AND FOR OTHER PURPOSES.
>
> ***Be it ordained by the People of the City and County of San Francisco:*** …
>
> (Proposition B, Ballot Ordinance, San Francisco Consolidated General Election, Nov. 7, 1989. RJN, Exh. A.)

Proposition B defined its parameters as follows:

> This ordinance shall be known as the "San Francisco County Transportation Authority Ordinance"…
>
> "Authority" shall mean the San Francisco County Transportation Authority.
>
> "District" shall mean the City and County of San Francisco. .
>
> "Plan" shall mean the Transportation Expenditure Plan approved by the Board of Supervisors of the City and County of San Francisco **which is considered part of this Ordinance** and hereby incorporated by reference as if fully set forth herein.
>
> (*Ibid.*)
>
> Proposition B stated:
>
> SEC. 1404. CREATION OF AUTHORITY.
>
> Upon voter approval of this Ordinance, **the Authority shall be created** and shall be composed of the eleven members of the San Francisco Board of Supervisors as specified in the Transportation Expenditure Plan… -
>
> (*Ibid.*, **emphasis** added.)

The section of the Transportation Expenditure Plan to which the preceding sentence referred stated in-full:

> Creation of a County Transportation Authority
>
> The Board of Supervisors shall request the voters to authorize **the creation of a County Transportation Authority** for the purpose of administering the sales tax proceeds **in accordance with the plan**. The members of the Authority shall be members of the Board of Supervisors.

(*Ibid.*)

Immediately following "SEC. 1404. CREATION OF AUTHORITY," Section 1405 of Proposition B mandated that the SFCTA – far from being an agency of the State of California – would instead ***contract with*** the State of California:

> SEC. 1405. **CONTRACT WITH STATE.**
>
> Prior to the operative date, **the Authority shall contract with the State Board of Equalization** to perform all functions incident to the administration and operation of this transactions and use tax.

(*Ibid.*, **emphasis** added.)

F. Article 14 of the San Francisco Business and Tax Regulations Code.

As described in the foregoing Section E, Proposition B amended the Municipal Code of the City and County of San Francisco. The text of that amendment was approved by the voters beginning at section 2 of Proposition B, which stated:

> Section 2. At the special election called by Section 1 of this Ordinance, an ordinance amending Part III of the Municipal Code of the City and County of San Francisco by adding Article 14 (commencing with Section 1401) is hereby submitted to the electorate as follows:
>
> SEC. 1401. TITLE. This ordinance shall be known as the "San Francisco County Transportation Authority Ordinance" which establishes and implements a transactions and use tax. . .

(*Ibid.*)

Part III of the Municipal Code of the City and County of San

Francisco is entitled the "Business and Tax Regulations Code." Article 14 of the Business and Tax Regulations Code (commencing with Section 1401) was added following voter approval of Proposition B, contained the text approved by the voters in Proposition B, and was entitled "Transportation Authority."

G. 2003: The voters of San Francisco approve "Proposition K: Sales Tax for Transportation."

In 2003, the voters of the City and County of San Francisco approved Proposition K, which included a new Transportation Expenditure Plan, an extension of the sales tax, and an extension of the life of the San Francisco County Transportation Authority, as then constituted by the eleven members of the San Francisco Board of Supervisors. (Proposition K, Sales Tax for Transportation, RJN, Exhibit B.) Proposition K also retained and amended Article 14 of Part III (the Business and Tax Regulations Code) of the Municipal Code of the City and County of San Francisco.

VI. ARGUMENT

A. Introduction

By virtue of Propositions B and K, the City and County of San Francisco voters amended the city and county's Municipal Code to tax themselves for a limited time period in the amount of about $100 million per year to fund specific local transportation projects. The SFCTA (consisting of the 11 San Francisco Supervisors) was created, and then extended, by the voters in these propositions for the sole purpose of collecting the tax and implementing the local projects. The SFCTA will die when the projects funded by the tax die and its bonds have been retired.

The SFCTA is necessarily subject to the laws of the City and County of San Francisco insofar as the SFCTA is created by one those laws, to wit:

Article 14 of Part III of the Municipal Code. Respondents nevertheless assert that the SFCTA is not subject to any *other* law or ordinance or the charter of the City and County of San Francisco beyond the requirements of Article 14 of the San Francisco Business and Tax Regulations Code.

Appellant disagrees with this illogical assertion, which contradicts the basis of SFCTA's creation and operation. Not only was the SFCTA created by the voters of San Francisco through an amendment to their own Municipal Code, but Propositions B and K, the Municipal Code, the Act, the caselaw, and the completely local nature of the SFCTA – from its creation and governance to its funding and activities – all likewise contradict the assertion that the SFCTA is an agency of the State of California exempt from local law.

Appellant begins its analysis with the plain language of both Propositions B and K (section B below) and of the Act (section C below). In the Superior Court, Appellant believed that the clear unambiguous text of the two Propositions and the Act, coupled with the completely local nature of the SFCTA's "world," would be sufficient to establish its "local" agency character.

On appeal before this Court, Appellant additionally focuses on a line of cases – *Escondido*, *Torres*, *Lynch*, *Hayward* – in which California courts have considered this question of the "local" versus "state" character of an affected agency. These cases – particularly *Torres* – confirm Appellant's strongly held position that the SFCTA is a local agency and, thus, subject to the Sunshine Ordinance.

Finally in section I, Appellant briefly rebuts an argument to the contrary made by Respondents.

B. The SFCTA does not exist outside of the confines of Propositions B and K; it is a voter-created implementation mechanism for a sales tax and a specific expenditure plan.

"We interpret initiative measures using the ordinary rules and canons of statutory construction. [Citation.] Thus, 'our primary purpose is to ascertain and effectuate the intent of the voters who passed the initiative measure. [Citations.]' [Citation.]" (*Yeroushalmi v. Miramar Sheraton* (2001) 88 Cal.App.4th 738, 747-748.)

"'Absent ambiguity, we presume that the voters intend the meaning apparent on the face of an initiative measure [Citation] and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language.' [Citation.] Of course, in construing the statute, 'the words . . . must be read in context, considering the nature and purpose of the statutory enactment.' [Citation.]" (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 301.)

Measures B and K are not ambiguous. They clearly state that:

1. They amend the Municipal Code of the City and County of San Francisco. (RJN, Exh. A & B, Preamble.)
2. All sales tax revenues dedicated to use by SFCTA are to be collected in the City and County of San Francisco. (RJN, Exh. A & B, Expenditure Plan, (2)(A).)
3. All of the projects detailed in their respective Transportation Expenditure Plans are to be located in the City and County of San Francisco. (RJN, Exh. B, Expenditure Plan, (2)(B)(b).)
4. The sales tax revenues and the expenditure plans are to be managed by a body called the San Francisco ***County*** Transportation Authority. (RJN, Exh. A & B, Sec. 1402(a).)
5. The SFCTA consists of the eleven members of the Board of Supervisors of the City and County of San Francisco.

(RJN, Exh. A & B, Sec. 1404.)

6. The SFCTA is required to "allocate the [½% sales tax proceeds] to meet project cash flow needs consistent with all the provisions of the Plan. In the event a project is infeasible, the Authority shall reallocate the tax proceeds to other projects in accordance with the provisions of the Plan." (RJN, Exh. A & B, Sec. 1404.)

7. They contain no mention or implication whatsoever that the SFCTA is "an agency of the State of California" but instead describe the State of California as a contracting party. (RJN, Exh. A & B, Sec. 1405.)

C. The Act emphasizes that county transportation authorities shall be locally-created and locally-controlled for local purposes and shall be limited in their powers and duration to effecting their local purposes.

Statutory interpretation begins with the statutory text. Where, as here, that text is "clear and unambiguous" and consistent with the Legislature's intent, the task ends there as well. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103; *People v. Garrett* (2001) 92 Cal.App.4th 1417, 1422.) When the text is clear a court has no cause and no warrant to resort to any of the canons of statutory construction. (*Baeza v. Superior Court* (2011) 201 Cal.App.4th 1214, 1222, ["'If the language is clear and unambiguous there is no need for construction ….'"].)

The California legislature knows how to create "state" agencies. For example, the San Francisco Housing Authority was not created by the local voters but by the State legislature: "In each county and city there is a public body corporate and politic known as the housing authority of the county or city." (Cal. Health & Safety Code § 34240.)

The San Francisco Redevelopment Agency was not created by the

local voters but by the legislature: "There is in each community a public body, corporate and politic, known as the redevelopment agency of the community." (*Id.* § 33100.)

The San Francisco Community College District was not created by the local voters but by the legislature: "There is hereby created the California Community Colleges, a postsecondary education system consisting of community college districts heretofore and hereafter established pursuant to law and the Board of Governors of the California Community Colleges." (Cal. Education Code § 70900.)

The San Francisco Bay Area Rapid Transit District was not created by the local voters but by the legislature: "There is hereby created the San Francisco Bay Area Rapid Transit District, comprising the territory lying within the boundaries of the Counties of Alameda, Contra Costa, Marin, San Francisco, and San Mateo." (Pub. Util. Code § 28600.)

In stark contrast, when the legislature drafted and approved the Act involved here, the Act explicitly stated: "Upon approval of a retail transactions and use tax at an election conducted pursuant to Chapter 3 (commencing with Section 131100) in a county with an adopted county transportation expenditure plan that includes a provision for the creation of a county transportation authority, ***the authority shall be created at that election***." (*Id.* at 131240 [**emphasis** added].)

The Act further stated that "any county transportation authority, in administering the adopted county transportation expenditure plan and imposing the retail transactions and use tax, ***shall have only those powers necessary for those purposes***." (Act at § 131057(a), **emphasis** added.)

"Any tax revenue generated pursuant to this chapter ***shall*** be expended in the ***county of origin . . . .***" (*Id.* at § 131100(b) [**emphasis** added].)

"A county transportation authority ***shall close its affairs and be***

terminated within 180 days after the completion of the projects listed in the county transportation expenditure plan..." (*Id.* at § 131280, **emphasis** added.)

"The county transportation authority shall determine the use of the net revenues derived from the imposition of the retail transactions and use tax ***in conformance with the priorities established in the adopted county transportation expenditure plan***." (*Id.* at § 131301, **emphasis** added.)

"All allocations of revenues derived from the adoption of a retail transactions and use tax ordinance in a county ***shall be consistent with the priorities established by its county transportation expenditure plan***." (*Id.* at § 131101, **emphasis** added.)

Chapter Five continued: "The county transportation authority shall consist of the members who are ***elected officials as specified in the*** county transportation expenditure plan or in the retail transactions and use tax ***ordinance*** and shall be appointed by ***each constituent local government*** within 45 days after the authority is created." (*Id.* at § 131241(a) [**emphasis** added].)

And finally, the only other option the Act provided counties as an alternative to voter creation of a county transportation authority was "to authorize the [Metropolitan Transportation Commission] to implement a retail transactions and use tax for the purpose of funding a local transportation expenditure plan showing a need for the proceeds from that tax." (*Id.* at 131001(e).) Even this entity, the Metropolitan Transportation Commission, was explicitly characterized by the legislature "as a local area planning agency and not as a part of the executive branch of the state government." (Cal. Gov't Code § 66502; see Statement of Facts § V.B., *supra*.)

D. The *Escondido* case.

In our interpretation of the Act, we first look to the guidance provided

by the California Supreme Court in *Merchants Nat'l Bank v. Escondido Irrigation Dist.* (1904) 144 Cal. 329, ("Escondido")

In *Escondido,* the California legislature had passed the Wright Act, which provided for the organization of irrigation districts. The Escondido Irrigation District was organized under the provisions of that state law by a majority vote of its electors. (*Id.* at 335.) The Wright Act at that time stated at section 17: "Said bonds and the interest thereon shall be paid by revenue derived from an annual assessment upon the real property of the district; and all the real property in the district shall be and remain liable to be assessed for such payments as hereinafter provided." (*Id.* at 332.)

Sometime after the organization of the Escondido Irrigation District, the California legislature amended section 17 of the Wright Act adding the text that "the board of directors shall have power to pledge, by mortgage, trust-deed, or otherwise, all property of the district." (*Id.* at 332.)

In *Escondido* the Supreme Court found that this amendment of the Wright Act to allow for hypothecation of the assets of the district was unconstitutional for three reasons. First, it rejected the argument that the amendment permitting hypothecation "merely 'authorizes a change in the custodian of the public use,' leaving the use itself and the rights of the landowners of the district to the use of the water unaffected." (*Id.* at 333.) The Supreme Court observed that such an interpretation would violate Cal. Const., art. XI, § 11(a): "The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions." (*Ibid.*)

With respect to the foregoing Constitutional provision the Supreme Court continued:

> Which provision, it can hardly be doubted, must… be construed as applying equally to public or municipal

> corporations of this character, as to ordinary municipalities or cities. For not only is this construction required by the reason, and consequently by the presumed intention, of the constitutional provision, but the term *municipal*, as commonly used, is appropriately applied to all corporations exercising governmental functions, either general or special; and, indeed, this must be taken as the definition of a *public* or *municipal corporation* . . . . Hence, accepting the ordinary division of corporations into *public* and private… corporations of the kind under consideration do not fall wholly within the one or the other class; but with regard to their public functions, are to be classed with the former, and with regard to the private rights of the individual landowners, with the latter.

(*Id.* at 333-34, *emphasis* in original, internal citations omitted.)

Second, the Supreme Court found that the amendment to section 17 amounted to deprivation of property without due process in violation of the 14th Amendment of the federal Constitution and its corollary in the California Constitution. (*Id.* at 334.) The Court observed:

> The state, indeed, has a large, though not an unlimited, power of disposition over the property of ordinary municipalities; which is commonly held in trust for the public generally, or for the limited public of the municipality… But here, the corporation in question is distinguished from ordinary municipal corporations by the fact that "the legal title," only of the property of the corporation is vested in the district, "in trust for the uses and purposes set forth in [the] act"; and that the beneficiaries of the trust -- who, upon familiar equitable principles, are to be regarded as the owners of the property -- are the landowners in the district with whose funds the property has been acquired… and in whom, indeed, is vested by the express provisions of the statute, in each, the right to the several use of a definite proportion of the water of the

> district, and in all, in common, the equitable ownership of its water-rights, reservoirs, ditches, and property generally, as the means of supplying water.

(*Id.* at 334, internal citations omitted.)

Third, the Supreme Court found that the amendment violated section 10 of article I of the federal constitution prohibiting the enactment by the state of any "law impairing the obligation of contracts." (*Id.* at 334-35.) The Supreme Court explained that:

> The act providing for the organization of the district, and the organization of the district under the provisions of the act by the vote of its electors, cannot be otherwise regarded than as a contract between the state and the individuals whose property was thereby affected… Hence the consent of all the parties to the contract was in fact given either personally or by their authorized agents; and there was thus created a complete contract between the parties... The burden thus imposed was, that the bonds issued under the act should "be paid by revenue derived from an annual assessment upon the real property of the district," and that their lands should "be and remain liable" for such assessment; and this implied that this should be the extent of the burden. But by the amendatory act the board of directors is authorized, without the consent, or even the knowledge, of the landowners, to pledge or hypothecate the property acquired by their contributions -- that is to say, acquired with their money -- and thus to subject them to the liability of losing entirely the property thus acquired... We have no doubt, therefore, that in this respect also the legislature went beyond its constitutional powers.

(*Id.* at 335.)

There are significant parallels between the circumstances in *Escondido*

and the case before this Court. In *Escondido*, the local landowners agreed in an election to form an irrigation district and contribute funds to it to acquire property. (*Id.* at 334.) Here, the people of San Francisco agreed in an election to form a county transportation authority and to contribute funds to it to implement transportation projects. (Propositions B and K.)

In *Escondido*, the property of the Irrigation District of Tulare County was vested in the district "in trust for the uses and purposes set forth in [the] act." (*Escondido,* at 334.) Here, the SFCTA is required to "allocate the [½% sales tax proceeds] to meet project cash flow needs consistent with all the provisions of the Plan. In the event a project is infeasible, the Authority shall reallocate the tax proceeds to other projects in accordance with the provisions of the Plan." (Proposition B at § 1404.)

In *Escondido*, the equitable ownership of the water-rights, reservoirs, ditches, and property generally of the irrigation district was vested in the local landowners, and the State of California did not have the right to deprive them of it. (*Escondido,* at 334.) Here, the equitable "ownership" of the sales tax proceeds, the SFCTA and its transportation projects is vested in the people of the City and County San Francisco, and the State of California does not have the right to deprive them of it. (Propositions B and K.)

In *Escondido*, the Supreme Court held that the California legislature cannot later unilaterally amend a "contract" agreed in the election to allow the Board of Directors to hypothecate the assets of the district. (*Escondido,* at 334-35.) Here, the SFCTA cannot later unilaterally purport to "amend" the local nature of the agency created by the voters in Propositions B and K so as to turn it into a "state" agency exempting it from the charter, ordinances and laws of the City and County of San Francisco. (Propositions B and K.)

In *Escondido*, the Escondido Irrigation District was a municipal corporation, that is, a corporation exercising governmental functions. (*Escondido,* at 333.) Here, the SFCTA is likewise a municipal corporation, a

corporation exercising government functions. (Sec. V.B-D, *supra*; Act §§ 131281, 131283-84.)

E. The *Torres* case.

The *Escondido* case was relied upon by the Court of Appeal in a case more directly on-point, *Torres v. Board of Commissioners* (1979) 89 Cal.App.3d 545.

The issue in *Torres* was which open meeting act, if any, applied to a county housing authority created pursuant to Health and Safety Code section 34200, et seq. The Court of Appeal concluded that such an entity is a "local agency" and not a "state agency" and, thus, subject to the Brown Act.

The Court of Appeal stated:

> While a housing authority may be a state agency for some purposes … a housing authority created by Health and Safety Code section 34200, et seq. is included within the statutory definition of a local agency under the Brown Act in that it is either an "other local public agency" or a "municipal corporation" or both, as those terms are used in Government Code section 54951… In order to give meaning to the term "municipal corporation" in Government Code section 54951 we hold that such term is not restricted to its technical sense of a "city," general law or charter, but rather includes such entities as housing authorities. (See Merchants Bank v. Escondido Irr. Dist. (1904) 144 Cal. 329, 333.) Such a holding is also in harmony with the intended broad coverage of the Brown Act. In addition, a housing authority is local in scope and character, restricted geographically in its area of operation, and does not have statewide power or jurisdiction even though it is created by, and is an agent of, the state rather than of the city or county in which it functions. Respondents are correct in noting that no housing authority has statewide powers or

jurisdiction and is in fact subject to some regulations by a state agency with statewide jurisdiction.

(*Id.* at 549-50.)

In *Torres*, the Housing Authority of Tulare County was created by the state. (*Torres,* at 550.) Here, the SFCTA was explicitly *not* created by the state but instead was created by the voters of the City and County of San Francisco.

In *Torres*, the Housing Authority of Tulare County – like all housing authorities – could receive funding from local, state, federal or any other sources. (Cal. Health & Saf. Code § 34315.3) Here, the SFCTA is funded by local tax revenues. (Propositions B and K.)

In *Torres*, the Housing Authority of Tulare County was local in scope and character, restricted geographically in its area of operation, and did not have statewide power or jurisdiction. (*Torres,* at 550.) Here, the SFCTA is even more local in scope and character, receiving local tax funds, created by local voters, restricted geographically in its area of operation, and has no statewide power or jurisdiction. (Propositions B and K.)

In *Torres*, the Court of Appeal held that the Housing Authority of Tulare County was either an "other local public agency" or a "municipal corporation" or both. (*Id.* at 549.) Here, the SFCTA is even more local in character than a housing authority and is both an "other local public agency" and a "municipal corporation." (Sec. V.B-D, *supra*; Act §§ 131281, 131283-84.)

F. The *Lynch* case.

The *Torres* case was repeatedly relied upon by the Court of Appeal in *Lynch v. San Francisco Hous. Auth.* (1997) 55 Cal.App.4th 527 (*"Lynch"*).

In *Lynch* the issue was whether the San Francisco Housing Authority

("SFHA") enjoyed the State of California's immunity from suit under the Eleventh Amendment of the federal Constitution. (*Id.* at 532-33.)

The Court of Appeal cited *Torres* for the proposition that "[l]abeling an entity as a 'state agency' in one context does not compel treatment of that entity as a 'state agency' in all contexts." (*Id.* at 534.) The Court of Appeal noted that *Torres* "squarely considered whether the statement in [*Housing Authority of Los Angeles v. Los Angeles* (1952) 38 Cal.2d 853 (*"Housing Authority of Los Angeles"*)] that a housing authority is a state agency compelled that court to treat a housing authority as a state agency for the purpose of the open meeting acts. The *Lynch* Court of Appeal concluded that it did not compel such a conclusion because "'a housing authority may be a state agency for some purposes' but not for others." (*Id.* at 535.)

The Court of Appeal thoroughly analyzed the issues presented in *Housing Authority of Los Angeles* and several cases that cited *Housing Authority of Los Angeles* for the proposition that a housing authority is a state agency. (*Id.* at 536-39.) The Court of Appeal stated that "even if a state statute characterizes an entity as an arm of the state that designation is also not conclusive, but instead is just a factor the court may consider. [Citations.]" (*Id.* at 536.) Overall, the Court of Appeal concluded that the cases "rel[ied] on *Housing Authority of Los Angeles* in a context quite different from the one we consider d[id] not resolve any of the reservations that we have regarding its pertinence here." (*Id.* at 537.)

Instead, the Court of Appeal described as follows the factors that it would use to analyze whether the SFHA could invoke the state's Eleventh Amendment immunity:

> A uniform test for defining the class of entities that share in the state's Eleventh Amendment immunity has not yet developed. The United States Court of Appeals for the Ninth Circuit, for example, considers five questions when resolving Eleventh Amendment issues such as the one presented here: "'**whether**

a money judgment would be satisfied out of state funds, whether the entity performs central governmental functions, whether the entity may sue or be sued, whether the entity has the power to take property in its own name or only the name of the state, and the corporate status of the entity.'" (*Hale v. Arizona* (9th Cir. 1993) 993 F.2d 1387, 1399; quoting *Mitchell v. Los Angeles Community College Dist.* (9th Cir. 1988) 861 F.2d 198, 201.) Other circuits, however, do not limit their inquiry to these five questions, instead examining various additional factors, such as, the **degree of autonomy enjoyed by the governmental entity** (*Christy v. Pennsylvania Turnpike Comm'n* (3d Cir. 1995) 54 F.3d 1140, 1144); **the entity's immunity from state taxation**; **the percentage of funding received from the state** (*Ibid.)*; **the geographic scope of the entities' area of operation and concern** (*McDonald v. Board of Mississippi Levee Comm'rs* (5th Cir. 1987) 832 F.2d 901, 906); **the independent authority, if any, of the entity to raise funds and the extent of state control over the entity's fiscal affairs** (*Kashani v. Purdue University* (7th Cir. 1987) 813 F.2d 843, 845). In our analysis, we will consider not just the five questions identified by the Ninth Circuit, but also many of these other factors that have been identified by courts throughout the federal system.

(*Id.* at 533-34, **emphasis** added.)

The Court of Appeals then applied these factors to the SFHA. First, it observed that the SFHA, and not the State of California, would be liable for a money judgment against the SFHA. (*Id.* at 539-40.) Second, it observed that "[h]ousing authorities have the power to generate revenues by, for example, issuing bonds and making or selling mortgage loans." (*Id.* at 540.) Third, it observed that housing authorities are under local political control from birth to death, so to speak:

> The governing body of the city or county, not the state, determines when the local housing authority may begin exercising its powers. (§ 34240, 34240.1, 34242.) "In view of this provision of the act, it must be concluded that it is the local government body, and not the Legislature, that confers upon the authority the right to exercise its functions." (*Dockweiler, supra*, 14 Cal. 2d at p. 463.) The local governing body also determines, subject to certain constraints, when the housing authority may cease exercising its powers (§ 34245); who shall serve as commissioners of the housing authority, (§ 34270, 34271.5, 34290), and who should be removed from such positions (§ 34282). It is the governing body of the city or county, not the state, that must initially fund the administrative expenses of the housing authority. (§ 34520.) Furthermore, state statutes classify housing authorities as public corporations and "local public entities." (§ 34203 [defining "authority" as public corporation]; Gov. Code § 900.4 [defining "local public entity" as including "public Authority"], 970, subd. (c) [same]; see *Hess v. Port Authority Trans-Hudson Corporation, supra*, 513 U.S. 30 [state's classification of defendant as public corporation rather than state agency is a factor indicating entity is not "arm of State"].)
>
> (*Ibid.*)

Fourth, the Court observed that state statutes do not "indicate that the SFHA is financially the alter ego of the state." (*Id.* at 541.)

Fifth, the Court observed that housing authorities "function within, and are concerned with, a limited geographic area." (*Ibid.*)

All five of the foregoing observations apply to the SFCTA. Further, the SFCTA is decidedly ***more local*** than the SFHA with respect to the second, third and fifth factors. That is the SFCTA's revenues are primarily derived from a local sales tax, whereas the SFHA secures revenues from

various federal, state, and local sources. Moreover, the SFCTA was created by the local voters, whereas the SFHA was created by the Legislature and began exercising its powers as a result of a resolution by the San Francisco Board of Supervisors. Thus, the SFCTA not only operates within a limited geographic area, it also implements only those specific projects that it is directed to implement by the voters of San Francisco, a point that was emphasized in *Hayward,* the last case upon which we rely.

G. The *Hayward* case.

Hayward Area Planning Assn. v. Alameda County Transportation Authority (1999) 72 Cal.App.4th 95 (*"Hayward"*) arose out of the same state statute underlying the case at-bar. In *Hayward,* the Court of Appeal summarized the Act as follows:

> The Act was adopted in 1986 after the Legislature found that the Bay Area was experiencing "serious traffic congestion and transit mobility problems that threaten the economic viability of the area and adversely impact the quality of life therein." (§ 131001, subd. (a).) The Legislature addressed this problem by establishing a framework whereby "the counties and cities within the nine-county San Francisco Bay area" could "collectively develop and implement, **on a county-by-county basis**, near-term local traffic and transportation projects that responsibly and adequately deal with current and anticipated traffic congestion and transit mobility problems." (§ 131001, subd. (c).) To this end, the Act authorized the voters in each of the designated Bay Area counties to create **a "county transportation authority" in order to "implement a retail transaction and use tax for the purpose of funding a local transportation expenditure plan . . .."** (§ 131001, subd. (e).)
>
> **The key element of the "county transportation expenditure plan," as described by the Act, is a "list of essential traffic**

and transportation projects in the order of priority within the county, . . . which current estimates of federal, state, and local funds indicate are insufficient to provide for their completion." (§ 131051, subd. (a)(1).) **The recommended county transportation expenditure plan then undergoes an adoption and approval process**. This process includes: 1) review and approval by the expenditure plan advisory committee, if any (§ 131050); 2) public hearings before, and review and approval by, the Metropolitan Transportation Commission (§ 131052-131054); **3) approval by a majority of the county board of supervisors; and 4) approval by majority votes of the respective city councils of cities representing a majority of the population in the county's incorporated areas.** (§ 131055).

Once this process has been completed, an ordinance imposing a retail transactions and use tax at a rate not to exceed 1 percent is submitted to the voters for their approval. 4 (§ 131052; 131053; 131055; 131102, subd. (a).) **The entire adopted county transportation expenditure plan must be included in the voter information handbook**. (§ 131108, subd. (h).) **The Act provides "all allocations of revenues derived from the adoption of a retail transactions and use tax ordinance in a county shall be consistent with the priorities established by its county transportation expenditure plan."** (§ 131101.)

The Act also specifies the procedure to be used to amend the county transportation expenditure plan after the voters have approved it. That procedure requires that any "amendment which adds or deletes a project, or is of major significance," shall be submitted for approval in the same manner the adopted plan was adopted and approved, requiring significant public participation in the process. (§ 131304, § 131203.)

(*Id.* at 99-100.) (**Emphasis** added.)

As the Court of Appeal described the dispute in *Hayward*, Alameda County in 1986 established the Alameda Countywide Transportation Committee ("ACTC") to develop a county transportation expenditure plan and an associated countywide sales and use tax measure. (*Id.* at 100.) In the November 1986 General Election, ACTC presented an ordinance to the voters of Alameda County denominated "Measure B." (*Ibid.*) Measure B proposed creating respondent Alameda County Transportation Authority to administer a countywide retail sales/use tax at the rate of one-half of 1 percent to fund 11 transportation projects set forth in the "Alameda County Transportation Expenditure Plan" (the "Expenditure Plan"). (*Ibid.*)

One component of the Expenditure Plan was described in the ballot pamphlet for the November 1986 election as the construction of "a six-lane freeway/expressway along Foothill and Mission Boulevard" between the State Route 238/Interstate 580 interchange and Industrial Boulevard in Hayward. (*Id.* at 100-101.) The accompanying location map was consistent with this description and showed a Foothill and Mission Boulevard alignment for the freeway/expressway. (*Id.* at 101.)

In 1997, appellants filed a petition for peremptory writ of mandate and complaint for injunctive relief alleging that respondent ACTA violated provisions of the Act by instead "improperly and illegally" using Measure B tax funds in support of an alignment for the Route 238 project that differed from the route described to the voters in the November 1986 ballot information. (*Ibid.*) Appellants alleged this discrepancy was purposeful. Appellants requested that the trial court grant injunctive relief to prevent respondents from spending Measure B tax funds "in support of the Hayward Bypass Project." (*Ibid.*)

The Superior Court dismissed the request and instead found that respondents were entitled to judgment as a matter of law based on the argument that the voters do not have the right to determine the particular

alignment or route for state highways. (*Id.* at 99, 102.)

The Court of Appeal described the question confronting it on appeal as follows: "Was it the purpose of this sales and use tax measure to provide funds to implement only those transportation projects as set forth in the Expenditure Plan at the time of the election, as argued by appellants? Or, on the other hand, did the voters impose the sales and use tax to fund transportation projects with fixed *termini* -- beginning and end points as established by the Expenditure Plan --with the understanding that the alignment or route connecting the termini could be materially changed at the sole discretion of state highway authorities, as argued by respondents?" (*Id.* at 104.)

The Court of Appeal looked to the clear meaning of the words (*Id.* at 105) of the Act for guidance and stated:

> The Act provides that a county transportation authority, such as ACTA, is specifically charged with the responsibility for "administer[ing] the county transportation expenditure plan" which sets forth the "essential traffic and transportation projects" needing voter-supported local funding if they are to be completed. (§ 131300; § 131051, subd. (a)(1).) In requesting the voters to shoulder a greater tax burden in order to fund the projects contained in the county transportation expenditure plan, the Legislature has specified that the expenditure plan, in its entirety, is to be included in the voter information handbook.
>
> Once the election has been held and the voter-approved tax imposed, a county transportation authority "in administering the adopted county transportation expenditure plan and imposing the retail transactions and use tax, ***shall have only those powers necessary for those purposes***." (§ 131057.) The Legislature mandated that all funds generated from a voter-approved sales and use tax, after deduction for expenses,

> "shall be used for the planning, design, construction, and operation of the traffic and transportation projects *as set forth in the adopted plan*, . . ." (§ 131107, italics added.) The Act reiterates: "All allocations of revenues derived from the adoption of a retail transactions and use tax ordinance in a county *shall be consistent with the priorities established by its county transportation expenditure plan*." (§ 131101, italics added.)
>
> (**Emphasis** added.)

The Court of Appeal then considered the Act's legislative history as well as the text of the ballot proposition submitted to the voters. (*Id.* at 106.) After this analysis, the Court of Appeal concluded:

> Therefore, the Act itself, its legislative history, and the ballot language all point to one conclusion--that when the voters of Alameda County ***agreed to*** tax themselves under Measure B, they voted with the understanding that the authority of the county to use the funds so generated was limited to and defined by the terms of the Expenditure Plan, which included a precise description of the Route 238 project. In our view, this statutory limitation on the use of the tax so levied serves the dual function of educating voters *before* an election about the specific transportation projects to be funded by the tax so they can intelligently cast their ballots, and it also ensures greater public accountability *after* the election for expenditures made by county transportation authorities, such as ACTA. It ensures that informed voters can make informed choices.
>
> (**Emphasis** added.)

The Court of Appeal then took up respondents' principal argument, namely, that California state law authorized "Caltrans and the California Highway Commission (the Commission) to relocate the voter-approved

route between designated points or termini subsequent to the election." (*Id.* at 107.) The Court of Appeal rejected this argument stating:

> Respondents have confused the authority of state highway officials to make a legally sanctioned change in the route of a state highway with the power to redesign a project specifically authorized and funded by a vote of the people under the terms of the Act… The voters did not authorize expenditure of the sales and use tax money to be used in a manner vested to the unbridled discretion of Caltrans. This is contrary to the express terms of the ballot information submitted to the voters and the express terms of the Act.
>
> (*Ibid.*)
>
> The Court of Appeal also noted that:
>
> If local officials had desired the discretionary power to select a primary road between the State Route 238/Interstate 580 interchange and Industrial Boulevard termini after the election, it would indeed have been a simple matter to so word the Expenditure Plan before its submission to the electorate. Instead, the Expenditure Plan included a project that was fully described and depicted in an accompanying map as running "along Foothill and Mission Boulevard." The voters of Alameda County authorized ACTA to collect and distribute sales and use tax money for the funding of this alignment, not some other route to be designated in the future.
>
> Furthermore, had only the *termini* been designated, or the now-preferred Hayward Bypass alignment been specified, the result of the election might have been entirely different.
>
> (*Id.* at 109.)
>
> The underlying questions of law raised by this case are essentially the

same as those raised by *Hayward*, and the arguments of the SFCTA here are at their core identical to those made by the ACTA in *Hayward*. In *Hayward*, the voters of Alameda County in 1986 voted to create the ACTA to administer a countywide retail sales/use tax at the rate of one-half of 1 percent to fund specific transportation projects set forth in the "Alameda County Transportation Expenditure Plan." (*Id.* at 100.) Here, the voters of the City and County of San Francisco in 1989 voted to create the SFCTA to administer a countywide retail sales/use tax at the rate of one-half of 1 percent to fund specific transportation projects set forth in the "City and County of San Francisco Transportation Expenditure Plan." (RJN, Exhibit A, (Proposition B).)

In *Hayward*, the Expenditure Plan in the ballot pamphlet for the November 1986 election called for the construction of "a six-lane freeway/expressway along Foothill and Mission Boulevard" between the State Route 238/Interstate 580 interchange and Industrial Boulevard in Hayward." (*Hayward*, at 101.) Here, in the November 1989 ballot pamphlet, Measure B was an "**ordinance adding Article 14 to Part III of the Municipal Code of the City and County of San Francisco providing for the creation of the San Francisco County Transportation Authority,**" and providing that the SFCTA would: (1) have a contractual relationship with the State of California, (2) be comprised of the San Francisco Board of Supervisors, (3) collect sales taxes from San Francisco taxes, and (4) use those San Francisco tax revenues to carry out San Francisco transportation projects specified in the incorporated Expenditure Plan. (**Emphasis** added.) (RJN, Exhibit A (Proposition B).)

In *Hayward*, the ACTA argued that California state highway authorities had the right to ignore the Expenditure Plan approved by local voters by "relocate[ing] the voter-approved route between designated points or termini subsequent to the election." (*Hayward*, at 107.) Here, the SFCTA

claims [and the Superior Court held] that the SFCTA is an agency of the State of California with the right to ignore local law subsequent to its local creation in the election. (Order-At-Issue, lines 3-6.) (A.A. 273.)

In *Hayward*, the Court of Appeal rejected ACTA's argument and stated: "The voters did not authorize expenditure of the sales and use tax money to be used in a manner vested to the unbridled discretion of Caltrans." (*Hayward*, at 107.) Here, the voters did not cede control over the sales tax money to an agency of the State of California exempt from local laws and ordinances. (RJN, Exhibit A, Proposition B.)

In *Hayward*, the Court of Appeal noted: "If local officials had desired the discretionary power to select a primary road between the State Route 238/Interstate 580 interchange and Industrial Boulevard termini after the election, it would indeed have been a simple matter to so word the Expenditure Plan before its submission to the electorate." (*Hayward*, at 109.) Here, at least theoretically, had local officials desired to ask local voters to agree to cede control over the sales and use tax money to an agency of the State of California exempt from local laws and ordinances, it could have so worded Measures B and K before their submission to the electorate.

In *Hayward*, the Court of Appeal noted that had the ballot measure been worded to allow the outcome desired by the ACTA, "the result of the election might have been entirely different." (*Hayward*, at 109.) Here, likewise, had Propositions B and K been worded to cede control over the sales and use tax money to an agency of the State of California exempt from San Francisco local laws and ordinances, the result of the elections might have been entirely different.

The guidance and authority provided by *Hayward* is that the Act, its legislative history and the ballot language of Measures B and K submitted to the voters of the City and County of San Francisco "all point to [the] conclusion" that this statutory scheme sought to ensure local voter control.

(*Id.* at 106.) Under the scheme, the voters of Alameda and San Francisco created the ACTA and SFCTA as local agencies to implement local sales taxes and to carry out specific local transportation projects during a limited time-period. There is nothing in the ballot language that implied to a reasonable voter that in creating these local agencies that they were instead ceding control over their tax dollars to agencies of the State of California. And "this statutory limitation on the use of the tax so levied serves the dual function of educating voters *before* an election about the specific transportation projects to be funded by the tax so they can intelligently cast their ballots, and it also ensures greater public accountability *after* the election for expenditures made by county transportation authorities, such as ACTA [and SFCTA]. It ensures that informed voters can make informed choices." (*Id.* at 106.)

H. The foregoing cases – and especially *Torres* – require reversal of the Order-At-Issue.

The four cited cases were decided in 1904, 1979, 1997 and 1999, respectively. This line of cases begins and ends with the same principle. The voters in *Escondido* did not authorize the Board of the irrigation district to hypothecate its assets, so when the legislature later *sua sponte* provided such authority to the Board, it amounted to breach of contract and a deprivation of property without due process. (*Escondido* at 334-35.) Likewise, in *Hayward*: "The voters did not authorize expenditure of the sales and use tax money to be used in a manner vested to the unbridled discretion of Caltrans." (*Hayward* at 107.)

Thus, when the voters in a city, county or (as here) charter city and county agree to tax themselves and form an entity such as the SFCTA, they ***agree*** to do so on certain terms. The Act and Propositions B and K emphasize that the SFCTA was to be a **local** agency to be created by the **local** voters and to be governed by the **local** Board of Supervisors with the

sole purpose of implementing a **local** ½% sales tax to complete a specific list of **local** transportation projects. If the California state legislature wanted the SFCTA to be a state agency, why did it not instead simply create it itself? Or in the alternative, why was it not stated in Propositions B and K that the voters were creating a state agency exempt from all other local laws and ordinances?

Lynch also adopts a comprehensive list of factors developed by the federal courts to make this assessment. (*Lynch,* at 533-34.) When these factors are applied to the SFCTA, it is readily apparent that it is squarely at the "local" end of the spectrum and certainly far more "local" in nature than the housing authorities at-issue in *Torres* and *Lynch*. (See sections G and H, *supra*.) Indeed, it is difficult to identify any "state agency" characteristics of the SFCTA.

The cases also provide the guidance that a given municipal corporation can fall at different places on the state/local spectrum for different purposes. (*Escondido,* at 334; *Torres,* at 550; *Lynch,* at 535.) On this point it is instructive to reference the definitions of "Local agency" and "State Agency" quoted, *supra*, at Section V.B.

Finally, we have the guidance of *Torres,* a case specifically concerned with the same purpose at-issue here, namely, whether the state or local version of a standards-type law (such as a "sunshine" or anti-discrimination law) was applicable to the agency. (*Torres,* at 547.) The housing authority at-issue in *Torres* was less "local" than the SFCTA for the many reasons detailed in the foregoing sections G and H, but the *Torres* court nevertheless found that the local standards applied. (*Id.* at 549.) Accordingly, even without Appellant's other relevant analyses herein, *Torres* would seem to call for a reversal of the Judgment below.

I. Respondents' argument that the Sunshine Ordinance impliedly "exempts" the SFCTA is circular.

San Francisco Administrative Code, Section 67.32, the Sunshine Ordinance, (RJN, Exhibit C) provides, in part:

> Sec. 67.32. Provision of Services to other Agencies; Sunshine Required.
>
> It is the policy of the City and County of San Francisco to ensure opportunities for informed civic participation embodied in this Ordinance to all local, state, regional and federal agencies and institutions with which it maintains continuing legal and political relationships... including but not limited to the Presidio Trust, the San Francisco Unified School District, the San Francisco Community College District, **the San Francisco Transportation Authority**, the San Francisco Housing Authority, the Treasure Island Development Authority, the San Francisco Redevelopment Authority and the University of California. To the extent not expressly prohibited by law, copies of all written communications with the above identified entities and any City employee, officer, agents, or and representative, shall be accessible as public records. …"

Article XI, Section 7.5 of the California Constitution (**emphasis** added) provides:

> (a) A city or county measure proposed by the legislative body of a city, charter city, county, or charter county and submitted to the voters for approval **may not do either of the following**:
>
> (1) Include or exclude ***any part*** of the city, charter city, county, or charter county from the application or effect of its provisions based upon approval or disapproval of the city or

> county measure, … by the electors of the city, charter city, county, charter county, or any part thereof.
>
> . . . .
>
> (b) "**City or county measure," as used in this section, means** an advisory question, **proposed** charter or charter amendment, ***ordinance,*** proposition for the issuance of bonds, or other question or proposition submitted to the voters of a city, or to the **voters of a county at an election held throughout an entire single county**.

The Superior Court conceded during oral argument that the foregoing Constitutional provision renders circular the argument that the language of section 67.32 of the Sunshine Ordinance impliedly exempts the SFCTA. (Transcript at 2:27-3:11.) If the SFCTA is, as the Superior Court contended, "an agency of the State of California exempt from local ordinances," there is no reason to reach the language of the Sunshine Ordinance. If on the other hand, the SFCTA is a "local agency" as Appellant contends, then any interpretation of section 67.32 as impliedly exempting the SFCTA from the Sunshine Ordinance would be unconstitutional.

Even absent this circularity, Appellant does not concede that section 67.32 can be read as exempting the SFCTA from the effect of the Sunshine Ordinance. Pursuant to Section 6253(e) of the California Public Records Act, the voter initiated and adopted 1999 Proposition G comprehensively amended the San Francisco Sunshine Ordinance. (RJN, Exhibit C.) In all of its respects, that Proposition sought to increase the public's right of access versus the prior ordinance. Section 67.32 was included in Proposition G as a "catch-all" provision designed to broaden the reach of the Sunshine Ordinance to all interactions with various agencies regardless of whether or not they were – or considered themselves to be – subject to the Sunshine

Ordinance.

"We interpret initiative measures …to ***ascertain and effectuate the intent of the voters who passed the initiative measure***." (*Emphasis* added.) (*Yeroushalmi v. Miramar Sheraton*, *supra*, 88 Cal.App.4th at pp. 747-748 (emphasis added).) As a threshold matter it would be entirely inconsistent with the ***intent of the voters*** in initiating and adopting Proposition G for section 67.32 to have the effect of ***affirmatively exempting*** agencies from the reach of the Sunshine Ordinance.

Nor can one reasonably suggest that in section 67.32 the voters opined on the state or local status of the listed agencies. "A decision, of course, is not authority for what it does not consider." (*Mercury Ins. Group v. Superior Court* (1998) 19 Cal. 4th 332, 348.) Instead most or all the agencies listed in section 67. 32, except the SFCTA, are true state agencies. The misnamed "San Francisco Transportation Authority" was mistakenly included ***as a result of the same confusion that resulted in this appeal.***

Even to the extent that the mistaken inclusion of the misnamed "San Francisco Transportation Authority" in section 67.32 creates uncertainty, "[w]hen uncertainty arises in a question of statutory interpretation, consideration must be given to the consequences that will flow from a particular interpretation. [Citation.] In this regard, it is presumed the Legislature intended reasonable results consistent with its expressed purpose, not absurd consequences." (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1165-1166; accord, *Webster v. Superior Court* (1988) 46 Cal.3d 338, 343-344.) The only purpose of the San Francisco Sunshine Ordinance was to result in ***increasing*** the public's right of access. In contrast Respondents' proposed interpretation of section 67.32 would have the effect of ***decreasing*** the public's right of access by exempting a local agency from the application and effects of the ordinance, an "absurd consequence" that would be entirely "[in]consistent with its expressed purpose."

Finally, to the extent that it remains in any way a "gray area", this Court's interpretation of section 67.32 must as a ***Constitutional matter*** be guided by another pertinent part of the California Constitution found at Article I, Section 3(b)(2):

> A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.

It would violate the foregoing Constitutional provision if this Court were to interpret section 67.32 as impliedly exempting the SFCTA from the purpose and effects of the Sunshine Ordinance because such a construction would limit the people's right of access, as this dispute so clearly demonstrates.

VII. Conclusion

In "Proposition B: Sales Tax for Transportation" in 1989 and "Measure K: Sales Tax for Transportation" in 2003, the voters of San Francisco agreed by ordinance to amend the San Francisco Municipal Code to tax themselves for a limited period of time with the understanding that the authority of the City and County to use the funds so generated was limited to and defined by the terms of detailed Transportation Expenditure Plans built into the two ordinances. (*Hayward*, at 106.) The only purpose and power that has ever been granted to the SFCTA was the power to implement the sales tax and the Transportation Expenditure Plans. (Act at § 131057(a).) Upon completion of the projects listed in the Transportation Expenditure Plans, the SFCTA must close its affairs and be terminated within 180 days. (*Id.* at § 131280.)

The voters further specified that the SFCTA shall consist of the San Francisco Board of Supervisors. Since the voters approved Propositions B and K, the Board of Supervisors have occasionally donned their "SFCTA"

hats to act as the "authority" to implement the mechanism for the two Propositions.

Contrary to the decidedly local nature of the SFCTA in virtually every respect, and notwithstanding that the SFCTA's existence, powers and limited authority are found in the laws of the City and County of San Francisco, the Superior Court held that the SFCTA is an agency of the State of California and, thus, exempt from all the other ordinances of the City and County of San Francisco, as well as its charter. (Order at issue, at lines 5-6.) (A.A. 273.)

Nothing in Proposition B or K states or implies that the "SFCTA" is an agency of the State of California, or even that the SFCTA is an agency with any permanent identity or function whatsoever. Instead, the emphasis of Propositions B and K and the entire statutory scheme from which they emerged is voter control: "[T]his statutory limitation on the use of the tax so levied serves the dual function of educating voters *before* an election about the specific transportation projects to be funded by the tax so they can intelligently cast their ballots, and it also ensures greater public accountability *after* the election for expenditures made by county transportation authorities." (*Emphasis* in original.) (*Hayward*, at 106.) The transportation authority – here, the San Francisco Board of Supervisors – is merely implementing a detailed Transportation Expenditure Plan and a tax agreed to and paid for by the voters.

So, while the SFCTA may be somewhat different from other agencies of the City government, it is a voter-created entity implementing a voter-approved plan using voter-generated tax revenue. The SFCTA is very much a part of the City and County of San Francisco demonstrably not exempt from its other ordinances and laws.

The *Escondido*, *Lynch* and *Torres* cases further support a conclusion that the SFCTA should be treated as a local agency subject to local

standards, such as sunshine ordinances or anti-discrimination laws. Those cases acknowledge that agencies such as the SFCTA are municipal corporations that can fall at different places on the local/state spectrum depending on the agency and purpose in question. Under the factors provided in those cases, the SFCTA is on the local extreme of the spectrum and in *Torres* the Court of Appeal found that even a housing authority is to be treated as a local agency for the purposes of a sunshine law.

WHEREFORE, Appellant respectfully requests that this court grant this appeal, reverse the order of the Superior Court below, and hold that the San Francisco County Transportation Authority is subject to the application and effect of the ordinances and laws of the City and County of San Francisco.

Appellant also request that they be awarded attorney fees and costs for this appeal.

Dated February 26, 2019

By _____/s/_____

Charles K. Seavey,
Attorney for Appellant

By _____/s/_____

Allen Grossman,
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

UNDER CALIF. RULES OF COURT, RULE 8.204, *subd.* (c)

I hereby certify that, according to the computer program used to prepare this brief, this brief contains 11,573 words, excluding the table of contents, table of authorities and this certificate.

Dated: February 26, 2019

By _____/s/_____

Charles K. Seavey,
Attorney for Appellant

PROOF OF SERVICE

I, Charles Seavey, am employed in the County of San Francisco, State of California. I am over the age of 18, not a party to this action, and my business address is: 101 California Street, Suite 2710, San Francisco, CA 94111.

On February 26, 2019, I served the foregoing document described as:

"APPELLANT'S OPENING BRIEF"

on the persons interested in said action by e-service through an approved portal addressed as follows:

STANLEY S. TAYLOR III (Counsel for SFTCA)
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In addition, the Superior Court was served by placing true copies thereof enclosed in sealed envelopes addressed as follows and then caused to be deposited in the United States Mail, postage prepaid.

Hon. Harold Kahn,
c/o Clerk of the Superior Court
400 McAllister St.
San Francisco, CA 94102-4515

Executed on February 26, 2019, at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/
Charles Seavey