

HIGH-SPEED RAIL IN CALIFORNIA MAY BE INEVITABLE: WHERE DOES THAT LEAVE OPPONENTS?

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INTRODUCTION

In the 1960s, the United States began seriously considering constructing a high-speed rail ("HSR")¹ system.² Developing such a system has been a slow process for various reasons: aggressive political opposition; an overwhelming American obsession with the automobile and, in turn, the lack of citizen embrace of public transportation; and other priorities receiving government attention and spending. Despite

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1. Congress has defined HSR as having trains capable of reaching speeds of more than 125 mph. 49 U.S.C. § 26105 (2011).

2. *See, e.g.*, President Lyndon Baines Johnson, Annual Message to the Congress on the State of the Union (Jan. 4, 1965).

this, it appears certain that ground will finally be broken towards creating the first high-speed track in 2014.³ This will take place in California, where the state plans to build up to 500 miles of HSR track connecting Los Angeles and San Francisco, with trains reaching top speeds of 220 mph.⁴ With many other regions in the nation hoping to enact their own HSR lines, the project in California is being watched closely across the nation.⁵ If successful, other regions will use California's HSR project as a standard in creating their own plans, and any mistakes made will similarly serve as guidance on what tactics to avoid. In this sense California is a "test case" for the nation's overall HSR vision.

Although construction on the initial construction segment ("ICS") of the project is set to begin sometime in 2014, the project still faces staunch opposition from various interests ranging from politicians at both the state and federal levels to local governments and ordinary citizens. Once the project began to gain steam around 2008, these groups intensified their opposition by employing a variety of tactics all aimed at ultimately undoing the project.

Irrespective of opposition, the project may have passed the point of no return. In addition to beginning construction on the ICS soon, a number of recent events have provided additional future security for the project. Perhaps most important were the various outcomes from the 2012 elections—at both the federal and state levels—which shored up much of the necessary political support for the project. This combined with the project's past successes increases the likelihood that the project will ultimately be constructed.

Certainly some opponents believe that their efforts can still stop the project. However, at this point, it may be in their respective best interests to drop their opposition, and redefine themselves as stakeholders. With this new paradigm, they can easily transition to more active roles associated with the HSR project to achieve results that better align with their various goals.

To place this situation in the most appropriate context, this note will first review the history of HSR in the United States and describe the current situation in detail, followed by a similar examination of the development of HSR in California to show why the state's project is so

3. At the time this note was submitted for publication, construction had not yet begun; preliminary work has begun in some areas. See Tim Sheehan, *Fresno soil drilling prepares for high-speed rail construction*, FRESNO BEE (Dec. 17, 2013), <http://www.fresnobee.com/2013/12/17/3672421/soil-drilling-begins-in-fresno.html>.

4. CAL. HIGH-SPEED RAIL AUTH., CALIFORNIA HIGH-SPEED RAIL PROGRAM REVISED 2012 BUSINESS PLAN: BUILDING CALIFORNIA'S FUTURE ES-13 (2012), available at http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2012_rpt.pdf.

5. See, e.g., Allen Best, Op-Ed, *High-Speed Rail Closer to Reality*, DENVER POST, Oct. 7, 2012 at 1D.

vital to the HSR vision for the entire country. Next, this note will detail the efforts of the most notable opponents of California's HSR project. In considering how their results align with their goals, the note will conclude by suggesting various tactical changes for these opponents in light of the imminence of the HSR project.⁶

I. THE HISTORY OF HSR IN THE UNITED STATES

American politicians began to explore the feasibility of bringing HSR to the United States after seeing various Asian and European countries build successful models as early as 1955.⁷ Due to its long-term planning and intensive infrastructure requirements, public investment is integral to the development and coordination of any HSR project—especially in its infancy. Accordingly, the federal government has always played an active role of incubating the development of HSR in the United States. However, instead of a "hands-on" federal project—as was used in constructing the national highway system and transcontinental railroad—the Federal Government opted for a decentralized, regional approach, leaving the planning of corridors to the states while retaining a degree of oversight.

Whereas public discussion regarding HSR in the United States has taken place for half a century, it was not until the 1990s that the vision finally began to take shape. In 1991, Congress enacted the Intermodal Surface Transportation Efficiency Act of 1991 to allow the Department of Transportation to conduct preliminary research and examine the feasibility of HSR.⁸ The law also called for the designations of potential HSR corridors—including the current one being constructed in California. Soon thereafter, the Swift Rail Development Act of 1994 provided additional focus to the nation's HSR vision by outlining the specific roles for federal and state governments, and, perhaps more importantly, appropriating the initial funding to support early stage planning of HSR.⁹ The Transportation Equity Act for the 21st Century followed to provide additional funding for corridor planning.¹⁰ While these acts created the base from which a HSR system could spring, it was

6. The HSR project in California has a multitude of legal and political issues to explore, such as the economic and financial aspects of the project as well as the safety and technology employed. While these are all controversial and fascinating topics, they are outside the scope of this note and, therefore, will not be addressed in detail.

7. For a comprehensive overview of the systems in Europe and Asia *see* DANIEL ALBALATE & GERMA BEL, *THE ECONOMICS AND POLITICS OF HIGH-SPEED RAIL* (2012).

8. Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914.

9. Swift Rail Development Act of 1994, Pub. L. No. 103-440, 108 Stat. 4615.

10. Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, 112 Stat. 107 (1998).

the American Reinvestment and Recovery Act of 2009 ("ARRA"), signed into law by President Barack Obama soon after taking office, that would provide the necessary next step to take HSR from planning to implementation.¹¹ ARRA created guidelines for various regional HSR corridors to compete against one other—based on the feasibility and readiness of their proposed plans—for billions of dollars.¹² At the time of ARRA's enactment, many corridors had already established basic HSR plans, but some were more polished and further along than others. Simply put, without ARRA, the current HSR vision would be nowhere near as complete as it is now.

For the purposes of ARRA funding, the Tampa-Orlando-Miami corridor was arguably the most competitive and construction-ready. The region's population size, combined with the modest distance between the cities, and Florida's head start on planning would have allowed the HSR corridor to be constructed quicker and with lower overall costs than most other corridors across the nation.¹³ As late as 2010, with billions in ARRA funding within reach to supplement existing efforts, it seemed like a foregone conclusion that the nation's first modern HSR line would be in Florida. None of this was altogether too surprising either, since the state's HSR roots run nearly as deep as the Federal Government's, dating back to the 1970s.¹⁴ In early 2011, however, these expectations were thwarted when Governor Rick Scott—in a move that some consider a broader rejection of the policies of President Obama—rejected ARRA funds already awarded to Florida for HSR.¹⁵ As a result, Florida's HSR project was abruptly halted while other corridors continued developing. While Governor Scott's actions certainly constituted a major setback to the nation's HSR efforts, they also created opportunities for other corridors to steal not only the spotlight, but the funds Florida did not want.

With its own history of HSR just as extensive as Florida's, California's corridor planning to connect San Francisco to Los Angeles also emerged as one of the more competitive regional plans for a significant amount of ARRA funds.¹⁶ When Governor Scott rejected

11. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115.

12. *Id.*

13. Florida's first line of track between Tampa and Orlando was expected to be operational in 2014. See Ted Jackovics, *State Makes Official Bid For High-Speed Rail Cash*, TAMPA TRIBUNE, Oct. 3, 2009, at 4.

14. See *High Speed Rail*, TAMPA BAY PARTNERSHIP, <http://www.tampabay.org/high-speed-rail> (last visited Mar. 2, 2014).

15. Janet Zink, *Gov. Rick Scott Rejects Funding for High-Speed Rail*, TAMPA BAY TIMES, Feb. 11, 2011, available at <http://www.tampabay.com/news/localgovernment/gov-rick-scott-rejects-funding-for-high-speed-rail/1151937>.

16. In the 1980s, Florida modeled some of its HSR planning efforts off California's. See

Florida's share of the ARRA funds, the Federal Government allowed other states to compete for the already-appropriated funds.¹⁷ Seizing this opportunity, California was able to add \$300 million to its already largest share of over \$3 billion, thus signaling it as a clear-cut front runner to be the first in the union to develop HSR.¹⁸

II. WHY CALIFORNIA IS IMPORTANT

"High Speed Rail . . . is bold, but so is everything else about California."¹⁹ With the largest state economy in the nation by a large margin, and expectations of population growth of around 30% in the next 20 years, HSR appears a highly strategic and perhaps necessary addition to the transportation infrastructure in California.²⁰ Considering the state's rich history during the development of the transcontinental railroad in the late 1800s, becoming the first state in the nation to develop HSR would be fitting.²¹

California is also no stranger to being a leader for new political ideas. The state was a forerunner to many groundbreaking political movements, such as Progressivism at the dawn of the 20th century, the tax revolt in the late 1970s, which spawned the "Reagan Revolution,"²² and more recently the struggle to legalize gay marriage on a national scale through the courts.²³ The state is also well-known for being a trendsetter of high-technology, with Silicon Valley producing many of the nation's breakthroughs in the field.

California's history of investing in infrastructure is nearly as ambitious as its willingness to push for political and technological advances. In response to massive increases in population during the 20th century, the state built highway and public university systems that quickly became the envy of the rest of the world.²⁴ Further paralleling HSR, California's highway system was also initially funded with bond

Tim Smart, *Visions of Bullet Train Lure Investors to State*, MIAMI HERALD, Aug. 16, 1982, at A1.

17. Robert J. Hawkins, *State's high-speed rail wins \$300m declined by Fla.*, U-T SAN DIEGO, May 9, 2011, available at <http://www.utsandiego.com/news/2011/May/09/california-high-speed-rail-wins-300-million-florid/>.

18. *Id.*

19. Governor Edmund G. Brown, State of the State Address, (Jan. 24, 2013).

20. HANS JOHNSON, PUB. POL'Y INST. OF CAL., CALIFORNIA POPULATION: PLANNING FOR A BETTER FUTURE 1 (Jan. 2013).

21. *First Transcontinental Railroad*, WIKIPEDIA (Oct. 7, 2013, 10:05 PM), http://en.wikipedia.org/wiki/First_Transcontinental_Railroad.

22. For a comprehensive overview of California's political history, see PETER SCHRAG, PARADISE LOST: CALIFORNIA'S EXPERIENCE, AMERICA'S FUTURE (2004).

23. *California Proposition 8*, WIKIPEDIA (Oct. 2, 2013, 7:52 AM), http://en.wikipedia.org/wiki/California_Proposition_8.

24. KEVIN STARR, GOLDEN DREAMS: CALIFORNIA IN AN AGE OF ABUNDANCE, 1950-1963 266 (2009).

measures.²⁵

While history indicates that California is the perfect place to construct HSR, its citizens' traditional tastes appear to be a less-ideal fit for embracing it. For instance, Californians have always had a strong affinity to the automobile.²⁶ Because of this, the state has traditionally invested heavily in roads while relegating funding for public transportation to the margins.²⁷ These attitudes, however, appear to be changing as already prevalent concerns over pollution continue to mount²⁸ and gasoline costs soar.²⁹ As a result, it appears that Californians may be more open to transportation alternatives.

The first mention of an idea for a HSR system that would span the length of the state came during current Governor Jerry Brown's first tenure as governor in the 1970s.³⁰ It was not until 1996 that this idea would actually begin coming into focus, when the legislature created the High-Speed Rail Authority (the "Authority") to oversee and administer the creation of HSR in California.³¹ The Authority continued to study and plan for HSR throughout the 1990s, but the critical point for HSR occurred when voters enacted The Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century ("Proposition 1A") in 2008.³² Proposition 1A pledged nearly \$10 billion in state bond funding to develop a HSR system connecting the Northern and Southern regions of the state.³³ This major commitment of funding alone positioned California quite well to receive a significant portion of ARRA funds. In the summer of 2012, the state legislature approved construction to begin on the ICS, thus enabling the authority to break ground on connecting the Central Valley cities of Merced and Fresno.³⁴

25. *History of California's State Highway System*, WIKIPEDIA (May 11, 2013, 5:06 AM), http://en.wikipedia.org/wiki/History_of_California's_state_highway_system.

26. *See generally*, KEVIN NELSON, WHEELS OF CHANGE: FROM ZERO TO 600 M.P.H.: THE AMAZING STORY OF CALIFORNIA AND THE AUTOMOBILE (2009).

27. *See, e.g.*, CLIFFORD W. WOODWARD, U.S. DEPT. OF TRANSP., TRENDS IN FEDERAL DOMESTIC TRANSPORTATION PROGRAMS, REVENUES AND EXPENDITURES: BY STATE, FISCAL YEARS 1957-1975 5-C (1979).

28. MARK BALDASSARE ET AL., PUB. POL'Y INST. OF CAL., PPIC STATEWIDE SURVEY: CALIFORNIANS & THE ENVIRONMENT 5 (July 2012).

29. CAL. ENERGY COMM'N, CALIFORNIA AVERAGE WEEKLY GASOLINE PRICES, http://energyalmanac.ca.gov/gasoline/retail_gasoline_prices2.html (last visited Mar. 2, 2014).

30. *State Planning High-Speed Train Line, Governor Says*, L.A. TIMES, Nov. 18, 1980, at A3.

31. California High-Speed Rail Act, ch. 796, 1996 Cal. Stat. 796.

32. The Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, ch. 267, 2008 Cal. Stat. 267.

33. *Id.*

34. Act of July 18, 2012, ch. 152, 2012 Cal. Stat. 152.

III. OPPOSITION TO HSR IN CALIFORNIA

No matter what the end-goal, large public infrastructure projects always attract opponents. For instance, even the cherished national highway system and iconic Golden Gate Bridge each faced opposition from various special interests when they were in their respective planning stages.³⁵ So it was not surprising when opposition to HSR in California sprang up around 2008 when Proposition 1A was being considered.³⁶ Once the public approved the measure, opponents at the state and federal level adjusted their tactics hoping to kill the project before it even began.

A. State Legislative Opposition

In hindsight it might seem odd, but Proposition 1A actually began as a bipartisan effort, with 18 Republican legislators and then-Republican Governor Arnold Schwarzenegger all supporting it.³⁷ In the years since, however, support and opposition to HSR in California has mostly followed party lines, with most Democrats supporting the project, and almost all Republicans opposing it—not unlike most modern issues tackled by the state legislature.³⁸ Despite hoping to seize upon declining public support for government spending, especially in a state with budget shortfalls throughout much of the past decade,³⁹ state legislative opponents' efforts have largely been devoid of actual results.

A prime example of this is Assembly member Diane Harkey, who

35. See THOMAS L. KARNES, ASPHALT AND POLITICS: A HISTORY OF THE AMERICAN HIGHWAY SYSTEM 82-83 (2009); KEVIN STARR, GOLDEN GATE: THE LIFE AND TIMES OF AMERICA'S GREATEST BRIDGE 71, 75, 77 (2010).

36. Up until it was passed by the legislature, the bill which put Proposition 1A on the ballot included only one registered opponent; however, once it was on the ballot, many more groups voiced their opposition. See STAFF OF S. RULES COMM., BILL ANALYSIS ASSEMB. B. 3034, Reg. Sess. (Cal. 2008), available at http://leginfo.ca.gov/pub/07-08/bill/asm/ab_3001-3050/ab_3034_cfa_20080808_164606_sen_floor.html; *California Proposition 1A, High-Speed Rail Act (2008)*, BALLOTEDIA (Apr. 8, 2013, 9:39 AM), http://ballotpedia.org/wiki/index.php/California_Proposition_1A,_High-Speed_Rail_Act_%282008%29#Opposition.

37. *AB 3034 – Assembly Floor Vote Information*, CAL. LEGISLATIVE COUNSEL (Aug. 13, 2008), http://leginfo.ca.gov/pub/07-08/bill/asm/ab_3001-3050/ab_3034_vote_20080813_0451PM_asm_floor.html; *AB 3034 – Senate Floor Vote Information*, CAL. LEGISLATIVE COUNSEL (Aug. 7, 2008), http://leginfo.ca.gov/pub/07-08/bill/asm/ab_3001-3050/ab_3034_vote_20080807_1055AM_sen_floor.html.

38. Most recently seen in S.B. 1029 which did not receive a vote from a single Republican legislator. *SB 1029 – Senate Floor Vote Information*, CAL. LEGISLATIVE COUNSEL (July 6, 2012), http://leginfo.ca.gov/pub/11-12/bill/sen/sb_1001-1050/sb_1029_vote_20120706_0356PM_sen_floor.html; *SB 1029 – Assembly Floor Vote Information*, CAL. LEGISLATIVE COUNSEL (July 5, 2012), http://leginfo.ca.gov/pub/11-12/bill/sen/sb_1001-1050/sb_1029_vote_20120705_0445PM_asm_floor.html.

39. PAUL WARREN & MARGARET WESTON, PUB. POL'Y INST. OF CAL., CALIFORNIA BUDGET: PLANNING FOR A BETTER FUTURE 1 (Jan. 2013).

represents a district comprising much of Orange County, where constituents have supported Republican presidents in every election since World War II and been traditionally hostile to government spending.⁴⁰ In introducing bills seeking to completely defund the project in each of the last three years, Harkey has made opposing HSR one of her key policy aims.⁴¹ However, because Republicans constitute such a small minority in the state legislature, none of these bills even survived the first hurdle of making it out of a policy committee.⁴² Perhaps as a ploy to draw attention to her efforts, Harkey has accompanied them with colorful, charged statements in the media about the HSR project, such as referring to the ARRA funds as "cocaine for the train,"⁴³ and characterizing the decision to start construction in the state's Central Valley farmland as "cultural genocide."⁴⁴ Despite a lack of results, Harkey may be incited to maintain an image as a strong opponent of HSR after receiving nearly \$90,000 from the oil, gas, and automotive industries—all of which would logically be threatened by California providing consumers with an alternative to existing transportation options.⁴⁵

Until recently, the most notable opponent in California's other legislative house was former state Senator Doug LaMalfa.⁴⁶ LaMalfa—whose district is in the far northern portion of the state and far away from the planned route for HSR—was the main face of legislative opposition when a quote was needed by media outlets attempting to show balance. While LaMalfa also introduced legislation similar to Harkey's, which also failed,⁴⁷ he received more publicity from an attempt to certify a ballot initiative defunding the project completely.⁴⁸ Like Harkey, LaMalfa used creative language to draw attention to his ballot initiative by seeking to have its title certified as the "Stop the \$100 Billion Bullet

40. *Orange County, California: Politics*, WIKIPEDIA (Oct. 15, 2013, 10:02 AM), http://en.wikipedia.org/wiki/Orange_county,_ca#Politics.

41. Assemb.B. 1455, Reg. Sess. (Cal. 2012); Assemb.B. 76, Reg. Sess. (Cal. 2011); Assemb.B. 2121, Reg. Sess. (Cal. 2010).

42. *Id.*

43. Assemb. Diane Harkey, *The Cocaine for the Train*, FLASHREPORT (Apr. 23, 2012), <http://www.flashreport.org/blog/featured-columns-library0b.php?faID=2012042310240250>.

44. David Siders, *GOP Kicks Off Budget Roadshow of its own*, CAPITOL ALERT (Apr. 7, 2011, 1:37 PM), <http://blogs.sacbee.com/capitolalertlatest/2011/04/gop-kicks-off-budget-roadshow.html>.

45. See generally CAL. SEC'Y OF STATE, CAMPAIGN FINANCE: DIANE HARKEY, <http://cal-access.sos.ca.gov/Campaign/Candidates/Detail.aspx?id=1281241> (last visited Mar. 2, 2014) (figure accounts for 2008, 2010, and 2012 election cycles where donors could at least be reasonably discerned be from the above three industries).

46. *Doug LaMalfa: 2012 Election*, WIKIPEDIA (Oct. 2, 2013, 3:02 PM), http://en.wikipedia.org/wiki/Doug_LaMalfa#2012_election.

47. S.B. 985, Reg. Sess. (Cal. 2012); S.B. 22, Reg. Sess. (Cal. 2011).

48. Torey Van Oot, *GOP Senator Wants to Put High-Speed Rail Back on the Ballot*, CAPITOL ALERT (Nov. 1, 2011, 4:57 PM), <http://blogs.sacbee.com/capitolalertlatest/2011/11/gop-sen-lamalfa.html>.

Train to Nowhere Act."⁴⁹ Despite this, the initiative failed to garner the required amount of signatures to qualify for the ballot.⁵⁰ Opponents of HSR may consider attempting a similar initiative in the future, but the earliest that such a measure can be placed on the ballot is 2014—long after construction has begun. At this point, no legislator in the state Senate appears poised to fill LaMalfa's role. This may indicate that the opposition voices in the legislature are dwindling even further.

State legislative opposition has not only come from Republicans. In July 2012, four Democratic state senators—Alan Lowenthal, Fran Pavley, Joe Simitian, and Mark DeSaulnier—voted against a bill to fund the ICS, despite all previously supporting the project.⁵¹ In hindsight, these votes did not harm the project. However, at the time they seemed quite threatening as the bill mustered a bare majority and only upon the final deadline for bills to be passed for the session.⁵² If the bill had failed, \$3.2 billion in federal funding would have been withdrawn and the project's fate could have easily mirrored the situation in Florida.⁵³ These votes do not signal a longer trend in the state legislature, since all four Senators seemed influenced by the state's current budget shortfall at the time of the vote.⁵⁴ Now the state is projecting a budget surplus for the first time in a decade, thereby mitigating such concerns.⁵⁵ Also, both Lowenthal and Simitian have since left the state legislature after being elected to other offices in November 2012.⁵⁶

49. Letter from Doug LaMalfa, Calif. St. Senator, & George Radanovich, former Congressman, to Ashley Johansson, Office of the Cal. Att'y Gen., (Mar. 20, 2012), *available at* https://oag.ca.gov/system/files/initiatives/pdfs/12-0010%20%28i1058_12-0010_%28bullet_train%29%29.pdf?.

50. Letter from Katherine Montgomery, Office of the Cal. Sec'y of State, to Cal. Cnty. Clerks/Registrars of Voters and Proponents, (Oct. 26, 2012), *available at* <http://www.sos.ca.gov/elections/ccrov/pdf/2012/october/12308km.pdf>.

51. *See AB 3034 – Assembly Floor Vote Information, supra* note 37; *AB 3034 – Senate Floor Vote Information, supra* note 37.

52. David Siders, *California Senate Approves Funding for High-Speed Rail*, CAPITOL ALERT (July 6, 2012, 3:59 PM), <http://blogs.sacbee.com/capitolalert/latest/2012/07/california-senate-approves-funding-for-high-speed-rail.html>.

53. *Id.*

54. *See, e.g.,* Sen. Joe Simitian, *Simitian's Floor Speech on High-Speed Rail*, STATE SENATOR JOE SIMITIAN (July 9, 2012), http://www.senatorsimitian.com/entry/senator_simitians_floor_speech_on_high-speed_rail/.

55. *Jerry Brown Projects Budget Surplus*, KQED NEWS (Jan. 10, 2013, 10:00 AM), <http://blogs.kqed.org/newsfix/2013/01/10/governor-to-propose-budget-more-money-for-schools-expected/>.

56. Press Release, Rep. Alan Lowenthal, Rep. Lowenthal Sworn Into Office (Jan. 3, 2013), *available at* <http://lowenthal.house.gov/news/documentsingle.aspx?DocumentID=334143>; L.A. Chung, *Joe Simitian Returns to Supervisor's Seat*, LOS GATOS PATCH (June 6, 2012), <http://losgatos.patch.com/articles/joe-simitian-returns-to-supervisors-seat-f7323971>.

B. Federal Opposition

Due to their large price tags and need for uniformity, long-term infrastructure projects in the United States have traditionally required a large amount of support from the federal government. With its expected 20-30 year timeframe, billions of dollars in expected costs, and the potential to link into the greater national transportation system, California's HSR project is no different.⁵⁷ Even though ARRA constituted seventeen times more funding for HSR than all the previous ten fiscal years,⁵⁸ future federal funding will likely be necessary to some degree. Accordingly, President Obama has requested \$1 billion for HSR in each of the last three budget years from Congress, only to be denied by the Republican-controlled majority, highlighting their main difference from their state-level counterparts.⁵⁹

While the 2012 election should be generally perceived as a victory for HSR, it also vaulted state Senator, and long-time HSR foe, Doug LaMalfa into Congress. Soon after being sworn in, LaMalfa reaffirmed his stance to "do everything in my power to stop funding and the implementation of high speed rail in California."⁶⁰ LaMalfa joins a group of California Congressmen who have expended much effort to oppose HSR. Of the group, Jeff Denham, who represents a district located in the middle of the ICS, has been the most visible. As a member of the House Transportation and Infrastructure Committee he has aggressively questioned witnesses involved with the project during Congressional hearings. For example, in December 2012, during a heated exchange with Secretary of Transportation Ray LaHood, Denham vowed to oppose the HSR project until it becomes fully funded.⁶¹ Denham also introduced bills prohibiting the distribution of any federal transportation funds to the California HSR project for the 2013 fiscal year⁶² and sought to block

57. CALIFORNIA HIGH-SPEED RAIL PROGRAM REVISED 2012 BUSINESS PLAN, *supra* note 4, at ES-13.

58. *President to Sign Stimulus Bill Today*, TRANSP. WKLY., (Legis. Services Group, Wash. D.C.), Feb. 17, 2009, at 5, available at http://www.pennfedbmwe.org/Docs/news/20090217_Transportation_Weekly_Usitorloseit.pdf.

59. DAVID R. PETERMAN, JOHN FRITTELLI & WILLIAM J. MALLETT, CONG. RESEARCH SERV., THE DEVELOPMENT OF HIGH SPEED RAIL IN THE UNITED STATES: ISSUES AND RECENT EVENTS 3 (2012).

60. John Myers, *LaHood: California will get Federal High Speed Rail Cash*, NEWS10/KXTV (Jan. 7, 2013), <http://www.news10.net/news/california/article/224276/430/LaHood-remains-buoyant-on-state-high-speed-rail>.

61. *An Update on the High-Speed Intercity Passenger Rail Program: Mistakes Made and Lessons Learned: Hearing Before the Subcomm. on R.R.s, Pipelines, & Hazardous Materials of the H. Comm. on Transp. & Infrastructure*, 112th Cong. (2012) (statement of Ray LaHood, Sec'y of Transp. of the U.S.).

62. Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2013, H.R. 5972, 112th Cong., 2d Sess. § 432 (2012) (awaiting passage in

California from receiving Florida's forfeited ARRA funds in 2011.⁶³

Another strong voice in opposition to HSR in California has been Majority Whip Kevin McCarthy, who represents Bakersfield—another city in the middle of the ICS. McCarthy is perhaps best known as a founding member of the "Republican Young Guns," along with other well-known, up-and-coming GOP Congressmen Eric Cantor and Paul Ryan.⁶⁴ His political profile is much larger than Denham's, and as a result he likely received more attention when he dubbed the project in California a "billion dollar boondoggle"⁶⁵ and attempted to divert money for HSR in California to other purposes.⁶⁶

Similar opposition is not present in the Senate for two reasons. First, both of California's two longtime Senators—Barbara Boxer and Dianne Feinstein—are Democrats who have been strong supporters of the project.⁶⁷ Second, Democrats have controlled the Senate since 2006. Without majority control or a single Senator from California, Senate Republicans have devoted their efforts elsewhere.

C. Citizen Opposition

Unlike legislators, citizen opponents of HSR in California have used procedural litigation as their method to stop the project. The most common vehicle for litigation has been using the state's seminal environmental quality law, the California Environmental Quality Act ("CEQA"), to sue the Authority.⁶⁸ CEQA requires a project's lead agency—in this case, the Authority—to fulfill various procedural requirements, including ensuring all environmental effects are identified and any alternatives are considered in an environmental impact report ("EIR"). Though the process can be onerous, the agency is not bound to

the Senate as of Aug. 7, 2013).

63. Jamie Dupree, *More Budget Amendments*, JAMIE DUPREE'S WASHINGTON INSIDER (Feb. 16, 2011, 9:30 AM), <http://www.ajc.com/weblogs/jamie-dupree/2011/feb/16/more-budget-amendments/>.

64. Nat'l Republican Cong. Comm., *About*, YOUNG GUNS, <http://gopyoungguns.com/about/> (last visited Mar. 2, 2014).

65. Kevin McCarthy, *High-Speed Rail: A Billion Dollar Boondoggle*, KEVIN MCCARTHY, <http://kevinmccarthy.house.gov/media-center/enewsletters/high-speed-rail-a-billion-dollar-boondoggle> (last visited Mar. 2, 2014).

66. H.R. 3143, 112th Cong., 1st Sess. (2011). McCarthy, Denham, and fellow California Congressman Devin Nunes also teamed together to co-sponsor a bill that would specifically divert ARRA HSR funds to state highway construction. *See* H.R. 761, 112th Cong., 2d Sess. (2011).

67. Press Release, Senator Barbara Boxer, Boxer, Feinstein Statement on DOT High-Speed Rail Announcement (May 9, 2011), *available at* <http://boxer.senate.gov/en/press/releases/050911.cfm>.

68. California Environmental Quality Act, CAL. PUB. RES. CODE §§ 21000-21189.3 (West 2012).

take any action based on the results of the EIR.⁶⁹ While CEQA is a valuable safeguard to ensure that environmental considerations are taken into account when agencies make discretionary decisions, it can also be used as a tool for political opponents—even those agnostic to environmental concerns—to halt state infrastructure projects.

The most notable of the CEQA lawsuits (the "Atherton suits") against the Authority have come out of the Bay Area.⁷⁰ One of the lead plaintiffs in the action—the Town of Atherton—was named after a relative of famed San Francisco author Gertrude Atherton,⁷¹ who, coincidentally, was one of the notable opponents of the iconic Golden Gate Bridge during its construction in the 1930s.⁷² While each of the Atherton suits were CEQA claims asserting that the Authority did not sufficiently meet its EIR prerequisites, the goal of the litigation was clearly to divert the path of the HSR line so that it does not pass through the cities of the plaintiffs in the suits.⁷³ In the only instance of success against the Authority, the Atherton suits' plaintiffs received a partial favorable ruling in 2009, when a judge ruled that the Authority had not completed the necessary EIR process and ordered the agency to rectify the deficiency.⁷⁴

Although the Authority revised the EIR in accordance with the ruling, the plaintiffs continued to litigate. They filed another lawsuit, contesting the revised EIR, but this time the suit was thrown out in March 2013 by the same judge.⁷⁵ Shortly thereafter, continuing to fight the project and confirming their true motivations, the town voted to donate \$10,000 to a non-CEQA lawsuit against the Authority based in the Central Valley.⁷⁶ This quite clearly confirms the Atherton plaintiffs'

69. *Id.* § 21002.1(c).

70. *Town of Atherton v. Cal. High-Speed Rail Auth.*, No. 34-2008-80000022, 2009 WL 6754051 (Cal. Super. Ct. Nov. 3, 2009); *Town of Atherton v. Cal. High-Speed Rail Auth.*, Nos. 34-2010-80000679-CU-WM-GDS, 34-2008-80000022-CU-WM-GDS, 2011 WL 10677730 (Cal. Super. Ct. Nov. 10, 2011), *appeal docketed*, No. C070877 (Cal. Ct. App. Apr. 13, 2012).

71. The city of Atherton was named after Faxon D. Atherton, Gertrude's father-in-law. *See Gertrude Atherton*, WIKIPEDIA (Oct. 11, 2013, 6:35 AM), http://en.wikipedia.org/wiki/Gertrude_Atherton.

72. STARR, *supra* note 35.

73. A complete victory in any of the law suits would have likely forced the Authority to alter the proposed route, currently set to span the entire length west of the Bay, to one that would instead extend further through the central valley and split east of the Bay, with one line going to San Francisco and the other to San Jose—thereby bypassing a large swath of the Bay area, which includes Atherton and the city of Menlo Park, another plaintiff in the suits. *See, e.g.*, Complaint at 2-3, *Town of Atherton v. Cal. High-Speed Rail Auth.*, No. 34-2008-80000022 (Cal. Super. Ct. Aug. 8, 2008).

74. Atherton, 2009 WL 6754051 (final judgment).

75. Mike Rosenberg, *Bullet Train Scores Win on Peninsula, Judge Dismisses Cities' Lawsuit to Block Use of Caltrain Corridor*, SAN JOSE MERCURY NEWS, Mar. 1, 2013, at 1B.

76. Renee Batti, *Another Lawsuit: Atherton Donates \$10K to High-Speed Rail*

only goal in the original lawsuit was to kill the project outright. Given the imminence of construction, the money could have been better spent elsewhere.

Another coalition of local governments and property interests—located in the Central Valley of the state, where the ICS is scheduled to be built—have also brought a CEQA suit against the Authority.⁷⁷ However, the judge overseeing the case denied their request for an injunction and in doing so recognized that granting their request would have possibly risked completely derailing the entire project.⁷⁸ Perhaps sensing an unfavorable ruling, one county voted to drop out of the lawsuit in May 2013.⁷⁹ Soon thereafter the rest of the plaintiffs settled with the Authority and dropped the suit.⁸⁰

Regardless of their motives, a future CEQA lawsuit could be used as a tool to threaten the project's viability by hoping to delay it long enough to cause the state to miss critical deadlines imposed by the Federal Government. While at this time no CEQA lawsuits are pending, it is worth noting that rulings in CEQA suits have been notoriously hard to predict.⁸¹ Since its enactment over 40 years ago, the resulting lawsuits have produced a diverse body of case law specific to a particular project.⁸² Increasing uncertainty is inevitable attitudinal shifts over the passage of time and the fact that judges generally afforded high amount of discretion to evaluate whether a lead agency has performed a legally thorough-enough analysis under the law's guidelines.⁸³ Despite this, agencies are generally afforded a high amount of deference and EIR's are

Litigation, THE ALMANAC (Mar. 6, 2013), http://www.almanacnews.com/story.php?story_id=13823.

77. Three separate suits were consolidated into one: *Cnty. of Madera v. Cal. High-Speed Rail Auth.*, Nos. 34-2012-80001165, 34-2012-80001166-CU-WM-GDS, 34-2012-80001166S-CU-WM-GDS, 2013 WL 2297158 (Cal. Super. Ct. Jan. 22, 2013). In October 2012, Bakersfield, another city along the ICS, had its city council vote unanimously to sue the Authority under CEQA as well. At the time of publication, no lawsuit has been filed. *See* Antonie Boessenkool, *City Considers Lawsuit to get High-Speed Rail Answers*, BAKERSFIELD CALIFORNIAN, Oct. 15, 2012, available at <http://www.bakersfieldcalifornian.com/local/x1526555495/City-considers-lawsuit-to-get-high-speed-rail-answers>.

78. *Cnty. of Madera v. Cal. High-Speed Rail Auth.*, No. 34-2012-80001165, 2012 WL 5846400 (Cal. Super. Ct. Nov. 16, 2012) (order denying preliminary injunction).

79. Tim Sheehan, *Madera County Drops Suit Against High-Speed Rail*, FRESNO BEE (Apr. 2, 2013), <http://www.fresnobee.com/2013/04/02/3240315/madera-county-supervisors-drop.html>.

80. Press Release, Cal. High-Speed Rail Auth., High-Speed Rail Authority and Madera/Merced County Agricultural Interests Reach Settlement Agreement on Remaining CEQA Litigation (Apr. 18, 2013), available at <http://www.hsr.ca.gov/docs/newsroom/archives/Settlement%20Agreement%20Reached%20in%20Remaining%20CEQA%20Litigation%20041813.pdf>.

81. *See* Christian Marsh, *The California Supreme Court's Recent Flood of CEQA Decisions*, 33 L.A. LAW. 13 (2011).

82. *Id.*

83. *Id.*

presumed adequate.⁸⁴ Also, as exhibited by the ruling in the Central Valley CEQA suit, judges are cognizant of the risk involved for ruling against the lead agency for what might amount to a mere technical oversight—especially if plaintiffs have ulterior motives. As a final resort, the Authority can seek CEQA waivers through the legislature if a lawsuit does actually pose a serious threat to the project. Such action is usually more appropriate for smaller projects,⁸⁵ and such maneuvers may face public criticism and come at a high political price.⁸⁶

Amidst all this, there have been recent calls for massive CEQA reform largely due to concerns that the process is not agile enough and is commonly abused by project opponents hoping to merely kill public projects.⁸⁷ In addition to this, the fact that the Authority has likely improved its EIR process since 2009—using the first rulings as a guidepost—and subsequent CEQA lawsuits seem less likely to succeed against the Authority.⁸⁸

The only legal challenge outside the CEQA framework argued that the Authority is illegally expending the funds from Proposition 1A.⁸⁹ The plaintiffs have been quite open about the fact that their motivation is to kill the project.⁹⁰ In August 2013, Judge Michael Kenny ruled that the Authority did not have a comprehensive enough funding plan or obtain the necessary environmental clearance for the project in its current state.⁹¹ While the Authority had completed each for the ICS, Kenny ruled that Proposition 1A required them for the entire Initial Operating Segment (IOS), of which the ICS is only a portion.⁹² The overall effect of the ruling is unclear since it ordered the Authority to rescind its funding plan from the November 2011 Business Plan, which had already been superseded by the 2012 Revised Plan.⁹³ More importantly, Kenny

84. CAL. PUB. RES. CODE § 21167.3 (West 2012).

85. Most visibly, these waivers are sought for the building of new stadiums, *see, e.g.*, Assemb.B. 81, 3rd Ext. Sess. (Cal. 2009).

86. *See, e.g.*, Garret Therolf & Patrick McGreevy, *L.A. County Supervisors Oppose Waivers for Professional Football Stadium*, L.A. TIMES (Sept. 8, 2009, 7:01 PM), <http://latimesblogs.latimes.com/lanow/2009/09/county-supervisor-oppose-waivers-for-professional-football-stadium.html>.

87. *Steinberg Sets CEQA Reform as Agenda Priority*, SENATE PRESIDENT PRO TEM DARRELL STEINBERG, <http://sd06.senate.ca.gov/news/2012-09-13-steinberg-sets-ceqa-reform-agenda-priority>.

88. Kevin Grochow, Comment, *California High-Speed Rail on Track? Bridging the Gap Between Competing Land Use Issues with the California High-Speed Rail Project*, 15 CHAP. L. REV. 585, 611 (2012).

89. *Tos v. Cal. High-Speed Rail Auth.*, No. 34-2001-00113919, 2013 WL 6578791, (Cal. Super. Ct. Aug. 16, 2013).

90. Michael Cabanatuan, *Central Valley Skeptics*, S.F. CHRON., July 5, 2012, at A1.

91. *Tos*, 2013 WL 6578791, at *5.

92. *Id.*

93. *Tos v. Cal. High-Speed Rail Auth.*, No. 34-2001-00113919, 2013 WL 6184096, at *2 (Cal. Super. Ct. Nov. 25, 2013).

refused to rescind all of the project's appropriations and construction contracts, which would have effectively halted the project.⁹⁴ It seems that Kenny's message may have been to sanction the Authority for cutting corners, with an underlying acknowledgement that killing the project at this point would be an extreme measure at odds with the will of the voters. From a practical standpoint, the ruling may demonstrate how hard it is to utilize the courts to kill the project at this stage.

Even though the Authority has thus far been quite successful in court, losing in court does not necessarily mean losing completely, as a long, drawn out court battle could affect the project as adversely as losing in court.⁹⁵ As such, the Authority will need to proceed cautiously and take any legal challenges seriously, despite their perceived motivations and merits. So far, the Authority has done such and protected the viability of the project in the process. The recent developments of the dismissal or settling of the CEQA suits has removed major potential hurdles for the project and suggest a larger trend.

IV. IS HSR IN CALIFORNIA INEVITABLE?

Outgoing Secretary of Transportation Ray LaHood recently exclaimed, "[t]here's no stopping high-speed rail in California."⁹⁶ His words might be more prophetic than some want to believe. The implications of the 2012 elections and future political projections suggest that HSR may be at a point where opponents can no longer kill the project. With the ICS now fully funded and local lawsuits mostly dispensed with, barring an unforeseen development, construction on it will begin this calendar year and finish around 2017.⁹⁷ Combining all of this seems to indicate that HSR in California is approaching inevitability, despite constant media depiction of a see-saw battle.⁹⁸

A. The 2012 Election

Arguably the most critical recent event for HSR in California was the 2012 election, as President Obama's victory essentially assured continued support for the project. Although Mitt Romney did not focus much on HSR during his campaign, his fiscal plan was more directed toward austerity and spending cuts than capital investments and

94. *Tos*, 2013 WL 6578791, at *8; *Tos*, 2013 WL 6184096, at *3.

95. See, e.g., Kathy Fox Powell, *Southwest Airlines v. High-Speed Rail: More Powerful Than a Locomotive?*, 60 J. AIR L & COM. 1091 (1995) (examining how a law suit in Texas where the plaintiff's loss ultimately caused the HSR agency there to fold).

96. Myers, *supra* note 60.

97. CALIFORNIA HIGH-SPEED RAIL PROGRAM REVISED 2012 BUSINESS PLAN, *supra* note 4, at 2-13.

98. See, e.g., Myers, *supra* note 60.

infrastructure funding, so it can be deduced that a project like HSR would have been a candidate to be cut.⁹⁹ On the other hand, President Obama supported HSR heavily during his first term,¹⁰⁰ making it easy to conclude that for HSR, the difference between a Romney presidency and an Obama presidency would have been stark.

Even though the 2012 elections saw the Republicans retain a majority in the House, it was lessened from 47 to 32.¹⁰¹ While any Republican majority will likely continue to oppose Obama's budget requests for HSR, a smaller majority is certainly better for his overall vision. HSR opposition in the Senate will continue to remain irrelevant for the next two years as the Democrats' majority there was not only maintained, but grew as well.¹⁰²

At the state-level, the 2012 elections also further blunted already weak HSR opposition. In the legislature, voters provided Democrats with a 2/3 majority in both houses.¹⁰³ This is critical because the state constitution requires a 2/3 majority to raise taxes.¹⁰⁴ It is unlikely that in the next two years HSR will need additional state funding, however such a large majority will make it easier to raise revenue to fund other competing priorities—such as education, highways, and social services—which may be more important to certain legislators than HSR. Such a majority also provides a larger cushion if any Democratic legislators decide to stray from party lines on HSR, as was the case in the lead-up to SB 1029's passage.

Perhaps more important for HSR has been the passage of Proposition 30—a ballot measure that raised taxes on the highest income earners.¹⁰⁵ Because Governor Jerry Brown sponsored and campaigned heavily for the measure, its success can be viewed as an indirect referendum on Brown in general. If it failed, anything associated with

99. See Alexander Burns, *Romney Endorses Ryan Budget*, POLITICO (Mar. 20, 2012, 5:00 PM), <http://www.politico.com/blogs/burns-haberman/2012/03/romney-endorses-ryan-budget-118079.html>.

100. Senator Barack Obama, Remarks to the U.S. Conference of Mayors (June 21, 2008).
101. *House Results – Election 2012*, N.Y. TIMES, <http://elections.nytimes.com/2012/results/house/big-board> (last visited Mar. 2, 2014).

102. *Senate Results – Election 2012*, N.Y. TIMES, <http://elections.nytimes.com/2012/results/senate/big-board> (last visited Mar. 2, 2014).

103. Brian Joseph, *Norby Loss Gives Foes New Power; Apparent Defeat in 65th Assembly Race Hands State's Democrats a Supermajority*, ORANGE COUNTY REG., Nov. 15, 2012. While the 2012 election resulted in Democrats obtaining a 2/3 majority in both houses, at the time this note was submitted for publication two seats in the Assembly remain vacant, thus bringing the Democratic majority down to just below 2/3. If a Democratic candidate wins either of the two special elections, then the supermajority remains intact. See Patrick McGreevy, *Assembly's Democrats Could Briefly Lose Supermajority*, L.A. TIMES, Mar. 10, 2013, available at <http://articles.latimes.com/2013/mar/10/local/la-me-legislature-20130311>.

104. CAL. CONST. art. XIII A, § 3.

105. *California Proposition 30 (2012)*, WIKIPEDIA (Aug. 4, 2013, 6:16 PM), http://en.wikipedia.org/wiki/California_Proposition_30_%282012%29.

Brown—including HSR—would have surely received collateral backlash. In fact, some suggested that Brown would need to abandon his support for HSR in order for the measure to pass,¹⁰⁶ citing poll numbers supporting this conclusion.¹⁰⁷ Nonetheless, Brown stood by his prior commitment to HSR.¹⁰⁸ This fact, even more than his verbal support of HSR, reaffirms his true willingness to keep HSR as a priority for the rest of his tenure.

The fiscal effect of the passage of Proposition 30 should also have residual effects on the HSR project. It was widely assumed that if Proposition 30 failed, the budgetary shortfall would have needed to be filled through spending cuts in areas deemed less important than traditional government spending—such as education. Given its large price tag and lack of immediate benefit, the HSR project would have surely been high on the list of potential programs to cut. This assumption was a pillar in Senator Simitian's reasoning when he opposed Senate Bill 1029.¹⁰⁹ Instead, proving many political commentators wrong, Proposition 30 passed with a double-digit margin.¹¹⁰ The wide margin of victory shows that, amidst many years of budget cuts and loud calls for austerity by some, the state's voters will support raising revenues to pay for certain projects.

B. Future Years

The future for HSR in California looks promising. At the state level, the project should continue to be supported by both the Governor and the legislature. Moreover, if construction on the early stages of the ICS is successful, that could also galvanize additional support. While Republicans still control the House, President Obama's continued support for HSR provides a good counter to their opposition. With that in mind, the 2014 mid-term Congressional elections could have a grave impact on the pace of the project's construction, so it will be critical to monitor them closely. Lastly, after it appeared that public sentiment in California may have turned against HSR in 2011, indications show that either this conclusion was premature or that voters are once again supporting HSR.

106. Dan Schnur, Op-Ed, *How Gov. Brown Can Save Prop. 30*, L.A. TIMES, Nov. 2, 2012, <http://articles.latimes.com/2012/nov/02/opinion/la-oe-schnur-proposition-30-train-20121102>.

107. MARK DICAMILLO & MERVIN FIELD, FIELD POLL, VOTERS FAVOR BROWN TAX INITIATIVE 54% TO 38%; EVENLY SPLIT ON MUNGER AND STEYER TAX PLANS. SUPPORT FOR THE GOVERNOR'S INITIATIVE WOULD BE ADVERSELY AFFECTED IF THE LEGISLATURE FUNDS HIGH-SPEED RAIL PROJECT, (July 5, 2012), *available at* <http://field.com/fieldpollonline/subscribers/RIs2415.pdf>.

108. David Siders, *The Buzz: 'Don't worry about the Field Poll' on high-speed rail, Jerry Brown says*, SACRAMENTO BEE, July 20, 2012, at 3A.

109. *See* Simitian, *supra* note 54.

110. *California Proposition 30 (2012)*, *supra* note 105.

This point will only become more apparent if the economy continues to improve, making taxpayers more apt to support public investments in infrastructure.

1. State Level Support

While support from both the Governor and the legislature for HSR in California appears secure for the next two years, beyond that timeframe some uncertainty does exist. While Jerry Brown is expected to be easily re-elected as Governor in 2014, Brown's age may give rise to some doubts. And while construction on the ICS is poised to begin in 2013, in order to better fend off critics, the Authority nonetheless still has much to do to ensure that the project is viewed as a success.

Governor Brown's commitment to HSR was confirmed in the period prior to the 2012 election when in the face of intense pressure, he did not abandon the project.¹¹¹ As such, it would be highly beneficial for the project if Brown were to win an additional term of office in 2014, not only because of his enthusiasm for it, but because five of the nine members of the Authority's board of directors serve at the pleasure of the Governor.¹¹² Governor Brown serving an additional term provides more security and continuity for the Authority, which can only add to the project's overall efficiency. Also, his role in campaigning for Proposition 30 served as a reminder of how good a politician he is, and in turn how he is able to persuade the public to support an issue in which he believes. Considering the fact that he hopes to include HSR as part of his ever growing political legacy,¹¹³ having such a credible and impassioned supporter of the cause only further bolsters the long-term hopes for the project.

While Brown has yet to announce his candidacy for 2014, he did hint that he is strongly considering running for re-election.¹¹⁴ Worth noting is the fact that Brown will be 76 years old by the time the election is held.¹¹⁵ He is already the oldest serving governor in California history.¹¹⁶ Despite his remarkable energy and unusually good health

111. Siders, *Don't worry about the Field Poll*, *supra* note 108.

112. CAL. PUB. UTIL. CODE § 185020(b)(1) (West 2012).

113. Dan Morain, *Brown buys a risky ticket on high-speed rail*, SACRAMENTO BEE, Jan. 19, 2012.

114. As of the time when this note was submitted for publication, Brown had yet to announce his candidacy for 2014. See *Face the Nation* (CBS television broadcast Apr. 29, 2012), available at http://www.cbsnews.com/8301-3460_162-57423869/face-the-nation-transcript-for-april-29-gov-barbour-mayor-villaraigosa-and-gov-brown/?pageNum=5.

115. *Jerry Brown*, WIKIPEDIA (Oct. 19, 2013, 3:20 AM), http://en.wikipedia.org/wiki/Jerry_brown.

116. *Governor of California: Age and Longevity*, WIKIPEDIA (Oct. 11, 2013, 4:53 AM), http://en.wikipedia.org/wiki/Governor_of_California#Age_and_longevity.

overall, he has had two cancer scares.¹¹⁷ Because of this, there may be a chance that Brown will decide against running due to health or age concerns. However, if Brown does decide to run, due to consistently high approval ratings,¹¹⁸ many are predicting that he will not face much of a challenge.¹¹⁹ Further buttressing this point is a lack of credible challengers. As of now, the only major candidate who has announced is Abel Maldonado, who before serving as Lieutenant Governor—arguably the least relevant office in state politics—served an uneventful set of terms in the legislature where his most notable moment was crossing Republican Party lines for a budget vote.¹²⁰ Due to electoral losses in 2006 for State Controller, 2010 for re-election as Lieutenant Governor and 2012 for Congress, most observers do not view him as a serious threat.¹²¹

Support in the state legislature also appears quite secure for the foreseeable future. Over the past 40 years, Democrats have maintained a majority in both houses of the state legislature for all but a brief period in the mid-1990s.¹²² Despite recently accumulating a supermajority, Democrats would be wise to act prudently with such a mandate since allowing the state to backslide from its current budget surplus might cause voter backlash.¹²³ Regardless, Democrats should be able to at least maintain a majority in both houses, since registered Republicans in the state are on the decline.¹²⁴ Considering the party line support for HSR, this is just another item suggesting a secure future of the HSR project at the state level of government.

A latent aspect of the viability of the HSR project in California

117. *Jerry Brown Done With Radiation Treatments*, POLITICO (Jan. 8, 2013, 8:05 PM), <http://www.politico.com/story/2013/01/jerry-brown-done-with-radiation-treatments-85937.html>.

118. MARK DICAMILLO & MERVIN FIELD, FIELD POLL, JERRY BROWN CONTINUES TO RECEIVE HIGH JOB PERFORMANCE MARKS. MORE FAVOR THAN OPPOSE HIS RE-ELECTION SHOULD HE RUN NEXT YEAR (July 24, 2013), *available at* <http://www.field.com/fieldpollonline/subscribers/Rls2446.pdf>.

119. *See* Alex Isenstadt, *Jerry Brown's California Revival*, POLITICO (Dec. 22, 2012, 4:03 PM), http://www.politico.com/story/2012/12/jerry-browns-california-revival-85440_Page2.html.

120. Dan Smith & Jim Sanders, *Governor Turns to a Senate Ally*, SACRAMENTO BEE, Nov. 24, 2009 at 1A.

121. *Abel Maldonado*, WIKIPEDIA (Sept. 27, 2013, 7:25 AM), http://en.wikipedia.org/wiki/Abel_Maldonado.

122. Republicans had a one vote majority for about one-and-a-half years in the mid-90s. *See California Republican Party: State Assembly*, WIKIPEDIA (SEPT. 29, 2013, 4:10 PM), http://en.wikipedia.org/wiki/California_Republican_Party#State_Assembly.

123. Editorial, *Will Democrats Squander Their Supermajority*, SACRAMENTO BEE, Nov. 11, 2012.

124. Drew Joseph, *California Republican Ranks Shrinking*, S.F. CHRON., Nov. 2, 2012, *available at* <http://www.sfgate.com/politics/article/California-Republican-ranks-shrinking-4005002.php>.

stems from the Authority's role in implementing the project. In early 2012, the Authority was under fire regarding its efficiency, technical decisions, and overall business model.¹²⁵ Various stakeholders also claimed that the Authority used heavy-handed tactics and was unresponsive to many of their concerns.¹²⁶ Additionally, the highly respected, non-partisan Legislative Analyst Office ("LAO") raised concerns about the Authority's ability to function due in large part to the fact that many key positions in the Authority were vacant for extensive periods of time.¹²⁷

The Authority utilized this feedback appropriately and took concerted efforts to address many of these concerns throughout the rest of 2012. The most visible example of this approach is the Revised Business Plan, where numerous critiques, concerns, and suggestions were not only considered, but also implemented.¹²⁸ Acknowledging the public relations downside of being perceived as bullying stakeholders, the Authority also committed to a more responsive outreach program.¹²⁹ A specific example of this is the Authority's decision to extend the public comment period for one of its EIRs due to stakeholder requests, despite no legal obligation to do so.¹³⁰ Because rebuilt relationships may carry a suspicious stigma, the Authority needs to continue focusing on making stakeholder relations a key aspect of the project. Lastly, the issue regarding high-level vacancies is slowly being addressed as well.¹³¹ In all, the Authority appears to be making smart decisions towards rebranding its image much more positively as it enters the critical period of building the ICS.

125. See generally, CAL. LEGIS. ANALYST'S OFFICE, HIGH-SPEED RAIL IS AT A CRITICAL JUNCTURE (2011), available at http://www.lao.ca.gov/reports/2011/trns/high_speed_rail/high_speed_rail_051011.pdf; CALIF. HIGH-SPEED RAIL PEER REVIEW GROUP, COMMENTS OF THE PEER REVIEW GROUP ON THE DRAFT 2012 BUSINESS PLAN (2012), available at http://www.cahsrprg.com/files/comments_on_draft.pdf.

126. Cabanatuan, *supra* note 90.

127. CAL. LEGIS. ANALYST'S OFFICE, THE 2012-13 BUDGET: FUNDING REQUESTS FOR HIGH-SPEED RAIL (2012), available at <http://www.lao.ca.gov/analysis/2012/transportation/high-speed-rail-041712.aspx>.

128. CALIFORNIA HIGH-SPEED RAIL PROGRAM REVISED 2012 BUSINESS PLAN, *supra* note 4.

129. See, e.g., John Cox, *McCarthy, Rail Chairman Spar Over Project*, BAKERSFIELD CALIFORNIAN (Mar. 16, 2012), <http://www.bakersfieldcalifornian.com/special-sections/rail/x1688919022/McCarthy-rail-chairman-spar-over-project>.

130. Press Release, Cal. High-Speed Rail Auth., High-Speed Authority Extends Public Comment Period for Revised Environmental Report for Fresno to Bakersfield Project Section (Aug. 22, 2012), available at http://www.hsr.ca.gov/docs/programs/fresno-baker-eir/RDrft_EIR_FB_ED082212.pdf.

131. Vanessa Castañeda, *High Speed Rail Authority Appoints New Managers*, BELMONT PATCH, Aug. 29, 2012, available at <http://sancarlos.patch.com/groups/business-news/p/high-speed-rail-authority-appoints-new-managers-514ead82>.

Perhaps the most important aspect of this rebranding will be the Authority's execution of the ICS. Surely stakeholders, skeptics, and opponents will all be watching this situation closely, and the Authority knows this.¹³² Once construction has commenced, if the authority can point to specific successes—particularly, keeping the project on budget and on time—demonizing the project becomes a much harder task. Regardless of how the project fares some voices will continue to oppose it; however, success on the ICS will relegate these voices even further to the margins. Additionally, it will galvanize potential private investment, which would offset reliance on uncertain federal funding and the critics who oppose the project on the basis of its cost.

The ICS certainly provides a watershed moment for the HSR project. Consequently, how it turns out will likely set the tone for the future of the entire project. While the passage of SB 1029 provided the Authority with a bit of breathing room, the agency must continue to focus on outreach and achieving its stated benchmarks in order for the project to enjoy a successful future.

2. Federal Support

Unlike support at the state level, many more questions remain at the federal level for HSR in California. While President Obama secured a second term quite easily, his agenda will inevitably contain many competing priorities. As such, it will be interesting to see how he balances these priorities and where HSR fits into his overall vision, amidst a contentious relationship with a Republican-controlled Congress. Whereas Congress has rejected his requests for HSR funding the past two years, and will likely do so for the next two years, if Democrats can retake a majority in Congress this trend is likely to reverse. Even if such funding does not materialize, there are reasons to believe that the project will still progress.

Even though HSR in California will enjoy more certainty under a Barack Obama presidency than a Mitt Romney one, an intransigent Congress could force him to shift or displace certain priorities for political expediency, despite the fact that he did reaffirm his support for HSR.¹³³ On the other hand, with healthcare reform and re-election no longer a concern, he may be willing to take more bold political risks to ensure some of his policy aims—such as HSR funding—are implemented despite this opposition. Whether this means the President will be willing to strong-arm certain policies or craft more political deals

132. Ronald Campbell, *High-Speed Rail Boss: We Don't Dare Mess Up*, OC WATCHDOG (Dec. 4, 2012, 10:25 AM), <http://www.ocregister.com/articles/strong-478976-speed-high.html>.

133. See President Barack Obama, Annual Message to the Congress on the State of the Union (Feb. 12, 2013); Myers, *supra* note 60.

with an unrelenting Congress remains to be seen, but such tactics seem more likely during his second term.

One area at the federal level over which Obama has complete control that has far reaching implications on the future of HSR is his power to appoint the Secretary of Transportation. During Obama's first term, HSR flourished under Secretary Ray LaHood. Not only has his enthusiasm been beneficial for the project in California, but also the fact that he was a seven-term Republican Congressman gives HSR a shade of bipartisanship reminiscent of pre-Proposition 1A.¹³⁴ However, as is the tradition with most cabinet secretaries, LaHood stepped down soon after Obama's second term began.¹³⁵ Obama recently replaced LaHood with Charlotte's Democratic Mayor Anthony Foxx.¹³⁶

While Foxx will not be able to replicate the bipartisanship or Congressional experience that made LaHood such an effective Transportation Secretary, a few conclusions can be drawn about his priorities regarding the HSR project despite his short political career. During Foxx's three and a half years as Mayor, Charlotte started construction on a new streetcar program and invested in a light rail system.¹³⁷ This prompted some in the media to refer to him as "the rapid-transit-loving Mayor."¹³⁸ So it certainly appears that Foxx heavily values modernizing public transportation. It has also been suggested that having a recent mayor transition to the post will be highly beneficial to a program like HSR in California that has such a direct impact on local governments, especially during an economic recovery.¹³⁹ While the jury may be out on Foxx for the next few years, it seems that he is primed to continue LaHood's role as the lead advocate for California's HSR project at the federal level.

134. See, e.g., Ray LaHood, Sec'y of Transp., Remarks at the High-Speed Rail Summit (Feb. 12, 2013); *Ray LaHood*, WIKIPEDIA (July 2, 2013, 7:42 PM), http://en.wikipedia.org/wiki/Ray_Lahood.

135. Press Release, United States Dept. of Transp., U.S. Transportation Secretary LaHood Announces That He Will Not Serve for a Second Term (Jan. 29, 2013), *available at* <http://www.dot.gov/briefing-room/us-transportation-secretary-lahood-announces-he-will-not-serve-second-term>.

136. See *Senate Approves Transportation Secretary Nominee*, N.Y. TIMES, June 28, 2013, at A19.

137. Alex Goldmark, *Meet Anthony Foxx, Young Transit-Loving Mayor, Employed by Bus Company, Tapped as U.S. Transpo Secretary*, TRANSPORTATION NATION (Apr. 29, 2013, 3:32 PM), <http://www.wnyc.org/blogs/transportation-nation/2013/apr/29/slim-credentials-hometown-take-charlotte-mayor-anthony-foxx-us-transportation-secretary/>.

138. Mark Silva, *Anthony Foxx's High-Speed Promotion*, POLITICAL CAPITAL (Apr. 29, 2013, 9:21 AM), <http://go.bloomberg.com/political-capital/2013-04-29/anthony-foxxs-high-speed-promotion/>.

139. Ryan Holeywell, *Anthony Foxx Confirmed: What Having a Mayor in Control of U.S. Transportation Could Mean*, GOVERNING (June 27, 2013), <http://www.governing.com/blogs/fedwatch/gov-senate-confirms-charlotte-mayor-as-transportation-secretary.html>.

Foxx's biggest struggle will be in dealing with a majority Congress that has thus far refused to provide any federal funds to HSR since ARRA passed. Since the Authority is seeking no federal funding until 2015, Congressional opposition might currently be a moot issue. However, the 2014 mid-term elections for Congress might possibly be the most critical points for HSR, along with the Authority's ability to execute on the ICS. While predicting how a body as large and as disparate as Congress will look in the future might be an impossible task, it is safe to say that the situation is worth keeping a close eye on for how it could affect the future of HSR. If Democrats can retake the House, while sustaining their current majority in the Senate, funding will almost certainly resume for HSR. If the Republicans maintain control, alternate funding paths might need to be sought.

If federal funding does not materialize for HSR following the 2014 elections, the project in California can still survive. Securing alternative financing from the private sector has always been a strong possibility.¹⁴⁰ This possibility should increase if the Authority's efforts in constructing the ICS are successful. Further signaling the desire of the private sector to get involved with HSR is a recent movement in Texas to revive its folded HSR project with private financing.¹⁴¹ Also, interest groups are beginning to suggest contingency plans on how to fill such funding gaps in the face of Congressional abandonment.¹⁴² In any case, even given political uncertainties, HSR in California has a high likelihood of receiving the funding necessary to keep the project on schedule beyond the construction of the ICS.

3. Public Support

As rhetoric ratchets up and opposing politicians dominate headlines surrounding an issue, it is easy to lose sight of the influence of public sentiment in the overall debate. As noted earlier, integral to this support is the Authority's rebranding efforts and how successful the construction of the ICS is. Reports suggesting a majority of voters had changed their mind on HSR in California, even after supporting it three years prior, were almost certainly a major influence on the Authority's decision to rebrand.¹⁴³ It was no coincidence that this apparent shift in public

140. *An Update on the High Speed and Intercity Passenger Rail Program*, *supra* note 61.

141. Gordon Dickson, *Group Aims to Raise \$10 Billion for High-Speed Rail in Texas*, FORT-WORTH STAR TELEGRAM (May 10, 2012), <http://www.star-telegram.com/2012/05/09/3949397/group-aims-to-raise-10-billion.html>.

142. Egon Terplan & Heng Gao, *Getting High-Speed Rail on Track*, S.F. PLAN. & URB. RES. ASS'N, July 10, 2012, *available at* <http://www.spur.org/publications/library/article/getting-high-speed-rail-track>.

143. MARK DICAMILLO & MERVIN FIELD, FIELD POLL, Voters Very Aware of High Speed Rail Project. Large Majority Wants Legislature to Call a Re-Vote on the Bond Package.

sentiment occurred around the same time the project's estimated capital costs skyrocketed to around \$100 billion, up from the original estimate of \$33 billion in 2006.¹⁴⁴ This implication was confirmed by polling soon thereafter.¹⁴⁵ Making matters worse was that this increase took place amidst a still suffering national economy, making it a ripe subject to dominate headlines.¹⁴⁶

To counter public concerns surrounding the cost of the project, the Authority has revised cost projections to \$68.4 billion.¹⁴⁷ The new estimate should only serve to allay fears that the project's costs are spiraling out of control. Indeed, two-thirds of Californians still view the HSR project as important to the state, though approximately half are still sensitive to the cost of the project.¹⁴⁸ However, some additional inferences can be drawn from a few notable items that suggest that public opinion was probably not as bad as the polling indicated. For instance, polling also suggested that voters would have reacted negatively to Proposition 30 if Governor Brown continued to support HSR. In the end, the measure still passed overwhelmingly. This suggests that public backlash against HSR may not have been as strong as initially expected. Another important factor likely to weigh heavily on public sentiment for the project is the improvement of the economy.¹⁴⁹ If it continues to recover as most are predicting,¹⁵⁰ the public is more likely to support infrastructure spending in general.

An additional gauge of public sentiment can be editorials in local newspapers. Even though the digital age has prompted a decline in the industry, a newspaper's editorial board continues to wield clout in the

Majority Would Vote No if an Election Were Held Today 3 (Dec. 6, 2011), *available at* <http://www.field.com/fieldpollonline/subscribers/Rls2400.pdf>.

144. CALIF. HIGH-SPEED RAIL AUTH., CALIFORNIA HIGH-SPEED TRAIN BUSINESS PLAN 19 (2008), *available at* http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2008_FullRpt.pdf; CALIF. HIGH-SPEED RAIL AUTH., CALIFORNIA HIGH-SPEED RAIL PROGRAM DRAFT 2012 BUSINESS PLAN ES-9 (2011).

145. DICAMILLO & FIELD, *supra* note 143.

146. *See, e.g.,* Juliet Williams, *California High-Speed Rail to Cost \$98B, Plan Says*, WASHINGTON TIMES (Nov. 1, 2011), <http://www.washingtontimes.com/news/2011/nov/1/california-high-speed-rail-cost-98-billion/?page=all>.

147. CALIFORNIA HIGH-SPEED RAIL PROGRAM REVISED 2012 BUSINESS PLAN, *supra* note 4, at ES-13.

148. MARK BALDASSARE ET AL., PUB. POL'Y INST. OF CAL., PPIC STATEWIDE SURVEY: CALIFORNIANS & THEIR GOVERNMENT 13 (Mar. 2013).

149. *See* BUREAU OF ECON. ANALYSIS, GROSS DOMESTIC PRODUCT, 4TH QUARTER AND ANNUAL 2012 (ADVANCE ESTIMATE) (2013).

150. Leah Schnurr, *Fiscal Woes to Keep U.S. Growth Modest in 2013 Reuters Poll*, REUTERS (Jan. 24, 2013, 5:21 PM), <http://www.reuters.com/article/2013/01/24/us-economy-poll-usa-idUSBRE90N1BB20130124>; U.S. DEPT. OF TREASURY, RECENT U.S. ECONOMIC GROWTH IN CHARTS (May 2012).

community and can often provide insight into local attitudes. So, the fact that newspapers in two notable cities on the planned HSR route have changed from opposing the project to supporting it is notable. The Sacramento *Bee* and Bakersfield *Californian* opposed Proposition 1A in 2008,¹⁵¹ but have recently switched to embracing the project.¹⁵² In fact, both even hinted that their reasoning for this is that the project is nearing inevitability. Whether shifts in editorial board attitude actually track public sentiment is debatable, however, they do add to the other evidence suggesting a stronger public embrace of HSR.

V. SUGGESTIONS FOR OPPONENTS

Since the future of the HSR project in California appears quite secure, the remaining opponents may want to consider altering their tactics. Instead of launching fruitless lawsuits, landowners and farmers in areas along the route should consider becoming more active participants in the process and engage the Authority in good-faith negotiations. State-level politicians opposing the project should realize that given their lack of political power, their opposition is unlikely to result in stopping the project. Instead, they too should consider a working relationship with the Authority and their legislative colleagues who support the project. And while opponents in Congress have a majority, a better long-term strategy might be to allow money to flow to the project but with strings attached to shape the project to be consistent with their own visions. Essentially, the various segments of opposition should all consider becoming stakeholders to better suit their interests.

A. Affected Property Owners

Given the Authority's checkered history in dealing with stakeholders, some citizens might be cynical to work with such a partner. This is certainly a valid concern; however, current leadership at the Authority seems to better understand the importance of having affected property owners as participating stakeholders.¹⁵³ Because having affected landowners supporting the HSR project would provide a boost in

151. Editorial, *Our Endorsements*, SACRAMENTO BEE, Oct. 20, 2008, at A14; Editorial, *We Recommend*, BAKERSFIELD CALIFORNIAN (Oct. 23, 2008).

152. Editorial, *McCarthy's Bid to Kill High-Speed Rail is Baffling*, SACRAMENTO BEE, Dec. 14, 2012, at 18A; Editorial, *Rail is Coming, With Us or Without Us*, BAKERSFIELD CALIFORNIAN, Nov. 24, 2012, available at <http://www.bakersfieldcalifornian.com/opinion/our-view/x59956304/Rail-is-coming-with-us-or-without-us>.

153. *Oversight of California High-Speed Rail Hearing Before Subcomm. on R.R.s, Pipelines, & Hazardous Materials of the H. Comm. on Transp. & Infrastructure*, 113th Cong. 11 (2013) (statement of Dan Richard, Chairman, California High-Speed Rail Authority Board of Directors).

credibility and public relations, the Authority has incentive to conduct fair negotiations with them rather than commencing eminent domain proceedings, which are usually bitter contests. So while these landowners have a right to be cautious in dealing with the Authority, they should not outright reject the notion of negotiating with it—especially if they can receive adequate returns.

John Tos, a Central Valley farmer and a lead plaintiff in one of the lawsuits against the Authority¹⁵⁴ recently remarked that if the ICS is constructed, there will be a repeat of the Mussel Slough tragedy—a conflict between settlers and Southern Pacific Railroad supporters that left seven dead in Tos's home city of Hanford in 1880.¹⁵⁵ With such impassioned conviction, it is clear that some people, such as Tos, are unlikely to abandon their opposition to HSR; however, others in the area understand the potential benefits of negotiating directly with the Authority. One example is fellow Hanford farmer Brad Johns, whose property is directly traversed by the planned route. He realized in 2011 that fighting the project was unlikely to produce positive results, and embraced it as a new opportunity.¹⁵⁶ With an engaging attitude, not only was he able to get the Authority to pay to have his house physically moved, but, once relocated, Johns plans to sell solar energy to the eventual operator of the HSR line.¹⁵⁷ As is the case with most large infrastructure projects, an unfortunate side effect of the HSR project is that some landowners will lose their land or have it affected adversely. The Authority has the ability to mitigate damage to affected citizens,¹⁵⁸ and those who understand how likely the project is to be built are in a better position to negotiate with the Authority than those who plan to fight it at any cost.

The Authority's power to negotiate with affected entities does not only apply to private citizens. Success stories of positive negotiations also include the actual cities on the planned route. For instance, the city of Fresno successfully negotiated an additional \$4.6 million to aid it in

154. *Tos v. Cal. High-Speed Rail Auth.*, No. 34-2001-00113919-CU-MC-GDS, (Cal. Super. Ct. filed Nov. 14, 2011).

155. Seth Nidever, *Residents Unite Against HSR*, HANFORD SENTINEL (Oct. 14, 2011), http://www.hanfordsentinel.com/news/local/residents-unite-against-hsr/article_c34f530e-f694-11e0-bbb3-001cc4c03286.html; *Mussel Slough Tragedy*, WIKIPEDIA (May 30, 2013, 6:53 PM), http://en.wikipedia.org/wiki/Mussel_Slough_Tragedy.

156. Tim Sheehan, *Path of High-Speed Rail Worries Valley Farmers*, FRESNO BEE (Jan. 8, 2011), <http://www.fresnobee.com/2011/01/08/2225457/rail-project-worries-valley-farmers.html>.

157. *PBS Newshour: Will Brown's Vision for High-Speed Rail in California Stay on Track?* (PBS television broadcast Mar. 1, 2012), available at http://www.pbs.org/newshour/bb/business/jan-june12/highspeedrail_03-01.html.

158. See, e.g., CAL. HIGH-SPEED AUTH., RELOCATION ASSISTANCE PROGRAM BROCHURE (BUSINESS, FARM, AND NON-PROFIT ORGANIZATIONS) (2011).

retaining local businesses in the downtown area.¹⁵⁹ Making this negotiation critical is the fact that Fresno currently struggles with unemployment nearly double the national rate¹⁶⁰ and has been trying to revitalize its downtown area since the 1990s.¹⁶¹ Bearing in mind the lack of success the plaintiff cities in the Atherton cases have had, they may want to consider switching tactics to a course of action similar to Fresno's.

In general, parties that believe suing the Authority is the best course of action should reconsider their tactics in light of the costs of litigation versus alternatives—including any externalities of such actions. While litigation might garner more headlines, it carries the risk of losing in court and then having nothing to show for it. This risk seems quite high since the Authority has a strong track record in court and judges fully understand the gravity of suits seeking to shut down the project on purely procedural grounds at this juncture.¹⁶² Continued litigation also risks alienating these parties if they attempt to deal with the Authority in the future. All told, these plaintiffs might be better off spending their money on lawyers who negotiate rather than litigate.

B. State Legislative Opponents

Ever since Proposition 1A passed, state-level legislative opponents have had virtually no effect on HSR. These politicians might enjoy the political points they score with some of their constituents, but due to the distinct minority of HSR opponents, these are not likely to produce anything more. Even though support from these politicians is not necessary to the overall success of the project, the Authority would certainly welcome it since a bipartisan consensus would lead to better public relations for the project. Part of the reason Proposition 1A was successful was the bipartisan support it had.¹⁶³ Since construction will begin soon, the state legislative opponents should consider abandoning

159. George Hostetter, *Fresno Accepts \$4.6 Million to Help Business Affected by High-Speed Rail*, FRESNO BEE (Sep. 27, 2012), <http://www.fresnobee.com/2012/09/27/3008995/fresno-accepts-46-million-to-help.html>.

160. *Economy at a Glance: Fresno, CA*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/eag/eag.ca_fresno_msa.htm (last visited Mar. 2, 2014); *Economy at a Glance: United States*, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/eag/eag.us.htm> (last visited Mar. 2, 2014).

161. While Fresno has had many revitalization efforts, it is an ongoing process. *See, e.g.*, Sanford Nax, *Agency's Demise Worrisome; Downtown Business Leaders Hope Someone Takes Up the Work of the Fresno Revitalization Corp.*, FRESNO BEE, June 15, 1996, at E1; Editorial, *Downtown Fresno is On Right Track to Revitalization, Mayor Will Release Crucial Planning Document Friday*, FRESNO BEE, Oct. 12, 2011.

162. *See, e.g.*, Cnty. of Madera v. Cal. High-Speed Rail Auth., *supra* note 77.

163. Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, *supra* note 32.

their current tactics in favor of becoming more active participants in the project's development.

In fact, these opponents could learn a lesson from their former colleague Senator Joe Simitian. Even though SB 1029 passed over Simitian's opposition, his concerns had a direct impact on the Authority's Revised Business Plan.¹⁶⁴ The fact that he was previously a strong supporter of the project and based many of his concerns on the LAO and Peer Review Group Study's findings provided additional clout to his reasoning.¹⁶⁵ In contrast, politicians like Diane Harkey who seize every opportunity to oppose HSR, have their professed criticisms easily dismissed. On the other hand, if these politicians extended a degree of support to the project, it would go a far way to show that they are acting in good-faith. This, in turn, would seemingly allow for more input on the project, and more desirable results.

C. Federal Opponents

Three of HSR's loudest opponents in Congress—Kevin McCarthy, Jeff Denham, and Devin Nunes—are in a paradoxical position regarding the project in California. Certainly their opposition is in line with the current Republican Party orthodoxy, but each of them represent a district located directly on the ICS. Accordingly, their constituents stand to gain much from a successful HSR project—in particular, an immediate infusion of new jobs and creating better access to the region to fuel its enormous growth potential. When this fact is coupled with the promising future for HSR in California, pivoting their position on HSR seems to be a smart decision.

Ashley Swearengin is a great example of how these opponents can leverage their situations to provide maximum benefits for constituents. While not a member of Congress, Swearengin is the Mayor of Fresno, a city situated to gain enormous benefits being the largest city on the ICS. As a result, the city's economic planning revolves around where in the city the HSR route is.¹⁶⁶ Beyond the obvious creation of initial jobs from the project's construction, Fresno's long-term plans include revitalizing its downtown business environment to cater to passengers and aligning the area's higher education institutions to serve as feeders for jobs working with and around HSR.¹⁶⁷ Swearengin, a Republican, separated herself from partisan politics to best serve her constituents in the face of

164. CALIFORNIA HIGH-SPEED RAIL PROGRAM REVISED 2012 BUSINESS PLAN, *supra* note 4.

165. *Id.*

166. ECON. DEV. CORP., FRESNO WORKS (2010), *available at* <http://www.fresnoedc.com/about/publications/FresnoWorks/flash.html>.

167. *Id.*

the likelihood of construction of the HSR project.

While partisan politics surely factors into the Congressmen's opposition to HSR, some of their specific criticisms do not need to be abandoned if they shift to supporting the project. As evidenced by the strong Republican opposition to ARRA, clearly there is a link between these Congressmen's opposition to HSR and the use of public funds to construct the project.¹⁶⁸ But since their districts have so much to gain from the project, instead of staunchly opposing it, perhaps these three should be focusing their efforts on ensuring private investment constitutes a majority of the remaining funding requirements.¹⁶⁹ Members of Congress wield great power and connections within the business community as a whole, so leading the charge to secure private funding for the project would not be difficult, nor would it seem to offend the Republican base too much. Another concern cited by the three as a pretext for opposition is that the project will lead to wasteful spending of taxpayer money. If this is the case, attaching additional oversight provisions to federal funding would seem to be the logical solution.¹⁷⁰

Denham, McCarthy, and Nunes have specific options that not only would address their stated concerns but also allow them to save political face if they were to shift their position on the project. Doing so would ensure their constituents receive maximum benefits from the project. With this in mind, it is amazing that they have not shown signs of altering course.

CONCLUSION

In politics, nothing may ever be truly inevitable, but the HSR project in California might be passing a point where its long-term viability is no longer in doubt. Though some uncertainty exists as to funding, as time passes and more ground is broken on the project, constructing the entire HSR line in California becomes more probable and the money should follow. As this happens, the various sets of opponents should re-evaluate their tactics to see if the results they are currently achieving actually align with their stated goals. While it may be politically painful for some, better long-term results might be attainable

168. Final Roll Call Vote: H.R. 1, United States House of Representatives (Jan. 28, 2009), available at <http://clerk.house.gov/evs/2009/roll046.xml>; Final Roll Call Vote: H.R. 1, United States Senate (Feb. 10, 2009), available at http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=111&session=1&vote=00061.

169. *McCarthy's Bid to Kill High-Speed Rail is Baffling*, *supra* note 152.

170. Patt Morrison, *Is California's High-Speed Train on Track or Off the Rails?*, L.A. TIMES (July 10, 2012), available at <http://articles.latimes.com/2012/jul/10/news/la-ol-california-high-speed-train-20120710>.

by redefining their role as stakeholders. For citizens affected directly by the project, this means working with the Authority to produce the best possible outcome given their circumstances. For state-level politicians, this means utilizing what little political power they have to generate some possible returns for the symbolic support they could provide the project. And for federal-level opponents, this means better aligning their tactics to best suit the goals and needs of their constituents.

In sum, the arguments at this point should not be about whether to have HSR or not, they should be geared towards addressing the specifics of how the project will eventually reach its end goal. Once the opponents realize this and become stakeholders, the entire dialogue regarding the project will be more efficient, focused, and most importantly, honest.