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Responsible Rail Design
349 Diable Court Palo Alto California 94306

October 1, 2010

Attorney General Jerry Brown
California Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

By email and by US mail

Dear Attorney General Brown:

We are requesting that the Attorney General initiate *quo warranto* proceedings against Curt Pringle, Mayor of Anaheim, board member of Orange County Transportation Authority ("OCTA") and California High Speed Rail Authority ("CHSRA") Board Member and Richard Katz of Los Angeles County Metropolitan Transportation Authority ("Metro") Board Member, Southern California Regional Rail Authority ("Metrolink") Board Member and CHSRA Board Member.

An action in *quo warranto* is filed by the Attorney General to try title to public office. This action adjudicates the right of an individual to hold public office. Pursuant to Code of Civil Procedure, section 803, the Attorney General "must bring the action . . . whenever he has reason to believe . . . that an office is unlawfully held."

The Attorney General has reason to believe that offices are unlawfully held.

In April 2010, legal counsel to the California Legislature issued an opinion questioning the legality of an individual holding simultaneously the office of Mayor of Anaheim and California High Speed Rail Authority ("CHSRA") Board Member and the legality of an individual holding simultaneously the office of Los Angeles County Metropolitan Transportation Authority ("Metro") Board Member and CHSRA Board Member.

By the same logic, an individual holding the office of CHSRA Board Member and the office of Orange County Transportation Authority ("OCTA") Board Member or the office of Southern California Regional Rail Authority ("Metrolink") Board Member would also hold incompatible offices.

Subsequently, your office sent a letter to the Board of High Speed Rail advising the members of the Board to investigate the holding of incompatible offices. Copies of both letters are attached and incorporated by reference. The two letters "are reason to believe.... that an office is unlawfully held."

There is reason to act with urgency.

A press release dated September 29, 2010 indicates that the critical decision of which segment of the California High Speed Rail project will be funded first may be made in the coming months. "[CHSRA CEO Roelof] van Ark indicated that a decision by the Authority Board on which section to begin construction may be made before the years' end."

The Authority Board has structured its requests for federal funding in such a way that it has created a "winner-take-all" situation. One geographic area will enjoy all of the Federal funding currently available, the next round of funding from the Federal Government, and state matching funds that total approximately $4.7 billion.

Currently, Curt Pringle holds the incompatible offices of CHSRA Board Member, Mayor of Anaheim and OCTA Board Member and Richard Katz holds the incompatible offices of CHSRA Board Member, Metrolink Board Member and Metro Board Member.

The choice of an initial segment will directly affect Anaheim, OCTA, Metrolink and Metro. If CHSRA board members continue to hold offices with those, any decision will be tainted to the detriment of the public interest.

The Attorney General should initiate the *quo warranto* action.

The Attorney General's office wrote in their letter dated July 30th, 2010 that it is waiting for a "properly supported request" from a private individual.

While such a stance might be understandable if this case involved a private wrong, this case does not. "Public policy demands that an office holder discharge his duties with undivided loyalty. The doctrine of incompatibility is intended to assure performance of that quality. (3 McQuillin, Municipal Corporations (3rd ed.), § 12.67, pp. 294-295). "

Indeed, legislators in 2005 found this interest so compelling that they added to statute this concept, which had lived in common law, to avoid continued infractions by local officials.

In this instance, the subject matter is largest single infrastructure project contemplated in California. CEO van Ark said in a speech at the Commonwealth Club on September 29th, 2010 that the CHSRA would soon be required to make a "difficult, politically charged

decision." The public's confidence in the loyalty of those holding board member positions is fundamental to maintaining public confidence in the process.

Your letter to the CHSRA dated July 30th, 2010 (attached) states that "Ordinarily, *quo warranto* proceedings are initiated and prosecuted by individual citizens or by interested local agencies; this office is not generally in the business of seeking out potentially conflicted officeholders and removing them from their offices."

It is concerning to us for two reasons that the Attorney General's office relies on private individuals to prosecute such cases. First, it leaves justice and defense of the public interest in the hands of those who have the money to afford the private attorney required to compile a "properly supported request" and to prosecute such a case. Second, it relies on individuals acting on their own accord and at their own expense with nothing to gain personally as the primary defenders of the public interest. They not only have nothing to gain, there is no guarantee they wouldn't be burdened with these legal costs even with successful action.

This differs from laws such as the False Claims Act, in which private citizens bring suit on behalf of themselves and the federal government, in exchange for a percentage of the recoveries in the case of fraud as well as reimbursement of attorney fees. A qui tam provision in this case can serve the public interest by greatly increasing the number of cases that will be brought and prosecuted.

In the case of *quo warranto* where the remedy is limited to the removal of the officer from office, there is no such pecuniary reward to motivate individuals to spend money hiring private attorneys whose costs are not reimbursable even in a successful prosecution.

The public interest is not served by relying almost exclusively on the enforcement of section 1099 by private individuals.

Because of the importance of the doctrine of incompatible offices to our democratic society, there are rightfully several layers of defense against violations.

1. The first is an awareness of the prohibition on holding conflicting offices. SB 274 was an explicit attempt to raise awareness. As written in the bill analysis of SB 274, "Once the Legislature adopts this statute, there will be no excuse for violating the public's trust by holding incompatible offices." The inclusion of materials regarding incompatible offices in the State Ethics Training required of Form 700 filers is yet another important safeguard.
2. The second, as indicated on your website, is that an official should leave their first office upon assumption of the second as the statute "purports to be self-enforcing."

3. The next, by statute, is the Attorney General's office. California Code of Civil Procedures Section 803, the statute that enforces *quo warranto*, has an unusual compulsion to act in the case that the Attorney General becomes aware of someone holding incompatible offices. This makes sense from a public policy perspective given the importance of the doctrine and the lack of incentive for individuals to prosecute such cases.
4. The final stop-gap measure is action by a private individual.

In this case, the first lines of defense have failed. Governor Schwarzenegger, less than 18 months after signing SB 274 into law, appointed Curt Pringle to the CHSRA board.

Curt Pringle, who is required to take State Ethics Training, assumed the office without resigning from his position as Mayor of Anaheim and OCTA Board Member. After his term on OCTA expired, he was re-appointed without resigning his position on the CHSRA board. Two years later, Richard Katz was appointed to the CHSRA board without resigning his positions as Metro and Metrolink board Members.

Even after State Senator Alan Lowenthal raised the issue of incompatible offices, neither Mr. Pringle nor Mr. Katz took any action.

Your office's letter to the CHSRA on July 30, 2010 notified them of members who may hold incompatible offices, offering them a chance to clear up "any lingering issues." You also stated that it was possible that you would offer the Authority legal advice, a courtesy not available to the general public.

Still, the members of the CHSRA board have refused to leave office. In recent media reports, Mr. Pringle does not deny the accusations but calls them political. Also via the media, Mr. Katz does not deny the accusations either but has stated that his service is so exemplary as to override the public policy considerations of the doctrine.

At this point, it is time to acknowledge that the statue's self-enforcing aspect has failed.

Therefore, we are requesting that the Attorney General file a petition in *Quo Warranto* on its own volition as is mandated to by law.

If you would like any further information, please contact Elizabeth Alexis at 650-996-8018 or ealexis@gmail.com.

Sincerely,

Elizabeth Alexis Co-Founder	Sara Armstrong Co-Founder
Nadia Naik Co-Founder	Rita Wespi Co-Founder

CC: Susan Lee, Supervising Deputy Attorney General
Opinion Unit 455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

Attached:

- Letter from Legislative Counsel to Secretary of State, April 23, 2010
- Letter from Attorney General to CHSRA CEO van Ark, July 30, 2010
- CHSRA Press Release
- Funding Memo

Newspaper article links:

- Los Angeles Times: http://articles.latimes.com/2010/sep/29/local/la-me-high-speed-rail-conflicts-20100929
- San Mateo Daily Journal: http://www.smdailyjournal.com/article_preview.php?type=bnews&id=142302&title=Conflict%20mars%20rail%20authority%20board&eddate=
- Orange County Register: http://www.ocregister.com/news/rail-268757-pringle-high.html