

Brown Act Does Not Require a Finding of Prejudice to Survive a Demurrer

Plaintiffs do not have to allege prejudice caused by a violation of the Brown Act's statutory vote reporting requirement to survive a demurrer, as long as they allege that the defendant has access to only one party's records at the demurrer phase. [Plaintiffs, No.](#)



A159235 (1st Dist., Dec. 18, 2020).

In January

2019, the Association of Bay Area Governments (ABAG) held a board meeting to discuss a regional housing and transportation development proposal. The board members rejected a motion to postpone the vote and approved a motion to call the question by "a show of hands." ABAG reported the rejection of the motion to postpone in the meeting notes as a "voice vote" and did not report the approval of the motion to call. Plaintiffs challenged these actions as a violation of the Brown Act, which requires the legislative body of local agencies to publicly report the vote or abstention of each member present for an action. The trial court sustained a demurrer and dismissed the complaint on the ground that plaintiffs had not alleged facts showing legally cognizable prejudice from the alleged violations. The appellate court reversed, noting that a complaint need only state a cause of action under "any legal theory" to survive a demurrer. Whether or not plaintiffs had demonstrated the prejudice necessary for the trial court to declare the board's action null and void was not dispositive because the complaint was minimally sufficient to a claim for declaratory and injunctive relief and mandamus under sections 54960 and 54960.1 of the Brown Act. In addition, the court rejected the trial court's finding that the cause of action became moot after ABAG publicly announced in a May 2019 meeting that it would take roll calls on all non-unanimous votes moving forward. The trial court reached this conclusion based on a judicially noticed "transcribed portion" of the May 2019 meeting submitted by ABAG with its demurrer, but did not allow the parties an opportunity to present extrinsic evidence regarding the meaning of the public announcement. The appellate court rejected this approach, stating that a court ruling on a demurrer may not take judicial notice of the proper interpretation of a document submitted in support of the demurrer. Stated differently, a court cannot use judicial notice to "convert a demurrer into an incomplete evidentiary hearing" where only the demurring party can present evidence.

Authors



Kaela Shiigi

Associate

KShiigi@perkinscoie.com [415.344.7064](tel:415.344.7064)

Blog series

California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes.

[View the blog](#)