

#8 ~~TENTATIVE~~ RULING

8:30 a.m., Tuesday, December 13, 2016

**SAVE VALLEY VILLAGE v. THE CITY OF L.A., et al. [#BS 160608]**

**RULING ON DEMURRER OF RESPONDENT CITY OF L.A. TO PLAINTIFF'S  
FIRST AMENDED PETITION**

**BACKGROUND:** The petition seeks injunctive relief "due to unconstitutional, unlawful and unjustifiable voting practices," etc.-

**CONT'D TIMELINE:**

8/23/16: The Court sustained MP's prior demurrer to causes of action 1 and 3 w/leave to amend; cause of action 2 was withdrawn

9/8/16: Petitioner filed its First Amended Verified Petition, purporting to assert 3 causes of action:

- 1) "Citizens CCP 1085 Petition for injunctive relief due to vote trading agreement at City Council"
- 2) [omitted]
- 3) Declaratory relief, CCP 1060 "re CEQA Consent Calendar"
- 4) Declaratory relief, CCP 1060 "re Council Rule 48a"

10/21/16: MP filed this general\* demurrer to causes of action 1, 3 and 4 [\*the Notice also asserts, as a ground for demurrer, that petitioner "fails to identify a justiciable issue"; however, that isn't a recognized ground for demurrer]

**THE GENERAL DEMURRERS OF DEFENDANT CITY OF L.A. TO CAUSES OF ACTION 1, 3 AND 4 OF PLAINTIFF'S FIRST AMENDED VERIFIED PETITION ARE SUSTAINED WITHOUT LEAVE TO AMEND. AS TO EACH OF THE CHALLENGED CAUSES OF ACTION, THE COURT RULES AS FOLLOWS:**

- 1) "Citizens CCP 1085 Petition for injunctive relief due to vote trading agreement at City Council":

Petitioner is seeking a writ of mandate to alter the voting practices of the Los Angeles City Council. As the Reply points out: while the Petition and Opposition criticize the City Council, they do not allege facts demonstrating a violation of the Brown Act. That Councilmembers allegedly vote without disagreement is insufficient to support a Brown Act claim. See Gov. Code § 5495 et seq.

Petitioner cites Penal Code §86 as the basis for "the public duty by which the courts may judge the councilmembers actions"; however, §86 does not give

rise to a private right of action. See *Farmers Ins. Exch. v. Superior Court*, 137 Cal.App.4th 842, 849 (2006); also see *Vikco Ins. Services, Inc v. Ohio Indemnity Co.*, 70 Cal.App.4th 55, 62 (1999). Nor does *Fuller v. San Bernardino Valley Municipal Water Dist.*, 242 Cal. App. 2d 52 (1966) support Petitioner's claim. That case was unrelated to any criminal statute.

The Court agrees with defendant's analysis to the effect that Petitioner "is no more interested in the votes and voting behaviors of City Council than any other resident or taxpayer." Assuming the Court were to consider responding party's improper exhibit #1, that exhibit only supports movant's argument to the effect that this case doesn't present a justiciable controversy. As the Reply posits: "Petitioner is recommending an entirely new system of government for the City," directing the City of Los Angeles "to expand its legislative body from 15 members, as set by the Charter, to 45." No adequate basis is alleged for the Court to order such relief. Also see *City of Montebello v. Vasquez*, .1 Cal. 5th 409, 426 (2016), cited by defendants for the proposition that "chaos would result if a resident or voter could simply sue an individual legislator for his or her voting preferences, habits or anything else....It is not necessary to sue government officers in their personal capacities to challenge the propriety of a government action."

3) Declaratory relief, CCP 1060 "re CEQA Consent Calendar":

Petitioner claims that the City Council's "consent calendar" violates CEQA's "independent judgment" requirement. Here, the Court agrees with movant's position - i.e., there can be no violation of any provision of the CEQA statute where, as here, no specific project is at issue. For the reasons stated in the Reply, the two cases cited by Petitioner are inapposite. See *California Clean Energy Committee v. City of San Jose* (2013) 220 Cal.App.4th 1325; also see *Kleist v. City of Glendale* (1976) 56 Cal.App.3d 770. Further, the Court finds merit in the proposition stated in the Reply, to the effect that "the failure of Petitioner to cite law supporting its consent calendar theory waives its argument." See *Atchley a City of Fresno* (1984) 151 Cal. App. 3d 635, 647.

4) Declaratory relief, CCP 1060 "re Council Rule 48a:

The fact that the City Council tabulates "actual votes," and counts "non-notes" as "yes" votes, does not present an actual controversy which could be a subject for declaratory relief. Under Council Rule 48, the Counsel is permitted to record abstentions by members present as "aye" votes. This practice has been previously approved by the courts. See, e.g., *Dry Creek Valley Assoc. v. Board of Supervisors* (1977), 67 Cal.App.3d 839, 845; also see *Martin v. Ballinger* (1938) 25 Cal.App.2d 435, 439. As Petitioner doesn't object to the language of the Rule, and no facts are presented to show that the Rule is

somehow violative of the Brown Act, Penal Code §86 or CEQA, it fails to present a basis for declaratory relief relating thereto. See Brownfield v. Daniel Freeman Marina Hosp., 208 Cal.App.3d 405, 410 (1989); see also Code Civ. Proc., § 1060.

The court will sign the proposed Order. MP is to serve notice of ruling. This TR shall be the order of the court, unless changed at the hearing, and shall by this reference be incorporated in the Minute Order.

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