

No. A172245

In the Court of Appeal, State of California
FIRST APPELLATE DISTRICT, DIVISION FOUR

BERKELEY PEOPLE'S ALLIANCE and NATHAN MIZELL
Plaintiffs and Appellants,

vs.

CITY OF BERKELEY and CITY OF BERKELEY CITY COUNCIL
Respondents and Defendants.

Appeal From the Superior Court of the State of California,
County of Alameda, Case No. 24CV064980
Honorable Victoria Kolakowski, Judge Presiding

**BRIEF OF AMICI CURIAE CALIFORNIA SPECIAL DISTRICTS
ASSOCIATION, CALIFORNIA STATE ASSOCIATION OF
COUNTIES, AND LEAGUE OF CALIFORNIA CITIES IN
SUPPORT OF RESPONDENT CITY OF BERKELEY**

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

This is the initial certificate of interested entities or persons submitted on behalf of Amici Curiae California Special Districts Association, California State Association of Counties, and the League of California Cities (“Local Government Amici”) in this appeal.

These entities or persons have either (1) an ownership interest of 10 percent or more in the party or parties filing this certificate or (2) a financial or other interest in the outcome of the proceeding that the Justices should consider in determining whether to disqualify themselves:

None.

DATED: May 27, 2025

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AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT

I. INTRODUCTION AND SUMMARY OF ARGUMENT

In response to protests by members of its audiences in late 2023 and early 2024, and after finding it could not quell those protests by excluding individuals, the Berkeley City Council adjourned to another room, allowing the media to accompany the Council and webcasting so others might watch. The City Council cites as authority for its action Government Code section 54957.9,¹ a provision of the Ralph M. Brown Act — California’s local government meeting law — which states:

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance,

¹ Unspecified section references are to the Government Code.

shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

Appellant Berkeley People's Alliance argues the City violated the Brown Act because the City Council did not clear its meeting room but adjourned to another room. In the Alliance's view, the statute does not allow the City Council to relocate to another room but must be read literally to require a meeting to end unless it is feasible, and responsible, to — literally — clear the room.

Given the recent rise of incivility in our society generally, and in local government meetings specifically, this Court should be loath to tie the hands of policymakers or to find in the Brown Act a binary choice between physical force or a heckler's veto. Government must function, but it need not break heads to do so.

Local Government Amici argue here that the Alliance misreads the Brown Act to deviate from stated public policy and to hinder the Act's purpose to facilitate local representative democracy. Moreover, we must read the statute as a whole, harmonizing its

provisions, including those which allow legislative bodies to relocate their meetings. Because the City Council is empowered to act as it did by several provisions of the Brown Act, Local Government Amici respectfully urge this Court to affirm.

II. JOINDER IN CITY OF BERKELEY'S STATEMENT OF FACTS, PROCEDURAL HISTORY, AND STANDARD OF REVIEW

Local Government Amici join in the City of Berkeley's Respondent's Brief Statement of Facts, Procedural History, and Standard of Review. (Cal. Rules of Court, rule 8.204.)

III. ARGUMENT

A. The Brown Act Must Be Interpreted Practically, as a Whole, and in Light of the Diverse Local Agencies It Governs

The practical consequences of competing interpretations of a statute are, of course, relevant to its construction. (E.g., *Mejia v. Reed* (2003) 31 Cal.4th 657, 663.) Accordingly, Local Government Amici begin by providing context, showing the wide range of local governments the Brown Act regulates and their varying needs and resources. What works in Los Angeles County may not work in

Lassen but the Brown Act applies to both — and to the myriad local agencies within each.

I. The Brown Act applies to all local governments of varying sizes and resources

California local governments vary greatly in their resources and circumstances – 58 counties,² 483 cities,³ and some 3,300 special districts,⁴ excluding school districts. Its counties range from Alpine, population 1,043 to Los Angeles’ 9.5 million.⁵ Its cities range from tiny, industrial Vernon, population 112⁶ to Los Angeles’ 3.8 million.⁷

² <<https://www.census.gov/geographies/reference-files/2010/geo/state-local-geo-guides-2010/california.html>> (as of Apr. 29, 2025).

³ <<https://www.mountainhouseca.gov/about-us>> [as of May 23, 2025] [newly incorporated Mountain House is California’s 483rd city].

⁴ Sen. Local Gov. Com., What’s So Special About Special Districts? (Fourth Edition, Oct. 2010), p. 1 available at <https://www.ca-ilg.org/sites/main/files/file-attachments/resources_2010WSSASD4edition.pdf> (as of May 18, 2025).

⁵ <<https://worldpopulationreview.com/us-counties/california>> (as of May 18, 2025).

⁶ <<https://datausa.io/profile/geo/vernon-ca#:~:text=About,was%201%20car%20per%20household>> (as of May 23, 2025).

⁷ <<https://worldpopulationreview.com/us-cities/california/los-angeles#:~:text=Los%20Angeles%20has%20a%202025,population%20of%203%2C895%2C848%20in%202020>> (as of May 18, 2025).

Alameda County alone includes 14 cities, 15 independent special districts, and 18 dependent special districts, the latter governed by the County Board of Supervisors or a City Council.⁸ Those special districts provide such services as fire and emergency medical services, mosquito control, flood control, resource conservation, water, sewer, health care, park and recreation, police services, streetlighting, and even lead abatement.⁹ All these are equally subject to the Brown Act. (Gov. Code, § 54958 [“this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.”].)

It also applies to bodies within these agencies. Section 54951 defines “local agency” to include “any board, commission or agency” of a local government and section 54952 defines “legislative body” expansively to include “[a] commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.” So Alameda

⁸ < <https://alamedalafco.org/sphere-of-influence/> > (as of May 18, 2025). See Government Code § 56032.5 (defining “dependent special district”).

⁹ < <https://alamedalafco.org/special-districts/> > (as of May 18, 2025).

County's smallest city, Piedmont (population 11,270),¹⁰ has these bodies which must comply with the Brown Act:

- Civil Service Commission,
- Park Commission,
- Planning Commission,
- Recreation Commission,
- Police & Fire Pension Board,
- Bond Oversight Committee,
- Budget Advisory & Financial Planning Committee,
- City-School Liaison Committee,
- Community Pool Advisory Committee, and
- Public Safety Committee.¹¹

Many are tiny agencies lacking police forces or even regular access to legal counsel. For example, the Alamo-Lafayette Cemetery District in Contra Costa County, which operates two historic

¹⁰ < https://en.wikipedia.org/wiki/Piedmont,_California#Demographics > (as of May 18, 2025).

¹¹ < https://piedmont.ca.gov/government/commissions__committees > (as of May 18, 2025).

cemeteries, has a budget of \$507,720, and no net income.¹² It has one employee and a serious backlog of capital needs.¹³ Such agencies cannot be expected to handle disruptions and emergency situations as large agencies can and the statute must be read to allow them to manage as they can in light of their resources.

Given the wide variety of agencies it governs, the Legislature necessarily intended the Brown Act to establish minimum standards suitable to all local agencies, no matter how small and under-resourced. The Act leaves to local policies (like those in Berkeley,¹⁴ San Francisco,¹⁵ and elsewhere) to set a higher bar for more complex agencies. The reading the Alliance gives section 54957.9 to require a formal finding that it is not possible to quell a disturbance by removing individuals, an effort to do so, and physically clearing the room will confuse those agencies with limited access to counsel and

¹² *Alamo Lafayette Cemetery District Profit & Loss Budget Overview* (2024) < https://www.alamolafayettecemetery.com/files/20039b08b/2024.7.5.f_y.24_25.budget.pdf > (as of May 18, 2025);

¹³ *Ibid.*

¹⁴ Berkeley Municipal Code, chapter 2.06, which may be viewed at < <https://berkeley.municipal.codes/BMC/2.06> > (as of May 18, 2025).

¹⁵ San Francisco Administrative Code, Chapter 67, adopted by a 1999 initiative. < https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_admin/0-0-0-19477 > (as of May 18, 2025).

no law enforcement authority, because little in the text of the statute gives warning of those hurdles. The Alamo-Lafayette Cemetery District has a yearly budget for legal fees of merely \$14,400¹⁶ — making it impractical for that agency to seek legal advice on this issue until it first encounters disruption and, perhaps, not even then.

2. The growing problem of incivility in American public life

Incivility is on the rise throughout our political culture and California's local governments are not immune. As a 2021 law review article put it:

It is commonly observed by commentators from across the political spectrum in the United States that the past decade has seen a marked intensification of political antagonism. Office holders and party officials seem to have lost the capacity to cooperate with those who do not share their political affiliation, resulting in political deadlock and stagnation. In fact, the trouble runs deeper than that. Whereas partisan animosity has long prevailed among politicians, it only recently has trickled down to,

¹⁶ See footnote 12 *supra*.

and intensified among the U.S. citizenry. Citizens struggle these days to communicate productively across partisan divides. Thus, in addition to the intransigence within government, popular political discourse is beset by a range of dysfunctions that are commonly referred to collectively as incivility. A common thought is that we can begin to repair our democracy only by first restoring a commitment to civility.

That incivility poses trouble for democracy is acknowledged by the American citizenry. A 2019 Pew study finds that most Americans believe that political debate has become dangerously toxic and disrespectful in recent years. A prior study finds that Americans disapprove of the incivility that has taken hold of democracy and want greater comity and cooperation among politicians. These findings offer some hope that the remedy for current political dysfunctions is not beyond reach. If citizens dislike over-the-top political rancor and want a more civil mode of politics, then the challenge is simply that of incentivizing politicians and citizens to turn down the heat.

Alas, this optimism fades in light of a further finding of the same study. Many who disapprove of the uncivil streak in contemporary U.S. politics also believe that the blame for incivility lies squarely with their political opponents; moreover, they think the solution is to force capitulation from the other side. In calling for more civility, many citizens seek submission or acquiescence from their political rivals. Surely civility cannot require capitulation from one's political opposition. Something is amiss.

(Robert B. Talisse, *Semantic Descent: More Trouble for Civility* (2021) 52 Conn. L. Rev. 1149, 1151–1152 [footnotes omitted].)

Local meetings have become places for protest, and some are disruptive, preventing legislative bodies from doing the public's business. For example, in May 2015, the Oakland City Council had to adjourn when protestors chained themselves to Councilmembers' desks.¹⁷ This phenomenon occurs not only in large cities such as

¹⁷ *Activists Chain Themselves Together, Shut Down Oakland City Council Meeting Over Lack of Affordable Housing* (2015), available at < <https://www.cbsnews.com/sanfrancisco/news/activists-opposing-condo-development-shut-down-oakland-city-council-meeting-black-seed/> > (last viewed May 23, 2025).

Berkeley and Oakland, but also in rural areas. The City Council of the small foothill town of Grass Valley (population 14,000) recently had to move to another room when those protesting its decision not to take a stand on the Gaza War refused to leave the chambers or cease singing protest songs.¹⁸ Indeed a recent news analysis documented rising incivility, profanity, and disruption in a variety of local governments around San Diego.¹⁹

While the 1953 drafters of the Brown Act may not have anticipated the scope of current incivility, they did expect disruptive behavior that cannot be quelled by excluding a few bad actors. And they did intend to allow agencies to conduct public business. (Gov. Code, §§ 54950 [policy of the Act to facilitate public business], 54957.9 [body may clear the room to prevent obstruction].)

¹⁸ < https://www.theunion.com/news/public-speaker-cited-for-disrupting-a-public-meeting-in-grass-valley/article_a8a692c6-1303-11ef-8aa5-ef103085093c.html > (as of May 18, 2025).

¹⁹ < <https://www.kpbs.org/news/politics/2024/07/01/threats-profanity-accusations-skyrocketing-at-public-meetings-kpbs-analysis-shows> > (as of May 18, 2015).

3. The policy implications of the Alliance's reading

The Alliance reads section 54957.9 literally, and impractically, to require the City Council to collectively approve an order to clear the room after finding disruption cannot be quelled by excluding a few agitators and to allow a meeting to continue only if it can do so. (Opening Brief at pp. 13–14.) As the City argues, the statute may be read flexibly to let the City Council determine how best to continue when disruptions interrupt meetings, whether it be moving to another room or clearing the room. (Respondent's Brief at p. 11.) Practically, the impact on public participation in local government is the same — the press may attend in person, all others must watch or listen remotely.

Reading section 54957.9 strictly would be overly burdensome and impractical, especially if it requires the City Council to collectively approve a formal order to clear the meeting room after finding a disruption cannot be quelled by excluding a few bad actors. How would it do so — making, seconding and debating a motion by shouting over those chanting protests? One can determine a teacup is insufficient to bail the ocean with attempting the task and without debating the issue. The Berkeley City Council's decision to retreat to another room evidences it made that finding.

Were there no basis for that finding, judicial review would be available, but the Alliance does not make that claim.

Realistically, the duty to demonstrate by events that a legislative body cannot control disruption without clearing the room must allow something between asking people to behave and physically dragging the obdurate from the room. Few lay volunteers who serve in local government are equipped for the latter. Verbal jujitsu and the command voice are elements of police training, not School Boardmember training.²⁰ A rule which allows a local body, subject to judicial review, to decide informally that a protest cannot be controlled so as to allow a meeting to continue is workable, even for tiny agencies without access to police protection or legal advice.

How much judgment is required when people chain themselves to furniture in the Oakland Council Chambers or pack the Grass Valley Council Chambers to sing protest songs? Why should formal action of the City Council be required to observe that a meeting cannot continue in the presence of such a throng? Why

²⁰

< <https://www.modestogov.com/DocumentCenter/View/15365/Modesto-Police-Department-Policy-Manual-Printable-PDF>; <https://www.policeforum.org/assets/icattrainingguide.pdf> > (as of May 18, 2025) [describing verbal command techniques].

put meetings on a path to physical confrontation which, even in the hands of trained police, can lead to injuries and erosion of public trust? And such confrontations can lead both to claims under 42 U.S.C. section 1983 and to workers' compensation claims. (*Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 [§ 1983 claim following exclusion from meeting for Nazi salute].)²¹ Nothing in section 54957.9 requires this reading. The City's more practical interpretation is far more likely to have been the Legislature's intent for a rule that applies to so many disparate local agencies.

B. The Brown Act Is Intended to Facilitate, Not Frustrate, the Public's Business

If the [statutory] language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy.

²¹ < <https://www.reuters.com/article/world/uk/california-cop-who-pepper-sprayed-student-protesters-awarded-38000-idUSBRE99N02N/> > (as of May 18, 2025) [reporting on workers compensation claim of police officer following protest].

(Coalition of Concerned Communities, Inc. v. City of Los Angeles (2004)
34 Cal.4th 733, 737.)

Open access to government is crucial, but it cannot come at the cost of getting business done — there is no evidence the Brown Act is intended to empower hecklers to obstruct public business. Rather, section 54950 states the Brown Act’s purpose to facilitate public access to government meetings to “aid in the conduct of the people’s business.” (Gov. Code, § 54950.) Frustrating that business may draw attention to a cause some advocate passionately, but it cannot be understood as a purpose of the Brown Act. For disruption prevents not only local government officials from discussing public business, it prevents all others from doing so, too.

The right to protest is fundamental, but it need not be indulged when it infringes others’ rights — such as those of local officials and other residents and property owners who wish to discuss other topics.

Construing section 54957.9 as the Alliance proposes creates a heckler’s veto but does little to advance the Brown Act’s purposes. The City’s reading allows both open and accessible meetings as well as the conduct of “the people’s business.” Protests will continue, some will seek arrest for civil disobedience to draw attention to their

causes, but local government can function without indulging a heckler's veto or requiring protestors to be physically removed.

C. The Brown Act Must Be Interpreted as a Whole

Familiar canons guide us. Statutes are to be read as a whole, harmonizing their parts. "[E]very statute should be construed with reference to all other statutes of similar subject so that each part of the law as a whole may be harmonized and given effect." (*Franchise Tax Bd. v. Superior Court* (1998) 63 Cal.App.4th 794, 799.)

Words are not added or omitted. (Code Civ. Proc., § 1858.) Stating one thing precludes implication of other things which might have been said, but were not. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391, fn. 13.) These familiar canons provide the key to harmonizing the provisions of the Brown Act that govern here.

I. The Brown Act does not generally control the location of meetings

Several Brown Act provisions demonstrate it does not generally control meeting locations. Instead, it governs access to and participation in meetings.

Section 54952.2 broadly defines the “meetings” to which the Act applies — without respect to location:

As used in this chapter, “meeting” means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

What makes a “meeting” is discussion among a quorum of a legislative body, not a particular location. Indeed, serial meetings — a series of discussions which lead to a collective concurrence to act — have no one location but are meetings under the Act nonetheless. Section 54952.2, subdivision (b) provides:

A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

A chain of emails can be an illegal serial meeting under this rule without involving any one location. (84 Ops. Cal. Atty. Gen. 30, 2001 WL 175919.)

Section 54954, subdivision (a) allows an agency to establish its place of regular meetings by ordinance, resolution, “or by whatever other rule is required for the conduct of business by that body.”

Berkeley, like many cities, establishes its meeting place by ordinance. (Berkeley Municipal Code, § 2.04.010.)²² But not all meetings must occur there. Section 54954, subdivision (b) allows special meetings anywhere in the City and elsewhere in some cases, as meetings with legal counsel or legislators. “Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except to do any of [seven stated exceptions].” (Gov. Code, § 54954, subd. (b).)

Section 54953, subdivision (j) defines a “remote location” from which local officials may participate in meetings by telephone or video as any location “other than any physical meeting location designated in the notice of meeting.” (Gov. Code, § 54953,

²² The City Code may be found at
< <https://berkeley.municipal.codes/BMC/2.04.010> > (as of May 18, 2025).

subd. (j)(3).) So, a notice of meeting need only state where the public may attend.

The Brown Act's limits on meeting locations are few. Section 54954, subdivision (b) requires meetings to occur within an agency's territory unless an exception applies. Section 54961 forbids meetings in locations which exclude the disabled or otherwise discriminate — a more salient point before modern civil rights barred private policies excluding women or racial minorities from places of public accommodation. (Gov. Code, § 54961, subd. (a).) But no provision generally regulates where agencies may meet, suggesting section 54957.9 is not intended to as a literal command that a meeting occur only in the place identified on the agenda when it is necessary to exclude all but the media due to disruption.

2. The Brown Act allows a meeting to be relocated

Section 54954, subdivision (e) allows a legislative body to relocate a meeting in an emergency:

If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding

officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

This provision does not state who has power to determine that an emergency requires a meeting to be relocated, charging the “the presiding officer” to inform the media of a new location. Presumably either the chair or the body as a whole may do so. But it is plain that local agencies may relocate their meetings when safety requires. The record here suggests the Berkeley City Council identified such an emergency and relocated its meeting to mitigate that emergency consistently with public safety. And the Mayor informed the media present where the meeting would resume.

Section 54955 similarly allows a notice of adjournment to identify a new location for an adjourned meeting:

The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting **to a time and place specified in the order of adjournment.** A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned

regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. **When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes.** When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule. (Emphasis added.)

This requires no notice beyond a notice of adjournment. The record here suggests the Berkeley City Council exercised this authority, adjourning its meeting for a few minutes to another room where it and the media could conduct business and broadcast to allow the public to follow the City's work without granting hecklers a veto.

The Alliance simply overlooks these authorities to argue the Brown Act controls the location of meetings in ways it does not.

3. Related provisions should be read together

Section 54957.9 is one of three related statutes. Section 54954.3, subdivision (b)(1) allows reasonable rules to limit public comment:

The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

Indeed, Berkeley has adopted such rules.²³

Section 54957.95 allows the chair to remove a disruptive individual:

(a) (1) **In addition to authority exercised pursuant to Sections 54954.3 and 54957.9**, the presiding member of the legislative body conducting a meeting or their designee may remove, or cause the removal of, an individual for disrupting the meeting.

(2) Prior to removing an individual, the presiding member or their designee shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their

²³ < <https://berkeleyca.gov/sites/default/files/2022-04/City%20Council%20Rules%20of%20Procedure.pdf> > (as of May 18, 2025).

removal. The presiding member or their designee may then remove the individual if they do not promptly cease their disruptive behavior. This paragraph does not apply to any behavior described in subparagraph (B) of paragraph (1) of subdivision (b) [involving force or a “true threat of force”] (Emphasis added.)

The emphasized language demonstrates the Legislature intended these three tools for managing public participation in meetings to be construed together.

Section 54957.9 allows a body to find that removing disruptive individuals is insufficient to quell disruption and to exclude all but the media.

These allow a legislative body to set rules to prevent excessive or inappropriate public comment, to remove disruptive individuals after warnings and, when necessary, to exclude all but the media. The facts on this record, and events elsewhere noted above, show that protestors can easily outnumber public officials and resist efforts to strip them of their heckler’s veto. When protestors chain themselves to furniture, only time or law enforcement can remove them. We should not ask volunteer members of advisory bodies to do so, but these are subject to the Brown Act, too. (Gov. Code,

§ 54958.) Berkeley might have used its police force to clear its chambers, but smaller agencies lacking police forces or budgets for security guards cannot.

Section 54957.9 allows a body to exclude all but the press and allows, but does not require, it to allow the nondisruptive to return:

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting **may** order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. **Nothing in this section shall prohibit** the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. (Emphasis added.)

Nothing in this section is mandatory,²⁴ although if a legislative body exercises this authority it must comply with its conditions. Though a City Council may clear a room to address disruption, it can respond in other ways, too, as by taking a break or, as here, exercising its authority under section 54954, subdivision (c) to relocate a meeting to ensure safety or its authority under section 54955 to adjourn to a new time and/or place.

Moreover, authority to clear the room implies the power to determine it is necessary to do so and to make that determination in a practical way. “Whatever is necessarily implied in a statute is as much a part of it as that which is expressed.” (*Johnston v. Baker* (1914) 167 Cal. 260, 264.)²⁵ The power to clear the room necessarily implies that the City Council may find it necessary to clear the room of all but the media. The power to adjourn to a new location or relocate meetings in an emergency implies authority to determine it is necessary to do so. And, of course, a reading that the Council must formally order a room cleared by motion in the midst of disruptive protest cannot have been the Legislature’s intent. Few can effectively

²⁴ “May,” of course, is permissive. (Gov. Code. § 14.)

²⁵ A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* (2012) “Predicate-Act Canon,” pp. 192–194 [predicate acts canon].)

attend to parliamentary niceties when surrounded by protestors chanting, singing, or shouting.

These rules authorize specified individuals to identify circumstances allowing limits on public participation. None require formal findings, evidence, or any decision-making process. They are to be interpreted practically in light of the wide range of agencies they govern, including tiny agencies with limited access to police protection or legal advice. The Legislature intended to give meeting chairs discretion to manage meetings so as to allow meaningful public input while getting the public's business done, whether it be taking a break, limiting public comment, removing disruptive individuals, clearing a room, or adjourning to another room.

These provisions serve the Brown Act's core purpose to ensure transparency in local government, as do its ample remedial provisions, including judicial review to correct errors of judgment. (Gov. Code, §§ 54959–54960.5.)

IV. CONCLUSION AND DISPOSITION

This Court should read section 54957.9 flexibly and practically and in context with related provisions because the Brown Act applies to all local agencies, regardless of size and resources, many of which cannot “clear the room” of many uncooperative protestors.

Furthermore, the purpose of the Brown Act — to conduct the people’s business informed by public participation — is frustrated by a heckler’s veto which silences not only public officials but other members of the public, too. The Brown Act allows those charged with managing local government meetings a variety of tools to quell disruption. They can take a break, limit public comment, exclude disruptive individuals, clear the room of all but the press, or — as here — adjourn a meeting to another time and place.

For all these reasons, Local Government Amici respectfully urge this Court to affirm.

DATED: May 27, 2025

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**



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Attorneys for Local Government Amici

**CERTIFICATE OF COMPLIANCE WITH
CAL. RULES OF COURT, RULE 8.204(C)(1)**

Pursuant to California Rules of Court, rule 8.204(c)(1), the foregoing BRIEF OF AMICI CURIAE CALIFORNIA SPECIAL DISTRICTS ASSOCIATION, CALIFORNIA STATE ASSOCIATION OF COUNTIES, and LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF RESPONDENT CITY OF BERKELEY is produced using 13-point Palatino Linotype font and contains 4,481 words (excluding the tables, cover information, and Certifications) and is thus within the limit of 14,000 words permitted by rule 8.204(c). In preparing this Certificate, I relied on the word count generated by Microsoft Word for Office 365 MSO.

DATED: May 27, 2025

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**



MICHAEL G. COLANTUONO
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PROOF OF SERVICE

Berkeley People's Alliance et al. v. City of Berkeley
First Appellate District, Division 4 Case No. A172245
Alameda County Superior Court Case No. 24CV064980

I, Tracey S. West, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 790 E. Colorado Boulevard, Suite 850, Pasadena, CA 91101-2109. On May 27, 2025, I served true copies of the following document(s) described as **BRIEF OF AMICI CURIAE CALIFORNIA SPECIAL DISTRICTS ASSOCIATION, CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF RESPONDENT CITY OF BERKELEY** on the interested parties in this action as follows:

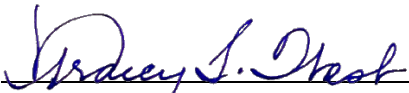
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BY ELECTRONIC SERVICE: I electronically transmitted the above document(s) to the person(s) at the e-mail address(es) set forth below via the TrueFiling electronic service portal.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 27, 2025, at St. Louis, Missouri.


Tracey S. West

SERVICE LIST

Berkeley People's Alliance et al. v. City of Berkeley
First Appellate District, Division 4 Case No. A172245
Alameda County Superior Court Case No. 24CV064980

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