

CASE No. S260209

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

MICHAEL GOMEZ DALY et al.,
Petitioners (in superior court) and Respondents (on appeal),

v.

BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, et al.,
Respondents and Real Party in Interest (in superior court) and Appellants,

After Order by the Court of Appeal
Fourth Appellate District, Division Two
Civil No. E073730

APPELLANTS' MOTION FOR JUDICIAL NOTICE

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WILSON

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MOTION FOR JUDICIAL NOTICE

Pursuant to California Evidence Code sections 452 and 459, and California Rules of Court 8.252, subdivision (a) and Rule 8.520, subdivision (d), Appellants the Board of Supervisors of San Bernardino County, and Supervisors Robert A. Lovingood, Janice Rutherford, Curt Hagman, Josie Gonzales, and Dawn Rowe (collectively, Appellants) hereby move the Court to take judicial notice of the documents listed below.

Exhibits B through X are true and correct copies of the documents obtained by counsel for Appellants from Legislative Intent Services, Inc. (LIS), which pertain to Government Code section 54960.1 as enacted by Assembly Bill 2674, Chapter 641, Statutes of 1986. The documents are described, as indicated, under penalty of perjury to be true and correct copies of the originals in the declaration of Anna Maria Berezky-Anderson, attorney for LIS. Appellants are requesting the Court to take judicial notice of these documents pursuant to Evidence Code section 459. Each document listed is cross-referenced in the Berezky-Anderson declaration for ready reference by the Court.

Exhibit B: All versions of Assembly Bill 2674 (Connelly-1986);

Exhibit C: Procedural history of Assembly Bill 2674 from the 1985-86
Assembly Final History;

Exhibit D: Two Analyses of Assembly Bill 2674 prepared for the
Assembly Committee on Local Government;

- Exhibit E:** Material from the legislative bill file of the Assembly
Committee on Assembly Bill 2674;
- Exhibit F:** Analysis of Assembly Bill 2674 prepared for the Assembly
Committee on Ways and Means;
- Exhibit G:** Material from the legislative bill file of the Assembly
Committee on Ways and Means on Assembly Bill 2674;
- Exhibit H:** Material from the legislative bill file of the Assembly
Committee on Ways and Means Minority on Assembly Bill
2674;
- Exhibit I:** Third Reading analysis of Assembly Bill 2674 prepared by the
Assembly Committee on Local Government;
- Exhibit J:** Material from the legislative bill file of the Assembly
Republican Caucus on Assembly Bill 2674;
- Exhibit K:** Two analyses of Assembly Bill 2674 prepared for the Senate
Committee on Local Government;
- Exhibit L:** Material from the legislative bill file of the Senate Committee
on Local Government on Assembly Bill 2674;
- Exhibit M:** Two analyses of Assembly Bill 2674 prepared by the
Legislative Analyst;
- Exhibit N:** Material from the legislative bill file of the Senate Committee
on Appropriations on Assembly Bill 2674;

- Exhibit O:** Third Reading analysis of Assembly Bill 2674 prepared by the Office of Senate Floor Analyses;
- Exhibit P:** Material from the legislative bill file of the Office of the Senate Floor Analyses on Assembly Bill 2674;
- Exhibit Q:** Legislative Counsel’s Rule 26.5 analysis of Assembly Bill 2674;
- Exhibit R:** Two Concurrence in Senate Amendments analyses of Assembly Bill 2674 prepared by the Assembly Committee on Local Government;
- Exhibit S:** Material from the legislative bill file of Assemblymember Lloyd Connelly on Assembly Bill 2674;
- Exhibit T:** Excerpt regarding Assembly Bill 2674 from the *Journal of the Senate*, July 3, 1986;
- Exhibit U:** Post-enrollment documents regarding Assembly Bill 2674;
- Exhibit V:** Press Release No. 691 issued by the Office of the Governor on September 2, 1986, to announce that Assembly Bill 2674 had been signed;
- Exhibit W:** Material from the legislative bill file of the Department of Justice on Assembly Bill 2674; and
- Exhibit X:** “Open Meeting Laws,” a publication prepared by the California Department of Justice, December 1984.

MEMORANDUM OF POINTS AND AUTHORITIES

Appellants move this Court to take judicial notice of the documents contained in Exhibits B through X to the motion. The documents comprise the complete legislative history of Assembly Bill 2674, Chapter 641, Statutes of 1986 (AB 2674) enacting Government Code section 54960.1 (Section 54960.1). These documents were obtained from the Legislative Intent Service, Inc. (LIS) as authenticated by the declaration of Anna Maria Bereczky-Anderson, attorney for LIS.

“In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute.” (*Hale v. Southern California IPA Medical Group, Inc.* (2001) 86 Cal.App.4th 919, 927; see also *East Bay Asian Local Development Corp. v. State of California* (2000) 24 Cal.4th 693, 710, fn. 5.) Courts have generally indicated a preference for a complete legislative history rather than “isolated” portions that do not provide the full context. (See *Drouet v. Superior Court* (2003) 31 Cal.4th 583, 598 [“Unable to find support in the statutory text, Tenants urge us instead to rely on isolated fragments of the Act’s legislative history.”]; *Alch v. Superior Court* (2004) 122 Cal.App.4th 339, 364 fn. 11 and 12 [noting that the “employers offer a single page from the legislative history” and then summarizing the court’s review of the complete legislative history].)

Respondents Michael Gomez Daly and I.E. United (collectively, I.E. United) moved this Court for judicial notice of several documents relating to the legislative history of Section 54960.1, as well as other Government Code sections that I.E. United asserts support its position. With respect to the legislative history of Section 54960.1, LIS prepared for I.E. United a legislative history of AB 2674 that included 23 documents or categories of documents. (See I.E. United Motion for Judicial Notice, Exh. A.) I.E. United has submitted two of these documents for judicial notice. (See I.E. United Motion for Judicial Notice, Exhs. B, C.) By this motion, Appellants seek to provide the Court with the complete legislative history for AB 2674 in order to provide the full context of I.E. United's selected documents.

The complete legislative history reveals that the Legislature did not intend the new mandamus procedures to be an alternative to quo warranto. I.E. United in its Answering Brief argues that "the Legislature's enactment of section 54960.1 necessarily reflects its view that other available remedies are insufficient." (Answering Brief at p. 29.) But I.E. United's argument that the Legislature considered quo warranto to be an "insufficient" remedy is belied by a review of the complete legislative history. The complete legislative history has only a single reference to "quo warranto," which is in a summary of the Brown Act's history that describes a proposed amendment from 1969 that was not adopted. (Fox Decl. ¶ 3.) And, "[u]npassed bills, as evidence of legislative intent, have little value."

(See *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 572, as modified (Jan. 12, 2005).)

Appellants did not seek judicial notice of these legislative history materials at the superior court because (1) I.E. United had not sought judicial notice of selected portions of the legislative history and (2) the relevance of legislative history is greater for the Supreme Court, rather than a superior court that is bound by appellate decisions pertaining to these issues.

For the foregoing reasons, Appellants ask this Court to take judicial notice of Exhibits B through X.

DATED: September 15, 2020 MEYERS, NAVE, RIBACK, SILVER
& WILSON

By: /s/ Deborah J. Fox
DEBORAH J. FOX
T. STEVEN BURKE, JR.
MATTHEW B. NAZARETH
Attorneys for Respondents/Real
Party in Interest/Appellants
BOARD OF SUPERVISORS OF
SAN BERNARDINO COUNTY;
ROBERT A. LOVINGOOD;
JANICE RUTHERFORD;
CURT HAGMAN; JOSIE
GONZALES; DAWN ROWE

DECLARATION OF DEBORAH J. FOX

I, Deborah J. Fox, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a principal of Meyers, Nave, Riback, Silver & Wilson, attorneys of record for Appellants. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. On February 24, 2020, Meyers Nave purchased the complete legislative history report from Legislative Intent Services, Inc. (LIS) for Assembly Bill 2674, Chapter 641, Statutes of 1986 (AB 2674), which enacted Government Code section 54960.1. Attached hereto as Exhibits B through X are true and correct copies of every document included in that legislative history. Exhibit A is a true and correct copy of a declaration by Anna Maria Bereczky-Anderson, attorney for LIS, authenticating Exhibits B through X.

3. In reviewing the complete legislative history, the only reference to “quo warranto” is at Exhibit E, page 100, in reference to a 1969 proposed amendment that was not enacted.

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

Executed on this 15th day of September, 2020, at Redondo Beach,
California.


Deborah J. Fox

[PROPOSED ORDER]

Court of Appeal, Fourth Appellate District, Division Two - No. E073730

CASE NO. S260209

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

En Banc

MICHAEL GOMEZ DALY et al.,

Petitioners (in superior court) and Respondents (on appeal),

v.

BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, et al.,
Respondents and Real Party in Interest (in superior court) and Appellants,

The Court, having reviewed Appellants' Motion for Judicial Notice and good cause appearing therefore, hereby orders that the Motion for Judicial Notice is granted.

Chief Justice

3584368

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **DALY v. BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY**

Case Number: **S260209**

Lower Court Case Number: **E073730**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **dfox@meyersnave.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
REPLY TO ANSWER TO PETITION FOR REVIEW	Reply Brief 9.15.20
REQUEST FOR JUDICIAL NOTICE	Motion for Judicial Notice 9.15.20
ADDITIONAL DOCUMENTS	RFJN Exhs Vol 1
ADDITIONAL DOCUMENTS	RFJN Exhs Vol 2
ADDITIONAL DOCUMENTS	RFJN Exhs Vol 3
ADDITIONAL DOCUMENTS	RFJN Exhs Vol 4
ADDITIONAL DOCUMENTS	RFJN Exhs Vol 5
ADDITIONAL DOCUMENTS	RFJN Exhs Vol 6
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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

9/15/2020

Date

/s/Kathy Glass

Signature

Fox, Deborah (110929)

Last Name, First Name (PNum)

Meyers, Nave, Riback, Silver & Wilson

Law Firm