

## Memorandum 98-9

**Judicial Review of Agency Action: SB 209 Followup**

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At the last meeting, the Commission considered whether to prepare a new judicial review recommendation limited to review of state and local agency adjudication, replacing the administrative mandamus statutes, Code of Civil Procedure Sections 1094.5 and 1094.6. The Commission directed the staff to contact the organizations that opposed SB 209 to get their reaction. The staff sent out 20 letters to these organizations, but only received four responses, attached:

*Exhibit pp.*

1. Gary Patton, Planning and Conservation League . . . . . 1
2. Dave Low, California School Employees Association . . . . . 2
3. Gerald James, Association of Cal. State Atty's & ALJs . . . . . 3
4. Michael Rawson, California Affordable Housing Law Project . . . . . 4

Mr. Patton urges the Commission not to go forward with this, saying the Planning and Conservation League would undoubtedly oppose such a bill. Mr. Low and Mr. James take a wait-and-see attitude, but do not appear enthusiastic about the proposal. Mr. Rawson has no objection to the proposal if his concerns are addressed.

In favor of going forward with this proposal is the fact that the Commission and staff have invested considerable time and effort developing the comprehensive judicial review recommendation, and we could probably develop a proposal limited to review of administrative adjudication with relatively little additional resources. Although the administrative mandamus statutes are considerably more fleshed out and detailed than the cryptic traditional mandamus provisions, there are areas in which codification might be useful — exhaustion of administrative remedies, standards of review (other than for factfinding), record for review, and venue.

Against going forward is the fact that we have found little enthusiasm for it and some opposition. If we bring another bill before the Senate Judiciary Committee (our oversight committee) with little support and some strong opposition, legislators may well ask why we continue beating a dead horse

instead of concentrating our resources in areas where there is consensus for change. Moreover, in a recodification, there is the risk of introducing new ambiguities and raising new questions, requiring appellate decisions to resolve.

On the basis of the three generally neutral letters and one strongly opposed, the staff doubts more work on the judicial review project will be fruitful. SB 209 was supported by a letter from the California Judges Association, but the Association declined to send a witness to the hearing. We did get more active support from the Judicial Council, but the Council believed the main benefit of SB 209 was that it would have replaced all the various and confusing methods of judicial review. A bill dealing only with review of adjudication would not have this benefit.

If we receive more communications before the meeting, the staff will supplement this memorandum to include those.

Respectfully submitted,

Robert J. Murphy  
Staff Counsel



February 2, 1998

Law Revision Commission  
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Robert J. Murphy, Staff Counsel  
California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

RE: Judicial Review of Agency Action

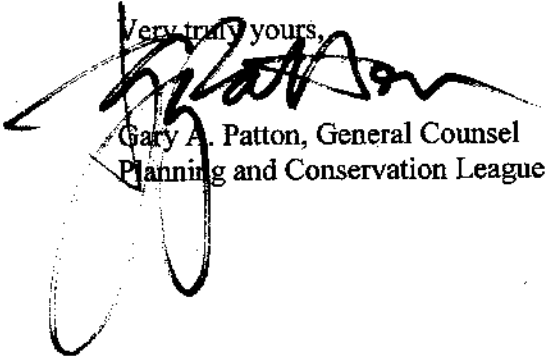
Dear Mr. Murphy:

Thank you for your letter of January 27, 1998, indicating that the Commission is considering the sponsorship of a bill that would revise current law by replacing Code of Civil Procedure Sections 1094.5 and 1094.6 with a unified statute. The idea is that this bill would look much like SB 209, but with a narrower scope.

As you know, PCL opposed SB 209, and we would undoubtedly oppose a bill like the one described in your January 27, 1998 letter. We urge the Commission not to proceed in this manner. We continue to believe that the proposed amendment would in fact be counter productive, would very likely complicate not clarify the law, and could lead to significant unforeseen consequences.

Thanks for taking our concerns into account.

Very truly yours,

  
Gary A. Patton, General Counsel  
Planning and Conservation League

# CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION

Governmental Relations Office • 1127 11th Street, Suite 346 • Sacramento, CA 95814 • (916) 444-0598  
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February 9, 1998

Law Revision Commission  
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Robert J. Murphy, Staff Counsel  
California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

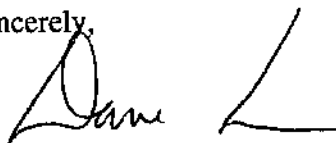
Dear Mr. Murphy:

In response to your January 27, 1998 letter regarding SB 209, Judicial Review of Agency Action, the California School Employees Association would not necessarily object to a proposal as described in your letter, provided that certain interests are protected.

CSEA would support the development of a recommendation to the Legislature limited to judicial review in administrative mandamus (Code of Civil Procedure Section 1094.5 and 1094.6). However, we must ensure that issues such as preparation of the administrative record, time limits, standing and preservation of the independent judgement test are preserved.

Please contact me if you have any questions regarding our position.

Sincerely,



Dave Low, Assistant Director  
Governmental Relations

DL:fs

14807/sb209





ASSOCIATION OF CALIFORNIA STATE ATTORNEYS  
AND ADMINISTRATIVE LAW JUDGES

February 6, 1998

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File: \_\_\_\_\_

Steve Baker  
Aaron Read & Associates  
1127 11<sup>th</sup> Street, Suite 350  
Sacramento, CA 95814

Re: SB 209 (Kopp) Judicial Review of Agency Action

Dear Steve:

I am responding to your request for comment on Robert Murphy's letter of January 27, 1998 regarding the California Law Revision Commission's consideration of revising the law related to judicial review of state and local administrative adjudication.

ACSA would probably not object to a proposal to revise the judicial review of state and local agency adjudication. Mr. Murphy's letter suggests that existing law in areas of our concern including standing, exhaustion of administrative remedies, standards of review and others would be codified. If the Commission's plan is to simply reorganize statutes and codify existing law, then we would likely not be concerned. As Mr. Murphy's letter suggests, we do wish to reserve the right to review the specific proposals and the potential impact upon our members.

Very truly yours,

Gerald James  
Labor Relations Counsel

c: Robert J. Murphy, CLRC Staff Counsel  
ACSA Administrative Adjudication Ad Hoc Committee

3

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Date: Fri, 06 Mar 1998 13:04:28 -0800  
From: Mike Rawson <mrawson@iname.com>  
Organization: The Public Interest Law Project  
MIME-Version: 1.0  
To: murphy@clrc.ca.gov  
Subject: SB 209  
X-Rcpt-To: murphy@clrc.ca.gov

Michael Rawson, Director  
California Affordable Housing Law Project  
of The Public Interest Law Project  
449 15th Street, Suite 301  
Oakland, CA 94612

March 6, 1998

Ralph Murphy  
Staff Counsel  
California Law Review Commission  
4000 Middlefield Rd. Rm D-1  
Palo Alto, CA 94303

Re: SB 209

Dear Mr. Murphy,

I do not generally object to revising the administrative mandamus statutes in most of the aspects proposed in SB 209. My primary objections to 209, as was the case for many others, were the ways it restricted review of legislative and quasi-legislative actions by traditional mandamus.

However, I also had a few concerns about the administrative mandamus provisions of the proposal. Specifically, the codification of deference to the decision of the local agency should be accompanied by a similar reference to the deference that also must be afforded the decisions of other state or local administrative agencies which may come into play in the review of a local agency action. Otherwise, a court would not be obligated to give due weight to the determinations of a state agency with special expertise when considering the challenge of a local agency decision which ignored the determinations of the state agency.

Please feel free to contact me if you have any questions. And, please keep me apprised as the Commission continues work on this issue.

Sincerely,

Michael Rawson  
Director, CAHLP