



March 2, 2015

Honorable Efrain Silva
Mayor, City of El Centro
El Centro City Hall
1275 Main Street
El Centro, CA 92243

Dr. Alejandro Calderon
President, Board of Trustees
El Centro Regional Medical Center
1415 Ross Avenue
El Centro, CA 92243

Re: Transfer Agreement with Planned Parenthood, Demand for Immediate Corrective Action pursuant to Cal. Gov. Code §§ 54950 *et seq.*, and California Open Records Act Request

Dear Mayor Silva and Dr. Calderon:

As you are no doubt aware, the recent approval by the Board of Trustees of El Centro Regional Medical Center (“ECRMC”) of a transfer agreement with Planned Parenthood has resulted in considerable controversy. The proposal has been of great concern to many El Centro citizens, including to our client the Imperial Valley Coalition for Life.

We understand that presentations were made to the Board of Trustees at its February 24, 2015, meeting which identified the potential liability to ECRMC, a city-owned hospital funded by the citizens and taxpayers of El Centro, CA, should the Board of Trustees approve this transfer agreement. We further understand that the Board of Trustees then met in closed session to discuss this agreement and, though there was no final vote on the agreement, an ECRMC officer executed the agreement. Approval by ECRMC of this transfer agreement was a condition precedent for Planned Parenthood, the largest abortion provider in the Nation, to open its abortion facility in El Centro.

We are informed that nearly two thousand citizens of El Centro attended the February 24, 2015 Board of Trustees meeting to express their concerns about the opening by Planned Parenthood of an abortion facility in El Centro. Paramount among those concerns was the substantial risk of liability that would be imposed on ECRMC by Planned Parenthood should the Board of Trustees execute the transfer agreement. Of course, many of El Centro’s citizens have strong views against

abortion and considered those views important to the Board of Trustees and the El Centro City Council as this decision was being considered.

In addition to presentations by, among others, Pastor Chris Nunn of El Centro's Christ Community Church and by his attorney David C. Gibbs III, a letter dated February 23, 2015 from Alliance Defending Freedom documented these potential liabilities should the Board of Trustees (or the City Council) enter into a transfer agreement with Planned Parenthood.

In our experience, Planned Parenthood frequently threatens to sue the governmental body and even to sue individual members of these governmental bodies should the governmental body make a good faith decision that is in the best interests of its constituents, but not in accord with Planned Parenthood's demands. While we are not privy to any such demands by Planned Parenthood here, it was for this reason that, in our February 23, 2015 letter we offered to defend, on a pro bono basis, the Board of Trustees, the City Council, and even the individual governing body members in the event of such a threat or a lawsuit by Planned Parenthood.

Our clients and others were informed that there had been a request by members of the El Centro City Council to have a joint meeting with the El Centro Regional Medical Center Board of Trustees to consider this matter before there was any decision by any governmental body on the execution of the transfer agreement with Planned Parenthood. We are advised by our clients that this request was totally ignored by the Board of Trustees and was not even mentioned during the February 24, 2015 public meeting.

Our clients and others were led to believe prior to the February 24, 2015 meeting that there would be no vote by the Board of Trustees on whether or not to approve the transfer agreement with Planned Parenthood at this meeting. Nevertheless, we are informed that, in accord with a meeting agenda made available shortly before the meeting and which cited "Government Code § 54956.9(b)(1)," the Board of Trustees went into a "closed session" near the end of the public meeting to consider "anticipated litigation."

The meeting agenda does not specifically identify this "anticipated litigation" except to note that the threat presented "significant exposure" to ECRMC and thus to the citizens of El Centro. Additionally, from our review of the Board of Trustees' agenda, the prospect of a vote on the transfer agreement with Planned Parenthood does not appear on the agenda.

The Board of Trustees' February 24, 2015 agenda listed, under the heading "Recess to Closed Session," the topic of "Anticipated Litigation." All that was published about this subject was the following:

"The Board will recess to closed session with its attorney regarding anticipated litigation in that: **Significant Exposure to Litigation Against the Agency.** A point

has been reached where, in the opinion of the Board of Trustees on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the agency. There is 1 such potential exposure to be discussed. (Government Code § 54956.9(b)(1).”

Our clients later learned that, during this “Closed Session,” the Board of Trustees voted to execute the transfer agreement with Planned Parenthood. Our clients advise us that the “threat” against ECRMC or El Centro made by Planned Parenthood was that, should ECRMC or the El Centro City Council not enter in to the requested transfer agreement, that Planned Parenthood would sue ECRMC and/or the City of El Centro and that ECRMC would lose all state and federal Medicaid and Medicare funding.

While we are sure you will correct any of the foregoing facts that have been made known to us by our clients that you believe to be in error, it is on the basis of these facts that we ask you to reconsider your decision so as to comply with California law and, more importantly, to reflect the will of the citizens of El Centro.

You are certainly aware that meetings of the ECRMC Board of Trustees are subject to the requirements of the Brown Act, Cal. Gov. Code §§ 54950 et seq. The Brown Act is a sunshine law intended to promote openness and transparency in conducting public business. *Shapiro v. Board of Directors of Centre City Development Corp.*, 35 Cal.Rptr.3d 826 (App.4 Dist. 2005), 134 Cal. App.4th 170. Its provisions for open meetings and public participation are to be broadly construed to effectuate its purpose and suppress the mischief it is directed at, whereas any statutory exceptions are to be narrowly construed. *Id.*

With regard to “closed sessions” of the ECRMC Board of Trustees, Cal. Gov. Code § 54954.5 provides that no legislative body shall be in violation of § 54954.2 or § 54956 if the closed session items are described in substantial compliance with its provisions. If matters are to be discussed in closed session pursuant to § 54956.9 regarding “anticipated litigation,” the body must provide notice that there is “significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9,” and the agency may additionally be required to provide additional information on the agenda or in an oral statement pursuant to paragraphs (2) to (5) of subdivision (e) of that same section. Subdivision (e) requires *public* disclosure (either on the agenda or by announcement) of facts and circumstances “that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs.” These sections also establish several other prerequisites for meeting closure depending upon the asserted reason for disclosure. Additionally, § 54956.9(g) mandates that prior to closed sessions being held pursuant to § 54956.9, the agency must state on the agenda or publicly announce which paragraph of subsection (d) authorizes the closed session.

It seems clear from the facts related to us by our client that the foregoing statutory requirements were not met by the Board of Trustees. In fact, based upon the facts and information we have received from our clients and others, it does not appear that *any of the statutory requirements of the Brown Act were met by the ECRMC at the Board of Trustees' February 24, 2015 meeting with regard to the consideration and subsequent execution by ECRMC of the Planned Parenthood transfer agreement.*

The Board of Trustees' February 24, 2015 agenda expressly acknowledged that the meeting was a "public meeting" and referenced various statutory citations. One of the citations referenced on the agenda, apparently as justification for closing the Board's meeting to discuss a matter regarding "anticipated litigation," was Cal. Gov. Code § 54956.9(b)(1). There is no such provision in the current California Government Code. The current § 54956.9(b) has no subsections and simply provides that "all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter." This statutory citation does not appear to justify the "Closed Session."

The issue of the potential ECRMC transfer agreement with Planned Parenthood did not appear on the Board of Trustees' agenda. Indeed, as related above, our clients and others were led to believe that there would be no vote by the Board of Trustees at this February 24, 2015 meeting on whether or not to approve the transfer agreement with Planned Parenthood. As the media has subsequently noted, "the topic of hospital privileges for the Planned Parenthood (PP) abortion clinic... was not thought to be on the [Board's] agenda."¹ That is certainly understandable because the potential approval of the transfer agreement was **not even noted** on the Board's agenda.

Moreover, as there was no proper statutory authority cited by the Board of Trustees for closing its February 24, 2015 meeting for this purpose, the closure was improper and, in any event, neither our clients nor apparently any member of the public was made aware, as required by the Brown Act, that the issue of the potential ECRMC transfer agreement with Planned Parenthood was even going to be discussed in Board's closed session, much less *voted* on.

Pursuant to Cal. Gov. Code § 54960.1, the Imperial Valley Coalition for Life respectfully demands that the ECRMC Board of Trustees take immediate action to cure and correct its actions taken in violation of California law. Specifically, the Coalition demands that the Board of Trustees rescind the vote held in closed session on February 24, 2015 (to include the transfer agreement, if it was executed) and conduct a proper open public meeting which provides appropriate notice that the transfer agreement sought by Planned Parenthood will be discussed and voted upon.

¹ Janet Cowne, *El Centro Trustees Vote for Planned Parenthood Agreement*, The Desert Review, February 25, 2015.

In addition to the foregoing demand, on behalf of the Imperial Valley Coalition for Life, we request that you provide us with the factual bases for the February 24, 2015 decision, including the bases for the Board of Trustees' belief that there was "anticipated litigation" which presented serious potential liability to ECRMC or the City of El Centro. As you provide us with this information, please also provide us with the names and titles of all persons who were in attendance at this February 24, 2015 closed session meeting of the Board of Trustees.

Pursuant to the California Open Records Act, Cal. Gov. Code §§ 6250-6277, our clients request production of all documents, dated from January 1, 2012 to date and in the possession, custody or control of the ECRMC Board of Trustees, the City of El Centro, or any attorney related thereto and which (i) concern or relate to the proposed Planned Parenthood transfer agreement with ECRMC; (ii) concern or relate to the threat of litigation to ECRMC by Planned Parenthood (or any other person or entity) and concerning the Planned Parenthood transfer agreement with ECRMC, including, without limitation, any demand letters and responses thereto; (iii) concern or relate to the statutory, regulatory, or administrative bases for the claim(s) that ECRMC, should it not enter into the Planned Parenthood transfer agreement, will lose all federal and state Medicaid and/or Medicare funding; (iv) memorialize communications from or to and to or from ECRMC and/or the City of El Centro concerning the Planned Parenthood transfer agreement with ECRMC, including when discussions relating to the transfer agreement commenced between ECRMC and/or the City of El Centro and Planned Parenthood; and (v) concern or relate to any investigation conducted by the ECRMC and/or the City of El Centro regarding the Planned Parenthood transfer agreement, including, without limitation, any risk assessment, financial analysis, insurance coverage and liabilities, increases in patients (including cost assessments for patients) suffering from post-abortion complications. In addition, we request production of the audio/video recording of the February 24, 2015 Board of Trustees meeting; any minutes or notes evidencing action at the Closed Session of the February 24, 2015 Board of Trustees meeting; the record of the votes for or against approval and/or execution of the Planned Parenthood transfer agreement; and a true and correct copy of the executed transfer agreement.

As required by Cal. Gov. Code § 6253(c), these requested documents are, unless specifically agreed otherwise in writing, to be produced within ten (10) days of the date of this letter. We further request that, wherever possible, records be produced electronically. We are willing to pay any reasonable fee for copying and postage that is legally authorized for complying with this request, up to \$250.00. In that regard, with the produced documents, please provide us with an itemized receipt for any amounts due and it will be promptly paid upon receipt. If you anticipate that the charge will exceed \$250.00, please notify us in advance so we may discuss this matter further with you.

If you deny this request or any part hereof, please provide a written explanation for each such denial including the specific statutory exemption(s) you rely on for each such denial. Additionally, please provide any segregable portions of records requested herein. Cal. Gov. Code § 6253(a).

Thank you for your cooperation. We look forward to your response.

Sincerely,

s/ Michael J. Norton

Michael J. Norton
Natalie L. Decker
ALLIANCE DEFENDING FREEDOM

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cc: Kris M. Becker, Esq.
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