



March 16, 2015

Via Hand-Delivery and U.S. Mail

Amanda Brooke
Acting President, Board of Trustees
El Centro Regional Medical Center
1415 Ross Avenue
El Centro, CA 92243

Re: Demand for Cure of Brown Act Violation by the Board of Trustees of the El Centro
Regional Medical Center

Dear Ms. Brooke:

As you know, we represent the Imperial Valley Coalition for Life and have expressed our concern about the February 24, 2015 decision by the Board of Trustees of the El Centro Regional Medical Center (“ECRMC”) in Closed Session to authorize ECRMC management officials to enter into a transfer agreement with Planned Parenthood so as to enable Planned Parenthood to open an abortion facility in El Centro.

We are informed that the Board of Trustees announced to those present for its February 24, 2015 public meeting that it was recessing into “Closed Session” to discuss unidentified “anticipated litigation.” While this “anticipated litigation” was not identified to those in attendance at the public meeting, we have since been informed that, during this Closed Session, the Board of Trustees was informed by attorneys for the Board of Trustees and/or the City of El Centro that Planned Parenthood had threatened to sue the Board of Trustees and to seek to hold individual members of the Board of Trustees personally liable, if the Board of Trustees did not approve the transfer agreement. We are further informed that, following some discussions, in what has since been characterized as either a “poll” or a “vote” of the Board of Trustees, the Board of Trustees was tied at 3 to 3, with the chair abstaining. While such a tie should have resulted in the defeat of the proposal to enter into a transfer agreement with Planned Parenthood, we are further informed that the Board of Trustees was advised by counsel that, in light of this tie vote, the decision could be made by ECRMC management officials as to whether or not to enter into the transfer agreement. Apparently, again possibly due to the threat of litigation by Planned Parenthood, ECFRMC management officials, while the Board of Trustees was still in Closed Session, effectively

instructed ECRMC management officials to approve and execute the transfer agreement with Planned Parenthood.

While we do not believe that, in light of the fact that there are several abortion facilities within a short distance of El Centro, any such lawsuit by Planned Parenthood would be successful, for all the reasons specified below, this action patently violates the Brown Act and must, within thirty (30) days from the date hereof be cured. These violations are as follows:

1. In violation of the Brown Act, the ECRMC Board of Trustees voted on a policy decision in a closed session under the agenda heading line of "Anticipated Litigation." During such a closed session, all that is legally authorized to occur is the transmission of legal advice by counsel. The attorney-client privilege in the context of the Brown Act is strictly construed. *Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.*, 263 Cal.App.2d 41 , 58 (1968) ("Public board members, sworn to uphold the law, may not arbitrarily or unnecessarily inflate confidentiality for the purpose of deflating the spread of the public meeting law. Neither the attorney's presence nor the happenstance of some kind of lawsuit may serve as the pretext for secret consultations whose revelation will not injure the public interest."). A closed session cannot be used, as was done here, to institute an ad hoc policy. (Cal. Gov. Code § 54956.9) 71 Ops. Cal. Atty. Gen 96, 104-105.
2. As we advised you and the City Council in our March 2, 2015 letter, the ECRMC Board of Trustees did not properly declare on the published agenda or provide notice in open session or otherwise its intent to vote on a policy issue prior to 72 hours in advance of the regular meeting and the Closed Session; or with 24 hours advance notice for a special meeting. (Cal. Gov. Code § 54954.2(a)). *See also Carlson v. Paradise United School Dist.*, 18 Cal.App.3d 196 (1971) (affirming injunction where agenda item was inadequate, misleading and failed to indicate the scope of board's plans).
3. Assuming the ECRMC Board of Trustees contend they did not actually vote on this policy issue on February 24, 2015, but only "polled" the ECRMC Board Trustees, then, in that event, the ECRMC Board of Trustees is in violation of the Brown Act for conducting an illegal "serial meeting". All deliberation for any policy issue must be conducted in open session for public review. (Cal. Gov. Code § 54953(c)). The Brown Act expressly prohibits serial meetings that are conducted through direct communications, personal intermediaries, or technological devices for the purpose of developing a concurrence as to action to be taken. (Cal. Gov. Code § 54952.2(b); *Stockton Newspapers, Inc. v. Redevelopment Agency*, 171 Cal.App.3d 95, 103 (1985).
4. We understand persons not authorized by law were invited into and to remain in the closed session. In that event, the ECRMC Board of Trustees violated the law by having a "Semi-

Closed Session”. 46 Ops. Cal. Atty. Gen. 34, 35 (1965) (Cal. Atty. Gen., Indexed Letter, No. IL 70-184 (October 9, 1970)).

5. As the transfer agreement is considered a contract between ECRMC and Planned Parenthood, California law requires that all contacts, not exempted in the Brown Act, be debated and ratified in open session. Cal. Gov. Code § 54950. Brown Act exceptions have been construed narrowly; thus if a specific statutory exception authorizing a closed session cannot be found, the matter must be conducted in public regardless of its sensitivity. (Cal. Gov. Code § 54962; *Rowen v. Santa Clara Unified School District*, 121 Cal.App.3d 231, 234 (1981); 68 Ops. Cal. Atty. Gen. 34, 41-42 (1985).

While our client would prefer to see that the Board of Trustees and the City Council take action in the best interest of the citizens of El Centro and do the right thing, our client will not be reluctant to bring a civil action against the Board of Trustees for this Brown Act violation if this improper action is not cured within fifteen (15) days from the date of this letter. In this regard and as you know, a successful Brown Act plaintiff is entitled to its attorney’s fees and costs. As we believe our chances of success based on the foregoing facts are quite high, we urge you to correct this manifestly unjust and unwarranted action within the requested fifteen (15) day time period.

We look forward to hearing from you that cure of this illegal action has been made.

Sincerely,

s/ Michael J. Norton

Michael J. Norton
Natalie L. Decker
ALLIANCE DEFENDING FREEDOM

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