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February 2, 2019

**VIA EMAIL ONLY**

Regina A. Petty  
Fisher & Phillips, LLP  
4747 Executive Drive  
Suite 1000  
San Diego, CA 92121

Re: Palomar Faculty Federations's Right To Petition The Government

Dear Ms. Petty:

I am in receipt of your letter of January 25, 2019, asserting that constituents meeting separately with each one of the members of the Palomar Community College District's Governing Board is somehow "improper under the Brown Act" under the theory that this would constitute a serial meeting of the Board. To be honest, I am stunned that a licensed attorney would make such a preposterous claim.

I would invite you to reacquaint yourself with the final clause of the First Amendment to the United States Constitution, which protects "the right of the people ... to petition the Government for a redress of grievances." While you are at it, I would also commend to you the Privileges or Immunities Clause of the Fourteenth Amendment to the United States Constitution, which provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." And, for good measure, I might suggest you peruse Article VI, Clause 2 of the Constitution, which makes clear that "this Constitution ... shall be the supreme Law of the Land, any Thing in the Laws of any State to the Contrary notwithstanding." Put simply, these constitutional provisions, taken together, guarantee the right of PFF and its members to lobby all five members of the District's Governing Board, regardless of what any state law might say to the contrary.

To be clear, the Brown Act does not actually purport to prohibit members of the public from lobbying their elected officials. You claim that "an organization's announced plan to conduct a series of single trustee meetings with a quorum of the District's Governing Board and the membership of PFF does not qualify for any of the statutory exemptions from compliance with the Brown Act. *See*, Government Code § 54952.2." It appears you did not read this statutory provision carefully, as it contains the exact exemption you claim is lacking. Subdivision (c)(1) of Section 54952.2 makes clear that "individual contacts or conversations between a member of a legislative body and any other person that do not violate subdivision (b)" are specifically

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excluded from regulation by the Brown Act. Subdivision (b), meanwhile, only prohibits a majority of the Governing Board from collectively discussing District business “directly or through intermediaries” via a “series of communications.” But since the Palomar Faculty Federation is **not** an intermediary for any Governing Board members, and is not organizing these “Meet the Trustees” at the behest of any member of the Governing Board, Government Code § 54952.2(b) does not prohibit a majority of the Governing Board from independently meeting with their constituents to hear their concerns.

In the event you find neither the constitutional provisions I cited nor the statutory provisions you yourself cited to be persuasive, I trust you will at least be swayed by the guidance issued by California's Office of the Attorney General, which issued a pamphlet in 2003 that, in relevant part, addresses this very issue (a copy of that pamphlet is attached to this email, and can also be found at the following link: <https://oag.ca.gov/open-meetings>). In its guidance, the Attorney General explains:

The prohibition against serial meetings must be reconciled with the exemption for individual contacts and communications contained in section 54952.2(c)(1). Individual contacts or communications between a member of a legislative body and any other person are specifically exempt from the definition of a meeting. (§ 54952.2(c)(1).) **The purpose of this exception appears to be to protect the constitutional rights of individuals to contact their government representatives regarding issues which concern them.** To harmonize this exemption with the serial meeting prohibition, the term “any other person” is construed to mean any person other than a board member or agency employee. Thus, while this provision exempts from the Act's coverage conversations between board members and members of the public, it does not exempt conversations among board members, or between board members and their staff.

By using the words “individual contacts or conversations” it appears that the Legislature was attempting to ensure that individual contacts would not be defined as a meeting, while still preventing the members of a body from orchestrating contacts between a private party and a quorum of the body. **Accordingly, if a member of the public requests a conversation with an individual member of the board, who then acts independently of the board and its other members in deciding whether to talk with the member of the public, no meeting will have occurred even if the member of the public ultimately meets with a quorum of the body.**

The Brown Act: Open Meetings for Legislative Bodies (2003), p. 13 (emphasis supplied).

As you can see, therefore, the Brown Act does not prohibit PFF from meeting individually with each one of the Governing Board members to lobby them – and even if it did, the Constitutional right to petition the government would trump any such prohibition.

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For the above-stated reasons, the Palomar Faculty Federation will not agree to conduct its "Meet the Trustees" gatherings as public meetings governed by the Brown Act. And PFF will not desist from seeking to lobby each one of Governing Board members individually over issues of concern. I trust the above recitation of basic legal principles will put to rest this foolishness about PFF's conduct somehow violating the Brown Act.

If, however, the District continues to believe that "the individual invitations extended by Ms. Teresa Laughlin to the entire Governing Board of the Palomar Community College District to meet with the membership of PFF are improper under the Brown Act[.]" then I invite the District to file a lawsuit against PFF to test its assertion. My office is authorized to accept service of process of any such lawsuit.

Please also be advised that if the District places on its February 12, 2019 agenda an item advising Governing Board members that participation in the "Meet the Trustees" events (or similar lobbying meetings with PFF members) is illegal, PFF reserves the right to file a lawsuit against the District seeking a judicial declaration that such meetings are not prohibited by the Brown Act.

Sincerely,



Ricardo Ochoa, Esq.  
OCHOA|LAW

Cc: Teresa Laughlin (via email)