

May 12, 2021

Via Email Only

tcarmel@carnaclaw.com

Kenneth Jorgensen
Deputy District Attorney
Special Prosecutions Division
1035 Palm Street
San Luis Obispo, CA 93408

RE: Notice of Ralph M. Brown Act Violation

Dear Mr. Jorgensen:

I serve as District Counsel to the Cambria Community Services District (“CCSD”). This letter is in reply to your May 7, 2021 Notice of Ralph M. Brown Act Violation sent to John Weigold, the General Manager of the CCSD. In your letter you assert that the CCSD violated the Brown Act at a closed-session meeting that took place on March 11, 2021, and that the meeting packet should have included correspondence from Mr. John Paul Drayer threatening potential litigation related to compliance with the California Voting Rights Act (Elections Code Section 14025 et seq., “CVRA”). Respectfully, we disagree that a Brown Act violation occurred. As explained below, the referenced closed session was properly agendized and conducted pursuant to the requirements of the Brown Act.

As you noted, the agenda description listed the closed session as being held pursuant to Government Code Section 54956.9(d)(2). That section permits a closed session when, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency. Subsection (e) of Section 54956.9 further defines “existing facts and circumstances” for purposes of subsection (d)(2).

You assert that a violation occurred because “... the meeting packet should have included a communication by Mr. Drayer threatening potential litigation concerning the District’s compliance with the Voting Rights Act.” This position appears to be based upon subsection (e)(3) of Government Code Section 54956.9, which provides that existing facts and circumstances include:

The receipt of a claim pursuant to the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

However, Mr. Drayer has not threatened litigation against the CCSD, nor, as will be explained, could he properly do so. Rather, Mr. Drayer sent an email to the CCSD in the form of a Public Records Act request. In his email he asked for “A copy of the Cambria CSD's most current test of Racial Polarization to prove compliance with the State & Federal Civil Rights Voting Acts to use an at large local election by precinct of protected voters by race, ethnic group, language, 2 races, and 3 or more races of voters.” Prior to that, Mr. Drayer had submitted another request to the District, asking “Does the Cambria CSD plan on switching to district elections after the 2020 Census results are released?” He has also left related voicemails for District staff.

Mr. Drayer is not a resident of Cambria. He resides in Cayucos. As such, under the CVRA, he would not be a proper plaintiff in an action seeking to enforce that law against the CCSD. In that respect, Election Code Section 14032 provides that:

Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

Since Mr. Drayer did not, and could not, threaten litigation under the CVRA against the District, the closed session was held pursuant to subsection (e)(1) of Government Code Section 54956.9, which provides that existing facts and circumstances related to a significant exposure to litigation includes:

Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

While Mr. Drayer might potentially recruit a Cambria voter and resident, who is a member of a protected class, to be a potential plaintiff against the CCSD in a CVRA lawsuit, to date we are unaware that he has done so.

As you note, Mr. Drayer has contacted other agencies regarding compliance with the CVRA. It appears that he is on a crusade to get other agencies in the region to change their election systems for their legislative bodies from “at large” to “by district”; however, Mr. Drayer can only be a potential plaintiff in Cayucos. While clearly there is a significant exposure to litigation against the CCSD under the CVRA, and at some point Mr. Drayer may recruit a potential plaintiff to sue the CCSD under that statutory scheme, so far a potential plaintiff has yet to emerge or threaten litigation. Accordingly, a closed session under Government Code Section 54956.9(d)(2) based upon subsection (e)(1) was appropriate to allow the Board of Directors an opportunity to discuss how to address that significant exposure to litigation.

For the record, the CCSD has contracted with National Demographics Corporation (“NDC”) to provide an analysis of whether racially polarized voting is an issue in Cambria.

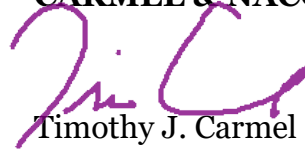
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CARMEL & NACCASHA LLP

We trust the foregoing adequately addresses your May 7, 2021 letter regarding compliance with the Brown Act. Please contact the undersigned if you would like to discuss this matter further.

Sincerely,

CARMEL & NACCASHA LLP



Timothy J. Carmel
District Counsel

TJC/lmh

Cc: John F. Weigold, IV, General Manager