



May 15, 2014

VIA U.S. MAIL AND E-MAIL

Ms. Lori Norton, County Administrative Officer
Calaveras County Board of Supervisors
891 Mountain Ranch Road
San Andreas, CA 95249
lnorton@co.calaveras.ca.us

RE: Resolution No. 2014-035

Dear Ms. Norton and Board of Supervisors:

I am writing on behalf of the American Civil Liberties Union of Northern California (ACLU-NC) and over 20 Calaveras County residents to express concern about the Board's adoption of Resolution No. 2014-035, adopted on April 8, 2014. We are concerned both that the Resolution expressly endorses a specific religion, in violation of the California Constitution, and that the Board adopted it without allowing for public comment, in violation of the Brown Act.

In enacting Resolution 2014-035, the Board voted to recognize the Calaveras Door of Hope's work and specifically included its "advocacy and education" that "seeks to enlighten and strengthen the lives of women and young women in Calaveras County by inviting them to test and see for themselves the many blessings that can come from living the teachings of Christ."¹ This part of the Resolution violates two separate provisions of the California Constitution.

Article I, section 4 of the California Constitution guarantees "Free exercise and enjoyment of religion without discrimination or preference" and prohibits laws "respecting an establishment of religion." Government must commit to "'a position of neutrality' whenever 'the relationship between man and religion' is affected." *Fox v. City of Los Angeles*, 22 Cal. 3d 792, 798 (1978). "In determining whether government action is neutral, a secular purpose must be shown. The secular purpose stated must be genuine, not a sham, and it may not be merely secondary to what is primarily a religious objective." *Paulson v. Abdelnour*, 145 Cal. App. 4th 400, 422 (2006). The Board's admitted purpose for adopting the Resolution is to recognize the Calaveras Door of Hope "[i]n conjunction with the annual '40 Days for life' program,"² "a focused pro-life campaign with a vision to access God's power through prayer, fasting, and

¹Calaveras County Resolution No. 2014-035, at 1:13-15.

²Calaveras County Bd. of Supervisors Agenda Submittal, Agenda No. 3.

peaceful vigil to end abortion.”³ By adopting the Resolution, the Board has unlawfully given “its stamp of approval” to the religious content of the Calaveras Door of Hope’s work. *Okrand v. City of Los Angeles*, 207 Cal. App. 3d 566, 579 (1989).

While it is permissible for the Board to recognize the charitable work of local religious groups, the Board must do this without endorsing the group’s sectarian tenants. Here the Board has engaged in “improper political entanglement” by creating “[t]he appearance of support” of the Calaveras Door of Hope’s position on abortion. *Feminist Women’s Health Ctr., Inc. v. Philibosian*, 157 Cal. App. 3d 1076, 1091 (1984). In the future we hope the Board will also commend the good work of clinics providing the full range of women’s health care and of local groups providing women with objective information about their pregnancy options.

Furthermore, Article XVI, section 5 of the California Constitution, “forbids official aid to any ‘religious sect, church, creed, or sectarian purpose.’” *Id.* at 1092. This “provision was “intended to insure the separation of church and state and to guarantee that the power, authority, and financial resources of the government shall never be devoted to the advancement or support of religious or sectarian purposes.” *California Educ. Facilities Auth. v. Priest*, 12 Cal. 3d 593, 604 (1974). By adopting the Resolution the Board has provided aid “in the intangible form of prestige and power” to the Calaveras Board of Hope’s sectarian purpose, in violation of this section. *Fox*, 22 Cal. 3d at 802.

In addition to the concerns regarding the content of the Resolution, the ACLU-NC objects to the Board’s failure to invite public comment before the Board vote as required by the Brown Act.⁴ On April 8, residents of Calaveras County attended the Board’s meeting to ask the Board to vote against the Resolution, as is their right under the Brown Act. After the Resolution was introduced, the Board chair only allowed the supervisors and a representative from the Calaveras Door of Hope to speak before the vote was taken. After adopting the Resolution and reading it into the record, the Board finally invited members of the public to speak. Nothing in the Board’s published agenda provided for public comment before this item was to be considered.⁵

This violated the Brown Act. “[T]he purpose of the Brown Act is to ensure openness in decisionmaking by public agencies and facilitate public participation in the decisionmaking process.” *Serv. Employees Inter. Union, Local 99 v. Options--A Child Care & Human Servs. Agency*, 200 Cal. App. 4th 869, 877 (2011). To accomplish this purpose, the law requires that legislative bodies allow the “public to directly address the legislative body on any item of

³ <http://www.40daysforlife.com/about.html>.

⁴ Cal. Gov’t Code §§ 54952.6, 54954.3(a); *The Brown Act: Open Meetings for Local Legislative Bodies*, California Attorney General’s Office, at *vii (2003), available at http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf.

⁵ Also, the agenda submittal for this item indicates the Board’s determination that public hearing was not required. Calaveras County Bd. of Supervisors Agenda Submittal, Agenda No. 3.

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interest to the public, **before or during** the legislative body's consideration of the item."⁶Here public participation was allowed only after the decision had been made and the final vote taken. This violated both the spirit and the letter of the Brown Act.

The ACLU-NC and the enclosed list of supporters, including [REDACTED] and other residents of Calaveras County, ask the Board to repeal the Resolution or that part of it that violates the state constitution, as discussed above. We also ask the Board to consider all future agenda items in accordance with the Brown Act, giving members of the public notice and a real opportunity to comment *before* action is taken by the Board. This change should be reflected in all written agendas for open Board meetings.

Please let us know your position on these matters by June 5, 2014. Also, please feel free to contact me if you have any questions or concerns.

Sincerely,



Novella Coleman
Staff Attorney

Enclosure: list of supporters

cc: Cliff Edson, Vice-Chair and District 1 Supervisor, cedson@co.calaveras.ca.us
Christopher Wright, District 2 Supervisor, cwright@co.calaveras.ca.us
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⁶Cal. Gov't Code § 54954.3(a)