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VIA WEB PORTAL

Assemblymember Blanca Pacheco
State Capitol
P.O. Box 942849
Sacramento, CA 94249

Re: <u>AB 817 – OPPOSE</u>

Dear Assemblymember Pacheco:

On behalf of the First Amendment Coalition,[1] I write in respectful opposition to AB 817, because it would reduce the transparency and accountability of local government meetings, by allowing certain entities to meet entirely virtually.

Since the beginning of the COVID-19 pandemic, we have seen the success of virtual meetings when used in emergency situations to keep government functioning while protecting public health and safety. Remote access and participation options have also benefited members of the public, providing additional avenues for participation, leading to increased civic engagement. However, allowing our public bodies to conduct public business entirely virtually in non-emergency situations erodes long-standing democratic safeguards of transparency and accountability. Despite the benefits of remote public participation as an option, it does not fully replace the benefits of a physical congregation of officials, community members, press, and other interested people.

A physical location open to the public allows everyone in the room to read body language, approach and engage officials and fellow attendees, to see how public officials interact with one another, and see to whom else they may be speaking. This has implications for members of the press who are able to keep their communities better informed by being able to access — and photograph — those who gather at these meetings. And it has implications for anyone who wishes to observe or participate in local government. In-person civic engagement is especially important to historically marginalized communities whose voices have often been minimized or ignored.

[1] The First Amendment Coalition works across California to protect and promote a free press, freedom of expression and the people's right to know. Nonpartisan and nonprofit, FAC believes that the broadest range of engaged and informed communities is essential to the health of our democracy. We co-authored and sponsored Proposition 59, the Sunshine Amendment to the California Constitution, enacted by voters in 2004.

AB 817 Reduces Civic Participation Options and Reduces Face-to-Face Accountability

This bill creates a new definition of “subsidiary bodies.” While subsidiary bodies, as defined, are those that serve in an advisory capacity, this does not mean their work is any less important or deserving of scrutiny and public participation. In fact, significant policy development and decisions are often made in subsidiary bodies, which can delve into complex details on specific topics. These bodies should not be held to a lower standard of transparency and accountability.
Consider a few examples:

- **Police oversight:** In Vallejo, years of organizing and activism by community members, including relatives of those killed by police, has led to the formation of the city’s first Police Oversight and Accountability Commission.[2] While appointees are community members who serve on a volunteer basis and the work is advisory, they will perform the important tasks of collecting complaints from the public, investigating reports of serious misconduct and making policy and discipline recommendations to the city’s police department. Meetings of this commission present an opportunity for impacted families to gather in the same place as officials, such as the police chiefs and command staff who may be called upon to attend, and make their voices heard.

- **Elections matters:** In Redding, a Shasta Elections Commission was established to advise and make recommendations on elections-related activities. The commission, made up of residents appointed by each member of the Shasta Board of Supervisors, have responsibilities that include touring and observing the elections department and registrar of voters facilities asking questions of elections officials, who sometimes appear to make presentations and provide other updates. The commission’s public meetings are no less deserving of all avenues of public access and participation.[3]

- **Taxpayer dollars:** Across California, cities rely on budget committees to provide advice about which government programs to fund and which to kill. These committees, made up of elected representatives, would likely be subsidiary bodies under AB 817's definition. Often, the advisory body's recommendations are rubber stamped by the full council, due to the detailed nature of budgeting. Under AB 817, these budget committees could drastically alter or cut funding for local programs like healthcare, housing, sanitation, and recreation without ever having to face an affected resident in person. Look to the City of Fresno, where an investigation by a local news organization determined it was already using evasive tactics to avoid the Brown Act’s open-meeting requirements.[4] Creating new definitions and ambiguities for relaxed rules will only give local governments a greater incentive and opportunity to do so.

- **Book bans and other controversial topics**: In Huntington Beach and Fresno County, the topic of library censorship has spurred residents on both sides of the issue to organize and

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[2] Vallejo establishes police oversight amid legacy of distrust, Open Vallejo
[3] Editorial: Public Officials Must Transparently Serve the Public’s Good, Shasta Scout
[4] Fresno’s budget committee doesn’t meet in public. Legal experts say it’s a major problem, Fresnoland

raise their voices in large numbers.[5] There is nothing stopping a city or county from creating bodies like the new parent oversight boards — established in these two communities to make book acquisition and placement decisions — in a way that would fit AB 817's definition of a subsidiary body, and therefore allow them to be excused from meeting in person. Appointees to new bodies established in highly politicized topics could simply turn the volume down rather than confront critical public comments and lawful demonstrations.

In-person civic engagement sends a far more powerful message than those forced to be filtered through a screen. In a recent meeting, an activist implored people in the room to "stand up" before the City of San Diego's Budget Review Committee if they believed the mayor's proposed budget cuts to equity programs were wrong.[6] Instantly, the committee saw before them a room full of constituents, almost all standing in solidarity, some wearing matching shirts and holding signs. A committee member was even moved to stand up and join the display.[7] A teleconferencing line simply does not allow the community to be able to send the same message.

AB 817 Creates Confusion That Will Lead to Disputes

In enacting the Brown Act in 1953, the Legislature declared that "public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people's business." It is the intent, the Legislature said, "that their actions be taken openly and that their deliberations be conducted openly." For these open-meeting protections to have meaning, the law must be clear to both the public agencies beholden to it and the members of the press and public who serve as the watchdogs of our democracy. AB 817's attempt to create a new definition for some bodies that proponents believe should have relaxed teleconferencing rules will inevitably create confusion for both the public and those performing public service.

AB 817 defines "subsidiary body" to mean a legislative body that: (1) "[i]s described in subdivision (b) of Government Code Section 54952"; (2) "[s]erves exclusively in an advisory capacity"; and (3) "[i]s not authorized to take final action on legislation, regulations, contracts, licenses, permits, or any other entitlements." To determine if a given body meets this definition, it requires analysis of the particulars of the body. Courts might strain to define differently "exclusively advisory capacity" and "not authorized to take final action on legislation, regulations, contracts, licenses, permits, or any other entitlements" when they mean, in effect, the same thing. How will the public or public agencies, or courts, if there is a dispute, understand the drafter's intended distinction between the second and third prongs of the "subsidiary body" definition? And even if there was a path to write a definition less ambiguous and and less susceptible to different interpretations, requiring such an analysis to determine if a body can avail itself to more relaxed teleconferencing rules will inevitably lead to disputes.

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[5] Censorship on certain children's books puts Fresno libraries on a 'slippery slope', Fresno Bee and Editorial: Huntington Beach will let neighbors censor neighbors' reading choices. That's wrong, Los Angeles Times
[6] https://sandiego.granicus.com/player/clip/8888?meta_id=935718
[7] https://x.com/GJonesWright/status/1785868769426018665

One of the important features of the Brown Act is the same transparency and accountability rules apply to all bodies covered by the act, with few exceptions. When the Court of Appeal held that the Brown Act applies to both decisionmaking and deliberative bodies it said: “Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices.” *Sacramento Newspaper Guild, etc. v. Sacramento Cty. Bd. of Supervisors*, 263 Cal. App. 2d 41, 50 (1968). Yet AB 817 seeks to roll back open meeting protections for those it defines as subsidiary bodies, which embrace “inquiry and discussion stages.”

Existing Law Already Provides Flexibility for Members of Bodies

Members of these bodies already have flexibility to participate in meetings virtually, under a variety of circumstances. Teleconferencing flexibility has been part of the Brown Act since 1988. Today, members of the legislative bodies covered by the act have the ability to participate remotely from publicly accessible locations so long as they follow important rules designed to protect transparency and accountability. In emergencies, the governor has the ability to suspend Brown Act requirements across the state, as we saw during the COVID-19 pandemic, and recent law changes have given more flexibility to local bodies to suspend certain in-person meeting requirements during emergencies. Additionally, AB 2449 (Rubio) of 2022 allows members to participate from private locations for a specified number of meetings under circumstances where the member has just cause, such as a caregiving need, illness, or disability.

This flexibility for those who choose to perform public service to be absent from physical meeting spaces must be balanced with the public’s right of access and interest in government accountability. AB 817 tips the balance too far, reducing the public’s right to a seat at the table to a seat at a television or computer screen.

Because AB 817 would dismantle critical protections that ensure that government meetings are primarily held in public places where Californians can engage face-to-face with those choosing to perform public service, the First Amendment Coalition must strongly oppose.

FIRST AMENDMENT COALITION

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cc: Members and staff of the Senate Committee on Local Government