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25 February 2017

The Honorable Dennis Baxley
The Florida Senate
404 South Monroe Street, Room 320 SOB
Tallahassee, FL 32399-1100

Re: SB 1004 Exemption/Public Meetings

Dear Senator Baxley:

We are writing to express our serious concerns regarding SB 1004, allowing two members of a board or commission with at least five members to discuss public business behind closed doors without procedural safeguards such as notice or a requirement that minutes of such discussions be taken. It is our position that SB 1004 is contrary to the public interest and we respectfully request that it be withdrawn from further consideration.

Senate Bill 1004 raises serious constitutional issues. Current law requires that any discussion of two or more members of any board or commission be open and noticed to the public. This interpretation of "meeting" comes from a Florida Supreme Court decision just a few years after passage of s. 286.011, F.S., Florida's sunshine law. [*City of Miami Beach v. Berns,* 245 So. 2d 38, 41 (Fla. 1971)]

The constitutional right of access to "all meetings of any collegial body of the executive branch of state government or of any . . . county, municipality, school district or special district" at which public business was transacted or discussed was placed on the ballot by joint resolution in the 1992 general election. [Art. I, s. 24(b), Fla. Con.] The measure was approved overwhelmingly by the voters and became effective on July 1, 1993. A similar constitutional provision providing a right of access to prearranged meetings of three or more legislators, Article III, s. 4(e), was added to the constitution a few years earlier. Had the drafters of the resolution providing a right of access to the meetings of state agencies and local governments intended to override the judicial definition of a "meeting" as found in our sunshine law, it would have been easy to do so at the time.

In addition to the constitutional issues, It is our position that SB 1004 is detrimental to the public interest. First and foremost, it precludes any meaningful opportunity

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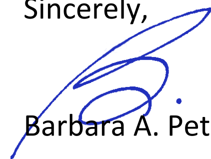
for public oversight and accountability. Additionally, SB 1004 invites pernicious mischief by our elected officials. A few years ago, a newly-elected mayor held one-on-one meetings with individual member of the city council each morning of the week on consecutive days. The meetings were noticed and the public allowed to attend, but very few people in the community could take the time to attend five meetings every morning for five days in a row. Those meetings, while in technical compliance with the law, most certainly violated the spirit and intent of the law. Under SB 1004, such meetings would be acceptable but notice and public attendance would not be required.

We agree that the requirements of our famed Sunshine Law can be an inconvenience for government officials at times. But the right of Floridians to oversee their government and hold it accountable for its actions – a right imbedded in our constitution – far outweighs such minor annoyances. Certainly, it is no less vexatious for today's public officials to comply with our sunshine law than it was in 1971 after the *Berns* decision.

We appreciate your attention to our concerns on this issue, Senator Baxley. If you have any questions about our position, please do not hesitate to contact us.

Sincerely,



Barbara A. Petersen, President

Cc: The Honorable Joe Negron, President, The Florida Senate
Jon Kaney, General Counsel, First Amendment Foundation
Sam Morley, General Counsel, Florida Press Association