

DR. CHARLES T. MUNGER, JR.
HONORABLE SAM BLAKESLEE
CO-PROponents, PROPOSITION 54

June 1, 2020

To: The Honorable Ken Cooley, Chair of the Assembly Rules Committee
The Honorable Jordan Cunningham, Vice Chair of the Assembly Rules Committee

RE: Proposition 54 proponents' Opposition to ACA 25

Dear Chair Cooley and Members,

This letter supersedes the letter sent earlier today.

We, the proponents of Proposition 54, the California Legislative Transparency Act, herewith register our opposition to ACA 25, by Mullin: State of emergency: remote legislative proceedings. As the proponents of Proposition 54, the citizen's initiative whose provisions ACA 25 would void, we request the opportunity to testify as official witnesses before the Assembly Rules Committee hearing on ACA 25.

ACA 25 guts the provisions on transparency in the California Legislature that the voters enacted by passing Proposition 54.

The notion that it would be possible for legislators "through the use of technology and without being physically present in the State Capitol," to "attend and vote remotely in a legislative proceeding," without it also being possible to record the proceedings and post them on the Internet within 24 hours, is a palpable absurdity.

If a legislator is able to send and receive audio and visual information from his home, then by definition there are devices that are receiving and transmitting the signals, whose feeds can be recorded and later posted. Allowing the Legislature at its whim to decide it is not necessary to post this information is to allow the Legislature to legislate in the dark, at its whim (should posting it the Legislature should decide it to be, in the language of ACA 25, "not practicable".)

That the mere existence of "a state of emergency declared by the President of the United States or the Governor" would justify excluding the public from legislative proceedings, eliminating the right of the public to record them, or relieving the Legislature of its obligation to record and post its public proceedings, all in violation of the California Constitution, is also absurd.

States of emergency arise somewhere in California for local storms or fires or floods or droughts or riots all the time. None of these have historically affected the ability of the Legislature to convene and to meet the transparency provisions in the Constitution, or indeed to meet with the public present before those provisions were enacted. Once such an emergency with only local scope is declared, formally rescinding it is seldom a priority; the result is that there will always be an 'emergency,' still officially declared and not rescinded, somewhere in California that would empower the Legislature to exclude the public and operate in the dark whenever it wished. There

need not even be a vote taken on the matter, if a house vested the power in a single individual to exclude the public by some standing rule.

True, ACA 25 states, “(c) As used in this section, ‘state of emergency’ means the existence of conditions of disaster or of extreme peril to the safety of persons and property within the State, or parts thereof, including, but not limited to, such conditions as an attack or probable or imminent attack by an enemy of the United States, fire, flood, storm, insurrection, earthquake, volcanic eruption, or pandemic or other public health emergency.”

But you will note the qualifiers “within the state, or parts thereof”, and “including but not limited to, such conditions as [a list that includes ‘volcanic eruptions’]”. As written, a state of emergency in a part of California howsoever small, would be acceptable. And the clause “including but not limited to” allows unlimited discretion to the legislature to include virtually any event, however inconsequential in scale, on the list of included and therefore acceptable conditions.

When we wrote Proposition 54 we included the right of the public to record the proceedings of the legislature in the public’s right to attend. ACA 25 removes the public’s right to attend, and therefore any ability for a member of the public to record what happens in a public proceeding of the legislature that members of the Legislature would prefer there be no awkward, indisputable, and telling evidence of. At the same time, the Legislature empowers itself to not make, or if it makes, withhold from the public, the recording it is currently obliged under the Constitution to make and post of its public proceedings. The legislature merely has to vote that “compliance is not practicable under the circumstances of the emergency.”

Can the Legislature tell us under what kind of ‘emergency’ it will be possible for the Legislature to convene as usual under the dome, but impossible to have a video camera operating? Or if the Legislature is not convening under the dome, and therefore would be convening using audiovisual signals sent and received from members of the Legislature in remote locations, under what kind of ‘emergency’ it will be impossible to have those signals recorded, and then posted on the Internet within 24 hours, as the Constitution currently requires? If it is “not practicable under the circumstances of the emergency,” will it not be only because the Legislature had determined to make it impracticable?

The public is left with no record at all of how their representatives really argued or failed to argue, acted or failed to act, not under some condition of actual desperation, but at whim. This is a government that can be held accountable?

Supposedly if the Legislature were to exclude the public by an unwise rule, “An aggrieved party shall have standing to challenge a waiver adopted pursuant to subparagraph (A), or a restriction made pursuant to subparagraph (B), in an action for declaratory and injunctive relief.” But this isn’t the protection currently in the Constitution against unwise rules, which is (Article IV, Section 7(c))

Any aggrieved party shall have standing to challenge said rules in an action for declaratory and injunctive relief, and the Legislature shall have the burden of demonstrating that the rule is reasonable.

Remember, ACA 25 allows the Legislature to exclude the public, stop all audio-visual recordings by the public, and refrain from making or releasing any recordings of its own. Without the burden of proof that a rule is reasonable being on the Legislature, any action

against the Legislature's rules, however unreasonable those rules may be, must fail—because the Legislature can avoid preserving, or elect to withhold, all the evidence. With the burden of proof being put on the party bringing the suit, without the above language currently in the California Constitution, a successful case would be impossible. This voids the protection written into the Constitution by Proposition 54.

This is not an exhaustive list of the deficiencies of ACA 25, and should not be taken as such; nor does the fact that we do not take up other issues, such as the issue of voting by proxy, mean that those issues are not equally important.

This note supersedes the other filed earlier today.

Sincerely yours,

Charles T. Munger, Jr.

Dr. Charles T. Munger, Jr.
Co-Proponent, California Proposition 54



Honorable Sam Blakeslee
Co-Proponent, California Proposition 54