

June 19, 2016

The Honorable Lois Wolk
California State Senate
State Capitol, Room 5114
Sacramento, CA 95814

The Honorable Rich Gordon
California State Assembly
State Capitol, Room 3013
Sacramento, CA 95814

**Re: SCA 14 (Wolk) (as amended June 17) and AB 884 (Gordon) (as amended June 9) —
OPPOSE**

Dear Senator Wolk and Assemblymember Gordon,

We are writing to respectfully express our opposition to the double-joined legislation: SCA 14, as amended June 17, 2016; and AB 884, as amended June 9, 2016.

We agree there is a dire need for greater transparency in the legislative process, and we applaud your efforts to craft a legislative proposal to meet that need. As you know, SCA 14 and AB 884 directly conflict with a state ballot initiative that is already assured of qualification for the November ballot. That initiative, called the California Legislature Transparency Act (CLTA), is supported by a broad and diverse coalition of good-government organizations. Therefore, in evaluating SCA 14 and AB 884, our test is whether they would improve the transparency offered by the CLTA to any significant degree. We would be happy to consider withdrawing the CLTA if the Legislature can propose a reform which we both agree offers a stronger version.

Unfortunately, SCA 14 and AB 884 continue to fall short of providing the same level of legislative transparency that would be provided by the CLTA. While the amendments of June 17 to SCA 14 are certainly improvements over the previous versions of SCA 14, significant flaws in both bills persist. As currently drafted, SCA 14 and AB 884 would merely place a visibly inferior, conflicting version of the CLTA on the same already-crowded ballot.

Please find attached to this letter our side-by-side analysis comparing SCA 14/AB 884 to the CLTA.

Although the current legislative proposals present numerous flaws, four flaws in particular merit discussion:

1. SCA 14 would fail to ensure lawmakers receive adequate time to review newly amended legislation before it is passed. As you know, it has become an unfortunate routine to amend a bill and then put it to an immediate vote before most legislators have time to read the new version, let alone hear their constituents' views on it. The CLTA would remedy this problem by requiring the Legislature to print and distribute new legislation to every member of the house that will vote on it, and post the legislation publicly online, for at least 72 hours before voting on it on the floor of either house.

In contrast, SCA 14 and AB 884 would fail to guarantee that every legislator would, as a practical matter, have at least 72 hours' notice of new legislation before a vote that may pass that legislation out of his or her house. Whereas the CLTA would require the Legislature to post new legislation online *and* distribute a print-out of the new legislation to every member of a house at least 72 hours before that house may vote on it, SCA 14 would *only* require the online posting of the legislation, not the distribution of print-outs to the members. This distinction is important because SCA 14 would allow the Legislature, in effect, to post new legislation at any time outside of normal working hours to start the 72-hour clock running before members have any practical opportunity to read the legislation. If legislation were posted online at 1:00 AM or 2:00 AM, for example, a number of hours would likely pass before legislators have their first practical opportunity to review it.

2. Unlike the CLTA, SCA 14 and AB 884 fail to grant the *right* of individuals to record any open public meeting of the Legislature. The CLTA would grant *a constitutional right* to record by audio or visual means any proceeding of the Legislature that is not already exempted from open-meeting requirements as a "closed session," which is narrowly defined by existing law in the Constitution. In contrast, SCA 14 does not grant any right; it only grants an "*authoriz[ation]*" to make "recordings" subject to "reasonable restrictions such as those necessary to ensure public safety and prevent disruption," without limiting the allowable reasons for imposing such restrictions and without providing any right to the public to challenge the legislative restrictions. By granting the Legislature the authority to narrowly restrict the people's right to record a particular proceeding, without any recourse by the public, SCA 14 fails to afford a meaningful right to the people to record the public proceedings of their elected representatives.
3. Unlike the CLTA, SCA 14 and AB 884 fail to guarantee the right of every individual to freely use the audiovisual recordings made by the Legislature for any legitimate purpose. AB 884 would merely declare that such recordings are "in the public domain." But even this concession, given that it is placed in a statute, could be subsequently removed by the Legislature. Moreover, SCA 14 grants no constitutional right to the public to broadcast even their own recordings of the legislative proceedings, thereby permitting the Legislature to enact statutes to restrict the public's legitimate uses of their own recordings. In contrast, the CLTA would enshrine in the State Constitution – which can be changed only by a vote of the people – the express right of every individual to broadcast these recordings for any legitimate purpose.
4. Of equal concern is that whereas the CLTA requires the Legislature to make its audiovisual recordings of its legislative proceedings accessible to the public through the Internet and downloadable for at least 20 years, SCA 14 only provides that the recordings shall remain "reasonably accessible" for 20 years. There is no requirement that they be posted on the Internet and downloadable. Even AB 884 – which can be amended by a subsequent Legislature – only vaguely makes the recordings "retrievable in a perceivable format" for up to 6 years and thereafter "reasonably available" – whatever that means.

Because the CLTA remains our best vehicle to improve legislative transparency, we must regretfully oppose moving SCA 14 and AB 884 forward.

It is with great appreciation and respect that we acknowledge your commendable efforts, through continual amendments to SCA 14 and AB 884, to craft a package that improves legislative transparency. Unfortunately, the latest amendments to SCA 14 have again fallen short of the CLTA's provisions.

Sincerely,



Charles T. Munger, Jr.
Proponent of the
California Legislature Transparency Act
Voter-Supported Initiative (15-0083)



Former State Senator Sam Blakeslee
Proponent of the
California Legislature Transparency Act
Voter-Supported Initiative (15-0083)