



ANTHONY RENDON

SPEAKER of the ASSEMBLY
Sixty-Third Assembly District

June 23, 2016

Dr. Charles T. Munger, Jr.
2350 Kerner Blvd #250,
San Rafael, California 94901

Subject: SCA 14 (Wolk)/AB 884 (Gordon) and Legislative Transparency

Dear Dr. Munger:

In a matter of days, the proponents of the California Legislature Transparency Act (“CLTA”) initiative will have squandered the opportunity to present voters with an improved legislative transparency measure. As you know, the Legislature enacted statutory reforms in the prior legislative session (Ch. 697, Stats. 2014) to allow initiative proponents to withdraw a measure from the ballot if the Legislature is able to enact an acceptable legislative alternative. This process was intended to reduce problems commonly associated with the initiative process. One common issue that has historically plagued initiatives is poor legislative drafting by persons lacking the specialized expertise necessary to draft clear, unambiguous language.

We believe that these recent reforms impose an obligation on both the Legislature *and the initiative proponents* to collaborate in an effort to produce the best possible measure for voter consideration. We regret, therefore, that the proponents of the CLTA have not embraced the spirit of these reforms to participate in a positive and productive way with respect to the Legislature’s proposed alternative measures to the CLTA – SCA 14 and AB 884. Instead, you have used the legislative proceedings regarding all of these measures as a soapbox to chastise Members of the Legislature for purported transparency abuses rather than to focus on the significant advantages that SCA 14 and AB 884 present over the CLTA.

The CLTA contains a number of flaws that ought to be corrected. Specifically, the Legislative Counsel has identified ambiguities in the CLTA’s language that should be *and still can be* fixed by enactment of SCA 14 and AB 884. As a courtesy, we would like to reiterate a few of the flaws in the current form of the CLTA that will be presented to the voters.

- The requirements in Section 7 of Article IV of the State Constitution that audiovisual recordings be “accessible to the public” and “downloadable” are ambiguous and nonspecific. You have suggested that the language imposing these requirements impliedly requires that recordings be made available in a format that can be reviewed and understood, but no such requirements are imposed by the express language of the CLTA. As pointed out by the Legislative Counsel, there is no clear obligation imposed on the

Legislature or the Legislative Counsel to update materials that were originally recorded using technologies that become obsolete.

- The requirement in Section 8 of Article IV of the State Constitution that no bill failing the 72-hour requirement may “ultimately become a statute” is unnecessary at best and ambiguous at worst based on the surrounding provisions of that section and the presentment requirements of Section 10 of Article IV. Clearly a bill that is not passed cannot “ultimately become a statute.” Unfortunately, the CLTA suggests otherwise.
- The requirement in Section 8 of Article IV of the State Constitution that no bill may be passed unless it is published on the Internet in its “final form” for at least 72 hours before “the vote,” is generously characterized as ambiguous. The term “final form,” the use of “the” (a definite article) to modify “vote,” and the omission of the phrase “in each house” (which statutory construction views as an intentional omission based on the use of that phrase in surrounding constitutional passage requirements) render it uncertain whether the 72-hour requirement would apply to any vote in either house that dispenses with a bill.
- The requirement in Section 9026.5 of the Government Code that recordings of legislative proceedings be used only for a “legitimate” purpose is ambiguous and subjective. Lawsuits disputing what constitutes a “legitimate” use of legislative records are almost certain to follow. Absent an objective standard, individuals will have no basis to determine whether they are complying with the law.

Even if you disagree as to the extent of the ambiguities in the CLTA’s language, it is inconceivable why you refuse to embrace the opportunity to clarify that language so that it will have the precise legal effect that you intend. As legislators, we completely understand that passion for a legislative proposal can sometimes blind the author to shortcomings that may be obvious to others. However, when ambiguities are identified and publicly raised by nonpartisan experts in legislative drafting, even the most passionate of legislators – and initiative proponents – have an obligation to work in good faith to correct those ambiguities before they are enshrined in statute or, worse, the Constitution. Yet, the CLTA proponents refuse to acknowledge even the possibility that portions of the CLTA may be flawed. It is unfortunate that you have become entrenched in a patently defensive, inflexible, and ultimately unproductive position, which has impeded the Legislature’s good faith efforts to help you develop a superior legislative transparency measure for voter consideration. Again, this is hardly in the spirit of recent statutes that were enacted to encourage initiative proponents to work with the Legislature, nor does it serve the best interests of the public by producing a measure that is clearly written and provides for the greatest amount of transparency.

You have testified repeatedly as to what you think the language of the CLTA means and what you intended when you wrote its language. But the proceedings have also made clear that the language used in the CLTA is subject to other reasonable interpretations. Where language is susceptible to multiple reasonable interpretations, that language is ambiguous by definition. And it is pure folly to believe that your conclusory statements as to your own subjective intent regarding the meaning of the CLTA resolve the various ambiguities created by the measure’s language.

Again, your failure to embrace the new initiative review process and collaborate with the Legislature to prepare a superior legislative product is perplexing. After expending so much time, money, and effort to qualify the CLTA, you are now willing to jeopardize the entire endeavor by proceeding with the initiative in a form that might not have the legal effect you intend.

There should be no confusion: the Legislature agrees with Legislative Counsel's assessment that the CLTA includes several ambiguities. Moreover, if you decide against withdrawing your initiative by next Thursday and the CLTA is adopted by the voters, the Legislature will be called upon to exercise its own best judgment to construe those ambiguities. Unfortunately, it is virtually certain that regardless of whether the proponents find the Legislature's interpretations satisfactory, there will be others who will favor any number of other reasonable interpretations. Accordingly, your unwillingness to collaborate with the Legislature carries the consequence of pursuing a course of action that is certain to result in unnecessary litigation.

The door remains open, even at this late hour, for the CLTA proponents to properly engage in the initiative review process to produce a superior transparency measure to submit to the voters. Although the time is short, the Legislature remains committed to working with you because the voters deserve to vote on a legislative transparency measure that is clearly drafted and free of unnecessary ambiguities. We believe that SCA 14 and AB 884, which are the alternative measures prepared by the Legislature, are the better options to present to the voters.

Unfortunately, we may be unable to proceed with floor votes to enact these measures because of the proponents' lobbying of Republican Members of the Legislature to oppose passage of any legislative alternative to the CLTA. Until you are willing to set aside your personal animosity toward the Legislature, which has become increasingly manifest in your committee testimony, and collaborate toward the passage of an improved legislative transparency measure, there is nothing more that the Legislature can do to assist you.

Sincerely,



ANTHONY RENDON
Speaker of the Assembly

cc: Honorable Sam Munger (Ret.)
Honorable Lois Wolk
Honorable Richard Gordon
Assembly Rules Committee
Senate Elections and Constitutional Amendments Committee