ASSEMBLY RULES COMMITTEE
HEARING
SCA 14

TUESDAY, JUNE 21, 2016

REPORTED BY:  KAREN CHALLE, CSR NO. 8244
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ASSEMBLY RULES COMMITTEE

HEARING

SCA 14

SACRAMENTO, CALIFORNIA

TUESDAY, JUNE 21, 2016

Transcript of proceedings taken on behalf of Redwood Pacific Public Affairs, California State Capitol, 1315 10th Street, Hearing Room 447, Sacramento, California, commencing on Tuesday, June 21, 2016, at 3:00 p.m., before Karen Challe, Certified Shorthand Reporter Number 8244.
APPEARANCES:

Assembly Rules Committee:

ASSEMBLY MEMBER RICHARD S. GORDON, Chairman
ASSEMBLY MEMBER LING LING CHANG
ASSEMBLY MEMBER CHRIS R. HOLDEN
ASSEMBLY MEMBER KEN COOLEY
ASSEMBLY MEMBER MARIE WALDRON
ASSEMBLY MEMBER JOAQUIN ARAMBULA
SENATOR JOEL ANDERSON
ASSEMBLY MEMBER JIMMY GOMEZ
ASSEMBLY MEMBER BILL QUIRK
ASSEMBLY MEMBER FREDDIE RODRIGUEZ
ASSEMBLY MEMBER WILLIAM P. BROUGHL
ASSEMBLY MEMBER BRIAN W. JONES

Presenters/Speakers:

SENATOR LOIS WOLK
DR. CHARLES MUNGER
JIM EWERT, California Newspapers Publishers Association
TOM SCOTT, National Federation of Independent Business in California
DAVID WOLF, Howard Jarvis Taxpayers Association
TERRY FRANK, Californians Aware
PAUL SMITH, Rural Counties Association
SACRAMENTO, CALIFORNIA
TUESDAY, JUNE 21, 2016
3:00 P.M.
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CHAIRMAN GORDON: Good afternoon. And welcome.

This is the Assembly Committee on Rules. Today is Tuesday, June 21st. We are convened today for two items.
We have a consent agenda, including some bill referrals. We will take that up when we achieve a quorum.

We are also here under a regular agenda to hear and consider SCA 14 by Senator Wolk. We do not yet have a quorum, but we can begin the procedure as essentially a subcommittee so that we do not delay those who are here, while other members of the Rules Committee are in hearings elsewhere and will be joining us shortly.

So with that, let me invite Senator Wolk to the witness table for her presentation on SCA 14.

Senator Wolk. Welcome.

SENATOR WOLK: Thank you, Mr. Chair and Members.

I'm here today to present SCA 14 to you, which is a concern --

THE COURT: Senator Wolk, we do have a quorum now, so I do want to establish that first so we get to that done. Apologize.

SENATOR WOLK: Absolutely.
THE COURT: But better to stop you right at the beginning than --

Roll call, please.

THE SECRETARY: Gordon?

CHAIRMAN GORDON: Here.


THE SECRETARY: Cooley. Here.


THE SECRETARY: Quirk.

ASSEMBLY MEMBER QUIRK: Here.


We have a quorum.

CHAIRMAN GORDON: A quorum's been established.

Senator Wolk, please continue. And again, sorry for the interruption.

SENATOR WOLK: It's all right. Thank you.

Mr. Chair and Members, I'm here to present SCA 14, which is -- concerns legislative transparency. And there is a companion measure that I'd like to mention that is authored by Assembly Member Gordon, which is the implementation measure to the SCA 14. That is AB 884.

I'll begin with SCA 14. Quote -- on page
five -- "No bill may be passed in either House until the bill in the form to be voted on has been made available to the public by publishing it on the internet for at least 72 hours before the vote in that House." This is the language from SCA 14 as recently amended, and it's before you today. It is the core of the measure. It's the reason we're here. It was -- it is what I and others have been advocating for many years. It requires a full 72 hours of public review before either House passes any bill. It applies to the House of origin, the second House and the concurrence vote, if there is one. It is absolutely clear and without doubt.

SCA 14 provides one special exception to the 72-hour rule. And that has to do with an emergency that's declared by the Governor. We also provide in this bill a change to an antiquated rule in the Constitution that dates back to the horse and buggy days. That rule says that a bill must be in print 31 days after it is introduced before it can be acted upon. This was done so that bills could be delivered to all parts of the State by any means of transportation -- stagecoaches, horseback, boats and trains no doubt. That, of course, is no longer the case, and the public can instantly see the Legislation the moment it's posted online on the internet. So we made this change, a small one, but an important one, to allow
our committees to hear bills after just 15 days, but make no change to the 31-day rule for the House to pass the bill.

This change will allow the Legislature to adjust our schedule to get working on bills sooner. It will also reduce the schedule overcrowding that might result from the new 72-hour rule in the House of origin this measure creates. SCA 14 does the following in addition to the 72-hour public review and the 15-day wait -- and those are understood on the page -- what I'm about to read is on page three and four. SCA 14 requires the Legislature to make audio visual recordings of all open and public Legislative proceedings in the State Capitol or anywhere else where an action or vote is taken. SCA 14 requires the Legislature to make all reasonable effort to make audio visual recordings of any other proceedings, such as informational hearings, held outside the State Capitol where no action or vote is taken. It requires all audio visual recordings to be made promptly available to the public. It requires the Legislature to make reasonable efforts to broadcast live online all proceedings of the Legislature. It guarantees the right of individuals to make their own audio visual recordings of Legislative proceedings. It requires the Legislature to provide sufficient funds to implement these provisions.
884, which is the companion Statute authored by Assembly Member Gordon, which is now pending action in the Senate, makes additional reforms to improve Legislative transparency. It requires Legislative Counsel to post all recordings within one business day in a retrievable and perceivable format for public use for the entire biannual session and the two following biannual sections. It requires Legislative Counsel to archive all recordings for at least 20 years in a perceivable format and make the recordings available to the public. It repeals the prohibition on using recordings of Legislative proceedings for political or commercial purposes. Instead, the bill would allow the use of such recordings by the public without limitation or imposing a fee.

884 repeals the law that would allow the State to make a claim of copyright on Legislative materials. Instead, the bill will codify that all recordings and other Legislative materials are in the public domain.

Members, I have some history on this, along with Assembly Member Olson, who has partnered with me in 2013, authoring SCA 10, and I with her on AC 1 this session, both of which focused on the 72-hour review requirement. These efforts, although supported by many, never moved past any committee. We've made great progress since then.

So what has changed? Well first, there's been
growing interest here within the Legislature from both sides of the aisle to increase transparency and to curb the practice known as gut and amend, where bills receive, as you know, very little public review before a vote. We've also moved to televise more and more of our hearings. At the same time, it's also fair to say that we wouldn't be here today were it not for the effort of Former Senator Sam Blakeslee and Dr. Charles Munger, who gathered signatures to put the ballot -- put on the ballot a measure to do most of what you have -- we have before you.

In fact, I introduced SCA 14 at Senator Blakeslee's request, to give us, the Legislature, one last try to correct the errors identified after the circulation of the Initiative, and to respond to public comment. Before putting in the language -- before putting language in concrete through the Initiative, I believe we have an obligation to try and get the details right in a public process. Our Leg Counsel identified ten areas of concern in the Initiative. And I believe we've done that. I believe, from a public interest perspective, responding to public comment, and with consultation, a great deal of consultation of our Legislative Counsel, the office expert in the Legislative process, and responsible for providing the public access to the Legislative information,
including the new requirements for AB recordings replacing
with them, we've put forward, we believe, a better
approach, which is more certain to provide the
transparency that we are seeking, without the unintended
consequences of an Initiative that might be drafted
without this public discussion or consultation.

In total, we believe that the Legislative
package, informed by -- that is -- SCA 10 and AB 8848,
which is not in front of us today for discussion or
action. It is in front of the Senate -- informed by the
work of Legislative -- of Initiative proponents provides a
stronger, more clear and more comprehensive solution to
the issue, one that will survive the test of time and any
legal challenges that have rendered other initiatives
inoperable or ineffective.

We believe this merits the Committee's support,
as well as the support of the Initiative proponents, and
all those who have been working on this issue throughout
the years. I ask for your "Aye" vote.

CHAIRMAN GORDON: Thank you.

Let me ask for witnesses in support.

THE COURT: Mr. Chair, Members. Jim Ewert with
the California Newspapers Publishers Association. We have
also been a long-time supporter of these efforts over the
years, beginning with Senator Wolk's first try, and also
Assembly Woman Olson's. We think that this is a strong effort, and it's getting stronger each day. The most recent amendments add two critical components to the Constitutional Amendment, the first being that it makes it clearer when the 72-hour period is triggered, and also makes clearer that the bill cannot become law unless that 72-hour period is recognized. And in both Houses I might add. There was some concern that, though the previous version only applied in one House, and I think it's clear now that that 72-hour period applies in both.

More critical, I think for us is the idea that individuals attending these hearings have a right to attend the hearings. That's going to be in the Constitution, and it also allow them to record the hearings on their own, independently, provide more accurate recordings of what they observed when they were there. And that is very critical for journalists who are at these hearings.

We think that SCA 14 increases public participation in the process. And it strengthens the integrity of the process in doing so. And for these reasons, we respectfully request an "Aye" vote. Thank you.

CHAIRMAN GORDON: Thank you.

MR. SMITH: Mr. Chairman and Members. Paul
Smith with the Rural Counties Association. We have long been supportive of Senator Wolk's efforts in the past, and we are so pleased to see that this bill looks so much more like the introduced version of SCA 14 and the previous versions she has authored. Many of you served in local government before coming into the Legislature. You're very familiar with the Brown Act, which requires 72 hours of posting, and a chill, before a Board of Supervisors or any other municipality can act on a measure or consider an item.

We feel that is clearly appropriate for the Legislature as well. We think the Brown Act protects and strengthens both the membership inside the Legislative body, as well as the public outside. So we are in strong support, pleased to see this bill and this measure getting stronger every day, as Mr. Ewert said. And appreciate the author for her courage in this fight over the years that she's been in this Legislature, and ask that this measure obviously make it to the ballot where the voters will have a consideration of it. Thank you.

CHAIRMAN GORDON: Thank you.

Any other witnesses in support?

Before I go to opposition, I'd like to take care of a small housekeeping item. We do have a Consent Agenda. There are a set of bill referrals that have
support on both sides.

ASSEMBLY MEMBER CHANG: I move.

CHAIRMAN GORDON: Miss Chang, Mr. Cooley, moved and seconded it. Roll call, please.

THE SECRETARY: Gordon?

CHAIRMAN GORDON: Aye.


Chang.

ASSEMBLY MEMBER CHANG: Aye.

THE SECRETARY: Chang: "Aye."

Arambula?

Aye.


Brough?

ASSEMBLY MEMBER BROUGH: Aye.

THE SECRETARY: Brough: "Aye."

Cooley?

ASSEMBLY MEMBER COOLEY: Aye.

THE SECRETARY: Cooley: "Aye."

Gomez? Holden?

ASSEMBLY MEMBER HOLDEN: Here. Aye.


Sorry.


ASSEMBLY MEMBER RODRIGUEZ: Aye.

Motion passes.

ASSEMBLY MEMBER GORDON: That motion passes.

And Mr. Holden, we were able to get both your attendance and your vote in one fell swoop. We appreciate that.

We'll now move to the opposition. Please come forward.

SENATOR WOLK: Mr. Chair, before he begins, I would like to make some -- at your -- whenever you think it's appropriate, the comments on the amendments that we're looking at for AB 884.

CHAIRMAN GORDON: I would suggest probably before we start the opposition, so if you want to make those comments now.

SENATOR WOLK: All right. It was conveyed to us recently, I believe late last week, that the proponents might be willing to withdraw their measure if the Legislative proposal included clearer language on the 42 hours of the House of origin, the ability for individuals to record and broadcast open hearings, and more transparency by subjecting Legislative budgets to Open Records Act.

In addition to the amendments that you see in front of you, a set of amendments has been chaired with
the proponents that would add implementing language that would -- to 884 that would mirror Bagley Keene on individual recording and broadcasts. That is what we -- that's what we hold ourselves to in our hearings. And again, would add Legislative budgets to the Open Records Act. So we believe that would make the proposal far superior to the Initiative, for a number of reasons.

CHAIRMAN GORDON: And those are amendments that are -- will be moving in the Senate.

SENATOR WOLK: Yes, Mr. Chair.

CHAIRMAN GORDON: Thank you.

Dr. Munger.

DR. MUNGER: Thank you. Good morning admirable Members of this Committee. I'm Charles Munger, with the Honorable Sam Blakeslee, co-proponent of the California Legislature Transparency Act, an Initiative, Constitutional Amendment and Statute shortly to qualify for the November ballot. SCA 14 and proposed Legislative Constitutional Amendment, and its companion, Bill AB 884, Legislative Statutes that have been developed in response to the California Legislature Transparency Act.

If SCA 14 is amended on June 17th, put on the ballot, I will not withdraw the California Legislature Transparency Act. Both will be on the ballot. I speak in opposition to SCA 14 on three grounds. One, SCA 14, as
amended June 17th is an inferior measure to the California Legislature Transparency Act. In our judgment, SCA 14 will not and cannot work.

Two, SCA 14 contains at least two completely unnecessary, quote, "poison pills," end quote. My language, provisions that make it hard to pass. So if, as this Legislature aspires to achieve, SCA 14 were the only measure on transparency in government on the November ballot, the most likely result is that it would not pass, leaving intact the present low degree of transparency in the California Legislature.

My third ground, a few of the things that SCA 14 seeks to accomplish, which the California Legislature Transparency Act does not, do not require a Constitutional Amendment at all. And if this Legislature were really serious about those things, it would simply do them, without tying them unnecessarily first to the uncertain prospects of SCA 14 appearing on the ballot at all, and then of SCA 14 is receiving more votes in November than the California Legislature Transparency Act.

So let me go through my grounds. We'll start with the first one. One. The structure of SCA 14 and AB 884 is Constitutionally flawed. First, no conceivable Statute, whether AB 884 or any other can bind a House of this Legislature when it exercises its right under the
California Constitution under Article 4, Section 7(a), which reads in relevant part, quote, "Each house shall choose its officers and adopt rules for its proceedings." End quote.

If the Legislature has a Constitutional right to adopt rules for its proceedings, then no mere Statute can tell the Legislature what rules to adopt. That Constitutional principle should seem obvious enough. The most recent case to address the point is People's Advocate, Incorporated, versus the California Legislature, appearing in Superior Court in 1986. It's CID Number 24645, Court of Appeals, California, Third Appellate District, May 21, 1986. This case was brought because a number of Statutes were passed by popular initiative, by Proposition 21 on June 5th, 1984, titled Legislative Reform Act of 1983, to constrain how the Legislature might use its Constitutionally-granted powers. From this opinion, I quote -- quote -- "To accomplish the purposes attempted by the Act, a Constitutional Amendment is required. Only by means of an Initiative Constitutional Amendment may the people modify or impinge upon the freedom of the Legislature to exercise its Constitutional -- Constitutionally-granted powers." End quote.

The consequence is it doesn't matter what AB 884
might put into Statute. A House of the Legislature can
simply pass its own rule in contradiction, a simple
majority of a House suffices, and the new rule prevails
over the Statute.

In case Honorable Members think this
Constitutional principle is a dead letter, without active
application, let me read a particular Statute. Government
Code Section 9911, one of several established by
Proposition 24, and still on the books. The Statute
begins, 9911, Assembly Committee and Rules. There is
hereby created in the Assembly a committee on rules which
shall consist of the speaker, who shall be chairman of the
committee, and six other members of the Assembly, three to
be elected by the party having the largest numbers of the
members in the Assembly, and three to be elected by the
party having the second largest number of members. It
goes on.

Now, here I sit before the very Assembly
Committee on Rules. Now the Honorable Rendon, Speaker of
the Assembly, is not its term. The Honorable Gordon is.
This Committee has ten other members. Not six. Those
members do not represent the parties equally, and none are
elected by their parties within the caucus, but all the
members of this Committee, whatever their party, are
appointed by the Speaker.
Now, why? It's contrary to the Statute. Because though the people, by initiative, establish the Statute, this Assembly has since adopted contrary rules. End of story.

Now given this Constitutional structure, were this Legislature to offer me, as the proponent of the California Legislature Transparency Act, to actually write every single word in the Implementation Measure, AB 884, I would not even bother. The better my language would be for California, such a Statute could constrain the Legislature, the bigger the crash of public expectation when the public found out yet again that what would be my fine-sounding rules, constrain this Legislature not at all.

Now if you doubt this, you can go figure out why it is that you're meeting here in contrary to Statute. You'll find the same research that three different attorneys I've had working on this point for the last four days, researching independently, came to the same conclusion. Therefore, all we are left with to interpret the Constitutional provisions of SCA 14 is its raw text. What you may choose to pass in Statute is simply Constitutionally and functionally irrelevant, and the only question is whether SCA 14 is or is not better than the CLTA. California Legislature Transparency Act.
So let's take it from the top. Let's go through its provisions. As amended, SCA 14 and imposition of 17.3(a), commencing January 1, 2018, the Legislature shall do all of the following with respect to its open and public proceedings. One, cause audio video recordings be made of all Floor Sessions of each House of the Legislature, the Committee Proceedings as well, at which a vote is taken or other actions recorded and the Committee proceedings thereof held in the State Capitol building, regardless of whether a vote is taken or an action is recorded. We don't accept the premise of SCA 14 the Legislature should not record all its public proceedings. Period.

Why, if there is a committee meeting at which a member of the public has a Constitutional right to be present, why should what that person would hear, and what that person would see not be recorded for any person to hear and see?

Now I've heard about informational hearings elsewhere. Why on earth are you holding them, if in addition to you finding out interesting information or presenting it, the public, who can't be there that day, should not also be allowed to do it? What are you doing in those meetings that you wish to make it hard for the people to find out about? I will return to this point
later.

Going on, SCA 14 says a Legislature shall, two, make "reasonable efforts," that's a quote, to cause audio visual recordings to be made of all committee proceedings held outside the State Capitol building of which no vote is taken and no action is recorded. Three, make reasonable efforts to broadcast to the public in real-time all proceedings of the Legislature and committees thereof that are held in the State Capitol building.

When the definition of what a, quote, "reasonable effort," end quote, might be defaults to what the Legislature itself considers is reasonable, by the setting of its own rules, these provisions are functionally meaningless. The Legislature will do or not, as it pleases, and not a thing would change if these provisions were simply deleted.

Okay. In particular, all the proceedings in the Capitol building, surely the overwhelming number of such proceedings, but in those, the Legislature shall continue to choose which, if any, will be broadcast in real-time. As it does now.

SCA 14 goes on. The Legislature shall, for authorized members of the public who attend the proceedings of the Legislature and the Committees thereof, to make recordings of those proceedings, subject to
reasonable restrictions such as those necessary to ensure public safety and prevent disruption of the proceedings, and to broadcast them.

Now again, when the definition of what a -- re-quote -- "reasonable restriction" -- end quote, might be, defaults to what the Legislature itself will consider reasonable, this provision is, again, functionally meaningless. The Legislature will allow only what it wants to allow.

Yes. This provision mentions something necessary to ensure public safety is now Constitutionally recognized as being sufficient. Wonderful. But so is, quote, "preventing disruption," end quote, of the proceedings. And if a future Legislature decides, for example, that having the proceedings recorded by the public has a chilling effect on discourse, and so -- quote, "disrupts," end quote -- the proceeding, there is no mechanism to overturn that judgment. This provision is simply empty as it stands.

Even taken seriously, the language to authorize, quote, "members of the public" to record, is not the same thing as my measure provides, Blakeslee's measure provides. Each person has the right to record. The Legislature might authorize some persons and not others. In particular, it might use its rules to classify certain
persons, say the Legislatures themselves, the staff, journalists and so forth, as persons not, quote, "members of the public," end quote, as the Legislature, using its rules, will later define the term. Nor through the, quote, "members of the public," end quote, who are quote, "authorized," end quote, to make a recording at a broadcast. No Constitutional freedom is given necessarily to transmit any part of them at will.

Next Provision, 7(b). The Legislature shall provide all of its audio visual recordings made personally to the section of the Legislative Counsel who shall make the recordings promptly available to public. The recording shall remain reasonably accessible to the public for not less than 20 years.

Now such recordings, if any, that the Legislative Counsel will provide to -- the Legislature provides to the Legislative Counsel -- oh, by the way, Legislative Counsel is not a Constitutionally-recognized office. There's nowhere in the California Constitution established by Statute. So one of the little details is you've a Constitutional provision which is making reference to something that is giving power to something that is outside the Constitution, which I will submit is a drafting error.

However, in this language, in taking it as
meant, it doesn't say how soon after the event the
recording is made. The Legislature shall undertake the
task of providing these recordings to Leg Counsel. There
may be a delay. Only after the Legislative Counsel
receives them, the recordings shall then be made
available, quote, "promptly," end quote. Which is, of
course, itself, a term of unknown duration. An hour? A
day? A week? Thereafter the recordings will be, quote,
"reasonably accessible," end quote, to the public. Only
the Legislature will decide what accessibility is
reasonable, again, by its rules. Perhaps one will have to
tavel to Sacramento to some office there to view and
listen to a recording, but still not be free to copy or
record what one hears and sees there. It will be just
like going to a small movie theatre, go there and listen,
and then go home.

Now apparently avoidance of specifying, as the
California Legislature Transparency Act does, that the
Legislature's record will be downloadable from the
internet by anybody is a deliberate policy choice. As the
word, quote, "internet," end quote, is exactly used twice
elsewhere in the Constitutional language of SCA 14.
Specifically, in Section 7(4)(c), Section 8(3)(a). Now,
the California Legislature Transparency Act does not allow
for these shenanigans. It requires access via the
internet to be public, and for copies to be downloadable.

Next provision, 7(c). The Legislature shall enact laws to implement this section, provided that notwithstanding paragraph three of Subdivision B, Section A, after 2015/16 session of the Legislature, a bill -- a bill implementing this section shall not be passed, ultimately become a Statute, unless the bill is published in its final form on the internet for at least 12 days prior to the final vote in each house. Now, we've already noted that while the Legislature can enact laws to implement these things, such laws will not bind the Legislature anyway. In any matter, the subsequent Legislature, simply by adopting its own rules, can void the effect of the Statute. Just the way the Constitution works.

Even assuming such laws would bind the Legislature, there is no requirement as to when the Legislature must implement these laws. The next Legislature might decide that a few years from now would be appropriate. And of course, the Legislature cannot bind a future Legislature. This Legislature cannot bind a future Legislature to enact any particular law anyway.

Regarding the grand 12 days notice for any possible amendment, this is actually functionally almost useless. It doesn't change the fact that two-thirds of
the Legislature, by itself or a simple majority with the consent of the Governor, can change the Statute to trim the public's access to the recordings of the Legislature's public proceedings to nothing.

Now an assistant viewing this meeting, who doesn't yet appreciate the Constitutional argument, but Statutes in question cannot bind the Legislature, can nonetheless appreciate that even if the statutes could, but the statutes are changeable by the very Legislature the statutes are meant to bind, and that little dynamic is a fatal flaw in the structure of SCA 14.

Now, it is to prevent just such a possibility that the California Legislature Transparency Act was written as it was. With all the provisions, it would bind the Legislature, put in the Constitution, without trying to rest them on any statutes. 7(d)(1), expenditures made in further paragraphs one through three, inclusive to Subdivision A are not subject to 7(7)(5). What does this do? This provision violates the Constitutional cap on the Legislature's budget set by the passage of Proposition 140 in 1990. Whatever funds are appropriated will go under the Capitol Dome and be hopelessly mingled with the existing budget for the Legislature's operations budget, whose breakdown has never been made public. If ten million is appropriated, what should be a one million
expense, which is a number the Legislative analyst, and we, and I think everybody thinks is the annual amount, who is then to know? I would submit, the honest way to get the extra million dollars a year, which we do not think at all necessary, would have been just to add one million dollars to the Legislature's budget as currently set in the California Constitution, and just leave it at that.

Bottom line, after being amended four times, SCA 14 has at last accomplished the goal, one goal, of writing in the Constitution that a bill is prohibited from being passed in either House until the bill, in the form being voted on, has been made available to the public by publishing it on the internet for at least 72 hours before the vote.

Okay. In our opinion, it makes a totally unnecessary deletion, relative to what the California Legislature Transparency Act provides, of the existing requirement that a bill has to be printed and distributed to the Members for 72 hours before the vote. But let us concede that, as I said, it's at least gotten that far. What they have not succeeded in doing is requiring the Legislature to make recordings of all the public meetings and allowing any person to do so. And we will argue the 72-hour notice period is therefore effectively unenforceable, because there will not be sufficient
evidence to accord, in practice, ultimately the Supreme Court to enforce it.

What do I mean? Plausible scenario. A certain bill is supposed to be impossible to pass out of, say, the Senate, because of the 72-hour notice provision before 10:00 a.m. on Sunday. The bill is in fact passed at 9:45. Why? Precisely to having a noted opponent of the bill, Democrat, Republican, doesn't matter, who is not yet present, speak against it. Well, after it's out of the Senate, the Assembly passes it. The Governor signs it, this opponent sues to keep the bill from becoming a Statute. Now, on what evidence is the California Supreme Court supposed to act? Evidence so compelling that the Court will now overrule both the Legislative and the Executive Branches of State Government that have approved this bill. What standard of evidence are we going to appeal to?

Now, if there is a recording of a Floor Session, which is complete and entire, we presume that will be enough. But it is, after all, not impossible that by an eery coincidence, on that critical moment, a cable will pulled or a computer file corrupted at the critical interval, or even that in the official recording, the camera was directed resolutely to fail to record the crucial information or any other little technical failure.
You want a technical failure, go look at the clock at the back of this room. I believe it is fixed at something like quarter to seven, because the battery is run down. If someone is recording this proceeding, and that's the only clock they see, there's not a lot of information about when you would actually take a vote. These little things happen.

However, the California Legislature Transparency Act, by providing that any person may record what their eyes see and what their ears hear, can pull out their cell phones or have a camcorder, and there will be abundant extra evidence for the Court in which to act, and very notably, since these will be recorded on individual person's own devices, never subject to this Legislature's control, never subject to their editing or manipulation, or frankly, human error. Those recordings will actually be there when they're needed. And that makes the 72 hours enforceable, even if some funny business or human error overtakes the official recording. So as I said, SCA 14 cannot and will not work.

My second point. There are poison pills -- my second grounds for objection, there are poison pills in SCA 14 that are unrelated to its essential mission and just make it hard to pass. One poison pill put forward is the change of the time interval between when a bill is
originally submitted and when it may be heard in the Committee, from the present 30 days, down to 16. Whether this is desirable public policy or not, the author should beware that in 2012, opponents of Proposition 31, which included among its thousand lines, both the 72-hour notice provision, and this change from 30 to 16 days, was attacked, whether rightly or not -- but certainly effectively -- on the grounds of lowering this interval for the public to read the original form of a bill, diminished transparency, rather than enhanced it. It is frankly a known political liability, which, in my opinion, no comparable public policy gain.

The second poison pill is the funding source. And as I said, Proposition 140 of 1990, established a Constitutional cap on the Legislature's own budget. As written, SCA 14 breaks that cap by allowing the Legislature to appropriate unlimited funds, but essentially to run the cameras, the cameraman, so forth, funds that, since the amount of disclosure was spending for the Legislature to decide can be inexplicably and irrevocably intermingled with the rest of the Legislature's own budget.

We disagree, firstly, adamantly on the policy. The Legislature's own budget grows, in real terms, five percent last year, five percent this year, and we project
it will rise another two percent next year, a 15 percent permanent increase over three years. And the cost of SCA 14 are about 0.3 percent. 0.3, or about two percent of that permanent increase.

Now, the Legislature already records and live-streams about half its proceedings, I presume, including this one, using its present budget. We think it entirely appropriate for the Legislature to devote some of that increase to improving the information it makes available to the public as part of whatever improvements it may elect to make on its own with the remaining 98 percent.

However, policy or no, clearly setting the precedent of breaking a Constitutional cap meant to impose fiscal discipline on the Legislature, to cover a mere 0.3 increase in the Legislature's budget, is accepting a big political liability for, in my view, a nugatory gain. C'mon, people. You've just passed 170 billion dollar budget. Here you are, ulcerating over a mere one million dollars, and not even whether or not it should be spent, but over -- from which -- of which pocket the people should choose to pay it. The Legislature's own budget or the General Fund. This is a silly thing to do.

I now go to the third of my three main points. You'll be relieved to know I don't have another one.
There are two good policy ideas lurking in the general wreck of SCA 14 and AB 884 that can in fact be implemented once, and require no Constitutional Amendment at all. The first is from AB 884, to dismiss any State copyrights of its recordings of its public proceedings. Instead, put those recordings in the public domain. We applaud that policy. We call it to be implemented at once. By an ordinary Statute. An effective date of next year. Whether or not any measure, SCA 14, or the California Legislature Transparency Act passes, or even this very year, by emergency statute. The Legislature has all of the imminent July recess to draft language, six weeks of the session, from August 1 to September 15th, to run the bill to the Committees for comment, et cetera. We note this would not only affect the recordings sooner, but without any uncertainty whether SCA 14 will or will not pass the Legislature or will or will not be approved by voters in November. That is, if the Legislature is really serious about the policy.

The other idea is from SCA 14. It's for the Legislature to live-stream its recordings. A marvelous idea. We suggest that the same super majority required to pass SCA 14 in the first place, simply at once, change the assembly, and send to Joint Rules to do this. You have the recordings. You're recording the meetings as they go.
Live-stream them. It's particularly easy to make these rule changes since I believe a mere majority of the body suffices.

Now, while it's true that each House currently lacks the hardware and control systems to record more than two committees' working at a time, fixing this is in part why there is a one to two million initial cost to implement either SCA 14 or the California Legislature Transparency Act. It can certainly change its rules at once to provide that whatever meetings you're currently recording, they must be live-streamed.

Regarding the live-streaming, it should be pointed out we did not ignore the virtues of this when we crafted the California Legislature Transparency Act. We provided for it. We provided any person, including a news organization or a person with an upload capability to YouTube can make their own recording which they can use as they wish, including broadcasting or otherwise transmitting it. Critically, including immediately. Those persons can live-stream at once.

Indeed, starting this year, when the California Legislature Transparency Act passes, without any need for the public to wait until January 1 of 2018, and for the Legislature to live-stream any of its own recordings. Though we laid on the Legislature only the responsibility
of posting the recordings within 24 hours, I doubt this body will let their recordings lag 24 hours from the news cycle for very long. In our view, competition can be effective as law in changing behavior.

To conclude. The structure of SCA 14 and AB 884 is Constitutionally flawed, and the pair cannot work as intended, because of the fallacy in believing a statute can constrain the Legislature whenever the Legislature exercises its own Constitutional right. This specific language in SCA 14 too often defaults the Legislature's own opinion about what it ought and ought not to do about transparency, and what ought and what ought not be available to the public to know. If such were adequate, we would have had transparency from the Legislature long before now.

SCA 14 contains unnecessary poison pills that make it hard to pass and such ideas as SCA 14 and AB 884 puts forward that are beyond what the California Legislature Transparency Act would achieve. The Legislature, one, they could implement immediately anyway, and two, they could be implemented without any Constitutional Amendment, either SCA 14 or the California Legislature Transparency Act, if the Legislature were serious about them.

Now, whether SCA 14 would or would not be an
improvement on the present state of the Legislature's current operations is an irrelevant consideration. The only question is whether it's an improvement on the California Legislature Transparency Act, and the answer manifestly is no. If this Legislature puts this Act, as amended June 17th, on the ballot, that question will be for the voters, because I will not withdraw the California Legislature Transparency Act from the ballot.

Now, I will continue to appear at every Assembly or Senate hearing on SCA 14 or its successors, but make no mistake. Right now, SCA 14 and the California Legislature Transparency Act are miles apart, and there is no imminent prospect of any happy joining of this bill and this Act. You're asking for a head-to-head battle on the ballot. It's that bad.

And with that, I will open for questions.

CHAIRMAN GORDON: Thank you.

We'll -- others in opposition?

MR. SCOTT: I will be quick. My name is Tom Scott, State Executive Director of the National Federation of Independent Business for California, representing 22,000 dues-paying members across the State. I am here today to speak in opposition to SCA 14. And really, in doing so, speak in support of true transparency through real reform with the initiative we already have, which is
close to being qualified for the ballot.

Transparency matters. And transparency from this building is a top concern for my small business members. Regardless of the policy debate surrounding the $15 minimum wage, what we witnessed in Senate Bill 3 in terms of process was a disgrace to the voters and all of Californians. There was no public input. There was no analysis. There was no transparency.

Now we have an opportunity for real reform with the California Legislature Transparency Act brought forward by Dr. Munger and State Senator Sam Blakeslee. This initiative will qualify for the ballot, since over one million voters have asked for it to be on the ballot.

This initiative has taken several months to be carefully crafted. Now, there are individuals trying to undermine that effort in a few hearings. And I cannot ignore the fact that the established position of my organization and the 22,000 members I represent were omitted from the latest committee analysis. We've been on this, in opposition, from the beginning. And the fact that it was dropped or omitted was, you know, very concerning.

NFIB has been opposed to this measure for a long list of reasons. A few amendments taken on a Friday evening would not change many, you know -- my or many
other organizations' opposition to this proposal. And to add insult to injury on this point, even if the amendments did alleviate some concerns, how would we be able to know, since the latest version hasn't even been in print for 72 hours?

The very process by which this watered-down transparency proposal has been crafted perfectly illustrates why Sacramento cannot regulate itself on this matter. Over one million Californians, one million Californians agree the State Capitol needs transparency from the outside, and not from self-regulation. Now is the time to let the people vote. NFIB remains opposed to SCA 14 and AB 884.

MR. WOLF: Mr. Chairman, Members. Good afternoon. David Wolf of the Howard Jarvis Taxpayers Association, also opposed to SCA 14 here today.

Members, let's be clear. 72 hours means 72 hours. Not 72 hours in the Second House. 72 hours in both Houses. Both. CLTA makes this expressly clear. SCA 14 does not. Allowing individuals to come in and record hearings. CLTA makes this provision very clear. SCA 14 does not. Those are just two examples of many where these two measures are fundamentally different.

Members, in closing, just again, briefly, let me provide a little bit of a history lesson. In 1978 there
were two propositions on the ballot for voters to consider. One was Proposition 13 and the other was Proposition 8, which also provided tax, surely, probably to a lesser extent than this Proposition 13. Proposition 8 was put on the ballot by the California Legislature. Voters saw through this deception. Proposition 13 passed, with its one percent property tax cap. Proposition 8 did not pass.

38 years later or so, here we are. The point being, Members, these decisions have consequences that could last for decades. It is fundamentally important that we do honor, as Mr. Scott said, the will of a million people who have put the CLTA on the ballot, and we do away with the half measure before us, SCA 14, so that true transparency can be in the Constitution, and can be in place for decades. I'd ask for a "No" vote.

MR. FRANK: Good afternoon, Mr. Chair and Members. My name's Terry Frank. I'm with Californians Aware, and we pledged our support for CLTA before it was in its final form, in principle, in other words. The analysis -- today's analysis notes that previously there were four pieces of legislation that had substantially similar provisions, as does SCA, and indeed the CLTA. If you look at what happened to them, the answer is nothing. These bills were duly introduced, but never got a hearing.
In fact, I can't find that they were ever assigned to Committee.

So to say that this is not a moment inspired by a sudden openness to this kind of idea insults the intelligence of the voters. The voters are not going to put down the two measures that will end up on the ballot if you insist, and compare -- make a side-by-side comparison with them, anymore than any of you, I suspect, is going to do that. They're going to be struck by the fact that there are two very, very similar-looking measures, at least similar from the 30,000-foot level, and they probably will decline to support either one.

And I have to believe that that is the not-so-buried intent of this legislation, since the Legislature had no taste, no stomach for any of this kind of thing in the four opportunities to take it up before. And for that reason, we must oppose this legislation.

CHAIRMAN GORDON: Thank you.

Anyone else in opposition?

If not, let me see if there are questions, comments from Committee Members, and then we'll allow Ms. Wolk to respond, and close.

Miss Chang.

ASSEMBLY MEMBER CHANG: Thank you, Mr. Chair.

You know, this issue of transparency is actually
a very important issue for me. When I first got elected into the Legislature, I -- one of my first bills was to require certain State agencies to live-stream their board meetings and archive those recordings. And that bill wasn't able to get approved by this Legislature. And you know, there's been similar legislation that has been introduced that either died in committee, or wasn't even referred. AB 27, 2011. Bill died with a "No" vote in the Assembly Budget Committee. SB 17, Blakeslee, 2011. Died awaiting referral in Rules Committee. AB 1685, Burrell, 2011. The bill died in the Assembly Budget Committee without a vote. AB 70, Burrell, 2013, held on the Assembly Budget's suspend file without a vote. ACA 11, Burrell, 2013, held on Assembly Budget suspense file without a vote. SCA 10, Wolk, 2013, never referred to a committee and never granted a vote. ACA 4 and ACA 1, by Olson, held on Assembly Budget suspense file without a vote.

So historically, this Legislature has not been open to the idea of transparency. But today, we have a very unique situation, because the question for us is do we support this bill and allow it to compete on the ballot with the existing ballot measure, or do we reject this measure and let the other measure stand alone.

And you know, there are good things with this
bill. But I gotta tell you, there's been a ballot measure moving forward for quite some time, and has been signed by a million Californians in support of the California Legislative Transparency Act. But the bigger question that we should all ask ourselves is how does this bill improve upon the California Legislative Transparency Act? Because it's going to be on the ballot. And we have a comprehensive act that we can support that is finally going to address the transparency issues. Are we going to have a half-baked ballot measure in the form of this piece of legislation? So that's my question, is how does this -- how does SCA 14 improve upon the CLTA?

CHAIRMAN GORDON: Allow you to deal with that in your close, I think.

Any other questions or comments?

Miss Waldron.

ASSEMBLY MEMBER WALDRON: Thank you, Mr. Chair.

A lot was brought up obviously, in the opposition. Some of the issues I think that make it sort of vague is, you know, requiring audio visual recording of floor sessions, committee meetings, broadcasts -- by what date does SCA 14 require these to be done?

SENATOR WOLK: By the next business day. And that would be spelled out in 884.

ASSEMBLY MEMBER WALDRON: But what -- but why?
What date would all of that be up and running? I mean, would it start the day after the election, or would it be implemented by 2018?

SENATOR WOLK: After the action is taken.

ASSEMBLY MEMBER WALDRON: Okay. And would it be available just in closed circuit TV, or by internet as well?

SENATOR WOLK: By internet.

ASSEMBLY MEMBER WALDRON: Okay. I think the trouble I have is that we have an initiative that's already on the ballot. It's gone through the process. It'll be voted on, and I don't really see an overriding reason to bring another one that could be confusing to voters, using similar language, not quite the same. I think the one that's on there now is strong and should stand alone. So I would not be supporting this today.

CHAIRMAN GORDON: Thank you.

Any other questions, comments from Members of the Committee?

Mr. Arambula.

ASSEMBLY MEMBER ARAMBULA: Permission to read, Mr. Chair?

CHAIRMAN GORDON: Sure.

ASSEMBLY MEMBER ARAMBULA: "Luke 8:16. No one lights a lamp and then covers it with a bowl or hides it
under a bed. A lamp is placed on a stand where its light can be seen by those who enter the house. For all that is secret will eventually be brought out to the open, and everything that is concealed will be brought to light and made known by all."

I want to take a moment to thank Dr. Munger and Senator Blakeslee for bringing this bill up, for taking the energy and the efforts to do CTLA. I think it's important for us to be held accountable by the people. I think it's important for the people to hear and see what we do in their stead each and every day.

I think the question that's in front of us right now is whether or not the Legislature has some ability to self-moderate and dictate our terms as well. I would like to see where that process takes us. I don't want to take away, though, the fact that I think you have been a champion and have really brought something out for us that has really helped to move that agenda forward.

Having a private citizen who is challenging us and bringing the best out from us is something that we should all aspire to. We get the government we deserve, and I am glad that there are public who's challenging us and moving us forward as well. So thank you for the efforts you have had.

CHAIRMAN GORDON: Okay. If there's no other
questions, comments from committee members --

   . DR. MUNGER: Can I comment?

CHAIRMAN GORDON: -- Senator Wolk, we'll allow you to close.

   SENATOR WOLK: I will. Thank you, Mr. Gordon.

   And I want to thank Dr. Munger as well for his energy and effort. That's what has brought us here. I think I was pretty clear about that in the beginning.

   He's been -- he suggested that this -- our attempt here has been inferior, that there are poison pills. That is unnecessary. And actually over the course of the hearings, you've gotten angrier and angrier. And I appreciate that. I think we're on the right path, frankly.

   My name is on this. And I believe this is a good faith effort, which was begun at the request of Senator Blakeslee, to take a look at this, in the light of the fact that this was a very serious effort by Dr. Munger to put something on the ballot. We did a good faith effort, particularly with respect to the 72-hour rule. And the reason -- you know, the fact was it -- it always is at the last minute. But that doesn't take away from the content or the process by which it is put together, and by the fact that there are flaws in yours that we believe are corrected in ours, and we believe that
SCA goes further.

I just wanted to tell you about the effort. That's why it takes so long to make sausage, to make good sausage. Involved in this effort and putting together the language and responding to the concerns that were raised by Dr. Munger and others, the Legislative Counsel, the Legislative Data Center, Assembly Rules, the Secretary of the Senate -- again, not single people, but themselves plus their staffs, many eyes in the CAO, in the Assembly, certainly Assembly Member Gordon and myself. The Speaker's Office, as well as the Pro Tem's office. Proponents, representatives of the proponents, stakeholders in this common cause, League of Women Voters, California Forward, the newspaper publishers, all of whom looked very carefully at the California Legislative Transparency Act and what we're attempting to do with SCA 14, and it's implementing Statute, AB 884.

The ambiguities in the 72-hour CLTA is serious. And I am not an attorney, but I certainly listen carefully to our Legislative Counsel. The language involving 72 hours before a vote in its final form, this is coming out of the initiative, or for any legitimate purpose according to our Legislative Counsel, is -- or at least three of the areas that raise serious concerns. There are seven others that raise serious concerns.
I am a proponent of the 72-hour notice. I have that history. I'm putting my name on this. It is clearly spelled out. Clearly spelled out. No bill may be passed in either House until the bill in the form to be voted on has been made available to the public by publishing it on the internet for at least 72 hours before the vote in that House. Only exception. Emergency. By the Governor. And no bill, it goes on, that fails to comply with these requirements, shall become a Statute. We're clear about that. We're also clear -- again, this is a Constitutional Amendment. Once it goes in there, it only is changed by -- again, by a vote of the people. And that's what we're trying to do.

We believe that we've gone further than Dr. Munger's initiative and provided other things. We have gone further in terms of legislative transparency, in terms of all our committees anywhere. The commitment is to make certain that they are available to the public. The other things we added, this -this very good government change from 31 days before a committee can entertain a new piece of legislation, to 16, should have been done many years ago. It is a Constitutional change. We're going to do that.

And the reason we're going to do that is that it makes sense. How many times have we been here? After
we've introduced our bills, and we sit around for a month. It's not that people can't see what bills have been introduced, with the internet and our Leg Info system. No. It's because we've never changed that. We should change it, and get to work. We should get to work right away, in my view. But I agree there should be a period of time that people can see the legislation. So I think that's a very good government change.

As I said about the 72-hour, we believe, with our Legislative Counsel, and the various input that has been given to us and consultation, that our 72-hour cannot be gotten around. And if there's an attempt to do that, the bill does not fly. Does not go.

You heard from the newspaper publishers. We've added this issue of whether the material that the Legislature, whether our material is in the public domain. There have been issues that the newspaper publishers and others have felt prohibit, or not prohibit, but just create barriers to access to our materials. So that copyright issue and the public domain is really an important thing that is not listed in the Legislature -- in the Initiative.

It is the Steinberg bill that gives us the opportunity to try to come to an agreement. We have tried. This is our -- our good faith effort to do that.
And I reject unequivocally on behalf of all those that have been involved in this very difficult effort, I reject that SCA 14 is flawed, unnecessary, has any poison pills in it or is inferior. I think it is the superior document, and I would ask that we move this forward. And thank you very much for your attention and questions.

CHAIRMAN GORDON: The chair would entertain a motion to do pass to --

ASSEMBLY MEMBER QUIRK: So moved.

CHAIRMAN GORDON: Moved by Mr. Quirk.

A second by Mr. Holden.

We'll take a roll call, please.

THE SECRETARY: Gordon.

CHAIRMAN GORDON: Aye.


Chang?

ASSEMBLY MEMBER CHANG: Not voting.

THE SECRETARY: Chang: Not voting.

Arambula?

ASSEMBLY MEMBER ARAMBULA: Aye.


Brough?

ASSEMBLY MEMBER BROUGH: Not voting.

THE SECRETARY: Brough: Not voting.

Cooley?
ASSEMBLY MEMBER COOLEY:  Aye.

THE SECRETARY:  Cooley:  "Aye."

Gomez?  Holden?

ASSEMBLY MEMBER HOLDEN:  Aye.


Jones?

ASSEMBLY MEMBER JONES:  No.

THE SECRETARY:  Jones:  "No."

Quirk.

ASSEMBLY MEMBER QUIRK:  Aye.

THE SECRETARY:  Quirk:  "Aye."

Rodriguez?

ASSEMBLY MEMBER RODRIGUEZ:  Aye.


Waldron?

ASSEMBLY MEMBER WALDRON:  No.

THE SECRETARY:  Waldron:  "No."

CHAIRMAN GORDON:  That motion passes.  And we'll -- I'm going to hold the roll open for just a couple minutes and see if Mr. Gomez will arrive.

SENATOR WOLK:  Thank you, Mr. Chair, and Members.

CHAIRMAN GORDON:  With that, we can certainly dismiss Committee Members and if anyone need to add onto consent calendar --
ASSEMBLY MEMBER JONES: Aye.

CHAIRMAN GORDON: -- earlier. Mr. Jones: "Aye" on the consent calendar.

ASSEMBLY MEMBER QUIRK: Aye.

CHAIRMAN GORDON: Mr. Quirk, "Aye" on the consent calendar.

So Mr. Gomez, we have a consent calendar. Miss Waldron, you wanted to add onto that an "Aye"?

ASSEMBLY MEMBER WALDRON: Aye.

CHAIRMAN GORDON: Motion due, pass on SCA 14, due pass on appropriations, the current vote: Six "Ayes."

Two "Nos." Two not voting.

ASSEMBLY MEMBER GOMEZ: Which one is this?


ASSEMBLY MEMBER GOMEZ: Aye.

Mr. Gomez: "Aye."


CHAIRMAN GORDON: All right. Thank you all very much. We will be adjourned.

(The proceeding was concluded at 4:13 p.m.)
REPORTER'S CERTIFICATE

I, KAREN S. CHALLE, CSR No. 8244, Certified Shorthand Reporter, certify:

That the foregoing proceedings, pages 1 through 50, were taken before me at the time and place therein set forth;

That the proceedings and all statements made at the time of the hearing were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this 30th day of June, 2016.

_____________________________
KAREN S. CHALLE, CSR NO. 8244