CALIFORNIA STATE SENATE

SENATE ELECTIONS AND

CONSTITUTIONAL AMENDMENTS COMMITTEE

HEARING

IN RE: SCA 14; AB 884

WEDNESDAY, JUNE 8, 2016
CALIFORNIA STATE SENATE
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AND CONSTITUTIONAL AMENDMENTS COMMITTEE

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SACRAMENTO, CALIFORNIA
WEDNESDAY, JUNE 8, 2016

Transcript of proceedings taken on behalf of
Redwood Pacific Public Affairs, State Capitol, 1315 10th
Street, Hearing Room 3191, Sacramento, California,
Commencing on Wednesday, June 8, 2016, at 1:30 p.m.,
Before Karen Challe, Certified Shorthand Reporter Number
8244.

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APPEARANCES:

The Committee:

SENATOR BENJAMIN ALLEN, Chairman
SENATOR JOEL ANDERSON, Co-Chair
SENATOR LONI HANCOCK
SENATOR ROBERT M. HERTZBERG
SENATOR CAROL LIU

Presenters/Speakers:

SENATOR ROBERT M. HERTZBERG, SCA 14
FORMER SENATOR SAM BLAKESLEE, SCA 14, AB 884
ASSEMBLY MEMBER RICHARD GORDON, AB 884
DR. CHARLES MUNGER, SCA 14, AB 884
PAUL SMITH, Rural Counties Association
JIM EWERT, California Newspaper Publishers Association
GAVIN BAKER, California Common Cause
TRUDY SCHAFER, League of Women Voters
MITCH SEAMAN, California Labor Federation
DEAN HUTCHINS, League of California Cities
DAVID WOLF, Howard Jarvis Taxpayers Association

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1:30 P.M.

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CHAIRMAN ALLEN: All right. Let me call this meeting of the Senate Elections Committee and -- Meeting of the Senate Elections and Constitutional Amendments Committee to order. I will ask our secretary to please call the roll. And I think we're also waiting for Darren to get back in here.

Maria.

THE SECRETARY: Allen?

CHAIRMAN ALLEN: Here.

THE SECRETARY: Anderson?

SENATOR ANDERSON: Here.

THE SECRETARY: Hancock?

Hertzberg?

SENATOR HERTZBERG: Here.

Liu?

CHAIRMAN ALLEN: All right. We have a quorum, and appreciate the Members coming. I certainly hope we're in touch with the Senators Liu and Hancock about coming. And then Darren is here too.

So the first item on the agenda that we'll be hearing is SCA 14. And what I wanted to just first
mention, it seems there's been a request to have a
stenographer record this proceeding. So I'm happy to
accept the request. But I want to say two things. First
thing is the common practice is to ask for permission of
the Chair in advance. And so, you know, just to let folks
know that in the future, please make sure to do that.

And second of all, we would appreciate a copy of
the -- of the transcript afterwards so we can, you know,
have it. But with that, I'm happy to accept the request
for the stenographer.

And with that, we have Senator Hertzberg here to
present Senator Wolk's SCA 14.

SENATOR HERTZBERG: Thank you, Mr. Chairman.
Yes. Senator -- last week, Senator Wolk asked me to
present, as she wouldn't be here today. And I'm happy to
do so. On a personal level, because I have been
personally involved in this issue with her when, before,
when I was out of government, and when she was chair of
the committee that I now chair, I'm deeply involved in
these issues of budget reform. And I wanted to be able to
then -- glad to have the opportunity, because I have some
sort of context with respect to this measure and other
measures that are part of the larger discussion about the
reform process. So this measure in broad terms, as you
have before you, we'll certainly talk about the details as
we go forward, provides that the Legislature provide at
least 72 hours notice of a measure in its final form
before taking it up, seeking to avoid what is commonly
referred to in the legislative parlance as gut and amends.

And secondly, it deals largely and together in
conjunction with the subject of Mr. Gordon's measure, with
the whole notion about the requirement that -- to make the
proceedings of the Legislature both available and public.
And there's some question about how -- what the depth and
dimension of that is in terms of it's all proceedings,
standing committees, the floor, many -- most of which is
already recorded.

I believe this committee is being recorded
today. Is that correct?

CHAIRMAN ALLEN: Yeah.

MR. HERTZBERG: So these are important
discussions. But let me frame it, because it involves a
lot of reform groups with whom I have been involved with
for years, a lot of reform groups, common cause, others in
this larger discussion. We have, for many years, been
dealing with this whole issue of transparency before
government, in the Legislative Branch of government. We
had a measure, of which I was the co-chair of, that was on
the ballot in 2012, which included, among other things,
the precise provision that we see here today, 72-hours
notice. Certainly it was one of many items. No question. But it is something that we spent a lot of time with in former groups, not-for-profit groups that I was involved with, looking at this whole larger issue, trying to build a consensus and trying to deal with this challenge that we face about these gut and amends.

I personally have a view that is -- that result, that certainly -- and you'll hear me talk about this over the next number years, as long as I serve in government, of how the Legislative Branch has to change its rules, and then hence avoid gut and amends, because we in fact deliberate on things in a much deeper way in committees, and let committees hold on to the bills over long periods of time and have series of hearings that ultimately will be able to really deliberate the kinds of issues that we need to deliberate and give the kind of thought that we need to do to the public policy issues that we face, and not be limited by whoever the author is or the single subject rule. They're much larger and deeper discussions.

But -- so one of the unintended consequences of this, that we've seen since Jess Andrew adopted this rule of how the Legislature works on these time deadlines is these gut and amends, these last-minute bills without having hearings, without going through the process, they're gut and amended often without much notice. So
what this measure seeks to do, and we sought to do in 2012 was to -- was to at least give a minimum of fleeting notice so that parties would be able to understand what's before them. Because often -- and I've certainly seen this in my tenure, being involved in government, folks introduce stuff at the last minute. You don't really get to know what it is or see it. And it's not fair or right in the process.

Now, the last thing I want to say about this is that it's important to understand that there's interrelationship between our role as a Legislature and trying to write the law, and the initiative process. This Constitutional Amendment by Senator Wolk is being introduced I think in no small measure in response to a ballot measure which is going on the ballot now. I think that's a fair and honest statement. And Senator Wolk has been involved in these issues, as the proponents know, for some period of time.

Well, as part of this tension that exists between the public's important right to be able to make the law or to question what we do, and the power of the Legislature to act responsibly, is an initiative process, and we used to have in the law what was called the indirect initiative. It was taken out under Proposition 1A in 1966, when we professionalized and full -- made the
Legislature full time, and we brought it back in last --
was it last year? Before last, I guess, with Senator
Steinberg's Bill 1253.

Now, what was the purpose of that and how does that relate to what we see here now? A group of, I believe it was 64 groups, came together and spent a year and a half. I -- according to my records when I looked at my computer I had 2,674 e-mails involved in this process over a year and a half, back and forth. And from Labor to League of Women Voters to Common Cause to the Howard Jarvis group and the like, sitting down for this period of time under the guidance of former Chief Justice Ron George and Justice Cruz Reynoso, giving us guidance and legal advice, trying to figure out how we can bring back the indirect initiative. And the purpose of the indirect initiative, and why it relates to this right now is that we've passed it. And what that means in large measure is the right to call back, the right to withdraw.

So that what happened before in the old law was that proponents, for whatever their motivations were, would come before the voters by virtue of getting signatures out in front of a grocery store or whatever it was, they put something on the ballot. The way the process worked in the old days, in the last 25 or 30 years, was by the time those things were actually
before the Legislature, we were at the end of our
Legislative Session. So by virtue of this 1253 -- this SB
1253, we required folks that had 25 percent signatures to
give notice, so that we harmonized the relationship
between the policy discussions on the one hand in the
Legislature, and the efforts by groups to try to put
initiatives on the ballot. So where we are today is a
result of what we see before us, I think, is fair to say.
Is that the Legislature, with Senator Wolk, who has a
history in this area, and me presenting this bill, who has
a history in this area, saying to the proponents, you
know, you've had an influence. You've had an impact. I
don't think that but for what they have done, that we
would have this before us, because quite frankly these are
hard kinds of things to change; these kinds of rules, and
why gut and amends exists. We, I think, know some of the
challenges with respect to that.

So now we're faced with an issue where we have
before us a measure, not exactly harmonized. You'll hear
it from the opposition. I saw that the comparison charts
of where the differences are. But I think that in taking
a look at those, you know, certainly I don't have
authority to take amendments now, but I think it's --
certainly there's an opportunity for discussion, to be
able to avoid putting this on the -- well, it will be put
on the ballot, but as a constitutional amendment by the Legislature, which is a better thing to do.

The differences are really twofold in large measure as I see them. One is the notion that the gut and amends are only in the final determination. The experts with whom I've briefly consulted with, some of the organizations I used to be involved with are concerned there's some litigable issues in that regard, because there's uncertainty as to how it's defined in the initiative. But basically the idea is that if there's a gut and amend in the first house, it doesn't -- it's not subject to the 72-hour notice rule as proposed in SCA 14, but it's only in the final analysis.

Well, the truth of the matter is, as we all know as a practical matter, is there's not really gut and amends in the house of origin because stuff gets passed through the house of origin in the second house. And gut and amends are always in the second house. It's how it works. But I think it's flexibility in that regard if that proves to be a point.

The second issue is who pays for and how extensive the disclosure is. Assemblyman Gordon had talked about that with respect to his measure. But really, the issue is is this something that comes within the purview of Prop. 140, that limits how much money
constitutionally the Legislature gets, or is this something that can be paid for, meaning the cost of doing these productions, outside of the -- in the general fund. My judgment is that, you know, it would be nice to have it just within the Legislative Branch. But someone who served in management roles of this body, or these bodies, the challenges are somewhat great. And the last thing we want to do is have a chilling effect on the ability to have as many hearings, and to spend as -- you know, and be as open as possible, where the Legislature's saying well, I don't know, if we have these extra hearings, and broadcast these hearings for a select committee or for some other proceeding, because of budgets, because, you know, you've got to always ask the leadership for the permission for the hearings.

And so in the scheme of things, the differences in my judgment are pretty de minimis. I think that the author, and certainly me as one of the voters on this, that are coming down the line, are certainly open to making changes. But the end of the day is, what's important here is there's tension that exists between folks that go out and put stuff on ballots, because they think the Legislature doesn't work. It's legitimate. It's true. I get it. I'm not denying it or think it's inappropriate. The question is whether the circumstances
are tasteful or not shouldn't be the discussion of what we
do as a Legislative Branch or what the proponents do. The
question is do we end up with public policy that moves
incrementally in the right direction, which is what this
measure's doing. This measure is much more narrow than
the measure that I was involved with on the ballot in
2012, Proposition 31, which is probably smarter, to be
more narrow. But it also faces a number of challenges.
And to the extent that we in government should always be
responsible and try to work together, whether we were
dragged there by horses to get to the trough is not the
issue. The issue is where are we, and what voter
experience will there be on the ballot, and trying to
limit the number of initiatives.

You know, it's been -- you've heard me talk
about this in the committee before with respect to other
initiatives. It worries me tremendously that when the
budget is too long -- the budget -- when the ballot is too
long, it undermines confidence in government. We have a
sacred right of the initiative. And people will never
give that up. I have poll-tested that. When I was in
government before, I had a commission on initiative
process. I've been through this in the private sector,
initiative process review, and people will not give it up,
'cause ultimately they want that power.

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But the same time, they don't want to be inverted with having a voting long ballot that's 30 pages long. So there's a tension there. And I think it is important. And I think what Senator Wolk is doing here is important. I understand and I completely personally relate to the frustration of the opponents of the measure. I only will say to you, as the committee, that I think from talking to Senator Wolk's staff, and conferring with her, and from knowing her in the past, by virtue of working on this issue when it wasn't popular, and she couldn't get stuff out of this house, that she's willing to work on this.

And I just -- I close with a quote that when you walk into my office you will see this in my reception area. I pulled it out. And it's a quote. It says "On Compromise. We shall need compromises in days ahead to be sure, but these will be -- or should be compromises of issues, not principles. We can compromise our political positions, but not ourselves. We can resolve the clash of interest without concealing -- conceding our ideals. Compromise does not mean cowardice. Indeed, it is frequently the compromiser and conciliators who are faced with the severest tests of political courage as they oppose the extremist views of their constituents." J.F.K. Profiles in Courage. 1955.
I share that with you because that's what we're asking here today, what Senator Wolk is asking, and asking of this committee and asking of the proponents of the committee and of leadership that understands and is supportive of this -- of these measures, you know, to step up to the plate and to fix the rules as they should. And to tell the truth to the public, to the proponents, to realize that yes, it has not always been the easiest way to have to go out and spend a bunch of money, go out and gather signatures and be prepared and hire the political industrial complex people of the process to be able to go out and fight your battles for you. But that the idea at the end of the day is that we serve the public. We serve the common good. We serve the public interest.

I think that's what Senator Wolk is doing with this measure. And I'm certainly happy to answer any questions and to respond to the opponents to this measure. Thank you very much for your patience for my long introduction.

CHAIRMAN ALLEN: No. I appreciate that a great deal, Senator. I think you did a good job of covering the major issues at play.

So do you have witnesses in support?

MR. SMITH: Thank you. Mr. Chairman, Members. Paul Smith with the Rural Counties Association. Our
membership is the members of Boards of Supervisors in 35 rural counties. And we do support this measure. We have supported each of Senator Wolk's efforts as it relates to imposing a 72-hour in-print rule.

As you can imagine, the 72-hour in-print rule is very understandable for Boards of Supervisors, because of the Brown Act, they have to live with that requirement. And particularly in rural counties, where everybody knows everybody, when you do not adhere to that, you get flack at the grocery store and everywhere else.

We think this is that good measure. We understand exactly as Senator Hertzberg has put forth, that this is a compromise measure. To be frank, we very much appreciated the previous version. But we think this is still a very, very good step in the direction in transparency.

Keep in mind that for final things to be acted on at the Board of Supervisors' level, you have that 72 hours. Obviously in the spirit that I think Senator Hertzberg said, is we are looking at that final close, right? That Second House, when really the chips are down, and the bills are really before us. That's when the full disclosure needs to be made.

The same is true of Boards of Supervisors. There's a lot of times conversations behind the scenes
with one staff member, one supervisor may be out in public, where things are talked and bantered over. But the requirements of the 72-hour in-print rule are there when final action is taken.

So we think this is a good measure. We think it's the step in the right direction, and we appreciate the spirit of compromise, and we encourage the Legislature to move forward.

CHAIRMAN ALLEN: Thank you, sir.

Yes, sir.

MR. EWERT: Mr. Chairman. Members of the Committee. Jim Ewert with the California Newspaper Publishers Association. And like the Rural Counties Association, we too have been supporters of Senator Wolk's previous efforts and in last year's assembly effort. And some of our individual members, as you may know, have been somewhat critical of the gut and amend process over the years.

We think that this is a good step. This is a good approach; that it would create more time for journalists and the public to review amendments that come before the body and allow not only the public and journalists to understand, but the legislators as well, what they're about to vote on and about to do.

It also provides additional expertise from
outside to help inform those efforts. And all of this strengthens the integrity of the legislative process, in our minds.

We are aware of the criticism of the approach to only provide this in the Second House. That is where most of this type of activity occurs. But we also are supportive of amendments that would clarify that there are some situations where bills may originate in a house, especially at the end of session, and we are supportive of that effort, and look forward to taking part in the discussions as to the applicability of those, the appropriateness of those, and we urge you to send this on so that we can engage in those discussions. Thank you.

CHAIRMAN ALLEN: Appreciate that. Thank you.

Other witnesses in support.

MR. BAKER: Gavin Baker with California Common Cause. We are neither in support nor opposition to the bill, but just providing comments at this time.

We thank the authors for bringing this bill. This is a really important conversation, and we're glad that the Legislature is joining it. As you heard, this is very similar to the California Legislature Transparency Act. We do have a support position on that initiative. And if it appeared on the ballot, we would urge voters to vote for it as it has been filed.
But we have also supported other approaches to this issue in the past, like ACA 1. So we're open-minded about the different ways that this could be done. The main thing is that we don't want to see two competing measures appear on the same ballot. So we hope that that won't happen. We encourage the authors and the proponents to continue discussion.

We do have some concerns with the bills as currently drafted, and most significantly we believe that the 72-hour transparency period should apply before a Floor Vote in either House, which is the way that the initiative would work. We think it's important that legislators have an opportunity to read a bill before they're voting on it, and that constituents have the opportunity to give their views before their legislators are voting on the bill, and that includes both their representatives in either the Senate or the Assembly, not just one or the other.

We hope that these issues can be addressed, and we hope that a consensus solution can be reached.

CHAIRMAN ALLEN: Thank you. Thanks so much.

Hey there.

MS. SCHAFER: Mr. Chair and Members of the Committee. I'm Trudy Schafer, representing the League of Women Voters of California. And like the representative
from Common Cause, I'm explaining that the League has not
taken a position on the bill. But we would like to make
some comments.

We do appreciate the effort to increase the
transparency of the legislative process. Like Common
Cause, we are also supporters of the initiative. And we
also -- we're strong proponents of the Ballot Initiative
Transparency Act that Senator Hertzberg referred to. And
for that reason we do hope that a continued conversation
will go on. We do think that this is something that
should be negotiated in good faith. And we hope that that
will continue to be the case.

We do have some concerns, and so at this point
we thought it best that we point them out. A major one is
that we also believe that it would not serve the public or
good policy if we were to end up with two measures on the
ballot. And for that reason, we -- all we can do is urge
both the proponents of the initiative, and you, as
legislators, to move forward in whatever discussions you
need. But we do think that the danger of the public being
confused is too great when there are two measures that are
essentially, to the public's eye, very similar, or even
the same.

We also have a major concern about the 72 hours
of published before a Floor Vote can be taken. And we do
feel that it ought to apply to both Houses. This is a case where we really have legislators who don't have a chance to understand what a bill is. And that's not serving either the Legislature or the public. The public won't have had the opportunity to see really what's in a bill. And they can't expect that their representatives will be doing their proper job even in the first house.

We know that Common Cause has called your attention to a number of points that need clarification in our minds. We've had some similar conversations. And so we would refer you to that.

And then finally, the provisions, one aspect of that perhaps is that we're aware of at least one provision that's in the statutory part of the initiative, but is in the Constitutional Amendment, SCA 14, and assume that that was done in order to make it harder to amend those provisions. There could be others, and I think the proponents would probably speak to that. So I would just say that that again is a topic for your discussions.

So thank you very much for your attention to this. And we hope that negotiations will move forward.

SENATOR HERTZBERG: Thank you, Trudy.

MR. SEAMAN: Thank you, Mr. Chair, Members.

Mitch Seaman with the California Labor Federation. We don't have an official position on the bills or the
initiative, and so we're here less to talk about the pros and cons of either, but really more to highlight the merits, we believe, of the legislative process, as a way to deal with these issues, as opposed to the initiative process.

As all of us in this room are painfully aware, the legislative process offers a lot of different ways to improve potential legislation. And all sorts of ways to take the time necessary to make sure that we're doing everything right; that as we learn more about an issue, and we learn more about how the statutory change should be worded, what amendments should be taken, what should be taken out and what should be put back in. The legislative process, for all of its flaws, offers a lot of great ways to make sure that at the end of the process we've got the best possible statutory change that we can come up with.

And the fact is that the initiative process just doesn't do that. While we're very supportive of the initiative process, and have been very involved in it in the past, we've sponsored a lot of legislation around, we're actually sponsoring legislation this year around the initiative process, the fact is that you kind of are stuck with your first draft. And then as the process goes forward, as you learn more about it, there's really nothing you can do. And you wind up with law that leaves
out all of the benefits of the legislative process. And as much as you might like to improve it, you're just not able to.

And so while we think the initiative process very much has a place, and is a worthwhile thing that should continue, there are times when it's not appropriate and not the best way to deal with issues. And we think the ones at hand with these two bills, and at hand with the initiative, are the kinds of issues that are -- that are best dealt with through the legislative process, and in the interest of good government, and in the interest of allowing the legislative process to benefit from the debate and benefit from the time and all that we learn about an issue through it, we think that the legislative process is the way to deal with these issues, and we hope that all involved can find a way to make that happen.

Thank you.

CHAIRMAN ALLEN: Thank you.

MR. HUTCHINS: Good afternoon. Dean Hutchins with the League of California Cities.

Also in line with the other folks' comments, we've not taken a position on SCA 14 at this time, but we'll point out one technical difference that applies to, that is encapsulated in the ballot measure, but is not in this measure, is that it is our understanding that SCA 14
does not apply to any special sessions that are happening. So -- you know, you're legislating or regulating your regular session, but when the government calls a special session, you know, sort of the same house rules apply. And that is one of the concerns that we had in reading the measures. So just something that we wanted to point out on a technical issue before the conversations continued.

Thank you.

SENATOR HERTZBERG: Thank you.

CHAIRMAN ALLEN: Thank you. Do we have witnesses in opposition?

SENATOR HERTZBERG: Seeing there are none.

CHAIRMAN ALLEN: For the stenographer, that was not me saying "seeing there are none."

MR. BLAKESLEE: Greetings. I'm Sam Blakeslee. And I'm a co-proponent for the California Legislative Transparency Act, which will appear this November. And I must respectfully oppose the SCA as it's drafted.

As you know, I had the distinct privilege and honor of serving in both the Assembly and the Senate for almost a decade, including a stint as Minority Leader. So I approach these issues from a perspective of deep personal commitment, and also not as someone who's "doe eyed," misunderstanding the complexities of how the
Legislature can or should work, but someone who wants to effectively help the Legislature move forward in an arena that I think everyone we heard speak today agrees needs attention.

So why am I so thrilled to be here? Because we're not just talking about any bill. We're talking about a bill that will reform the conduct of this Legislature. And we're talking about a Legislature that has a distinct role of voicing the hopes, the dreams, the aspirations, the values and more importantly the will of the people, which is why it's so important that we do our work in the public's eye.

Earlier this year bills were drafted to put a stop to special meetings with the California Coastal Commission members. And last year the Legislature sprang into action when members and staff of the California Public Utilities Commission were found to be operating improperly behind closed doors.

Indeed, over the years, the Legislature has passed numerous laws designed to end dealings that exclude the public, and to bring sunlight to the operation of government.

For example, and those of you who've served either in local government or in agencies will know this well, the Legislature passed the Ralph Brown Act of 1953,
the Bagley Keene Act of 1967, the California Public
And all of these measures had three things in common.
First, each forced greater transparency onto government
despite the objections of those public officials who would
be covered by these laws. Second, each was written by the
Legislature to protect the rights of the public. And
third, each was intentionally written to not apply to this
institution, the Legislature.

And I'm not the first to cite these facts, as
virtually every major newspaper has decried this body's
aversion to applying the same rules to itself that it
applies to others.

Indeed, over the years, legislators have
authored nearly ten different measures to require a bill
to be in print for 72 hours before it can be voted on.
Many of these proposals were defeated without even being
given the courtesy of a hearing, let alone a vote. And
none has ever passed out of a policy committee, let alone
off the Senate Assembly Floor.

And now, after years of work, and filing a
million signatures with the Secretary of State, a
citizens' initiative is moving its way to the ballot so
that voters can have the opportunity to do what this
Legislature has refused to do.
And now, at this 11th hour, the Legislature has written a competing measure to the citizens' initiative, and it is designed to go on the exact same ballot. And here we are testifying on this measure. And as the good senator mentioned, we are in an era of SB 1253, where coordination and cooperation was envisioned. But let me just point out that part of that process was an SB 1253 hearing to start the dialogue, which was supposed to commence not three weeks before the deadline, but when the 25-percent threshold was met. We met that threshold months ago. We have yet to be invited to a SB 1253 hearing.

So it's important to put that in context because we have worked for a very long time on this language. And we are now facing a very short timeframe to respond to the Legislature's involvement and interest, newfound interest in this issue.

I will tell you that we would cheer the Legislature's late effort if the measure were complimentary to the citizens' initiative by addressing additional important issues. And we know there are many from which to choose. For example, SCA 14 could have been a constitutional amendment providing improved budget transparency, an area which CALPIRG gave this state an F rating. We would have certainly cheered that effort and
been here in strong support if that were the transparency measure that was being contemplated.

Similarly, we would cheer the effort if the measure was designed to strengthen the citizens' initiative by going further in providing greater transparency; for example, in the conduct of how committees operate.

But unfortunately the measure before you today neither compliments nor strengthens the citizens initiative. Instead, it is a measure rife with loopholes designed to weaken the reforms already headed to the voters.

Therefore, I must sadly and respectfully oppose SCA 14 as written, and hope that it will either be held or active effort at amending these problems will be addressed in the near future. Thank you.

And with that, I'd like to introduce Charles -- Dr. Charles Munger, Jr., with further comments.

DR. MUNGER: Thank you, Senator.

Mr. Munger.

DR. MUNGER: Thank you, Mr. Chairman, Honorable Members.

As Senator Blakeslee has mentioned, he and I are the proponents of the California Legislature Transparency Act or the CLTA, an initiative state Constitutional
amendment and statute. Qualification of CLTA for the November ballot is certain. A partial list of our endorsers for this measure, the League of Women Voters of California, the California State Conference of the NAACP, the California Black Chamber of Commerce, the National Federation of Independent Business, California. The Los Angeles Chamber of Commerce, the Howard Jarvis Tax Fair Association, California Common Cause, Californians Aware, the First Amendment Coalition, California Forward, the California Chamber of Commerce, California Business Roundtable, La Raza Roundtable to California, the Small Business Action Committee, the Fresno Chamber of Commerce, the San Jose Silicon Valley NAACP, the Hispanic 100. These groups don't come together on much. But they have all endorsed the CLTA. The question before this committee, therefore, is not the usual one. Namely, whether SCA 14 and its companion, AB 884 together, if approved by the voters, would improve the transparency of the Legislature. The question instead is whether these bills would improve it more than would the CLTA? And the answer as amended is no. And surely we can agree there's no point in this committee moving to put on the ballot and to ask voters to adopt an alternative inferior to one on the ballot already. Particularly when the CLTA has proven broad
support outside the Capitol Dome, and the inferior alternative does not have it.

Now, initiative proponents we have faithfully engaged with the Legislature. SCA 14 indeed was originally submitted as a word-for-word copy of the 72-hour notice provisions of the CLTA, which is why even the titles of the two measures are the same. We now respectfully direct that SCA 14's title now be changed, less the public become confused between our initiative and this bill.

But the amendments of June 1 have moved SCA 14 backward, not forward. So why is SCA 14 as amended June 1 worse than the CLTA? As many people have noticed, SCA 14 would require 72-hours notice only before the Second House to act on the bill could pass it, not the first. The CLTA, and the original SCA 14, before the June 1st amendments, in contrast, always give 72-hours notice of the text of the bill to all the members of the Assembly and the Senate and to the public before a bill can be passed in either House.

Now, for a citizen to be allowed to read a bill and communicate with only one of his or her two representatives, because we have a bicameral legislature, Assembly Member or legislator, before a bill leaves a house, and for only one of these representatives to be
able, within 72 hours, to read and think about a bill, to participate in the cycle of debate and amendment in his or her House, that makes no sense at all. The time taken in the Legislature to pass a bill is not an issue. The same 72 hours elapses for a bill to be amended and sent to the Governor's desk under terms of either the amended SCA 14 or the CLTA.

SCA 14 sets no penalty if its 72-hour notice provision is ignored. And a law whose violation is without consequence, is empty.

The CLTA in contrast provides that if the notice provision is ignored, then despite the vote on the bill, the bill, quote, "shall not become a statute," end quote. Rush a vote on a bill? It doesn't become a law unless it is voted anew, with the notice duly given.

SCA 14 does not guarantee that the proceedings of the Legislature's present Standing Committees, such as this one, will be recorded. Yes. SCA 4 -- 14 would require meetings of, quote, "Standing Committees," end quote, to be recorded. The problem is that while the term "Committee" is already in the constitution, the term "Standing Committee" is new, undefined and without Constitutional precedent. By abundant court precedent in particular set by the litigation over the ill-fated Legislature Reform Act of 1983, in the absence of a
Constitutional definition of the distinction between what a committee at the Legislature might be, and what a Standing Committee of the Legislature might be, the distinction will default to the Legislature's own rules. Those rules alone define the committees and their powers according to Article 4, Section 7(a) of the California Constitution.

So a committee will be standing in the sense of SCA 14 only if a future Senate decides it should be. That is no protection for the public at all. The CLTA in contrast requires that all the public proceedings in the Legislature, and therefore all the standing committees, however the Legislature might choose to define the term, are to be recorded.

SCA 14 does not protect the public's access to recordings of the Legislature's public proceedings. The recordings may exist. They need be shown to no one. The criteria for access has been put into AB 884, a statute. And a statute passed by this Legislature, this committee well knows, the next Legislature could simply undue.

The CLTA, in contrast, guarantees that any person, as well as the press, may view recordings at will on the internet and copy, transmit, excerpt and use the recordings freely. And only a vote of the people, not a majority vote of the Legislature, could restrict access.
But a key safeguard for transparency is left to the whims of a future Legislature to undue is a recurring defect in SCA 14 and AB 884. While the CLTA enshrines the public's right to transparency in the Constitution, this legislation, SCA 14, leaves many of those safeguards and statutes, again, where it can be later deleted or changed.

The SCA 14 does not compel the Assembly or Senate to allow a member of the press or public themselves to make an audio or visual recording of a public proceeding. In fact, it was a matter of discussion just now whether a court reporter could actually take down the words this committee was going to hear before it. The CLTA, in contrast does, keeping the information available to the public timely and complete and an official State recording, honest, all at no cost, I might add. Under current State Law, the Assembly and Senate alone of state and local government agencies may still legally hinder the state and the public this way, in finding out what's going on in their own meetings in a timely way. It is time to end that exception.

I will close shortly. A more detailed comparison of SCA 14 and the CLTA has been submitted to you. SCA 14 does not improve on the CLTA. And if it doesn't, what is its point? I challenge the members of this committee to hold SCA 14 in committee, pending
further amendments that will themselves be subject to
public comment to review this committee. SCA 14 is not
going to start from where it is to get somewhere better
than the CLTA in one jump.

      As written, we oppose SCA 14. And if the SCA
wishes to -- if this Legislature wishes to put it and its
companion bill on the ballot, as proponents we will not
withdraw the CLTA from the ballot.

      We are here to engage with our Legislature, even
at this very late date, to see if a common vision can be
wrought into a workable piece of legislation. It can be
put before the public. But understand that we have worked
very hard to get here. We have been waiting for a long
time for a show of interest. We know how hard these
things are to write, and while we're willing to engage,
we're also not willing to settle for second best simply to
achieve a compromise.

      So with that, we would open to questions from
this body.

      CHAIRMAN ALLEN: Thank you, Dr. Munger. We have
other witnesses in opposition.

      MR. WOLF: Yes. Mr. Chairman, Members. Good
afternoon. David Wolf of the Howard Jarvis Taxpayers
Association in opposition to the bill.

      Mr. Chairman, with respect to two aside, and
given the prior comments, I'm not going to elaborate further, unless the Committee would like with a specific question or comment. So with that, we're opposed.

CHAIRMAN ALLEN: Appreciate you being here.

Thank you.

Are there other folks who want to come and raise their opposition?

Okay. With that, I'd like to turn -- I think the author wants to have some responses to some of the issues that were raised, and then we can open up the floor to questions of the Committee, and discussion. So -- not the author. But the Senator who's presenting the amendment.

SENATOR HERTZBERG: You know, a lot of what was said, I agree with. And I -- let's -- I want to go through the specifics with respect to what's before us now. And certainly I'm not the author, but I certainly will consult with her and consult with her staff, just now, as you observed me doing.

But this notion of sunlight in government's operation is exactly what we're trying do here. I think the idea of greater transparency, the idea of trying to protect the public and the like is what we're doing here. Now, we're doing it at the last minute. That's true. Okay? That's just the -- that's just the God's
honest truth. We -- is it something that -- I've been in this fight for a lot of years too. I happen to be on both sides of the fence, both in government and outside of government, with a lot of groups that you're keenly aware, to which you referred. And I have been fighting these very fights. And I can't disagree.

The test is not how far, as I said before, how long you go down the road if you will. The test is what's the end product. And let's examine this issue. And I don't know why there was not a 1253 hearing. I don't know. And I apologize for that. But I can just say to you that we're here now, and the question is what's the best course of action going forward. Let's examine the points that were raised.

One, the issue of both Houses. I know there's been some discussion as to whether or not that 72-hour rule applies. I personally think, and certainly as was indicated earlier, that that -- it -- really the amendments happen in the second House. But from what I gather, from consulting with the various folks, that's an issue that is not very hard to correct in terms of mirroring what you're saying.

Two, the idea of what the consequences are of failure to adhering to this, I'm informed that Legislative Counsel says that something has to be passed; that they --
that they will opine, from what I gather, that the idea of something being passed means that if it is not passed, it hasn't gone through this process, it's not passed. It has that same effect to which your language you've talked about, with respect to your language saying the law doesn't go into full force and effect.

With that being said to me, that's a lawyering question as to whether or not the consequences are the same or not, and that works. The third element you talked about was the definition of committees, standing committees versus other committees. And also, again, I mean -- I don't -- I think that's a lawyer question about the definition, whether it's limited as constitutional. I understand, and I think it's appropriate for you to be cautious in that regard that somehow this is being drafted in a way that's trying to get around it. But I'm assured, and certainly me now, on the other side of the fence, will stand up if that's the case, because I don't think anybody's trying to play that game of whether someone is a standing committee, informational committee and what that looks like. The idea is to open it up that you've been successful in that regard.

Next, the notion of access on -- you know, again. It's -- I think the underlying issue here, and I think certainly Assembly Member Gordon will talk about
that with respect to his issue. I don't think there's any issue in terms of limiting the access. You didn't raise, but what was raised in your letters, the issue of the funding, whether it comes within the context of Prop. 140, or outside of Prop. 140. And again, as a practical matter, my only thought was, inside of Prop. 140, it will have a chilling effect on how many hearings you have. And we, in this last year, year and a half, had a tremendous number of oversight hearings, in a pretty aggressive manner, which I think is the right thing to do. I think every one of them was televised. But that notion -- and I -- and the last thing, this idea about permission, I don't think that the Chairman said you didn't have permission. The idea, I think, is more just a matter of management in terms of dealing with folks that come here. It's already all on TV anyway. So I don't think in any respect -- he can answer that himself. That's what he intended to mean. And certainly I know that's not what we intend to mean as a body. It's more just a management issue as to whether you have a court reporter here or cameras or whatever, so we know how to deal with it, and the sergeants have notice. It's just an operational issue with respect to it.

So the bottom line is I have no issue with your position that you don't want to make something worse. I
get that. Okay? And I think that's a fair and
appropriate thing. And I think your objectives are fair
and appropriate. The question is you've gone through a
lot of hard work. You have been dissed pretty
dramatically over the years. Fair call. I don't think
anybody would say that didn't happen. Right? But this
collection is a winning conversation.

You're now down to very small issues in terms of
the largest issue that we have been dealing with for years
about changing this Legislature. And I think that I
would -- I'm not suggesting that you capitulate until you
get what you need. But I think -- and I understand the
frustration, how much money you had to spend, and how many
signatures you had to get. I get that. That's a fair
observation. But you're here. You have won.

This reminds me of what I just saw, the
television, Lyndon Johnson, sitting in the Oval Office
with March Luther King and getting the Civil Rights Act,
right? And then subsequently, the following year, getting
the Voting Rights Act. These were hard fought fights, and
there were a lot of issues before that. But these are --
these are big victories. Painful, but victories
nonetheless.

That's why I quoted this Kennedy issue on
compromise. Because however painful it is, certainly from
my point of view, has been in this very fight longer than
you have. Maybe not. I don't know. But I think so.
The -- I get the frustration. I get the distrust. I
think it's fair. That's not the test. The test is we are
lawmakers, and we are looking to make a law to put on the
ballot. We're looking to do it in a fair and appropriate
way. Not way. Fair and appropriate end result that
something that voters can vote on that will have the
impacts on the system, that we're all seeking to do.

You know, the -- there was a bill before this
committee some weeks ago involving redistricting. Was
that your bill or was it -- on the redistricting? Yeah.
On redistricting. I've been fighting that fight for
30 years. And I sat before this Legislature and watched
Common Cause get up here and support your bill. I watched
you adopt something that locals could do on redistricting
that my own party fought me like crazy for.
Redistricting. And here you did it in this house, put it
out. That's progress. That's what we do.

These fights are ugly often in the beginning.
But that's what we do. And I would just celebrate your
success. Don't put down your guard. Get the deal. But I
think there's nothing that you said here, I think it's
fair to say, that Senator Wolk would not entertain. And
if she doesn't, then stand tall. But I think the notion
of saying we're gonna keep this thing going is good for a -- your initiative, is good for a negotiating tactic and -- I think. But it's -- at the end of the day, if what we produce is something that works, I think it's a fair and reasonable solution, which was the compromise that was just mentioned by the League of Women Voters that was envisioned in 1253, to try to bring people to the table to be able to create an honorable discussion, however late, between the Legislative Branch of government and those folks who are proponents of the initiatives.

CHAIRMAN ALLEN: I couldn't agree more with the Senator.

Do we have questions from the Committee?
Yes. Mr. Vice Chair.

SENATOR ANDERSON: I -- excuse me. My voice, I've been struggling with it.

You know, today we're exercising the Legislature's role in examining qualified propositions, and to consider whether changes to proposed initiatives are warranted, and whether we'll decide to place a competitive measure on the ballot with those changes. So I think the core of this is how does SCA 14 improve upon the California Legislative Transparency Act, CLTA? And further, what's the true purpose of those proposed changes to those measures?
So far, in my observance of the testimony thus far, we keep talking about how we need to change SCA 14 to improve it to meet the standard that's already qualified for the ballot. So I would ask you, what about it is so much better or an improvement than what currently is going to be on the ballot?

SENATOR HERTZBERG: Well, let me make -- answer your question as two parts as to part one, and one part as to part two. First --

SENATOR ANDERSON: Would you repeat that again?

SENATOR HERTZBERG: First, with --

SENATOR ANDERSON: I'll just go along.

SENATOR HERTZBERG: Just go along.

First, with respect to the issue of improving upon, one of the points that was made by one of the witnesses here testifying, and it's one of the things that we grappled with with Ron George, and with Cruz Reynoso, the former Justice of the Supreme Court, and others, was this problem that so often initiatives have problems in them. And so we wanted to create an opportunity to fix problems. 'Cause once you collect the signatures, it becomes very difficult. And so we have a provision in, that when you go out and collect your signatures, you have a right to withdraw. We have a day, a number of days, we have in the beginning, in that you can make corrections.
But let's talk about that. First of all, the -- if you go to Section 4.2, Section 8 of Article 4 of the Constitution as amended here, Section 8(a)(2), it says that no bill may be passed 72 hours -- it uses the word "final form."

Now, people at California Forward and others have used the word "final form." And we've seen this game being played before, where somebody goes "Is final form concurrence?" So you can't amend a concurrence. You do a gut and amend in House One. Concur in the next House. Is that final form? Does that create an issue where you're going to litigate?

Well, what's going to happen, that's one of those kinds of questions. So by virtue of being able to engage this discussion between the Legislative Branch on the one hand, and the proponents on the other hand, is to try to fix things that could potentially be wrong with theirs. So your point, number one, was well, are we moving toward a direction that's things that wrong with SCA 14? Well, there's actually things that certainly some people -- I don't know, I haven't done analysis myself -- but could be wrong with the initiative, and certainly will be litigated among the parties. And you want to avoid that.

Secondly, as I expressed here, there are
questions where the lawyers for the proponents of the
initiative are raising issues like the word "past" versus
"consequences." Well, our legal counsel tells us that the
way it's written complies with exactly the objective they
wanted to achieve. So this is not an issue about being a
difference with distinction. It's a difference where
parties agree to intent. It's what language do you use to
get to the intent. We're not disagreeing with that by
virtue of what's in SCA 14.

So the notion is that, A, there's not so many
differences. There's just interpretations. B, there
could be problems with respect to the initiative that's on
the ballot. And C, the motivation is the exact motivation
of what has been the Constitution of the State of
California since 1879 to 1966, which was the notion of an
indirect initiative, was the notion of the
interrelationship once the initiatives were formed at the
turn of the century to be able to have a discussion with
the Legislature and determine either A, to make
corrections, or B, to make compromises, or C, to have the
Legislature put it on the ballot. For whatever the cause
was, it is a legitimate and appropriate constitutional
discussion, particularly as the law is to be able to have
this discussion prior to the time the printing is done for
ballot, to make those determinations.
And so that's what this is. That's okay.
That's a good thing for the Legislature.

SENATOR ANDERSON: Senator, I clearly know now why Lois isn't here today, and you're presenting the bill.
But --

SENATOR HERTZBERG: Lois knows this stuff exceedingly well. Let me tell you. She worked with me on this a lot when I was out of government.

SENATOR ANDERSON: I'm not questioning her ability. I'm just complimenting how well you --

SENATOR HERTZBERG: Thank you.

SENATOR ANDERSON: -- present it. So now that you've gone through all that, I think the crux of my question is how is SCA 14 an improvement on the initiative? Because through all that stuff that -- you gave us a lot of minutiae, which is all very important minutiae I may add, but -- you know -- you talked about the length of time that we've been working on this issue, and yet we've seen zero progress until this moment. And only when we're trying to create a competing initiative potentially. So the whole purpose of this drill is to provide a better product.

So I'm wondering, what aspects of SCA 14 are superior to what we currently have going on the ballot?

SENATOR HERTZBERG: Well, I gotta tell you, this
is my own personal view about what constitutes superior, whether the thing has an extra kung fu grip and for the G.I. Joe toy and whatever else it might have. I think superior is a constitutional discussion between the Legislative Branch and proponents. I believe that the initiative process should be a measure of last resort, where the people are frustrated with their government, 'cause their government's not acting, that there should be action taken.

I think that the level of discussion in the interrelationship between the Legislative Branch of government and proponents of the initiative is critical, albeit late. I apologize for that, although I wasn't involved. But I'm a member of this house, I'm a member of the government, and I do not stand tall and proud about this. But we are where we are. We are in a position to have an impact.

There is a value if it's the exact same language, in my judgment, to have the Legislative Branch acting in coordination when somebody comes forward with a good idea, and we adopt it, albeit late. So I think that has a value to it.

And the last point I'll reiterate is that -- and I went through the points that Dr. Munger raised, you know, at least from what I can determine by my quick
notes, and certainly requires a little bit more homework, but I don't think there really is -- I mean the difference is both houses, which I think is solvable, personally. And I'll advocate for it. Again, I'm not the author, so I have no authority to say otherwise. But I'll tell you as a gentleman, I will advocate for it.

I think that most of the other issues are de minimus lawyer issues that are raised that are appropriate if interpreted incorrectly. But I don't mean de minimus in the sense they're not hard to fix, because the parties are aligned together.

SENATOR ANDERSON: I would suggest to you that CLTA does provide for posting within 24 hours of the recordings.

SENATOR HERTZBERG: Yeah.

SENATOR ANDERSON: And SCA 14 --

SENATOR HERTZBERG: That's right.

SENATOR ANDERSON: -- has no such provision whatsoever.

SENATOR HERTZBERG: That's right.

SENATOR ANDERSON: So you could collect this, you could have all this great information, but there's nowhere in SCA 14 that it provides for it to be posted. And I think that that is -- I think that's where SCA 14 is yet again insufficient when going to the ballot and a far
lesser product for consumer protections. And I look at
Californians as being the consumers and government being
the product.

So let me finish by asking, if -- so is it -- is
it your position -- and I don't want you to speak for the
author -- but based on what you've said, is it your
position that the goal really of SCA 14 is to put options
on the ballot, and not necessarily proceed to strive to
get best product on the ballot?

SENATOR HERTZBERG: Well, let me just -- first,
the first part of what you said, let me just address that
Assembly Member Gordon will raise that with respect to the
24 hours, which is important in terms of his measure in
combining this. But I -- what I think is, is not -- I
don't think it's about competition. I don't think that's
a fair question that you're reading. I don't think that
that's the right thing. It's not about competition.
It's -- that's not the purpose, you know?

I mean, if the purpose is to try to get people
on this to vote for stuff and play games with elections,
everybody's going to endorse this thing who's running for
office. That's not gonna be the question. The purpose
is, in my judgment, from my own personal view -- I can't
speak for the author -- but I'll tell you, for somebody
who spent a year and a half of my life and all those
thousands of e-mails, and you can ask a lot of the people here who were testifying how all those endless meetings and conference calls we had, creating the 1253, which was the budget transparency -- I mean the Ballot Transparency Act was to create this exact situation; to avoid things going on the ballot, and to given an opportunity for the Legislature to engage. So I would argue, in my personal view, its a replacement.

And we certainly heard the points of view of both the proponents. They don't want to replace. I would just appeal to -- as long as at the end of the day, they exercise good faith, negotiate with the lawyers in the Legislature, and the staff and Legislature, to try to come up with something that achieves the same objectives that they're achieving, that they stand down and we have one measure going forward, and we solve the problem for which they have been solely the catalyst for making it happen.

SENATOR ANDERSON: Well, I'd like to just finish by saying quick, three things. One, there is a huge distinction between a Constitutional Amendment and a simple Majority Bill. And when you think in terms of posting within 24 hours, I would have hoped that that would have been part of the constitutional transparency; that it wouldn't be changed at a simple majority vote at a future date, willy-nilly, without the public's input.
Second thing is it is, I think, fascinating to me how the initiative process has given legislators the backbone that they have lacked over the last 20, 30 years to all your hard work and all the predecessors that worked hard on this issue. So I'm grateful for the initiative process that we're even having this debate, and it's lasting more than a committee. When many of the times, in just the short time I've been in the Legislature, these types of measures have fallen on deaf ears, that can't seem to get out of any committee to make it to Floor, or even to the Appropriations Committee. And I would hope in that the author would consider not allowing SCA 14 to be used as a spoiler to stop transparency on the ballot by confusing even further.

And I will say, Senator, you have been more than outspoken when you're talking in terms of how long ballots are, and how many measures and that you have, time and time scolded us in a very thoughtful manner on the Senate Floor about proceeding very carefully. I'd hate to see SCA 14 get on your list of just one more burdensome measure to confuse the voters.

So thank you.

SENATOR HERTZBERG: I don't want it on my list either, sir.

But let me just say one thing, just a final
point if I can, Mr. Chairman, if I may. Okay? And that
is -- let me tell you something. Senator Wolk is not a
spoiler. Senator Wolk has been engaged in this
discussion. She has been unsuccessful. The benefit of
having Mr. Blakeslee and Dr. Munger as advocates, I think
has been helpful in terms of moving this thing forward. I
don't think there's any question about it. It's an honest
answer. This is not an intention to be a spoiler.

It's an intention to be the indirect initiative
to work, often not artfully, but to work the way it's
supposed to work in conjunction with having the
Legislature put this on the ballot.

SENATOR ANDERSON: Through the Chair, I'd just
like to -- I'd like to say for the record -- although I
never said it, "spoiler" was never used in conjunction
with Senator Wolk. I have a great respect for Senator
Wolk.

SENATOR HERTZBERG: I know. She's the best.

SENATOR ANDERSON: It was solely in conjunction
with the legislation, SCA 14, that I used the term
"spoiler." So I want to make sure there's no confusion
there. It's not the Senator.

SENATOR HERTZBERG: I already texted her.

You're in trouble.

SENATOR ANDERSON: All right. After Prop. 50,
I'm worried.

CHAIRMAN ALLEN: I think Senator Hancock had a question.

SENATOR HANCOCK: Yeah. I have a question. And I just want a yes or no answer, please, from everybody. Is the difference between these two measures that one is an initiative and one is a statute?

MR. BLAKESLEE: I'll respond, if I may. Both are Constitutional Amendment and a statute. Ours puts more into the Constitutional Amendment in terms protections that could not be undone at a later point without a vote of the people.

SENATOR HANCOCK: Okay.

DR. MUNGER: And if I may be permitted a clarification? An initiative, a statute that is written by the Legislature, can of course can be changed by a majority vote of the Legislature. A statute which is established by initiative requires a subsequent vote of the people to change, absent special mechanism of the contrary. There are certain technical revisions that we allow -- allow to be changed absent a vote of the people. But our key statutory provisions involving availability of the recordings are guarded by acquiring a vote of the people in order to abridge those rights.

SENATOR HANCOCK: Okay. So would SCA 14 be
placed on the ballot as a statute?

CHAIRMAN ALLEN: No.

SENATOR HANCOCK: As an initiative. So once it was an initiative, say it were enacting, how could it be changed in any way more simply than if the current initiative is on the ballot? Is there any difference that way? Two-third's vote? A simple majority?

CHAIRMAN ALLEN: It's part of the Constitution. It would take another vote of the people.

DR. MUNGER: Once you've amended the Constitution, you have to leave it in the Constitution, again vote.

SENATOR HANCOCK: No. So your entire measure is in the constitution?

DR. MUNGER: No.

SENATOR HANCOCK: Well, that is unfortunately not in our write-up. That is why I am asking. Because we haven't had the informational hearing on the initiative.

So let me -- if I'm not going to be able to get a yes or no answer, let me explain where I'm coming from. I chaired this committee for two years. We had a big hearing on the initiative process. During that period of time, because there was enormous concern over the length of the ballot, over the fact that initiatives become very difficult to change if they have unintended consequences,
as many of them have had. And that it was becoming increasingly apparent that qualifying an initiative was often a matter of money. And that we even had special interest bills for particular businesses put on as initiatives.

So in going through all those issues and considering solutions, we did decide that the process itself is truly worth keeping. And I've come to appreciate it even more in recent years, for two reasons. I do believe it's sometimes necessary, that there are times when interest groups with a lot of share in the Capitol absolutely just keep something from happening. And it may not even be a major thing. But an example I would give you is the treatment of animals.

Do you remember Measure 4? And that was the Humane Society finally put it on after measure after measure about whether chickens could turn around in their cages was defeated in the agriculture committee. And it passed. And it would not have been able to pass this Legislature, I don't think.

The second reason I come to like it more is that it exactly sometimes forces action from the Legislature. And I remember after bill after bill after bill had been defeated in the Judiciary Committee in the Assembly regarding privacy and bank accounts. Now Congress Woman
Jackie Speier stood there with a millionaire behind her, saying if you don't pass this, we're gonna -- we're gonna have an initiative.

Well, the bill passed, lo and behold. And nobody's changed that since that time, that I can remember. Sometimes it's an impetus for action. That is, you know, what I see here. Because I agree with -- I think all of the things that I understand -- the keeping the recordings, making them available, no cost, absolutely, 72 hours. Many of us here supported Senator Wolk in this effort over time.

I do think, though, that we've reached the point where our state constitution is a joke. It's kind of a collection of statutes and an expression of frustration. So unless I'm misinterpreting what's going on here, the differences in these measures may be slight or nonexistent, except that one would be essentially a statute, and one would be more a series of Constitutional Amendments.

I think that's a discussion that ought to proceed. And I would come down in favor of statute, just because of the lessons of history that I've learned in the last 14 years. But again, I think it's great that the authors did this. Sometimes that's what it takes. We know that.
CHAIRMAN ALLEN: Thank you, Senator.

Okay. My thoughts are very much in line with those articulated by Senator Hertzberg. I think that ultimately this is -- there's clearly, it seems, from listening to the discussion, that the key sticking points that the initiative authors have should be, we should be able to work out.

I mean, I agree ultimately, I think what the Senators are trying to do here, Senator Anderson, is avoid adding to the ballot clutter if we can figure out a mutually-agreeable way of addressing the core transparency issues that are behind the CLTA proposal.

And so I understand. I think that -- I'm gonna support moving this forward, with the understanding that a discussion is going to continue, and hopefully intense negotiations, to see what we can -- what we can get -- where we can see eye to eye, and -- and come up with a mutually agreeable solution for both sides. And I -- after listening to this discussion, I heard everyone's positioning, I -- actually I'm more convinced that we can come to a mutually agreeable solution, given, you know, what I understand to be the core quibbles that exist with the proponents and -- and SCA 14.

So that's my feeling. We're also gonna hear, of course, AB 844. There's an interesting hybrid initiative,
statute-thing happening here. But you have to kind of look at both of them within the context of negotiation that's ongoing.

So with that, if there's any other comments from the Committee, I'll entertain a motion --

SENATOR LIU: I'll move.


SENATOR LIU: I'll move on SCA 14.

CHAIRMAN ALLEN: Okay. So there's a motion to pass this Senate Appropriations Committee of SCA 14?

SENATOR ANDERSON: Mr. Chair?

CHAIRMAN ALLEN: I'm sorry. Yeah. Yes.

SENATOR ANDERSON: I would like to just have a quick closing comment.

CHAIRMAN ALLEN: Absolutely. Please.

SENATOR ANDERSON: I don't want to go through every intimate detail line by line. But --

SENATOR HERTZBERG: You can, if you want to.

SENATOR ANDERSON: No. I don't want to, because we're going to go through it with AB 884. But I do think that it's important somewhere along the line to point out the fact that SCA 14 only provides a portion of what CLTA provides, and that the rest of it would be statutory in an Assembly Bill that could easily be changed. And I think when you're talking about protecting the public's right to
know, it's very important that it is constitutional, and not at the whim of today's legislators or tomorrow's legislators. It should go back to the people for a vote, because it's their right to know.

So thank you for accommodating me.

CHAIRMAN ALLEN: Absolutely, Senator. And I think ultimately, Dr. Munger and Senator Blakeslee are acutely aware of their leverage in this situation. And I can only imagine that they would only sign onto an agreement that addressed the core transparency and right to know issues that, values that you just expressed. So that's my thoughts about this.

So there's a motion made by Senator Liu.

SENATOR HERTZBERG: Close, just a couple comments.

CHAIRMAN ALLEN: Okay. The Senator would like to close.

SENATOR HERTZBERG: Given the comments, I just wanted to springboard off of what Senator Hancock said, and I just took a look at this. You know, again, you have two things before you. You'll have -- after this, you'll have Assembly Member Gordon's measure that deals with the whole issue of recording and keeping records. The -- what you have before you is a constitutional amendment, to get specific. And it's very short and sweet. And it is --
basically puts in the Constitution the requirement of the
72-hour notice. And that's what it does.

I am keenly sensitive to the fact that our
Constitution is looking more like a regulation rule book.

CHAIRMAN ALLEN: Uh-huh.

SENATOR HERTZBERG: With 473 Amendments I think
added to it at this point. 573. Excuse me. Something
along those lines. I know it's in that range. And -- but
this is very limited. It does put that portion in the
Constitution.

But I just -- I just think I can't stress enough
how important it is. I think it should be part of the
negotiation. I apologize to the proponents that this
wasn't started a long time ago. But all I can tell you
is, you know, I too have suffered the frustration, and
what you've seen here before in terms of this committee is
the members of both parties, of a willingness to engage at
a level we didn't used to see years ago.

So with that, I certainly ask for your support
on behalf of Senator Wolk.

CHAIRMAN ALLEN: Thank you. Okay.

There's a motion. And we'll ask the secretary
to call the roll.

THE SECRETARY: Motion is due, pass Senate
Appropriations?
Allen?

CHAIRMAN ALLEN: Aye.


THE SECRETARY: Anderson?

SENATOR ANDERSON: No.

THE SECRETARY: Anderson: No.

Hancock?

SENATOR HANCOCK: Aye.


Hertzberg?

SENATOR HERTZBERG: Aye.


Liu?

SENATOR LIU: Aye.


CHAIRMAN ALLEN: Okay. So that motion passes four votes to one.

Let's next hear about 884. And I assume that folks will stay around for that too.

MR. BLAKESLEE: You want us to go back to our seats?

CHAIRMAN ALLEN: I guess technically you should go back to your seats, and then we'll invite you back. I apologize. We're giving everyone some exercise today.

Okay. Thank you everyone for that. And the
discussion continues with this statutory aspect of the debate. We'll hear from Assembly Member Gordon who will present AB 884.

ASSEMBLYMAN GORDON: Thank you, Mr. Chairman.

And as I think has been well explained by this point, AB 884 is a companion measure to SCA 14. SCA 14 would place in our constitution, if approved by the voters, the requirements relative to the 72-hour public review before final approval of legislation. It would also enshrine within the Constitution, requirement of the Legislature to record and make available audio visual recordings of each Chamber and its decision-making committees.

Although the California Constitution currently provides that the proceedings of each House and the Committees shall be open to the public, few Californians have the opportunity to attend our meetings. They're just not here when we are holding our proceedings.

While SCA 14 would appropriately establish a constitution requirement that the Legislature create and make available audio visual records of the proceedings, details are left to the Statute. AB 884 contains a statutory implementation, detailing how the Legislature would arrange for audio visual recording in a way that provides a clear distinction of how this would be accomplished, but done so in a manner that is technology
neutral.

First, the Bill would reaffirm the Constitutional requirement that proceedings of each House and its Standing Committees be recorded and made available. Second, once recorded, the Bill would require a Legislative Council to post all such recordings within one business day, in retrievable and perceivable format, for public use, the entire biannual session, and the following session.

Third, for the longer term, the Bill would require the Legislative Counsel to archive all such recordings for at least 20 years, and make the recordings reasonably available to the public.

Finally, the Bill would repeal the prohibition of using recordings of legislative proceedings for political or commercial purposes and allow the use for such recordings for any lawful purpose without imposing any fee. What these measures do is fairly common sense. And I think what’s one of the pieces that’s important here is that these were carefully drafted to be technology neutral, so that they can stand the test of time.

The last thing we’d want to do, I think, is enshrine in our constitution, specific definitions of technology, knowing how rapidly technology changes. But they were also drafted to provide certainty that the
public would have access, and they would minimize ambiguity about that, and in the end, I believe that S- -- AB 884 would simply and appropriately narrow the distance between the Legislative process, the lawmakers who serve here in Sacramento, and our citizens. And I would respectfully ask for an aye vote.

CHAIRMAN ALLEN: Thank you, Assemblyman. I appreciate your testimony.

Are there folks here who want to testify in support? This is deja vu all over again.

Nice to see you again.

MR. EWERT: Nice to see you, Mr. Chair, Members of the Committee.

Jim Ewert with the California Newspaper Publishers Association. And we are in support of AB 884. It would strike a provision in the law right now that prohibits the use of some of the recordings that are made for uses that we think may be constitutional. That is going to be litigated right now.

But more importantly it would allow public access to the footage of all of the sessions and the committees. And with respect to whether the definition of committee is something that is a matter of ambiguity, there is some guidance in the constitution for that.

In Article 1, Section 3, there is a defini--
there is a standard in Section B, Subsection 2, which says that any Statute Court Rule in place at the time has to be interpreted broadly in favor of public access, and narrowly when it limits public access. And so that's a standard that we think is appropriate in making that determination.

Also, we have expressed one concern about the existing language, simply because of where the bill has been amended. And it deals with the issue of copyright protection that the State could assert in this footage. Our concern is that even though the language states that there is public access to the footage, and it's -- and it's clear, we think, that somehow, somewhere down the line the State could assert that in its copyright interests, it could limit the public's use of that footage.

And so we have talked to the author's office about that concern. We would like to see that addressed either by a declaration that this is going to be, that the materials in the section are in the public domain, and some affirmative statement indicating that the Legislature does not intend to assert any copyright interest in these materials.

And with that, we would fully support this measure. Thank you.
CHAIRMAN ALLEN: Thank you, sir. That sounds reasonable.

Okay. Are there other folks here to testify in support, or with ambiguity perhaps?

MR. BAKER: Right. Commenting neutrality.

CHAIRMAN ALLEN: Okay.

MR. BAKER: Gavin Baker with California Common Cause. In the interest of time, we won't reiterate what we said about the previous bill. But we have the same position on AB 884, neither in support nor opposition. We have some concerns about the bill as drafted. But we thank the author for bringing this forward. It's a very important conversation. We hope that the issues can be resolved, and that a consensus solution will move forward.

CHAIRMAN ALLEN: Thank you.

MS. SCHAEFER: Mr. Chairman, Members. I'm Trudy Schafer representing the League of Women Voters of California. And my statement is basically the same as what Mr. Baker said.

We do have concerns. We've gone through the comparison chart that the authors of the two bills, the Constitutional Amendment and the statute made, and noted places where it does seem that there's either ambiguity or a need to strengthen. And so we look forward to further discussions about this.
CHAIRMAN ALLEN: Thank you. Thank you so much. Folks here to testify in opposition or raise concerns? Here we go. All right. Welcome back, gentlemen.

Senator.

MR. BLAKESLEE: Again, Sam Blakeslee. Thank you. Proponent of the California Transparency Act. Just in quick response to a comment you heard just a moment ago, that the definition of a committee is clear. And that to the degree there was ambiguity, it would be interpreted broadly and in favor of public access, the actual code that was cited, or rather the actual article in the Constitution that was cited is something known as the Sunshine Act of 2004, which interestingly came through this body with a two-thirds vote, but at the last minute, paragraph number seven was added, which said it doesn't apply to the Legislature.

So it is in fact a good example of why we do not want to rely upon the rules or a statute when it comes to a question as important as to the public's right to have access to what happens in this building.

Now with that, I'll just quickly make a couple of comments if I may. First, with regard to the pro statute, as you heard, it can be easily and readily repealed or amended. The citizens' initiative provides a
Constitutional guarantee that the public will have access to audio-video recordings, and no such right is present in the Legislature's SCA.

Second, although this bill does strike the current language of Government Code Section 9026.5 respecting the use of Legislative audio-video recordings, AB 884 provides that these recordings may be used for any lawful purpose, which differs from the initiative's use of a term of any legitimate purpose.

We choose the term legitimate because of its broad interpretation regarding First Amendment rights.

Let me give you an example or two of why this is so important.

As just mentioned, Government Code Section 9026.5 makes it illegal, a crime, unlawful for a citizen to use recordings of Legislative hearings for purposes that represent core first amendment speech and conduct; specifically, commercial or political speech.

Under this bill, a similar speech ban could be passed by this Legislature, which would then define what was or wasn't lawful. So there's an easy way for this body to use that term lawful to write another such ban similar to the one that currently exists.

Second, earlier this week, the Assembly passed a bill which was strongly opposed by the California
Newspaper Publishers Association, that gave the State copyright privileges over public records. If a Legislature made such an assertion over Legislative audio-video recordings, then free access could again be withheld, and such an act still would be lawful under the definition of lawful, which is what's included in AB 884.

So this is no protection at all for a public's right. Not only is it not in the Constitution, but the language that's used is easily circumvented.

And the third issue I want to make, and final issue I want to identify is that while the initiative calls for a 20-year on-line access for recordings, AB 884 requires only the current and immediate past session to be available. And I simply can't understand the cause for such a restriction.

Today, Legislative Council's website provides 24/7 internet access to anyone, for every version of every bill that's been introduced by the Legislature, and every analysis of every bill dating back to the 1999-2000 session, and Legal Counsel's Council's Legacy Site views every bill, every analysis going all the way back to 1993, '94 session.

Why would this Legislature even contemplate limiting the public to only the immediate session and the immediate -- this current session and immediate prior
session? It does not make sense to me given what we understand is available and easily accomplished through technology.

CHAIRMAN ALLEN: Okay. Senator, just to clarify, I believe that the bottom -- so Section 2(a)(3), it says "Legislative Council shall preserve and secure all recordings made pursuant to subdivision in electronic form and store them in an archive for not less than then 20 years. They shall be reasonably available, free to the public, in a medium in which the recording was originally made."

Is that --

MR. BLAKESLEE: Not available on the internet.

CHAIRMAN ALLEN: The website. Okay.

MR. BLAKESLEE: Correct. So the concept here is if you are living in San Diego or Yolo County, and you want to know what your legislator said or did --

CHAIRMAN ALLEN: Okay.

MR. BLAKESLEE: -- four years ago, six years ago, eight years ago, trying to study legislation, and you want to pull up that video --

CHAIRMAN ALLEN: Right.

MR. BLAKESLEE: -- to see exactly what happened --

CHAIRMAN ALLEN: So we need to expand the
language of reasonably available for use.

MR. BLAKESLEE: Reasonably available for use could be to show up, you know, show your ID card and go in and then make handwritten notes as to what is present.

CHAIRMAN ALLEN: Sorry for the interruption.

MR. BLAKESLEE: It's not the same kind of broad constitutional protection that would be available to everyone, anywhere, anytime, free of cost.

CHAIRMAN ALLEN: Understood. Thank you, Senator.

MR. BLAKESLEE: Of course. And with that, I'll conclude my remarks. And again, just urge a no vote as this bill needs, I think, serious attention and work, some of these defects I've identified. Respectfully.

CHAIRMAN ALLEN: Thank you, Senator. I appreciate it.

Dr. Munger.

DR. MUNGER: Well, this is continuing the conversation between initiative proponents and the Legislature. So again, let me say we're here to learn. We're here to hear what's wrong with the CLTA and why anything that's being offered is an improvement. And if you can show it, we're here.

We're also very interested in any flaw we have in the CLTA. So for example, the Honorable Mr. Hertzberg
said the CLTA said you have this problem, referring to
bills being in final form, and there's ambiguity as to
exactly what that means. And I said that is a very
interesting comment, since it's exactly the same language
which is currently in SCA 14.

So if it's a problem, it's a problem for
everybody. And we're very eager to hear what it is.

All right. But going on to AB 884, we have
nothing but praise for this Legislature, if this
Legislature volunteered using its present budget, its own
rules, to implement on its own some of the provisions in
AB 884 concerning the recording this Legislature presently
makes. For example, the recording being made right now of
this meeting might be posted on the internet, quote,
within a business day, unquote, as this measure would have
it, after adjournment of this meeting. That is, that
would be tomorrow.

None of the May recordings of the meetings of
this committee are posted yet on the internet, and we're
now in the second week of June. So if you --
Legislature -- sorry. I looked at them three days ago,
and they weren't available.

The Legislature might even live-stream its
meetings, so make the recordings available on the internet
with no delay at all. But you don't need laws to make
these improvements. You could make them yourself now.

Regarding AB 884, the fundamental objection as it remains is it attempts to do the impossible, to set regulations to preserve public access and free use of recordings, against the will if need be, of a Legislature hostile to the whole idea, using a mere statute, which that future hostile Legislature could change at any time. There isn't any way to solve that problem.

Now, I will emphasize, we, the proponents, could solve that problem. Because when we write something into a statute, we can specify it takes a vote of the people to change it. The Legislature doesn't have that ability. We used it when we put protections into our statutes, we them where it takes a vote of the people to change. So while there are some protections in our statutes, and some protections in this measure, understand with utmost clarity, our State's a two-third's vote -- it takes a vote of the people change. You could undo your statutes with a majority vote of the Legislature.

However, let's pass over that objection and the particular terms in AB 884. As written, they're weak, and public access easily restricted while following the regulations is strict letter. As Senator Blakeslee observed, the regulations for the archive could be satisfied by a single office in Sacramento, to which a
person would have to travel to play a recording; the
office perhaps permitting no freedom to copy, excerpt or
transmit all or any part of it.

Could a court rule that such could not
constitute, quote, "public use," end quote? As 884 has
it, if the Legislature maintained the contrary, I don't
think so.

Before being archived, the recordings under AB
884 are to be, and I quote, "retrievable in a perceivable
format for public use," end quote. Even if this language
guaranteed anyone could link to a State-owned website and
view a recording at will, on their own equipment, which
this language does not -- quote, "public use," end quote,
might again deny any person the ability to copy, excerpt
or transmit all or any part of the regarding.

In short person-to-person circulation of content
could be choked off, even if the language of AB 884 as
written were strictly followed. The CLTA, in contrast,
guarantees that any person, as well as the pres may view
recordings, at will, on the internet, and copy, transmit
and use the recordings freely. For the recordings must be
posted for a minimum of 20, not two-plus years, and that
only a vote of the people, and not a majority vote of the
Legislature could restrict access.

Now, the Honorable Assembly Member mentioned
1 that we don't want to be too specific about our technical
terms we write into the Constitution. And we write in the
term "internet." And maybe in 20 years, there will be
some other way of allowing an expensive, instantaneous
computer-to-computer or person-to-person communication.
I'm not worried about this. The Constitution manages to
say "freedom of the press shall not be abridged." We
don't actually deal with ink, dyes descending onto velum
anymore, as technology has moved from typewriters to word
processors and so forth. The Courts have been able to
follow pretty well what you meant by freedom of the press.
And we think that posting on the internet will follow,
even if in 30 years we're doing it by hologram.

    All right. AB 884 is not going to go from its
present form to something better than the CLTA. Which I
keep reiterating, I'm happy to work the Legislature to
come up with a composite bill. I'm still waiting for
someone to point out something that is better than the
CLTA. Still waiting. I hear lots of things they think
are as good. But I haven't heard an argument yet they've
got something that is better. I'm waiting to hear it.

    We request this committee to hold it so that
further amendments be subject to public comment and review
by this committee. This is particularly important to do,
because after all, the last amendment of AB 884 was a
literal gut and amend, without one word or even the
subject of the bill or its author being preserved.
The public and this committee has literally no
idea what is going to come next. And so I suggest you
hold this bill in committee until we all do. Thank you
very much.

CHAIRMAN ALLEN: Thank you.

MR. WOLF: Mr. Chairman, Members. Good
afternoon. David Wolf --

THE COURT: You can sit down.

MR. WOLF: -- with the Howard Jarvis Taxpayers
Association. Just again, registering our opposition in
light of the prior comments. Thank you.

CHAIRMAN ALLEN: Okay. Thank you, David.

I know one of things that was brought up is some
of the cost concerns and trying to make sure that the CLTA
doesn't end up creating perverse incentives associated
with holding hearings in other parts of the State. As was
mentioned by Senator Hertzberg, we've been doing a lot of
hearings of our select committees, and also standing
committees, all over the place. And that's -- I think we
can all argue that's a really good thing. And the
question is how do we make sure we move forward together
in a way that doesn't, you know, dis-incentivize that
activity. Because I think we can all agree that's a good
had, but I know that's one of the concerns that's there among -- about CLTA.

So questions of the Committee? I know Mr. Vice Chair probably has some things he wants to --

DR. MUNGER: May we respond to your comment?


MR. BLAKESLEE: Just real quickly. This question of cost and a chilling effect on public dialogue, I think it's been an interesting one to consider. We relied upon precedent which is that responsibility of the Legislature should be paid by the Legislature, and that the people had already voted under Prop. 140 that there should be a cap, so obviously the Legislature can't award itself unlimited funds. When we brought this measure forward to the Legislative Analyst's Office and sought to receive feedback as to the cost for the total implementation of everything you've heard, the total cost on an ongoing basis, according LAO, is about a million dollars a year of new costs. About one million dollars.

The current Legislative budget is in the vicinity of 300 million dollars. And this one million dollars represents a small fraction of just this year's increase to that State Appropriation Limit.

So the first comment I would make is that the notion that this would chill speech seems unlikely, given
the de minimus amount of money that's involved, and given
the fact that when we sat down and looked how easy it is
now to get recording systems or to use existing recording
systems, we found that this is a small fraction of the one
million dollar annual cost. So this should not be a
chilling effect.

And second, if we were to push this into the
General Fund, it would then directly compete with Health
and Human Services, with Education, with Parks, and the
next time there's a budget downturn, and having lived
through the last one with you all, sitting up there, I am
keenly attuned to the terrible pressures that will be
faced by this Legislature. And if there is any desire to
cut something that the Legislature doesn't really want to
do, in favor of doing something -- for example, that it
does want to do in the General Fund, this will be one of
the first places that is cut. So we think it's important
this funding come out of that dedicated amount of money
that's used for the State for let the State Legislature
run its operation, which is enshrined in the Constitution
and is consistent with precedent. And that's the reason
we took that approach.

CHAIRMAN ALLEN: And Senator, certainly as a
former Minority Leader, you know a lot more about the
internal budgeting of the Legislature than I do. And I --
you know, I would think that -- but I would -- I would --
you know, I mean I would think, I know there's a big
portion of the budget, that some costs, there's very
little flexibility over. But this is just one of the many
things that will presumably be part of the negotiations
that you have with the authors, and leadership, as this
negotiation proceeds.

So are there other questions from the Committee,
or thoughts or Joel, did you --

SENATOR ANDERSON: Well, just speaking to what
Former Senator Blakeslee had spoken to, I mean, Mr. Chair,
you and I have talked about fully funding elections, and
how difficult that's been, and then we just recently were
talking about fully funding the Secretary of State
database to ensure that we don't see dead people voting.

So we're having difficulties funding that. I
could see very easily that this act of transparency would
also be put on the back burner. And I -- and I don't want
to say that -- that when given the choice between
providing for poor children's health care and food, and
that these are easy decisions to chose that over. So in
my mind, it makes perfectly good sense to take it from a
budget that's guaranteed, that perhaps we won't get a
raise next year, because we won't have the money, because
we're funding transparency. So I very much like the
idea --

CHAIRMAN ALLEN: Except that the raises, you know, are coming out of a totally different --

SENATOR ANDERSON: Well --

CHAIRMAN ALLEN: -- format.

SENATOR ANDERSON: I know. But this sounded a lot better.

CHAIRMAN ALLEN: I know. Right. I just wanted to check you on it, my dear friend.

SENATOR ANDERSON: But if that was coming out of the budget --

SENATOR HERTZBERG: Senator, we agreed not to take the money. Don't worry about that.

SENATOR ANDERSON: I always take the money. So one of the concerns I have is right now in the Constitution, there's a public right for people to have access. And SCA 14 doesn't keep that public right going, and AB 884 would -- couldn't possibly do it on a constitutional level. And I have a real -- I really think that's important, that we protect the public right to know, to know how their government's operating, and to have these transparencies. And I -- I would like for you to address that.

And the other part I would like for you to address, if you wouldn't mind, that is, you know, I've
been in the Legislature, I think this is my tenth year I'm completing. I've seen these transparency bills time and time again, and they never get through the Legislature. And I have a good feeling about AB 884, and it concerns me, because it took an initiative to give legislators the clarity of thought of why this might be important to the people we represent.

But because it's not a constitutional -- it's not a constitutional amendment, so there's no protection that the people can go back to, what would stop one party from changing this in the future? Since we've -- we've seen one party domination in California for a long time. And I personally hold myself accountable for that domination, because I haven't worked enough. But could you address that.

ASSEMBLYMAN GORDON: Sure. Thank you, Senator. Let me -- let me preface some comments before getting directly to that point. And that is that I want to start by thanking the proponents. You know, we wouldn't be here today. We wouldn't be having this discussion if you hadn't taken the actions that you have taken to bring this forward.

There is, I believe, an opportunity here to perfect an effort at public transparency, and the opportunity for public engagement. And I think that, you
know, if we work together, we can do this.

The -- and I'm very willing, Senator, to look at some of the elements of SB 884, and work with Senator Wolk, and the proponents, to look at are there some elements of this that ought to be moved into the Constitution that are currently in this statute.

For example, I think that it would be very, very appropriate, and will advocate with the Senator, that we look at this business of the requirement for a 24-hour posting of any recording. Currently, that's not in the Constitutional Amendment as proposed by the Senator. It's here in the Statute. I would like to see that reversed, like to move that. But I think there are some steps that we can take that will provide greater assurance for the transparency through a Constitutional Amendment.

My goal here is to make sure that in implementing the Constitutional Amendment, that the Legislature would have flexibility around the issue of technology. I come from the Silicon Valley, and that's kind of my main emphasis here.

I actually, Dr. Munger, believe that there perhaps will be a day when our citizens can participate in these hearings through virtual reality. And we'd have a whole other conversation going on if that were possible.

The -- you know, so I think there is a way to
craft this so that any concern about the -- a statute being manipulated by some future legislature can be reduced to the point that it is de minimus, if not nonexistent. And I think that's something we can and ought to strive for in a conversation and dialogue between this Legislature and the proponents.

The -- as it relates to the length of time for maintaining archives, I also think that's something we can further discuss.

Earlier, my esteemed colleague, Senator Hertzberg, talked about lawyer language and talk. I think that perhaps the difference between lawful and legitimate is an area that the lawyers could explore. One of my concerns about the term "legitimate" as exists in the proponents' initiative, I'm a little concerned that that might be too vague, and lead to a set of lawsuits in the future trying to define that word. If they feel that lawful is probably not the right word, maybe there is someplace that we can land that comes up with the right word and achieves what I think we're trying to achieve here.

So -- and I guess, finally I think, as it would relate to the -- to the issue of budget, I think that there is a way to craft this so that the Constitution mandates this activity of maintaining the records in a way
that the Legislature, should it prefer to use a general
fund source, would be required to do so. So I think
there's an option in this regard that can be further
explored as we move forward.

I thank you for your comments and questions.

CHAIRMAN ALLEN: Thank you, Senator.

Yes. Senator Hertzberg.

SENATOR HERTZBERG: Won't take too much time
because I took so much in the presentation.

But I think, Dr. Munger, you really raise an
interesting point. I hadn't looked at the language. I
did read it, but I didn't recall with specificity the
notion of the specific words I referenced. But there's
one really big difference. If in fact the lawyers are
correct, that the word in final form have Constitutional
challenges or challenge with respect to your intent, our
languages can be amended, and yours can't. We're in the
process of developing it, and if in fact we found the
problem, and we copied your language, Senator Wolk did in
an effort to try to get as much harmony as possible
between the respective measures. And if in fact, that we
have seen so many times, measures that have been put on
ballots, that often incentivize election turnout,
disincentive turnout, all sorts of things that we've seen.
But at the end of the day, they get overturned. You
actually undermine confidence with the voters, because they look at this and they say "God, I voted for this, and now it's overturned as unconstitutional." There's a number of examples, I'm sure, that you know.

So I just wanted to share that with you in the sense that if in fact that is a problem that needs to be discussed, this gives us a venue to do it, albeit late.

Secondly, I just want to share my own personal observations, bottom point, on the budget pressures. And I understand the issue of what our constraints are. But I managed the budget part of this Legislative Branch for some period of time in a number of difference capacities of which I was involved. I know what it means, taking the sergeants to a meeting, and what does it cost and what the line items are and what the other associated costs are. I know the games get played internally, and how that happens. And you do not want to have the chilling effect.

I think there is, internally, in terms of the realistic operations and management of this institution, ways to actually achieve the balance that Assembly Member Gordon was talking about, that gives you the flexibility, but makes sure there's not too much pressure. You know, we had a significant budget problem here last year and -- you know, a lot of people being laid off, and a lot of other stuff. There were a number of issues that were very
realistic. And all I'm just saying is these are things that I think that, again, albeit late, but can be drafted, that achieves the deliverables that both sides need in the other to create legislation and/or Constitutional Amendment, as the case may be, to achieve the end we all desire.

DR. MUNGER: May I respond to the first part of your remark?

SENATOR HERTZBERG: Yes.

DR. MUNGER: Thank you. Of course, I certainly share your disinclination to write initiatives which wind up in courts. I did the -- before I came here, I of course listened to your meetings of a month ago. And I was very pleased to hear praise for redistricting reform, and how important it was that this be extended to local races, such as in San Diego and Los Angeles. While having had a large role in writing that very reform, I will tell you I went to the California Supreme Court on that one, actually against my own party, as it happens, which is one of life's greater ironies. And it upheld the language seven-zero. Zap. Because the person who wrote that was Dan Kulke, who you may remember was Governor Wilson's Chief Advisor. He's an Appellate Court Judge, one of the most noted Constitutional scholars in the area.

I've been to the U.S. Supreme Court last year on
redistricting, indirectly, because I was an amicus brief on the case concerning the Arizona redistricting commissions, and not as overwhelming, we won that case too. I'm pretty confident therefore, that when we come up with Constitutional language, there may be a slight argument among Constitutional scholars somewhere, because there's always an argument about anything whenever there's power at stake, depending which side you come down.

We've been very careful with this one. I am happy to volunteer Mr. Kulke's services with whatever council the Legislature wishes to have on precisely these Constitutional issues, and to have a meeting of minds. And if indeed there is better constitutional language, and if there's a sufficient difference that there might be that -- and if we come to agreement on other things, then by all means, let's do it slightly better than slightly worse. But it's, to my mind, no means proven that there's a flaw to the constitutional language that we wrote.

But I'm perfectly willing to entertain the possibility that there is. Again, I'm here to say find me the flaw in the CTLA, and you've got a really good case for the Legislature putting on a bill that's mostly the CTLA, but doesn't contain the flaw. But I haven't heard that yet. And will I also remark in terms about things going forward, as I be, you know, if there is no flaw in
the CTLA, and you want a conversation, I didn't put in
that you should live stream your meetings, 'cause I think
that might be a technical bridge too far to force on a
recalcitrant Legislature that somehow is gonna live-stream
all of its meetings. But a Legislature that's
volunteering to take that on its own shoulders, I'm all
for it.

I gave you 72 hours. I don't -- I think all of
you have profited by having more than 72 hours to review
some complicated bills. How this thick is the budget?
How thick are constitutional amendments? Et cetera, et
cetera. And if you would like to say that on at least
some bills, perhaps more than 72 hours is appropriate,
that's a strengthening. And I think that's a big step in
the right direction. If you would like to say, with your
own recordings -- this one is lovely. But as far as I
know, it's broadcast only in English. And if you would
like to see that they get transcribed into English text
for the benefit of the deaf, if you would like to
translate them into Spanish or Mandarin or anything else.
If you would like to make them searchable, so people
can -- don't have to play through the entire tape to sort
of find out where someone was speaking, just jump to the
last silly thing Mr. Munger just said, I think that would
be great.
We didn't lay those burdens upon, but if you would like to lay them on yourselves, we've thought a lot about those issues. We're happy to work with you.

CHAIRMAN ALLEN: Thank you very, Dr. Munger.

Are there other questions or comments from the Committee?

Yes. Mr. Anderson.

SENATOR ANDERSON: I just have one other. So in the CLTA, it talks about --

CHAIRMAN ALLEN: It's CLTA, by the way. Isn't it?

CHAIRMAN ALLEN: I think two-fold. One, certainly believed that, you know, if we implement the process to record everything, the information is available. Secondly, it is common practice, as was done here today, for the committee chair to allow external
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recording. We have news outlets who -- television comes periodically to the Legislature. Committee chairmen are asked. They grant that. So I really felt that it, you know, both the material would be available, and we already have a process for doing that.

SENATOR ANDERSON: The fact that you have to ask to do it presumes that it's at some point the Chair's gonna say no. If you added it to 884, it would remove that presumption that there's -- that somebody could be stopped from having public access to public meetings.

ASSEMBLYMAN GORDON: Happy to have further conversation about that.

CHAIRMAN ALLEN: Okay. Once again, part of very exciting negotiations that hopefully one day scholars will write about. I will entertain a motion to pass AB 844 to Senate Appropriations Committee.

SENATOR LIU: With all of its flaws, I'll move the Bill.

CHAIRMAN ALLEN: Okay. So Senator Liu moves to pass Senate Appropriation Committee to AB 884.

Would the author like to close?

ASSEMBLYMAN GORDON: I think it's been said. And we will, if this moves forward, which I would appreciate today, it does provide opportunity for continued dialogue and discussion with the interested
parties. I'm happy to be a part of that.

CHAIRMAN ALLEN: Okay. Thank you, Assembly Members. Thank you to the two of you.

Secretary, please call the roll.

THE SECRETARY: Motion is due pass Senate Appropriations Committee.

Allen?

CHAIRMAN ALLEN: Aye.


Anderson?

SENATOR ANDERSON: No.

THE SECRETARY: Anderson: No.

Hancock?

SENATOR HANCOCK: Aye.


Hertzberg?

SENATOR HERTZBERG: Aye.


Liu?

SENATOR LIU: Aye.


CHAIRMAN ALLEN: Okay. So that passes that four to one. Thank you, gentlemen. Really do appreciate it, and good luck with your negotiations. Let's --

DR. MUNGER: And we'll see that you get a copy
of the meeting today, as agreed.

CHAIRMAN ALLEN: Let's take a two-minute break while we wait for the next author to come.

(Off the record at 3:34.)

(This concludes proceedings concerning SCA 14 and AB 884.)
REPORTER'S CERTIFICATE

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

That the foregoing proceedings, pages 1 through 91, 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 13th day of June, 2016.

______________________________
KAREN S. CHALLE, CSR NO. 8244