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CALIFORNIA STATE SENATE
SENATE ELECTIONS AND
CONSTITUTIONAL AMENDMENTS COMMITTEE

HEARING
IN RE: SCA 14; AB 884
WEDNESDAY, JUNE 8, 2016

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REPORTED BY: KAREN CHALLE, CSR NO. 8244
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IN RE: SCA 14; AB 884

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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1 APPEARANCES:

2

The Committee:

3

SENATOR BENJAMIN ALLEN, Chairman

4

SENATOR JOEL ANDERSON, Co-Chair

5

SENATOR LONI HANCOCK

6

SENATOR ROBERT M. HERTZBERG

7

SENATOR CAROL LIU

8

9 Presenters/Speakers:

10

SENATOR ROBERT M. HERTZBERG, SCA 14

11

FORMER SENATOR SAM BLAKESLEE, SCA 14, AB 884

12

ASSEMBLY MEMBER RICHARD GORDON, AB 884

13

DR. CHARLES MUNGER, SCA 14, AB 884

14

PAUL SMITH, Rural Counties Association

15

JIM EWERT, California Newspaper
Publishers Association

16

GAVIN BAKER, California Common Cause

17

TRUDY SCHAFER, League of Women Voters

18

MITCH SEAMAN, California Labor Federation

19

DEAN HUTCHINS, League of California Cities

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DAVID WOLF, Howard Jarvis Taxpayers Association

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SACRAMENTO, CALIFORNIA
WEDNESDAY, JUNE 8, 2016
1:30 P.M.

- - -

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

1 mention, it seems there's been a request to have a
2 stenographer record this proceeding. So I'm happy to
3 accept the request. But I want to say two things. First
4 thing is the common practice is to ask for permission of
5 the Chair in advance. And so, you know, just to let folks
6 know that in the future, please make sure to do that.

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

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

13 SENATOR HERTZBERG: Thank you, Mr. Chairman.
14 Yes. Senator -- last week, Senator Wolk asked me to
15 present, as she wouldn't be here today. And I'm happy to
16 do so. On a personal level, because I have been
17 personally involved in this issue with her when, before,
18 when I was out of government, and when she was chair of
19 the committee that I now chair, I'm deeply involved in
20 these issues of budget reform. And I wanted to be able to
21 then -- glad to have the opportunity, because I have some
22 sort of context with respect to this measure and other
23 measures that are part of the larger discussion about the
24 reform process. So this measure in broad terms, as you
25 have before you, we'll certainly talk about the details as

1 we go forward, provides that the Legislature provide at
2 least 72 hours notice of a measure in its final form
3 before taking it up, seeking to avoid what is commonly
4 referred to in the legislative parlance as gut and amends.

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

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

15 CHAIRMAN ALLEN: Yeah.

16 MR. HERTZBERG: So these are important
17 discussions. But let me frame it, because it involves a
18 lot of reform groups with whom I have been involved with
19 for years, a lot of reform groups, common cause, others in
20 this larger discussion. We have, for many years, been
21 dealing with this whole issue of transparency before
22 government, in the Legislative Branch of government. We
23 had a measure, of which I was the co-chair of, that was on
24 the ballot in 2012, which included, among other things,
25 the precise provision that we see here today, 72-hours

1 notice. Certainly it was one of many items. No question.
2 But it is something that we spent a lot of time with in
3 former groups, not-for-profit groups that I was involved
4 with, looking at this whole larger issue, trying to build
5 a consensus and trying to deal with this challenge that we
6 face about these gut and amends.

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

20 But -- so one of the unintended consequences of
21 this, that we've seen since Jess Andrew adopted this rule
22 of how the Legislature works on these time deadlines is
23 these gut and amends, these last-minute bills without
24 having hearings, without going through the process,
25 they're gut and amended often without much notice. So

1 what this measure seeks to do, and we sought to do in 2012
2 was to -- was to at least give a minimum of fleeting
3 notice so that parties would be able to understand what's
4 before them. Because often -- and I've certainly seen
5 this in my tenure, being involved in government, folks
6 introduce stuff at the last minute. You don't really get
7 to know what it is or see it. And it's not fair or right
8 in the process.

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

19 Well, as part of this tension that exists
20 between the public's important right to be able to make
21 the law or to question what we do, and the power of the
22 Legislature to act responsibly, is an initiative process,
23 and we used to have in the law what was called the
24 indirect initiative. It was taken out under Proposition
25 1A in 1966, when we professionalized and full -- made the

1 Legislature full time, and we brought it back in last --
2 was it last year? Before last, I guess, with Senator
3 Steinberg's Bill 1253.

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

19 So that what happened before in the old law was
20 that proponents, for whatever their motivations were,
21 would come before the voters by virtue of getting
22 signatures out in front of a grocery store or whatever it
23 was, they put something on the ballot. The way the
24 process worked in the old days, in the last 25 or
25 30 years, was by the time those things were actually

1 before the Legislature, we were at the end of our
2 Legislative Session. So by virtue of this 1253 -- this SB
3 1253, we required folks that had 25 percent signatures to
4 give notice, so that we harmonized the relationship
5 between the policy discussions on the one hand in the
6 Legislature, and the efforts by groups to try to put
7 initiatives on the ballot. So where we are today is a
8 result of what we see before us, I think, is fair to say.
9 Is that the Legislature, with Senator Wolk, who has a
10 history in this area, and me presenting this bill, who has
11 a history in this area, saying to the proponents, you
12 know, you've had an influence. You've had an impact. I
13 don't think that but for what they have done, that we
14 would have this before us, because quite frankly these are
15 hard kinds of things to change; these kinds of rules, and
16 why gut and amends exists. We, I think, know some of the
17 challenges with respect to that.

18 So now we're faced with an issue where we have
19 before us a measure, not exactly harmonized. You'll hear
20 it from the opposition. I saw that the comparison charts
21 of where the differences are. But I think that in taking
22 a look at those, you know, certainly I don't have
23 authority to take amendments now, but I think it's --
24 certainly there's an opportunity for discussion, to be
25 able to avoid putting this on the -- well, it will be put

1 on the ballot, but as a constitutional amendment by the
2 Legislature, which is a better thing to do.

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

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

21 The second issue is who pays for and how
22 extensive the disclosure is. Assemblyman Gordon had
23 talked about that with respect to his measure. But
24 really, the issue is is this something that comes within
25 the purview of Prop. 140, that limits how much money

1 constitutionally the Legislature gets, or is this
2 something that can be paid for, meaning the cost of doing
3 these productions, outside of the -- in the general fund.

4 My judgment is that, you know, it would be nice
5 to have it just within the Legislative Branch. But
6 someone who served in management roles of this body, or
7 these bodies, the challenges are somewhat great. And the
8 last thing we want to do is have a chilling effect on the
9 ability to have as many hearings, and to spend as -- you
10 know, and be as open as possible, where the Legislature's
11 saying well, I don't know, if we have these extra
12 hearings, and broadcast these hearings for a select
13 committee or for some other proceeding, because of
14 budgets, because, you know, you've got to always ask the
15 leadership for the permission for the hearings.

16 And so in the scheme of things, the differences
17 in my judgment are pretty de minimis. I think that the
18 author, and certainly me as one of the voters on this,
19 that are coming down the line, are certainly open to
20 making changes. But the end of the day is, what's
21 important here is there's tension that exists between
22 folks that go out and put stuff on ballots, because they
23 think the Legislature doesn't work. It's legitimate.
24 It's true. I get it. I'm not denying it or think it's
25 inappropriate. The question is whether the circumstances

1 are tasteful or not shouldn't be the discussion of what we
2 do as a Legislative Branch or what the proponents do. The
3 question is do we end up with public policy that moves
4 incrementally in the right direction, which is what this
5 measure's doing. This measure is much more narrow than
6 the measure that I was involved with on the ballot in
7 2012, Proposition 31, which is probably smarter, to be
8 more narrow. But it also faces a number of challenges.
9 And to the extent that we in government should always be
10 responsible and try to work together, whether we were
11 dragged there by horses to get to the trough is not the
12 issue. The issue is where are we, and what voter
13 experience will there be on the ballot, and trying to
14 limit the number of initiatives.

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

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

13 And I just -- I close with a quote that when you
14 walk into my office you will see this in my reception
15 area. I pulled it out. And it's a quote. It says "On
16 Compromise. We shall need compromises in days ahead to be
17 sure, but these will be -- or should be compromises of
18 issues, not principles. We can compromise our political
19 positions, but not ourselves. We can resolve the clash of
20 interest without concealing -- conceding our ideals.
21 Compromise does not mean cowardice. Indeed, it is
22 frequently the compromiser and conciliators who are faced
23 with the severest tests of political courage as they
24 oppose the extremist views of their constituents." J.F.K.
25 Profiles in Courage. 1955.

1 I share that with you because that's what we're
2 asking here today, what Senator Wolk is asking, and asking
3 of this committee and asking of the proponents of the
4 committee and of leadership that understands and is
5 supportive of this -- of these measures, you know, to step
6 up to the plate and to fix the rules as they should. And
7 to tell the truth to the public, to the proponents, to
8 realize that yes, it has not always been the easiest way
9 to have to go out and spend a bunch of money, go out and
10 gather signatures and be prepared and hire the political
11 industrial complex people of the process to be able to go
12 out and fight your battles for you. But that the idea at
13 the end of the day is that we serve the public. We serve
14 the common good. We serve the public interest.

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

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

23 So do you have witnesses in support?

24 MR. SMITH: Thank you. Mr. Chairman, Members.
25 Paul Smith with the Rural Counties Association. Our

1 membership is the members of Boards of Supervisors in 35
2 rural counties. And we do support this measure. We have
3 supported each of Senator Wolk's efforts as it relates to
4 imposing a 72-hour in-print rule.

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

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

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

24 The same is true of Boards of Supervisors.
25 There's a lot of times conversations behind the scenes

1 with one staff member, one supervisor may be out in
2 public, where things are talked and bantered over. But
3 the requirements of the 72-hour in-print rule are there
4 when final action is taken.

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

9 CHAIRMAN ALLEN: Thank you, sir.

10 Yes, sir.

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

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

25 It also provides additional expertise from

1 outside to help inform those efforts. And all of this
2 strengthens the integrity of the legislative process, in
3 our minds.

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

14 CHAIRMAN ALLEN: Appreciate that. Thank you.
15 Other witnesses in support.

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

19 We thank the authors for bringing this bill.
20 This is a really important conversation, and we're glad
21 that the Legislature is joining it. As you heard, this is
22 very similar to the California Legislature Transparency
23 Act. We do have a support position on that initiative.
24 And if it appeared on the ballot, we would urge voters to
25 vote for it as it has been filed.

1 But we have also supported other approaches to
2 this issue in the past, like ACA 1. So we're open-minded
3 about the different ways that this could be done. The
4 main thing is that we don't want to see two competing
5 measures appear on the same ballot. So we hope that that
6 won't happen. We encourage the authors and the proponents
7 to continue discussion.

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

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

21 CHAIRMAN ALLEN: Thank you. Thanks so much.

22 Hey there.

23 MS. SCHAFER: Mr. Chair and Members of the
24 Committee. I'm Trudy Schafer, representing the League of
25 Women Voters of California. And like the representative

1 from Common Cause, I'm explaining that the League has not
2 taken a position on the bill. But we would like to make
3 some comments.

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

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

24 We also have a major concern about the 72 hours
25 of published before a Floor Vote can be taken. And we do

1 feel that it ought to apply to both Houses. This is a
2 case where we really have legislators who don't have a
3 chance to understand what a bill is. And that's not
4 serving either the Legislature or the public. The public
5 won't have had the opportunity to see really what's in a
6 bill. And they can't expect that their representatives
7 will be doing their proper job even in the first house.

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

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

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

22 SENATOR HERTZBERG: Thank you, Trudy.

23 MR. SEAMAN: Thank you, Mr. Chair, Members.
24 Mitch Seaman with the California Labor Federation. We
25 don't have an official position on the bills or the

1 initiative, and so we're here less to talk about the pros
2 and cons of either, but really more to highlight the
3 merits, we believe, of the legislative process, as a way
4 to deal with these issues, as opposed to the initiative
5 process.

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

17 And the fact is that the initiative process just
18 doesn't do that. While we're very supportive of the
19 initiative process, and have been very involved in it in
20 the past, we've sponsored a lot of legislation around,
21 we're actually sponsoring legislation this year around the
22 initiative process, the fact is that you kind of are stuck
23 with your first draft. And then as the process goes
24 forward, as you learn more about it, there's really
25 nothing you can do. And you wind up with law that leaves

1 out all of the benefits of the legislative process. And
2 as much as you might like to improve it, you're just not
3 able to.

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

18 CHAIRMAN ALLEN: Thank you.

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

21 Also in line with the other folks' comments,
22 we've not taken a position on SCA 14 at this time, but
23 we'll point out one technical difference that applies to,
24 that is encapsulated in the ballot measure, but is not in
25 this measure, is that it is our understanding that SCA 14

1 does not apply to any special sessions that are happening.
2 So -- you know, you're legislating or regulating your
3 regular session, but when the government calls a special
4 session, you know, sort of the same house rules apply.
5 And that is one of the concerns that we had in reading the
6 measures.

7 So just something that we wanted to point out on
8 a technical issue before the conversations continued.

9 Thank you.

10 SENATOR HERTZBERG: Thank you.

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

13 SENATOR HERTZBERG: Seeing there are none.

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

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

20 As you know, I had the distinct privilege and
21 honor of serving in both the Assembly and the Senate for
22 almost a decade, including a stint as Minority Leader. So
23 I approach these issues from a perspective of deep
24 personal commitment, and also not as someone who's "doe
25 eyed," misunderstanding the complexities of how the

1 Legislature can or should work, but someone who wants to
2 effectively help the Legislature move forward in an arena
3 that I think everyone we heard speak today agrees needs
4 attention.

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

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

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

23 For example, and those of you who've served
24 either in local government or in agencies will know this
25 well, the Legislature passed the Ralph Brown Act of 1953,

1 the Bagley Keene Act of 1967, the California Public
2 Records Act of 1968, the California Sunshine Act of 2004.
3 And all of these measures had three things in common.
4 First, each forced greater transparency onto government
5 despite the objections of those public officials who would
6 be covered by these laws. Second, each was written by the
7 Legislature to protect the rights of the public. And
8 third, each was intentionally written to not apply to this
9 institution, the Legislature.

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

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

21 And now, after years of work, and filing a
22 million signatures with the Secretary of State, a
23 citizens' initiative is moving its way to the ballot so
24 that voters can have the opportunity to do what this
25 Legislature has refused to do.

1 And now, at this 11th hour, the Legislature has
2 written a competing measure to the citizens' initiative,
3 and it is designed to go on the exact same ballot. And
4 here we are testifying on this measure. And as the good
5 senator mentioned, we are in an era of SB 1253, where
6 coordination and cooperation was envisioned. But let me
7 just point out that part of that process was an SB 1253
8 hearing to start the dialogue, which was supposed to
9 commence not three weeks before the deadline, but when the
10 25-percent threshold was met. We met that threshold
11 months ago. We have yet to be invited to a SB 1253
12 hearing.

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

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

1 been here in strong support if that were the transparency
2 measure that was being contemplated.

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

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

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

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

19 DR. MUNGER: Thank you, Senator.

20 Mr. Munger.

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

23 As Senator Blakeslee has mentioned, he and I are
24 the proponents of the California Legislature Transparency
25 Act or the CLTA, an initiative state Constitutional

1 amendment and statute. Qualification of CLTA for the
2 November ballot is certain. A partial list of our
3 endorsers for this measure, the League of Women Voters of
4 California, the California State Conference of the NAACP,
5 the California Black Chamber of Commerce, the National
6 Federation of Independent Business, California. The Los
7 Angeles Chamber of Commerce, the Howard Jarvis Tax Fair
8 Association, California Common Cause, Californians Aware,
9 the First Amendment Coalition, California Forward, the
10 California Chamber of Commerce, California Business
11 Roundtable, La Raza Roundtable to California, the Small
12 Business Action Committee, the Fresno Chamber of Commerce,
13 the San Jose Silicon Valley NAACP, the Hispanic 100.
14 These groups don't come together on much. But they have
15 all endorsed the CLTA. The question before this
16 committee, therefore, is not the usual one. Namely,
17 whether SCA 14 and its companion, AB 884 together, if
18 approved by the voters, would improve the transparency of
19 the Legislature. The question instead is whether these
20 bills would improve it more than would the CLTA? And the
21 answer as amended is no.

22 And surely we can agree there's no point in this
23 committee moving to put on the ballot and to ask voters to
24 adopt an alternative inferior to one on the ballot
25 already. Particularly when the CLTA has proven broad

1 support outside the Capitol Dome, and the inferior
2 alternative does not have it.

3 Now, initiative proponents we have faithfully
4 engaged with the Legislature. SCA 14 indeed was
5 originally submitted as a word-for-word copy of the
6 72-hour notice provisions of the CLTA, which is why even
7 the titles of the two measures are the same. We now
8 respectfully direct that SCA 14's title now be changed,
9 less the public become confused between our initiative and
10 this bill.

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

21 Now, for a citizen to be allowed to read a bill
22 and communicate with only one of his or her two
23 representatives, because we have a bicameral legislature,
24 Assembly Member or legislator, before a bill leaves a
25 house, and for only one of these representatives to be

1 able, within 72 hours, to read and think about a bill, to
2 participate in the cycle of debate and amendment in his or
3 her House, that makes no sense at all. The time taken in
4 the Legislature to pass a bill is not an issue. The same
5 72 hours elapses for a bill to be amended and sent to the
6 Governor's desk under terms of either the amended SCA 14
7 or the CLTA.

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

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

16 SCA 14 does not guarantee that the proceedings
17 of the Legislature's present Standing Committees, such as
18 this one, will be recorded. Yes. SCA 4 -- 14 would
19 require meetings of, quote, "Standing Committees," end
20 quote, to be recorded. The problem is that while the term
21 "Committee" is already in the constitution, the term
22 "Standing Committee" is new, undefined and without
23 Constitutional precedent. By abundant court precedent in
24 particular set by the litigation over the ill-fated
25 Legislature Reform Act of 1983, in the absence of a

1 Constitutional definition of the distinction between what
2 a committee at the Legislature might be, and what a
3 Standing Committee of the Legislature might be, the
4 distinction will default to the Legislature's own rules.
5 Those rules alone define the committees and their powers
6 according to Article 4, Section 7(a) of the California
7 Constitution.

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

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

21 The CLTA, in contrast, guarantees that any
22 person, as well as the press, may view recordings at will
23 on the internet and copy, transmit, excerpt and use the
24 recordings freely. And only a vote of the people, not a
25 majority vote of the Legislature, could restrict access.

1 But a key safeguard for transparency is left to
2 the whims of a future Legislature to undue is a recurring
3 defect in SCA 14 and AB 884. While the CLTA enshrines the
4 public's right to transparency in the Constitution, this
5 legislation, SCA 14, leaves many of those safeguards and
6 statues, again, where it can be later deleted or changed.

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

21 I will close shortly. A more detailed
22 comparison of SCA 14 and the CLTA has been submitted to
23 you. SCA 14 does not improve on the CLTA. And if it
24 doesn't, what is its point? I challenge the members of
25 this committee to hold SCA 14 in committee, pending

1 further amendments that will themselves be subject to
2 public comment to review this committee. SCA 14 is not
3 going to start from where it is to get somewhere better
4 than the CLTA in one jump.

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

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

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

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

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

25 Mr. Chairman, with respect to two aside, and

1 given the prior comments, I'm not going to elaborate
2 further, unless the Committee would like with a specific
3 question or comment. So with that, we're opposed.

4 CHAIRMAN ALLEN: Appreciate you being here.
5 Thank you.

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

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

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

20 But this notion of sunlight in government's
21 operation is exactly what we're trying do here. I think
22 the idea of greater transparency, the idea of trying to
23 protect the public and the like is what we're doing here.

24 Now, we're doing it at the last minute. That's
25 true. Okay? That's just the -- that's just the God's

1 honest truth. We -- is it something that -- I've been in
2 this fight for a lot of years too. I happen to be on both
3 sides of the fence, both in government and outside of
4 government, with a lot of groups that you're keenly aware,
5 to which you referred. And I have been fighting these
6 very fights. And I can't disagree.

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

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

23 Two, the idea of what the consequences are of
24 failure to adhering to this, I'm informed that Legislative
25 Counsel says that something has to be passed; that they --

1 that they will opine, from what I gather, that the idea of
2 something being passed means that if it is not passed, it
3 hasn't gone through this process, it's not passed. It has
4 that same effect to which your language you've talked
5 about, with respect to your language saying the law
6 doesn't go into full force and effect.

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

23 Next, the notion of access on -- you know,
24 again. It's -- I think the underlying issue here, and I
25 think certainly Assembly Member Gordon will talk about

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

24 So the bottom line is I have no issue with your
25 position that you don't want to make something worse. I

1 get that. Okay? And I think that's a fair and
2 appropriate thing. And I think your objectives are fair
3 and appropriate. The question is you've gone through a
4 lot of hard work. You have been dissed pretty
5 dramatically over the years. Fair call. I don't think
6 anybody would say that didn't happen. Right? But this
7 conversation is a winning conversation.

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

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

24 That's why I quoted this Kennedy issue on
25 compromise. Because however painful it is, certainly from

1 my point of view, has been in this very fight longer than
2 you have. Maybe not. I don't know. But I think so.
3 The -- I get the frustration. I get the distrust. I
4 think it's fair. That's not the test. The test is we are
5 lawmakers, and we are looking to make a law to put on the
6 ballot. We're looking to do it in a fair and appropriate
7 way. Not way. Fair and appropriate end result that
8 something that voters can vote on that will have the
9 impacts on the system, that we're all seeking to do.

10 You know, the -- there was a bill before this
11 committee some weeks ago involving redistricting. Was
12 that your bill or was it -- on the redistricting? Yeah.
13 On redistricting. I've been fighting that fight for
14 30 years. And I sat before this Legislature and watched
15 Common Cause get up here and support your bill. I watched
16 you adopt something that locals could do on redistricting
17 that my own party fought me like crazy for.
18 Redistricting. And here you did it in this house, put it
19 out. That's progress. That's what we do.

20 These fights are ugly often in the beginning.
21 But that's what we do. And I would just celebrate your
22 success. Don't put down your guard. Get the deal. But I
23 think there's nothing that you said here, I think it's
24 fair to say, that Senator Wolk would not entertain. And
25 if she doesn't, then stand tall. But I think the notion

1 of saying we're gonna keep this thing going is good for
2 a -- your initiative, is good for a negotiating tactic
3 and -- I think. But it's -- at the end of the day, if
4 what we produce is something that works, I think it's a
5 fair and reasonable solution, which was the compromise
6 that was just mentioned by the League of Women Voters that
7 was envisioned in 1253, to try to bring people to the
8 table to be able to create an honorable discussion,
9 however late, between the Legislative Branch of government
10 and those folks who are proponents of the initiatives.

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

13 Do we have questions from the Committee?

14 Yes. Mr. Vice Chair.

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

17 You know, today we're exercising the
18 Legislature's role in examining qualified propositions,
19 and to consider whether changes to proposed initiatives
20 are warranted, and whether we'll decide to place a
21 competitive measure on the ballot with those changes. So
22 I think the core of this is how does SCA 14 improve upon
23 the California Legislative Transparency Act, CLTA? And
24 further, what's the true purpose of those proposed changes
25 to those measures?

1 So far, in my observance of the testimony thus
2 far, we keep talking about how we need to change SCA 14 to
3 improve it to meet the standard that's already qualified
4 for the ballot. So I would ask you, what about it is so
5 much better or an improvement than what currently is going
6 to be on the ballot?

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

10 SENATOR ANDERSON: Would you repeat that again?

11 SENATOR HERTZBERG: First, with --

12 SENATOR ANDERSON: I'll just go along.

13 SENATOR HERTZBERG: Just go along.

14 First, with respect to the issue of improving
15 upon, one of the points that was made by one of the
16 witnesses here testifying, and it's one of the things that
17 we grappled with with Ron George, and with Cruz Reynoso,
18 the former Justice of the Supreme Court, and others, was
19 this problem that so often initiatives have problems in
20 them. And so we wanted to create an opportunity to fix
21 problems. 'Cause once you collect the signatures, it
22 becomes very difficult. And so we have a provision in,
23 that when you go out and collect your signatures, you have
24 a right to withdraw. We have a day, a number of days, we
25 have in the beginning, in that you can make corrections.

1 But let's talk about that. First of all, the --
2 if you go to Section 4.2, Section 8 of Article 4 of the
3 Constitution as amended here, Section 8(a)(2), it says
4 that no bill may be passed 72 hours -- it uses the word
5 "final form."

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

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

25 Secondly, as I expressed here, there are

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

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

1 And so that's what this is. That's okay.
2 That's a good thing for the Legislature.

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

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

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

11 SENATOR HERTZBERG: Thank you.

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

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

25 SENATOR HERTZBERG: Well, I gotta tell you, this

1 is my own personal view about what constitutes superior,
2 whether the thing has an extra kung fu grip and for the
3 G.I. Joe toy and whatever else it might have. I think
4 superior is a constitutional discussion between the
5 Legislative Branch and proponents. I believe that the
6 initiative process should be a measure of last resort,
7 where the people are frustrated with their government,
8 'cause their government's not acting, that there should be
9 action taken.

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

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

23 And the last point I'll reiterate is that -- and
24 I went through the points that Dr. Munger raised, you
25 know, at least from what I can determine by my quick

1 notes, and certainly requires a little bit more homework,
2 but I don't think there really is -- I mean the difference
3 is both houses, which I think is solvable, personally.
4 And I'll advocate for it. Again, I'm not the author, so I
5 have no authority to say otherwise. But I'll tell you as
6 a gentleman, I will advocate for it.

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

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

15 SENATOR HERTZBERG: Yeah.

16 SENATOR ANDERSON: And SCA 14 --

17 SENATOR HERTZBERG: That's right.

18 SENATOR ANDERSON: -- has no such provision
19 whatsoever.

20 SENATOR HERTZBERG: That's right.

21 SENATOR ANDERSON: So you could collect this,
22 you could have all this great information, but there's
23 nowhere in SCA 14 that it provides for it to be posted.
24 And I think that that is -- I think that's where SCA 14 is
25 yet again insufficient when going to the ballot and a far

1 lesser product for consumer protections. And I look at
2 Californians as being the consumers and government being
3 the product.

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

10 SENATOR HERTZBERG: Well, let me just -- first,
11 the first part of what you said, let me just address that
12 Assembly Member Gordon will raise that with respect to the
13 24 hours, which is important in terms of his measure in
14 combining this. But I -- what I think is, is not -- I
15 don't think it's about competition. I don't think that's
16 a fair question that you're reading. I don't think that
17 that's the right thing. It's not about competition.
18 It's -- that's not the purpose, you know?

19 I mean, if the purpose is to try to get people
20 on this to vote for stuff and play games with elections,
21 everybody's going to endorse this thing who's running for
22 office. That's not gonna be the question. The purpose
23 is, in my judgment, from my own personal view -- I can't
24 speak for the author -- but I'll tell you, for somebody
25 who spent a year and a half of my life and all those

1 thousands of e-mails, and you can ask a lot of the people
2 here who were testifying how all those endless meetings
3 and conference calls we had, creating the 1253, which was
4 the budget transparency -- I mean the Ballot Transparency
5 Act was to create this exact situation; to avoid things
6 going on the ballot, and to given an opportunity for the
7 Legislature to engage. So I would argue, in my personal
8 view, its a replacement.

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

18 SENATOR ANDERSON: Well, I'd like to just finish
19 by saying quick, three things. One, there is a huge
20 distinction between a Constitutional Amendment and a
21 simple Majority Bill. And when you think in terms of
22 posting within 24 hours, I would have hoped that that
23 would have been part of the constitutional transparency;
24 that it wouldn't be changed at a simple majority vote at a
25 future date, willy-nilly, without the public's input.

1 Second thing is it is, I think, fascinating to
2 me how the initiative process has given legislators the
3 backbone that they have lacked over the last 20, 30 years
4 to all your hard work and all the predecessors that worked
5 hard on this issue. So I'm grateful for the initiative
6 process that we're even having this debate, and it's
7 lasting more than a committee. When many of the times, in
8 just the short time I've been in the Legislature, these
9 types of measures have fallen on deaf ears, that can't
10 seem to get out of any committee to make it to Floor, or
11 even to the Appropriations Committee. And I would hope in
12 that the author would consider not allowing SCA 14 to be
13 used as a spoiler to stop transparency on the ballot by
14 confusing even further.

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

22 So thank you.

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

25 But let me just say one thing, just a final

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

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

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

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

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

23 SENATOR HERTZBERG: I already texted her.
24 You're in trouble.

25 SENATOR ANDERSON: All right. After Prop. 50,

1 I'm worried.

2 CHAIRMAN ALLEN: I think Senator Hancock had a
3 question.

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

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

13 SENATOR HANCOCK: Okay.

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

25 SENATOR HANCOCK: Okay. So would SCA 14 be

1 placed on the ballot as a statute?

2 CHAIRMAN ALLEN: No.

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

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

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

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

15 DR. MUNGER: No.

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

19 So let me -- if I'm not going to be able to get
20 a yes or no answer, let me explain where I'm coming from.
21 I chaired this committee for two years. We had a big
22 hearing on the initiative process. During that period of
23 time, because there was enormous concern over the length
24 of the ballot, over the fact that initiatives become very
25 difficult to change if they have unintended consequences,

1 as many of them have had. And that it was becoming
2 increasingly apparent that qualifying an initiative was
3 often a matter of money. And that we even had special
4 interest bills for particular businesses put on as
5 initiatives.

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

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

21 The second reason I come to like it more is that
22 it exactly sometimes forces action from the Legislature.
23 And I remember after bill after bill after bill had been
24 defeated in the Judiciary Committee in the Assembly
25 regarding privacy and bank accounts. Now Congress Woman

1 Jackie Speier stood there with a millionaire behind her,
2 saying if you don't pass this, we're gonna -- we're gonna
3 have an initiative.

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

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

20 I think that's a discussion that ought to
21 proceed. And I would come down in favor of statute, just
22 because of the lessons of history that I've learned in the
23 last 14 years. But again, I think it's great that the
24 authors did this. Sometimes that's what it takes. We
25 know that.

1 CHAIRMAN ALLEN: Thank you, Senator.

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

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

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

24 So that's my feeling. We're also gonna hear, of
25 course, AB 844. There's an interesting hybrid initiative,

1 statute-thing happening here. But you have to kind of
2 look at both of them within the context of negotiation
3 that's ongoing.

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

6 SENATOR LIU: I'll move.

7 CHAIRMAN ALLEN: -- for Senator Wolk's SCA 14.

8 SENATOR LIU: I'll move on SCA 14.

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

11 SENATOR ANDERSON: Mr. Chair?

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

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

15 CHAIRMAN ALLEN: Absolutely. Please.

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

18 SENATOR HERTZBERG: You can, if you want to.

19 SENATOR ANDERSON: No. I don't want to, because
20 we're going to go through it with AB 884. But I do think
21 that it's important somewhere along the line to point out
22 the fact that SCA 14 only provides a portion of what CLTA
23 provides, and that the rest of it would be statutory in an
24 Assembly Bill that could easily be changed. And I think
25 when you're talking about protecting the public's right to

1 know, it's very important that it is constitutional, and
2 not at the whim of today's legislators or tomorrow's
3 legislators. It should go back to the people for a vote,
4 because it's their right to know.

5 So thank you for accommodating me.

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

13 So there's a motion made by Senator Liu.

14 SENATOR HERTZBERG: Close, just a couple
15 comments.

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

18 SENATOR HERTZBERG: Given the comments, I just
19 wanted to springboard off of what Senator Hancock said,
20 and I just took a look at this. You know, again, you have
21 two things before you. You'll have -- after this, you'll
22 have Assembly Member Gordon's measure that deals with the
23 whole issue of recording and keeping records. The -- what
24 you have before you is a constitutional amendment, to get
25 specific. And it's very short and sweet. And it is --

1 basically puts in the Constitution the requirement of the
2 72-hour notice. And that's what it does.

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

5 CHAIRMAN ALLEN: Uh-huh.

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

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

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

21 CHAIRMAN ALLEN: Thank you. Okay.

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

24 THE SECRETARY: Motion is due, pass Senate
25 Appropriations?

1 Allen?
2 CHAIRMAN ALLEN: Aye.
3 THE SECRETARY: Allen: Aye.
4 THE SECRETARY: Anderson?
5 SENATOR ANDERSON: No.
6 THE SECRETARY: Anderson: No.
7 Hancock?
8 SENATOR HANCOCK: Aye.
9 THE SECRETARY: Hancock: Aye.
10 Hertzberg?
11 SENATOR HERTZBERG: Aye.
12 THE SECRETARY: Hertzberg: Aye.
13 Liu?
14 SENATOR LIU: Aye.
15 THE SECRETARY: Liu: Aye.
16 CHAIRMAN ALLEN: Okay. So that motion passes
17 four votes to one.
18 Let's next hear about 884. And I assume that
19 folks will stay around for that too.
20 MR. BLAKESLEE: You want us to go back to our
21 seats?
22 CHAIRMAN ALLEN: I guess technically you should
23 go back to your seats, and then we'll invite you back. I
24 apologize. We're giving everyone some exercise today.
25 Okay. Thank you everyone for that. And the

1 discussion continues with this statutory aspect of the
2 debate. We'll hear from Assembly Member Gordon who will
3 present AB 884.

4 ASSEMBLYMAN GORDON: Thank you, Mr. Chairman.
5 And as I think has been well explained by this point, AB
6 884 is a companion measure to SCA 14. SCA 14 would
7 place in our constitution, if approved by the voters, the
8 requirements relative to the 72-hour public review before
9 final approval of legislation. It would also enshrine
10 within the Constitution, requirement of the Legislature to
11 record and make available audio visual recordings of each
12 Chamber and its the decision-making committees.

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

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

1 neutral.

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

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

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

22 The last thing we'd want to do, I think, is
23 enshrine in our constitution, specific definitions of
24 technology, knowing how rapidly technology changes. But
25 they were also drafted to provide certainty that the

1 public would have access, and they would minimize
2 ambiguity about that, and in the end, I believe that S- --
3 AB 884 would simply and appropriately narrow the distance
4 between the Legislative process, the lawmakers who serve
5 here in Sacramento, and our citizens. And I would
6 respectfully ask for an aye vote.

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

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

11 Nice to see you again.

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

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

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

25 In Article 1, Section 3, there is a defini- --

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

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

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

24 And with that, we would fully support this
25 measure. Thank you.

1 CHAIRMAN ALLEN: Thank you, sir. That sounds
2 reasonable.

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

5 MR. BAKER: Right. Commenting neutrality.

6 CHAIRMAN ALLEN: Okay.

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

15 CHAIRMAN ALLEN: Thank you.

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

20 We do have concerns. We've gone through the
21 comparison chart that the authors of the two bills, the
22 Constitutional Amendment and the statute made, and noted
23 places where it does seem that there's either ambiguity or
24 a need to strengthen. And so we look forward to further
25 discussions about this.

1 CHAIRMAN ALLEN: Thank you. Thank you so much.
2 Folks here to testify in opposition or raise
3 concerns? Here we go. All right. Welcome back,
4 gentlemen.

5 Senator.

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

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

22 Now with that, I'll just quickly make a couple
23 of comments if I may. First, with regard to the pro
24 statute, as you heard, it can be easily and readily
25 repealed or amended. The citizens' initiative provides a

1 Constitutional guarantee that the public will have access
2 to audio-video recordings, and no such right is present in
3 the Legislature's SCA.

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

10 We choose the term legitimate because of its
11 broad interpretation regarding First Amendment rights.
12 Let me give you an example or two of why this is so
13 important.

14 As just mentioned, Government Code Section
15 9026.5 makes it illegal, a crime, unlawful for a citizen
16 to use recordings of Legislative hearings for purposes
17 that represent core first amendment speech and conduct;
18 specifically, commercial or political speech.

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

24 Second, earlier this week, the Assembly passed a
25 bill which was strongly opposed by the California

1 Newspaper Publishers Association, that gave the State
2 copyright privileges over public records. If a
3 Legislature made such an assertion over Legislative
4 audio-video recordings, then free access could again be
5 withheld, and such an act still would be lawful under the
6 definition of lawful, which is what's included in AB 884.

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

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

16 Today, Legislative Council's website provides
17 24/7 internet access to anyone, for every version of every
18 bill that's been introduced by the Legislature, and every
19 analysis of every bill dating back to the 1999-2000
20 session, and Legal Counsel's Council's Legacy Site views
21 every bill, every analysis going all the way back to 1993,
22 '94 session.

23 Why would this Legislature even contemplate
24 limiting the public to only the immediate session and the
25 immediate -- this current session and immediate prior

1 session? It does not make sense to me given what we
2 understand is available and easily accomplished through
3 technology.

4 CHAIRMAN ALLEN: Okay. Senator, just to
5 clarify, I believe that the bottom -- so Section 2(a)(3),
6 it says "Legislative Council shall preserve and secure all
7 recordings made pursuant to subdivision in electronic form
8 and store them in an archive for not less than then
9 20 years. They shall be reasonably available, free to the
10 public, in a medium in which the recording was originally
11 made."

12 Is that --

13 MR. BLAKESLEE: Not available on the internet.

14 CHAIRMAN ALLEN: The website. Okay.

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

18 CHAIRMAN ALLEN: Okay.

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

22 CHAIRMAN ALLEN: Right.

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

25 CHAIRMAN ALLEN: So we need to expand the

1 language of reasonably available for use.

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

5 CHAIRMAN ALLEN: Sorry for the interruption.

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

9 CHAIRMAN ALLEN: Understood. Thank you,
10 Senator.

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

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

17 Dr. Munger.

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

24 We're also very interested in any flaw we have
25 in the CLTA. So for example, the Honorable Mr. Hertzberg

1 said the CLTA said you have this problem, referring to
2 bills being in final form, and there's ambiguity as to
3 exactly what that means. And I said that is a very
4 interesting comment, since it's exactly the same language
5 which is currently in SCA 14.

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

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

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

23 The Legislature might even live-stream its
24 meetings, so make the recordings available on the internet
25 with no delay at all. But you don't need laws to make

1 these improvements. You could make them yourself now.

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

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

20 However, let's pass over that objection and the
21 particular terms in AB 884. As written, they're weak, and
22 public access easily restricted while following the
23 regulations is strict letter. As Senator Blakeslee
24 observed, the regulations for the archive could be
25 satisfied by a single office in Sacramento, to which a

1 person would have to travel to play a recording; the
2 office perhaps permitting no freedom to copy, excerpt or
3 transmit all or any part of it.

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

8 Before being archived, the recordings under AB
9 884 are to be, and I quote, "retrievable in a perceivable
10 format for public use," end quote. Even if this language
11 guaranteed anyone could link to a State-owned website and
12 view a recording at will, on their own equipment, which
13 this language does not -- quote, "public use," end quote,
14 might again deny any person the ability to copy, excerpt
15 or transmit all or any part of the regarding.

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

25 Now, the Honorable Assembly Member mentioned

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

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

22 We request this committee to hold it so that
23 further amendments be subject to public comment and review
24 by this committee. This is particularly important to do,
25 because after all, the last amendment of AB 884 was a

1 literal gut and amend, without one word or even the
2 subject of the bill or its author being preserved.

3 The public and this committee has literally no
4 idea what is going to come next. And so I suggest you
5 hold this bill in committee until we all do. Thank you
6 very much.

7 CHAIRMAN ALLEN: Thank you.

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

10 THE COURT: You can sit down.

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

14 CHAIRMAN ALLEN: Okay. Thank you, David.

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

1 had, but I know that's one of the concerns that's there
2 among -- about CLTA.

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

5 DR. MUNGER: May we respond to your comment?

6 CHAIRMAN ALLEN: Yeah. Absolutely. Please.

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

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

24 So the first comment I would make is that the
25 notion that this would chill speech seems unlikely, given

1 the de minimus amount of money that's involved, and given
2 the fact that when we sat down and looked how easy it is
3 now to get recording systems or to use existing recording
4 systems, we found that this is a small fraction of the one
5 million dollar annual cost. So this should not be a
6 chilling effect.

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

23 CHAIRMAN ALLEN: And Senator, certainly as a
24 former Minority Leader, you know a lot more about the
25 internal budgeting of the Legislature than I do. And I --

1 you know, I would think that -- but I would -- I would --
2 you know, I mean I would think, I know there's a big
3 portion of the budget, that some costs, there's very
4 little flexibility over. But this is just one of the many
5 things that will presumably be part of the negotiations
6 that you have with the authors, and leadership, as this
7 negotiation proceeds.

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

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

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

1 idea --

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

4 SENATOR ANDERSON: Well --

5 CHAIRMAN ALLEN: -- format.

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

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

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

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

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

24 And the other part I would like for you to
25 address, if you wouldn't mind, that is, you know, I've

1 been in the Legislature, I think this is my tenth year I'm
2 completing. I've seen these transparency bills time and
3 time again, and they never get through the Legislature.
4 And I have a good feeling about AB 884, and it concerns
5 me, because it took an initiative to give legislators the
6 clarity of thought of why this might be important to the
7 people we represent.

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

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

23 There is, I believe, an opportunity here to
24 perfect an effort at public transparency, and the
25 opportunity for public engagement. And I think that, you

1 know, if we work together, we can do this.

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

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

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

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

25 The -- you know, so I think there is a way to

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

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

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

22 So -- and I guess, finally I think, as it would
23 relate to the -- to the issue of budget, I think that
24 there is a way to craft this so that the Constitution
25 mandates this activity of maintaining the records in a way

1 that the Legislature, should it prefer to use a general
2 fund source, would be required to do so. So I think
3 there's an option in this regard that can be further
4 explored as we move forward.

5 I thank you for your comments and questions.

6 CHAIRMAN ALLEN: Thank you, Senator.

7 Yes. Senator Hertzberg.

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

10 But I think, Dr. Munger, you really raise an
11 interesting point. I hadn't looked at the language. I
12 did read it, but I didn't recall with specificity the
13 notion of the specific words I referenced. But there's
14 one really big difference. If in fact the lawyers are
15 correct, that the word in final form have Constitutional
16 challenges or challenge with respect to your intent, our
17 languages can be amended, and yours can't. We're in the
18 process of developing it, and if in fact we found the
19 problem, and we copied your language, Senator Wolk did in
20 an effort to try to get as much harmony as possible
21 between the respective measures. And if in fact, that we
22 have seen so many times, measures that have been put on
23 ballots, that often incentivize election turnout,
24 disincentive turnout, all sorts of things that we've seen.
25 But at the end of the day, they get overturned. You

1 actually undermine confidence with the voters, because
2 they look at this and they say "God, I voted for this, and
3 now it's overturned as unconstitutional." There's a
4 number of examples, I'm sure, that you know.

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

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

18 I think there is, internally, in terms of the
19 realistic operations and management of this institution,
20 ways to actually achieve the balance that Assembly Member
21 Gordon was talking about, that gives you the flexibility,
22 but makes sure there's not too much pressure. You know,
23 we had a significant budget problem here last year and --
24 you know, a lot of people being laid off, and a lot of
25 other stuff. There were a number of issues that were very

1 realistic. And all I'm just saying is these are things
2 that I think that, again, albeit late, but can be drafted,
3 that achieves the deliverables that both sides need in the
4 other to create legislation and/or Constitutional
5 Amendment, as the case may be, to achieve the end we all
6 desire.

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

9 SENATOR HERTZBERG: Yes.

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

25 I've been to the U.S. Supreme Court last year on

1 redistricting, indirectly, because I was an amicus brief
2 on the case concerning the Arizona redistricting
3 commissions, and not as overwhelming, we won that case
4 too. I'm pretty confident therefore, that when we come up
5 with Constitutional language, there may be a slight
6 argument among Constitutional scholars somewhere, because
7 there's always an argument about anything whenever there's
8 power at stake, depending which side you come down.

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

19 But I'm perfectly willing to entertain the
20 possibility that there is. Again, I'm here to say find me
21 the flaw in the CTLA, and you've got a really good case
22 for the Legislature putting on a bill that's mostly the
23 CTLA, but doesn't contain the flaw. But I haven't heard
24 that yet. And will I also remark in terms about things
25 going forward, as I be, you know, if there is no flaw in

1 the CTLA, and you want a conversation, I didn't put in
2 that you should live stream your meetings, 'cause I think
3 that might be a technical bridge too far to force on a
4 recalcitrant Legislature that somehow is gonna live-stream
5 all of its meetings. But a Legislature that's
6 volunteering to take that on its own shoulders, I'm all
7 for it.

8 I gave you 72 hours. I don't -- I think all of
9 you have profited by having more than 72 hours to review
10 some complicated bills. How thick is the budget?
11 How thick are constitutional amendments? Et cetera, et
12 cetera. And if you would like to say that on at least
13 some bills, perhaps more than 72 hours is appropriate,
14 that's a strengthening. And I think that's a big step in
15 the right direction. If you would like to say, with your
16 own recordings -- this one is lovely. But as far as I
17 know, it's broadcast only in English. And if you would
18 like to see that they get transcribed into English text
19 for the benefit of the deaf, if you would like to
20 translate them into Spanish or Mandarin or anything else.
21 If you would like to make them searchable, so people
22 can -- don't have to play through the entire tape to sort
23 of find out where someone was speaking, just jump to the
24 last silly thing Mr. Munger just said, I think that would
25 be great.

1 We didn't lay those burdens upon, but if you
2 would like to lay them on yourselves, we've thought a lot
3 about those issues. We're happy to work with you.

4 CHAIRMAN ALLEN: Thank you very, Dr. Munger.

5 Are there other questions or comments from the
6 Committee?

7 Yes. Mr. Anderson.

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

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

12 SENATOR ANDERSON: Did I transpose it?

13 DR. MUNGER: Might be me. Sorry.

14 SENATOR ANDERSON: It was -- this is why it
15 would be very good to have it in writing. So the CTLA
16 grants rights of any person to record a public proceeding
17 and broadcast or otherwise transmit it. In AB 884, there
18 is -- there is no such permission. So is that something
19 you were thinking about adding, or why didn't you include
20 it to start with?

21 ASSEMBLYMAN GORDON: I think two-fold. One,
22 certainly believed that, you know, if we implement the
23 process to record everything, the information is
24 available. Secondly, it is common practice, as was done
25 here today, for the committee chair to allow external

1 recording. We have news outlets who -- television comes
2 periodically to the Legislature. Committee chairmen are
3 asked. They grant that. So I really felt that it, you
4 know, both the material would be available, and we already
5 have a process for doing that.

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

11 ASSEMBLYMAN GORDON: Happy to have further
12 conversation about that.

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

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

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

21 Would the author like to close?

22 ASSEMBLYMAN GORDON: I think it's been said.
23 And we will, if this moves forward, which I would
24 appreciate today, it does provide opportunity for
25 continued dialogue and discussion with the interested

1 parties. I'm happy to be a part of that.

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

4 Secretary, please call the roll.

5 THE SECRETARY: Motion is due pass Senate
6 Appropriations Committee.

7 Allen?

8 CHAIRMAN ALLEN: Aye.

9 THE SECRETARY: Allen: Aye.

10 Anderson?

11 SENATOR ANDERSON: No.

12 THE SECRETARY: Anderson: No.

13 Hancock?

14 SENATOR HANCOCK: Aye.

15 THE SECRETARY: Hancock: Aye.

16 Hertzberg?

17 SENATOR HERTZBERG: Aye.

18 THE SECRETARY: Hertzberg: Aye.

19 Liu?

20 SENATOR LIU: Aye.

21 THE SECRETARY: Liu: Aye.

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

25 DR. MUNGER: And we'll see that you get a copy

1 of the meeting today, as agreed.

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

4 (Off the record at 3:34.)

5 (This concludes proceedings concerning SCA 14
6 and AB 884.)

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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