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July 28, 2020

The Honorable Anthony Rendon,  
Speaker of the Assembly  
State Capitol, Room 219  
Sacramento, CA 95814

Diane Boyer-Vine,  
Legislative Counsel  
State Capitol, Suite 3021  
Sacramento, CA 95814

RE: *Assembly's Proposed Rule Authorizing "Proxy Voting" (HR100)*

Dear Speaker Rendon and Counselor:

This firm represents the Institute of Governmental Advocates ("IGA"). IGA is a voluntary, non-partisan association representing the leading professional lobbyists and lobbying firms in California. It has been widely reported that the Assembly is going to consider a "rule" allowing "proxy voting" on the Floor. IGA opposed the same authorization that was part of ACA 25 last month. As IGA stated in its opposition letter to ACA 25, the Legislature should never reject, even in the face of crisis, the structural underpinnings of our representative democracy as enumerated in our State Constitution. These foundational constitutional provisions include:

- 1) "The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good." (Art. I, § 3(a).)
- 2) "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." (Art. I, § 3(b).)
- 3) "Except as provided in paragraph (3) [permissible closed session matters], the proceedings of each house and the committees thereof shall be open and public." (Art. IV, § 6(c).)

- 4) “The right to attend open and public proceedings includes the right of any person to record by audio or video means any and all parts of the proceedings and to broadcast or otherwise transmit them...” (Id.)
- 5) “The Legislature shall also cause audiovisual recordings to be made of all proceedings subject to paragraph (1) in their entirety, shall make such recordings public through the Internet within 24 hours after the proceedings have been recessed or adjourned for the day, and shall maintain an archive of said recordings...” (Id.)
- 6) “No bill may be passed or ultimately become a statute unless the bill with any amendments has been printed, distributed to the members, and published on the Internet, in its final form, for at least 72 hours before the vote, except [for bills necessary to address the declared state of emergency by the Governor].” (Art. IV, § 8(b)(2).)

The proposed rule is clearly unconstitutional and threatens the legality of any bill passed using proxy votes. Indeed, the prior justification for ACA 25 was the necessity of amending the Constitution to provide for “proxy voting.” In short, the Legislature cannot now by rule, that what can only be achieved by amending the Constitution. No bill passed in this unlawful manner should be considered by the Senate and should be rejected by the Governor.

Though it is not clear from press reports, we know in non-legislative contexts, “proxies” are sometimes used to establish a quorum. Our Constitution has a quorum requirement. (Art. IV, § 7(a).) Quorum can only be established by the physical presence of a majority of the members of the house. This requirement is so important that under the Constitution each house is entitled “to compel the attendance of absent members.” (*Id.*) This requirement is also so important that under the Constitution, the Legislature can fill the vacancies of as many as 16 Assembly members if they were to be killed, missing, or disabled, by war or enemy-caused disaster (Art. IV, § 21).

In addition, our Constitution requires that all legislative action be taken by “rollcall vote entered into the journal.” (See, e.g., Art. IV, sec. §§ 7, 8, 10.) Here again, a “rollcall vote” can only be conducted with members present and voting. The public descriptions of the proposed “proxy voting” process are not clear as to what the Assembly means by “proxy voting.” Again, in non-legislative contexts, a person who gives his or her voting “proxy” to another gives that proxy without condition and the proxy holder can vote that proxy in any manner as he or she sees fit. Is that what you intend? Even if you intend the proxy holder to vote the proxy as directed by the Member, how will that be enforced? What if a bill passes because of an error or misuse by the proxy holder? Regardless of the Assembly’s intent, we believe any use of “proxy voting” to be unconstitutional.

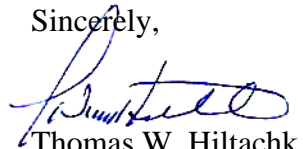
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The “business of the people” should never be conducted in the manner proposed – under any circumstance. Indeed, our Constitution does not presently dispense with these foundational principles even in the face of “war-caused or enemy-caused disaster.” (Art. IV, § 21.) We are mindful of the severity of the present crisis and the need to protect the health and safety of Members, legislative staff, the lobbying community, and the citizens with business before the Legislature.

Many Californians have been classified as “essential” workers. They show up to work every day, many caring for the sick, disabled, aged, or infirmed. Many work to keep our communities safe and others work to keep the engine of the State’s necessary economy running. In our view, Members of the Legislature are also “essential,” and adequate safeguards can be put in place to protect all of us.

Thank you for your consideration of this important matter.

Sincerely,



Thomas W. Hiltachk,  
Attorney for  
Institute of Governmental Advocates

cc: The Honorable Gavin Newsom,  
Governor  
The Honorable Toni Atkins,  
Senate President Pro Tempore