



April 1, 2021

The Honorable Robert Rivas
 California State Capitol, Room 5158
 Sacramento, CA 95814

**Re: AB 361 – as introduced
 OPPOSE**

Dear Assemblymember Rivas:

The undersigned organizations regret that we must respectfully oppose your Assembly Bill 361, which authorizes local agencies to use teleconference technology to participate in public meetings without complying with the requirements imposed by the Ralph M. Brown Act, during a declared local or state emergency.

AB 361 would permanently codify into statute provisions drawn from Executive Order No. N-29-20. This Executive Order reflects one temporary policy decision that was made quickly under the pressure and turmoil of a newly declared state of emergency to respond to an unprecedented global pandemic last year. The premise of the bill appears to be that an executive order tailor-made for the COVID-19 pandemic should be blanketly applied to all future declared emergencies. We believe this is unwise. Whether or not E.O. N-29-20 is good policy, it should be remembered that the Governor’s temporary suspension of the Brown Act was intended to meet the specific challenges posed by a previously unknown and highly contagious airborne virus. Should AB 361 pass, this attempt at a one-size-fits-all approach would fail to respond to the nuanced conditions of a unique local or state emergency.

Moreover, the bill would empower members to avoid their public meetings obligations whenever they declare a local emergency, regardless of the circumstances or the impact on the ability of

the public meeting to be conducted safely. Further, the bill would allow local public officials to evade their legal obligations not only by declaring a local emergency but also by exploiting an emergency that may be legitimate but does not actually prevent the local body from complying with the otherwise applicable provisions of the Brown Act. For example, a city council could assert that it need not comply with the Brown Act because the county in which it is located has declared an emergency, perhaps on the other side of the county, that makes the attendance of a member somewhat more complicated or difficult – *i.e.*, “hinders” that member’s attendance. Likewise, the local agency could evade the Brown Act if some state or local official has merely recommended some undefined type of “social distancing,” even if it is nevertheless safe for people to meet.

This power is ripe for abuse because it will be tempting and unchecked. By declaring an emergency, or exploiting one that might hinder attendance, local governments would be free to conduct themselves with less openness and transparency. This could embolden local governments to make decisions without full public participation when they see it as advantageous to do so. The public accessibility requirements of the Brown Act ensure that all Californians can attend meetings in person and can directly address members of governing bodies. Broadly removing this ability is contrary to the basic tenets of a representative democracy. As members of the public, we have a right to access our elected officials while they are conducting public business and to instruct our representatives on decisions that deeply affect our lives.

Since the issuance of Executive Order No. N-29-20, there are clear examples where public comment has been limited and has caused harm to California communities. In September 2020, the Anaheim City Council approved a \$150 million cash deal to sell the Angel Stadium despite large-scale public opposition.¹ More than 250 public comments were made but had to be delivered via email because the council is not holding in-person meetings during the COVID-19 pandemic. This is not an isolated incident – across the state, numerous city and county governing bodies have reduced or eliminated their constituents’ ability to give direct comment during public meetings. While some have been receptive to pushback, others have not, illustrating the bill’s potential to replicate the problems seen over the past year.²

The COVID-19 pandemic has shown us that teleconference technology can be integrated into public meetings, but AB 361 fails to provide clear standards for how remote access should be implemented in a way that protects the ability of the public to participate in the government decision-making process. Clearer standards that ensure the equitable provision of access to public meetings are necessary to ensure a government that is accountable to its constituents. Public participation is vital to our democracy. For these reasons, we oppose AB 361.

Sincerely,

Leadership Counsel for Justice & Accountability

¹ <https://www.latimes.com/sports/story/2020-09-30/anaheim-city-council-angels-stadium-arte-moreno>

² [Pomona council and school board violating open meeting laws, ACLU says – Daily Bulletin](#), [Pomona council and school board now allow live public comment – Daily Bulletin](#)

ACLU California Action
Center on Race, Poverty & the Environment
First Amendment Coalition
Inland Congregations United for Change
Faith in the Valley
Central Valley Air Quality Coalition
Fresno Barrios Unidos
Yalla Indivisible
Asia Pacific Environmental Network
Hmong Innovating Politics
Californians Aware

cc: Members and Committee Staff, Assembly Committee on Local Government