

★ ARGUMENT IN FAVOR OF PROPOSITION 42 ★

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Everyone has heard the old saw “you can’t fight city hall.” It turns out it is flatly untrue. Millions of Californians seek answers from public officials and bureaucrats in cities, counties, school districts, water agencies, and every type of government agency, using the information they gain to enter the political process and positively affect public policy.

Powerful tools like the California Public Records Act give citizens and businesses the ability to obtain the records they need to be effective advocates and protect the interests of the community. The Ralph M. Brown Open Meeting Law gives us the right to be in the room and heard as policy is developed during city council, board of supervisor, school board, and special district meetings.

In 2004, these laws giving Californians the right to access public records and attend meetings of local public bodies were made even more powerful when over 82 percent of the voters approved an amendment to the state constitution that says, in part: “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.”

In the past few years, though, key provisions of these great laws have been threatened when the state suffers fiscal crisis. In short, the state and local governments have been in long disagreement about the amount and level of state financial support for the local costs of complying with the public’s civil right of access to government. At times key provisions of these laws have become optional for local government agencies by virtue of tough decisions made in the state budget process. While most governments

continued to comply during these short periods of fiscal stress, the public’s fundamental rights should not depend on the good graces of local officials.

Proposition 42 will clarify that local government agencies and not the state are responsible for the costs associated with their compliance with our access laws. It will ensure access to public records and meetings that are essential to expose and fight public corruption, like that experienced by the citizens of the City of Bell when public officials engaged in criminal acts and sacked the city’s coffers.

Proposition 42 will cement in the Constitution the public’s civil right to know what the government is doing and how it is doing it. It will add independent force to the state’s laws that require local governments to comply with open meeting and public record laws and future changes to those laws made by the Legislature.

Proposition 42 will eliminate the possibility that local agencies can deny a request for public information or slam a meeting door shut based on cost. As Thomas Jefferson said, “Information is the currency of democracy.” Tell the bureaucrats that the people—not the government—ought to decide what we need to know. Vote yes on Proposition 42.

MARK LENO, Member
California State Senate

THOMAS W. NEWTON, Executive Director
California Newspaper Publishers Association

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 42 ★

The proponents are basically right that “*Proposition 42 will eliminate the possibility that local agencies can [lawfully] deny a request for public information or slam a meeting door based on [the] cost*” of complying with these state laws. It would do so by imposing the cost of complying upon local governments. An alternative would be to require that the state government pay.

Over many years, I have provided arguments against state and local ballot measures so that voters will receive more information about the measures before voting.

I have also used the California Public Records Act and open meeting laws to attempt to positively influence decision-making at the local level. When those laws are violated, a civil lawsuit may be filed, and the official misconduct involved may be reported to the civil grand jury in the county.

However, the ability of individuals to make a difference—even at the local level—has been undermined in

recent years by the influence of *big money* and by the empowerment of various *regional agencies* throughout California headed by board members *never elected* to those regional positions.

For example, in the San Francisco Bay Area, regional agencies just adopted plans that will cram millions of new residents from around the world into existing metropolitan transportation corridors. Bus-only lanes are being created. HOV (high occupancy vehicle) lanes are being converted into “Express Lanes” that also allow toll-payers.

All lanes on freeways may become *toll lanes* in the years ahead. It is happening across the country.

GARY WESLEY

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Local governments are run by employees and politicians who may or may NOT want to share information or receive public input before making decisions.

In 2004, California voters approved an initiative state constitutional amendment designed to halt the rolling back of state laws that *guaranteed* access to many public records and *mandated* that meetings of local government legislative bodies usually be held in public and that decisions of local legislative bodies could be made only after an opportunity for public input (*California Constitution, article I, section 3(b)*).

Some local governments responded by objecting that the new constitutional provision did not supersede another provision of the State Constitution (*article XIII B, section 6*) which requires that the State pay to local governments the cost of implementing any new State mandates.

Proposition 42 would amend the California Constitution to clarify that the State need not pay a local government for the cost of complying with the open meeting law applicable to local governments (the *Brown Act*—Government Code sections 54950–54963) or with the *Public Records Act* (Government Code sections 6250–6270) as written or later changed—as long as any change “contains findings demonstrating that the statutory enactment further the purposes of” the constitutional guarantee of public access and input.

The main issue presented by this proposition is whether voters believe that the cost of complying with these important state laws should be borne by local governments or by the state government.

GARY WESLEY

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Our democracy depends upon informed and active participation in government. Proposition 42 is a simple measure that protects the basic right to know how government conducts our business.

Mr. Wesley’s primary argument against Proposition 42 recites a lot of facts—most of which we agree with—but doesn’t make much of an argument about why local government agencies should look to the state to pay their costs associated with compliance with your freedom of information laws like the California Public Records Act and Ralph M. Brown Open Meeting Law.

Compliance with our state and local laws requiring open meetings and access to public records is a matter of constitutional principle.

The fact is every state agency pays its own costs of compliance with the public records act and the Bagley-Keene Act, which is similar to the Brown Act and requires state boards and commissions to meet in open and public sessions.

When agencies pay their own costs of compliance, there is a built-in incentive to innovate to keep those costs down, like streamlining record request processes and putting commonly requested records online for easy public access. If the state pays local agencies for the purely local obligation of complying with these fundamentally important laws, though, there is no incentive to improve.

It’s simple; the state pays its own costs and local agencies should pay theirs.

Protect your civil right to know and vote YES on Proposition 42.

JAMES W. EWERT, General Counsel
California Newspaper Publishers Association

DONNA FRYE, President
Californians Aware

JENNIFER A. WAGGONER, President
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