

Government Transparency in an Emergency **A statement of principles from California Common Cause**

As COVID-19 puts lives at risk, undermines the economy, disrupts education for millions of children, and wrecks state and local budgets, the need for strong, honest, and effective decision-making by state and local government has never been greater. The demands of a socially-distanced world and the expansion of remote meeting technologies are moving state and local governments toward remote proceedings. But such a move carries risks to government transparency and public oversight. California must strike a balance between giving governments the flexibility needed to make critical decisions during a crisis and the public's right to participate so government proceedings are fully transparent and accountable.

Below, California Common Cause outlines the risks of moving to fully remote proceedings without guardrails, and the restraints and principles that can enable California to strike the right balance between urgency and transparency. These principles apply not just during the current epidemic, but also for state and local governmental proceedings held remotely because of wild fire, earthquake, or any other emergency that may strike the Golden State. We put these forward not as a policy proposal but as the start of a conversation with other concerned Californians.

Risks of remote proceedings

- Remote proceedings are a necessity in an era of stay-at-home orders. But governments' use of remote proceedings today sets a precedent for the future, when the State Legislature or local governments may try to employ remote proceedings in situations that do not rise to the level of a true emergency. Hard votes are sometimes scheduled late at night or on weekends, enabling lawmakers to avoid public scrutiny. Remote voting, either by the entire body or by specific members with unique circumstances, could be exploited such that vulnerable lawmakers are allowed to take a difficult vote far from the press, interest groups, and the public.
- Remote proceedings that connect multiple access points using the internet leave our governments vulnerable to hacking, deepfakes, zoom-bombing, and other cybersecurity threats. This is particularly true for local governments that lack well-resourced IT infrastructures and/or in situations where lawmakers are permitted to participate from home using home internet systems.
- Remote proceedings, if conducted without at least one in-person location where the public can attend, freeze out those that do not have access to high-speed internet and/or livestreaming video.
- Remote proceedings are vulnerable to internet service disruptions or weak wifi, leaving a member of the public or a participating lawmaker at risk of being dropped while the proceeding continues.

Principles for ensuring remote proceedings are transparent and publically accessible

1. **Ensure remote proceedings of any kind are truly necessary, and rare.** Remote proceedings should only be used when in-person participation for the State Legislature or a local government is logistically impossible or poses very grave health risks. One option is permitting remote proceedings

only when the Governor or state/local public health officials have declared a state of emergency. Setting a high bar in this way prevents remote proceedings from being abused in the future. Remote participation should never be permitted for an individual lawmaker for reasons of personal convenience, excluding situations where a reasonable accommodation is necessary and appropriate under the Americans with Disabilities Act (ADA). Additionally, in an emergency context only those lawmakers impacted by the emergency should be able to participate remotely. There may be a useful difference in policy pertaining to remote discussion versus actual voting during an emergency (with the bar being higher for remote voting).

2. **Ensure highest levels of internet security and reliability.** Remote proceedings should only be used if the highest levels of internet security can be secured at all points of access and a cybersecurity plan is established. Remote participation by lawmakers should only be permitted at locations where audio/visual capabilities and internet strength are good enough to enable high-quality and reliable real-time streaming. Remote proceedings should be paused immediately if there are any technical issues that impede public viewing.
3. **Ensure opportunities for public access and participation.** Remote proceedings must provide internet and telephonic access for the public. All government entities must continue to comply with the requirements of the ADA, which may include providing real-time captioning or transcription upon request. Unless the emergency in question makes it impossible, one public location should be maintained for in-person attendance to ensure access for community members without internet and/or streaming video capabilities. Remote proceedings must also provide opportunities for public comment in internet, telephonic, and written formats. Meetings must be noticed as before, with instructions on how to access the meeting via internet, telephone, and any available in-person sites. Agenda materials must be made available online beforehand. (In the event internet access is unavailable, the telephonic or other replacement means of conducting remote proceedings should maintain some avenue for public access.)
4. **Ensure limited subject matter.** The subject matter addressed via remote voting should be limited to actions that must be taken to address the emergency, that ensure public health or safety, or that are legally required to be taken because of statutory or constitutional deadlines. Any actions taken via remote voting should have an automatic sunset date, with the option available to reevaluate any such decisions once the Legislature or local government body is able to reconvene in person, in adherence with standard procedure. While remote voting should be on limited topics, remote discussion may be broader.

California Common Cause urges the State Legislature and every local government in California to develop a policy for remote proceedings in accordance with these principles, to ensure the public has access to and oversight over our government decisions at this critically important time. The State Legislature and local governments would be well-served by developing these plans in an open, consultative manner that builds public trust and confidence in them, which will improve support for them in the event they need to be deployed.