

October 7, 2009

Hon. Edmund G. Brown Jr.
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Krystal Paris
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed a proposed constitutional amendment initiative related to marriage (A.G. File No. 09-0026).

Background

Marriage. California law defines marriage as a personal relationship arising out of a civil contract between two consenting adults. In addition, state law requires the issuance of a license from the county clerk's office and the performance of a ceremony for a marriage to be valid and recognized. In a statewide election in November 2008, voters passed Proposition 8, which amended the State Constitution to provide that only marriage between a man and a woman is valid or recognized in California.

County clerk's offices are authorized to collect fees for the issuance of marriage licenses. State law dedicates a set portion of these fees for the support of domestic violence shelters and family reconciliation services, among other purposes.

Divorce and Legal Separation. State law allows a marriage to be ended only by one of the following ways: (a) the death of one of the parties, (b) a dissolution of marriage, commonly known as divorce, or (c) a nullification of the marriage. A marriage may be nullified in specific instances such as those involving marriages between blood relatives, those involving parties under the age of 18, or those in which consent to marriage was obtained by fraud or force.

A married couple can seek court approval for a legal separation, which results in the division of assets and custody as in a divorce but does not return the parties to the legal status of being unmarried. Married and legally separated individuals cannot remarry under state law, while divorced individuals or those whose spouse has died may do so.

Proposal

This measure amends the Constitution to prohibit any party to marriage from being restored to the state of an unmarried person during the other party's lifetime unless the marriage can be nullified under state law. This measure would in effect remove the option of divorce and make nullification or the death of a spouse the only options for ending marriage in this state.

Fiscal Effects

We have identified the following major fiscal impacts of this measure:

Net Reduction in Court Costs. This measure would reduce court workload for divorce cases and, therefore, reduce state costs for the support of the court system. Currently, parties filing for divorce pay a civil court fee of \$350. According to the Administrative Office of the Courts, these fee revenues are far less than the administrative costs of the average divorce proceeding. Therefore, the reduction in the number of divorce cases that would result from this measure means that the state's court system would have lower revenues but substantially lower workload and costs overall. This could lead to savings of up to hundreds of millions of dollars annually. These net savings would be offset to the extent that the courts redirected these available resources to address any pending backlog of court cases.

Reduced Purchases of Goods and Services From Fewer Weddings. This proposal would reduce the number of marriages performed in the state because married parties would no longer be permitted to divorce and remarry. Also, the change in state law so that divorce would no longer be recognized might deter some persons from getting married the first time. These changes may reduce various state and local tax revenues as it would likely reduce purchases of goods and services related to the performance of weddings—for example, if it reduced the amount of tourism in the state attributable to weddings.

Potential Population-Related Effects. It is possible that this measure could, over time, result in a lower overall state population than would otherwise be the case by encouraging out-migration and discouraging in-migration to California. First, this proposal may encourage individuals wishing to divorce their spouses to move out of the state. Second, married couples or singles planning to eventually be married may choose not to move to California if they would no longer have the option of divorcing should future problems arise. The magnitude of these potential effects on the size of the state's population over time is unknown, and thus could result in both (1) a reduction in the collection of state and local tax revenues and (2) a reduction in the overall level of state and local government spending on governmental services.

Reduction in Marriage License Revenues. For the reasons noted above, this measure would result in fewer marriages and, therefore, a decrease in the collection of marriage

license fees by county clerk's offices. In most cases, this is unlikely to have a significant fiscal effect on county clerk's offices, as counties are authorized to adjust marriage license fees to cover their costs. However, this would reduce the funding provided from marriage license fees to domestic violence shelters and family reconciliation services. If the number of marriage licenses issued were reduced by half, for example, these programs would lose roughly \$1 million annually.

Summary of Fiscal Effects

We estimate that this measure would have the following major fiscal effects:

- Savings to the state of up to hundreds of millions of dollars annually for support of the court system due to the elimination of divorce proceedings.

Sincerely,

Mac Taylor
Legislative Analyst

Michael C. Genest
Director of Finance