



September 4, 2020

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative that would express the intent of California voters to seek changes in the state's relationship with the United States of America (A.G. File No. 20-0001, Amendment #1).

Background

California's Constitution. In 1850, Congress and President Fillmore approved the act admitting California into the United States of America. Section 1 of Article III of the current State Constitution provides that California "is an inseparable part of the United States of America." The State Constitution provides that the U.S. Constitution is the supreme law of the land.

U.S. Constitution Does Not Provide for Secession. The U.S. Constitution includes neither a mechanism for a state to secede from the United States nor a provision for a single state to be an autonomous nation within the United States. In 1869, following the Civil War, the U.S. Supreme Court ruled in *Texas v. White* that the initial act admitting a state to the Union "was final." "There was no place for reconsideration, or revocation," the court said, "except through revolution, or through consent of the states."

Initiatives and Constitutional Revisions. In 1911, California voters approved Proposition 7, which amended the State Constitution to create the statewide voter initiative process. A voter initiative, such as this proposal, may not institute changes—known as constitutional revisions—that substantially alter the basic governmental framework of the state. Only the Legislature or a state constitutional convention may place proposed constitutional revisions before the voters.

Proposal

Proposes Statutory Changes. This measure proposes to enact new California statutory law and proposes no constitutional amendments. State statutory law generally cannot override the State Constitution or the U.S. Constitution. In addition, voter initiative measures such as this one

may not institute changes, known as revisions, which alter the "basic governmental framework" set forth in the State Constitution.

Creates New State Commission. This measure creates a 20-member state commission on national sovereignty and independence. The commission would be required to produce a public report—by August 1, 2024—on the ability of California to govern itself as an independent nation and possible means to achieve independence. The measure specifies the commission’s composition, selection process, and eligibility criteria for members. The commission would hold hearings and have subpoena power.

Calls for Voters to Respond to a Question on Independence in November 2024. This measure calls for voters to consider a question related to independence on November 5, 2024—a date when a statewide election is scheduled to be held. At this election, voters would be asked: “Should California leave the United States and become a free and independent country?” The measure states this election “shall constitute a vote of no confidence in the United States of America and an expression of the will of the people of California to become a free and independent country” if both of the following conditions are met:

- At least 50 percent of registered voters participate.
- At least 55 percent vote “Yes.”

If both conditions are met, this measure requires the state to remove the national flag of the United States of America from all state buildings and properties and instead display the state flag. The measure does not state how, when, or whether California would become an independent country.

Fiscal Effects

Various Uncertainties. There are many legal uncertainties concerning this measure and, therefore, uncertainties about its economic and fiscal effects. For example, this measure could be found by the courts to be an unconstitutional revision of California’s basic governmental framework, either (1) preventing it from ever reaching the ballot or (2) invalidating it in whole or in part if voters approved it at an election. Even if voters approved this measure and a later vote for independence, it is not clear that there would be any change without the consent of the rest of the United States.

Cost of New State Commission and Future Election. The measure would involve added state costs to form the new state commission on national sovereignty and independence. These costs would vary depending on decisions by the Legislature in funding the new commission. However, existing state commissions of similar size have budgets around \$1 million annually. By calling for voters to respond to a question on independence in a future election, the measure also could increase state and local election administration costs on a one-time basis by tens of millions of dollars. However, the State Constitution outlines a specific process by which a voter initiative can appear on the ballot and the initiative does not follow that process.

Major Economic and Fiscal Changes if California Becomes Sovereign Nation. Assuming that California actually became a sovereign and independent nation, there could be major

economic and budgetary changes for the state and local governments. For example, this would include: California's use of the U.S. dollar as a currency, the ability of Californians to travel to and trade with the U.S., and Californian's participation in federal programs like Social Security and Medicare. The details of these changes are unknown. They would depend on the terms of any arrangement reached between California and the United States, which would have to be approved by voters at some point in the future after the approval of this measure.

Summary of Fiscal Impact. This measure would have the following fiscal effects:

- Around \$1 million in added state costs for a new state commission on national sovereignty and independence.
- Potential state and local election administration costs in the tens of millions of dollars to ask voters to respond to a question on independence.
- Unknown, potentially major, fiscal effects if California voters approved changes to the state's relationship with the United States at a future election after the approval of this measure.

Sincerely,

Gabriel Petek
Legislative Analyst

Keely Martin Bosler
Director of Finance