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December 4, 1998

Hon. Daniel E. Lungren
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Connie Lemus
Initiative Coordinator

Dear Attorney General Lungren:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative regarding citizen's constitutional rights (File No. SA98RF0020, Amendment No. 1- S). This initiative amends the California Constitution to create a new procedure for determining the validity of statutes. Specifically, the initiative would establish the California State Office of Ombudsman General which would be responsible for ensuring that no state laws are in conflict with the United States Constitution or the California Constitution. The main provisions of the initiative are discussed below.

California State Office of Ombudsman General. Under current law, California's courts are ultimately responsible for determining the validity of state and local laws. This measure would create the new state elective office of Ombudsman General who would have powers equivalent to the Attorney General. Specifically, the Ombudsman General would have authority to investigate and prosecute cases that are directly related to constitutional issues. The Ombudsman General's Office would examine *all* state laws for compliance with the U.S. and the California Constitutions. The Ombudsman General's Office would identify laws that it determines are invalid and report its findings to the Attorney General's Office.

The Attorney General's Office would have three working days to respond. If the Attorney General agrees that a conflict exists between the law and either of the Constitu-

tions, the law would immediately become null and void. If the Attorney General does not agree that a conflict exists, the final decision would be made by a grand jury.

District Ombudsmen. The initiative would create the county elective office of District Ombudsman. The State Ombudsman General would oversee the District Ombudsmen. The District Ombudsman would be responsible for investigating and prosecuting constitutional violations of citizens' rights by public officials within each county. Police and district attorneys would be required to get approval from the District Ombudsman's office before performing strip searches, negotiating plea bargains, or generally confiscating or impounding property. Additionally, the District Ombudsman's office would be available to the public for advice or legal representation on constitutional issues.

Penalties. Under current law, government employees can be prosecuted and sued for violating a person's constitutional rights. This measure sets forth penalties of a minimum of six months incarceration and lifetime forfeiture of rights to hold any public office or government employment for the violation, or failure to protect any citizen's constitutional rights by any person.

Fiscal Impact

The measure would likely result in unknown, but probably major, annual costs for state and local governments for support of the Offices of Ombudsman General and District Ombudsman, and for the new responsibilities of the Attorney General. The magnitude of these costs would depend upon the scope of review of existing laws, the number of laws determined as invalid, and the extent to which citizens make use of the legal services provided by the District Ombudsmen offices. In addition, to the extent that the measure results in state laws being declared null and void, the measure could result in costs or savings to the state and local governments, depending on the specific laws that are invalidated. Thus, the net fiscal impact of the measure is unknown.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Craig L. Brown
Director of Finance