

November 10, 2009

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

Attention: Ms. Krystal Paris  
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative related to the initiative and referenda processes (A.G. File No. 09-0038 Amdt. #2-S).

## **BACKGROUND**

At statewide elections, Californians choose candidates for state and local offices and decide whether to approve or reject measures proposed by the Legislature or by local authorities. In addition, Californians often vote on measures proposed by individuals or groups through the initiative process. On occasion, measures previously approved by the Legislature are placed before voters for approval or rejection through the referendum process.

### **Initiatives**

*Existing Direct Initiative Process.* When it was written in 1879, California's Constitution placed essentially all of the legislative power of the state (including the power to pass, amend, and repeal laws) with the Legislature. The Constitution, however, was amended in 1911 to specify that the state's voters reserved for themselves the legislative power of the initiative process. Through the initiative process, any voter may propose a new or amended statute (that is, a law or declaration of state policy) or state constitutional provision. The Constitution requires initiative supporters to gather a specific number of signatures from registered voters in order to have their proposed initiative placed on a statewide election ballot. That number is equal to at least 5 percent of the votes cast for Governor at the most recent gubernatorial election for proposed statutory initiatives or at least 8 percent of the votes cast for Governor for proposed constitutional initiatives. (Currently, under these requirements, statutory initiatives require at least 433,971 signatures of registered voters to qualify for the ballot, and constitutional initiatives require at least 694,354 such signatures.) Historically, about one-fourth of initia-

tives that have been formally proposed have qualified for the ballot. Of those that have qualified for the ballot, about one-third have been approved by the state's voters. The types of initiatives now allowed under the State Constitution sometimes are called "direct initiatives" because they represent a method for initiative supporters to bypass the Legislature to put a proposal *directly* on the ballot for approval or rejection by voters.

***Voters Eliminated Indirect Initiatives in 1966.*** Until 1966, the Constitution also allowed "indirect initiatives." This was a way that voters could gather signatures to put a proposal before the Legislature. The Legislature could accept or reject the proposal, but if it rejected the proposal, it then was placed on a statewide ballot for approval or rejection by the voters. This indirect initiative process was rarely used. In 1966, voters approved Proposition 1A, which eliminated the indirect initiative process. Today, as a result, only direct initiatives are authorized in California.

## **Referenda**

***Existing Referendum Process.*** The 1911 constitutional amendment that created the initiative process also created the referendum process. Through referenda, the state's voters may reject certain laws approved by the Legislature and prevent them from ever taking effect. The Constitution requires those wishing to reject a law passed by the Legislature to gather signatures from registered voters totaling 5 percent of those who voted in the last gubernatorial election (currently 433,971 signatures). As described below, referendum advocates must collect signatures on an expedited timeline in order to place a measure on the ballot asking voters to reject a law passed by the Legislature. Since 1911, 65 referenda have been formally proposed, and 47 of these have qualified for the ballot. In 28 of these 47 instances, voters chose to reject the challenged law that had been approved by the Legislature.

## **Initiative and Referendum Petitions**

***Requests for Title and Summary of Proposals.*** Currently, a voter submits a proposed initiative to the Attorney General and pays a fee of \$200 before circulating initiative petitions to obtain the required signatures of voters. (Under state law, the \$200 fee is refunded if the initiative measure qualifies for the ballot within two years.) The Attorney General generally asks the state's Department of Finance and Legislative Analyst's Office to prepare an estimate of how the proposed measure would affect state and local finances, and these offices have 25 business days to respond. The Attorney General then has 15 calendar days after receiving the financial estimate to complete a title and summary of the proposed measure. This title and summary must appear on each initiative petition circulated for signatures. The process for proposing a referendum is similar, but there is not a \$200 filing fee required for proposed referenda.

***Petition Requirements.*** State law describes the format for initiative and referendum petitions, which are distributed to gather signatures from registered voters. For exam-

ple, initiative petitions must contain the title and summary prepared by the Attorney General across the top of each page of the petition in a boldface type of at least a certain size. Initiative and referendum supporters must produce petitions that comply with these requirements.

**Petition Deadlines.** Initiative proponents have up to 150 days to collect petition signatures after the Attorney General assigns a title and summary to the proposal. Referendum advocates have up to 90 days after a legislative statute is enacted to collect petition signatures.

**Random Check of Petition Signatures by County Officials.** Each of California's 58 counties has a county official—typically the County Clerk or Registrar of Voters—responsible for conducting elections. State law requires initiative supporters to submit initiative petitions to the election official in each county in which the petitions are circulated. The petitions are submitted all at once in each county after signature gathering is completed in that county. Within eight business days, the county official and his or her staff count the total number of signatures on the petitions received in the county and reports the total to the Secretary of State (SOS), the state's chief election administrator. If the total number of all signatures in all 58 counties equals at least the number required to qualify for the ballot, the SOS notifies the county officials that they must verify a random sample of petition signatures within 30 business days. During this period, county officials must verify whether the randomly chosen petition signatures are those of registered voters. The county officials certify to the SOS the number of valid signatures on their petitions based on this random sample.

**Qualification of Measures for the Ballot.** Upon receiving the results of each county's random signature check, the SOS applies a formula to estimate the total number of valid initiative or referendum signatures statewide. Whether a measure qualifies for the ballot depends principally on this determination, as follows:

- **Failure to Qualify for Ballot Based on Random Signature Check.** If, based on the results of the random signature count, the SOS estimates that the number of valid petition signatures is less than 95 percent of the number required to qualify for the statewide ballot, state law specifies that the measure fails to qualify for the ballot.
- **Qualification for the Ballot Based on Random Signature Check.** If, based on the random signature count, the SOS estimates that the number of valid petition signatures is greater than 110 percent of the number required to qualify for the ballot, state law specifies that the measure qualifies for the ballot.
- **Qualification for the Ballot Based on Full Signature Check.** If, based on the random signature count, the SOS estimates that the number of valid petition signatures is between 95 percent and 110 percent of the number required to qualify for the ballot, state law requires county election officials to verify

every signature on the petition (known as a “full check”). Following notification by the SOS, counties have 30 business days to complete the full check. The SOS receives the results of the full check from counties, and if the total number of valid petition signatures meets or exceeds the required number, the measure qualifies for the ballot.

## **Other Matters**

*The Legislature’s Role in the Direct Initiative Process.* California’s direct initiative process bypasses the Legislature and places measures directly on the ballot. After initiative measures qualify for the ballot, however, state law requires a joint committee of Senators and Assembly Members to hold a public hearing on the proposal no later than 30 days prior to the election. Currently, the Legislature has no power to prevent a qualified initiative measure from appearing on the ballot.

*Role of Legislative Counsel.* The Legislative Counsel Bureau (bureau) assists the Legislature, the Governor, and other state officers by drafting legislation and rendering legal opinions. Currently, state law requires the bureau to assist initiative supporters in preparing language for initiatives when 25 or more voters ask the bureau to do so and the bureau determines it is reasonably probable that the proposed measure eventually will be submitted to voters. Some voters who propose initiatives also use their own private counsel to draft these measures.

## **PROPOSAL**

This measure amends the Constitution to make significant changes to the initiative and referendum processes.

### **Initiatives**

*Increases Fee Required to Propose an Initiative.* The measure increases the fee required to be submitted upon proposing an initiative from \$200 to \$500. This \$500 fee would be adjusted thereafter in line with inflation. The Legislature, however, would be able to establish a lower fee in law. As is currently the case, if the initiative later qualifies for the ballot, this fee would be refunded.

*Extends Time to Gather Petition Signatures.* The measure extends significantly the amount of time that initiative supporters would have to gather the required petition signatures to place an initiative on a statewide ballot. Under this measure, that time is extended from 150 days to 365 days.

### **Referenda**

*Establishes Fee to Propose a Referendum.* The measure requires referendum supporters to pay a fee of \$500 when filing a referendum proposal. As with this proposal’s requirements for the initiative filing fee, this \$500 fee would be adjusted thereafter in line

with inflation. The Legislature could establish a lower fee in law. The \$500 fee could be refunded in several instances, including if the referendum later qualifies for the ballot.

*Extends Time to Gather Petition Signatures.* The measure would extend significantly the amount of time that referendum supporters would have to gather the required petition signatures to place a referendum on a statewide ballot. Under this measure, that time would be extended from 90 days to 365 days.

*Various Measures Passed by Legislature Would Be Newly Subject to Referendum.* Under this measure, the Constitution would be amended to specify that tax levy measures passed by the Legislature would not go into effect immediately. The measure also would provide that tax levy measures, as well as “urgency statutes” (bills approved by two-thirds of the Members of the Legislature in order to take effect immediately), would be subject to the voters approving or rejecting them through the referendum process.

### **Role of the Legislature**

*Required Legislative Response to Initiative and Referendum Petitions.* Under this measure, the Constitution requires the Legislature to respond to proposed initiative and referendum measures once they are certified to have been signed by 100,000 voters. For initiative measures, a committee of the Legislature would be required to hold hearings and recommend to the full Legislature whether or not it should enact the proposed measure into law, with or without amendments, or place an alternative on the ballot. Even if the initiative measure receives enough petition signatures to qualify for the statewide ballot, the individuals who proposed the measure may withdraw it from the ballot if the measure or an “acceptable” alternative that “furthers the purposes of the measure” is approved by the Legislature and signed by the Governor or placed on the ballot. For proposed referenda, once the referendum petition receives 100,000 signatures, the Legislature would have 25 session days to reconsider the measure that is the subject of the referendum. If the Legislature and the Governor fail to “re-approve” the measure, it would be considered void or, if it has already taken effect, would remain in effect only until the next December 31. If, on the other hand, the Legislature and the Governor re-approve the measure, it would be placed on a future statewide ballot if the sufficient number of voter signatures are certified on the referendum petitions.

### **Initiative and Referendum Petitions**

*Materials Would Be Available on SOS’s Web Site.* Under this measure, the SOS is responsible for preparing a petition form for each submitted initiative or referendum. Within 60 days of the state receiving the proposed initiative or referendum, the SOS would be required to place this form on his or her official Web site. As an alternative to the SOS’s suggested petition, initiative or referendum supporters may submit alternate versions of the petition to the SOS for his or her approval.

***SOS to Keep "Running Count" of Petition Signatures.*** The measure amends the Constitution to require initiative and referendum supporters to submit petitions with signatures to the SOS, rather than to county elections officials. Supporters could submit petition signatures at any time before the final deadline for submitting petitions. Under this measure, the SOS would keep a running count of the number of signatures submitted. Once the number of such signatures exceeds 100,000, verification of the validity of those signatures would begin by a sampling method, such as the random signature count methods described above. (The measure does not specify whether the SOS's office would be required to verify signatures or whether county elections officials would continue to verify signatures.) The SOS would be required to post on his or her official Web site a running count at least weekly of the estimated number of valid petition signatures. Once the estimated valid signature count exceeds 105 percent of the required total (less than the current 110 percent threshold), the measure would be officially qualified for the statewide ballot. If the estimated valid signature count equals between 95 percent and 105 percent of the required total, a full check of petition signatures would be initiated to determine whether there are enough signatures for the measure to be officially qualified for the statewide ballot.

### **Other Matters**

***Constitutional Requirement for Financial Disclosure.*** The measure would require initiative and referendum supporters to form a committee for the support of the measure prior to circulating petitions for signatures of voters. That committee would be required to disclose donors contributing \$10,000 or more toward the expenses of qualifying the measure for the statewide ballot. Such committees, as well as committees and supporters that support or oppose qualification of an initiative or referendum measure, would be required in the Constitution to file monthly campaign finance statements.

***Full Text of Measures Would Not Be Required in Petitions.*** Under this measure, the Constitution would specify that initiative and referenda petitions circulated for voters' signatures would not need to include the full text of the proposed measure. Instead, petition circulators would have to make that full text available for viewing upon request of a voter.

***Legislative Counsel Services Available to Initiative and Referendum Proponents.*** The measure provides a constitutional guarantee to all possible initiative and referendum proponents that the Legislative Counsel would be available on a confidential basis to help them draft such measures, identify constitutional or other legal problems, and assist them in resolving such problems.

### **FISCAL EFFECTS**

***Unknown Fiscal Effects if More Initiatives and Referenda Qualify for the Ballot.*** This measure contains a number of provisions that might make it easier for initiative and referendum measures to qualify for a statewide ballot. Whether this would have a

significant effect on state and local government finances would depend on how future voters vote on these proposed measures and how the Legislature and the Governor use their new powers under this measure to prevent measures from being placed on the ballot. Accordingly, the fiscal effects of more initiatives and referenda potentially qualifying for the ballot are unknown.

***Increased State Costs.*** The measure would result in increased costs for the state. The costs could affect several state departments, including the SOS, the Fair Political Practices Commission (which regulates campaign spending and financing, including that for initiative and referendum measures), and the bureau. These costs could total in the millions of dollars per year. The state also could receive increased initiative and referendum filing fees totaling a few thousand dollars per year.

***Potential Savings in County Costs for Counting Petition Signatures.*** Depending on how the measure is interpreted and implemented, the workload of county elections officials in counting initiative and referendum petition signatures could decrease. The potential savings for counties could be in the millions of dollars per year.

### **Summary of Fiscal Effect**

The measure would have the following major fiscal effects:

- Unknown effects on state and local finances, subject to future decisions by voters, the Legislature, and the Governor, if the measure results in more initiative and referendum measures qualifying for the statewide ballot.
- Higher state costs potentially totaling in the millions of dollars per year to meet the measure's requirements. The measure also could result in increased petition filing fees paid to the state and possible county government savings.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Michael C. Genest  
Director of Finance