

December 29, 2015

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative to impose a 1,000 percent sales tax on some political advertisements (A.G. File No. 15-0106).

Background

Constitutional Free Speech Protections. The First Amendment to the U.S. Constitution limits the ability of governmental entities to abridge the freedoms of speech and petitioning government. Article I of the California Constitution also includes various protections for free speech and petitions. These constitutional provisions have been interpreted over the years in many court cases, including cases about laws related to political campaigns.

Significant Sums Now Spent on Political Advertisements. The amount spent in California for political advertisements varies depending on whether it is an even-numbered year (when statewide elections are scheduled) or not and on which political campaigns attract significant interest from campaign donors. Various groups also spend money on political advertisements to influence decisions of local entities, the state government, or the federal government. In an even-numbered year, for instance, many millions of dollars are spent on advertisements to influence elections and governmental decisions.

Public Educational Entities. The state spends tens of billions of dollars per year to fund part of the operations of hundreds of public educational entities in California. These entities include early childhood education providers, K-12 school districts, community colleges, and two public university systems (the California State University and the University of California).

Proposal

1,000 Percent Sales Tax on Some Political Ads. This measure states that a sales tax of 1,000 percent would be imposed on some "political advertisements," a term which it says refers to "any political advertising delivered within the state of California," including, but not limited to, "all media spending by political parties, political action committees or candidates." The

measure provides the sales tax will not apply to the first \$1 million “of spending within a calendar year by any tax entity,” as specified. The tax proceeds would solely benefit “California public education.”

States Certain Federal Courts Would Have Powers to Adjust Tax. The measure states that “if a federal district court or Supreme Court of the United States find this tax to be too high, then this law shall immediately ratchet down to the highest acceptable level and remain in place.” There is no comparable provision concerning decisions of state courts.

Fiscal Effects

Many Legal Uncertainties. This measure likely would be subject to substantial legal challenges, inasmuch as the proposed 1,000 percent tax, if fully implemented, might render some existing forms of political communication infeasible. Furthermore, it is unclear how or if a federal court would implement the measure’s “ratchet down” provision. In addition, executive branch entities and the courts would have to determine how exactly the \$1 million tax exemption in the measure would work.

Fiscal Effect Highly Uncertain. The amount of tax money the proposed sales tax would generate for public education is highly uncertain. This is due to the unknown outcome of the court challenges and implementation decisions described above and uncertainty about how any such tax would affect the behavior of groups and individuals involved in politics.

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

- Unknown increase in state revenues to be provided to public educational entities, assuming that the measure goes into effect after voter approval, executive branch implementation decisions, and court challenges.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance