



January 10, 2017

Ms. Kathleen Kenealy
Acting Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Ms. Kenealy:

Pursuant to Elections Code Section 9005, we have reviewed an initiative (A.G. File No. 16-0011, Amdt. #1) proposing state constitutional and statutory amendments to ask voters if California should be an independent country.

Background

U.S. Constitution, Laws, and Treaties Are Supreme Law. Article VI of the U.S. Constitution provides that the U.S. Constitution itself, the laws of the United States, and treaties made under the federal government’s authority are “the supreme law of the land.” Article VI requires that judges in every state be bound by this supreme law, notwithstanding any contrary provisions of state constitutions or state laws. The U.S. Constitution and its amendments assign certain public powers to the federal government, while reserving others for the states and the people. Since passage of the Bill of Rights in 1791, Congress and the states have amended the U.S. Constitution 17 times.

California’s Constitution. In 1850, Congress and President Fillmore approved the act admitting California as one of 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.” This section of the State Constitution also states that the U.S. Constitution is “the supreme law of land.” Early in the 20th Century, the State Constitution was amended to establish the voter initiative process. A voter initiative, such as this proposal, may not institute changes—known as revisions—that make “far reaching changes in the nature of our basic governmental plan” or “substantially alter the basic governmental framework set forth in our Constitution.” Only the Legislature or a state constitutional convention may place proposed revisions before the voters.

U.S. Constitution Does Not Provide for Secession. The U.S. Constitution includes no mechanism for a state to secede from the United States of America. In 1869, following the Civil War, the U.S. Supreme Court ruled in *Texas v. White* that the initial act admitting a state into the

Union “was final.” “There was no place for reconsideration, or revocation,” the court said, “except through revolution, or through consent of the states.”

International Institutions. The United Nations (UN) Charter states that one of its purposes is to promote respect for the principle of “self-determination of peoples,” but the Charter generally does not authorize intervention in “matters which are essentially within the domestic jurisdiction of any state.” International institutions, however, sometimes play a role in helping aspiring nations secure independent statehood status. One of the most recent examples was Timor-Leste (also known as East Timor). After decades of violent struggle between separatist groups and the Indonesian military, the Indonesian government agreed to a UN-supervised referendum on Timor-Leste’s status in 1999. The UN Security Council (which includes the U.S. as one of its five permanent members) established a transitional administration to keep order in Timor-Leste after the referendum. Timor-Leste became a new sovereign state in 2002 and was admitted to the United Nations as a Member State. As part of the process to be admitted to the United Nations, Chapter II of the UN Charter provides that an applicant state’s admission must be submitted to the Security Council. To be approved at this stage of the process, the application must be approved by 9 of the council’s 15 members, provided that none of the council’s permanent members (including the U.S.) vote against the application. In general, therefore, the U.S. government has a significant say in whether institutions like the UN assist an aspiring nation in achieving independent statehood.

Proposal

This measure amends the State Constitution and adds a new section to California’s Elections Code concerning a statewide vote on independence.

Repeals Section 1 of Article III of State Constitution. This measure repeals the part of the State Constitution that declares California to be “an inseparable part of the United States of America” and describes the U.S. Constitution as the “supreme law of the land.”

Calls Statewide Election on Independence in March 2019. This measure calls a statewide election related to independence in March 2019—on a date when some local elections are scheduled to be held. At this election, voters would be asked, “Should California become a free, sovereign, and independent country?” The measure states this election “shall constitute a Declaration of Independence from the United States of America” if both of the following conditions are met:

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

If both of these conditions are met, this measure requires the Governor (or an “ambassador” he or she appoints) to submit to the UN the application of the “newly-independent Republic of California” to be a UN member state. The measure does not state explicitly when California would become an independent country.

Fiscal Effects

Various Uncertainties. There are many legal uncertainties concerning this measure and, therefore, its economic and fiscal effects. For example, this measure could be found by 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.

Major Impacts if California Actually Realized Independence. Assuming that California actually became an independent nation, there would be major economic and budgetary impacts for the state and its local governments. The details of these impacts are unknown. These details would depend, for example, on the sorting out of the liabilities, property holdings, border arrangements, military infrastructure, and other details relevant to both the smaller U.S. and the newly independent California. They also would depend on details of California's military, trade, customs, and other relationships with other countries.

Increased Election Costs. This measure would increase state and local election administration costs on a one-time basis by requiring an additional statewide election in March 2019. Additional elections-related costs would total in the tens of millions of dollars.

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

- The fiscal impact of this measure is dependent on various factors, including a vote by the people on this measure, a subsequent vote on California independence, possible legal challenges, and implementation issues. Assuming that California actually became an independent nation, the state and its local governments would experience major, but unknown, budgetary impacts. This measure also would result in tens of millions of dollars of one-time state and local election costs.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance