



October 6, 2017

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

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code 9005, we have reviewed a statutory initiative (A.G. File No. 17-0017, Amendment No. 1) that would express the intent of California voters for the California Legislature to apply for a constitutional convention pursuant to Article V of the U.S. Constitution.

Background

First and Only Constitutional Convention Held in 1787. The Constitutional Convention of 1787 met to amend the Articles of Confederation, the original governance structure of the United States. Rather than amend the Articles of Confederation, however, the convention ultimately wrote the U.S. Constitution. The U.S. Constitution describes the governance structure of the United States, the powers granted to the states, and the rights of individuals.

Two Options for Proposing Amendments. The U.S. Constitution provides for two means of proposing amendments. Either (1) two-thirds of both houses of the U.S. Congress (Congress) may propose amendments or (2) a constitutional convention may be called if two-thirds of state legislatures apply to the Congress for such a convention. In either case, proposed amendments must be ratified by three-fourths of the states. All 27 amendments to the U.S. Constitution were proposed by the Congress.

State Applications for Constitutional Conventions. Until recently, there was no central repository for state applications for constitutional conventions. Consequently, there is no official record for how many states have applied historically. Under rules adopted by the House of Representatives in 2015 for cataloging state applications and application rescissions, currently there are 24 applications for constitutional conventions from 16 states. To date, however, the Congress has not determined that the requirements to call a constitutional convention have been met. In part, this may be because there is disagreement as to whether state applications are valid forever or have a limited “shelf life.” There also is disagreement as to whether applications for constitutional conventions must be general or address a specific issue.

No Specified Processes for a Constitutional Convention Once Called. The U.S. Constitution does not specify the process for holding a constitutional convention beyond the responsibility of the Congress to call a convention upon the application of two-thirds of the states. For example, the U.S. Constitution does not specify how states would select representatives for such a convention or how the states would vote on proposed amendments. There also are no established procedures for how amendments approved by the convention would be submitted to the states for ratification.

Potential Legal Limitations to Calling for Constitutional Conventions. A 1984 California voter initiative sought to require the state Legislature to adopt a resolution to apply to the Congress for a constitutional convention. The legality of this initiative was challenged in court. The state Supreme Court found that “a state may not, by initiative or otherwise, compel its legislators to apply for a constitutional convention, or to refrain from such action.” The court reasoned that the ability to apply for a constitutional convention under Article V of the U.S. Constitution applies to the Legislature as the state representative body, not the voters. As a result, the 1984 initiative was not put on the ballot.

Proposal

Directs Legislature to Apply for Constitutional Convention. This measure requires the Legislature to apply to the Congress for a constitutional convention to propose amendments to the U.S. Constitution affecting the following areas:

- ***Civil Rights and Governance.*** This measure calls for a broad expansion of civil rights, some of which somewhat overlap with existing Constitutional protections. Amendments outlined by the measure include establishing or clarifying rights to self-determination, health care, education, marriage, and privacy. Regarding governance issues, the measure requires amendments be proposed to eliminate certain rights of corporations as well as eliminate the Electoral College. The measure also outlines amendments establishing local governments as the primary governing body with regard to issues affecting local development and the use of natural resources.
- ***Wages and Taxes.*** This measure directs the Legislature to propose Constitutional amendments to ensure individuals—regardless of “gender, age, religion, national origin, ethnicity, sexual orientation, or race”—receive equal pay for equal work. In addition, the measure outlines amendments requiring every state to establish a state minimum wage reflective of the state’s cost of living. With regard to taxes, the measure proposes amendments to make federal taxes negotiable by states.
- ***Nature.*** The measure proposes amendments to expand the rights of nature. Amendments would extend many of the rights of individuals to nature. Further, the measure proposes amendments to forbid the overuse of nature and establish nature’s right to be restored.
- ***State Independence.*** As no process currently exists for states to secede from the United States, the measure would require amendments be proposed to enable states to secede from the United States.

Fiscal Effects

Various Uncertainties. There are many uncertainties about the effects of this measure. The economic and fiscal effects of this measure are dependent on (1) whether the measure withstands any legal challenges to the initiative process as it relates to constitutional conventions, (2) whether a constitutional convention is called, (3) what Constitutional amendments such a convention adopted, and (4) the extent to which the amendments proposed by the measure are ratified by three-fourths of the states. If a constitutional convention is called and some of the measure's proposed amendments are ratified by three-fourths of the states, the economic and fiscal impacts could be significant. For instance, making federal taxes negotiable could have major economic and budgetary impacts on California and its local governments. California could receive far less or far more federal revenue with such a change. Major changes to programs paid with federal revenue benefiting many Californians—like Medicare and Medicaid—also could be possible.

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

- Unknown, but potentially major, changes to state and local budgets if the measure withstands legal challenges, is approved by the voters, and results in three-quarters of states eventually approving amendments to the U.S. Constitution.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance