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Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we received the proposed initiative related to state enforcement of the 22nd Amendment to the U.S. Constitution. (A.G. File No. 25-0030, Amendment #1).

BACKGROUND

22nd Amendment to the U.S. Constitution Limits the Number of Times That a Person Can Be Elected President. The 22nd Amendment to the U.S. Constitution prohibits people from being elected President more than twice. (Some Presidents have assumed office through means other than election, such as through succession.) Congress proposed the 22nd Amendment in 1947 after the fourth presidential election of Franklin D. Roosevelt. Presidents elected since ratification of the 22nd Amendment in 1951 have all served two or fewer terms. Because there is little case law related to the 22nd Amendment, it is unclear how the courts would interpret it. For example, it is unclear under what circumstances—if any—a President would be allowed to serve a third term.

Attorney General Designated as State's Chief Law Officer. The California Constitution designates the Attorney General—who leads the state's Department of Justice—as the state's chief law officer and specifies various duties for the Attorney General. One duty is to prosecute violations of state law when the Attorney General believes state law is not being adequately enforced. In addition, state law generally requires the Attorney General to represent the State of California (as a whole) and state agencies in state or federal judicial proceedings.


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PROPOSAL

Requires State Response to Violations of the 22nd Amendment. This measure directs the state to seek judicial relief whenever a President attempts (or is suspected of attempting) to violate the 22nd Amendment. If the courts definitively and conclusively determine that a President has violated the 22nd Amendment, this measure would further require state leaders to do three things. First, the state must cease to recognize the presidential authority of that President. Second, the Attorney General must take all lawful steps to arrest and prosecute that President for any applicable state crimes. Third, the Legislature must pass state laws to disqualify people who violate the 22nd Amendment from state office and to provide for the “civil forfeiture of ill-gotten gains and restitution.”

Requires Protection for Certain People Who Refuse Unconstitutional Orders. This measure directs the Legislature to provide legal protections for “state employees, veterans, and servicemembers who, in good faith, refuse to carry out or report orders finally adjudicated unconstitutional.”

FISCAL EFFECTS

The fiscal effects of the measure are subject to uncertainty because it is unclear if all of its provisions would be allowed under the state or U.S. Constitutions. Our estimate below assumes that all of its provision would go into effect.

State Costs to Address Violations of the 22nd Amendment. The potential fiscal effects of the measure’s provisions addressing violations of the 22nd Amendment depend on how they are interpreted, implemented, and how Presidents behave. First, in order for those provisions to take effect, a President would have to attempt to violate the 22nd Amendment. Under such circumstances, the state would be required to seek judicial relief. If a court then found that that a President had violated the 22nd Amendment, this initiative would require the Attorney General to prosecute that President under state criminal law. Additionally, the Legislature would be required to enact certain statutes. The cost of these actions would be unlikely to exceed the low millions of dollars. However, these costs would only be incurred when a President attempts to violate the 22nd Amendment. There would be no costs in other years.

State Costs Related to Protections for People Refusing Unconstitutional Orders. The measure’s provisions requiring the creation of protections for state employees, veterans, and servicemembers who refuse unconstitutional orders could create new state costs. However, the costs would depend on what protections are adopted.

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

- Potential increase in one-time state costs, not likely to exceed the low millions of dollars, to address violations of the 22nd Amendment, in years in which such violations are attempted.

- State costs to create protections for state employees, veterans, and servicemembers who refuse unconstitutional orders. These costs would depend on what protections are adopted.

Sincerely,



for Gabriel Petek
Legislative Analyst



for Joe Stephenshaw
Director of Finance