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June 14, 2013

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

RECEIVED
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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative related to the free exercise of religion (A.G. File No. 13-0003).

Background

Federal Laws. The U.S. Constitution prohibits the enactment of any law (1) with respect to an establishment of religion, (2) that would prohibit the free exercise of religion, or (3) that would restrict freedom of speech.

State Laws. The State Constitution guarantees free exercise and enjoyment of religion without discrimination or preference and prohibits the Legislature from enacting any law with respect to an establishment of religion. However, the State Constitution specifies that this religious liberty does not excuse acts that are licentious or inconsistent with the peace or safety of the state. The State Constitution also provides that every person may freely speak his or her sentiments on all subjects, but allows a person to be held responsible for abuse of this right.

Existing California statutes also contain several provisions that protect and regulate the right to exercise religion and free speech. For example, the state Penal Code specifies that it is a misdemeanor to disturb places of worship with rude discourse (Section 302); makes it a misdemeanor to prevent individuals from entering or exiting a health care facility, place of worship, or school (Section 602.11); and makes it a felony to use threats to attempt to cause a person to refrain from exercising his or her religion (Section 11412).

Local Ordinances. Some local governments have also adopted ordinances that regulate the exercise of religion and free speech. For example, some local governments may require that a property owner obtain a land-use permit in order to conduct a religious assembly at a location within their jurisdiction. In addition, local agencies sometimes require that individuals or groups obtain a permit to conduct a public demonstration.

Proposal

This measure would adopt several amendments to the State Constitution regarding the free exercise of religion. In particular, the measure would specify that a person "using any part of the

Legislative Analyst's Office
California Legislature
Mac Taylor · Legislative Analyst
925 L Street, Suite 1000 · Sacramento CA 95814
(916) 445-4645 · FAX 324-4281

Bible's content as authority" may freely communicate his or her views at any public or private gathering, school, or place of worship, or in specified forms of communication (such as the radio or telephone). The measure further specifies that these particular provisions shall not be construed to authorize activities prohibited by Penal Code Sections 302, 602.11, and 11412, discussed above, which generally regulate free speech and the exercise of religion. In addition, the measure repeals the existing provision of the State Constitution stating that the exercise of freedom of religion does not excuse acts that are licentious or inconsistent with the peace or safety of the state.

Fiscal Effect

Some of the provisions of this measure could be subject to challenge in the courts and found unconstitutional under federal law. For example, the measure's reference to the Bible could be challenged in the courts as being in violation of the provisions in the U.S. Constitution that prohibit laws with respect to the establishment of religion.

The fiscal effect of this measure on state and local governments is uncertain due to these and other potential legal issues but is likely to be minor. Specifically, this measure may result in minor costs to resolve various legal issues pertaining to the measure, such as potential conflicts with local ordinances.

Summary of Fiscal Effect

The fiscal impact of this measure would depend in large part on how the measure is interpreted and whether the measure would withstand federal constitutional or other potential legal challenges as discussed above. If upheld in the courts, we estimate that this measure could have the following fiscal effect:

- Potentially minor increased costs to state and local governments to resolve legal issues pertaining to the effect of the measure.

Sincerely,

for Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance