

**ASSEMBLY COMMITTEE ON JUDICIARY
SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION**

JOINT HEARING

To: Members of the Assembly Committee on Judiciary and the Senate Committee on Governmental Organization

From: Committee Chairs Mark Stone and Bill Dodd

Subject: Hearing on Proposed Initiative No. 17-0018, "Division of California into Three States"

Date: Wednesday, June 6, 2018

Introduction: The purpose of this hearing is to provide a public hearing on the proposed ballot initiative for the November 6, 2018, ballot, "Division of California into Three States." State law, pursuant to section 9034 of the Elections Code (SB 1253, Steinberg, Chapter 967, Statutes of 2014) requires the Legislature to hold a public hearing on a proposed initiative once 25% of the total number of signatures required to qualify an initiative for the ballot are obtained, and requires the hearing to be held no later than 131 days before the election (by June 28, 2018 for a measure to be placed on the November, 2018 ballot).

Ballot Measure Description: The initiative proposes to divide the current State of California into three new states. Specifically, this initiative:

- 1) Makes a number of declarations and findings, including:
 - a) California is the most populous state, nearly six times larger than the average population of the fifty states, though its population tends to be concentrated in coastal and urban regions.
 - b) By geographic size, California is the third largest state and has large and diverse economic sectors including agriculture, energy, technology, and entertainment.
 - c) California's size and "other socio-economic factors, political representation of California's diverse population and economies has rendered the state nearly ungovernable." In addition, "vast parts of California are poorly served by a representative government dominated by a large number of elected representatives from a small part of our state, both geographically and economically."
 - d) In 1859, California voters and the legislature approved a proposal to divide the state into two separate states, but Congress never acted on this due to the Civil War.

- e) The people would be better served by three smaller state governments while keeping county, city, and town boundaries.
- 2) States that the purpose of the initiative is to do the following:
 - a) Establish new boundaries of three new states within the existing boundaries of California;
 - b) Establish a procedure for the transformation of the single State of California into three new states; and
 - c) Provide the legislative consent for the formation of three new states to Congress as required by the United States Constitution.
 - 3) Specifies the boundaries of the three new states as follows:
 - a) Northern California (or a different name to be chosen by the people of that state): composed of 40 counties, including the following counties that make up the southern and eastern borders of the new state: Santa Cruz, Santa Clara, Merced, Mariposa, Tuolumne, and Alpine.
 - b) California (or a different name to be chosen by the people of that state): composed of just six counties: Los Angeles, Monterey, San Benito, San Luis Obispo, Santa Barbara, and Ventura.
 - c) Southern California (or a different name to be chosen by the people of that state) composed of all of the other counties of the state, including but not limited to Orange, San Diego and Fresno.
 - 4) Provides that the “legal relationship between the counties and State of California shall continue until the organization and establishment of a separate government in a newly created state, including the adoption of a Constitution by convention or popular vote within each newly created state.”
 - 5) Requires the Governor on January 1, 2019 to transmit copies of the election results to Congress with a request to act upon the consent of the people within 12 months.
 - 6) Provides that, following Congressional consent for the creation of three new states, the state Legislature shall “provide for the division and transformation of California and provides that, if the Legislature fails to “reach resolution of such matters within twelve (12) months” that the “debts of the State of California shall be distributed among the newly created states based upon the population of the new states proportionately to the population of California at the time of Congressional action, and the assets within the boundaries of each newly created state shall become the assets of that new state.”

Existing Law:

- 1) Specifies that New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed

by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress. (U.S. Const., art. IV, Sec. 3.)

- 2) Provides that the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. (U.S. Const., art. IV, Sec. 2.)
- 3) Pursuant to case law, specifies that notwithstanding the constitutional provision of 2), above, states are not prohibited from imposing higher fees on nonresidents, so long as the reason for doing so bears a rational relationship to legitimate state purposes. (*Baldwin v. Fish & Game Commission of Montana* (1978) 436 U.S. 371.)
- 4) Defines the boundaries of California pursuant to the United States Government's Act of June 10, 1872 17 Stat. 358 (1872) and specifies that the boundaries of the state shall extend three English nautical miles from the outer sides of any islands and harbors. (Government Code Section 160, *et seq.*)

Comment. Efforts to divide California started before California even became a state and date back to at least the Mexican period (1821-1846) prior to U.S. occupation. The 1850s marked the most serious and nearly successful effort to divide the state when the Pico Act, which would have divided the state between north and south at the 36th parallel near San Luis Obispo County, was passed by both houses of the Legislature, signed by the governor, and approved by more than two-thirds of the voters. But the Pico Act was derailed because it reached Washington just as the nation was heading into the Civil War. Nevertheless, other efforts to divide the state continued with varying degrees of seriousness into the late 19th Century and beyond. The history of efforts to divide California, as well as national efforts to form states from existing states, is discussed in detail in Appendix A to the background paper, Constitutional and Historical Background.

Public Opinion About the Initiative. News coverage on the initiative has generally been critical of the proposal, citing the low probability that Congress would approve the request and the many logistical difficulties associated with dividing the state. (Bloomberg May 10, 2018 <https://www.bloomberg.com/news/articles/2018-05-10/this-cryptocurrency-billionaire-is-trying-to-split-california-into-three-states>) Polling data also suggest voters are unlikely to approve the initiative -- an April 2018 poll of registered California voters found that 17% of respondents supported the measure while 10% were undecided and 72% opposed it (margin of error +/- 3.6). (Survey USA poll: <http://www.surveyusa.com/client/PollReport.aspx?g=e60651f4-03ad-4a80-9b0d-09bc68bbdc74>)

Consequences of Implementation. The measure has an appealingly simple goal: to make the state easier to govern by making it smaller (and creating three new states in the process). But in reality, the appeal of the initiative's simplicity could be characterized as illusory. In reality, the dissolution of the State of California—which is now the 5th largest economy in the world—and the creation of three new states while dealing with the legal and practical issues raised by doing so would be extremely complicated and will likely have many unintended consequences.

The myriad issues confronting the State of California (and the three states that eventually could be created in its place) if the initiative were to be approved include how to divide the state's debts and assets; problems surrounding the state's colleges and universities; how and when to

abolish the state's laws (including the Constitution of the State of California, all statutes, and decisional law) and enact new laws and constitutions for the three new states; how and when to abolish the existing state Legislature and presumably create three new state legislatures; and how and when to abolish the statewide Constitutional offices (Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer, Controller, Insurance Commissioner, and Superintendent of Public Education). Some of the most complicated questions include issues about the state's court system, including the fate of the California Supreme Court, the state appellate courts (which now span county lines and, if the initiative were implemented, would span state lines) and the state's superior courts. For example, would case law, court rules, and rules of professional conduct established in California apply to the new states? Other complexities include the impact of the measure on California's licensing entities (the state's boards and commissions that issue licenses and permits) and the licensed professions they regulate (including professionals whose licenses are suspended, or are pending disciplinary proceedings at the time when the state and its regulatory agencies are abolished) as well as water issues, environmental policy, and public safety, including oversight and operation of state correctional facilities, databases, and state public safety officials working for entities such as the California Department of Justice, the California Highway Patrol, and CalFIRE. In addition, existing statutory and contractual relationships between the State of California and the federal government, as well as relationships between the state and local governments, would all have to be reconfigured and, in some cases, renegotiated.

The initiative itself glosses over these complications by providing that, "Upon enactment of this section the California State Legislature shall *provide for the division and transformation of California* [emphasis added]." (It is somewhat surprising that the initiative would give such monumental responsibility to the Legislature, given its premise that "political representation of California's diverse population and economies" has rendered California "nearly ungovernable." If this allegedly unrepresentative Legislature has done such a poor job governing the state, does it logically follow that the Legislature would fairly and effectively resolve the complex task of dividing the state?) The initiative provides that if the Legislature failed to "provide for the division and transformation of California" within 12 months, "the debts of the State of California shall be distributed among the newly created states" in a manner that reflects their proportional share of the population on the date when Congress consented to the division of the state (although it is unclear how the population of each state would be determined without a source of such data, such as the most recent U.S. Census, for example). Likewise, the initiative states that "the assets within the boundaries of each newly created state shall become the assets of that new state." Finally, it provides that the "legal relationship between the counties and the State of California shall continue until the organization and establishment of *a* separate government in *a* newly created state, including the adoption of a Constitution by convention or popular vote within *each* newly created state [emphasis added]."

But the initiative otherwise gives little, if any guidance about how huge questions such as what "division and transformation" of the state means; what are the "assets" and the "debts" of the State of California; whether the State of California would continue to exist if just one or two, but not all three, states were organized and established (in which case, both an old State of California and a newly created State of California could theoretically exist), which should be answered. The initiative also fails to anticipate what entity, if any, would have responsibility for the "division and transformation" of the State of California after the 12 month period during which

the Legislature is tasked with that responsibility. In fact, the initiative is far more specific about relatively minor issues—the names of the new states and the counties that would comprise them—than the far more complex issues raised by its enactment. As discussed in detail in Appendix A, the last time a new state (West Virginia) was created from an existing state (Virginia), litigation over the division of debts lasted for more than fifty years. One consequence of the initiative seems clear: the “division and transformation” of the world’s 5th largest economy would almost certainly prompt decades, or perhaps a century, of litigation.

In addition to detailing the issues above, this background paper touches on the potentially catastrophic effects on the economy and public safety that could result from the unprecedented regulatory and statutory uncertainty that the adoption of the initiative would create. Finally, this background paper discusses the potential futility of even contemplating the theoretical difficulty of abolishing California and creating three new states, given that Congress almost certainly would not consent to create three new states to take the place of California.

Educational Institutions. California has a complex and well-established system of K-12 and higher education, funded by state, local, and federal funds that would need to be dissolved and reconfigured.

- The world-renowned University of California and California State University systems would have to be broken up so that individual campuses would no longer be part of one statewide system and would instead be part of new systems within each of the three new states. Presumably, the campuses of these university systems would be considered “assets” of the state and would therefore, pursuant to the wording of the initiative, be assigned to the area of the state where they are located. For example, Northern California would have **four** former UC campuses (Merced, Santa Cruz, Davis, and Berkeley); California would have just **two** (UCLA and Santa Barbara); and Southern California would have **three** (San Diego, Irvine, and Riverside). Each new state would be responsible for the campuses within its geographic borders, presumably requiring three new centralized administrative offices to be created. Campuses would presumably be able to charge different amounts for tuition and application, have different admission criteria, and charge different tuition to residents of other former parts of the former state (i.e. a resident of Riverside County would pay out of state tuition in order to attend UCLA).
- Dividing the state would also create complications for programs that operated jointly between UC and CSU. To cite just one example, the CSU Sacramento History Department offers a Ph.D. program in Public History jointly with U.C. Santa Barbara, as a CSU campus cannot offer a Ph.D. on its own. Under the proposed initiative, UCSB and CSU Sacramento will be in different states. While it is certainly possible that the UCSB-CSU Public History program could continue under an interstate agreement, the existing CSU-UC agreements governing this and other programs would need to be renegotiated. The initiative apparently presumes that these things will be worked out as part of the Legislature's duty to provide for the "division and transformation" of the state. It is unclear, however, how the Legislature could renegotiate these arrangements *before* the new states are even created. Can the California Legislature command that the new states continue participating in these joint programs? If the Legislature cannot command the new states to do this, what becomes of the students who are midway through their doctoral programs? The proponent may see this as a

"detail" that misses the "big picture" virtues of state division, and in some ways that is true. But it speaks to a larger conundrum: in order to ensure a smooth transition, the outgoing (and allegedly dysfunctional and unaccountable) Legislature will make myriad decisions that could substantially shape the obligations and assets of each new state. As a result, would the newly created states themselves also become "ungovernable"?

- K-12 funding (including from the federal government to the State of California and from the State of California to local school districts and county offices of education), curriculum and policies would require serious revision or would have to be created again for each of the three new states. Some of these include state history content, maps of the state, and any educational standard codified in state law (e.g., requirements for sex education).

Statutory and Regulatory Uncertainty - Licensed Professions and the Legal System.

Individuals, licensed professionals, and businesses will face an uncertain regulatory landscape until such time when the State of California is dissolved and all state duties are delegated pursuant to new constitutions and legal codes adopted in each of the three new states. Even then, if a business had locations in more than one of the new states, it could face conflicting labor, taxation, and regulatory standards. While this is already true for businesses that operate across multiple states, the creation of three entirely new states from an existing state would present an extraordinary situation for private sector employers accustomed to operating under California laws and regulations.

- All professions currently licensed by the state of California would face questions about their ability to continue carrying out their work in the three new states and consumers would likewise be lacking in the protections that such licensing affords. Individuals working across state lines would likely also find that they must become licensed and pay fees for each of the three new states in which they wish to practice. If licensing schemes were not grandfathered in based on current California standards or were not adopted immediately upon creation of the new states, then professionals such as doctors, nurses, dentists, auto mechanics, and accountants would all be unregulated and a person without any training could presumably practice these trades without penalty until such time when licensing and legal remedies became effective in the three newly created states.
- The legal profession in particular would face significant existential questions in the three new states since admission to the State Bar involves knowledge of state law and case law established by prior state court decisions. Given that this initiative, if fully carried out, would create three new states, then all existing case law would also be presumably invalidated unless one or more of the new states decided to explicitly adopt the prior decisions as the case law governing the state(s). Dividing the state would also likely lead to hundreds of pending trial court, appellate court, and state Supreme Court cases being left unresolved, potentially denying access to justice to those seeking relief through the trial and appellate court system. Additionally, while the initiative would leave county and city boundaries intact, appellate court districts would have to be divided, given that some are not confined within the proposed boundaries of the three new states. For example, the third appellate court district in California is located both in the newly proposed state of Northern California and in the newly proposed state of Southern California.

Cap & Trade and Climate Change Mitigation Efforts. In order to meet the greenhouse gas emissions goals set by AB 32 (Pavley & Nunez, Chap. 488, Stats. 2006), the California Air Resources Board established California's Cap and Trade program, adopting multiple sets of regulations since 2010. The California program is the fourth largest in the world, only surpassed by the European Union, the Republic of Korea, and the Chinese province of Guangdong. California's Cap and Trade program requires 450 businesses, responsible for 85 percent of all greenhouse gas emissions statewide, to purchase a decreasing number of emissions offset credits each year. Since 2013, California has merged its market with the Canadian provinces of Ontario and Quebec, permitting sharing of offset credits across jurisdictions.

- Should California be split into three states, it is unclear whether the Cap and Trade program would continue to exist, how the new market would function, or if every one of the new states would be subject to the program. Assuming that each new state continued to operate some form of a Cap and Trade program, new regulations would have to be adopted and compliance would be difficult, especially for companies operating across jurisdictions. For example, an oil refiner operating in both Los Angeles County and the Bay Area would be forced to purchase credits in two new systems.
- Even, if all three of the new states were to opt into the existing joint market with Ontario and Quebec, such an arrangement would require renegotiating existing market agreements, which could take months, if not years, to complete. Such delays would undermine compliance with existing climate change goals and timelines while significantly increasing costs to businesses and consumers in all of the new states.

Impact on Endangered Species. Eliminating or rewriting California's existing environmental protection laws could have dire consequences for endangered species.

- California's lead bullet ban is already being phased in and by July 1, 2019, will require all ammunition used for wildlife hunting to contain no lead (AB 711, Statutes of 2013, Chapter 742). Certain scavenger species, including the critically endangered California condor, are especially vulnerable to ingesting lead bullets used to hunt wildlife. Given that California condors are found across all three proposed states, to adequately safeguard the species, the law would have to be implemented across all three of the new states in order to be effective.
- The San Gabriel Mountains spans two of the new states: California and Southern California. Over two dozen plant and animal species listed as threatened or endangered live in the mountains and would be subject to potentially conflicting species preservation laws.
- The proposal splits many of California's rivers that are currently under unified governance. This may present both ecological and economic challenges to the future California. For example, Chinook Salmon have some spawning areas on the San Joaquin River. The headwaters of the San Joaquin River begin in the Sierra Nevada Mountains in the proposed new state of Southern California. The river then migrates into the Sacramento-San Joaquin Delta in the proposed state of Northern California before it drains into the San Francisco Bay and the Pacific Ocean. Should any one of the three new states enact a law threatening the fish's migratory patterns (for example if the new state of Northern California constructs a

series of dams to keep its water from flowing to the new states of California or Southern California), the fishing economy and environment of the other new states would likely suffer.

Impact on Existing Water Rights. Existing California law identifies two main types of water rights. Riparian rights attach to a parcel of land that is located next to a water source and is rooted in English common law. Appropriative rights focus on the first party to stake a claim to the water, even if the water is redirected to a parcel of land away from the water source. Appropriative rights originate from early mining claims in California. The existing California Legislature adopted riparian rights when it adopted English common law at the onset of statehood. Appropriative *permit* rights were formally recognized in 1914, with the passage of the Water Commission Act. There is no guarantee any of the new states would adopt the existing water rights system, as the new sovereign bodies would be free to enact any water rights system they see fit.

- Water rights and waterways transcend county lines within the State of California and, if the initiative were implemented, would transcend newly created state lines, further complicating the process of adjudicating those rights.
- The California State Water Project, and various municipal reservoir projects, all redirect water resources from the northern and eastern portions of California, to southern and coastal areas. The overwhelming majority of California's existing water storage capacity would be in the proposed new state of Northern California, while most of the demand for that water would be in Southern California and California. Given that this measure would create three separate sovereign entities, there is no guarantee that the existing system of water sharing would continue.
- The City of Los Angeles, in the proposed new state of California, would obtain most of its municipal water from the Owens Valley in the proposed new state of Southern California. Should California be split into three entities, the Owens Valley (in the new state of Southern California) could very likely pressure the legislature of the new state of Southern California to cut off the City of Los Angeles (in the new State of California).
- An interstate compact would potentially be required for the State Water Project, originating in the new state of Northern California (home to most existing reservoirs) to reach the new State of Southern California, something that the state of Northern California would have little incentive to sign. Instead, the new Northern California could pressure the other new states to make financial or other concessions in order to agree to make its water available to those states.
- Absent an interstate compact with another new state, the proposed new state of California arguably would have no rights to the State Water Project.
- Rights to water from the Colorado River coming into the state potentially could be completely eliminated. Since 1922, the Colorado River Compact has allocated excess water (not used by upriver states) to the State of California. Due to over-allocation of the river's actual water supply and significant population growth in other western states and northern Mexico, many of the compact's signatories have sought to take more of the Colorado River's

water back from California's existing allocation. Should California split into three entities, it is unclear if any of the three newly created states would be able to assert California's original rights to the water from the 1922 compact. Furthermore, given the growing demands on the river's water, it is unclear how willing California's neighbors would be to allow any of the new states to enter a new compact.

- Within California, water is shared between inland and coastal regions of the southern portion of the state, including the Imperial Valley, the City of San Diego and the City of Los Angeles. These regions would be included in the proposed new states of Southern California and California. It is unclear how the existing allocation, if maintained, would be split between these new states, or if the water would continue to be shared.
- Hydroelectric power - Beyond water, municipal utility districts in the southern part of the State of California rely on electricity generated on the Colorado River. For example, the Los Angeles Department of Water and Power, and several other municipal utility companies obtain power from the Hoover Dam on the Colorado River and have rights in the dam itself. Splitting the state may complicate these rights and agreements.

Property Rights (Including but not Limited to Water Rights) – Constitutional Concerns.

The "Full Faith and Credit Clause" (Article IV, Section 1 of the U.S. Constitution) requires that all judicial proceedings from one state shall be honored in each of the other U.S. states. That is, as a general rule, a court sitting in one state must give "full faith" and "credit" to the decisions rendered by courts in other states, unless a federal statute provides otherwise. It was this principle, for example, that prompted Congress to enact the Defense of Marriage Act (DOMA) to allow states to refuse to recognize same-sex marriages formed in other states. It could also create potential problems if California were divided into three new states. Consider, for example, the contentious question of water rights. Suppose a California court had recognized the right of a riparian rights holder and enjoined an upstream appropriator from unreasonably interfering with those rights, but when the state is divided the riparian right holder is situated in one of the new states and the upstream appropriator in another. Suppose further that the new upstream state does something that has long been advocated by some interest groups and abolishes riparian water rights. Would that state be required by the full faith and credit clause to recognize the prior state ruling and the rights of the riparian in the other state?

Moreover, even if one were to argue that the full faith and credit clause did not apply – because old California, where the injunction had been issued would no longer exist – would the failure of the new state to recognize the rights of the riparian constitute an unlawful taking under the takings clause of the Fifth Amendment of the U.S. Constitution?

Public Safety in Three New States. California has a number of statewide law enforcement agencies, including the California Department of Justice (DOJ) and the California Highway Patrol. Without each new state quickly separating and reconfiguring law enforcement resources in a coordinated manner, the new states would arguably lack critical public safety services.

- Currently, the California Department of Forestry and Fire Protection (CAL FIRE) is responsible for providing wildland firefighting services on state lands in all 58 California counties. Additionally, CAL FIRE has agreements with local governments to provide municipal firefighting services in counties spread across all three proposed states including

Butte, Napa, San Mateo, Tuolumne, Merced, San Luis Obispo, Riverside, and San Diego counties. Should California be split apart, without additional action by each individual state, there would not be a successor entity to provide fire suppression crews, lookouts, maintenance of firefighting facilities, fire prevention assistants, pre-fire management positions, dispatch, special repairs, and administrative services to these counties.

- Additionally, CAL FIRE contracts with six counties, including Los Angeles, Orange and Marin counties, to provide state funding to local departments. Should California be split apart it is also unclear how the funding for these local public safety agencies would be maintained. Although, presumably, the new states would be able to develop a successor to CAL FIRE, even a short lapse in funding or legal authorization for critical public safety agencies like CAL FIRE would place all Californians (including the new Northern and Southern variety) at risk from the fires that are regular occurrence across the existing state.
- The California Highway Patrol is currently divided into eight divisions across California. At least three of the divisions would be split as a result of the boundaries of the new state including the Central Division, Inland Division and Coastal Division. Without each new state separating resources quickly, the new states would lack critical public safety services.
- DOJ maintains and administers statewide databases, including those of criminal history, domestic violence restraining orders, gun violence restraining orders, and gun ownership. In addition, DOJ regulates gun dealers and gun shows in the state, and—pursuant to an agreement with the FBI—conducts background checks on gun purchasers. DOJ administers testing programs in DOJ-certified testing laboratories of all gun safes and handguns sold in the state. In addition, DOJ administers a statewide system called the California Law Enforcement Communication System (or CLETS), accessible only by authorized local, state, and federal law enforcement personnel, that connects those law enforcement agencies and connects agencies to DOJ's databases of statewide court and crime information, such as information about arrest and search warrants, restraining orders, and stolen vehicles. It is unclear how or if DOJ's communication systems and databases, which contain highly sensitive and personal information, and DOJ's highly specialized duties, currently overseen by the Attorney General of the state (whose office would no longer exist if the state were partitioned) would be transferred to new statewide law enforcement agencies established in the three new states.
- Rather than three new DOJ's being created in three new states, it is more likely that DOJ's independent and discretionary programs (i.e. handgun safety testing programs) and duties (i.e. regulation of gun shows) would cease and that any programs mandated by federal law (i.e. such as background checks on gun purchasers) would instead be carried out by federal authorities. Given that existing California law is significantly more restrictive than federal law in areas such as regulation of firearms, the effect of dividing the state would be to significantly weaken such laws and programs in the three new states.
- The Commission on Peace Officer Standards and Training set minimum selection and training standards for law enforcement officers in California. The Commission is a creation of the California Legislature. Should the state be split into three new states, it would be unclear if the new states would adopt the same standards for peace officer training, whether

higher or lower standards would be adopted, and whether current officers would be qualified to be sworn officers in all three of the new states. Splitting California into three new entities may leave all of the new states lacking any qualified sworn peace officers, as well as fully staffed and functioning local and state law enforcement agencies.

Public Health. The California Department of Public Health (CDPH) tracks outbreaks of illnesses, such as the incidence of influenza, and contamination of food, such as the recent discovery of E. coli in romaine lettuce. Any division of the state would potentially interrupt the ability to respond to public health issues since a centralized public health agency would be lacking in the newly created states.

Meanwhile, the California Department of Health Care Services (DHCS) is the backbone of California's health care safety net, helping millions of low-income and disabled Californians each and every day. DHCS funds health care services for about 13.5 million Medi-Cal members. About one-third of Californians receive health care services financed or organized by DHCS, making the department the largest health care purchaser in California. Our success is made possible only through collaboration and cooperation with other state agencies, counties, and partners as we invest more than \$100 billion for the care of low-income families, children, pregnant women, seniors, and persons with disabilities.

The programs administered by DHCS, some of which are mandated by the federal government and others that are required by state law, include California Children's Services; Child Health and Disability Prevention program; the Genetically Handicapped Persons Program; the Newborn Hearing Screening Program; the Family Planning, Access, Care, and Treatment program; Program of All-Inclusive Care for the Elderly, Every Woman Counts, and Coordinated Care Management. DHCS also administers programs for underserved Californians, including farm workers and American Indian communities.

- As part of the 2010 Patient Protection and Affordable Care Act (ACA, or Obamacare), California was authorized by the federal government to expand Medicaid to many low-income individuals under age 65 who were previously ineligible for coverage and set a new income eligibility limit of 138 percent of the federal poverty level, increasing the number of Californians eligible for coverage. As of March 2016, more than 4.7 million Californians have begun receiving comprehensive health care benefits provided by Medi-Cal since the ACA was implemented. The state negotiated Medi-Cal waivers with the federal government. The three new states would presumably have to negotiate new waivers with the federal government, which is now far less supportive of the ACA than it was at the time when the waivers were granted to California, on their own. In the meantime, Californians in those groups would presumably lose their medical coverage.
- Covered California, created by the State of California as a result of the ACA, is the state's health insurance marketplace where Californians can shop for health plans and access financial assistance if they qualify for it. Covered California, administered by DHCS, allows individuals and small businesses to purchase health insurance at federally subsidized rates. The uninsured rate in California has gone down from 17.2 percent in 2013 to a historic low of 7.4 percent in 2016. Covered California, and the subsidies it provides to low-income health insurance purchasers, would cease to exist if the state were dissolved. If new health

exchanges were not created in each of the three new states, some Californians would almost certainly lose their health insurance.

- In August of 2015, DHCS received federal approval to expand full-scope benefit coverage to pregnant women with incomes between 0 percent up to 138 percent of the federal poverty level. If California were dissolved and the three new states were not able to immediately obtain waivers from the federal government to provide this same coverage, low-income pregnant women would lose their ability to obtain medical care.

Protection of Vulnerable Children, the Disabled, and the Elderly—Duties of the Department of Social Services. While most social services programs are administered by the counties, the Department of Social Services (DSS), working with the federal government, oversees those programs and issues regulations and control letters to ensure that the local county agencies operate effectively and properly protect California's most vulnerable. These programs include adoption and adoption assistance, foster care and child welfare, CalWORKs, CalFresh (food assistance), immigrant and refugee assistance, and In-Home Supportive Services (IHSS), which provides in-home assistance to eligible aged, blind and disabled individuals. In addition, DSS licenses and regulates child care facilities and assisted living facilities across the state. The division of California into three separate states would disrupt all of these duties and oversight and, at least in the short-term, place our most vulnerable residents at risk.

- The state has negotiated a nine-county waiver with the federal government to better serve and support children in the foster care system or at risk of entering foster care (Title IV-E waiver). The waiver, which involves counties in all three proposed new states, allows California to improve the services and supports to children and families involved in the child welfare and juvenile probation systems. Were this initiative to pass, the three new states would have to renegotiate the waiver with the federal government.
(<http://www.cdss.ca.gov/inforesources/Foster-Care/Title-IV-E-Waiver-California-Well-Being-Project>)
- Every child care center, family day care, and assisted living facility in the state would need to be re-licensed in one of the new states, which could cause significant disruption to children, the elderly and their families, not to mention the businesses themselves.
- While most children in the foster care system are placed in the same county in which their families live, some are placed in different counties. If the different counties will be in different states, overlapping supervision by multiple states will now be required?
- Would every recipient of the state and county social services be required to re-apply for assistance in their new state? The division of California into three states will result in better off and worse off states. Will the neediest residents of the state with fewest resources receive reduced benefits? How will this impact the most vulnerable children, disabled and the elderly?

State Retirement Systems. Most public employees of the state pay into different retirement systems—CalPERS (California Public Employees Retirement System, which oversees the pension plans of the majority of state employees) and CalSTRS (California State Teachers

Retirement System, which oversees the pension plans of all members employed by state educational institutions—depending on their occupation. CalPERS also administers a Judges Retirement Plan, for eligible elected and appointed California justices. Employees of colleges in the UC system may elect to join the *University of California Retirement Plan* instead of CalSTRS. In all of these systems, employees accumulate savings and obtain vested rights to a defined retirement benefit, determined by their years of service, ending salary, and occupation (i.e. law enforcement “safety” personnel are entitled to a higher percentage of their ending salary).

CalPERS alone has 1.9 million members, with nearly 900,000 active members and nearly 700,000 retirees and beneficiaries. For every dollar paid to CalPERS retirees, approximately 61 cents comes from investment earnings; 26 cents comes from the state employer; and 13 cents comes from member contributions.

If the state were dissolved, CalPERS and CalSTRS would also be dissolved. Would the three new states create three new pension programs? How would the states allocate responsibility for administering the savings and contributions of current state employees? What about retirees, whose retirement benefits are vested, being paid, and needed for their financial survival? Would their retirement benefits be the “debts” of the new state where the retiree resides? Or would they be “debts” of the state where the retiree worked? If so, what if the years of service were performed for the State of California in different locations that are now divided into different states? Would such a retiree recover multiple pensions from multiple new states? If the pension assets and obligations were divided between the three states would the new plans be as successful and influential as CalPERS, for example, which has a market fund value of \$326.4 billion dollars and earned an overall 11.2% on its investments in 2016-17, ultimately making the fund viable for the future?

Correctional Facilities. As of June 30, 2017, the California Department of Corrections and Rehabilitation (CDCR) reported a population of over 131,000 inmates housed in various adult institutions across the state. There are at least 38 adult institutions run by CDCR across California, but their distribution among the proposed three new states is uneven, with a greater concentration of such facilities in the proposed new states of California and Southern California. For example, although the new state of Northern California would be comprised of 40 of California's 58 existing counties, only eight current institutions would be located in that new state.

- The initiative is unclear on how the costs for these correctional facilities would be allocated. Would current prisoners automatically be the responsibility of the new state where the prison happens to be located? Or would all the states equally share the costs of running these facilities, including responsibility for all prison personnel? Or would the areas of the state that originally sentenced the inmates be responsible for the costs of housing the inmates, even if the inmates are housed in a state other than where the county is located? What about allocation of other costs, such as providing parole supervision and revocation? Should they be the responsibility of the jurisdiction that sentenced the inmate, or the jurisdiction where the prison is located?
- Should the initiative pass, Californians currently serving sentences in CDCR-run institutions might find themselves incarcerated in a different state than the state where they committed

the crime, or where their families reside. Would each of the three states contract with each other to house prisoners that were originally from a different region of California? In addition, it should be noted that while California already houses prisoners in out-of-state facilities, the complexities, including interstate agreements, would be increased with the division of California into three smaller states.

- It is unclear whether Proposition 47 (an initiative that requires a misdemeanor instead of a felony sentence for certain drug possession offenses and other crimes involving \$950 or less); Proposition 57, (which increased the number of non-violent inmates eligible for parole consideration and allowed parole consideration after serving the full term of the sentence for their primary offense); the Three Strikes Law; or any current sentencing laws applicable in California would continue to apply to the sentencing or parole of current inmates in all or any of the three new states. It is conceivable that each state would impose its own set of laws in such a way that some persons would be released earlier than they would have been, but later than they would have been under current California law—raising difficult constitutional due process questions for prisoners if the correctional system were split into three pursuant to the proposed initiative.

State Employment in General. According to the California State Controller (whose office would be abolished and duties—including issuing all of the state’s payments, including state payroll—would be abolished if the initiative were fully implemented), the state has nearly 600,000 employees (including employees of State government, California State Universities, and Judicial Council). The gross monthly pay of these employees totals more than \$1.85 billion per month. (Accessed May 22, 2018, at: https://www.sco.ca.gov/ppsd_empinfo_demo.html.) If the state were dissolved, what would happen to these employees? The fact is that they and their families depend on state employment for their survival. The loss of 600,000 jobs, and \$1.85 billion dollars a month in earnings, would be economically catastrophic on both a personal and statewide level.

Division of Debts and Assets and Effects on Future Borrowing. Investor uncertainty about the state of California bond repayments would be likely given that the three proposed new states would not be equally well suited to pay back such obligations (both the differential tax base and the lack of a constitution or any state laws would mean that no source of revenue exists for the new states to pay back their creditors). This uncertainty could lead the new states to face increased difficulty in selling bonds and the possibility of markedly higher interest rates for future borrowing. In looking to historical examples of state division, West Virginia’s separation from Virginia led to a prolonged fight about debts and over half a century passed between the admission of West Virginia to the United States in 1863 and the settling of all debts with Virginia in 1939 following a ruling by the Supreme Court.

Potential Market Instability and Threats to Public Safety. Uncertainty about laws and regulations could plausibly lead businesses to leave the state in order to find a more stable, predictable jurisdiction under which to operate. Additionally, since public safety would be at risk due to fears of institutional illegitimacy (e.g., what entity is paying the salaries for law enforcement and from what revenue source?), it is possible that riots and/or mass out-migration would occur (eroding the tax base of the new states). Since individuals with resources would be most likely to be able to leave the state, the residents remaining may be poorer and have fewer

economic prospects as businesses leave the state too, leading to a vicious cycle in which increasing uncertainty leads to greater and greater instability.

If the outgoing Legislature did not require the three new states to effectively organize themselves, including by enacting effective public safety, education, licensing and regulatory systems that were ready to be deployed and implemented at short notice, then there would likely be a period of significant uncertainty, and perhaps civil unrest, without even basic government services, let alone more complex systems of regulation and consumer protection. In that case, it would be hard to see how the initiative would have improved the quality of life for the people of the State of California.

However, if the outgoing Legislature were able to fend off this period of limbo and potential chaos by *requiring* the new states to provide basic services, recognize licenses, and carry forward vital regulations or programs, then a basic premise of the initiative—that Legislature is incapable of governing the state—would be disproven. In that case, it arguably still would be hard to see why the people of the State of California would be better off as residents of three smaller states, all with uncertain futures, diminished resources, and untested institutions, rather than being residents of one large but unified state that is governed by a functional Legislature and has personal, natural, and institutional resources significant enough to make it the fifth largest economy in the world.

The Potential Futility of Planning to Abolish California and Create Three New States. As required by Article IV, Section 3 of the U.S. Constitution and in acknowledgment that new states could not be created without such approval, the initiative requires that a request to abolish California and create three new states be transmitted to Congress with a “request that Congress act upon the consent of the people within twelve (12) months.” For a number of reasons, Congress would seem unlikely to approve such a request.

First, the costs to the federal government would be significant and would include reapportionment of funding for social services, dividing seats in Congress, and changes to data collection and tracking programs. Additionally, new postal designations for the three new states would need to be created and all government forms, maps, and documentation would need to be updated.

Second, and most significant, creation of three states to take the place of just one State of California would mean that California would be entitled to be represented by four additional Senators in the U.S. Senate, thereby increasing the representative influence of the people of the former State of California, and diminishing the influence of every other state. Given that none of the circumstances would exist that historically motivated Congress to consent to creation of new states (discussed in detail in Appendix A), Congress would seemingly have no reason to consent to the request to create three new states.

SUMMARY OF ARGUMENTS IN FAVOR OF THE INITIATIVE: Cal 3, a group supporting the initiative, argues that dividing California into three states would provide better governance and help improve public education, roads, and the taxation system. In particular, those in favor of the proposal contend that splitting the state would create a more responsive government due to smaller state size and the development of policies that would be better tailored to each geographic region. Supporters base their arguments on the theory that smaller

states could more effectively use revenues to create desirable policy outcomes. By creating three new states, those in favor of the ballot initiative believe there will be better management in these new jurisdictions which will lead to improvements in areas such as education and road quality. (Appendix B discusses the effectiveness of small and large states in meeting the needs of their residents in detail.)

The initiative text states that the state in its current form is “nearly ungovernable” and that vast portions of California are “poorly served by a representative government dominated by a large number of elected representatives from a small part of our state, both geographically and economically.” Data on the demographics of state legislatures show that lawmakers tend to be more educated than the general public (40% of state legislators have an advanced degree compared to 11% of the general U.S. population), and since education is often used as measure of socioeconomic status, it is reasonable to conclude that state legislative representatives do not represent the state economically. (National Conference of State Legislatures, “Who We Elect: The Demographics of State Legislatures” URL: <http://www.ncsl.org/research/about-state-legislatures/who-we-elect.aspx>)

SUMMARY OF ARGUMENTS IN OPPOSITION TO THE INITIATIVE: Arguments in opposition to the initiative focus primarily on two issues: the low probability that the measure would be approved by Congress and pragmatic difficulties that would arise from any attempt to divide the many interconnected institutions and natural resources in the state. On the first issue of Congressional action, opponents note that any attempt to divide the state would have to be approved by Congress – something they are unlikely to do given the potential costs and the change it would bring in the distribution of power within Congress. Since the current state of California has two U.S. Senators, and the three newly created states would presumably each have their own two senators, the total number of seats in the Senate would be increased by four to a total of 54 voting members (thus diluting the amount of power all other states would have in the Senate).

Secondly, opponents note the interconnected nature of the state and several of its institutions, including higher education and the court system. The background paper on this initiative goes further in depth about some of these complications, though to give one example, in a recent radio segment, John Meyers from the Los Angeles Times and Joseph Rodota, Chairman of OneCalifornia, a committee in opposition to the initiative, mention that the cost of out-of-state tuition in the three newly created states would be over 2 billion dollars. (Air Talk: <https://www.scpr.org/programs/airtalk/2018/04/16/62600/initiative-to-split-california-into-3-states-may-b/>)