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December 10, 1999

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Diane Calkins
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative related to unborn persons (File No. SA 1999 RF 0052, Amendment No. 1-S). This measure would amend the California Constitution to specify that unborn children have all of the same constitutional rights and protections afforded to any other person. This provision would apply to unborn children from the time of fertilization until live birth.

Background

Under the California Constitution, persons have many fundamental rights and protections. For example, Article I, Section 1 states as follows:

“All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”

Furthermore, Article I, Section 7 states, that "A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws . . ." By extending these protections (and others) to unborn children, this measure could affect many areas of law.

Abortion Rights

Because abortions terminate the life of a fetus (unborn child), the protections afforded to unborn children by this measure could affect abortion rights in California.

State and Federal Court Decisions. In 1969, the California Supreme Court found (in *People v. Belous*) that, under both the California and United States Constitutions, women have a fundamental right to choose whether to bear children, and only a compelling state interest, such as protecting women's lives, could subject that right to regulation. In 1973, the United States Supreme Court (in *Roe v. Wade*) found that women generally have a right under the United States Constitution to terminate a pregnancy by abortion. Subsequent decisions by the California Supreme Court (for example, *Committee to Defend Reproductive Rights v. Myers* in 1981) specifically established a right to abortion under the California Constitution's right of privacy guaranteed by Section 1 of Article I and under other state constitutional provisions. Consequently, women currently may obtain abortions, and physicians may perform them, essentially on an elective basis.

By extending rights to unborn children, this measure might restrict or eliminate abortion rights based on the California Constitution. However, the right to obtain an abortion would continue to be guaranteed by the U.S. Constitution to the extent provided by *Roe v. Wade* and related decisions.

Medi-Cal Funding of Abortions. Under existing state law, benefits provided to qualifying persons under the Medi-Cal Program include abortions. The state and the federal governments (through the national Medicaid Program) share the cost of Medi-Cal benefits on a roughly equal basis. However, federal law generally prohibits Medicaid funding of abortions, so that the cost of Medi-Cal abortions is paid entirely by the state. The annual cost of Medi-Cal abortions to the state currently is about \$40 million.

In 1980, the U.S. Supreme Court, in *Harris v. McRae*, determined that the federal prohibition on Medicaid funding of abortions does not violate the U.S. Constitution. However, in its 1981 decision in *Committee to Defend Reproductive Rights v. Myers*, the California Supreme Court invalidated similar past prohibitions of Medi-Cal funding of abortions enacted by the Legislature on the basis that they violated the California Constitution.

It is not clear whether this proposed initiative measure, by itself, would prohibit Medi-Cal funding of abortions because (1) it explicitly addresses neither abortions nor their funding and (2) the right to an abortion generally would remain protected under *Roe v. Wade*. However, the measure might enable the Legislature to enact legislation to eliminate Medi-Cal funding of abortions or to restrict (but not prohibit) abortions in various ways consistent with federal court decisions.

Other Potential Effects of the Measure

The measure may affect many other areas, such as criminal justice, inheritance, public benefit calculations and entitlements, and provisions regarding child support and custody. However, the measure's potential broad reach and the novel issues that it would raise make it infeasible to determine the full scope or the precise nature of the measure's effects in these areas.

Fiscal Effects

We are unable to determine the fiscal effects of this measure on the state and local governments because the measure's scope and impact on existing laws and programs is unclear. Thus, the net fiscal impact of the measure on state and local expenditures and revenues is unknown.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

B. Timothy Gage
Director of Finance