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September 12, 2001

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

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative related to unborn children (File No. SA2001RF0022). This measure would amend Section 43.1 of the California Civil Code to specify that unborn children have life because life begins at conception.

Background

Under the California Civil Code, persons have many fundamental rights and protections. For example, under Section 43, besides the personal rights mentioned or recognized in the Government Code, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and for injury to his personal relations. Currently, a fetus is deemed to be an existing person under Civil Code Section 43.1 as necessary to protect the child's interests in the event of the child's subsequent birth.

Abortion Rights

Because abortions result in the death of a fetus (unborn child), the protections afforded to unborn children by this measure could affect abortion rights in California. However, since the California Supreme Court has held that the right to an abortion in California is a constitutional right, a statutory amendment alone cannot eliminate that right.

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.

Even if this measure is seen as extending the rights of unborn children, it will not restrict or eliminate abortion rights to the extent that those rights are based on the California Constitution. Also, 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 based on the rationale that the state cannot elect to fund only one legally permissible choice a woman has during pregnancy, that is, to carry to term or terminate prior to birth. 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.

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 appears unlikely that 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 the prior U.S. Supreme Court ruling in *Roe v. Wade* and the California Supreme Court ruling in *Committee to Defend Reproductive Rights v. Myers*.

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 of the precise nature of the measure's effect in these areas.

Fiscal Effects

We are unable to determine the fiscal effects of this measure on 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