

March 21, 2005

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 persons (File No. SA2005RF0069). This measure would amend the California Constitution to specify that each unborn person, upon conception, has the inalienable right to life while in utero.

Background

Abortion Rights. In 1969, the California Supreme Court found in *People v. Belous* that women have a fundamental right to choose whether to bear children under both the California and United States Constitutions. In 1973, the United States Supreme Court found in *Roe v. Wade* 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.

Public Funding for Abortions. In 1980, the United States Supreme Court determined in *Harris v. McRae* that the federal prohibition on funding abortions does not violate the United States Constitution. However, the California Supreme Court decision the following year in *Committee to Defend Reproductive Rights v. Myers* invalidated similar prohibitions of state funding for abortions enacted by the Legislature on the basis that they violated the California Constitution. Thus, the cost to California's Medicaid program (Medi-Cal) for abortions is paid entirely from the state General Fund.

Proposal

The initiative would amend the California Constitution to specify the following:
“Each unborn person, upon conception, has the inalienable right to life while in utero.”

Fiscal Effects

We are unable to determine the fiscal effects of this measure on state government because the measure’s scope and impact on existing laws and programs is unknown. It appears unlikely that the measure, by itself, would affect the right to have an abortion, which would remain protected under the prior U.S. Supreme Court ruling in *Roe v. Wade*. It is also unclear whether the measure would affect Medi-Cal funding for abortions. This is because the measure adds to, but does not amend, the existing language of the California Constitution relating to the right of privacy, upon which the California Supreme Court based its ruling that invalidated past bans on public funding for abortions. Thus, the scope and impact of the change proposed by this initiative, including any potential effect on the existing provisions of the State Constitution, would be subject to interpretation by the courts. To the extent that a court’s interpretation of this initiative were to prohibit abortions or public funding for abortions in the state, potentially significant costs to the state could result for Medi-Cal and various social services programs.

Summary

The net fiscal impact of this measure is unknown.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Tom Campbell
Director of Finance