

November 4, 2005

Hon. Bill Lockyer  
Attorney General  
1300 I Street, 17<sup>th</sup> 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 regarding marriage (File No. SA2005RF0104).

### **Background**

*Federal Laws.* The U. S. Constitution does not define marriage nor does it require states to define marriage. Current federal law only recognizes marriage between a man and a woman. (The law affects matters such as the receipt of federal benefits and federal taxes.)

*State Laws.* The State Constitution currently does not define marriage. Under current California statute, only marriage between a man and a woman is valid and recognized. Couples of the same sex or unmarried couples of the opposite sex where at least one partner is 62 years or older may register as domestic partners. In most instances, registered domestic partners are provided the same rights and benefits as married couples. Rights of marriage include, but are not limited to, alimony and community property rights.

### **Major Provisions**

This measure amends the State Constitution to recognize marriage only between a man and a woman. In addition, the measure prohibits the Legislature, courts, and state and local government agencies from granting the rights of marriage to any unmarried persons. The measure also prohibits government agencies from requiring private entities to extend the rights of marriage to unmarried persons.

### **Fiscal Effect**

The measure would repeal some provisions of existing law and prohibit state and local government agencies from authorizing some rights of marriage to domestic

partners in the future. For example, the state could no longer provide community property rights to domestic partners since only married couples would have these rights. The fiscal effect of the measure would depend on future interpretation by the courts of what constitutes “rights or incidents of marriage,” both under existing law and under the measure. For instance, the extension of health benefits to domestic partners of government employees has tended to be considered an employee benefit, rather than an incident of marriage. If the courts, however, determined that this measure would affect these benefits, state and local governments could experience some savings from reduced health benefit costs. For this reason, the fiscal effect of the measure is unknown. Overall, however, we would not expect the measure to have a significant net fiscal effect on state and local governments.

*Fiscal Summary.* This measure would have the following fiscal impact:

- Unknown, but probably not significant, fiscal effect on state and local governments. The impact would depend in large part on future court interpretations.

Sincerely,

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Elizabeth G. Hill  
Legislative Analyst

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Michael Genest  
Acting Director of Finance