

November 22, 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 regarding marriage (File No. SA2005RF0109).

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, incidents, or employee benefits 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 or other unmarried persons. 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 is unknown and would depend on future interpretation by the courts of what constitutes "rights, incidents, or employee benefits of marriage," both under existing law and under the measure. For instance, the measure may prohibit health benefits to domestic partners of government employees. If so, state and local governments could experience some savings from reduced health benefit costs. In the context of overall government costs for employee compensation, however, we would not expect such savings to be significant.

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

- Unknown, but potentially some savings for state and local governments. The impact would depend in large part on future court interpretations.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Michael Genest
Acting Director of Finance