November 6, 2007

Hon. Edmund G. Brown Jr.
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Krystal Paris
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative regarding marriage (A.G. File No. 07-0061).

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 where both partners are at least age 18, 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 it defines a man as possessing a Y chromosome and a woman as not possessing such a chromosome. 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 or decreasing the existing marriage rights or benefits. 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 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 decreasing the value of existing health benefits for spouses of government employees. If so, state and local governments could experience increased costs over time from higher health benefit costs than otherwise would have been the case. These increased costs could be partially offset if the measure is interpreted to also prohibit health benefits to domestic partners of government employees. The magnitude of any net increase in government costs is unknown.

Additional costs could also arise from the implementation of the measure's definition of a man and a woman. For instance, the measure may result in local governments, which issue marriage licenses, adopting new requirements to verify that marriage applicants meet the constitutional definition of a man and a woman. If so, local governments could experience increased costs from the additional workload necessary to meet any new requirements. These increased costs would likely be offset by increases in fees charged to marriage applicants.

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

- Unknown, but potential increased costs for 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 C. Genest
Director of Finance