

November 3, 2009

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 (A.G. File No. 09-0043) that would define the term “person” in the State Constitution.

State Laws Regarding Individual Rights. Under the California Constitution, persons have many fundamental rights and protections. For example, the State Constitution states that a person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws. The State Constitution does not define who is considered to be a person. However, an unborn child is deemed under a statute to be an existing person “so far as necessary to protect the child’s interests in the event of the child’s subsequent birth.”

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 prior to the point of fetal viability. In 1992, the U.S. Supreme Court upheld the central tenet of its *Roe* decision (in *Planned Parenthood v. Casey*). Decisions by the California Supreme Court (for example, *Committee to Defend Reproductive Rights v. Myers* in 1981) have recognized a right to abortion under the California Constitution’s right of privacy guaranteed by Section 1 of Article I. Consequently, under many circumstances, women currently may obtain abortions and physicians may perform them.

State and Local Government Health and Social Services Programs. The state and local government administers several health and social services programs that provide benefits mainly to low-income persons. The services these programs provide include: (1) reproductive health services such as prenatal care, birth control, delivery, and abor-

tion; (2) general health care services to children and families and the aged and disabled; and (3) child welfare services to protect children from abuse and neglect. In 2008-09, the state spent an estimated \$29 billion General Fund on health and social services, about 31 percent of total General Fund spending of \$92 billion. The exact amount that local governments spend on health and social services programs is unknown but probably exceeds \$1 billion annually on a statewide basis.

Medical Research. California law currently permits research on embryos, which are fertilized human eggs. The exact amount of funding devoted to such research could not be determined but probably exceeds \$100 million annually.

Proposition 71, enacted by California voters in 2004, made conducting stem cell research—a particular type of research that sometimes involves embryos—a State Constitutional right. Proposition 71 also authorized the sale of \$3 billion in state bonds over a multiyear period to fund stem cell research, research facilities, and related activities, but limited bond sales to no more than \$350 million per year. A stem cell is a type of cell found in both animals and humans that has the potential to develop into many types of specialized cells in the body. Stem cell research can involve either adult or embryonic stem cells. Human embryonic stem cells appear in an embryo five to seven days after fertilization. They are ordinarily extracted from extra embryos that have been donated for research by persons who have tried to conceive a child through certain procedures performed at fertility clinics.

Proposal

As noted earlier, the State Constitution provides that a person cannot be deprived of life, liberty, or property without due process of law or be denied equal protection of the laws. This measure would amend this section of the State Constitution to define the term person. This measure states that the term applies to all living human organisms from the beginning of their biological development, regardless of the means by which they are procreated, and regardless of their age, race, sex, gender, physical well-being, function, or condition of physical or mental dependency and/or disability. Thus, this measure would confer due process and equal protection rights upon human embryos and fetuses. This measure may conflict, in certain cases, with federal court rulings, such as the U.S. Supreme Court case discussed above relating to abortion.

Some provisions of existing state law might be applied differently based upon the new definition of the word person established by the measure. Whether those state laws would be applied differently would depend on the intended scope of those laws as they may be interpreted by the courts. Among the potential legal issues that could arise are: (1) whether some activities involving embryos and fetuses would now be subject to criminal prosecution or require their legal representation in civil court proceedings, (2) whether access to some types of reproductive services and methods of birth control would be restricted, (3) whether certain types of medical research would be restricted,

and (4) whether some medical practices by medical personnel would be affected by broadening their consideration of patients' rights to include the rights of a human embryo or fetus.

Fiscal Effects

Potential Court and Law Enforcement Costs. To the extent the courts determine that some activities that are currently legal become illegal as a result of this measure, and thereby constitute crimes, state and local law enforcement agencies could have additional workload. Law enforcement agencies have some discretion in how they prioritize their workload and allocate their resources. However, if the additional workload was not absorbable within existing resources, and was deemed a high priority, it could result in the provision of additional funding to state and local law enforcement agencies.

It is likewise unknown how many additional criminal or civil cases would be filed with the courts as a result of this measure or how it could otherwise affect the caseloads and costs of agencies representing the legal rights of children. The nature, facts, and circumstances of cases could vary broadly, affecting the amount of time and resources needed to hear such cases. For example, the courts may be obligated in some additional situations to provide court-appointed counsel to represent the rights of an embryo or fetus. These factors could potentially require additional state funding for the courts as well as costs for other agencies.

Fiscal Effects on Health and Social Services Programs. As noted above, this measure may result in restrictions on some birth control methods. There would be little or no effect on the number of pregnancies and births if women switched to another equally effective method of birth control. However, to the extent that women did not switch to an equally effective method, or an equally effective method was unavailable, there could be an increase in the number of women becoming pregnant and delivering babies. If those babies and their mothers qualified for and enrolled in state and county health and social services programs these agencies could incur potentially significant increased costs.

These potential costs might be offset to the unknown extent that this measure had the effect of reducing the range of birth control methods available to program beneficiaries. The net fiscal effect of these factors is unknown.

Effects on Medical Research Costs. As noted earlier, the measure may result in restrictions on certain types of medical research. To the extent that the courts found that certain research, such as human embryonic stem cell research, was no longer permissible, research efforts currently funded from private and public sources could be halted. As a consequence, state costs for this research would probably be reduced. Since this research activity and associated investments generate net gains in jobs and taxable income, this measure could result in lower state and local revenues. The likelihood and magnitude of these potential indirect fiscal effects are unknown.

Fiscal Effects Due to Changes in Medical Practices. For the reasons discussed above, this measure may require medical personnel to broaden their consideration of patients' rights to include the rights of an embryo or fetus. These changes in medical practices would likely affect state and local government medical expenditures for publicly supported health care programs and health coverage of their employees. The nature and extent of these fiscal impacts are unknown.

Summary

Depending upon how this measure is upheld and interpreted by the courts, it may have the following major fiscal effects:

- Potential increased costs for courts, law enforcement, and other agencies for criminal and civil proceedings.
- Potential costs and savings for health and social services programs if the courts determined that the measure restricts access to some types of birth control methods.
- Potential loss of state or local revenues due to reduced research activity that may be offset by reduced state spending on research.
- Unknown potential effects on state and local health care expenditures due to changes that may occur in medical practices.

Sincerely,

Mac Taylor
Legislative Analyst

Michael C. Genest
Director of Finance