

November 2, 2011

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Dawn McFarland
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative (A.G. File No. 11-0041) 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 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 United States 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.

State and Local Health, Social, and Education Programs. The state and local government administer 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 abortion; (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. The state also funds education for children regardless of income.

Medical Research. Proposition 71, enacted by California voters in 2004, made conducting stem cell research a State Constitutional right. Stem cell research sometimes involves fertilized human eggs. Public and private funds currently support this research.

Proposal

This measure amends Section 7 in Article 1 of the State Constitution to define the term person. This measure states that “the term ‘person’ applies only to all living human beings from the beginning of their biological development as human organisms—regardless of the means by which they are procreated, method of reproduction, 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 zygotes, embryos, and fetuses. In this context, the term zygote refers to a fertilized human egg, while the terms embryo and fetus refer to later stages of development.

Fiscal Effects

The fiscal impact of the amendment is difficult to determine, as it would depend on subsequent interpretation by the courts. For example, under federal law abortion would still be legal. This amendment, however, could require the state to balance the rights of the mother against the newly established due process rights for the zygote, embryo, or fetus. These due process rights could, for example, obligate the state to provide counsel to represent the rights of a zygote, embryo, or fetus, and require state and local government to protect zygotes, embryos, and fetuses from child abuse and neglect. Moreover, the establishment of fetal due process and equal protection rights could shift eligibility for certain health and social services to an earlier pre-birth point in development. Finally, to the extent new fetal rights discouraged abortion, there would be net public costs associated with the additional children born as a result of this amendment. These costs are difficult to estimate, but could be in the tens of millions of dollars annually.

Other Potential Impacts. In addition to the impacts discussed above, this measure could restrict stem cell research and alter medical practices in both the public and private sector. The economic and fiscal impacts of these changes are unknown.

Summary of Fiscal Effects. Assuming current federal case law, this measure would have the following fiscal effects on state and local government:

- Costs from the establishment of due process and equal protection rights for zygotes, embryos, and fetuses, potentially in the tens of millions of dollars annually.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance