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September 9, 1999

Hon. Bill Lockyer  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Connie Lemus  
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative related to abortion (File No. SA1999 RF 0032). This measure would amend the California Constitution to specify that the right to privacy does not provide a right to an abortion or public funding of abortions, or a right of minors to obtain abortions without parental consent.

**BACKGROUND**

*Abortion Rights.* In 1967, the California Legislature enacted the "Therapeutic Abortion Act" (Chapter 327), which authorized physicians to perform abortions in a hospital up to the 21<sup>st</sup> week of pregnancy in cases in which the pregnancy resulted from rape or incest or endangered the physical or mental health of the mother. In 1969, the California Supreme Court found (in *People v. Belous*) that women have a fundamental right to choose whether to bear children under both the California and United States Constitutions. As such, the state may regulate the right to have an abortion only when a compelling state interest exists, such as protecting a woman's life. However, the Therapeutic Abortion Act was not at issue in the *Belous* case and was left intact by that decision.

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, and subsequent decisions by the California Supreme Court (for example, *Committee to Defend Reproductive Rights v. Myers* in 1981) specifically established a right to abortion under the California Constitution's right of privacy guaranteed by Section 1 of Article I and under other state constitutional provisions. Consequently, women currently may obtain abortions, and physicians may perform them, essentially on an elective basis.

**Parental Consent for Abortions for Minors.** In 1953, the California Legislature enacted Chapter 1654, which allowed minors to receive, without parental consent or notice, the same range of medical care for a pregnancy that is available to an adult. This law eventually became the vehicle through which minors could obtain abortions without parental consent or notice. In 1987, the Legislature amended the Therapeutic Abortion Act—through the enactment of Chapter 1237—to require minors to obtain parental consent or a court authorization prior to obtaining an abortion. However, implementation of Chapter 1237 was enjoined by the courts, and in 1997 the California Supreme Court invalidated the law by finding that it violates the California Constitution's right to privacy. Consequently, minors in the state may receive abortion services, including abortion services provided by the state Medi-Cal Program, to the same extent that adults may receive such services and without parental consent or notification. The United States Supreme Court determined in 1992 that parental consent requirements similar to those of Chapter 1237 do not violate the United States Constitution (*Planned Parenthood v. Casey*).

**Medi-Cal Funding of Abortions.** Under existing state law, benefits provided to qualifying persons under the Medi-Cal Program include inpatient hospital services as well as physician, hospital or clinic outpatient, and surgical center services. These services include abortions. The state and the federal government (through the national Medicaid Program) share the cost of Medi-Cal benefits on a roughly equal basis. However, federal law generally prohibits Medicaid funding of abortions, so that the cost of Medi-Cal abortions is paid entirely from the state General Fund. In 1980, the United States Supreme Court, in *Harris v. McRae*, determined that the federal prohibition on funding abortions does not violate the United States Constitution. However, in its 1981 decision in *Committee to Defend Reproductive Rights v. Myers* the California Supreme Court invalidated similar prohibitions of Medi-Cal funding of abortions enacted by the Legislature on the basis that they violated the California Constitution.

**Summary.** In summary, the current status of case law regarding abortions in California is as follows:

- The basic right to choose to have an abortion is protected under both the State and Federal Constitutions.
- The State Constitution, but not the Federal Constitution, prohibits the state from (1) imposing a parental consent requirement on minors seeking an abortion or (2) eliminating funding for Medi-Cal abortions.

#### SUMMARY OF THE INITIATIVE

**Abortions.** The proposed measure would amend the California Constitution to state that none of its provisions provide (1) a right to an abortion, (2) a right to public funding of abortions, or (3) a right of minors to obtain abortions without the knowledge or consent of their parents or guardians.

The measure would not eliminate the right to obtain an abortion, which would remain protected under the United States Constitution. As a result of the measure, however, the Legislature would have the option of enacting laws to restrict or eliminate Medi-Cal funding of abortions, except where continued pregnancy or birth would threaten a woman's life, as provided under federal law.

**Parental Consent Requirement.** Absent any other changes to existing law, the effect of this measure would be to enable the state's currently invalidated parental consent requirement to become effective. Consequently, an unemancipated minor seeking an abortion would need to obtain the consent of at least one of her parents or her legal guardian. The law provides an exception for medical emergencies. It also establishes a process—typically referred to as “judicial bypass”—to allow minors to obtain an abortion without parental consent by filing a confidential petition with the juvenile court. Petitioners would be entitled to court-appointed counsel and would be exempt from filing fees. The law provides expedited deadlines for issuing judgments and considering appeals, and requires the Judicial Council to establish rules for these proceedings. The court must grant a waiver to the parental consent requirement if it finds that either (1) the minor is sufficiently mature to give informed consent or (2) an abortion is in the best interest of the minor.

**Abortion Counseling in Public Schools.** This initiative also amends the State Constitution to prohibit public school personnel, or any other persons given access to students on school grounds or in school facilities, from assisting, referring, or advising any enrolled student in seeking or obtaining an abortion (except in the case of parents or legal guardians advising their own child).

## FISCAL EFFECTS

This measure could affect state and local government costs in a number of ways, primarily depending on how it affects the behavior of teens regarding abortion, child-bearing, sexual activity, and birth control.

***Medi-Cal Savings or Costs.*** The annual cost of Medi-Cal abortions to the state General Fund is about \$40 million. Of this amount, about \$3 million (8 percent) is for abortions for minors (age 17 or younger). To the extent that the parental consent requirement discourages abortions, there would be fewer Medi-Cal abortions provided to minors. Based on studies of other states with parental consent or notification laws, we estimate that the reduction in abortions to minors in California could be up to 25 percent (some of this reduction might reflect an increase in travel by minors to obtain abortions in states without restrictions). Consequently, we estimate that this potential savings would be less than \$1 million annually.

The measure's effect on Medi-Cal costs for teen pregnancies, deliveries, and resulting infant care is uncertain. To the extent that the measure causes minors to avoid pregnancies, there would be savings. On the other hand, there would be additional Medi-Cal costs due to births from pregnancies that otherwise would have been terminated by abortion. The net fiscal effect of these factors is unknown, but could result in state savings or costs of up to several million dollars annually, which would not be a significant amount in the context of total General Fund spending for the Medi-Cal Program.

***Juvenile Court Costs.*** The measure would result in increased state costs related to the implementation of the judicial bypass process. The magnitude of these costs would depend on the number of minors that use the judicial bypass process as an alternative to parental notification. To the extent that minors use the judicial bypass process, courts will incur additional workload and administrative costs, as well as costs to provide court-appointed counsel to minors. The amount of these costs is unknown, but probably not significant in the context of total state and local expenditures for courts.

***Public School Costs.*** Based on discussion with the state Department of Education, we estimate that the prohibition of abortion counseling in the measure would not have any significant fiscal effect on public schools.

***Indirect Fiscal Effects.*** The measure could result in various indirect fiscal effects on state and local government, such as savings or costs for welfare, depending in part on the extent to which the measure results in a net decrease or increase in births to teen parents (as discussed above). The net indirect fiscal effects are unknown.

*Summary of Fiscal Effects.* The net fiscal impact of this measure on expenditures for the Medi-Cal Program and the courts is unknown, but probably not significant in the context of the total expenditures for these programs.

Sincerely,

Elizabeth G. Hill  
Legislative Analyst

B. Timothy Gage  
Director of Finance