09-0060

October 1, 2009

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Office of the Attorney General of California
Attn: Krystal Paris, Initiative Coordinator
1300 I Street
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Sacramento, CA 94244-2550

Telephone: (916) 445-1968
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E-Mail: Krystal.Paris@doj.ca.gov

Re: **Request for Title and Summary for Proposed Initiative**

Dear Initiative Coordinator Krystal Paris:

Pursuant to Article II, Section 10(d) of the California Constitution, I am submitting the attached proposed statewide Constitutional Amendment ballot initiative to your office and request the preparation of a title and summary for the ballot initiative as provided by law.

I propose the title: **Parental Notification, Child and Teen Safety, and Stop Predators Act [V-2]**

I have also included with this letter the required, signed statement under California Elections Code section 9608, my voter registration address, and payment in the amount of $200.

Thank you for your attention to this important matter. Should you have any questions or require additional information, please contact me at my voter registration address, or by telephone, fax, or e-mail using the information provided on the attached letter.

Sincerely

John Smith

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO VOTERS

The Attorney General of California has prepared the following title and summary of the chief purposes and points of the proposed measure:

(Insert 100 word title and summary)

To the Honorable Secretary of State of California:

We the undersigned, registered, qualified voters of California, residents of the afore-described County (or City and County), on the signature page of this petition section, hereby propose an amendment to the Constitution of the State of California relating to parental notification and personal consent prior to the performance of an abortion on a pregnant unemancipated minor, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to the general election or otherwise provided by law. The proposed amendment reads as follows:

SECTION 1. Title

This amendment shall be known and may be cited as the Parental Notification, Child and Teen Safety, and Stop Predators Act.

SECTION 2. Declaration of Findings and Purposes

The People of California have a compelling interest in protecting minors from the known risks of secret abortions, including the danger of not obtaining prompt care for health- and life-threatening complications when a minor's parent is unaware that she has undergone a secret abortion. The People also have a compelling interest in preventing sexual predators from using secret abortions to conceal sexual exploitation of minors.

SECTION 3. Parental Notification

Section 32 of Article 1 of the California Constitution is added to read:

SEC. 32 (a) For purposes of this Section, the following terms shall be defined to mean:

(1) "Parent" means a person who, at the time notice or waiver is required under this Section, is either a parent if both parents have legal custody, or the parent or person having legal custody, or the legal guardian of an unemancipated minor.

(2) "Unemancipated minor" means a female under the age of 18 years who has not entered into a valid marriage and is not on active duty with the armed services of the United States and has not received a declaration of emancipation under state law. For the purposes of this Section, pregnancy does not emancipate a female under the age of 18 years.

(3) "Physician" means any person authorized under the statutes and regulations of the State of California to perform an abortion upon an unemancipated minor.

(4) "Notice" means a written notification, signed and dated by a physician or his or her agent, informing the parent of an unemancipated minor that she has requested an abortion.

(5) "Abortion" means the use of any means to terminate the pregnancy of an unemancipated minor known to be pregnant except for the purpose of producing a live birth. "Abortion" shall not include the use of any contraceptive drug or device.

(6) "Medical emergency" means a condition which, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant unemancipated minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(b) Notwithstanding Article 1, Section 1, or any other provision of this Constitution or law to the contrary, and except as provided in subdivisions (d), (e), or (f) of this Section, a physician shall not perform an abortion on an unemancipated minor until at least forty-eight (48) hours has elapsed after the physician or the physician's agent has delivered written notice as provided in subdivision (c) of this section, or has received a copy of a waiver of notification from the court as provided in subdivisions (h), (i), or (j). A copy of any notice or

waiver shall be retained with the unemancipated minor's medical records. The physician or the physician's agent shall inform the unemancipated minor that her parent may receive notice as provided for in this section.

(c) The written notice shall be delivered by the physician or the physician's agent to the parent, either personally or by certified mail addressed to the parent at the parent's last known address with return receipt requested and restricted delivery to the addressee. If notice is provided by certified mail, a copy of the written notice shall also be sent at the same time by first class mail to the parent. Notice by mail may be presumed to have been delivered under the provisions of this subdivision at noon of the second day after the written notice sent by certified mail was postmarked, not counting any days on which regular mail delivery does not take place. A form for the notice shall be prescribed by the California Department of Public Health. The notice form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published.

(d) Notice of an unemancipated minor's intent to obtain an abortion may be waived by her parent. The waiver must be in writing, on a form prescribed by the California Department of Public Health, signed by a parent, dated, and notarized. The parent shall specify on the form that the waiver is valid for 30 days, or until a specified date, or until the minor's eighteenth birthday. The written waiver need not be notarized if the parent personally delivers it to the physician or the physician's agent. The form shall include the following statement: **"WARNING. It is a crime to knowingly provide false information to a physician or a physician's agent for the purpose of inducing a physician or a physician's agent to believe that a waiver of notice has been provided by a parent or guardian."** The waiver form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published. For each abortion performed on an unemancipated minor pursuant to this subdivision, the physician or the physician's agent must receive a separate original written waiver that shall be retained with the unemancipated minor's medical records.

(e) Notice to a parent shall not be required under this Section if the unemancipated minor is the victim of physical or sexual abuse committed by one or both of the minor's parents and the abuse is documented by a signed and notarized statement by (1) a person at least 21 years of age who has personal knowledge of the abuse and who is a grandparent, stepparent, foster parent, sibling of a parent, or sibling or half-sibling of the unemancipated minor, or (2) a law

enforcement officer or agent of a public child protective agency who has investigated the abuse of the unemancipated minor. The physician shall retain the signed and notarized statement with the unemancipated minor's medical records.

(f) Notice shall not be required under this Section if the attending physician certifies in the unemancipated minor's medical records the medical indications supporting the physician's good-faith clinical judgment that the abortion is necessary due to a medical emergency.

(g) Notice shall not be required under this Section if waived pursuant to this subdivision and subdivisions (h) or (i) or (j). If the pregnant unemancipated minor elects not to permit notice to be given to a parent, she may file a petition with the juvenile court. No filing fee shall be required for filing a petition. If, pursuant to this subdivision, an unemancipated minor seeks to file a petition, the court shall assist the minor or person designated by the minor in preparing the documents required pursuant to this Section. The petition shall set forth with specificity the minor's reasons for the request. The unemancipated minor shall appear personally in the proceedings in juvenile court and may appear on her own behalf or with counsel of her own choosing. The court shall, however, advise her that she has a right to court-appointed counsel upon request. The hearing shall be held by 5 p.m. on the second court day after filing the petition unless extended at the written request of the unemancipated minor or her counsel. The unemancipated minor shall be notified of the date, time, and place of the hearing on the petition. Judgment shall be entered within one court day of submission of the matter. The judge shall order a record of the evidence to be maintained, including the judge's written factual findings and legal conclusions supporting the decision. The court shall ensure that the minor's identity be kept confidential and that all court proceedings be sealed.

(h) (1) If the judge finds, by clear and convincing evidence, that the unemancipated minor is both sufficiently mature and well-informed to decide whether to have an abortion, the judge shall authorize a waiver of notice of a parent.

(2) If the judge finds, by clear and convincing evidence, that notice to a parent is not in the best interests of the unemancipated minor, the judge shall authorize a waiver of notice. If the finding that notice to a parent is not in the best interests of the minor is based on evidence of physical or sexual abuse, the court shall ensure that such evidence is brought to the attention of the appropriate law enforcement or public child protective agency.

(3) If the judge does not make a finding specified in subdivision (h)(1) or (h)(2), the judge shall deny the petition.

(i) If the judge fails to rule within the time period specified in subdivision (g) and no extension was requested and granted, the petition shall be deemed granted and the notice requirement shall be waived.

(j) The unemancipated minor may appeal the judgment of the juvenile court at any time after the entry of judgment. The Judicial Council shall prescribe, by rule, the practice and procedure on appeal and the time and manner in which any record on appeal shall be prepared and filed and may prescribe forms for such proceedings. These procedures shall require that the hearing shall be held within three court days of filing the notice of appeal. The unemancipated minor shall be notified of the date, time, and place of the hearing. The appellate court shall ensure that the unemancipated minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing an appeal. Judgment on appeal shall be entered within one court day of submission of the matter.

(k) The Judicial Council shall prescribe, by rule, the practice and procedure for petitions for waiver of parental notification, hearings, and entry of judgment as it deems necessary and may prescribe forms for such proceedings. Each court shall provide annually to the Judicial Council, in a manner to be prescribed by the Judicial Council to ensure confidentiality of the unemancipated minors filing petitions, a report of the number of petitions filed, the number of petitions granted under subdivisions (h)(1) or (h)(2), deemed granted under subdivision (i), denied under subdivision (h)(3), and granted or denied under subdivision (j), said reports to be publicly available unless the Judicial Council determines that the data contained in individual reports should be aggregated by county before being made available to the public in order to preserve the confidentiality of the unemancipated minors filing petitions.

(l) The California Department of Public Health shall prescribe forms for the reporting of abortions performed on unemancipated minors by physicians. The report forms shall not identify the unemancipated minor or her parent(s) by name or request other information by which the unemancipated minor or her parent(s) might be identified. The forms shall include the date of the procedure and the unemancipated minor's month and year of birth, the duration of the pregnancy, the type of abortion procedure, the numbers of the unemancipated minor's previous

abortions and deliveries if known, and the facility where the abortion was performed. The forms shall also indicate whether the abortion was performed pursuant to subdivision (c); or (d); or (e); or (f); or (h), (i), or (j).

(m) The physician who performs an abortion on an unemancipated minor shall within one month file a dated and signed report concerning that abortion with the California Department of Public Health on forms prescribed pursuant to subdivision (l). The identity of the physician shall be kept confidential and shall not be subject to disclosure under the California Public Records Act.

(n) The California Department of Public Health shall compile an annual statistical report from the information specified in subdivision (l). The annual report shall not include the identity of any physician who filed a report as required by subdivision (m). The compilation shall include statistical information on the numbers of abortions by month and by county where performed, the minors' ages, the duration of the pregnancies, the types of abortion procedures, the numbers of prior abortions or deliveries where known, and the numbers of abortions performed pursuant to each of subdivision (c); or (d); or (e); or (f); or (h), (i), or (j). The annual statistical report shall be made available to county public health officials, members of the legislature, the governor, and the public.

(o) Any person who performs an abortion on an unemancipated minor and in so doing knowingly or negligently fails to comply with the provisions of this Section shall be liable for damages in a civil action brought by the unemancipated minor, her legal representative, or by a parent wrongfully denied notification. The time for commencement of the action shall be within four years of the date the minor attains majority or four years of the date a parent wrongfully denied notification discovers or reasonably should have discovered the failure to comply with this Section, whichever period expires later, provided, however, that no action may be commenced more than twelve years after the abortion occurred. A person shall not be liable under this Section if the person establishes by written or documentary evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the unemancipated minor or other persons regarding information necessary to comply with this Section were bona fide and true. At any time prior to the rendering of a final judgment in an action brought under this subdivision, the plaintiff may elect to recover, in lieu of actual damages, an award of statutory damages in the amount of $10,000. In addition to any damages awarded under this subdivision, the plaintiff shall be entitled to an award of reasonable attorney fees. Nothing in this Section shall abrogate, limit, or restrict the common law rights of parents, or any right to relief under any theory of

liability that any person or any state or local agency may have under any statute or common law for any injury or damage, including any legal, equitable, or administrative remedy under federal or state law, against any party, with respect to injury to an unemancipated minor from an abortion.

(p) Other than an unemancipated minor who is the patient of a physician, or other than the physician or the physician's agent, any person who knowingly provides false information to a physician or a physician's agent for the purpose of inducing the physician or the physician's agent to believe that pursuant to this Section notice has been or will be delivered to a parent, or that a waiver of notice has been obtained, or that an unemancipated minor is the victim of physical or sexual abuse, or that an unemancipated minor patient is not an unemancipated minor, is guilty of a misdemeanor punishable by a fine of up to $10,000.

(q) Notwithstanding any notice or waivers of notice, except where the particular circumstances of a medical emergency or her own-lack of legal mental capacity precludes obtaining her informed consent, a physician shall not perform or induce an abortion upon an unemancipated minor except with the informed consent of the unemancipated minor herself.

(r) Notwithstanding any notice or waivers of notice, an unemancipated minor who is being coerced by any person through force, threat of force, or threatened or actual deprivation of food or shelter to consent to undergo an abortion may apply to the juvenile court for relief. The court shall give the matter expedited consideration and grant such relief as may be necessary to prevent such coercion.

(s) This Section shall not take effect until 90 days after the election in which it is approved. The Judicial Council shall, within these 90 days, prescribe the rules, practices, and procedures and prepare and make available any forms it may prescribe as provided in subdivision (k). The California Department of Public Health shall, within these 90 days, prepare and make available the forms prescribed in subdivisions (c), (d), and (l).

(t) If any one or more provision, subdivision, sentence, clause, phrase or word of this Section or the application thereof to any person or circumstance is found to be unconstitutional or invalid, the same is hereby declared to be severable and the balance of this Section shall remain effective notwithstanding such unconstitutionality or invalidity. Each provision, subdivision, sentence, clause, phrase or word of this Section would have been approved by voters irrespective of

the fact that any one or more provision, subdivision, sentence, clause, phrase, or word might be declared unconstitutional or invalid.

(u) Except for the rights, duties, privileges, conditions, and limitations specifically provided for in this Section, nothing in this Section shall be construed to grant, secure, or deny any other rights, duties, privileges, conditions, and limitations relating to abortion or the funding thereof.