

SA2004RF0034

November 18, 2004

Ms. Tricia Knight
Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

RECEIVED
NOV 19 2004

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Request for Title & Summary for Proposed Initiative

Dear Ms. Knight:

Pursuant to Article II, Section 10(d) of the California Constitution, we are submitting the attached proposed statewide ballot measure to your office and request that you prepare a title and summary of the measure as provided by law. We have also included with this letter the required signed statement under California Elections Code section 9608, and a check in the amount of \$200.

Thank you for your time and attention to this important matter. Should you have any questions or require additional information, please contact Mr. Mark Bucher, Bucher & Palmer LLP, 18002 Irvine Blvd., Ste 108, Tustin, CA 92780, Phone 714-573-2201.

Very Truly Yours,

Kristen Edwards

Rosemarie Avila

SA2004RF0034

AFFIDAVIT

I, Kristen Edwards, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Kristen Edwards

Dated this 17th day of November, 2004

RECEIVED
NOV 19 2004

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

SA2004RF0034

AFFIDAVIT

I, Rosemarie Avila, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Rosemarie Avila

Dated this 18th day of November, 2004

RECEIVED
NOV 19 2004

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

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

(Here set forth the title and summary prepared by the Attorney General.)

To the Honorable Secretary of State of California:

We, the undersigned, registered, qualified voters of California, residents of _____ County (or City and County), hereby propose amendments to the Constitution of California 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 that general election or otherwise provided by law. The proposed constitutional amendments read as follows:

SECTION 1. Title

This amendment shall be known and may be cited as the Parental Notification and Child Protection Act.

SECTION 2. Declaration of Findings and Purposes

The People of California have a special and compelling interest in and responsibility for protecting the health and well-being of children, ensuring that parents are properly informed of medical decisions involving their children, and promoting parent-child communication and parental responsibility.

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) "Abortion" means the use of any means to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the unborn child and "unborn child" means any individual human organism from fertilization until birth.

For the purposes of this section, abortion shall not mean the use of any contraceptive drug or device.

(2) "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.

(3) "Notice" means a written notification, signed and dated by a physician or his or her agent and addressed to a parent or guardian, informing the parent or guardian that the unemancipated minor is pregnant and that she has requested an abortion.

(4) "Parent or guardian" means either parent if both parents have legal custody, or the parent or person having legal custody, or the legal guardian of a minor.

(5) "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.

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

(b) Notwithstanding Article 1, Section 1, or any other provision of this Constitution or law to the contrary and except in a medical emergency as provided for in subdivision (f), a physician shall not perform an abortion upon a pregnant unemancipated minor until after the physician or the physician's agent has first provided written notice to a parent or guardian either personally as provided for in subdivision (c) and at least forty-eight (48) hours has elapsed after personal delivery of notice; or until the physician can presume that notice has been delivered by mail as provided in subdivision (d) and at least forty-eight (48) hours has elapsed after presumed delivery of notice by mail; or until the physician or the physician's agent has received from a parent or guardian a written waiver of notice as provided for in subdivision (e); or until the physician has received a copy of a waiver of notification from the court as provided in subdivision (h) or (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 or guardian may receive notice as provided for in this section.

(c) The written notice shall be delivered to the parent or guardian personally by the physician or the physician's agent unless delivered by mail as provided in subsection (d). A form for the notice shall be prescribed by the Department of Health Services.

(d) In lieu of the personal delivery required in subdivision (c) of this Section, written notice may be made by certified mail addressed to the parent or guardian at the parent's or guardian's last known address with return receipt requested and restricted delivery to the addressee, which means a postal employee may only deliver the mail to the authorized addressee. Notice can only 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.

(e) Notice as required by this Section may be waived by a parent or guardian. The waiver must be in writing, on a form prescribed by the Department of Health Services, signed by a parent or guardian, dated, and notarized. The written waiver need not be notarized if the parent or guardian personally delivers it to the physician or the physician's agent.

(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 as defined in subdivision (a)(3) of this Section.

(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 or guardian, she may file a petition with the juvenile court. If, pursuant to this subdivision, an unemancipated minor seeks to file a petition, the court shall assist the unemancipated minor or person designated by the unemancipated minor in preparing the petition and notifications required pursuant to this Section. The petition shall set forth with specificity the unemancipated minor's reasons for the request. The court shall ensure that the minor's identity be kept confidential and that all court proceedings

be sealed. No filing fee shall be required for filing a petition. An unemancipated pregnant 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 court shall appoint a guardian ad litem for her. 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, her guardian ad litem, or her counsel. If the guardian ad litem requests an extension, that extension may not be granted for more than one court day without the consent 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.

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

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

(3) If the judge does not make a finding specified in subsection (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.

(l) 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 or guardian wrongfully denied notification. A person shall not be liable under this Section if the person establishes by written 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 parent or guardian 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 guardians, 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.

(m) 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 Department of Health Services shall, within these 90 days, prepare and make available the forms prescribed in subdivisions (c) and (e).

(n) If any one or more provision, subdivision, sentence, clause, phrase or word of this Section n 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.

(o) 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.