The health and welfare of women, minors, and unborn children continues to be at risk in California. Despite numerous attempts over the last several years, it has no parental involvement law. Further, the state prohibits cloning-to-produce-children, but allows cloning-for-biomedical-research, thus it is a “clone-and-kill” state. It also directly funds destructive embryo research.

ABORTION:

- The California Supreme Court has found that the state constitution provides a broader right to abortion than does the U.S. Constitution.

- The state also maintains a “Freedom of Choice Act.” The Act mandates the right to abortion in California even if Roe v. Wade is eventually overturned, specifically providing that “[e]very woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion” and “[t]he state may not deny or interfere with a woman’s right to choose or obtain an abortion prior to the viability of the fetus, or when the abortion is necessary to protect the life or health of the woman.”

- California requires that, prior to an abortion, a woman be informed of the nature of the abortion procedure, possible risks and complications, abortion alternatives, post-procedure medical services, and family planning information.

- A law requiring that a physician have the consent of one parent or a court order prior to performing an abortion on a minor under the age of 18 has been declared unconstitutional by the California Supreme Court.

- California law provides that a person cannot perform or assist in a “nonsurgical abortion” if he or she does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon, or does not have a valid, unrevoked, and unsuspended licence or certificate obtained in accordance with some other provision that authorizes that person to perform or assist in performing a “nonsurgical abortion.”

- The California Supreme Court has mandated that taxpayers pay for “medically necessary” abortions for women eligible for state medical assistance. This requirement essentially equates to funding abortion-on-demand in light of the U.S. Supreme Court’s broad definition of “health” in the context of abortion.
• Grants made by the Adolescent Family Life Program may not be expended for abortions, abortion referrals, or abortion counselling.

• Family planning grants may not be used for abortions or services ancillary to abortions.

• California requires abortion clinics meet rudimentary standards for patient care, equipment, and staffing.

• Only licensed physicians and surgeons may perform surgical abortions.

• California provides direct funding to pregnancy care centers.

• Emergency rooms are required to provide sexual assault victims with information about and access to “emergency contraception.”

• The state allows pharmacists to dispense “emergency contraception” directly and without a prescription.

• Health insurance plans that provide prescription coverage must also provide coverage for contraception. The provision includes an exemption so narrow it excludes the ability of most employers and insurers with moral or religious objections from exercising it.

• California protects “freedom of access” to abortion clinics and has established procedures for investigating “anti-reproductive-rights crimes.”

LEGAL RECOGNITION OF UNBORN AND NEWLY BORN:

• Since 1970, California law has defined the killing of an unborn child after the embryonic stage (seven to eight weeks of gestation) as a form of homicide.

• The state allows wrongful death (civil) actions only when an unborn child is born alive following a negligent or criminal action and dies thereafter.

• The state has created a specific affirmative duty of physicians to provide medical care and treatment to born-alive infants at any stage of development.

• California maintains a “Baby Moses” law, under which a mother or legal guardian who is unable to care for a newborn infant may anonymously and safely leave the infant in the care of a responsible person at a hospital, police station, fire station, or other prescribed location.
• California funds drug treatment programs for pregnant women and newborns.

BIOETHICS LAWS:

• California bans cloning-to-produce-children, but explicitly allows and funds cloning-for-biomedical-research. Thus, it is a clone-and-kill state.

• California funds and protects the “right” to engage in destructive embryo research and human cloning by state constitutional amendment. The state also allows research on “fetal remains.”

• However, the state does promote ethical forms of research by tasking the University of California with developing a plan to establish and administer an Umbilical Cord Blood Collection Program for the purpose of collecting units of umbilical cord blood for public use in transplantation. The state also conducts an “Umbilical Cord Blood Awareness Campaign” to disseminate information about cord blood banking options.

• California maintains some regulations of assisted reproductive technologies, including a degree of informed consent. This informed consent requirement includes a provision that a patient be provided information on embryo donation.

• The state requires that any advertising for egg donors (for fertility treatments) contain a statement that “there may be risks associated with human egg donation.” No eggs shall be sold for “valuable consideration,” which does not include reasonable payment for the removal, processing, disposal, preservation, quality control, and storage of eggs.

END OF LIFE LAWS:

• California expressly prohibits assisted suicide by statute. In 1996, the Ninth Circuit Court of Appeals upheld the felony charge that accompanies this prohibition.

• However, in 2008, the state enacted a measure that requires physicians to provide end-of-life counseling to patients.

• California has amended its medical school curriculum requirements to include instruction on pain management and end-of-life issues.
HEALTHCARE
RIGHTS OF CONSCIENCE LAWS:

Participation in Abortion:

- California currently provides legal protection for individual healthcare workers and private healthcare institutions that conscientiously object to participating in abortions. Protection also extends to medical and nursing students. However, this protection does not apply in medical emergencies.

- The state provides some protection for the civil rights of pharmacists and pharmacies.

Participation in Research Harmful to Human Life:

- California currently provides no protection for the rights of healthcare providers who conscientiously object to participation in human cloning, destructive embryo research, or other forms of immoral medical research.

WHAT HAPPENED IN 2011:

- California considered a measure strengthening existing informed consent for abortion requirements.

- The state also considered legislation designed to curb substance abuse by pregnant women.

- California considered a number of measures related to regulation of assisted reproductive technologies (ART), parentage and inheritance rights of children conceived using ART, and requiring or regulating insurance coverage for ART.

- The state also considered legislation prohibiting discrimination on the basis of genetic information under the state’s “Fair Employment and Housing Act” and the “Unruh Act,” which prohibits discrimination on the basis of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation.

- California was one of the only states this session to address human egg harvesting, considering a bill that would have required any advertisement seeking oocyte donation (associated with the delivery of fertility treatment) to contain a notice relating to the potential health risks associated with human egg donation.

- California did not consider any measures related to end-of-life issues or healthcare right
RECOMMENDATIONS FOR CALIFORNIA

TOP PRIORITIES:

- State Constitutional Amendment (providing that there is no state constitutional right to abortion)
- Personhood Preamble
- Repeal of State FOCA
- Abortion-Mandate Opt-Out Act
- Abortion Subsidy Prohibition Act
- Parental Notification for Abortion Act (or parental notice voter initiative)
- Women’s Health Protection Act
- Abortion-Inducing Drugs Safety Act

OTHER PRIORITIES:

Abortion

- Women’s Ultrasound Right to Know Act
- Coercive Abuse Against Mothers Prevention Act
- Child Protection Act
- Joint Resolution Commending Pregnancy Centers

Legal Recognition and Protection for the Unborn:

- Amend fetal homicide law to protect unborn from conception
- Unborn Wrongful Death Act
- Statutory prohibition on wrongful birth and wrongful life lawsuits
- Pregnant Woman’s Protection Act

Bioethics:

- Constitutional amendment banning state funding for human cloning and destructive embryo research

Healthcare Freedom of Conscience:

- Healthcare Freedom of Conscience Act