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**REPORT ON
STATE MEASURE NO. 7**

**PROHIBITS STATE EXPENDITURES, PROGRAMS
OR SERVICES FOR ABORTION**

The Committee: Margery Abbott, Harriet Anani, Roy D. Lambert, A. Thomas Niebergall, Randolph West, Jean G. Frost, *Chairman*; Gerard R. Griffin, *abstaining*.

**REPORT ON
STATE MEASURE NO. 9**

LIMITATIONS ON PUBLIC UTILITY RATE BASE

The Committee: Willard W. Bone, William V. Bottler, Ruth Bucknam, John A. Carlson, Frank E. Blachly, *Chairman*.

**REPORT ON
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**LAND USE PLANNING, ZONING
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The Committee: Donna M. Drummond, John Malick, Walter W. McMonies, Jr., Cristy Muller, Dana Rasmussen, Richard S. Wilhelmi, Mark D. Whitlow, *Chairman*.

**RESEARCH BOARD STATEMENT ON STATE MEASURES
NO. 3 and 5; MULT. CO. MEASURES 26-20 and 26-21; and
MUNICIPAL MEASURES NO. 51, 52, and 53**

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REPORT ON
STATE MEASURE NO. 7
PROHIBITS STATE EXPENDITURES, PROGRAMS
OR SERVICES FOR ABORTION

Purpose: "Measure prohibits any State agency from spending any State money for abortions, and from providing any programs or services promoting abortion."

AN ACT

BE IT ENACTED by the people of the State of Oregon that the following new law be created and read as follows:

SECTION 1. Notwithstanding any other provision of law, no agency of this state shall expend State monies for abortions or provide programs or services that promote abortion.

To the Board of Governors,
The City Club of Portland:

I. INTRODUCTION

Your Committee was appointed to study and report on State Measure No. 7. Our investigation covered the issues relating to:

- a. *funding*, i.e., what would be the effect of eliminating these programs and services and would their elimination save the State money?
- b. *scope of proposed legislation*, i.e., what is the scope of the programs and services which might be defined as "promoting abortion"?

Although your Committee is mindful of the deep emotional reaction the entire abortion question generates in the minds and hearts of many Oregonians, abortion is, in the 1973 opinions of the U.S. Supreme Court, a legal medical procedure. Consequently, your Committee has limited its considerations and this report to the very narrow question of state funding of abortions. Whenever the term "abortion" is used in this report, it refers to "induced abortions" only.

Because of the substantial number of technical terms used in the report, a glossary is included as Appendix A. Listings of all individuals contacted and all sources used are included as Appendices B and C.

II. HISTORY AND BACKGROUND INFORMATION

Until the early nineteen seventies many states had laws (enacted for the most part in the latter half of the nineteenth century) making abortion illegal except where the mother's life was at stake. Oregon's own statute, enacted in 1969 and still on its books today, restricted abortions to circumstances involving either (1) substantial risk to the mother's physical or mental health, (2) a fetus with a serious physical or mental defect, or (3) pregnancy resulting from felonious intercourse. Such laws were held to be unconstitutional in January, 1973 by the U.S. Supreme Court in the case of *Roe v. Wade* and the companion case of *Doe v. Bolton*.

The Court held that during the first trimester of pregnancy—when the risk of mortality in abortion may be less than mortality in normal childbirth—the abortion decision must be left to the medical judgment of the pregnant woman's attending physician without regulation by a state. During the second trimester, a state may regulate the abortion procedure in ways that are reasonably related to the preservation and protection of maternal health. In the third trimester—when the fetus presumably has the capability of surviving outside the womb—a state may regulate and even proscribe abortion, except

where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

In 1976 and 1977, Congress changed the provisions for federal funding of abortions and ultimately prohibited the expenditure of federal funds for abortion (on a maximum 90 percent match basis with the state) except

“ . . . where the life of the mother would be endangered if the fetus were carried to term; . . . for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service; or . . . in those instances where severe and long-lasting physical health damage to the mother would result if pregnancy were carried to term when so determined by two physicians.” P.L. No. 95-205, Section 101 [91 Stat. 1460] (Dec. 9, 1977)

Prior to implementation of this legislation, Oregon's Department of Human Resources had paid for (and received federal contributions for) abortions requested by all women who were eligible for welfare.

Following implementation of the federal funding cut-back on August 5, 1977, the Oregon Department of Human Resources requested an Emergency Fund allocation of \$1,820,612 to replace the federal funds. After considerable debate, the Emergency Board voted to allocate \$200,000 as a stopgap measure to provide a restricted level of abortion services until further consideration could be given to the question.

The Emergency Board then voted in February, 1978, to allocate an additional \$481,790 to supplement the prior legislative appropriation for abortion services. Funding cutbacks affected existing programs and only provided funds for services to the following persons:

- 1) Women 18 years of age and older who were clients of Adult and Family Services Division, Department of Human Resources, at the time of conception; or
- 2) Women 17 years of age and younger who were welfare-eligible or already in foster care, or under the jurisdiction of the Children's Services Division, Department of Human Resources.

The Adult and Family Services Division and the Health Division of the Department of Human Resources have provided statistical information on the actual costs of the program to the state. In Fiscal Year 1977-78, there were a total of 13,163 abortions reported in Oregon. Of these, 1,738 (13.2 percent) were state funded. The actual cost to the state was \$480,552 and to the federal government \$213,983. Prior to the Emergency Board action in February, 1978, 13 percent of the abortions in Oregon were funded by the state; after the change in definition of eligibility in February, 1978, six percent, or 312, were state funded, and 11 of these qualified for federal match funding.

III. ARGUMENTS FOR AND AGAINST MEASURE 7

The following arguments were compiled from numerous interviews, statements, and reports from other groups concerned with the question. No attempt is made in this section to assess the validity of any argument presented by either proponents or opponents of Measure 7.

A. Arguments advanced for the Measure (and in opposition to state funding of abortions)

1. The passage of Measure 7 would mean a direct savings to the state of as much as \$3 million for the 1978-79 biennium.
2. The Measure would provide indirect savings which are much greater than the direct savings. The estimated productivity of an individual to the State of Oregon is \$146,422 over an average lifetime.

3. The Measure would eliminate the use of tax money for a program which many taxpayers feel is morally wrong. The state should not be in the business of promoting abortions.

4. This Measure would not cover medical procedures to save a pregnant woman's life. The term "major abdominal surgery" rather than "abortion" applies in most situations where the pregnant woman's life is in danger.

5. Carrying pregnancy to term instead of inducing abortion in women eligible for state funding will not increase the cost to the state. There is a long list of couples who wish to adopt children, including handicapped children, and who are willing to pay the mother's hospital costs.

6. Measure 7 will not in any way limit privately financed abortions.

7. There are alternative ways for a welfare-eligible woman to obtain an abortion if she chooses or if her life or health is in danger.

8. The Measure would not preclude the training of doctors and nurses in medical schools. There are other medically valid reasons for teaching the abortion procedure.

9. The Measure would prevent women from being pressured into obtaining an abortion. It would not affect genetic counseling or family planning clinics unless they are "promoting abortion."

10. Money now used for state funded abortions could be better used for improved family planning and counseling for welfare-eligible women in order to prevent unwanted pregnancy.

11. The Measure would eliminate welfare fraud relating to abortions.

B. Arguments advanced against the Measure (and in favor of state funding of abortions)

1. Measure 7 would increase the state's financial burden. The Division of Adult and Family Services estimates that the potential cost of discontinuing the abortion program may range as high as \$14 million for the 1978-79 biennium to pay for hospital and medical costs associated with delivery and additional support costs for the newborn children.

2. The Measure restricts access to necessary medical care for a substantial proportion of Oregon's population.

3. The Measure establishes the precedent of allowing government, rather than doctors and patients, to determine which individuals require and/or deserve medical care.

4. The breadth of the proposal and the failure of the Measure to define the meaning of the phrase "provide programs or services that promote abortion" will result in numerous lawsuits to establish the obligation of the state to fund therapeutic abortions.

5. The U.S. Supreme Court has determined that a woman has a constitutional right to consider the option of abortion and that the decision should be left to a woman and the medical judgment of her physician. This Measure would eliminate that option for welfare-eligible women.

6. No governmental funding would be available under this Measure regardless of the health risks to the mother, circumstances of conception, or the probability of a severely defective fetus.

7. Roughly one-third of the women obtaining abortions are teenagers. Childbearing for teenagers carries with it an increased risk of obstetric complications, poor pregnancy outcome (including low birth weight infants and a disproportionate share of perinatal deaths and developmentally impaired children) and social disruption.

8. Prospective adoptive parents cannot be expected to bear the costs of state-funded childbirth as indicated by the fact that over 90 percent of the unmarried women who do give birth elect to keep their children.

9. Bearing and keeping a child greatly decreases the chances of welfare-eligible women becoming self-supporting.

10. The restriction on programs that "promote abortion" would affect both the state amniocentesis program and family planning clinics and might prohibit medical and nursing school training for abortion at the University of Oregon Health Sciences Center.

11. State employees could be denied coverage for abortion on their health plans, which could cause the state-paid premiums to rise.

12. All hospitals in the state might be prevented from performing abortions since they require state licensure.

IV. DISCUSSION

A. The Right to Abortions

The U.S. Supreme Court has established the constitutional right of women to obtain abortions in the first and second trimester of pregnancy. Your Committee accepts this legal interpretation as a "given" and has confirmed its examination to those issues relating to state funding of abortions.

Measure 7 directly affects women who are eligible for Aid to Families with Dependent Children grants or who are under the jurisdiction of the Children's Services Division. Your Committee is concerned by the effect the Measure would have in denying low income women a medical choice available to other pregnant women when this choice is eliminated. No evidence has been presented to support the assertion that these women can obtain abortions when they do not have the ability to pay (although your Committee is aware that free abortions have been provided on rare occasions). This potential inequality becomes particularly important when the life or health of the woman is at stake. The argument that termination of pregnancy in order to save the life of the woman is not an "abortion" is not supported by legal precedent. It appears that litigation may be necessary to determine the right of welfare-eligible women to obtain this type of medical procedure.

B. Financial Aspects

1. *Costs for Fiscal Year 1979.* Measure 7 is presented by its proponents primarily as a tax saving measure. Your Committee obtained estimates of the direct costs to the state related to the funding of abortions for welfare-eligible women. No estimates were available relating to the costs of "programs or services that promote abortion." According to the Adult and Family Services Division, approximately \$2 million would have been spent during the current biennium had the state-financed abortion program received full funding. The Division also projects that direct savings from discontinuing the program would range from \$230,334 to \$1,743,719 for Fiscal Year 1979 depending on the assumptions relating to case load and cost of abortions.

However, estimates have also been made by the Adult and Family Services Division of increased costs for prenatal care and delivery and of ongoing grants for Aid to Families with Dependent Children resulting from the restriction of state funding for abortions. Projected costs range from \$4,268,764 to \$14,287,792 for Fiscal Year 1979. The variations depend on the number of women who carry to term and the number of children released for adoption.

Proponents argue that the costs associated with carrying the fetus to term will not be financed by the state because the children will be adopted and the adoptive parents will reimburse the state for these costs. The Children's Services Division has stated that it neither requests nor expects adoptive families to reimburse the state for delivery costs. Your Committee has found strong evidence that at least 90 percent of the children will be kept by their mothers and fewer than 10 percent placed for adoption.

It is clear to your Committee that no precise estimates can be made of the direct costs to the state because of the number of variables resulting from Measure 7. However, your Committee believes that it may be reasonably anticipated that elimination of state funding for abortion will result in increased costs to the taxpayers of Oregon, as indi-

cated by the above figures. These figures indicate that the direct cost to the taxpayers could increase by at least a factor of two in Fiscal Year 1979.

2. *Long Term Costs.* An additional financial argument raised by the proponents is that the economic analysis of the impact of abortion funding cannot be confined to the immediate costs to the state but must, rather, include the loss to the economy for each potential life which is terminated. The proponents have calculated that "the average direct productivity loss to Oregon whenever an unborn baby is destroyed is . . . \$146,422." This figure is derived from data developed by the National Highway Traffic Safety Administration in 1976, corrected to apply to Oregon in 1978. The figure, however, is not directly applicable as stated by the proponents. It is an average for all segments of society and cannot be accurately applied to a specific segment such as children born of welfare-eligible women. The national average or even the state average may not be applicable to such children.

An additional element would have to be included if long-term costs to the state were to be analyzed, that being the cost of maintaining a child on welfare. The cost of one mother and one child on Aid to Families with Dependent Children for 18 years, assuming no cost-of-living adjustments, has been estimated to be \$73,757.¹ Your Committee believes that the assertion of long-term savings to the state, if state funding of abortion is prohibited, must be weighed against the substantial unknown variables relating to long-term welfare cost estimates and the uncertainties in the available data.

A further important financial consideration is that the elimination of state funding for all abortions will result in the elimination of partial federal funding under those circumstances where a federal contribution would otherwise be available.

Your Committee has found no cost data relating to other programs which might be affected, but prohibition of programs or services "promoting abortion" could affect family planning programs and genetic counseling programs, among others. These would include state programs and private programs which receive state funding.

C. Absolute Prohibition of Programs and Services

As drafted, the language of Measure 7 provides for no exceptions to the prohibition of state funds for abortions or for programs or services which promote abortions. The provision is much more stringent than corresponding federal legislation and could limit the access of women to necessary medical care as well as prohibiting induced abortions. Because of the Measure's all-encompassing language, at least the following issues will require administrative resolution and/or litigation if this Measure is passed:

1. *Constitutionality.* The constitutionality of withdrawing state funds for abortion may be questioned at least where the life or physical health of the woman is threatened. Current federal law provides for contribution towards the cost of abortion, based on matching state funds.
2. *Definition of abortion in Oregon.* Proponents of the Measure argue that abortion where the life of the woman is at stake will not be affected because it normally falls within the category of major abdominal surgery—not abortion. Judicial definitions do not support this contention. The Uniform Abortion Act, for example, defines abortion as the "termination of human pregnancy with an intention other than to promote live birth or to remove a dead fetus."
3. *Definition of "promoting abortion."* The phrase "promoting abortion" used in the ballot measure could be interpreted as precluding training in abortion procedure at state medical and nursing schools, prohibiting or limiting any state or state-funded counseling programs which discuss abortion as an alternative, preventing all hospitals in the state from performing abortions (since hospitals require state licensing) or prohibiting any state-funded or licensed facility from performing test procedures designed to disclose deformities of the fetus during pregnancy.

¹ Letter from Governor Bob Straub to David Kruse, Gladstone, Oregon, July 25, 1978.

D. Medical Considerations

Measure 7 would limit access to abortion for welfare-eligible women. While specific data are not available for this group, approximately one-third of the induced abortions in 1977 involved teenage women.² There is strong evidence for the fact that pregnancy among teenagers results in a higher than normal percentage of premature or low birthweight babies, perinatal deaths and other obstetric complications.³ Young parental age has also been associated with decreased educational attainment, marital instability and child abuse.⁴ Denial of state-funded abortions for eligible teenage women could thus result in increased medical and other complications which could decrease if childbearing were postponed.

Some women who would be eligible for state-funded abortions will obtain abortions even if state funding were not available. This could result in two potential problems:

1. The reappearance in Oregon of non-medical abortions and their resultant medical complications; or
2. Delays in performing an abortion while a woman obtained funds exposes her to vastly increased risks of death. There is 50 times the chance of maternal mortality for an abortion performed at 16 weeks or later than for an abortion performed before nine weeks gestation.⁵

As noted above, the Measure makes no provision for abortion to protect the life of the woman. Neither does it allow for therapeutic abortion when the health of the woman is at stake, nor for abortion following rape or incest. Federal funding is now available under these conditions but would be denied following the elimination of the state matching funds under Measure 7.

E. Other Arguments

1. While proponents of Measure 7 have argued that the elimination of state funds for abortions will prevent welfare fraud, no evidence of such alleged fraud was presented by the proponents to support this argument and your Committee did not investigate further.

2. The proponents have also stated that they are concerned that pregnant women are pressured into having abortions by clinics, counseling centers and volunteer agencies. They have stated that women are not given any realistic alternatives to abortion during counseling sessions. No evidence was presented by the proponents to support this argument and your Committee did not investigate further.

Your Committee finds:

V. CONCLUSIONS

1. no solid evidence that passage of Measure 7 will provide any decrease in state expenditures or relief to taxpayers;
2. it may be reasonably anticipated that direct costs to the taxpayer could increase by at least a factor of two in Fiscal Year 1979;
3. passage of the Measure would create a disproportionate financial hardship and deny a legal medical procedure to that class of citizens least able to afford such an impact;
4. passage of Measure 7 would unnecessarily increase the health risks to welfare-eligible women; and
5. the broad sweeping nature of the language used in the ballot measure allows no exceptions and will create uncertainty in a number of areas, which will ultimately be resolved either by administrative rule or litigation.

²Vital Statistics Section, Oregon State Health Division

³New England Journal of Medicine, June 29, 1978, p. 1475.

⁴Ibid. p. 1476.

⁵Ibid. p. 1475.

VII. RECOMMENDATION

Your Committee therefore recommends a "NO" vote on Measure 7.

Respectfully submitted,*

Margery Abbott

Harriet Anani

Roy D. Lambert

A. Thomas Niebergall

Randolph West

Jean G. Frost, *Chairman*

*Committee member Gerard R. Griffin requested the following statement be inserted:

My religious convictions preclude my endorsement of an otherwise unanimous study committee recommendation that City Club members vote against Measure 7.

On the other hand, Measure 7, as written, is so loaded with present and future problems of enormous sociological impact for individuals and additional economic costs to the State of Oregon, that neither can I vote for Measure 7.

Therefore, I abstain.

Gerard R. Griffin

