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Medi-Cal abortion suit gets unusual interest

□ A Louisiana state prosecutor is wheeling out a 13-year-old abortion case in an attempt to reinstate an 1855 ban on the procedure. Page A5.

By Claire Cooper
Bee Legal Affairs Writer

SAN FRANCISCO — A case that could become a test of post-Roe vs. Wade abortion rights in California was filed Tuesday in the state Court of Appeal.

Prepared by the Committee to Defend Reproductive Rights, the case is the 12th annual challenge to state budget restrictions that would eliminate about 90 percent of Medi-Cal abortions. Since the California courts have nullified the restrictions every year, it normally would merit little attention.

This year, however, in the wake of the U.S. Supreme Court's decision upholding restrictions on abortions in Missouri, the annual Medi-Cal challenge is being watched closely.

The Assembly Republican Caucus has urged the California Supreme Court to take over the case without waiting for the Court of Appeal to decide it and to use it to bring California's

abortion laws in line with the U.S. court's new standards.

Acting last week in the case of Webster vs. Reproductive Health Services, the nation's highest court gave the states broad powers to restrict privately as well as publicly funded abortions.

Janet Carroll, lobbyist for National Right To Life, said Tuesday, "I'm just hoping that Webster decision will provide an impetus for the California Supreme Court to take on the increased responsibilities that the U.S. Supreme Court apparently wants to hand back to the states."

In California, abortion has been largely unregulated for two decades. The state Supreme Court first declared a constitutional right to abortion in 1969. In a key decision in 1981, it ruled that abortion was protected by the state constitution's privacy clause.

The state Supreme Court has consistently refused to reconsider the 1981 decision — even after conservative justices formed a majority in 1987. The Missouri decision could turn the tide.

Malcolm Lucas, California's new chief justice, and Justice Edward Panelli have voted in the past to review the Medi-Cal decision, and Justice Marcus Kaufman has told court watchers not to read too much into the other justices' past reluctance to do so.

Margaret Crosby, an American Civil Liberties Union attorney who has handled the Medi-Cal abortion challenge every year, said Tuesday: "I would be astonished if this (California Supreme Court) took the issue out of the hands of the Court of Appeal."

She also said she doesn't expect the state Supreme Court to reverse its position once it is confronted with a petition to review the Court of Appeal's decision.

Reversing precedent "really degrades the court as an institution," she said.

She has asked the Court of Appeal to stay the Medi-Cal funding restrictions by Friday. If the usual timetable is followed, the Court of Appeal will issue a stay order this week and a final decision in September. The state Supreme Court then will vote in mid-December whether to take on the case.

In addition to the Committee to Defend Reproductive Rights, petitioners in the case include the Coalition of California Welfare Rights Organizations, Comision Femenil de Los Angeles, three physicians who perform abortions and a state taxpayer.

At a press conference at ACLU headquarters, pro-choice advocates contended that they speak for the majority of Californians. They said a majority of California legislators also support the pro-choice position.

Although the Legislature voted by a slim margin to include abortion restrictions in this year's Medi-Cal budget, other anti-abortion bills were killed in committee, ACLU legislative director Margaret Pena said.

Now that the Missouri case has been decided, Pena said, pro-choice groups are on the lookout for anti-abortion amendments that could be slipped into bills the committees have already cleared. She said that legislative staff members "have come out of the woodwork" to help the pro-choicers.

"We have a well-oiled machine in place," she said.