

No. S147999

**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

In re MARRIAGE CASES

Judicial Council Coordination Proceeding No. 4365
First Appellate District No. A110463 (Consolidated on appeal with Nos. A110449,
A110450, A110451, A110651, A110652)

GREGORY CLINTON, et al.,
Plaintiffs-Petitioners, and Respondents,
v.
STATE OF CALIFORNIA, et al.,
Defendants-Respondents, and Appellants.

SUPPLEMENTAL BRIEFING

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INTRODUCTION

On June 20, 2007, this Court requested supplemental briefing on the following issues:

1. What differences in legal rights or benefits and legal obligations or duties exist under current California law affecting those couples who are registered domestic partners as compared to those couples who are legally married spouses?
2. What, if any, are the minimum, constitutionally-guaranteed substantive attributes or rights that are embodied within the fundamental constitutional "right to marry" that is referred to in cases such as *Perez v. Sharp* (1948) 32 Cal.2d 711, 713-714? In other words, what set of substantive rights and/or obligations, if any, does a married couple possess that, because of their constitutionally protected status under the state Constitution, may not (in the absence of a compelling interest) be eliminated or abrogated by the Legislature, or by the people through the initiative process, without amending the California Constitution?
3. Do the terms "marriage" or "marry" themselves have constitutional significance under the California Constitution? Could the Legislature, consistent with the California Constitution, change the name of the legal relationship of "marriage" to some other name, assuming the legislation preserved all of the rights and obligations that are now associated with marriage?
4. Should Family Code section 308.5 - which provides that "[o]nly marriage between a man and a woman is valid or recognized in California" - be interpreted to prohibit only the recognition in California of same-sex marriages that are entered into in another state or country or does the provision also apply to and prohibit same-sex marriages entered into within California? Under the Full Faith and Credit Clause and the Privileges and Immunities Clause of the federal Constitution (U.S. Const., art. IV, §§ 1, 2, cl.1), could California recognize same-sex marriages that are entered into within California but deny such recognition to same-sex marriages that are entered into in another state? Do these federal constitutional provisions affect how Family Code section 308.5 should be interpreted?

ARGUMENT

Supplemental Question 1: What differences in legal rights or benefits and legal obligations or duties exist under current California law affecting those couples who are registered domestic partners as compared to those couples who are legally married spouses?

I. SIGNIFICANT DIFFERENCES EXIST BETWEEN THE RIGHTS AND BENEFITS OF MARRIED COUPLES AND THOSE OF COUPLES WHO ARE REGISTERED DOMESTIC PARTNERS

A. Domestic partnerships are not universally understood or accepted

Marriage is an institution universally understood and respected by many as “one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.” *Loving v. Commonwealth of Virginia*, (1967) 388 U.S. 1, 12, citing *Skinner v. State of Oklahoma*, (1942) 316 U.S. 535, 541. Specifically, when a couple says they are “married” there is no question about what kind of relationship is being referenced. No further explanation is necessary because marriage is recognized as “the most socially productive and individually fulfilling relationship that one can enjoy in the course of a lifetime.” *Marvin v. Marvin* (1976) 18 Cal.3d 660, 684.

Domestic partnerships laws, on the other hand, provide some of the legal and statutory benefits of marriage to registered same-gender couples but relegate them to a separate system. The purpose of the Domestic Partner Act is set forth in *Family Code* §297.5, in which the Legislature declares: “This act is intended to help California *move closer* to fulfilling the promises of inalienable rights, liberty, and equality contained in Sections 1 and 7 of Article 1 of the California

Constitution by providing all caring and committed couples, regardless of their gender or sexual orientation, the opportunity to obtain essential rights, protections, and benefits and to assume corresponding responsibilities, obligations, and duties and to further the state's interests in promoting stable and lasting family relationships, and protecting Californians from the economic and social consequences of abandonment, separation, the death of loved ones, and other life crises.” *Koebke v. Bernardo Heights Country Club* (2005) 36 Cal. 4th 824, 838 citing [Stats. 2003, ch. 421, § 1, subd. (a)], (emphasis added.). To that end, while the motivation behind enacting domestic partnership laws is to “move closer” to equality, as the Third Appellate District noted, “marriage is considered a more substantial relationship and is accorded a greater stature than domestic partnership.” *Knight v. Superior Court* (2005) 128 Cal.App.4th 14, 30; see also, *Velez v. Smith* (2006) 142 Cal.App.4th 1154, 1173.

Thus, as the cases cited above demonstrate, married couples enjoy a status that is accepted and recognized throughout the country while domestic partnerships are not afforded the same regard. At this basic level, the two are inherently unequal. And when this unequal status is evident in California, it is even more evident outside of our state. For example, when registered domestic partners leave California there have no guarantee that their relationship will be recognized or even understood in other states. In fact, that domestic partners are must perpetually explain the significance of their relationship shows the inferior status of domestic partnerships.

Therefore, a significant difference between marriage and domestic partnerships is the *recognition and status* afforded to married couples but not to domestic partners.

B. The formation and dissolution of domestic partnerships differs from marriage

There are numerous differences involved in the formation and dissolution of domestic partnerships versus marriage. Specifically, marriage laws contain more exceptions and a higher degree of formality that evidences recognition of a superior status when compared to domestic partnerships. *Knight, supra*, 128 Cal.App.4th at p. 30.

1. Formation of domestic partnerships vs. marriage

In order to register as domestic partners a couple must first meet criteria set forth in California *Family Code* § 297 (b)1-6. One criteria is that domestic partners must both have a common residence. *Cal. Fam. Code* §297 (b)(1). On the other hand, no such requirement exists for couples seeking civil marriage. In fact, many couples that do decide to marry share religious beliefs that preclude living together before entering into marriage. In addition, as noted by the court in *Knight*, even “prison inmates have the right and ability to marry despite the fact that they are incarcerated, do not currently reside with their intended spouse, and

might never reside with their spouse....” *Knight, supra*, 128 Cal. App. 4th at p. 30.

Also, domestic partners must both be over the age of eighteen. *Cal. Fam. Code* § 297 (b)(4). On the other hand, couples seeking civil marriage can be married if they are under eighteen so long as they have consent of a parent or upon court order. *Cal. Fam. Code* §302 (a) & (b). No comparable exception is provided in the domestic partnership act.

Generally, a marriage must be licensed, solemnized, and authenticated to be valid. *Cal. Fam. Code* §307. But domestic partners are only required to file a Declaration of Domestic Partnership with the Secretary of State. *Cal. Fam. Code* § 298.5.

2. Dissolution of domestic partnerships vs. marriage

A marriage can be dissolved in only one of the three following ways: (1) Death of one of the parties; (2) A judgment of dissolution of marriage; or (3) A judgment of nullity of marriage. *Cal. Fam. Code* § 310 (a)-(c). See also *Cal. Fam. Code* §§ 2400-2406. Therefore, a marriage in California “can be dissolved only by consent of the state, and upon statutory grounds, presented in good faith to a court of competent jurisdiction.” *Rehfuss v. Rehfuss* (1915) 169 Cal. 86, 92.

On the other hand, domestic partnerships can be terminated without filing a proceeding for dissolution of domestic partnership, and instead by the filing of a

Notice of Termination of Domestic Partnership with the Secretary of State. Cal.

Fam. Code § 299.

C. Domestic partners are ineligible to participate in the Public Employees Long-Term Care Act

The Public Employees' Long-Term Care Act provides an opportunity for public employees to purchase long term care for their spouses, parents, siblings and spouse's parents. Cal. Gov. Code § 21661 (d) 1-7. However the Domestic Partnership Act contains a specific exclusion from this section, stating that "nothing in this section applies to modify eligibility for long-term care plans pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2 of the Government Code." Cal. *Fam. Code* § 297.5 (g). Therefore, registered domestic partners and the domestic partner's parents are excluded from participation.

D. Domestic partners do not have a putative spouse exception

The California *Family Code* contains a provision providing an exception for couples whose marriage is void or voidable but either or both parties believed in good faith that the marriage was valid. Cal. *Fam. Code* § 2251. As a result, if the court makes this finding then the court declares the party or parties to have the status of putative spouse. Cal. *Fam. Code* § 2251 (1).

However, this same putative spouse exception is not available to registered domestic partners. *Velez*, supra, 142 Cal.App.4th at p. 1174. The court in *Velez* observed “that given the different and less stringent requirements for formation of a domestic partnership, the Legislature may not have wanted to create a putative domestic partnership status to grant parties dissolution rights despite the invalidity of the relationship due to a legal infirmity.”

These differences between marriage and domestic partnerships emphasize what the Clinton Petitioners already understand: domestic partnerships are not a substitute for marriage.

Supplemental Question 2: What, if any, are the minimum, constitutionally-guaranteed substantive attributes or rights that are embodied within the fundamental constitutional “right to marry” that is referred to in cases such as *Perez v. Sharp* (1948) 32 Cal.2d 711, 713-714? In other words, what set of substantive rights and/or obligations, if any, does a married couple possess that, because of their constitutionally protected status under the state Constitution, may not (in the absence of a compelling interest) be eliminated or abrogated by the Legislature, or by the people through the initiative process, without amending the California Constitution?

I. THE FUNDAMENTAL RIGHT TO MARRY UNDER CALIFORNIA’S CONSTITUTION IS THE PERSONAL RIGHT TO MARRY THE INDIVIDUAL OF ONE’S CHOICE

This Court stated in *Perez* that “marriage is something more than a civil contract subject to regulation by the state; it is a fundamental right of free men.” *Perez v. Sharp* (1948) 32 Cal.2d 711, 714. While the “fundamental right to marry” is not specifically enumerated in the California Constitution, it “is no impediment to the existence of the right.” *People v. Belous* (1969) 71 Cal. 2d 954,

963. To that end, the fundamental nature of the “right to marry” has been established in many different contexts. *Loving v. Virginia* (1967) 388 U.S. 1, 12 [marriage as “fundamental freedom” under due process]; *Perez, supra*, 32 Cal.2d at pgs. 731-732 [impairment of right to marry on basis of race violated equal protection]; *Ortiz v. Los Angeles Police Relief Assoc., Inc.* (2002) 98 Cal.App.4th 1288, 1303 [“under the state Constitution, the right to marry and the right of intimate association are virtually synonymous.”]; *People v. Belous* (1969) 71 Cal.2d 954, 963 (citation omitted) [“right of privacy” or “liberty” in marriage]; *Elden v. Sheldon* (1988) 46 Cal.3d 267, 274-275 [“policy favoring marriage is rooted in necessity of providing an institutional basis for defining the fundamental relation rights and responsibilities of persons in organized society.” (citations omitted)].

What these opinions demonstrate is that the personal and intimate nature of the relationship is regarded as a liberty interest associated with the ability to choose the individual one wants to marry. And while courts acknowledge that the State does maintain the ability to make reasonable regulations pertaining to marriage, it is when the State attempts to completely deny access to a class of individuals based upon that individual’s choice of who they wish to marry, when the “fundamental” nature of marriage becomes evident. *Perez, supra*, 32 Cal.2d at p. 715 [“a statute that prohibits an individual from marrying a member of a race other than his own restricts the scope of his choice and thereby restricts his right to marry.”]; *In re Carrafa* (1978) 77 Cal. App. 3d 788, 791-792 [upholding

fundamental right of inmate to marry]; *Ortiz, supra*, 98 Cal.App.4th at p. 1312 [finding “conflict of interest” marriage restriction did not require strict scrutiny because “the rule [was] not a flat prohibition on marriage that affects entire classes of individuals statewide. [Defendant] did not (*and could not*) prohibit Ortiz and Estrada from getting married.” (emphasis added).

This absolute denial of the Clinton Petitioners right to marry the person of their choice triggers strict judicial scrutiny. Indeed, the State does prescribe many aspects of how two people can enter into marriage, but California courts nonetheless become particularly concerned when the regulation *completely denies* access to the institution for an entire class of individuals.

Supplemental Question 3: Do the terms "marriage" or "marry" themselves have constitutional significance under the California Constitution? Could the Legislature, consistent with the California Constitution, change the name of the legal relationship of "marriage" to some other name, assuming the legislation preserved all of the rights and obligations that are now associated with marriage?

I. MARRIAGE HAS CONSTITUTIONAL SIGNIFICANCE UNDER THE CALIFORNIA CONSTITUTION WHICH PRECLUDES THE LEGISLATURE FROM CHANGING THE NAME “MARRIAGE”

The term “marriage” has significant meaning under the California Constitution. While there are aspects of civil marriage that bestow legal obligations and rights, marriage represents something more than just this conveyance of rights, it is a relationship that is recognized as “intimate to the degree of being sacred.” *Ortiz, supra*, 98 Cal.App.4th at p. 1303 [citing *Griswold v. Connecticut* (1965) 381 U.S. 479, 486].

As explained in Section I (A) of this brief, there are significant social and cultural aspects that are intertwined with the term marriage. For example, once a couple becomes married their relationship is elevated and accorded greater validity and recognition by society. This recognition is part of the fundamental nature of marriage. As Justice Kennard observed, “for many, marriage is the most significant and most highly treasured experience in a lifetime. Individuals in loving same-sex relationships have waited years, sometimes several decades, for a chance to wed, yearning to obtain the public validation that only marriage can give.” *Lockyer v. City of San Francisco* (2004) 33 Cal. 4th 1055, 1132.

Further as described in Section II, marriage has significant meaning in throughout California jurisprudence. Protection has been provided to marriage under equal protection, due process and privacy. *Loving v. Virginia* 388 U.S. at p. 12 [marriage as “fundamental freedom” under due process]; *Perez, supra*, 32 Cal.2d at pgs. 731-732 [impairment of right to marry on basis of race violated equal protection]; *Ortiz, supra*, 98 Cal.App.4th at p. 1303 [“under the state Constitution, the right to marry and the right of intimate association are virtually synonymous.”]; *Belous, supra*, 71 Cal.2d at p. 963 (citation omitted) [“right of privacy” or “liberty” in marriage]. Given the extensive protections to the marital relationship through jurisprudence coupled with the societal importance bestowed on marriage, it would be impossible for California’s Legislature to change the term “marriage” and still keep all the “rights and obligations” associated with it

because no other word could encompass all of the legal, economic, social and cultural that are bestowed upon marriage.

Supplemental Question 4: Should Family Code section 308.5 - which provides that "[o]nly marriage between a man and a woman is valid or recognized in California" - be interpreted to prohibit only the recognition in California of same-sex marriages that are entered into in another state or country or does the provision also apply to and prohibit same-sex marriages entered into within California? Under the Full Faith and Credit Clause and the Privileges and Immunities Clause of the federal Constitution (U.S. Const., art. IV, §§ 1, 2, cl.1), could California recognize same-sex marriages that are entered into within California but deny such recognition to same-sex marriages that are entered into in another state? Do these federal constitutional provisions affect how Family Code section 308.5 should be interpreted?

I. CALIFORNIA FAMILY CODE SECTION 308.5 APPLIES ONLY TO RECOGNITION OF OUT-OF-STATE SAME-SEX MARRIAGES

Section 308.5 was enacted by voter initiative, Proposition 22. The code section states, "Only marriage between a man and a woman is valid or recognized in California." *Cal. Fam. Code* § 308.5. The Clinton petitioners maintain that *Family Code* section 308.5 violates the California Constitution under equal protection, due process and privacy. However, assuming *arguendo* that §308.5 was found constitutional, it only applies to California's recognition of out-of-state same-sex marriages.

Statutes enacted by voter initiative are interpreted by applying the same principles that govern statutory construction. *Robert L. v. Superior Court*, (2003) 30 Cal. 4th 849, 900. (Citing reference omitted). "Thus, [1] 'we turn first to the language of the statute, giving the words their ordinary meaning.' [2] The

statutory language must also be construed in the context of the statute as a whole and the overall statutory scheme [in light of the electorate's intent]. [3] When the language is ambiguous, ‘we refer to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet.’ In other words, our ‘task is simply to interpret and apply the initiative's language so as to effectuate the electorate's intent.’” (*Id.*).

A. Applying the “ordinary meaning” principle to §308.5 fails to resolve the statute’s ambiguity

The term “valid or recognized” in §308.5 is ambiguous as to whether the statute applies to foreign marriage or to both foreign and in-state marriages. The scope of this section was discussed by several appellate courts in *dicta*, each of which came to different conclusions. In *Armijo v. Miles* (2005) 127 Cal. App. 4th 105, 1422-1424, the Second Appellate District stated that Proposition 22, was designed to prevent foreign marriages of same-gender couples from being recognized in California. However, the Third Appellate District in *Knight v. Superior Court* (2005) 128 Cal. App. 4th 14, 23-24, found that section 308.5 reaffirmed the definition of marriage found in *Family Code* §300, limiting marriage to only between a man and a woman, and therefore confirmed that California will not permit same-sex partners to marry. These conflicting interpretations highlight the ambiguity caused by a reading of the ordinary meaning of the words. As the ordinary use of the words in the statute is not clear further inquiry is required.

B. The statutory scheme on the whole indicates that §308.5 applies only to out-of-state marriages

Family Code sections 300 through 310 contain numerous provisions regarding marriage in California. *Cal. Fam. Code* §§ 300-310. And when §308.5 is read in context with the statutory scheme as a whole the intent becomes evident. Specifically, §308—which directly precedes 308.5—reads: “A marriage contracted *outside this state* that would be *valid* by the laws of the jurisdiction in which the marriage was contracted is *valid* in this state.” *Cal. Fam. Code* § 308. (emphasis added). Next, §308.5 then follows, “Only marriage between a man and a woman is *valid or recognized* in California.” (emphasis added.)

Therefore, the placement of §308.5 in the *Family Code* indicates that it was intended to act as a modifier to §308, which specifically discusses marriage outside of California.

C. Voter intent indicates that § 308.5 was enacted with the intent of preventing recognition of foreign same-sex marriages only

The arguments contained in the voter ballot pamphlet accompanying Proposition 22 provide clear evidence that the amendment was to apply only to out-of-state same-sex marriages.

The argument in favor of Proposition 22 stated,

“When people ask, ‘Why is [Proposition 22] necessary?’ I say that even though California law already says only a man and woman man marry, it also recognizes marriages from other states. However, judges in some of those states want to define marriage differently than we do. If they succeed,

California may have to recognize new kinds of marriages, even though most people believe marriage should be a man and a woman.”

Armijo, supra, 127 Cal.App.4th at p. 1423 citing *Ballot Pamp., Primary Elec.* (Mar. 7, 2000) argument in favor of Prop.22, p.52.

The argument in favor of Proposition 22 shows that its intent is to ensure that California will not recognize same-sex marriages performed in other states. The rebuttal argument against Proposition 22 forcefully reasserts this sentiment, “*UNLESS WE PASS PROPOSITION 22, LEGAL LOOPHOLES COULD FORCE CALIFORNIA TO RECOGNIZE “SAME-SEX MARRIAGES” PERFORMED IN OTHER STATES.*” Respondents’ Appendix, Case No. A110463 at p. 1. (capitalization and italic in original). Nothing in the ballot pamphlets indicate that the measure is directed at same-sex marriages performed in California.

Tin sum, the placement of §308.5 in the *Family Code*, combined with the clear intent expressed in the voter pamphlets, demonstrate that §308.5 was designed and enacted with the specific intent of preventing California from recognizing out-of state marriages only.

D. Under the Full Faith and Credit Clause and the Privileges and Immunities Clause of the United States Constitution, California could not recognize same-sex marriages entered into within California while denying recognition to out-of state marriages

The Clinton Petitioners reiterate that for the reasons asserted in their Opening Brief on the Merits as well as in their Reply Brief, that California *Family Code* §308.5 is unconstitutional under the California Constitution because it

violates equal protection, due process and privacy. Therefore, it is unnecessary for this Court to consider §308.5 and its interaction with federal law. However, if this Court upheld §308.5 as to out-of-state same-sex marriages but allowed in-state same-sex marriages it could not do so without offending the Full Faith and Credit Clause or the Privileges and Immunities Clause of the United States Constitution.

1. Full Faith and Credit Clause

Under the Full Faith and Credit Clause, “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.” U.S. CONST. art. IV, § 1. The question posed by this Court is then, under this clause, could California allow same-sex marriage for its citizens but deny full faith and credit to same-sex couples who married in another state?

Petitioners assert that for the same reasons posited in support of California’s recognition that the fundamental right to marry of gay men and lesbians, it would be inconsistent to deny that same right to out-of state same-sex married couples.

The very purpose of the full faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of

right, irrespective of the state of its origin. That purpose ought not lightly to be set aside out of deference to a local policy which, if it exists, would seem to be too trivial to merit serious consideration when weighed against the policy of the constitutional provision and the interest of the state whose judgment is challenged.

Milwaukee County v. M.E. White Co. (1935) 29 U.S. 268, 276-277.

In light of the purpose of the Full Faith and Credit Clause it is difficult to posit how California could rationalize that gays and lesbians were entitled to all the constitutional protections provided to married couples but then deny the same legitimacy to same-sex couples married in another state.

While the United States Supreme Court has developed a "public policy exception" to the Constitution's Full Faith and Credit Clause this exception applies to conflicts in law. Under this public policy exception, the United States Supreme Court has recognized limitations on the extent to which a state is required to enforce the laws of another state in contravention of its own statutes or policy. (*Pacific Employers*, supra, 306 U.S. at p. 502, ("We think the conclusion is unavoidable that the full faith and credit clause does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of the state of its enactment with respect to the same person and events.") However, if California recognized same sex-marriages there would be no conflicting policy between California and another state which also recognized same-sex marriage. Given the lack of conflict in the underlying policies of the

states in regard to same-sex marriage it becomes extremely difficult to rationalize a legitimate reason for upholding and enforcing section 308.5.

2. The Privileges and Immunities Clause

The Privileges and Immunities Clause holds, “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.” U.S. CONST., art. IV, sec.2, cl.1. “The object of the Privileges and Immunities Clause is to ‘strongly . . . constitute the citizens of the United States one people,’ by ‘placing the citizens of each State upon the same footing with the citizens of other States, so far as the advantages resulting from citizenship in those States are concerned.’” *Lunding v. New York Tax Appeal Tribunal*, (1998) 522 U.S. 287, 296 [citing *Paul v. Virginia*, (1896) 75 U.S. 168, 180.].

As the goal of the Privileges and Immunities Clause is to place citizens of different states on equal grounds as those citizens who are in-state, if California were to recognize same-gender marriages for its citizens but deny recognition to citizens from other states that would clearly conflict with the purpose of the Clause. As the Supreme Court has held, the “Privileges and Immunities Clause bars ‘discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States.’” *Lunding, supra*, 522 U.S. 287 at p. 298 [citing *Toomer v. Whitsell* (1948) 334 U.S. 385, 396.]. Therefore, when a challenge arises to a law distinguishing between residents and non-residents the State must demonstrate: (1)

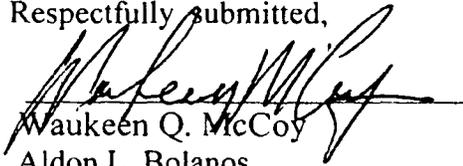
there is a substantial reason for the different treatment; and (2) the discrimination practiced against nonresidents bears a substantial relationship to the State's objective. *Lunding, supra*, 522 U.S. 287 at p. 298 [citing *Supreme Court of New Hampshire v. Piper* (1985) 470 U.S. 274, 284.].

When viewed under this standard it is difficult to see how the State could rationalize providing its citizens with the right to same-gender marriage while denying the right to persons from out-of-state. First, it is difficult to conceive of a substantial reason to provide different treatment to out-of-state same-sex couples while simultaneously recognizing the right of California same-sex couples to marry. The same constitutional protections that validate California's same-sex couples right to marry would be equally applicable to same-sex marriages from other states. Therefore, the State would be unable to demonstrate that the discrimination of out-of-state same-sex married couples would bear a substantial relationship to precluding recognition of the marriage.

The Full Faith and Credit Clause and the Privileges and Immunities Clause do not affect how this Court should interpret Family Code section 308.5 because section 308.5 is unconstitutional under the California Constitution. However, both clauses help to illustrate the unconstitutional nature of 308.5 and how its application would be inconsistent with California law and policy.

Dated August 17, 2007

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CERTIFICATE OF COMPLIANCE

I certify that the attached Supplemental Brief on the Merits uses a 13-point Times New Roman font and contains 4,523 words according to the word count feature of the computer program used to prepare this document.

Dated August 17, 2007

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Kristen Anderson, Michele Bettega, Derrik Anderson, and Wayne Edfors II

PROOF OF SERVICE

I, Aldon L. Bolanos, declare that I am over the age of eighteen years and I am not a party to this action. My business address is The Law Offices of Waukeen McCoy, The Central Tower, 703 Market Street, Suite 1407, San Francisco, California, 94103.

On August 16, 2007, I served the document listed below on the interested parties in this action in the manner listed below:

Supplemental brief, Case No. S147999

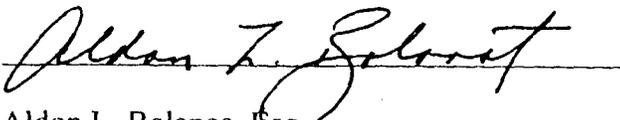
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I caused such envelopes to be delivered on the following business day by Federal Express service.

INTERESTED PARTIES:

See attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; that this declaration is executed on August 16, 2007, at San Francisco, California.


Aldon L. Bolanos, Esq.

SERVICE LIST

**City and County of San Francisco v. State of California, et. al.
San Francisco Superior Court Case No. CGC-04-429539
Court of Appeal No. A110449
California Supreme Court Case No. S147999**

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