

Case No. S147999

Supreme Court of the State of California

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In re Marriage Cases  
Judicial Council Coordination Proceeding No. 4365  
Court of Appeal No. A110651

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PROPOSITION 22 LEGAL DEFENSE AND EDUCATION FUND,  
*Plaintiff and Respondent,*

SUPREME COURT  
**FILED**

v.

JUL - 6 2007

CITY AND COUNTY OF SAN FRANCISCO, et al.,  
*Defendants and Petitioner,*

Frederick K. Ohlrich Clerk  
DEPUTY

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DEL MARTIN, et al.,  
*Intervenors/Defendants/Petitioner.*

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After a Decision by the Court of Appeal,  
First Appellate District, Division Three,  
Consolidated on Appeal with Case Nos.  
A110449, A110450, A110451, A110463, A110652  
San Francisco Superior Court Case Nos. 503943, 428794  
Honorable Richard A. Kramer

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**ERRATA TO PROPOSITION 22 LEGAL DEFENSE AND  
EDUCATION FUND'S ANSWER TO PETITIONERS'  
OPENING BRIEFS ON THE SUBSTANTIVE ISSUES**

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ERRATA

Proposition 22 Legal Defense and Education Fund's Answer to Petitioners'

Opening Briefs on the Substantive Issues, filed on June 15, 2007, should have included four citations that were inadvertently omitted. Please take notice of the following corrections:

- Page 47, paragraph 2, the reference to the "Rekers Delcaration" should include the citation "Corrected Clerks Transcript ("CCT")12-18."
- Page 47-48, paragraph 3, the citation to the quote from the "Rekers Delcaration" should include "CCT:18."
- Page 48, paragraph 1, the citation to the "Rekers Delcaration" should include "CCT:22-23."
- Page 48-49, paragraph 2, the citation to the "Rekers Delcaration" should include "CCT:12-15."

Attached is the amended version of pages 47-49, with the corrected citations.

Dated: July 05, 2007.

Respectfully submitted,

By:

  
GLEN LAVVY

Attorney for the Plaintiff-Respondent  
Proposition 22 Legal Defense and Education Fund

# ATTACHMENT

**B. Petitioners Have Not Established that Same-sex Couples Are Similarly Situated with Opposite-Sex Couples.**

Petitioners have made no effort to prove that same-sex couples are similarly situated with opposite-sex couples in regard to the legitimate purpose of the marriage laws. At most, they assume that same-sex couples are similarly situated with opposite-sex couples because they enter committed, long-term relationships and may raise children in those relationships. But even if that were normative, they have not established that the purpose of the marriage laws is to affirm the commitment of all couples in long-term relationships. At best, Petitioners can raise a dispute about whether same-sex parenting has similar outcomes with married couples. The New York high court recently held that same-sex parenting “studies on their face do not establish beyond doubt that children fare equally well in same-sex and opposite-sex households. What they show, at most, is that rather limited observation has detected no marked differences.” (*Hernandez, supra*, 7 N.Y.3d at p. 360.) One of the *Goodridge* dissents likewise acknowledged the methodological problems in same-sex parenting studies, and concluded that there is inadequate evidence to find that same-sex parenting is “as optimal as the biologically based marriage norm.” (*Goodridge, supra*, 440 Mass. at pp. 387-90 [Cordy, J., dissenting].)

In contrast, the Fund presented a solid body of current social science research below supporting the conclusion that the state has a legitimate interest in steering procreation into stable, married households because that is the optimal context not only for natural procreation, but also for child rearing. (See, e.g. Carlson Decl., ¶¶ 6-7, 10, CT:369, 371; Young Decl., CT:422, 437-440, 444; Rekers Decl. ¶¶ 5-19, Corrected Clerk’s Transcript (“CCT”)12-18.)

As one of the Fund’s experts concluded:

Thus, dual-gender and heterosexual parenting in which married mothers and fathers live together in the same home

provide stable and secure environments for children. This natural family structure provides greater benefits for nearly every aspect of children's well-being, including better emotional and physical health, less substance abuse, lower rates of early sexual activity by girls, better educational opportunity, and less delinquency for boys. Only the family headed by a mother and father has the necessary parent figures for providing the best environment to promote stable psychological development of most children.

(Rekers Decl., ¶ 19, CCT:18.)

Even if a same-sex couple engages a third party to “procreate,” they cannot provide a child the same benefits the child's own biological parents would. Every child raised in a same-sex home has been deliberately deprived of a mother or a father. There is no generally applicable, generally accepted social science evidence that children raised by a same-sex couple do as well as children raised by their own biological parents. At most the research suggests directions for further research. (Rekers Decl., ¶¶ 26-27, CCT:22-23.) Such research cannot constitute a scientific basis for this Court to reformulate public policy.

Indeed, even if this Court were to venture into the legislative role, there is no research – none – comparing children raised from birth by male couples or by female couples with children raised by their own biological parents. The fact that the state permits same-sex couples, non-biological adoptive parents, or single parents to raise children does not mean the state must ignore the evidence demonstrating that the *optimal* environment for raising children is in a stable household comprised of their own biological, married parents.<sup>24</sup> The

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<sup>24</sup>Such an arrangement being the optimal one for society, “[i]t is therefore entitled to a presumption in its favor over any other form of lifestyle, whether it be polygamy, communal living, homosexual relationships, celibate utopian communities or a myriad of other forms tried throughout the ages, none of which succeeded in supplanting the traditional family. . . . A primary function of government and law is to preserve and perpetuate society, in this

social science evidence is very clear: children generally do best when raised by their own married, biological parents. (Carlson Decl., ¶ 9, CT:371.; Rekers Decl., ¶¶ 5-11, CCT:12-15; Maggie Gallagher, *Does Sex Make Babies? Marriage, Same-Sex Marriage and legal Justifications for the Regulation of Intimacy in a Post-Lawrence World*, 23 QLR 447, 466-68 [2004].)

Because they have failed to counter this social science evidence by a preponderance of the evidence, Petitioners cannot meet the threshold for an equal protection challenge. Accordingly, this Court should not even consider what standard of review would be appropriate for the alleged equal protection claims.

**C. The Marriage Laws Do Not Discriminate on the Basis of Sex.**

**1. Laws that treat men and women equally are not discriminatory.**

California’s marriage laws do not discriminate on the basis of sex – they treat men and women equally. Neither men nor women may marry a person of his or her same sex. Petitioners have not cited a single California case that has found sex discrimination – or applied strict scrutiny – where both sexes are treated equally. Instead, they attempt to push California law well beyond all established parameters to where the very use of the terms “male” and “female” in a statute are presumably unconstitutional sex discrimination and “sex-stereotyping.” The novelty of Petitioners’ arguments is highlighted by the dearth of support for their claim in California or any other jurisdiction, despite an abundance of cases analyzing sex discrimination.

Instead of rejecting all distinctions between men and women, California’s strong public policy against sex-discrimination ensures that one sex cannot be given *preferential* treatment over the other. It is well-established

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instance, the family.” (*Constant A. v. Paul C.A.* (1985) 344 Pa.Super 49, 59 n.6 [496 A.2d 1].)

**PROOF OF SERVICE**

I, declare that I am over the age of 18 years and not a party to the within action. My business address is 15333 N. Pima Road, Suite 165, Scottsdale, AZ 85260.

I served the document(s) described as:

1. Errata to Proposition 22 Legal Defense and Education Fund's Answer to Petitioners' Opening Briefs on the Substantive Issues

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DATE: July 05, 2007



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Joshua Tijerina

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