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Supreme Court Seeks Supplemental Briefing In Same-Sex Marriage Cases

San Francisco – The California Supreme Court today issued an order in the same-sex marriage cases pending before it, requesting that each party file, on or before July 18, 2007, supplemental briefs addressing four legal questions. Supplemental reply briefs on these issues may be filed on or before August 1, 2007.

The court noted that its request does not necessarily signify that its ultimate opinion in these cases will address the points upon which supplemental briefs have been requested. (*In re Marriage Cases*, S147999)

The court took the action at its regular weekly petition conference today in San Francisco.

The order requesting supplemental briefing was filed while the regular briefing schedule in these cases proceeds. Opening briefs on the merits and answer briefs on the merits already have been filed, and reply briefs on the merits are due to be filed on or before July 5, 2005. Amicus curiae briefs may be filed no later than 30 days after the reply briefs on the merits are due.

After briefing is complete and the court has had adequate opportunity to review the briefs, the court will schedule these cases for oral argument. After oral argument is heard, the court's opinion is generally filed within 90 days.

The full text of the court's order follows.

S147999

IN THE SUPREME COURT OF CALIFORNIA

In re MARRIAGE CASES

Reply briefs on the merits in these consolidated cases are due on or before July 5, 2007.

In addition to any reply brief that a party may choose to file, the court requests each party to file, on or before July 18, 2007, a supplemental brief addressing the following questions:

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? Please list all of the current differences of which you are aware.

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?

The court notes that its request that the parties brief these matters does not necessarily signify that the court will address these points in its opinion.

As indicated above, the supplemental briefs addressing these issues are to be served and filed simultaneously by the parties on or before July 18, 2007. The parties may serve and file simultaneous supplemental reply briefs, addressed solely to these questions, on or before August 1, 2007. Because of the nature and number of the questions to be addressed, the limitation on the permissible length of supplemental briefs set forth in California Rules of Court, rule 8.520(d)(2), do not apply to the requested supplemental briefs.

Chief Justice