

SUPREME COURT OF THE STATE OF CALIFORNIA

BILL LOCKYER, Attorney General of
the State of California,

Petitioner,

vs.

**CITY AND COUNTY OF SAN
FRANCISCO, GAVIN NEWSOM**, in
his official capacity as Mayor of the
City and County of San Francisco;
MABEL S. TENG, in her official
capacity as Assessor-Recorder of the
City and County of San Francisco; and
NANCY ALFARO, in her official
capacity as the San Francisco County
Clerk,

Respondents.

Case No. S122923

**RESPONDENTS' ANSWER TO PETITION FOR
WRIT OF MANDATE, PROHIBITION,
CERTIORARI, AND/OR OTHER APPROPRIATE
RELIEF**

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ANSWER

Respondents City and County of San Francisco, Gavin Newsom, Mabel Teng, and Nancy Alfaro answer Petitioner Bill Lockyer's Original Petition for Writ of Mandate, Prohibition, Certiorari and/or Other Appropriate Relief and Request for Immediate Cease and Desist Order and or Stay of Proceedings as follows:

PARTIES

1. Answering Paragraph 1 of the Petition, Respondents admit each and every allegation contained therein.

2. Answering Paragraph 2 of the Petition, Respondents assert that the allegations contained therein constitute legal argument or state legal conclusions to which no response is now required, and on that basis deny each and every allegation contained in Paragraph 2.

3. Answering Paragraph 3 of the Petition, Respondents admit each and every allegation contained therein.

4. Answering Paragraph 4 of the Petition, Respondents admit each and every allegation contained therein.

5. Answering Paragraph 5 of the Petition, Respondents allege that Daryl M. Burton is the San Francisco County Clerk, and that Nancy Alfaro is the Director of the County Clerk's Office, to whom all of the responsibilities and privileges of County Clerk have been delegated. Answering Paragraph 5 further, Respondents allege that as Burton's delegate, Nancy Alfaro is the designated "commissioner of civil marriages" for San Francisco County. Unless expressly admitted, Respondents deny each and every allegation contained in Paragraph 5.

6. Answering Paragraph 6 of the Petition, Respondents admit each and every allegation contained therein.

AUTHENTICITY OF EXHIBITS

7. Answering Paragraph 7 of the Petition, Respondents admit each and every allegation contained therein.

FACTUAL ALLEGATIONS

8. Answering Paragraph 8 of the Petition, Respondents admit that on February 10, 2004, San Francisco Mayor Gavin Newsom sent a letter to the Director Alfaro, instructing her to “determine what changes should be made to the forms and documents used to apply for and issue marriage licenses in order to provide marriage licenses on a non-discriminatory basis, without regard to gender or sexual orientation.” Answering Paragraph 8 further, Respondents admit that by February 12, 2004, Director Alfaro had produced gender-neutral applications for public marriage licenses, and gender neutral marriage licenses and certificates, and admit that such documents were issued by the City and County of San Francisco in all same-sex marriages taking place within the City and County of San Francisco. Unless expressly admitted, Respondents deny each and every allegation contained in Paragraph 8.

9. Answering Paragraph 9 of the Petition, Respondents admit that from February 12, 2004, until approximately 2:30 p.m. on March 11, 2004, Respondents issued marriage licenses to same-sex couples. Respondents further admit that on March 11, 2004, at approximately 2:30 p.m., the California Supreme Court issued an immediate stay preventing the Respondents from issuing same-sex marriage licenses pending the resolution of this petition, and the original writ application in *Lewis v.*

Alfaro, Supreme Court Case Number S122865. Unless expressly admitted, Respondents deny each and every allegation contained in Paragraph 9.

10. Answering Paragraph 10 of the Petition, Respondents assert that the allegations contained therein constitute legal argument or state legal conclusions to which no response is now required, and on that basis, deny each and every allegation contained therein.

11. Answering Paragraph 11 of the Petition, Respondents admit that Petitioner is the chief law enforcement officer of the State of California. Respondents assert that each remaining allegation contained in Paragraph 11 constitutes legal argument or state legal conclusions to which no response is now required, and on that basis deny each and every remaining allegation contained in Paragraph 11.

12. Answering Paragraph 12 of the Petition, Respondents deny that the State of California is not named as a party in *Proposition 22 Legal Defense Fund v. San Francisco*. Respondents admit each and every remaining allegation contained in Paragraph 12.

13. Answering Paragraph 13 of the Petition, Respondents deny that the State of California is not named as a party in *Thomasson v. Newsom*. Respondents admit each and every remaining allegation contained in Paragraph 13.

14. Answering Paragraph 14 of the Petition, Respondents admit that on February 19, 2004, the City and County of San Francisco filed a cross-complaint in *Proposition 22 Legal Defense Fund v. San Francisco* naming the State of California, Proposition 22 Legal Defense and Education Fund, the Campaign for California Families, and Randy Thomasson as cross-defendants. Respondents further admit that a true and correct copy of that cross-complaint is included in the Appendix to the

Petition as Exhibit 6. Unless expressly admitted, Respondents deny each and every allegation contained in Paragraph 14.

15. Answering Paragraph 15 of the Petition, Respondents allege that on February 13, February 17, and February 20, the San Francisco Superior Court heard four separate requests from Petitioners Proposition 22 Legal Defense and Education Fund, and Campaign for California Families and Randy Thomasson, for an order restraining Respondents from continuing to issue and record same-sex marriage certificates, and that the San Francisco Superior Court declined to issue such an order. Answering Paragraph 15 further, Respondents allege that the Petitioners in *Thomasson v. Newsom* immediately sought review by the First District Court of Appeal of the Superior Court's refusal to issue preliminary injunctive relief, but that the *Thomasson* Petitioners withdrew that request shortly thereafter. Unless expressly admitted, Respondents deny each and every allegation contained in Paragraph 15.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

As a separate and affirmative defense to the Petition, Respondents allege that the Petition, and each and every allegation stated therein, whether considered singly or in any combination, fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

As a separate and affirmative defense to the Petition, Respondents allege that the Petition, and each and every allegation stated therein, whether considered singly or in any combination, fails to state a ground for relief because the Respondents acted under a good faith belief that the United States Constitution and the California Constitution – and

Respondents' oaths to "support and defend" those constitutions – preclude enforcement of discriminatory marriage laws.

THIRD AFFIRMATIVE DEFENSE

As a separate and affirmative defense to the Petition, Respondents allege that the Petition, and each and every allegation stated therein, whether considered singly or in any combination, fails to state a ground for relief to the extent Petitioner seeks to compel the Respondents to act in violation of the California and United States Constitutions.

WHEREFORE, Respondents City and County of San Francisco, Gavin Newsom, Mabel Teng, and Nancy Alfaro deny that Petitioner is entitled to the relief prayed for in the Petition, and any other relief against them, and pray as follows:

1. The Original Petition for Writ of Mandate, Prohibition, Certiorari and/or Other Appropriate Relief and Request for Immediate Cease and Desist Order and or Stay of Proceedings be dismissed with prejudice and that Petitioner takes nothing thereby;

2. For costs of suit;

3. For attorney's fees; and

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4. For such other and further relief as this court may deem proper.

Dated: March 18, 2004

Respectfully submitted,

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