IN THE

SUPREME COURT OF CALIFORNIA

Coordination Proceeding, Special Title [Rule 1550(b)] **IN RE MARRIAGE CASES.**	)	Case No. S147999
	)	(JCCP No. 4365)

First Appellate District, Case Nos. A110449, A110450, A110451, A110463, A110651, A110652
San Francisco County Superior Court Nos. CGC-04-429539, CGC-04-504038, CGC-04-429548, CPF-04-503943, CGC-04-428794
Los Angeles County Superior Court Case No. BS-088506
Hon. Richard A. Kramer, Judge

ANSWER BRIEF OF GOVERNOR ARNOLD SCHWARZENEGGER AND STATE REGISTRAR OF VITAL STATISTICS TERESITA TRINIDAD ON THE MERITS

KENNETH C. MENNEMEIER (SBN 113973)
KELCIE M. GOSLING (SBN 142225)
MENNEMEIER, GLASSMAN & STROUD LLP
980 9th Street, Suite 1700
Sacramento, CA 95814-2736
Telephone: 916-553-4000
E-Mail: kcrh@mgslaw.com

Attorneys for Respondents
Governor Arnold Schwarzenegger and
State Registrar of Vital Statistics Teresita Trinidad

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CALIFORNIA CASES

CALIFORNIA CONSTITUTION, STATUTES AND REGULATIONS

FEDERAL CASES

FEDERAL CONSTITUTION, STATUTES AND REGULATIONS

OTHER STATE CASES

OTHER STATE CONSTITUTIONS, STATUTES AND REGULATIONS

LAW REVIEWS

IN THE

SUPREME COURT OF CALIFORNIA

Coordination Proceeding, Special Title [Rule 1550(b)] **IN RE MARRIAGE CASES.**	)	Case No. S147999
	)	(JCCP No. 4365)

Respondents Governor Arnold Schwarzenegger and State Registrar of Vital Statistics Teresita Trinidad (collectively, the Administration) respectfully submit their Answer Brief on the Merits.

INTRODUCTION

California's marriage laws and domestic partner laws establish a careful balance by declaring that registered domestic partners shall have the same rights and benefits as spouses, while at the same time maintaining the common understanding of marriage that has been in place throughout state history. In the future, the People of California may choose, through the initiative process, to change this legal framework. But at present, this careful balance does not violate the California Constitution.

From the beginning of California's statehood, the word "marriage" has been understood in our state as a union between a man and a woman. Today, millions of California citizens contend that the word "marriage" has a particular meaning to them, that their common understanding of marriage is vitally important to the interests of the state, and that the common meaning of marriage should not change.

At the same time, millions of California citizens view the current definition of marriage as an archaic vestige of the past, because it does not permit marriage for same-sex couples. They contend that same-sex couples in committed relationships deserve the same recognition and respect afforded opposite-sex couples, and that a change in California law is long overdue.

The definition of marriage presents a question that has far-reaching social implications touching many aspects of our lives. It is a question that has created great division and disagreement in our state and throughout the nation. Given California's constitutional system of government, in which political power is inherent in the People (Cal. Const., art. II, §§ 1, 8), the question of whether marriage should be redefined may ultimately be answered by the voters of California through the initiative process. In the meantime, the California Legislature has been hard at work providing rights and benefits to same-sex couples. The Domestic Partner Rights and Responsibility Act of 2003 (Domestic Partner Act) broadly declares that registered domestic partners shall have the "same rights, protections, and benefits" as spouses. California is committed to providing equal rights and benefits to same-sex couples.

Although federal law continues to deny same-sex couples, whether married or not, many federal rights and benefits available to traditional married couples, the California Legislature is powerless to change federal law. Within the Legislature's sphere of control, however, all

rights and benefits afforded to spouses have now been extended to registered domestic partners.[1/]

This Court recognized that a chief goal of the Domestic Partner Act is "to equalize the status of registered domestic partners and married couples" (*Koebke v. Bernardo Heights Country Club* (2005) 36 Cal.4th 824, at pp. 839, 845), and that the Legislature has granted to registered domestic partners "legal recognition comparable to marriage both procedurally and in terms of the substantive rights and obligations granted to and imposed upon the partners, which are supported by policy considerations similar to those that favor marriage." (*Id.*, at p. 845.) This Court stated that registered domestic partners are "the equivalent of spouses" for the purposes of the Unruh Act. (*Id.* at p. 831.) Thus, California law establishes a careful balance that maintains the common understanding of marriage as between a man and a woman, while at the same time declaring that registered domestic partners shall have the same rights, protections and benefits as spouses.

In this case, the Court of Appeal correctly held that such a balance does not violate the California Constitution, explaining:

> [W]e believe it is rational for the Legislature to preserve the opposite-sex definition of marriage, which has existed throughout history and which continues to represent the common understanding of marriage in most other countries and states of our union, while at the same time providing equal rights and benefits to

---

1/ In addition to the Legislature's inability to modify federal law, the Legislature also lacks the power to unilaterally alter the California Constitution or state laws adopted by initiative. (See, e.g., Cal. Const., art. II, § 10; *Id.*, art. XVIII, § 4.)

> same-sex partners through a comprehensive domestic partnership system. The state may legitimately support these parallel institutions while also acknowledging their differences.

Opn. at p. 55.[2] The court held: "By maintaining the traditional definition of marriage while simultaneously granting legal recognition and expanded rights to same-sex relationships, the Legislature has struck a careful balance to satisfy the diverse needs and desires of Californians." *Id.* at p. 61.

In California, the legislative process, and perhaps the initiative process, will continue to address the complex societal issues surrounding the definition of marriage. Such complex policy issues are not presented in this case. Instead, this case presents the following narrow, purely legal issue:

> Where California law provides that registered domestic partners shall have the same rights, protections and benefits as spouses, while at the same time preserving the common understanding of marriage as a union between a man and a woman, does this statutory balance violate the equal protection, due process or privacy protections in the California Constitution?

Federal courts, and appellate courts in other states, have addressed whether the common understanding of marriage violates constitutional principles, and marriage between a man and a woman has been upheld time after time. (See, e.g., *Baker v. Nelson* (Minn. 1971) 191 N.W.2d 185, summarily decided and dismissed in *Baker v. Nelson* (1972) 409 U.S. 810; *Jones v. Hallahan* (Ky.Ct.App. 1973) 501 S.W.2d

---

[2] The decision of the Court of Appeal will be cited as "Opn."

588; *Dean v. District of Columbia* (D.C. Ct.App. 1995) 653 A.2d 307; *Baker v. State of Vermont* (Vt. 1999), 744 A.2d 864; *Standhardt v. Superior Court* (Ariz.Ct.App. 2003) 77 P.3d 451; *Morrison v. Sadler* (Ind.Ct.App. 2005) 821 N.E.2d 15; *In re Kandu* (Bankr. W.D. Wash 2004) 315 B.R. 123; *Hernandez v. Robles* (N.Y. 2006) 855 N.E.2d 1; *Andersen v. King County* (Wash. 2006) 138 P.3d 963; *Lewis v. Harris* (N.J. 2006) 908 A.2d 196.

This common understanding of marriage as between a man and a woman is deeply rooted in our culture, and it is legitimate for California to maintain this understanding while extending the same rights and benefits to registered domestic partners. For these reasons, the Administration respectfully urges this Court to affirm the decision of the Court of Appeal.

BACKGROUND OF MARRIAGE LAWS AND DOMESTIC PARTNERSHIP LAWS

A. The History of California's Marriage Laws.

The Legislature began exercising its authority over civil marriage immediately upon statehood.[3/] (Stats. 1850, ch. 140, §§ 1-11.) The state's current marriage statutes find their origin in the 1872 Civil Code, a modified version of Field's New York Draft Civil Code. Former Civil Code section 55 provided that marriage was "a personal relation

---

[3] Marriage has a spiritual or religious significance for many people, but civil marriage in California has never been subject to a religious requirement. California's first Constitution provided: "No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect." (Cal. Const. 1849, art. XI, § 12.) This provision was retained in the 1879 Constitution before being codified in 1970. (Former Cal. Const. 1879, art. XX, § 7; Fam. Code, § 420, subd. (c).) Thus, civil marriage has never been a religious institution under California law.

arising out of a civil contract, to which the consent of parties capable of making it is necessary." (Appellants' Appendix on Appeal ("AA") at p. 6.) Section 56 of that Code provided: "Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of fifteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage." (*Ibid.*) The 1872 Civil Code further provided, in section 69, subdivision (4), that the county clerk must obtain "the consent of the father, mother, or guardian," before solemnizing any marriage in which "the male be under the age of twenty-one, or the female under the age of eighteen years . . . ." (AA at p. 7.)

Former Civil Code section 55 did not expressly state that marriage was between a man and a woman, but this Court held in 1890 that the legal relationship defined in section 55 "is one 'by which a man and woman reciprocally engage to live with each other during their joint lives, and to discharge toward each other the duties imposed by law on the relation of husband and wife.'" (*Mott v. Mott* (1890) 82 Cal. 413, 416, quoting Bouvier's Law Dist., tit. Marriage; see also *Kilburn v. Kilburn* (1891) 89 Cal. 46, 50, quoting Shelf. Mar. & Div. 1 [describing marriage as a contract "by which a man and woman, capable of entering into such a contract, mutually engage with each other to live their whole lives together in the state of union which ought to exist between a husband and his wife."].)

Although California statutes governing marriage and family relations have undergone extensive changes since the nineteenth century,[4/]

---

[4] California abolished common law marriage in 1895. (*Elden v. Sheldon* (1988) 46 Cal.3d 267, 275.)

the understanding of marriage as a union between a man and a woman has endured. In 1969, the Legislature enacted "The Family Law Act." (Stats. 1969, ch. 1608.) While reforming the laws governing divorce, the bill left many of the statutes governing marriage unchanged though recodified. Former Civil Code sections 55 and 56 were recodified as Civil Code sections 4100 and 4101. (AA at p. 21.)

Following the passage in 1971 of the Twenty-Sixth Amendment to the United States Constitution lowering the minimum voting age to 18 years, the Legislature passed Assembly Bill 2887 (1971 Reg. Sess.), an omnibus bill lowering most statutory minimum ages to 18. (AA at pp. 41-57; Stats. 1971, ch. 1748.) AB 2887 amended subdivision (a) of former Civil Code section 4101, setting the uniform age requirement for marriage at 18 years of age, instead of 21 for men and 18 for women. (Stats. 1971, ch. 1748, § 26.) Although, by setting a uniform age, the amended statute eliminated the reference to the gender of the marrying partners, the legislative history of AB 2887 confirms that there was no intent to authorize same-sex marriage.[5] In fact, the enactment of AB 2887 left unchanged many statutes that continued to treat marriage as the union of one man and one woman, including Civil Code section 4100.[6]

---

[5] AA at p. 59 (Gov. Reagan Statement on AB 2887, Dec. 14, 1971); see also AA at pp. 60-61(Assem. Comm. on Jud. Analysis of AB 2887, July 12, 1971).

[6] See AA at pp. 23, 25 (former Civil Code § 4213(a) ["[w]hen unmarried persons, not minors, have been living together as man and wife, they may, without a license, be married by any clergyman"], § 4357 ["the superior court may order the husband or wife, or father or mother, as the case may be, to pay any amount that is necessary" to support the husband, wife or children], § 4400 [prohibiting marriages between "brothers and sisters of the half as well as the whole blood, and between uncles and nieces

In 1977, the County Clerks Association of California sponsored Assembly Bill 607 (Stats. 1977, ch. 339, § 1). The legislation amended former Civil Code sections 4100 and 4101 to reaffirm that marriage was a contract between a man and a woman. The legislative history of AB 607 indicates concern that the 1971 elimination of the gender references in section 4101 made the issue of whether same-sex couples could marry "vague and subject to controversy." (AA at p. 63.) Today, section 4100 is recodified, without substantial change, as Family Code section 300, and the provisions of former section 4101 are found in Family Code sections 301, 302 and 304.

Proposition 22 was subsequently approved by the People of California in the year 2000. That initiative added Family Code section 308.5, which provides that "[o]nly marriage between a man and a woman is valid or recognized in California." (Fam. Code, § 308.5.)

This statutory history demonstrates that California's definition of marriage has always been commonly and judicially understood as a union between a man and a woman. (See also *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1128 (conc. & dis. opn. of Kennard, J.) ["Since the earliest days of statehood, California has recognized only opposite-sex marriages."].)

---

and aunts and nephews"], § 4401 [prohibiting marriage by a person "during the life of a former husband or wife of such person"], § 4425(b) [marriage voidable if "husband or wife" is living, marriage is in force, and husband or wife has not been absent for five years or more]).

B. California's Efforts to Afford the Same Rights and Benefits to Same-Sex Couples.

The California Legislature created the first statewide domestic partnership registry in 1999, and has steadily expanded the rights of same-sex couples. (Stats. 1999, ch. 588; Stats. 2002, ch. 447.) In 2003, the Legislature enacted Assembly Bill 205 (AB 205), the Domestic Partner Rights and Responsibilities Act of 2003 (Domestic Partner Act) (Stats. 2003, ch. 421). The Domestic Partner Act, which became effective on January 1, 2005, broadly declared that registered domestic partners "shall have the same rights, protections and benefits" as spouses, "and shall be subject to the same responsibilities, obligations, and duties under the law . . . ." (Fam. Code, § 297.5, subd. (a).) The Domestic Partner Act gave registered domestic partners rights and obligations regarding financial support of partners and children, community property, child custody and visitation, and ownership and transfer of property. (Fam. Code, § 297.5, subd. (b)-(d).)

Moreover, as of last year, registered domestic partners have been provided with *all* of the rights and benefits given by the state to married couples. The Legislature enacted and the Governor signed Senate Bill 1827 (Stats. 2006, ch. 802), which amended the Domestic Partner Act to provide that the earned income of registered domestic partners would be treated as community property for purposes of state income taxation and that registered domestic partners could file joint tax returns just as married spouses do. (Rev. & Tax. Code, § 18521, subd. (d).)[7]

---

[7] In recent years, this Court has also issued several decisions holding that same-sex partners have many of the same rights and responsibilities as spouses. For example, in *Koebke v. Bernardo Heights*

There are, of course, limits on what California can do to afford domestic partners the same rights and benefits enjoyed by spouses. As explained below, federal law does not recognize domestic partnerships, and it defines marriage as the union of a man and a woman. (1 U.S.C. § 7; 28 U.S.C. §1738C.) Thus, many federal benefits are not afforded to registered domestic partners. But these federal rights and benefits would be denied to same-sex couples even if California chose to extend the title of marriage to same-sex couples, because federal law prohibits recognition of same-sex marriages for the purposes of providing federal benefits. (1 U.S.C. § 7.)[8] Similarly, states are not required to recognize registered

---

Country Club (2005) 36 Cal.4th 824, the Court held that same-sex couples who form registered domestic partnerships engage in "the creation of a new family unit" as surely as married couples do (*id.* at p. 843), and a business that extends benefits to spouses but denies those same benefits to registered domestic partners engages in impermissible marital status discrimination. (*Id.* at p. 831.) In *Elisa B. v. Superior Court* (2005) 37 Cal.4th 108, the Court held that a woman who agreed to raise children with her female partner, supported her partner's artificial insemination, and held the children out as her own was considered a legal parent and had an obligation to support the children. In *K.M. v. E.G.* (2005) 37 Cal.4th 130, the Court held that a woman who donated her ova to her lesbian partner for in vitro fertilization is a parent to the children. In *Kristine H. v. Lisa R.* (2005) 37 Cal.4th 156, the Court held that a biological mother who stipulated to a judgment declaring that she and her lesbian partner were the parents of her child was estopped from attacking that judgment. In 2003, the Court held that second-parent adoption, a method of adoption often used by same-sex couples in which a child born to or legally adopted by one partner is adopted by a non-legal or non-biological second parent, constitutes a valid independent adoption under our adoption laws. (*Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 422 fn. 2.)

[8] Nevertheless, to the extent that California law relies upon federal law in conferring any right or benefit to spouses, the Domestic Partner Act provides that domestic partners shall be treated under state law

domestic partnerships from California even though California law recognizes legal statuses comparable to domestic partnerships entered into in other states.[9] California lacks authority to dictate the laws of other states.

C. Treatment of Same-Sex Marriage Under Federal Law.

In 1996 Congress passed, and President Clinton signed, the federal Defense of Marriage Act (DOMA), which provides that no state shall be required to give effect to any act, record or judicial proceeding of any other state regarding same-sex marriage. (28 U.S.C. § 1738C.) DOMA also provides that for purposes of federal law, "marriage" means only a legal union between one man and one woman as husband and wife, and "spouse" refers only to a person of the opposite sex who is a husband or a wife. (1 U.S.C. § 7.) Thus, many federal benefits and rights – such as social security, medicare, federal housing, food stamps, federal income taxation, veterans' benefits, federal civilian and military benefits, the Family and Medical Leave Act, and other federal employment benefits – are not available to persons registered as domestic partners under state law.

Notably, DOMA has survived constitutional scrutiny. In a case entitled *In re Kandu, supra*, 315 B.R. 123, the United States Bankruptcy Court for the Western District of Washington held that

---

as if federal law recognized such partnerships. (Fam. Code, § 297.5, subd. (e).)

[9] See Fam. Code, § 299.2 ["A legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership as defined in this part, shall be recognized as a valid domestic partnership in this state regardless of whether it bears the name domestic partnership."].

(1) same-sex marriage is not a constitutionally- mandated fundamental right under the due process clause of the Fifth Amendment; (2) DOMA's prohibition on same-sex marriage is therefore reviewed under a rational basis, rather than a strict scrutiny, standard of review; (3) DOMA's same-sex marriage prohibition does not single out men or women as a discrete class for unequal treatment under the equal protection component of the due process clause of the Fifth Amendment, and is therefore subject to rational basis review; (4) homosexuality is not a suspect or quasi-suspect class under the equal protection component of the due process clause of the Fifth Amendment, and is therefore subject to rational basis review; and (5) DOMA's same-sex marriage prohibition survives rational basis review.

D. Treatment of Same-Sex Marriage in Other States.

Only one state in the nation defines marriage to include same-sex couples. Like federal law, the laws of all other states have maintained the common understanding of marriage.

The first reported case analyzing an alleged constitutional right to same-sex marriage was decided in 1971. In *Baker v. Nelson, supra*, 191 N.W.2d 185, a unanimous Minnesota Supreme Court rejected a claim by two men that they had a constitutional right to marry. The court held that limiting the State's marriage statute to opposite-sex marriages did not violate either the equal protection or due process guarantees of the Fourteenth Amendment, the First Amendment, the Eighth Amendment, or the Ninth Amendment of the United States Constitution. The Minnesota court rejected the claim that the United States Supreme Court's decisions in *Skinner v. Oklahoma* (1942) 316 U.S. 535, *Griswold v. Connecticut* (1965) 381 U.S. 479, and *Loving v. Virginia* (1967) 388 U.S. 1, which recognized a fundamental right to marry and the right to marital privacy, required that

same-sex couples be afforded the same rights. (*Baker v. Nelson, supra*, 191 N.W.2d at p. 187.) Regarding the due process clause of the Fourteenth Amendment, the court held that the historic institution of marriage "manifestly is more deeply founded than the asserted contemporary concept of marriage and societal interests for which Petitioners contend. The due process clause of the Fourteenth Amendment is not a charter for restructuring it by judicial legislation." (*Id.*, at p. 186.) The court further held that the "equal protection clause of the Fourteenth Amendment, like the due process clause, is not offended by the state's classification of persons authorized to marry. There is no irrational or invidious discrimination." (*Id.*, at p. 187.)

Plaintiffs appealed, invoking the United States Supreme Court's mandatory appellate jurisdiction, which has since been repealed. (*Baker v. Nelson, supra*, 409 U.S. 810; see also *Hicks v. Miranda* (1975) 422 U.S. 332, 344.) The Supreme Court summarily decided the case and dismissed the appeal "for want of a substantial federal question." (*Id.*, 409 U.S. 810.)[10/] The Supreme Court's dismissal was subsequently interpreted to be binding federal precedent by the Eighth Circuit in related litigation filed by the Baker plaintiffs.[11/]

---

10 Summary dismissals by the Supreme Court "prevent lower courts from coming to opposite conclusions on the precise issues presented and necessarily decided by those actions." (*Mandel v. Bradley* (1977) 432 U.S. 173, 176.)

11 While the appeal to the Minnesota Supreme Court was pending in *Baker v. Nelson, supra*, the same plaintiffs obtained a marriage license from a county clerk and were married by a minister. (*McConnell v. Nooner* (8th Cir. 1976) 547 F.2d 54, 55.) Plaintiffs thereafter petitioned the Veterans Administration for increased educational benefits based upon their new marital status. (*Ibid.*) When the Veterans Administration denied the

In the years following *Baker v. Nelson*, legal actions were brought in several states by plaintiffs attempting to establish a right to same-sex marriage. In *Jones v. Hallahan*, *supra*, 501 S.W.2d 588, two women who were denied a marriage license claimed that their constitutional rights were violated. The Kentucky Court of Appeal held that the meaning of marriage as a union between a man and woman was established long before the State issued marriage licenses, and the failure to extend marriage licenses to same-sex couples did not violate constitutional rights. (*Id.*, at p. 589.)

In *Baehr v. Lewin* (Hawaii 1993) 852 P.2d 44, the Hawaii Supreme Court, in a plurality opinion, rejected plaintiffs' privacy and due process challenges to the state's marriage laws, but found an equal protection violation. In that case several same-sex couples challenged Hawaii's laws limiting marriage to a man and woman, claiming that such

---

petition, plaintiffs thereafter filed suit in the United States District Court for the District of Minnesota, challenging the denial of the petition for increased benefits. (*Ibid.*) The District Court dismissed the complaint and the Eighth Circuit Court of Appeals affirmed, holding that "the Supreme Court's dismissal of the [*Baker v. Nelson*] appeal for want of a substantial federal question constitutes an adjudication of the merits which is binding on the lower federal courts." (*McConnell*, *supra*, 547 F.2d at pp. 55-56.) In her concurring and dissenting opinion in *Lockyer v. CCSF*, *supra*, 33 Cal.4th 1055, Justice Kennard cited *Baker v. Nelson*, stating: "Indeed, there is a decision of the United States Supreme Court, binding on all other courts and public officials, that a state law restricting marriage to opposite-sex couples does *not* violate the federal Constitution's guarantees of equal protection and due process of law." (*Id.*, at p. 1126.) Justice Kennard added: "The United States Supreme Court has not expressly overruled *Baker v. Nelson*, *supra*, 409 U.S. 810, 93 S.Ct. 37, 34 L.Ed.2d 65, nor do any of its later decisions contain doctrinal developments that are necessarily incompatible with that decision." (*Id.*, at p. 1127.)

laws violated the rights to privacy, due process and equal protection guaranteed by the Hawaii Constitution. The Hawaii Court rejected plaintiffs' privacy and due process claims, finding that there was no right to same-sex marriage rooted in the State's traditions and history such that the failure to recognize these marriages would violate the principles of ordered liberty. (*Id.*, at p. 57.) The court concluded, however, that banning same-sex marriage violated Hawaii's unique equal protection clause, which specifically prohibited discrimination based on a person's sex. (*Id.*, at p. 60.) The court held that limiting civil marriage to opposite-sex couples discriminated against same-sex couples on the basis of sex. (*Id.*, at p. 64.) Nonetheless, the court in *Baehr* did not require the state to recognize same-sex marriage. (*Id.*, at p. 67.) Instead, it remanded the case to the trial court to develop a factual record regarding whether there were sufficient state interests that justified barring same-sex civil marriage. (*Id.*, at p. 68.) The people of Hawaii amended their state constitution to empower the Hawaii Legislature to bar same-sex marriage before the case was resolved. (Hawaii Const., art. I, § 23.)

In *Dean v. District of Columbia, supra*, 653 A.2d 307, the District of Columbia Court of Appeals examined whether a right to same-sex marriage existed under the federal Constitution. Two men challenged the District of Columbia's denial of a marriage license to them, arguing that it violated due process and equal protection. The court held that there was no constitutional basis under the due process clause for recognizing same-sex marriage since such a definition of marriage was not rooted in the nation's history or traditions. (*Id.*, at pp. 331-333.) The court also held that recognizing the historical condition of marriage as constituting a union between a man and woman did not violate the

principles of equal protection.[12] (*Id.*, at pp. 361-364 [concurring opinions of Judges Terry and Steadman].)

The Vermont Supreme Court addressed the issue of same-sex marriage in 1999. In *Baker v. State of Vermont*, *supra*, 744 A.2d 864, the Vermont Supreme Court held that under the Common Benefits Clause of the Vermont Constitution, same-sex couples must be afforded the same legal rights that married couples enjoy, but the court expressly held that Vermont was not required to afford such rights by redefining marriage. (*Id.*, at p. 867.) "We hold that the State is constitutionally required to extend to same-sex couples the common benefits and protections that flow from marriage under Vermont law. That the State could do so through a marriage license is obvious. But it is not required to do so . . . ." *(Ibid.)* Instead, the Vermont Supreme Court deferred to the legislative process for determination of an appropriate way in which to afford equivalent rights and benefits. Vermont law now authorizes "civil unions" which afford rights and benefits to same-sex couples.

More recent cases have also held that there is no constitutional right to same-sex marriage. In *Standhardt v. Superior Court, supra*, 77 P.3d 451, the Arizona Court of Appeals held that prohibiting same-sex marriage did not violate the due process or equal protection provisions of the federal or Arizona Constitutions or the Arizona Constitution's right to privacy. (*Id.*, at pp. 460, 465.) The court concluded there was no deeply-rooted tradition to recognize same-sex unions that warranted triggering the due process or privacy protections, and that the

---

12 See also *DeSanto v. Barnsley* (Pa. Super. Ct. 1984) 476 A.2d 952, 955 [no right to a same-sex common law marriage].

United States Supreme Court's decision in *Lawrence v. Texas* (2003) 539 U.S. 558 [123 S.Ct. 2472, 156 L.Ed.2d 508], did not require recognizing a federal constitutional right to same-sex marriage. (*Id.*, at p. 456.)

As a result of two rulings by the Supreme Judicial Court of Massachusetts in 2004, the state of Massachusetts is now the only state in the nation issuing same-sex marriage licenses. In *Goodridge v. Department of Public Health* (Mass. 2003) 798 N.E.2d 941, the Court held in a 4-3 decision that Massachusetts' common law definition of marriage failed the rational basis test, and thus violated the equal protection and due process clauses of the Massachusetts Constitution. Later, in a unique process by which the Massachusetts Legislature could request a legal opinion of the Supreme Judicial Court, the Court was asked whether civil unions having all the legal rights of civil marriage would satisfy the requirements of the Massachusetts Constitution. (*Opinions of the Justices to the Senate* (Mass. 2004) 802 N.E.2d 565, 566-567.) The Court answered the question in the negative. (*Id.* at 572.)[13/]

Then, in 2006, the highest courts of New York, Washington and New Jersey all held that limiting the definition of marriage to

---

[13] Massachusetts is different from California because the definition of marriage in Massachusetts is based on the common law, not established by statute. *See Goodridge, supra,* 798 N.E.2d at 952-953.) (*Id.* at p. 969.) In contrast, California's definition of marriage is defined by statute, and hence the definition of marriage is squarely within the province of California's legislative process. (*Estate of DePasse* (2002) 97 Cal.App.4th 92, 99 [marriage is solely within the province of the legislative process]; *Kelsey v. Miller* (1928) 203 Cal. 61, 91 [marriage is a question of public policy within state's discretion]; *McClure v. Donovan* (1949) 33 Cal.2d 717, 728 [Legislature has full control of subject of marriage and may fix its conditions and its creation].)

heterosexual unions was constitutional under state law. First, the New York Court of Appeals held that the due process and equal protection clauses in New York's Constitution do not compel recognition of same-sex marriages. (*Hernandez v. Robles, supra,* 855 N.E.2d 1.) In so holding, the court applied the rational basis test. The court concluded that "[w]hether [same-sex] marriages should be recognized is a question to be addressed by the Legislature." (*Id.* at p. 5.)

Similarly, the Washington Supreme Court held that the Washington Legislature had the authority, under the Washington Constitution, to "limit the definition of marriage to include only heterosexual unions." (*Andersen v. King County, supra,* 138 P.3d 963, 990.) The court held that there was no fundamental right to marry a person of the same sex (*id.* at p. 976-79), and that plaintiffs had not established that gay and lesbian persons were a suspect class. (*Id.* at p. 974-76.) Therefore, the court applied rational basis review and found that the Washington Legislature had a rational basis for limiting the institution of marriage to opposite-sex couples. (*Id.* at p. 980-85.)

Likewise, in *Lewis v. Harris, supra,* 908 A.2d 196, 200, the Supreme Court of New Jersey held that the New Jersey constitution precluded "the unequal dispensation of rights and benefits to committed same-sex partners," but did not preclude the Legislature from conferring the "title of marriage" only upon opposite-sex couples. (*Ibid.*) The court gave the New Jersey Legislature 180 days to adopt a statutory scheme that provides same-sex couples with the full rights and benefits enjoyed by heterosexual married couples. (*Id.* at p. 224.) In doing so, the court left the Legislature with two options, either amending the marriage statutes to include same-sex couples or creating a separate statutory scheme, as other

states have done. (*Id.* at p. 221.) In allowing for the latter option, the court noted that New Jersey "has a substantial interest in preserving the historically and almost universally accepted definition of marriage as the union of a man and a woman." (*Ibid.*) The court concluded: "The name to be given to the statutory scheme that provides full rights and benefits to same-sex couples, whether marriage or some other term, is a matter left to the democratic process." (*Id.* at p. 200.)

As the above decisions show, state courts have been reluctant to interfere with legislative determinations relating to the definition of marriage. Moreover, in recent years, twenty-seven states have adopted constitutional prohibitions against same-sex marriages.[14/] At the same time, however, nine states and the District of Columbia now provide same-sex couples with some or all of the rights and benefits typically associated with marriage.[15/]

---

[14] Those states are Alabama (Ala. Const. amend. 774), Alaska (Alaska Const., art. I, § 25), Arkansas (Ark. Const. amend. 83, § 1), Colorado (Colo. Const., art. II, § 31), Georgia (Ga. Const., art. I, § IV), Hawaii (Hawaii Const., art. I, § 23), Idaho (Idaho Const., art. III, § 28), Kansas (Kan. Const., art. 15, § 16), Kentucky (Ky. Const., § 233A), Louisiana (La. Const., art. XII, § 15), Michigan (Mich. Const., art. I, § 25), Mississippi (Miss. Const., art. 14, § 263A), Missouri (Mo. Const., art. I, § 33), Montana (Mont. Const., art. XIII, § 7), Nebraska (Neb. Const., art. I, § 29), Nevada (Nev. Const., art. I, § 21), North Dakota (N.D. Const., art. XI, § 28), Ohio (Ohio Const., art. XV, § 11), Oklahoma (Okla. Const., art. II, § 35), Oregon (Or. Const., art. XV, § 5a), South Carolina (S.C. Const., art. XVII, § 15), South Dakota (S.D. Const., art. XXI, § 9), Tennessee (Tenn. Const., art. XI, § 18), Texas (Tex. Const., art. I, § 32), Utah (Utah Const., art. I, § 29), Virginia (Va. Const., art. I, § 15-A), and Wisconsin (Wis. Const., art. XIII, § 13).

[15] Connecticut, New Jersey and Vermont provide for civil unions and the Governor of New Hampshire recently announced his

PROCEDURAL HISTORY

A detailed history of the proceedings in the trial court is set forth in the Answer Brief for the State of California and the Attorney General, and will not be repeated here. Petitioners sought review in this case from a judgment issued on October 5, 2006, by the Court of Appeal for the First Appellate District, Division Three. The Court of Appeal held that the definition of marriage did not deprive same-sex couples of a fundamental right and did not discriminate against a suspect class. (Opn. at p. 3.) Applying the rational relationship test to Petitioners' equal protection claims, the Court of Appeal concluded that the marriage statutes were constitutional. (*Ibid.*) The Court of Appeal also held that the statutes did not violate rights of due process, privacy, freedom of association, or freedom of expression. (*Id.* at pp. 21-64.)[16] The Administration respectfully requests that the Court of Appeal's decision be affirmed in its entirety.

---

intention to sign a civil union bill that passed the New Hampshire Legislature. (Conn. Gen. Stat. Ann. §§ 46b-38aa - 46b-38oo; Vt. Stat. Ann. §§ 1201 - 1207; N.J. Stat. Ann. §§ 37:1-29 - 37:1-36; Belluck, *New Hampshire Senate Votes to Allow Same-Sex Civil Unions*, N.Y. Times, Apr. 27, 2007, p. A20.) In the spring of 2007, Washington and Oregon joined California, Maine and the District of Columbia in providing for registered domestic partnerships. (Wash. Stats. 2007, ch. 156; Ore. Stats. 2007, ch. 99; Maine Rev. Stat. Ann., tit. 22, § 2710; D.C. Official Code § 32-702.) In addition, Hawaii provides certain rights to same-sex couples who register as "reciprocal beneficiaries." (Haw. Rev. Stat. § 572C-2.)

[16] The Court of Appeal further held that the appellants in the *Fund* and *Thomasson* actions lacked standing to pursue their claims. (Opn. at pp. 7-12.)

ARGUMENT

I

CALIFORNIA'S MARRIAGE LAWS DO NOT VIOLATE EQUAL PROTECTION, BECAUSE THEY DO NOT CLASSIFY BASED ON GENDER OR SEXUAL ORIENTATION, AND IT IS LEGITIMATE FOR CALIFORNIA TO AFFORD RIGHTS AND BENEFITS TO SAME-SEX COUPLES WHILE MAINTAINING THE COMMON UNDERSTANDING OF MARRIAGE.

"Equal protection analysis requires a reconciliation of the constitutional promise that no person shall be denied equal protection of the laws with the practical reality that most legislation classifies for one purpose or another, with resulting advantage or disadvantage to various groups or persons." (*Flynt v. California Gambling Control Commission* (2002) 104 Cal.App.4th 1125, 1140 (citation omitted).) "As a general rule, such legislative classifications are presumptively valid." (*Ibid.*) Statutes making classifications that are not based on suspect classes must be upheld as long as there exists a "rational relationship between the disparity of treatment and some legitimate governmental purpose." (*Ibid.*)

In *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, this Court described the two principal standards or tests that generally have been applied in reviewing classifications challenged under the equal protection clause of article I, section 7 of the California Constitution. "The first is the basic and conventional standard for reviewing economic and social welfare legislation in which there is a 'discrimination' or differentiation of treatment between classes or individuals." (*Id.*, at p. 16.) Applying this standard, judicial restraint affords deference to the discretionary act of a co-equal branch of government. The legislation is

presumed constitutional and will be upheld if there is a rational relationship between the challenged legislation and any conceivable legitimate state purpose. (*Ibid.*) The burden of demonstrating the invalidity of a classification under this standard rests squarely upon the party who assails it. (*Id.*, at pp. 16-17.)

A more stringent test is applied in cases touching on fundamental rights or involving suspect classifications. (*D'Amico, supra*, 11 Cal.3d at p. 17.) Applying this test, courts adopt "an attitude of active and critical analysis, subjecting the classifications to strict scrutiny." (*Id.*, at p. 17.) Under the strict scrutiny standard, the state bears the burden of establishing not only that it has a compelling interest which justifies the law but that the distinctions drawn by the law are necessary to further its purpose. (*Ibid.*)

No appellate court (other than the plurality opinion by two of the five Justices on the Hawaii Supreme Court in *Baehr v. Lewin, supra*, 852 P.2d 44) has applied heightened or strict scrutiny in the present context, and heightened or strict scrutiny should not be applied in this case.

A. Rational Basis Review Is Appropriate in This Case, Because California's Marriage Laws Do Not Discriminate Based on Gender or Sexual Orientation.

1. The Marriage Statutes Do Not Classify Based on Gender, Because They Do Not Favor One Gender Over the Other.

Family Code section 300 provides in pertinent part that "[m]arriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary." In addition, Family Code section 308.5 provides that "[o]nly marriage between a man and a woman is valid or recognized in California." The plain language of these statutes establishes that they do

not discriminate on the basis of gender, because they do not give preferential treatment to one gender over the other. Men and women are treated exactly the same under the law.

The equal protection clause of the California Constitution protects against "disparate" treatment of one gender over the other. (*Michelle W. v. Ronald W.* (1985) 39 Cal.3d 354, 364-365.) Hence, equal protection is not violated if both genders are treated the same. In *Hardy v. Stumpf* (1978) 21 Cal.3d 1, a female applicant for a city police department challenged the department's physical agility test, which included a six-foot wall climb, under the equal protection clause on the grounds that it disproportionately excluded women from the police force. This Court held that the six-foot wall climb was not a gender classification, because it was applied equally to men and women. (*Id.*, at p. 7.) "The only classification occurs between those persons – male and female – who can climb the wall and those – again of both sexes – who cannot." (*Ibid.*; see also *Miller v. California Commission on the Status of Women* (1984) 151 Cal.App.3d 693, 699 [rejecting an equal protection challenge to a state commission on the status of women, because the mere use of "gender-framed measures" was "not a preference of women over men in the application of public resources"]; *Reece v. Alcoholic Beverage Control Appeals Board* (1977) 64 Cal.App.3d 675 [holding that a regulation barring "spouses" of employees of law enforcement agencies from holding alcoholic beverage licenses did not violate equal protection because the class of spouses affected by the regulation included both men and women].)

No preferential treatment of one gender over the other is found in the plain language of Family Code sections 300 or 308.5. Men and women are treated exactly the same.

The Vermont Supreme Court addressed this issue squarely and rejected the notion that the definition of marriage as between a man and a woman constitutes a gender classification. In *Baker v. State of Vermont, supra,* 744 A.2d at p. 864, the Vermont Supreme Court stated: "All of the seminal sex-discrimination decisions . . . have invalidated statutes that single out men or women as a discrete class for unequal treatment." (*Id.*, at p. 880, fn. 13.) "The difficulty here is that the marriage laws are facially neutral; they do not single out men or women as a class for disparate treatment, but rather prohibit men and women equally from marrying a person of the same sex." (*Ibid.*)

Despite the authority in California and in other states establishing that gender classification does not exist if the marriage laws treat men and women the same, the trial court nonetheless held that Family Code sections 300 and 308.5 classify based on gender, because a man cannot marry a man simply because of his partner's gender, and a woman cannot marry a woman simply because of her partner's gender. The Court of Appeal expressly rejected this theory, pointing out that "[t]he laws treat men and women exactly the same, in that neither group is permitted to marry a person of the same gender." (Opn. at p. 34.) The Court of Appeal's holding is consistent with this Court's decisions, which invalidate only those statutes that *subject one sex to disparate treatment*, that is, favor one sex over another. (*See, e.g., Hardy v. Stumpf, supra*, 21 Cal. 3d at p. 7.)

Based on the plain language of California's marriage laws, this Court should conclude that those laws do not classify based on gender, and this Court should apply rational basis review to the equal protection challenge.

2. Moreover, the Marriage Statutes Do Not Classify Based on Sexual Orientation, But Even If They Did, Rational Basis Review Would Be Required.

Family Code sections 300 and 308.5 make no mention of sexual orientation, nor do they make heterosexuality a prerequisite for a marriage license. In fact, it cannot be said that California's understanding of marriage as between a man and a woman was originally drafted with discriminatory animus toward same-sex couples, because marriage has been understood as a union between a man and a woman throughout California history. (*Lockyer v. CCSF*, *supra*, 33 Cal.4th at p. 1128 (Kennard, J., concurring and dissenting); *Mott, supra*, 82 Cal. at p. 416; *Kilburn, supra*, 89 Cal. at p. 50.) The 1977 legislation amending former Civil Code sections 4100 and 4101 (now Family Code sections 300, 301, 302 and 304) only clarified existing law. Accordingly, the Court of Appeal correctly concluded that Family Code sections 300 and 308.5 do not classify on the basis of sexual orientation.

But even if California's marriage laws did classify based on sexual orientation, rational basis review would still apply. No California court has determined that homosexuality is a suspect classification.[17/]

---

[17] In *Gay Law Students Association v. Pacific Telephone & Telegraph Co.* (1979) 24 Cal.3d 458, this Court held that a cause of action is stated when it is alleged that a public utility had an employment policy of discriminating against homosexuals, but that decision "did not establish homosexuality as a suspect class . . . ." (*Hinman v. Department of Personnel Administration* (1985) 167 Cal.App.3d 516, 526, fn. 8.) And in holding that a proposed local ordinance pertaining to homosexuality and AIDS violated equal protection under a rational basis test, the Court of Appeal in *Citizens for Responsible Behavior v. Superior Court* (1991) 1 Cal.App.4th 1013, deliberately chose not to determine whether a higher standard of review could apply to sexual orientation claims. (*Id.*, at p. 1026,

Moreover, the United States Supreme Court has applied rational basis review in cases alleging sexual orientation discrimination.[18] In *Romer v. Evans* (1996) 517 U.S. 620, the United States Supreme Court considered an equal protection challenge to an amendment to the Colorado Constitution that prohibited legislative, executive or judicial actions designed to protect gays and lesbians from discrimination. (*Id.*, at p. 625.) The Court applied the rational basis test in striking down that amendment on equal protection

---

fn. 8.) The decision in *Children's Hospital and Medical Center v. Bonta* (2002) 97 Cal.App.4th 740, involved an equal protection challenge by out-of-state hospitals to Department of Health Services regulations governing reimbursement rates for treatment of Medi-Cal patients. (*Id.*, at p. 747.) In its discussion, the Court of Appeal stated that because "the differential treatment of in-state and out-of-state enterprises does not relate to any fundamental interests, such as the right to vote, or suspect classifications, such as race or sexual orientation, the question is whether there is a rational basis for the different treatment." (*Id.*, at p. 769.) However, the reference to sexual orientation was dicta. And the Court of Appeal's decision in *Holmes v. California National Guard* (2001) 90 Cal.App.4th 297, contains no discussion of whether strict scrutiny or rational basis review should apply. But the Ninth Circuit held in a related case by the same plaintiff that "[h]omosexuals do not constitute a suspect or quasi-suspect class," thus requiring the application of rational basis review to a challenge to the military's "don't ask / don't tell" policy. (*Holmes v. California Army National Guard* (9th Cir. 1997) 124 F.3d 1126, 1132.)

[18] Federal equal protection cases are relevant to the analysis of Petitioners' claims under the equal protection provision of the California Constitution. This Court has observed that the equal protection provisions of the California Constitution "'have been generally thought in California to be substantially the equivalent of the equal protection clause of the Fourteenth Amendment to the United States Constitution.'" (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 572.) Although the California Constitution is construed independently from the United States Constitution, this Court has followed federal equal protection analysis in analyzing California constitutional claims that are analogous to claims made under the United States Constitution. (*Ibid.*)

grounds. (*Id.*, at p. 632 [Amendment 2 "lacks a rational relationship to legitimate state interests."].) And in *Lawrence v. Texas, supra*, 539 U.S. 558, which struck down a Texas law barring homosexual sodomy on due process grounds, the Supreme Court cited with favor the *Romer* decision's application of the rational basis test.[19] (*Id.*, at p. 574, citing *Romer, supra*, 517 U.S. at p. 634.)

In sum, the United States Supreme Court and the California courts have never applied strict scrutiny to laws that classify on the basis of sexual orientation.[20] California's marriage laws do not classify based on sexual orientation, but even if they did, the rational basis test would apply.

3. It Is Legitimate for California to Afford Rights and Benefits to Same-sex Couples While Maintaining the Common Understanding of Marriage.

This Court has explained that in areas of social policy, "a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge *if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.*" (*Warden v. State Bar* (1999) 21 Cal.4th 628, 644, original emphasis.) Where there are

---

19 Justice O'Connor wrote a separate concurrence in which she opined that the Texas law should be struck down on equal protection grounds. (*Lawrence v. Texas, supra,* 539 U.S. at pp. 579-86) (O'Connor, J., concurring).) Justice O'Connor indicated that she would have applied rational basis review to the equal protection claim. (*Id.*, at pp. 579-85.)

20 In addition, the Ninth Circuit Court of Appeals held in *High Tech Gays v. Defense Industrial Security Center* (9th Cir. 1990) 895 F.2d 563, that classifications based on homosexuality were not entitled to heightened scrutiny. (*Id.*, at p. 572.)

"plausible reasons" for the classification, the court's inquiry is done. (*Ibid.*)[21]

This Court also explained that the absence of facts proving a conceivable basis for the statute is not significant under rational-basis analysis. (*Warden, supra,* 21 Cal.4th at p. 650.) "[A] legislative choice is not subject to courtroom factfinding and may be based on rational speculation *unsupported by evidence or empirical data.*" (*Ibid.*, original emphasis, citing *Heller v. Doe* (1993) 509 U.S. 312, 320 ["[a] State . . . has no obligation to produce evidence to sustain the rationality of a statutory classification"], and *U.S. Railroad Retirement Bd. v. Fritz* (1980) 449 U.S. 166, 179 [it is "constitutionally irrelevant whether [the] reasoning in fact underlay the legislative decision"].) It is enough to identify a conceivable basis, even if that basis did not actually serve as a motivating factor during the legislative process. (*Warden, supra,* 21 Cal.4th at p. 650, citing *FCC v. Beach Communications, Inc.* (1993) 508 U.S. 307, 315.)

As this Court explained, the rational basis test is an extremely deferential standard. (*Warden, supra,* 21 Cal.4th at p. 651, fn. 14.) Courts may not reweigh policy choices or reevaluate the efficacy of a legislative

---

[21] Under the rational basis standard of review, courts presume a statute is constitutional and will uphold it if there is a rational basis for its enactment. (*Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 907-908.) The party challenging the constitutionality of the statute bears the burden of proving that the statute is not rationally related to *any conceivable* legitimate state interest. (*Ameri-Medical Corporation v. Workers' Compensation Appeals Board* (1996) 42 Cal.App.4th 1260, 1283.) As this Court explained, the rational basis test has "never been interpreted to mean that we may properly strike down a statute simply because we disagree with the wisdom of the law or because we believe that there is a fairer method for dealing with a problem." (*Fein v. Permanente Medical Group* (1985) 38 Cal.3d 137, 163.)

scheme. (*Ibid.*) In this case, the question is not whether redefining marriage is good public policy; the question instead is whether there is any conceivable basis for the State's decision to maintain the understanding of marriage that has existed since the inception of California's statehood. (*Id.* at 644.)

The Administration submits that maintaining the understanding of marriage that has always existed in California, while declaring that registered domestic partners shall have the same rights, protections and benefits as spouses, is legitimate and is not irrational.

Marriage has been understood to be a union between a man and a woman throughout California history. (*Mott, supra*, 82 Cal. at p. 416.) This common understanding of marriage is also recognized in federal law (1 U.S.C. § 7) and in every state but Massachusetts. And in the year 2000, California voters passed Proposition 22, providing that only marriage between a man and a woman is valid or recognized in California. (Family Code, § 308.5.) The word "marriage" has a particular meaning for millions of Californians, and that common understanding of marriage is important to them.

At the same time, Californians do not want to deny same-sex couples the rights, benefits and protections afforded to spouses. Accordingly, the California Legislature approved, and the Governor signed, sweeping laws dictating that registered domestic partners shall have the same rights, benefits and protections as spouses. (See, e.g., Family Code § 297.5.)

In California, political power is inherent in the People. (Cal. Const., art. II, §§ 1, 8.) The People expressed their will in passing Proposition 22, and the Legislature and the Governor also responded to the

will of the People in passing the Domestic Partner Act. The resulting statutes create an appropriate and constitutional balance of legitimate interests, and the statutes are rationally related to those interests. This Court recognized that registered domestic partners are "the equivalent of spouses" when it comes to equal rights, and that they have been granted recognition "comparable to marriage" both procedurally and substantively. (*Koebke, supra,* 36 Cal.4th at pp. 831, 845.) This careful balance maintains the common understanding of marriage as between a man and a woman, while at the same time declaring that registered domestic partners shall have the same rights, protections and benefits as spouses. This balance does not violate the equal protection clause.[22]

It is also legitimate for California to recognize that the legislative process, including the People's power of the initiative, is best suited to consider, through public input and debate, the complex social and policy implications involved in the definition of marriage. The definition of

---

[22] The Administration does not hold a monopoly on articulating the state's interests, and California's marriage laws should be upheld if there is *any conceivable* legitimate state interest. (*Ameri-Medical Corporation, supra,* 42 Cal.App.4th at 1283.) Nonetheless, certain alleged state interests articulated by other parties in other cases, or in the public discourse, are clearly inconsistent with California's decision to afford substantially equivalent rights and benefits to same-sex couples. It has been suggested by some, for example, that same-sex relationships are less committed or stable than are opposite-sex relationships. But the Domestic Partner Act declares that "many lesbian, gay and bisexual Californians have formed lasting, committed, and caring relationships with persons of the same sex." (Section 1, subd. (b), of Stats.2003, c. 421 [A.B. 205].) It has also been suggested by certain advocates that same-sex marriages would place children at risk. Once again, this assertion is inconsistent with California's determination to extend to registered domestic partners the "same rights, protections, and benefits" as spouses.

marriage is properly reserved to the legislative process. (*Estate of DePasse, supra,* 97 Cal.App.4th at p. 99; *Kelsey v. Miller, supra,* 203 Cal. at p. 91; *McClure v. Donovan, supra,* 33 Cal.2d at p. 728.) "The fact that the line could be drawn differently is a matter for legislative, rather than judicial, consideration, as long as plausible reasons exist for placement of the current line." (*Standhardt, supra,* 77 P.3d at p. 463, *citing FCC v. Beach Communications, Inc., supra,* 508 U.S. at pp. 313-314.) Because the definition of marriage is solely within the discretion of the legislative process, this Court should ask whether there is any conceivable basis to maintain a definition of marriage that has existed throughout history, while at the same time affording rights and benefits to registered domestic partners that are "comparable to marriage." (*Koebke, supra,* 36 Cal.4th at p. 845.)

Petitioners argue that such a careful balance of legitimate interests smacks of "separate but equal," but that phrase has no application in this context. Certainly, the phrase "separate but equal" strikes an emotional chord with anyone who remembers this nation's troubling history of racial discrimination. But this is not a situation where same-sex couples are required to use different facilities or different housing. Here, California law mandates that registered domestic partners shall have "the *same* rights, protections, and benefits" as spouses. (Family Code, § 297.5, subd. (a); emphasis added.)

Petitioners also compare California's current marriage laws to previous anti-miscegenation statutes, and cite *Perez v. Sharp* (1948) 32 Cal.2d 711 and *Loving v. Virginia* (1967) 388 U.S. 1, as support for the conclusion that California's marriage laws are unconstitutional. But *Perez* and *Loving* are not on point. Here, California has declared that same-sex

couples shall have the *same* rights and benefits, and has adopted legislation comparable to marriage. (*Koebke, supra,* 36 Cal.4th at p. 845.) In addition, *Perez* and *Loving* involved challenges under the federal constitution, not the California constitution. (*Perez, supra,* 32 Cal.2d at p. 713; *Loving, supra,* 388 U.S. at p. 2.) Although the courts in those cases held that the anti-miscegenation statutes violated the federal constitution, federal courts have reached a *different* conclusion regarding the constitutionality of marriage as between a man and a woman. (*Baker v. Nelson, supra,* 409 U.S. 810; *In re Kandu, supra,* 315 B.R. 123.)

It has also been argued that granting registered domestic partners the same rights, protections and benefits as spouses is not enough, because "domestic partnership" does not have the same meaning as "marriage." But that is precisely why California's marriage laws survive this constitutional challenge. The common understanding of marriage is deeply rooted in our society, and it is legitimate for California to maintain this meaning while affording equivalent rights and benefits to same-sex couples.

B. Even If Heightened or Strict Scrutiny Applied, California Has a Compelling Interest in Affording Rights and Benefits to Same-sex Couples While Maintaining the Common Understanding of Marriage, and in Recognizing that the Legislative Process Is Best Suited to Define Marriage.

No appellate court (other than two of the five Justices on the Hawaii Supreme Court in *Baehr v. Lewin, supra,* 852 P.2d 44) has applied heightened or strict scrutiny in this context. Nonetheless, even if strict scrutiny applied, California has a compelling interest in affording rights and benefits to same-sex couples while maintaining the deeply-rooted understanding of marriage. It is well-settled that the definition and

regulation of marriage is solely within the province of the legislative process (*Estate of DePasse, supra,* 97 Cal.App.4th at p. 99), and that "[t]he state has a vital interest in the institution of marriage and plenary power to fix the conditions under which the marital status may be created or terminated." (*Ibid.*) There is also no doubt that the State can impose limits on the right to marry. (See, e.g., Family Code §§ 2200 *et seq*. [void and voidable marriages].) Because the common understanding of marriage as between a man and a woman is so deeply rooted in our culture and understanding, the State has a compelling interest in maintaining that understanding while at the same time declaring that registered domestic partners shall have the same rights, protections and benefits as spouses. California also has a compelling interest in deferring to the legislative process, including the People's power of initiative, in crafting an appropriate balance in this regard, and in considering, through public input and debate, the complex social and policy implications regarding the definition of marriage.

II

DUE PROCESS IS NOT INFRINGED BY CALIFORNIA'S MARRIAGE LAWS, BECAUSE CALIFORNIA AFFORDS RIGHTS AND BENEFITS TO SAME-SEX COUPLES, AND BECAUSE SAME-SEX MARRIAGE IS NOT DEEPLY ROOTED IN CALIFORNIA'S CULTURE AND UNDERSTANDING.

This Court has recognized California's efforts to declare registered domestic partners "the equivalent of spouses" when it comes to equal rights and to afford them "legal recognition comparable to marriage" both procedurally and substantively. (*Koebke, supra,* 36 Cal.4th at 831,

845.) But even if California had not taken such strides to achieve equality, due process would not be violated because same-sex marriage is not deeply rooted in our culture.

The first step under due process analysis is to determine whether a fundamental right is implicated. Rights are considered fundamental only if they are deeply-rooted and firmly entrenched in our state's history and tradition, and are implicit in the state's concept of ordered liberty. (*Dawn D. v. Superior Court* (*Jerry K.*) (1998) 17 Cal. 4th 932, 940; cf. *Washington v. Glucksberg* (1997) 521 U.S. 702, 720-721; see also *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 19 [original intent of framers of the California due process clause is "the pivotal factor" in construing its terms]; *Committee to Defend Reproductive Rights v. Myers* (1981) 29 Cal.3d 252, 261 ["the safeguards guaranteed by the California Constitution [are interpreted] in a manner consistent with the governing principles of California law"].)[23]

The common understanding of marriage as between a man and a woman pre-dates the founding of this state or nation, and such an understanding is certainly deeply rooted in our culture. Hence, courts have appropriately held that marriage is a fundamental right. (See, e.g., *Perez v. Sharp, supra,* 32 Cal.2d at p.714.) But in *Perez*, the court necessarily analyzed the question in a manner consistent with the legal definition of

---

[23] While the protections of the California Constitution are independent of those found in the United States Constitution, California courts interpret the California Constitution's due process guarantee in a manner similar to its federal counterpart. (See *Kruger v. Wells Fargo Bank* (1974) 11 Cal.3d 352, 366.) Thus, the federal test for determining which liberty interests fall within the scope of state substantive due process applies.

marriage as between a man and a woman, because that is how marriage has always been understood and how it has always been defined.

If there is a fundamental right to marriage, and if marriage has always been defined as a union between a man and a woman, then it necessarily follows that individuals have a fundamental right to enter into a union between a man and a woman. The cases articulating a fundamental right to marriage cannot stand for anything more, because they must be read in a manner consistent with the definition of marriage.

If a fundamental right is one that is deeply-rooted in our culture, then courts cannot ignore that culture in determining whether such a right exists. This is not to say, of course, that fundamental rights can never evolve. Certainly, there was no deeply-rooted tradition of interracial marriage in California prior to the decision in *Perez, supra,* 32 Cal.2d 711. But although the court in *Perez* expanded the fundamental right, it has never been suggested that *Perez* went so far as to redefine the definition of marriage. *Perez* must be understood in the context of California's definition of marriage as between a man and a woman.

Same-sex marriage is not deeply-rooted in our culture. (*Lockyer v. CCSF, supra,* 33 Cal.4th at p. 1128 (Kennard, J., concurring and dissenting) [marriage has been understood as a union between a man and a woman throughout California history]; *Mott, supra*, 82 Cal. at p. 416; *Kilburn, supra*, 89 Cal. at p. 50.) Other states have reached the same conclusion, holding that due process is not violated by the definition of marriage as between a man and a woman. (*Baehr, supra,* 852 P.2d at pp. 44, 57 [same-sex marriage is not rooted in history or tradition, is not a fundamental right, and is not protected by due process]; *Dean, supra*, 653 A.2d at pp. 331-333 [same]; *Standhardt, supra,* 77 P.3d at pp. 458-459

[same]; *In re Estate of Cooper*, *supra*, 564 N.Y.S.2d 684, 685; *Jones v. Hallahan*, *supra*, 501 S.W.2d at p. 590; *Baker v. Nelson, supra,* 191 N.W.2d at pp. 186-187; cf. *Goodridge, supra*, 798 N.E.2d at p. 961.) In addition, the federal court in *In re Kandu, supra,* 315 B.R. 123, declined to hold that there is a fundamental right to marry someone of the same sex. (See also *Adams v. Howerton* (C.D. Cal. 1980) 486 F.Supp. 1119, 1124-1125.)

Because same-sex marriage is not a fundamental right, a rational basis standard of review applies. (*People v. Gallegos* (1997) 54 Cal.App.4th 252, 262-263.) It is legitimate for California to maintain the deeply-rooted understanding of marriage, while declaring that registered domestic partners shall have the same rights, protections and benefits as spouses. It is also legitimate for California to defer to the legislative process, including the People's right of initiative, to resolve this complex social issue. California's marriage laws are rationally related to these interests.

III

CALIFORNIA'S MARRIAGE LAWS DO NOT VIOLATE RIGHTS OF PRIVACY, ASSOCIATION OR EXPRESSION.

Article I, section 1 of the California Constitution guarantees the right of privacy to state citizens. The right to privacy encompasses "autonomy privacy" and "informational privacy." (*Hill, supra,* 7 Cal.4th 1, 35.) Only a right to autonomy privacy was asserted in this case. A plaintiff alleging a violation of the right to privacy under the California Constitution must establish each of the following: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy under the circumstances;

and (3) conduct by defendant constituting a serious invasion of privacy. (*Id.*, at p. 39-40.)

Actionable violations of privacy "must be sufficiently serious in their nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right." (*Hill, supra*, 7 Cal.4th at p. 37.) In California, there has been no egregious breach of a social norm, because California is a leader in providing rights and benefits to same-sex couples. In any event, Petitioners cannot even establish the essential elements of their privacy claim.

A. There Is No Legally Protected Privacy Interest in Same-Sex Marriage.

The privacy provision of our Constitution "was not intended 'to create any unbridled right of personal freedom of action that may be vindicated in lawsuits against either government agencies or private persons or entities.'" (*Liebert v. Transworld Systems* (1995) 32 Cal.App.4th 1693, 1702 (quoting *Hill, supra,* 7 Cal.4th at p. 36) [affirming a demurrer to a privacy claim based on an alleged termination due to sexual orientation].) The right of privacy does not protect every conceivable claim for privacy. (*Hill, supra*, 7 Cal.4th at p. 37; see also J. Clark Kelso, *California's Constitutional Right to Privacy* (1992) 19 Pepp. L. Rev. 327, 440 ["There is no indication that *all* aspects of home life, *all* aspects of family, and *all* rights of association are protected by the privacy clause."].)

"Whether a legally recognized privacy interest is present in a given case is a question of law to be decided by the court." (*Hill, supra,* 7 Cal.4th at p. 40.) The framers of the constitutional privacy provision intended to protect those privacy rights that were recognized in the common law and protected by the federal Constitution. (*Id.*, at p. 16.) The

constitutional right to privacy "is to be interpreted and applied in a manner consistent with the probable intent of the body enacting it: the voters of the State of California." (*Ibid.*) There is no support for the proposition that a right to same-sex marriage was recognized as a constitutionally protected privacy interest.

Courts in other states have addressed this issue by noting that there is no fundamental right to same-sex marriage arising out of the privacy right. (See *Baehr, supra*, 852 P.2d at p. 57 [holding that "the applicant couples do not have a fundamental constitutional right to same-sex marriage arising out of the right of privacy or otherwise"]; *Standhardt, supra*, 77 P.3d at p. 460 [holding that Arizona's constitutional right to privacy was not violated because of the lack of a fundamental right to same-sex marriage]; *Lewis v. Harris*, *supra*, 908 A.2d at pp. 206-11 [no right to same sex-marriage under the liberty guarantee of the New Jersey Constitution]; see also *Baker v. Nelson, supra*, 191 N.W.2d at p. 185; *Jones v. Hallahan, supra*, 501 S.W.2d at p. 588; *Singer v. Hara, supra*, 522 P.2d at p. 1187.)

The court in *Ortiz v. Los Angeles Police Relief Ass'n, Inc.* (2002) 98 Cal.App.4th 1288, recognized a privacy interest in marriage, but that case does not stand for the proposition that there is a privacy interest in same-sex marriage. In *Ortiz*, a female employee of a non-profit organization that managed police officer benefits was terminated because she planned to marry a male prison inmate. (*Id.*, at p. 1297.) The employer was concerned that the female employee's involvement with the male inmate could result in the disclosure of confidential police information to the inmate. (*Ibid.*) The Court of Appeal noted that marriage was a protected privacy interest (*id.*, at p. 1304), but nonetheless held that the

employer did not violate that interest. (*Id.*, at p. 1312.) Applying the rational basis test, the court concluded that the employer's policy was legitimate. (*Ibid.*)

Although *Ortiz* recognized a privacy interest in marriage, that decision must be viewed in the context of the definition of marriage. If there is a privacy interest in marriage, and if marriage has always been understood as a union between a man and a woman, then *Ortiz* only stands for the proposition that there is a privacy interest in a union between a man and a woman. No California case holds that there is a privacy interest in same-sex marriage.

B. Under Current Law, There Can Be No Reasonable Expectation Of a Privacy Interest in Same-Sex Marriage, and the State Has Not Committed an Egregious Breach of Social Norms.

If there is no privacy interest in same-sex marriage, and if marriage has always been understood as a union between a man and a woman, then under current law there can be no reasonable expectation of a privacy interest in same-sex marriage. In addition, California's marriage laws do not constitute an *invasion* of privacy. This Court has held that actionable violations of privacy must involve an egregious breach of social norms (*Hill, supra*, 7 Cal.4th at p. 37), but there is no social norm recognizing same-sex marriage, and there is no egregious breach because the Domestic Partner Act declares that registered domestic partners shall have the same rights, protections and benefits as spouses.

C. The Marriage Laws Do Not Infringe Rights of Expression or Association.

The marriage laws do not forbid Petitioners from associating with anyone, individually or in groups. (See *Nieto v. City of Los Angeles*

(1982) 138 Cal.App.3d 464, 468 [statute denying plaintiff standing to sue city for wrongful death of fiancé did not violate plaintiff's right to freely associate with persons of her choice].) And they do not limit Petitioners' freedom to express themselves. Although it has been argued that the decision in *Lawrence v. Texas, supra*, 539 U.S. 558, supports the proposition that gay men and lesbians have a liberty interest in association for intimate relations, the United States Supreme Court clearly stated in that case that it was not making any determination on the constitutionality of same-sex marriage. (*Id.*, at p. 578.) *Lawrence* does not require finding a right to same-sex marriage under the rubric of the right to free association. (See *Standhardt, supra*, 77 P.3d at p. 457 [*Lawrence* did not "intend by its comments to address same-sex marriages," and "we reject [the] contention that *Lawrence* establishes entry in same-sex marriages as a fundamental right."].)

The Court of Appeal was correct in holding that California's marriage laws do not violate rights of privacy, expression or association.

CONCLUSION

California's effort to extend rights and benefits to same-sex couples, while maintaining the common understanding of marriage, does not run afoul of the California Constitution. The Court of Appeal decision should be affirmed.

Dated: June 14, 2007

MENNEMEIER, GLASSMAN & STROUD LLP
KENNETH C. MENNEMEIER
KELCIE M. GOSLING

By: Kenneth C. Mennemeier

Kenneth C. Mennemeier
Attorneys for Respondents Governor Arnold Schwarzenegger and State Registrar of Vital Statistics Teresita Trinidad

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using 13 point Times New Roman typeface. According to the "Word Count" feature in my WordPerfect software, this brief contains 11,622 words up to and including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on June 14, 2007.

MENNEMEIER, GLASSMAN & STROUD LLP
KENNETH C. MENNEMEIER
KELCIE M. GOSLING

By: Kenneth C. Mennemeier
Kenneth C. Mennemeier
Attorneys for Respondents Governor Arnold Schwarzenegger and State Registrar of Vital Statistics Teresita Trinidad

Case Name: *In re Marriage Cases*
Case No: S147999

PROOF OF SERVICE
BY MAIL

I hereby declare:

I am a citizen of the United States and employed in Sacramento County, California; I am over the age of eighteen years, and not a party to the within action; my business address is 980 9th Street, Suite 1700, Sacramento, California 95814-2736. On June 14, 2007, I served the within documents:

ANSWER BRIEF OF GOVERNOR ARNOLD SCHWARZENEGGER AND STATE REGISTRAR OF VITAL STATISTICS TERESITA TRINIDAD ON THE MERITS

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepared, in the United States mail at Sacramento, California addressed as set forth below:

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepared in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Executed on June 14, 2007, at Sacramento, California.

Angela Knight
(Type or Print Name)

Angela Knight
(Signature)

SERVICE LIST FOR CONSOLIDATED *MARRIAGE CASES*,
CALIFORNIA SUPREME COURT CASE NO. S147999
JCCP No. 4365[1]

City and County of San Francisco v. State of California
California Court of Appeal, First Appellate District Case No. A110449
San Francisco County Superior Court Case No. CGC-04-429539
(Consolidated for Trial with)
San Francisco County Superior Court Case No. CGC-04-429548

Representing Attorney General Edmund G. Brown Jr.: Edmund G. Brown Jr. Attorney General of the State of California Christopher E. Krueger Supervising Deputy Attorney General 1300 I Street, Suite 125 P.O. Box 944255 Sacramento, CA 94244-2550 Telephone: (916) 445-7385 Facsimile: (916) 324-8835	**Honorable Richard A. Kramer, Presiding Judge of the Superior Court of California, County of San Francisco:** Clerk of the Court, Civil Superior Court of California, County of San Francisco Civic Center Courthouse 400 McAllister Street, Dept. 304 San Francisco, CA 94104-4514
California Court of Appeal: California Court of Appeal First Appellate District, Division Three 350 McAllister Street San Francisco, CA 94102	

1. These cases were consolidated by the Court of Appeal in an order dated December 1, 2005.

Representing Petitioner City and County of San Francisco and Defendant and Respondent Mayor Gavin Newsom:	**Representing Petitioner City and County of San Francisco and Defendant and Respondent Mayor Gavin Newsom:**
Therese M. Stewart Chief Deputy City Attorney OFFICE OF THE CITY ATTORNEY City Hall, Room 234 1 Dr. Carlton B. Goodlett Pl. San Francisco, California 94102–4682 Telephone: (415) 554-4708 Facsimile: (415) 554-4745	Bobbie J. Wilson Amy E. Margolin HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN Three Embarcadero Center, 7th Floor San Francisco, CA 94111-4024 Telephone: (415) 434-1600 Facsimile: (415) 217-5910

Tyler, et al. v. State of California
California Court of Appeal, First Appellate District Case No. A110450
Los Angeles County Superior Court Case No. BS088506

Representing Petitioners Robin Tyler, et al:	**Representing County of Los Angeles:**
Gloria Allred Michael Maroko John S. West ALLRED, MAROKO & GOLDBERG 6300 Wilshire Blvd., Ste. 1500 Los Angeles, CA 90048-5217 Telephone: (323) 653-6530 Facsimile: (323) 653-1660	Lloyd W. Pellman, County Counsel Raymond G. Fortner Senior Deputy County Counsel Judy W. Whitehurst Senior Deputy County Counsel 648 Kenneth Hahn Hall of Administration 500 W. Temple St. Los Angeles, CA 90012-2713 Telephone: (213) 974-8948 Facsimile: (213) 626-2105

Representing Respondent Equality California: Stephen V. Bomse Christopher F. Stoll HELLER EHRMAN WHITE & MCAULIFFE LLP 333 Bush Street San Francisco, CA 94104-2878 Telephone: (415) 772-6000 Facsimile: (415) 772-6268	**Representing Respondent Equality California:** Shannon Minter Vanessa H. Eisemann Melanie Rowen Catherine Sakimura NATIONAL CENTER FOR LESBIAN RIGHTS 870 Market Street, Suite 370 San Francisco, CA 94102 Telephone: (415) 392-6257 Facsimile: (415) 392-8442
Representing Respondent Equality California: Jon W. Davidson Jennifer C. Pizer LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. 3325 Wilshire Boulevard, Suite 1300 Los Angeles, CA 90010 Telephone: (213) 382-7600 Facsimile: (213) 351-6050	**Representing Respondent Equality California:** Peter J. Eliasberg Clare Pastore ACLU FOUNDATION OF SOUTHERN CALIFORNIA 1616 Beverly Boulevard Los Angeles, CA 90026 Telephone: (213) 977-9500 Facsimile: (213) 250-3919
Representing Respondent Equality California: Alan L. Schlosser Alex M. Cleghorn ACLU FOUNDATION OF NORTHERN CALIFORNIA 39 Drumm Street San Francisco, CA 94111 Telephone: (415) 621-2493 Facsimile: (415) 255-8437	**Representing Respondent Equality California:** David C. Codell LAW OFFICE OF DAVID C. CODELL 9200 Sunset Blvd. Penthouse Two Los Angeles, CA 90069 Telephone: (310) 273-0306 Facsimile: (310) 273-0307

Woo, et al. v. Lockyer
California Court of Appeal, First Appellate District Case No. A110451
San Francisco County Superior Court Case No. CGC 04-504038

Representing Respondents Lancy Woo, et al.: Stephen V. Bomse Christopher F. Stoll HELLER EHRMAN LLP *See listing above under Tyler, et al. v. State of California*	**Representing Respondents Lancy Woo, et al.:** Shannon Minter Vanessa H. Eisemann Melanie Rowen Catherine Sakimura NATIONAL CENTER FOR LESBIAN RIGHTS *See listing above under Tyler, et al. v. State of California*
Representing Respondents Lancy Woo, et al.: Alan L. Schlosser Alex M. Cleghorn ACLU FOUNDATION OF NORTHERN CALIFORNIA *See listing above under Tyler, et al. v. State of California*	**Representing Respondents Lancy Woo, et al.:** David C. Codell LAW OFFICE OF DAVID C. CODELL *See listing above under Tyler, et al. v. State of California*
Representing Respondents Lancy Woo, et al.: Peter J. Eliasberg Clare Pastore ACLU FOUNDATION OF SOUTHERN CALIFORNIA *See listing above under Tyler, et al. v. State of California*	**Representing Respondents Lancy Woo, et al.:** Jon W. Davidson Jennifer C. Pizer LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. *See listing above under Tyler, et al. v. State of California*
Representing Respondents Lancy Woo, et al.: Dena L. Narbaitz Clyde J. Wadsworth STEEFEL, LEVIT & WEISS, a Professional Corporation One Embarcadero Center, 30th Floor San Francisco, CA 94111	

Proposition 22 Legal Defense and Education Fund v. City and County of San Francisco
California Court of Appeal, First Appellate District Case No. A110651
San Francisco County Superior Court Case No. CGC-04-503943
consolidated with
Campaign for California Families v. Newsom
California Court of Appeal, First Appellate District Case No. A110652
San Francisco County Superior Court Case No. CGC-04-428794

Representing Proposition 22 Legal Defense and Education Fund: Benjamin W. Bull Glen Lavy ALLIANCE DEFENSE FUND 15333 North Pima Road, Suite 165 Scottsdale, AZ 85260 Telephone: (480) 444-0020 Facsimile: (480) 444-0028	**Representing Proposition 22 Legal Defense and Education Fund:** Timothy Chandler ALLIANCE DEFENSE FUND 101 Parkshore Drive, Suite 100 Folsom, CA 95630 Telephone: (916) 932-2850 Facsimile: (916) 932-2851
Representing Proposition 22 Legal Defense and Education Fund: Robert H. Tyler ADVOCATES FOR FAITH AND FREEDOM 24910 Las Brisas Road, Suite 110 Murrieta, CA 92562 Telephone: (951) 304-7583 Facsimile: (951) 894-6430	**Representing Proposition 22 Legal Defense and Education Fund:** Terry L. Thompson LAW OFFICES OF TERRY L. THOMPSON 1804 Piedras Circle Alamo, CA 94507 Telephone: (925) 608-3065 Facsimile: (925) 820-6034
Representing Proposition 22 Legal Defense and Education Fund: Andrew P. Pugno LAW OFFICES OF ANDREW P. PUGNO 101 Parkshore Drive, Suite 100 Folsom, CA 95630 Telephone: (916) 608-3065 Facsimile: (916) 608-3066	**Representing Petitioner City and County of San Francisco:** Therese M. Stewart Chief Deputy City Attorney OFFICE OF THE CITY ATTORNEY *See listing above under CCSF v. State of California*

Representing Petitioner City and County of San Francisco: Bobbie J. Wilson Amy E. Margolin HOWARD, RICE, NEMEROVSKI, CANADY, FALK & RABKIN *See listing above under CCSF v. State of California*	**Representing Campaign for California Families:** Matthew D. Staver LIBERTY COUNSEL Second Floor 1055 Maitland Center Commons Maitland, FL 32751-7214 Telephone: (407) 875-2100 Facsimile: (407) 875-0770
Representing Campaign for California Families: Mary E. McAlister LIBERTY COUNSEL P.O. Box 11108 100 Mountain View Road, Suite 2775 Lynchburg, VA 24506 Telephone: (434) 592-7000 Facsimile: (434) 592-7700	**Representing Campaign for California Families:** Ross S. Heckman ATTORNEY AT LAW 1214 Valencia Way Arcadia, CA 91006 Telephone: (626) 256-4664 Facsimile: (626) 256-4774
Representing Del Martin, et al.: Stephen V. Bomse Christopher F. Stoll HELLER EHRMAN LLP *See listing above under Tyler, et al. v. State of California*	**Representing Del Martin, et al.:** Shannon Minter Vanessa H. Eisemann Melanie Rowen Catherine Sakimura NATIONAL CENTER FOR LESBIAN RIGHTS *See listing above under Tyler, et al. v. State of California*
Representing Del Martin, et al.: Alan L. Schlosser Alex M. Cleghorn ACLU FOUNDATION OF NORTHERN CALIFORNIA *See listing above under Tyler, et al. v. State of California*	**Representing Del Martin, et al.:** David C. Codell LAW OFFICE OF DAVID C. CODELL *See listing above under Tyler, et al. v. State of California*

Representing Del Martin, et al.:	**Representing Del Martin, et al.:**
Peter J. Eliasberg Clare Pastore ACLU FOUNDATION OF SOUTHERN CALIFORNIA *See listing above under Tyler, et al. v. State of California*	Jon W. Davidson Jennifer C. Pizer LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. *See listing above under Tyler, et al. v. State of California*

Clinton, et al. v. State of California, et al.
California Court of Appeal, First Appellate District Case No. A110463
San Francisco County Superior Court Case No. CGC-04-429548

Representing Petitioners Clinton, et al.:	**Representing Petitioners Clinton, et al.:**
Jason Hasley PAUL, HANLEY & HARLEY LLP 1608 Fourth Street, Suite 300 Berkeley, CA 94710 Telephone: (510) 559-9980 Facsimile: (510) 559-9970	Waukeen Q. McCoy Aldon L. Bolanos LAW OFFICES OF WAUKEEN Q. MCCOY 703 Market Street, Suite 1407 San Francisco, CA 94103 Telephone: (415) 675-7705 Facsimile: (415) 675-2530