

IN THE SUPREME COURT OF THE STATE 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 Case 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

**CONSOLIDATED ANSWER TO PETITIONS FOR REVIEW**

BILL LOCKYER  
Attorney General of the State of California

STACY BOULWARE EURIE  
Senior Assistant Attorney General

CHRISTOPHER E. KRUEGER  
Supervising Deputy Attorney General  
State Bar No. 173288  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 445-7385  
Fax: (916) 324-8835  
[Christopher.Krueger@doj.ca.gov](mailto:Christopher.Krueger@doj.ca.gov)

Attorneys for Respondents State of  
California, Governor Arnold  
Schwarzenegger, Attorney General Bill  
Lockyer, and State Registrar of Vital  
Statistics Teresita Trinidad

## TABLE OF CONTENTS

	<b>Page</b>
THE SAME-SEX MARRIAGE CASES PRESENT A LEGAL ISSUE OF GREAT PUBLIC IMPORTANCE JUSTIFYING REVIEW BY THIS COURT	2
CONCLUSION	5

## TABLE OF AUTHORITIES

	<b>Page</b>
<b>Cases</b>	
<i>Anderson v. King Co.</i> (Wash. 2006) 138 P.3d 963	2
<i>Hernandez v. Robles</i> (N.Y. 2006) 855 N.E.2d 1	2
<i>In re Marriage Cases</i> (2006) 143 Cal.App.4th 873	4
<i>Knight v. Superior Court</i> (2005) 128 Cal.App.4th 14	4
<i>Koebke v. Bernardo Heights Country Club</i> (2005) 36 Cal.4th 824	3
<i>Lewis v. Harris</i> (N.J. 2006) 908 A.2d 196	2
<i>Lockyer v. City and County of San Francisco</i> (2004) 33 Cal.4th 1055	2, 3
<i>Pearl Inv. Co. v. City &amp; County of S.F.</i> (9 <sup>th</sup> Cir. 1985) 774 F.2d 1460	3
<i>Smelt v. County of Orange</i> (9 <sup>th</sup> Cir. 2006) 447 F.3d 673 cert. den. (2006) __ U.S. __ [127 S.Ct. 396]	3
<b>Constitutional Provision</b>	
California Constitution article II section 10, subdivision (c)	4

**TABLE OF AUTHORITIES (continued)**

	<b>Page</b>
<b>Statutes</b>	
Family Code	
§ 297.5	3
§ 300	3
§ 301	3
§ 308.5	3
 <b>Court Rules</b>	
California Rules of Court	
rule 28(b)(1)	2

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**Coordination Proceeding, Special Title [Rule 1550(b)]  
In re MARRIAGE CASES.**

S147999

The definition of marriage constitutes a matter of great statewide importance, and the parties to these cases have always recognized that the constitutional questions involved should be decided by this Court to bring the greatest amount of finality and certainty to the issues presented. At various points during the proceedings prior to the Court of Appeal's decision, the State Respondents<sup>1/</sup> urged this Court to quickly decide these significant issues to ensure uniformity of decision and finality for the citizens of California. Although the Court of Appeal upheld the position argued by the State Respondents, we believe a decision by this Court would provide the greatest level of certainty, uniformity and finality in these matters. Accordingly, we urge this Court to grant review of the five petitions for review that seek review

---

1. Respondents State of California, Governor Arnold Schwarzenegger, Attorney General Bill Lockyer, and State Registrar of Vital Statistics Teresita Trinidad will be referred to collectively as the "State Respondents."

of the Court of Appeal's decision upholding the marriage laws.<sup>2/</sup>

**THE SAME-SEX MARRIAGE CASES PRESENT A LEGAL  
ISSUE OF GREAT PUBLIC IMPORTANCE JUSTIFYING  
REVIEW BY THIS COURT.**

The constitutionality of statutes limiting marriage to male-female unions constitutes an important question of law that should be reviewed by California's highest court. (Cal. Rules of Ct., rule 28(b)(1).) Although the Court of Appeal upheld the position argued by the State Respondents, we nonetheless support review by this Court to ensure uniformity of decision, finality and certainty for the citizens of California. In the two years since this Court decided *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, numerous state and federal courts have considered the constitutionality of laws limiting marriage to male-female unions. Similar cases have been decided in recent months by the highest courts of New York, New Jersey and Washington state. (*Hernandez v. Robles* (N.Y. 2006) 855 N.E.2d 1; *Lewis v. Harris* (N.J. 2006) 908 A.2d 196; *Anderson v. King Co.* (Wash. 2006) 138 P.3d 963.) Meanwhile, the federal courts have abstained from construing

---

2. The State Respondents support review of the five petitions filed by the City and County of San Francisco (First App. Dist. Case No. A110449), the petitioners in *Woo v. Lockyer* (A110451), the petitioners in *Tyler v. State of California* (A110450), Equality California as intervenor in *Tyler v. State of California* (A110450), and the petitioners in *Clinton v. State of California* (A110463). The State Respondents take no position on the petition for review filed by the petitioner in *Proposition 22 Legal Defense and Education Fund v. City and County of San Francisco* (A110651). The *Proposition 22* petition raises issues related to the standing of the Proposition 22 Legal Defense and Education Fund to bring its action against the City and County of San Francisco. The State Respondents were not parties to the *Proposition 22* action, although it was coordinated in the trial court with the *CCSF*, *Woo*, *Tyler*, *Clinton* and *Campaign for California Families* actions and then consolidated for purposes of hearing and decision in the Court of Appeal.

The State Respondents are submitting a motion for permission to file a consolidated answer to these five petitions along with this answer.

California's marriage statutes, because they "simply 'cannot predict with any confidence how [the California Supreme Court] would decide' the state constitutional questions." (*Smelt v. County of Orange* (9<sup>th</sup> Cir. 2006) 447 F.3d 673, 681, cert. den. (2006) \_\_ U.S. \_\_ [127 S.Ct. 396] (quoting *Pearl Inv. Co. v. City & County of S.F.* (9<sup>th</sup> Cir. 1985) 774 F.2d 1460, 1465) [affirming the district court's decision to abstain from considering federal constitutional challenge to Family Code sections 300, 301, and 308.5].) Thus, the same-sex marriage issue remains a topic of intense public interest and debate.

Moreover, the legality of same-sex marriage remains an issue of direct, personal importance to same-sex couples and their families. As this Court previously noted, the decision by San Francisco officials to authorize, perform and register thousands of same-sex marriages "created an unusual, perhaps unprecedented, set of circumstances." (*Lockyer v. CCSF, supra*, 33 Cal.4th at p. 1113.) Those couples married in San Francisco have since seen their marriages invalidated, and they have waited as the superior court and the court of appeal reached opposite conclusions about whether the State is constitutionally-compelled to authorize same-sex marriages. Like all Californians, these couples rightly expect the final resolution of this controversy to come from the State's highest court.

A decision by this Court would also be important to the nation as a whole. California presently stands as one of the few states to confer upon same-sex couples who register as domestic partners substantially the same rights, benefits and protections as are given to married couples. (Fam. Code, § 297.5, subd. (a).) This Court has previously observed 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, 829.) The Court of Appeal concluded that it was rational, and thus constitutional, 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 same-sex partners through a comprehensive domestic partnership system.” (*In re Marriage Cases* (2006) 143 Cal.App.4th 873, 931.) It further held that “[t]he state may legitimately support these parallel institutions while also acknowledging their differences.” (*Ibid.*) By reviewing the Court of Appeal’s decision in this action, this Court can demonstrate to the rest of the nation that a constitutionally-permissible alternative exists in what has otherwise turned into an all-or-nothing battle between advocates of same-sex marriage and many of their opponents, who would deny same-sex couples not only the legal status of marriage but also the rights, benefits and responsibilities that are typically associated with marriage. (See, e.g., *Knight v. Superior Court* (2005) 128 Cal.App.4th 14 [upholding domestic partnership law against challenge that it constituted an amendment of Proposition 22 without a vote of the electorate in violation of article II, section 10, subdivision (c) of the California Constitution].)

## CONCLUSION

For the foregoing reasons, the State Respondents respectfully request that this Court grant the petitions for review filed by City and County of San Francisco (A110449), the petitioners in *Woo v. Lockyer* (A110451), the petitioners and Equality California as intervenor in *Tyler v. State of California* (A110450), and the petitioners in *Clinton v. State of California* (A110463).

Dated: December 4, 2006

Respectfully submitted,

BILL LOCKYER

Attorney General of the State of California

STACY BOULWARE EURIE

Senior Assistant Attorney General

CHRISTOPHER E. KRUEGER

Supervising Deputy Attorney General

Attorneys for Respondents State of  
California, Governor Arnold

Schwarzenegger, Attorney General Bill

Lockyer and State Registrar of Vital

Statistics Teresita Trinidad

## **CERTIFICATE OF COMPLIANCE**

I certify that the attached **CONSOLIDATED ANSWER TO PETITIONS FOR REVIEW** uses a 13-point Times New Roman font and contains 1,575 words.

Dated: December 4, 2006

Respectfully submitted,

**BILL LOCKYER**

Attorney General of the State of California

**STACY BOULWARE EURIE**

Senior Assistant Attorney General

**CHRISTOPHER E. KRUEGER**

Supervising Deputy Attorney General

Attorneys for Respondents State of

California, Governor Arnold

Schwarzenegger, Attorney General Bill

Lockyer and State Registrar of Vital

Statistics Teresita Trinidad