Case No. S 147999

IN THE SUPREME COURT OF CALIFORNIA

In re MARRIAGE CASES
Judicial Council Coordination Proceeding No. 4365

After a Decision of the Court of Appeal
First Appellate District, Division Three
Of Consolidated Cases A110449, A110450, A110451,
A110463, A110651 and A110652
San Francisco Superior Court Case Nos. 504038, JCCP 4365
Honorable Richard A. Kramer, Judge

OPENING BRIEF OF CAMPAIGN FOR CALIFORNIA FAMILIES ON STANDING AND JUSTICIABILITY

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ISSUES PRESENTED FOR REVIEW

On December 20, 2006, this Court granted six petitions for review. On January 5, 2007, this Court clarified that it granted review in all of the cases included within this Coordinated Proceeding and of all of the issues addressed by the Court of Appeal. This Court further clarified that Petitioners in the cases of *Proposition 22 Legal Defense and Education Fund v. City and County of San Francisco* and *Campaign for California Families v. Newsom* may address in their opening briefs the issue of justiciability or standing addressed by the Court of Appeal.

As stated in Proposition 22 Legal Defense and Education Fund's ("the Fund") Petition for Review, the issues presented for review related to standing and justiciability are the following[1]:

1. Whether claims under Code of Civil Procedure §526a and §1060 may be rendered moot by a writ of mandate that restrains conduct without reaching the merits of the claims for injunctive and declaratory relief.

2. Whether citizen initiative proponents and organizers have a

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[1] Campaign for California Families ("the Campaign") also raised issues for review related to standing in its Answer to the Petitions for Review. The Campaign asserted that the Court of Appeal's ruling on standing and justiciability should be reviewed because it was fatally flawed and conflicted with this Court's precedents under Code of Civil Procedure §§ 526a and 1060. In the interest of efficiency, the Campaign will frame its argument using the issues as described in the Fund's Petition for Review.

unique interest in defending the constitutionality of an initiative in which they have invested time, money and reputation.

3. Whether a trial judge's finding of justiciability under CCP §1060 in complex litigation is entitled to a deferential standard of review.

NATURE OF THE ACTION

The key question underlying all of the cases in this Coordinated Proceeding is whether California's long-standing definition of marriage as the union of one man and one woman is constitutional. The Campaign for California Families ("the Campaign") raised that issue through a Complaint for declaratory relief, injunctive relief and mandamus filed against San Francisco Mayor Gavin Newsom and County Clerk Nancy Alfaro one day after they began issuing marriage licenses to same-sex couples based upon Mayor Newsom's belief that the statutes defining marriage as the union of one man and one woman are unconstitutional. (*Thomasson v. Newsom*, San Francisco Superior Court Case No. 428794). The Fund filed a similar Complaint against the City and County of San Francisco ("CCSF"). (*Proposition 22 Legal Defense and Education Fund v. City and County of San Francisco,* San Francisco Superior Court Case No. 503943). CCSF filed a cross-complaint against the Fund, the Campaign and the state seeking a declaratory judgment that the marriage laws were unconstitutional.

(Appellant's Appendix in Case No. A110652 ("AA"), 47-53). A group of citizens and then-Attorney General Bill Lockyer filed original actions in this Court seeking an immediate stay and peremptory writ of mandate against Ms. Alfaro and CCSF.(*Lewis v. Alfaro*, Supreme Court Case No. S122865 and *Lockyer v. City and County of San Francisco*, Supreme Court Case No. S122923). The cases were consolidated, and this Court granted an immediate stay against the issuance of marriage licenses for same-sex couples, and also stayed further proceedings in the Campaign's and the Fund's cases.

Meanwhile, four lawsuits challenging the constitutionality of the definition of marriage as one man and one woman were filed, including one by CCSF against the State. (*CCSF v. State*, San Francisco Superior Court Case No. 429539). The other three cases were brought by same-sex couples who alleged that the definition of marriage as the union of one man and one woman violated the California Constitution. (*Woo v. State of California*, San Francisco Superior Court Case No 504038; *Clinton v. State of California*, San Francisco Superior Court Case No. 429548 and *Tyler v. County of Los Angeles*, Los Angeles Superior Court Case No. 088506). The four lawsuits and the Fund's and the Campaign's lawsuits were coordinated in Judicial Council Coordination Proceeding No. 4365 before San Francisco Superior Court Judge Richard Kramer.

This Court issued a writ of mandate in the *Lockyer* and *Lewis* cases. The writ ordered that CCSF and its officials comply with the requirements and limitations in the current marriage laws and to take steps to notify those same-sex couples who receive marriage licenses that the marriages were void *ab initio*. *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1120 [17 Cal.Rptr.3d 225, 95 P.2d 459]. This Court specifically stated that it was not addressing the constitutionality of the marriage laws. *Id.*

In the coordinated cases, Judge Kramer determined that the laws defining marriage as the union of one man and one woman were unconstitutional. *In re Coordination Proceeding* (2005) 2005 WL 583129. The State of California, the Fund and the Campaign appealed, and the First District Court of Appeal consolidated the appeals. *In re Marriage Cases* (2006) 143 Cal.App.4th 873 [49 Cal.Rptr.3d 675]. The Court of Appeal overturned the trial court decision and found that laws defining marriage as the union of one man and one woman do not violate the California Constitution. The Court of Appeal also overturned the trial court's determination that the Fund's and the Campaign's claims were justiciable.

Plaintiffs in the *CCSF, Woo, Clinton* and *Tyler* cases petitioned for review on the constitutionality claim. The Fund petitioned for review on the standing/justiciability issue, and the Campaign sought review on the

standing/justiciability issue as part of its Answer to the Petitions for Review.

SUMMARY OF FACTS

Since at least 1872, California law has been interpreted as defining marriage as the union of one man and one woman. *See In re Marriage Cases* (2006) 143 Cal.App.4th 873, 897-898. In 1977, the Legislature made explicit what was always understood when it revised what is now Family Code §300 to read that marriage is a relationship "between a man and a woman." *Id.* On March 7, 2000 California voters approved Proposition 22, which enacted what is now Family Code §308.5. *Id.* Section 308.5 provides that "only marriage between a man and a woman is valid or recognized in California." *Id.* The Campaign's executive director, Randy Thomasson, and members, all California voters and taxpayers, actively and extensively campaigned for and voted for Proposition 22, which was approved by 61.4 percent of the electorate, or more than 4.6 million Californians. (AA90).[2]

Shortly after taking office in 2004, San Francisco Mayor Gavin Newsom announced that he had unilaterally determined that Family Code §§300 and 308.5 and other statutes which incorporated the definition of

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[2] The final vote statistics were obtained from the Statement of the Vote, March 2000 Primary Election, issued by the California Secretary of State. http://www.ss.ca.gov/elections/sov/2000_primary/measures.pdf (last visited March 23, 2007).

marriage as the union of one man and one woman were unconstitutional. *See Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1070 n.4. Acting on that belief, Mayor Newsom directed County Clerk Nancy Alfaro to alter marriage license forms and begin issuing marriage licenses to same-sex couples. *Id.* at 1070-1071. On February 12, 2004, Ms. Alfaro's office began issuing marriage licenses to same-sex couples, and approximately 4,000 such licenses were issued. *Id.* at 1071.

The Campaign recognized that Mayor Newsom was blatantly disregarding the constitutional rights of the Campaign's members and the 4.6 million Californians who voted for Proposition 22.(AA90). The Campaign saw that Mayor Newsom was attempting to circumvent the democratic process and unilaterally alter the state's marriage laws in derogation of the constitutional rights of all California voters. (AA90). The Campaign immediately responded to this deprivation of constitutional rights by filing a lawsuit in San Francisco Superior Court on February 13, 2004. *Thomasson et. al. v. Newsom, et. al.* San Francisco Superior Court Case No. 04-428794. In the Complaint, the Campaign sought injunctive and declaratory relief under Code of Civil Procedure §§526a and 1060, and a writ of mandamus under Code of Civil Procedure §1085. (Verified Amended Complaint, AA2-AA21). The Campaign specifically alleged that it believed that Mayor Newsom and Clerk Alfaro were

acting unlawfully, but that the city officials believed that they were acting lawfully, therefore establishing an actual controversy for which declaratory and injunctive relief were necessary. (AA5-AA7). The Campaign also alleged that the mayor and county clerk had violated and were violating the Campaign's members' constitutional rights. (AA5-AA7). The Fund filed a similar action in the same court. *Proposition 22 Legal Defense and Education Fund v. City and County of San Francisco,* Case No. 04-50943. The cases were consolidated for all purposes on February 25, 2004, with the Campaign's case as the lead case. (AA56-AA57). The trial court denied an immediate stay, but issued an order to show cause with a hearing date of March 29, 2004.(AA54-AA55).

CCSF filed a Cross-Complaint in that action, specifically naming the Campaign and its Executive Director, along with the Fund and State of California as Cross-Defendants. (AA47-AA53). In the Cross-Complaint, CCSF alleged that "Cross Defendants," which included the Campaign, "contend that Family Code sections 300, 301 and 308.5 are constitutional," while CCSF contends that they are unconstitutional, thus establishing an actual controversy. (AA50). The only allegations to which CCSF could be referring to as contentions that the statutes are constitutional were the allegations of the Complaint filed by the Campaign in *Thomasson v. Newsom*.

After this Court issued its writ of mandate in *Lockyer*, CCSF became determined to exclude the Campaign from the coordinated cases. In February 2004 CCSF stated that the Campaign "contends that Family Code sections 300, 301 and 308.5 are constitutional" in its Cross-Complaint (AA50). However, by October 2004 CCSF was calling the idea that the Campaign's claims addressed the constitutionality of the statutes "spurious." (AA173). CCSF used this Court's very narrow writ of mandate to try to justify its contradictory positions. (AA173). Although none of the parties to the Campaign's action were parties in the *Lockyer* action, CCSF alleged that this Court's writ in *Lockyer* somehow rendered all of the Campaign's claims moot. (AA173). According to CCSF, this Court's statement that "the substantive question of the constitutional validity of California's statutory provisions limiting marriage to a union between a man and a woman is not before this Court," *Lockyer*, 33 Cal.4th at 1069, somehow disposed of the Campaign's claims for injunctive and declaratory relief against Mayor Newsom's unilateral assertion that the marriage laws are unconstitutional. (AA173). This Court specifically said that the writ of mandate would direct the city officials to enforce the marriage laws "unless and until they are judicially determined to be unconstitutional," *Id.* Nevertheless, CCSF argued that the question of whether Mayor Newsom's assertion that the marriage laws were unconstitutional was no longer at issue.

(AA173).

The trial court rejected CCSF's arguments and denied the motion to dismiss. (Reporter's Transcript of Proceedings December 22-23, 2004, "RT," p.175). The trial court correctly found that "the relief relative to Mayor Newsom is interim and . . . the declaratory resolution of the constitutionality of the statute is important to determine whether or not the interim order precluding Mayor Newsom should become permanent." (RT, p. 175, lines 2-7). Based upon that, the trial court determined that the Campaign's case would go forward as part of the consolidated action, and the final decision included a determination of the Campaign's claims. (RT, p. 175; AA1865).

CCSF's crusade to exclude the Campaign from this action continued in the Court of Appeal, which ruled that the Campaign lacked standing. *In re Marriage Cases* (2006) 143 Cal.App.4th 873, 897. The Court of Appeal misconstrued the Campaign's claims as being solely a claim for declaratory relief solely aimed at the mayor's actions in issuing marriage licenses to same sex couples. Based upon that characterization, the Court of Appeal claimed that the Campaign lacked standing and that its claims were not justiciable. *Id.* The Campaign is now asking this Court to reverse that determination.

SUMMARY OF ARGUMENT

Mayor Newsom threw down the gauntlet on February 10, 2004 when

he proclaimed that California's laws defining marriage as the union of one man and one woman are unconstitutional and sanctioned the issuance of marriage licenses for same-sex couples.(AA12-AA13). The Campaign responded to the challenge by filing its Complaint for a writ of mandate, injunctive and declaratory relief. (AA2-AA21). The foundation of the Campaign's action is that the marriage laws are constitutional and, therefore, Mayor Newsom and Clerk Alfaro acted illegally when they attempted to circumvent the laws. CCSF agreed that the constitutionality of the marriage laws is part of the Campaign's action, but then reversed course and asked the trial court to dismiss the claims as moot. (AA47-AA53; AA173). The trial court denied the request and determined that the Campaign's claims for injunctive and declaratory relief remained viable. (RT, p. 175). When CCSF resurrected its arguments at the Court of Appeal, the appellate panel engaged in a de novo review and reversed the trial court. *See In re Marriage Cases* 143 Cal.App.4th at 894-897.

That de novo review contravened this Court's long-established rule that a trial court's determination regarding justiciability is not reviewable except for an abuse of discretion. *See City of Alturas v. Gloster* (1940) 16 Cal.2d 46,49-50,[104 P.2d 810,812]. The Court of Appeal also disregarded this Court's long-established precedent that standing is to be broadly construed

under Code of Civil Procedure §526a. *See Blair v. Pitchess* (1971) 5 Cal.3d 258, 267-268; [96 Cal.Rptr. 42; 486 P.2d 1242]. Furthermore, the Court of Appeal adopted a narrow construction of "actual case or controversy" under Code of Civil Procedure §1060 in contravention of this Court's rulings that an action which meets the requirements of Section 526a presents a true case or controversy, *Id.* at 269, and that claims against public agencies are to be broadly defined. *See Stanson v. Mott* (1976) 17 Cal.3d 206, 210 [551 P.2d 1; 130 Cal.Rptr. 697].

Instead of fulfilling the purpose of Code of Civil Procedure § 526a to "enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged," *Blair*, 5 Cal.3d at 267, the Court of Appeal has countermanded the statute. If the Court of Appeal's ruling is left standing, then decades of precedent will be reversed and California voters and taxpayers will be denied their right to vigorously defend their interests.

Furthermore, the Court of Appeal's ruling infringes upon the right of initiative and referendum reserved to the people in Art.4, §1 of the California Constitution. The rights granted to California voters under Art. 4, §1 give the Campaign a heightened interest in upholding the constitutionality of Family Code §308.5. The Court of Appeal disregarded that interest when it ruled that the Campaign no longer had standing to pursue its claims. Left standing, the

Court of Appeal's ruling would eviscerate the right of initiative under Art. 4, §1 and leave initiative proponents and voters with no recourse against rogue officials bent on ignoring the will of the people when it conflicts with their personal agenda.

Because the Court of Appeal wholly ignored substantive and procedural precedent and infringed upon the constitutional rights of the Campaign's members and other California voters, its ruling granting CCSF's motion to dismiss must be overturned.

LEGAL ARGUMENT

I. THE COURT OF APPEAL ERRED WHEN IT RULED THAT THIS COURT'S WRIT OF MANDATE IN *LOCKYER* RENDERED THE CAMPAIGN'S INJUNCTIVE AND DECLARATORY RELIEF CLAIMS MOOT.

The Court of Appeal mischaracterized the nature of the Campaign's action by wholly ignoring one of the Campaign's grounds for relief. The Court then compounded its error when it failed to follow this Court's precedents that require a broad definition of standing under Code of Civil Procedure §§ 526a and 1060.

A. The Court Of Appeal Failed To Acknowledge, Let Alone Analyze, The Campaign's Claim For Injunctive Relief.

The Court of Appeal wholly ignored the Campaign's claim for permanent injunctive relief against Mayor Newsom and Clerk Alfaro when it

determined that the Campaign "lacked standing to pursue these pure declaratory relief claims." *In re Marriage Cases* (2006) 143 Cal.App.4th 873, 894. This Court ruled in *Lockyer* that CCSF officials were to enforce the marriage laws "unless and until they are judicially determined to be unconstitutional." *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055,1069. The trial court correctly concluded that, as a result, "the relief relative to Mayor Newsom is interim and that the declaratory resolution of the constitutionality of the statute is important to determine whether or not the interim order precluding Mayor Newsom should become permanent." (RT, p. 175). The trial court's use of the terms "interim" and "permanent" relief, as well as "declaratory resolution" demonstrated that it understood that the Campaign's Complaint sought preliminary and permanent injunctive relief **and** declaratory relief against the mayor's declaration that the marriage laws were unconstitutional.

However, when the Court of Appeal undertook its de novo review of the standing issue, it discussed only the Campaign's declaratory relief claim.

> Assuming the trial court acted within its discretion when it construed **the declaratory relief claims** in Thomasson and Proposition 22 broadly to encompass issues about the constitutionality of the marriage statutes (see *Application Group, Inc. v. Hunter Group, Inc.* (1998) 61 Cal.App.4th 881, 892-893), we conclude the court erred in denying the motion to dismiss because CCF and the Fund lacked standing to pursue these **pure declaratory relief claims.**

In re Marriage Cases, 143 Cal.App.4th at 894 (emphasis added).

> A broad reading was required because the complaints did not mention the constitutionality of the statutes. Rather, in virtually identical passages, both complaints sought "a judicial determination of the rights and duties of the parties and a declaration that Defendants have failed to comply with state statutes governing the issuance of marriage licenses by unlawfully issuing marriage licenses to same-sex couples; and that all marriage licenses issued and marriages solemnized under circumstances not provided by law are invalid."

Id. at 894 n7. The above footnote accurately portrays one of the allegations in the Campaign's first cause of action for declaratory relief.(AA7). However, the Court of Appeal stopped there and proceeded to analyze the standing and justiciability issues without acknowledging or discussing the second cause of action for injunctive relief, reflected in the following paragraphs:

> 46. Defendants' actions in marrying same-sex couples deprives who passed Proposition 22 of their constitutional right to define marriage.
>
> 47. Defendants have illegally expended and wasted, and threaten and will continue to illegally spend and waste, the public funds of the City and County of San Francisco, to the detriment of local taxpayers.
>
> 48. There is no plain, adequate or speedy remedy at law that is applicable herein.
>
> 49. Unless enjoined and restrained by this Court, Plaintiffs' rights will continue to be violated, funds will be illegally expended and wasted, and the Defendants will continue to act unlawfully and without authority.

(AA7). By omitting the Campaign's injunctive relief claim from its analysis, the Court of Appeal ignored a significant part of the Campaign's challenge to

Mayor Newsom. In particular, by omitting reference to the injunctive relief claim, the Court of Appeal ignored the specific allegations regarding deprivation of constitutional rights. That oversight means that the Court of Appeal's determination that Campaign lacked standing under Code of Civil Procedure §§ 526a and 1060 is fatally flawed.

The Court of Appeal's mischaracterization of the Campaign's claim created a domino effect in that without an acknowledged claim for injunctive relief, there could not be a meaningful analysis of standing or justiciability under Code of Civil Procedure §526a, which in turn meant that there could not be a proper analysis of standing or justiciability under Code of Civil Procedure §1060. The effect is apparent in the Court of Appeal's complete failure to follow this Court's precedents for standing and justiciability under Sections 526a and 1060.

B. The Court Of Appeal Failed To Follow This Court's Long-Established Rule That Standing Is To Be Broadly Construed Under Code Of Civil Procedure §526a.

More than 80 years ago, this Court discussed what even by then had become a well-established rule regarding taxpayer standing.

> In this state we have been very liberal in the application of the rule permitting taxpayers to bring a suit to prevent the illegal conduct of city officials, and no showing of special damage to the particular taxpayer has been held necessary. [Citations omitted]. The rule has now been crystallized into a statute (Code

Civ. Proc., sec. 526a).

Crowe v. Boyle (1920) 184 Cal. 117, 152 [193 P. 111]. As this Court said in *Blair*, "[t]he primary purpose of the statute, which was originally enacted in 1909, is to enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement."*Blair v. Pitchess* (1971) 5 Cal.3d 258, 267-268. "California courts have consistently construed section 526a liberally to achieve this remedial purpose." *Id.*

Section 526a is designed to facilitate access to the courts for those who might be the most affected by particular government conduct but might not satisfy the usual standing requirements of direct injury. "The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a court and not in the issues he wishes to have adjudicated." *Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 159 [101 Cal.Rptr. 880, 496 P.2d 1248]. "A party enjoys standing to bring his complaint into court if his stake in the resolution of that complaint assumes the proportions necessary to ensure that he will vigorously present his case." *Id.* Taxpayers are "among the class of people long recognized as having a sufficient interest in the claim to establish standing." *Id.* "Taxpayers have a sufficiently personal interest in illegal expenditure of funds to become dedicated adversaries." *Id.*

"CCP §526a recognizes that interest and provides a taxpayer with standing to bring an action to obtain a judgment." *Id.* Taxpayer actions under Section 526a are not limited to injunctive or declaratory relief. *Id.* Instead, under Section 526a a "Plaintiff's interest as a taxpayer in the outcome of the instant case establishes her standing to seek both equitable and legal relief against the city's allegedly wrongful disposition of its assets," improper expenditures or other illegal conduct. *Id.*. at 160.[3]

Contrary to the Court of Appeal's conclusion, Section 526a claims are not limited to actions to halt illegal expenditures. Instead, Section 526a "provides a general citizen remedy for controlling illegal governmental activity." *White v. Davis* (1975) 13 Cal.3d 757, 763 [120 Cal.Rptr. 94, 533 P.2d 222] , *See also Crowe*, 184 Cal. at 152 (Section 526a provides a means for taxpayers to bring suit to stop illegal **conduct.**) (emphasis added). In *White*, this Court found that the plaintiff's challenge to police conduct clearly constituted a justiciable controversy and required that the court determine the

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[3] The question of associational standing has not been raised by the parties, but would be satisfied in this case. An association has standing to bring an action if its members would have standing to bring suit in their own right. *Associated Builders and Contractors, Inc. v. San Francisco Airports Commission* (1999) 21 Cal.4th 351, 361 [87 Cal.Rptr.2d 654, 981 P.2d 499]. The Campaign established that its executive director, Randy Thomasson, and members are California voters and taxpayers.(AA90). As taxpayers, the Campaign's members would have standing to bring suit under Code of Civil Procedure §526a. Therefore, the Campaign has standing. *Id.*

constitutional validity of the governmental activity. 13 Cal.3d at 763. The *White* court emphasized that "under Section 526a no showing of special damage to the particular taxpayer is necessary." *Id.* at 764.

In addition, Section 526a actions are not limited to claims of actual or threatened illegal expenditures of public funds, but can also be used to remedy prior illegal acts. *See Stanson v. Mott* (1976) 17 Cal.3d 206, 222-223. In *Stanson*, this Court reversed the trial court's dismissal of a complaint that challenged the Department of Parks and Recreation's expenditure of public funds for promotion of a park bond issue in a recently completed election. 17 Cal.3d at 206. Since the election was over, so were the purported illegal expenditures. *Id.* However, the fact that there were no ongoing or threatened expenditures did not deprive the plaintiff of standing under Section 526a. *Id.* at 222-223.

> The complaint alleges, inter alia, that defendant Mott authorized the dissemination of agency publications 'which were merely not informative but . . . promotional' and sanctioned the distribution, at public expense, of promotional materials written by a private organization formed to promote the passage of the bond act. If plaintiff can establish these allegations at trial, he will have demonstrated that defendant did indeed authorize the improper expenditure of public funds, and plaintiff will be entitled, at least, to a declaratory judgment to that effect; if he establishes that similar expenses are threatened in the future, he will also be entitled to injunctive relief.

Id.

Therefore, since at least 1920, this Court has made it clear that "[t]o achieve the 'socially therapeutic' purpose of section 526a, 'provision must be made for a broad basis of relief. Otherwise, the perpetration of public wrongs would continue almost unhampered.'" *Van Atta v. Scott* (1980) 27 Cal.3d 424, 450 [166 Cal.Rptr. 149, 613 P.2d 210].

Standing in stark contrast to this well-established precedent is the Court of Appeal's ruling that the Campaign lacks standing under Section 526a. The Court of Appeal said that the Campaign could not assert a claim because it did not identify "any continuing public expenditure it challenges." *In re Marriage Cases* (2006) 143 Cal.App.4th 873, 895. The Court of Appeal combined its mischaracterization of the Campaign's action as a "purely declaratory relief claim" with a misreading of this Court's writ of mandate in *Lockyer* to arrive at the conclusion that the Campaign lacked standing because CCSF has stopped issuing marriage licenses to same-sex couples. *Id.* Inherent in that conclusion is a presumption that because of the *Lockyer* writ CCSF will never engage in similar actions. Of course, this Court's writ does not go that far. Instead, it directs CCSF officials to enforce the existing marriage laws "unless and until they are judicially determined to be unconstitutional." *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1069. As the trial court noted, "the relief relative to Mayor Newsom is interim and . . . the declaratory

resolution of the constitutionality of the statute is important to determine whether or not the interim order precluding Mayor Newsom should become permanent." (RT, p. 175, lines 2-7). Consequently, even if actual or threatened expenditures of public funds were a prerequisite to standing under Section 526a, that possibility has not been foreclosed by the *Lockyer* writ.

More importantly, actual or threatened expenditure of public funds is not required to attain standing under Section 526a. As this Court made clear in *Stanson*, if a taxpayer can prove that a public official previously spent public funds or used public property improperly, then he can obtain declaratory relief, even if the event triggering the spending has ended. 17 Cal.3d at 222-223. In *Stanson*, the election was over and the bond measure passed, so the Department of Parks and Recreation could not spend any more public money trying to promote passage of that bond measure. *Id.* at 209. Nevertheless, this Court overruled the trial court's dismissal, finding that the plaintiff still had standing to seek a declaratory judgment for past actions. *Id.* at 223. Similarly, in this case, even if the City never issues another marriage license to a same-sex couple, the Campaign would still have standing to seek a declaratory judgment for the past actions by Mayor Newsom and Clerk Alfaro.

In addition, as this Court found in *Stanson* and the trial court held in this case, the Campaign retains standing to pursue a claim for permanent

injunctive relief for any threatened similar future expenditures by the mayor and county clerk. *See id.*, RT, p. 175. Since the Court of Appeal failed to even acknowledge that there was an injunctive relief claim, it did not analyze whether the Campaign had standing to bring such a claim. Consequently, its conclusion that the Campaign lacks standing is wholly without merit.

The Court of Appeal made a passing reference to "the liberal construction granted claims under Code of Civil Procedure section 526a," but then dismissed that concept in favor of its own very restrictive definition of standing. *In re Marriage Cases*, 143 Cal.App.4th at 896. However, as this Court has established, granting a broad base of relief for claims under Section 526a is not merely a good idea that courts of appeal can accept or dismiss at their whim. Instead, in order "[t]o achieve the 'socially therapeutic' purpose of section 526a, 'provision **must be** made for a broad basis of relief. Otherwise, the perpetration of public wrongs would continue almost unhampered.'" *Van Atta*, 27 Cal.3d at 450 (emphasis added). The Court of Appeal did not have the discretion to pick only part of the Campaign's claims and then ignore this Court's precedents to fashion its own narrow definition of taxpayer standing. Section 526a requires an expansive, not a narrow, view of standing in order to ensure that a large body of the citizenry retains its right to challenge governmental action. *See Blair*, 5 Cal.3d at 267-268. Denying a

taxpayer standing because the government has temporarily halted the challenged activities, as the Court of Appeal did here, does not accomplish that goal. An overly restrictive definition of Section 526a standing, such as that adopted by the Court of Appeal, permits "the perpetration of public wrongs" to continue virtually unhampered. Government officials could flout the law for a time, then temporarily stop their activities and thereby effectively prevent taxpayers from holding the officials accountable for their actions.

That is the result of the Court of Appeal's ruling that the Campaign lost standing to sue when CCSF stopped issuing marriage licenses to same-sex couples. Under the Court of Appeal's determination, Mayor Newsom is free to dictate marriage policy in San Francisco with no fear of a challenge from the millions of Californians who overwhelmingly determined that marriage is to be defined as the union of one man and one woman. The Court of Appeal's ruling eviscerates Section 526a and erases more than 80 years of precedent. This Court should not permit the ruling to stand.

C. The Court Of Appeal Failed To Follow This Court's Precedents When It Concluded That The Campaign's Claims Were Not Justiciable Under Code Of Civil Procedure §§526a And 1060.

This Court has consistently held that in cases such as this which raise claims under both Section 1060 and Section 526a of the Code of Civil Procedure, the concept of "actual case or controversy" in Section 1060 is

wedded to the concept of standing and justiciability under Section 526a. *See Blair v. Pitchess* (1971) 5 Cal.3d 258, 269. In contravention of those precedents, the Court of Appeal divorced its discussion of standing and justiciability under Code of Civil Procedure §1060 from its discussion of standing and justiciability under Section 526a. In so doing, the Court of Appeal strayed even farther from the bedrock principle that "provision must be made for a broad basis of relief" when taxpayers are challenging governmental actions. *Van Atta v. Scott* (1980) 27 Cal.3d 424, 450.

In *Blair,* this Court rejected the defendants' claim that even if the plaintiffs had standing under 526a, that the action was not cognizable because it did not present a true case and controversy.

> We conclude that if an action meets the requirements of section 526a, it presents a true case or controversy. As we noted before, the primary purpose of section 526a was to give a large body of citizens standing to challenge governmental actions. If we were to hold that such suits did not present a true case or controversy unless the plaintiff and the defendant each had a special, personal interest in the outcome, we would drastically curtail their usefulness as a check on illegal government activity. Few indeed are the government officers who have a personal interest in the continued validity of their official acts.

Blair v. Pitchess, 5 Cal.3d at 269.

> Taxpayers have a sufficiently personal interest in the illegal expenditure of funds by county officials to become dedicated adversaries, and in the same manner, the interest of government officials in continuing their programs is sufficient to guarantee a spirited opposition. There is no danger that the court will be

> misled by the failure of the parties to adequately explore and argue the issues. Therefore, an action meeting the requirements of 526a presents a true case or controversy.

Id. at 270. Citing *Blair*, the *Van Atta* court also denied the defendants' contention that there was no case or controversy. *Van Atta*, 27 Cal. 3d at 450.

> Since section 526a authorizes taxpayer suits for declaratory relief, the further contention that this suit lacks justiciability because plaintiffs have not satisfied the "actual controversy" requirements of Code of Civil Procedure section 1060 must also fail. An action, such as this one, which meets the criteria of section 526a satisfies case or controversy requirements.

Van Atta, 27 Cal.3d at 450 n.28. Consequently, the Court of Appeal's erroneous ruling that the Campaign lacked standing under Section 526a renders its determination that there was no "actual case or controversy" under Section 1060 suspect, even without an examination of the factual context of this case.

However, looking at the facts of this case in light of *Van Atta* and similar precedents establishes that the Court of Appeal's determination that there was no "actual case or controversy" is not merely suspect, but wholly erroneous. In *Van Atta*, the defendants argued that the requisite adverse interests were lacking because one defendant had been relieved of responsibility for the challenged practice and the only other defendant conceded that the practice was unconstitutional. 27 Cal.3d at 450. This Court disagreed, noting that the trial record and briefs showed that the defendants

vigorously opposed the plaintiffs' contentions. *Id.* At all times at trial and appeal, the defendants contested plaintiffs' claims and affirmatively challenged the propriety of the trial court's order. *Id.* at 450 n.29. That demonstrated the necessary adversity of interest to establish justiciability under Section 1060. *Id.* at 450.

Similarly, in *Arrieta v. Mahon* (1982) 31 Cal.3d 381, 387 [182 Cal Rptr. 770, 644 P.2d 1249], this Court rejected the defendant's claim that the plaintiffs did not meet the case or controversy requirement because the defendant was only interested in determining what his ministerial duty was and therefore was not truly "adverse" to the plaintiffs. The *Arrieta* Court reiterated that *Blair* and *Van Atta* were the standards for determining justiciability. Under those precedents and in light of the significant arguments the defendant made against the plaintiffs, there was a sufficient case or controversy. *Id.* at 387 n.5.

In *Pacific Gas & Electric Co. v. County of Stanislaus* (1997) 16 Cal.4th 1143 [69 Cal.Rptr.2d 329, 947 P.2d 291] ("PG&E"), this Court dealt with a situation procedurally similar to the situation in this case. The county had filed a federal antitrust lawsuit against PG&E, and PG&E filed an action seeking injunctive and declaratory relief against the county's expenditure of public funds for the federal lawsuit. *Id.* at 1147. The federal lawsuit was dismissed. This Court noted that the dismissal appeared to render the injunctive relief

claim moot. *Id.* at 1147 n.4. Nevertheless, the declaratory relief claim still appeared to present a live controversy. *Id.*

> Moreover, because PG & E's assertion that the County lacks the power to bring its antitrust action is an issue of substantial public interest that is likely to recur, we may reach the merits of the appeal even if the allegedly illegal action has been completed.

Id.

Similarly, in this case the Campaign's claim for a writ of mandamus might have been rendered moot by this Court's decision in *Lockyer*, but the declaratory relief and injunctive relief claims remain live controversies. As this Court emphasized in *Lockyer*, the constitutionality of the marriage statutes was not addressed, and the mandamus relief was granted only unless and until the statutes were judicially determined to be unconstitutional. *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1069. Since the question of the constitutionality of the marriage laws was the event that triggered Mayor Newsom's actions which triggered the Campaign's lawsuit, the Campaign's claims for declaratory and injunctive relief against the mayor remain live controversies. Furthermore, as was true with the antitrust question in *PG&E,* the question of the constitutionality of the marriage laws is an issue of substantial public interest which justifies addressing the merits of the Campaign's claims even if the mayor's actions have been halted. *See*

*PG&E,*16 Cal.4th at 1147.

Furthermore, as was true with the plaintiffs in *Blair* and *Van Atta*, the Campaign has vigorously opposed CCSF's positions from the inception of these cases. In fact, the Campaign's case was the first case that was filed to challenge Mayor Newsom's actions. Throughout these proceedings, the Campaign has proven itself to be a dedicated advocate of its position that the marriage statutes are constitutional and must be enforced. In fact, as discussed more fully below, the Campaign has pursued issues that the State has failed to pursue. Furthermore, CCSF has vigorously opposed the Campaign's claims, and even its rights as a party, throughout these proceedings. As was true in *Blair* and *Van Atta*, these factors establish the necessary adversity of interest to meet the case and controversy requirement of Section 1060. *See Blair,* 5 Cal.3d at 270; *Van Atta*, 27 Cal.3d at 450. In addition, the required broad reading of standing under Section 526a, which clearly grants the Campaign standing, establishes the actual case or controversy necessary for the Campaign to pursue a claim for declaratory relief. *Van Atta*, 27 Cal.3d at 450 n.28.

CCSF itself established that there is an actual controversy between the city and the Campaign when it filed its cross-complaint alleging that "Cross Defendants," which included the Campaign, "contend that Family Code sections 300, 301 and 308.5 are constitutional," while CCSF contends that they

are unconstitutional.(AA50). Nothing that this Court did in the *Lockyer* case affected the viability of that controversy. The Campaign satisfies the requirements to bring an action for declaratory or injunctive relief under Section 526a, thus establishing a case or controversy sufficient to constitute standing under Section 1060. The Court of Appeal's finding to the contrary in both instances was clear error.

II. THE COURT OF APPEAL'S FINDING THAT THE CAMPAIGN'S CLAIMS ARE NOT JUSTICIABLE INFRINGES THE CONSTITUTIONAL RIGHTS OF INITIATIVE PROPONENTS TO PROTECT INITIATIVES THEY SUPPORTED AND VOTED FOR.

The Court of Appeal's determinations that the Campaign does not have standing and that its claims are not justiciable infringes upon the substantial constitutional rights that the people of California have reserved to themselves in Art. 4, §1 of the California Constitution. Added to the Constitution in 1911, Art. 4, §1 provides that "the people reserve to themselves the powers of initiative and referendum." This Court has called Art. 4 "one of the outstanding achievements of the progressive movement of the early 1900's."*Associated Home Builders v. City of Livermore* (1976) 18 Cal.3d 582, 591 [135 Cal.Rptr. 41, 557 P.2d 473].

> Declaring it "the duty of the courts to jealously guard this right of the people"[citation omitted], the courts have described the initiative and referendum as articulating"one of the most precious rights of our democratic process" [citations omitted].

> "[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it."[citation omitted].

Id. "The right of initiative is precious to the people and is one which the courts are zealous to preserve to the fullest tenable measure of spirit as well as letter." *McFadden v. Jordan* (1948) 32 Cal.2d 330, 332 [196 P.2d 787]. When they actively campaigned for and then voted for Proposition 22, the Campaign's members were exercising this "precious" right of the people. When Mayor Newsom attacked Proposition 22 and attempted to overturn it unilaterally, the Campaign acted quickly to prevent the mayor from annulling the votes of more than 4.6 million Californians. Instead of fulfilling its duty to zealously guard the rights of the Campaign and other California voters, the Court of Appeal ignored those rights and slammed the courthouse door in the voters' faces.

As the Court of Appeal said in *Goodenough v. Superior Court* (1971) 18 Cal.App.3d 692, 696 [97 Cal.Rptr. 165], "The free exercise of the right of initiative reserved to the people may not be circumscribed except by the people of the state acting through the Legislature." *See also, Teachers Management & Inv. Corp. v. City of Santa Cruz* (1976) 64 Cal.App.3d 438, 448-449 [134 Cal.Rptr. 523] (citing *Goodenough*). In *Teachers Management*, the court of appeal found that permitting the plaintiff, a private developer, to frustrate the

initiative power of the citizens of Santa Cruz by raising an equitable estoppel claim would "contravene the strong policy of this state favoring the use of the initiative." 64 Cal.App.3d at 449.

In this case, the Court of Appeal's ruling denying the Campaign standing permits CCSF to circumscribe the free exercise of the right of initiative, in contravention of this state's strong public policy favoring the use of the initiative. Dissatisfied with the result of the initiative process that enacted Proposition 22, CCSF's officials set out to overturn the will of the people by creating their own definition of marriage. Mayor Newsom attempted to do an end run around the democratic process through an ultra vires proclamation that same-sex couples could obtain marriage licenses. The Campaign acted to fend off that attack on its constitutional rights through legal action. This Court's granting of a writ of mandamus for the Attorney General did nothing to remedy Mayor Newsom's constitutional attack against the Campaign's constitutional rights. By finding to the contrary, the Court of Appeal frustrated the initiative power of the citizens of California, in contravention of this Court's long-standing policy that the initiative process is to be zealously protected.

The Court of Appeal completely disregarded the Campaign's constitutional rights under Art. 4 §1 of the Constitution when it concluded that

the Campaign does not have an actual interest in the constitutionality of the marriage laws sufficient to support a claim for declaratory relief. The Court of Appeal's finding that the Campaign's claims represent nothing more than an abstract, academic dispute based upon strong philosophical or political interests, 143 Cal.App.4th at 894-896, ignores the Campaign's and its members' status as proponents and supporters of Proposition 22. Instead of acting as the guardian of the Campaign's initiative rights, the Court of Appeal acted as a facilitator for those who seek to circumvent those rights through unilateral political action.

The Court of Appeal's failure to fulfill its duty as guardian of the Campaign's constitutional rights is further illustrated in its statement that its determination that the Campaign lacks standing has "little or no significance" in the review of the substantive issues in the appeal. 143 Cal.App.4th at 896. According to the court, since it read all of the briefs anyway, it really does not matter whether the Campaign participated as a party or merely amicus curiae. *Id.* To the contrary, the Court of Appeal itself later noted that there was a considerable difference between the arguments raised by the Campaign and those raised by the State, and whether the Campaign was viewed as a party or merely amicus curiae made a difference in how the court reviewed those issues.

> As CCF and the Fund and several amici curiae have stressed, only heterosexual unions have the potential of producing unintended offspring. Marriage, with all the social and legal benefits it confers, apparently developed as an incentive to encourage heterosexual couples to raise their children together, in a reasonably stable and structured environment. Although some appellants and amici curiae argue this **"responsible procreation" incentive justifies the state's continued definition of marriage as opposite-sex, we do not analyze the legitimacy of this asserted state interest because the Attorney General has expressly disavowed it.**

143 Cal.App.4th at 935 n33 (citations omitted) (emphasis added).

One of the key arguments raised by the Campaign in its briefs, and a critical factor behind the initiative that the Campaign's members supported and voted for, was the importance of marriage as a means of fostering responsible procreation. (AA89; AA367-AA396).[4] Nationally recognized marriage expert Maggie Gallagher offered extensive testimony on the subject, including the following:

> By creating a clear shared public category called "marriage" and preferring marital unions as the context for sex and childbearing, the law (a) informs young people of the importance of doing whatever is necessary to delay pregnancy until marriage (as well as enabling other stakeholders, such as family, friends, and faith communities, to communicate this message), and (b) creates a

[4] Indeed, the United States Supreme Court has consistently recognized the state's legitimate interest in fostering responsible procreation through the regulation of marriage. *See, e.g., Skinner v. Oklahoma*, 316 U.S. 535 (1942) (Describing procreation as an important governmental interest central to our understanding of marriage.); *Nguyen v. I.N.S.*, 533 U.S. 53 (2001) (Describing the role of marriage in identifying and promoting parental relationships).

> clear marker for when men and women have created the kind of unions where babies can be encouraged.

(AA377-AA378). The Campaign's Executive Director, Randy Thomasson, testified that he and fellow Campaign members campaigned and voted for Proposition 22 for a multitude of reasons, including "promoting procreation in the optimal environment, where both natural parents are present, for child rearing." (AA89). In order for the Campaign's rights under Art. 4 §1 to be fully protected, those arguments had to be considered as part of the determination of whether Proposition 22 and the other statutes are constitutional.

Under this Court's directives that the courts are to zealously guard the right of initiative, the Court of Appeal should have ensured that all of the Campaign's issues, including procreation, were considered. What the Court of Appeal did instead was to refuse to address the responsible procreation issue because the Attorney General "disavowed" it. 143 Cal.App.4th at 935 n33. Rather than guarding the Campaign's rights, the Court of Appeal surrendered them at the first note of disagreement. If the Campaign were a party fully equal to the Attorney General, or any of the other defendants, then its arguments could not be swept aside by the court just because another party disagreed with them. The fact that the Court of Appeal did sweep the arguments aside illustrates that it was treating the Campaign as an amicus curiae, not as a party,

and that, contrary to its conclusion, status as a party versus an amicus is significant.

The Court of Appeal trampled on instead of protecting the spirit of the Campaign's constitutional right of initiative, in contravention of this Court's long-established precedents. Therefore, its ruling granting CCSF's motion to dismiss for lack of standing must be overturned.

III. THE TRIAL COURT ERRED WHEN IT ENGAGED IN DE NOVO REVIEW INSTEAD OF UTILIZING THE DEFERENTIAL ABUSE OF DISCRETION STANDARD REQUIRED FOR TRIAL COURT DECISIONS REGARDING JUSTICIABILITY UNDER CODE OF CIVIL PROCEDURE §1060.

The Court of Appeal not only failed to afford due deference to the Campaign's rights, but also failed to give the trial court's decision due deference when it engaged in a de novo review of the question of whether the Campaign's claims are justiciable under Code of Civil Procedure § 1060. "Whether a determination [that there is an actual case or controversy] is necessary and proper is a matter within the discretion of the trial court, and in the absence of a clear showing of abuse of that discretion, which does not appear here, its decision will not be disturbed upon appeal." *California Physicians' Service v. Garrison* (1946) 28 Cal. 2d 790, 801 [172 P.2d 4]. "Whether an action is justiciable for purposes of Code of Civil Procedure section 1060 is also a matter entrusted to the sound discretion of the trial

court." *The Application Group, Inc. v. The Hunter Group, Inc.* (1998) 61 Cal.App.4th 881, 893 [72 Cal.Rptr.2d 73].

Consequently, the trial court's determination that the Campaign's claims were justiciable was not subject to review by the Court of Appeal unless it determined that there was an abuse of discretion. Abuse of discretion is deferential. *People v. Williams* (1998) 17 Cal.4th 148, 162 [69 Cal.Rptr.2d 917, 948 P.2d 429]. "[I]t asks in substance whether the ruling in question 'falls outside the bounds of reason' under the applicable law and the relevant facts." *Id.* (citing *People v. DeSantis* (1992) 2 Cal.4th 1198, 1226 [9 Cal.Rptr.2d 628, 831 P.2d 1210])."We could therefore disagree with the trial court's conclusion, but if the trial court's conclusion was a reasonable exercise of its discretion, we are not free to substitute our discretion for that of the trial court." *Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876,881-882 [94 Cal.Rptr.2d 505].

By contrast, the Court of Appeal in this case believed that it was free to substitute its discretion for the trial court without first determining that the trial court acted unreasonably. The Court of Appeal said that it disagreed with the trial court's determination and then proceeded with its own de novo review of the facts. *In re Marriage Cases* (2006) 143 Cal.App.4th 873, 894-896. The Court of Appeal neither explicitly nor implicitly stated whether the trial court

had abused its discretion. Instead, the Court of Appeal simply stated that the trial court was wrong because it disagreed with the appellate court's conclusion. *Id.* at 894.

The appellate court's conclusion was based upon its independent review of only those facts which it chose to review. As discussed more fully above, the Court of Appeal wholly ignored the factual allegations in the Campaign's claim for injunctive relief and claimed the Complaint was a "pure declaratory relief claim." *Id.* Relying upon that assumption, the Court of Appeal independently reviewed solely the allegations contained in one paragraph specifically related to the prayer for declaratory relief. *Id.* at 894 n.7. The Court of Appeal read that one paragraph to mean that the Campaign's declaratory relief claim was solely premised on Mayor Newsom's issuance of marriage licenses to same-sex couples and concluded that there was no actual controversy because this Court had issued a writ in *Lockyer* that temporarily halted the issuance of marriage licenses to same-sex couples. *Id.* at 894. In fact, as the trial court correctly found, the Campaign's claims were about much more than merely the issuance of marriage licenses, but addressed the motivation behind the mayor's actions, namely, whether the statutes are constitutional. (RT, p.175). By failing to examine the reasonableness of the trial court's exercise of discretion before embarking on its own limited de novo

review, the Court of Appeal completely ignored the ongoing constitutional questions inherent in the Campaign's claims for declaratory and injunctive relief . As a result, the Campaign was denied status as a party in a coordinated proceeding that began with the Campaign's Complaint.

The Court of Appeal in this case gave no deference to the trial court's ruling. Its conclusion that the Campaign's claims were not justiciable under Section 1060 was based upon its selective independent review of limited facts prompted by nothing more than its disagreement with the trial court's conclusion. The conclusion is wholly unsupported by the facts and must be reversed.

CONCLUSION

The Court of Appeal disregarded this Court's precedents related to taxpayer standard under Code of Civil Procedure §§526a and 1060 when it concluded that the Campaign lacked standing. The Court of Appeal's denial of standing infringed upon the Campaign's constitutional rights under Art. 4, §1 of the California Constitution. The Court of Appeal improperly engaged in de novo review of the trial court's determination that the Campaigns' claims were justiciable.

For these reasons, the Court of Appeal's determination that the

Campaign lacks standing/that its claims are not justiciable[5], must be reversed.

Dated: March 30, 2007

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[5] The Court of Appeal titled the procedural part of its discussion "Justiciability," and began the discussing talking about the justiciability of the Campaign's claims. However, it then switched to talking about the Campaign's standing and concluded with a statement that addressed both standing and justiciability. Therefore the issue has been denominated as standing and justiciability in keeping with the dual nature of the Court of Appeal's discussion.

CERTIFICATE OF COMPLIANCE

I hereby certify that this Answer to Petitions for Rehearing has been prepared using proportionately double-spaced 13 point Times New Roman font. According to the "word count" feature of WordPerfect, which was used to prepare this document, the total number of words including footnotes but excluding the Table of Contents, Table of Authorities and this Certificate, is 9,909 words.

I declare under penalty of perjury under the laws of the State of California that this statement is true and correct.

Executed on March 30, 2007 at Lynchburg, Virginia.

_____

Mary E. McAlister

PROOF OF SERVICE

I, Mary E. McAlister, declare that I am over the age of eighteen and am not a party to this action. My business address is 100 Mountain View Road, Suite 2775, Lynchburg, Virginia 24502.

On March 30, 2007, I served the above Opening Brief on the interested parties in this action in the manner indicated below:

X By Mail: I am readily familiar with the business practice for collection and processing correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelopes were sealed, and with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail in Lynchburg Virginia (as indicated on the Service List).

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct; that this declaration is executed on March 30, 2007, in Lynchburg, Virginia.

_____

Mary E. McAlister

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