

IN THE
SUPREME COURT OF CALIFORNIA

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

**SUPPLEMENTAL BRIEF OF GOVERNOR ARNOLD SCHWARZENEGGER
AND STATE REGISTRAR OF VITAL STATISTICS TERESITA TRINIDAD
ADDRESSING THE QUESTIONS SET FORTH IN THE COURT'S ORDER
DATED JUNE 20, 2007**

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Respondents Governor Arnold Schwarzenegger and State Registrar of Vital Statistics Teresita Trinidad (collectively, “the Administration”) respectfully submit their supplemental brief addressing the questions set forth in the Court’s order dated June 20, 2007.

QUESTION NUMBER ONE

What differences in legal rights or benefits and legal obligations or duties exist under current California law affecting those couples who are registered domestic partners as compared to those couples who are legally married spouses? Please list all of the current differences of which you are aware.

RESPONSE TO QUESTION NUMBER ONE

There Are No Differences Between the Legal Rights and Benefits or the Legal Obligations and Duties Provided to Married Couples and Those Provided to Registered Domestic Partners Under California Law.

The Administration is not aware of any differences between the legal rights and benefits and the legal obligations and duties affecting

registered domestic partners under California law and the rights, benefits, duties and obligations given to married couples. As explained in the answer briefs, the State's laws governing domestic partnerships have evolved since 1999 such that there do not appear to be any legal rights, benefits, duties or obligations conferred by state law upon married couples that are not also possessed by registered domestic partners. (Answer Brief of Governor Arnold Schwarzenegger and State Registrar of Vital Statistics Teresita Trinidad on the Merits ("Administration Answer Brief") at pp. 9-11; Answer Brief of State of California and the Attorney General to Opening Briefs on the Merits ("State Answer Brief") at pp. 1, 7-12.)

QUESTION NUMBER TWO

What, if any, are the minimum, constitutionally-guaranteed substantive attributes or rights that are embodied within the fundamental constitutional "right to marry" that is referred to in cases such as *Perez v. Sharp* (1948) 32 Cal.2d 711, 713-714? In other words, what set of substantive rights and/or obligations, if any, does a married couple possess that, because of their constitutionally protected status under the state Constitution, may not (in the absence of a compelling interest) be eliminated or abrogated by the Legislature, or by the people through the initiative process, without amending the California Constitution?

RESPONSE TO QUESTION NUMBER TWO

Married Couples Do Not Possess Any Substantive Rights or Obligations Under California Law that Could Not Be Eliminated by State Action Supported by a Rational Basis.

The Administration is unaware of any opinion of this Court or of the United States Supreme Court that defines the essential minimum attributes of the fundamental right to marry. To the extent that, in the past, civil marriage was necessary to legitimize the conjugal and family

relationships then regarded as the exclusive prerogative of married couples – such as cohabitation, sexual intimacy, mutual lifelong care and support, procreation or child-rearing – such state authorization is no longer required. Thus, the Administration submits that, except for the ability to choose and declare one's life partner in a reciprocal commitment of mutual support, any of the statutory rights and obligations that are afforded to married couples in California could be abrogated or eliminated by the Legislature or the electorate for any rational legislative purpose.

QUESTION NUMBER THREE

Do the terms "marriage" or "marry" themselves have constitutional significance under the California Constitution? Could the Legislature, consistent with the California Constitution, change the name of the legal relationship of "marriage" to some other name, assuming the legislation preserved all of the rights and obligations that are now associated with marriage?

RESPONSE TO QUESTION NUMBER THREE

No Constitutional Provision Would Prohibit Changing the Name of the Marriage Relationship to Some Other Name.

In response to the Court's third set of questions, the Administration submits that use of the words "marry" and "marriage" is not required by the California Constitution. Thus, the name of the legal relationship now known as "marriage" could be changed. Because Proposition 22 refers to "marriage," however, any such change might require a vote of the people.

QUESTION NUMBER FOUR

Should Family Code section 308.5 – which provides that “[o]nly marriage between a man and a woman is valid or recognized in California” – be interpreted to prohibit only the recognition in California of same-sex marriages that are entered into in another state or country or does the provision also apply to and prohibit same-sex marriages entered into within California? Under the Full Faith and Credit Clause and the Privileges and Immunities Clause of the federal Constitution (U.S. Const., art. IV, §§ 1, 2, cl.1), could California recognize same-sex marriages that are entered into within California but deny such recognition to same-sex marriages that are entered into in another state? Do these federal constitutional provisions affect how Family Code section 308.5 should be interpreted?

RESPONSE TO QUESTION NUMBER FOUR

Although Interpretation of Family Code Section 308.5 Is Unnecessary in These Proceedings, the Plain Language of that Statute Prohibits Recognition of Same-Sex Marriages Entered into in California as Well as Those Entered into Outside the State.

As the Court of Appeal correctly held, it is not necessary to decide, in these proceedings, the exact interpretation of section 308.5. Nonetheless, in response to this Court’s question, the Administration responds that section 308.5 applies to both in-state and out-of-state marriages.

In interpreting statutes, courts look first to the language of the statute itself and interpret the words in their usual, ordinary meaning. (*Younger v. Superior Court* (1976) 16 Cal.3d 30, 40.) If the meaning is without ambiguity or uncertainty, then the language controls. (*Halbert Lumber v. Luck Stores* (1992) 6 Cal.App.4th 1233, 1239.) The language of Family Code section 308.5 is clear and unambiguous. It states simply:

“Only marriage between a man and a woman is valid or recognized in California.” Therefore, the plain language of section 308.5 controls this question.

Interpreting section 308.5 to apply to all same-sex marriages avoids unnecessary constitutional issues. If California recognized same-sex marriages entered into within California, it would be obliged to recognize those contracted out of state as well. (See, e.g., *Lunding v. New York Tax Appeals Tribunal* (1998) 522 U.S. 287, 296 [purpose of privilege and immunities clause is to place citizens of different states on equal footing].) Thus, this Court should interpret section 308.5 so as to avoid an unnecessary constitutional question.

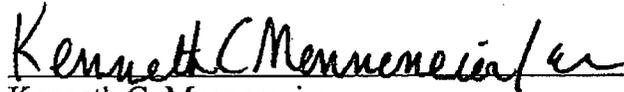
Dated: August 17, 2007 MENNEMEIER, GLASSMAN & STROUD LLP

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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 1,076 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 August 17, 2007.

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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 August 17, 2007, I served the within documents:

**SUPPLEMENTAL BRIEF OF GOVERNOR ARNOLD SCHWARZENEGGER
AND STATE REGISTRAR OF VITAL STATISTICS TERESITA TRINIDAD
ADDRESSING THE QUESTIONS SET FORTH IN THE COURT'S ORDER
DATED JUNE 20, 2007**

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 August 17, 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. 4365¹**

**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**

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

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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

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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

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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

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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

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In re Marriage Cases
CALIFORNIA SUPREME COURT CASE NO. S147999
JCCP No. 4365
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