

SUPREME COURT OF THE STATE OF CALIFORNIA

**Coordination Proceeding Special
Title (Rule 1550(b))
IN RE MARRIAGE CASES**

Case No. S147999

Judicial Council Coordination
Proceeding No. 4365

First Appellate District
No. A110449
(Consolidated on appeal with case
nos. A110540, A110451,
A110463, A110651, A110652)

San Francisco Superior Court Case
No. 429539
(Consolidated for trial with San
Francisco Superior Court Case No.
429548)

**CITY AND COUNTY OF SAN
FRANCISCO'S CONSOLIDATED REPLY
TO SUPPLEMENTAL BRIEFS**

The Honorable Richard A. Kramer
Superior Court for the City and County of San Francisco

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TABLE OF AUTHORITIES

State Cases

Perez v. Sharp
(1948) 32 Cal.2d 7111

Federal Cases

Loving v. Virginia
(1967) 388 U.S. 11

Turner v. Safley
(1987) 482 U.S. 78.....1, 2

Zablocki v. Redhail
(1978) 434 U.S. 374.....1

The Supplemental Briefs filed by the Attorney General, Governor Schwarzenegger, the Proposition 22 Legal Defense and Education Fund (Fund), and the Campaign for California Families (Campaign) are remarkable for their disagreements more than their content. For example, in answering question one, they disagree over whether there are any differences in the rights and benefits conferred by marriage and domestic partnership.¹ And in answering question two, they disagree over which rights and obligations conferred by marriage are protected by our State Constitution.² Moreover, neither the State nor its allies ground their answers to the second question in the constitutional right-to-marry cases, including *Perez v. Sharp* (1948) 32 Cal.2d 711, *Loving v. Virginia* (1967) 388 U.S. 1, *Zablocki v. Redhail* (1978) 434 U.S. 374, and *Turner v. Safley* (1987) 482 U.S. 78. This failure – and their divergent answers – reveal the infirmity of their positions. The supplemental briefs filed by the City and County of San Francisco (City) and the same-sex couples in this case make this even more clear. And no further explication on these points is needed.³

¹ (Compare Supplemental Brief of the State of California and Attorney General Edmund G. Brown, Jr. (AG Supp. Brief) 1-2 [no differences]; Supplemental Brief of Governor Arnold Schwarzenegger and State Registrar of Vital Statistics Teresita Trinidad (Gov. Supp. Brief) 1-2 [same] with Fund Supplemental Brief (Fund Supp. Brief) 2-3 [acknowledging differences]; Campaign Supplemental Brief (Campaign Supp. Brief) 4-5 [same].)

² (Compare AG Supp. Brief 4-5 [only "the essential ability to choose and declare one's life partner in a reciprocal and binding contractual commitment of mutual support" is constitutionally protected]; Gov. Supp. Brief 2-3 [same] with Fund Supp. Brief 5-11 [describing laundry list of marital rights protected by Constitution]; Campaign Supp. Brief 6-23 [same].)

³ Likewise, question four is more than adequately answered by the supplemental briefs filed by the City and its allies.

The City writes to address another key issue on which there is disagreement between the Attorney General and his allies: whether denying same-sex couples the legal status and name of "marriage" deprives them of a constitutionally protected right. In their supplemental briefs, the Attorney General and the Governor acknowledge that the constitutional right to marry encompasses "the intangible emotional benefits that come from the ancient tradition of public declaration and recognition of life partnership." (AG Supp. Brief 5, citing *Turner*, 482 U.S. at 95; accord Gov. Supp. Brief 3.) At the same time, they contend the name "marriage" has no constitutional significance and could be changed by the State without constitutional impediment. (AG Supp. Brief 6; Gov. Supp. Brief 3.) But the "ancient tradition" to which they refer – and which is universally understood as the "public declaration and recognition of life partnership" – *is* marriage. (AG Supp. Brief 5; Gov. Supp. Brief 3.) Thus, their two statements are irreconcilable.

Moreover, if the Attorney General and the Governor were correct that marriage is a constitutionally insignificant label, it could freely deny marriage licenses to divorced people, deadbeat parents, or the elderly – so long as it gave them domestic partnership certificates. But the State *cannot* do so precisely because it would deny *those* people "the intangible emotional benefits that come from the ancient tradition of public declaration and recognition of life partnership." (AG Supp. Brief 5; Gov. Supp. Brief 3.) And the State cannot deny same-sex couples marriage licenses for the same reason.

In stark contrast to the position of the Attorney General and the Governor, the State's other allies recognize and emphasize the constitutional significance of marriage. The Fund states:

To change the name of the relationship would eliminate its universal identity and generate confusion as to the nature of the relationship. It would no longer be the same right, and it would no longer be universally recognized. . . . That would violate the fundamental right to marry by prohibiting entry into that institution. (Fund Supp. Brief 13.)

Similarly, the Campaign emphasizes the importance of the name "marriage," observing:

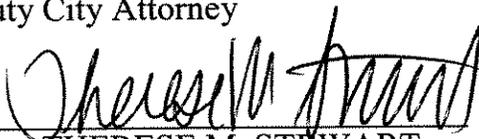
- "marriage by any other name would cease to be marriage, no matter what substantive rights, benefits and obligations are included in the new relationship" (Campaign Supp. Brief 23);
- "[i]t is that universally recognized social institution, not a legislatively created bundle of individual rights, that is protected by the due process clause of the Fourteenth Amendment" (*id.* 26);
- the term marriage has "over the course of several millennia . . . developed universally shared meanings and expectations" (*id.* 28);
- "[t]he term 'marriage' is . . . protected by the United States and California constitutions because it is significant to society" (*id.* 26); and
- "[t]he term 'marriage' is not merely a label that can be removed and attached to an ever-changing bundle of rights, but is a universally recognized social construct that is constitutionally significant wholly apart from whatever rights or benefits a particular group might assign to it" (*id.* 27).

This extreme conflict in the positions of the State and its allies is again notable. The Attorney General and the Governor argue that marriage

is a constitutionally insignificant label, but this is clearly wrong. The Campaign and the Fund recognize that marriage is constitutionally significant but argue that it is *too* significant for same-sex couples. This is also wrong because the public policy of this State makes abundantly clear that lesbians and gay men may not be discriminated against. (See City and County of San Francisco's Opening Brief 37-39.) Thus, by acknowledging that "marriage" is a constitutionally significant label, the Fund and the Campaign provide the very reason why the State may not deny marriage licenses to same-sex couples.

Dated: August 31, 2007

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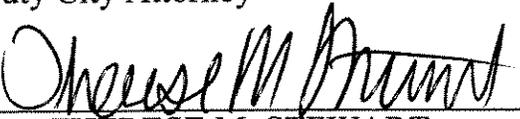
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 968 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 31, 2007.

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PROOF OF SERVICE

I, HOLLY TAN, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, California, 94102.

On August 31, 2007, I served:

**CITY AND COUNTY OF SAN FRANCISCO'S CONSOLIDATED
REPLY TO SUPPLEMENTAL BRIEFS**

on the interested parties in said action, by placing a true copy thereof in sealed envelopes addressed as follows:

ATTACHED SERVICE LIST

and served the named document on the parties as set forth on the attached list in the manners indicated below:

- BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.
- BY EXPRESS SERVICES OVERNITE:** I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered to EXPRESS SERVICES OVERNITE for overnight courier service to the offices of the addressees.
- BY ELECTRONIC MAIL:** I caused a copy of such document to be transmitted via electronic mail in Portable Document Format ("PDF") Adobe Acrobat from the electronic address: *holly.tan@sfgov.org*
- BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelopes and caused such envelopes to be delivered by hand at the above locations by a professional messenger service.

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

Executed August 31, 2007, at San Francisco, California.



HOLLY TAN

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City and County of San Francisco v. State of California, et al.
San Francisco Superior Court Case No. CGC-04-429539
consolidated with
Woo v. Lockyer
San Francisco Superior Court Case No. CPF-04-504038

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**Proposition 22 Legal Defense and Education Fund v. City and County of San
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San Francisco Superior Court Case No. CPF-04-503943
consolidated with
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