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7 Attorney for Plaintiffs  
8 CLINTON, et al.

9  
10 JUDICIAL COUNCIL OF THE STATE OF CALIFORNIA

11 DR. GREGORY CLINTON & GREGORY )  
12 MORRIS, individually and as a same-sex )  
13 married couple, DR. ANTHONY )  
14 BERNAN & ANDREW )  
15 NEUGENBAUER, individually and as a )  
16 same-sex married couple, KRISTEN )  
17 ANDERSON & MICHELLE BETTEGA, )  
18 individually and as a same-sex married )  
19 couple, STEPHANIE O'BRIEN & JANET )  
20 LEVY, individually and as a same-sex )  
21 married couple and JOSEPH FAULKNER )  
22 & ARTHUR HEALEY, individually and )  
23 as a same-sex married couple, on behalf of )  
24 themselves and all others similarly )  
25 situated,

26 Plaintiffs,  
27 vs.

28 STATE OF CALIFORNIA, GOVERNOR )  
29 ARNOLD SCHWARZENEGGER, in the )  
30 capacity as Governor of the State of )  
31 California, a California resident, and )  
32 DOES 1-50,

33 Defendants.

Case No. CGC-04-429548

**MEMORANDUM OF POINT AND  
AUTHORITIES SUPPORTING  
PLAINTIFFS CLINTON, et al.'S  
PETITION TO COORDINATE ADD-  
ON CASE**

1 **INTRODUCTION**

2 For the reasons set forth below and in the declaration of Waukeen Q. McCoy, plaintiffs in  
3 CLINTON, et al. v. STATE OF CALIFORNIA, et al., San Francisco County Superior Court  
4 Case No. CGC-04-429548, submit that coordination of their action is appropriate under the  
5 standards specified in California Code of Civil Procedure section 404.1.  
6

7 **FACTS**

8 On March 12, 2004, petitioners filed an action against the State of California and  
9 Governor Arnold Schwarzenegger on behalf of themselves and all other similarly situated same  
10 sex couples. Plaintiffs CLINTON, et al.'s claim is based on the defendants' continuing policies  
11 and practices of discriminating against homosexuals with respect to the receipt of marriage  
12 licenses. More specifically, plaintiffs' action brings into question the constitutionality of  
13 California's Family Code sections 300, 301, 308.5 and 2251.  
14

15 **ARGUMENT**

16 **GOOD CAUSE EXISTS FOR COORDINATING THE ENUMERATED CASES**  
17 **WITH THE PETITIONERS' CASE BECAUSE ALL CASES RAISE THE SAME**  
18 **ISSUES OF LAW AND FACT.**

19 **A. Coordination is Appropriate.**

20 Coordination is appropriate if (a) the common question of fact or law predominates, (b)  
21 the common question of fact or law is significant in all of the actions to be coordinated, and (c)  
22 one judge hearing all of the actions for all purposes in a selected site will promote the ends of  
23 justice, preserve the convenience of parties and witnesses, advance the efficient use of judicial  
24 resources, avoid inconsistent rulings, and increase the likelihood of settlement. (Cal. Code Civ.  
25 Proc., § 404.1.)

26 Petitioners' action, CLINTON, et al. v. STATE OF CALIFORNIA, et al., predominantly  
27 deals with the constitutionality of California's Family Code provisions, which define marriage as  
28 "a personal relation arising out of a civil contract between a man and a woman..." (See, Fam.

1 Code § 300.) The very same legal issue is the predominant question in the following  
2 consolidated cases: *Proposition 22 Legal Defense and Education Fund v. City and County of San*  
3 *Francisco*, San Francisco County Superior Court Case No. 503943; *Thomasson v. Newsom*, San  
4 *Francisco* County Superior Court Case No. 428794; *Lancy Woo, et al. v. Bill Lockyer, et al.*, San  
5 *Francisco* Superior Court Case No. CPF-04-504030; *Robin Tyler, et al. v. The County of Los*  
6 *Angeles*, Los Angeles County Superior Court Case No. BS 088506, and *City and County of San*  
7 *Francisco v. State of California, et al.*, San Francisco Superior Court Case No. CGC-04-429539.

8 Trying the CLINTON case separately from the five consolidated actions generates a high  
9 potential for inconsistent results with respect to the numerous evidentiary rulings, as well as in  
10 the final outcome of each case. The potential result is that there will be a series of cases on  
11 appeal, with a multitude of appealable issues unique to each case. This undesirable prospect is  
12 precisely what coordination is designed to avoid.

13 Trying this one common issue in one forum will promote judicial economy and would be  
14 far more convenient and less expensive for all the parties involved. Coordination will foster the  
15 efficient utilization of judicial facilities, resources and calendars of the courts. Coordinating  
16 cases will also avoid duplicative and inconsistent rulings, orders or judgments. Furthermore,  
17 coordination will significantly reduce the aggregate expense of litigation by eliminating  
18 redundant and repetitive discovery, motions, and trials.

19 **B. Petitioners' Lawsuit is a Complex Action.**

20  
21 If the actions are complex, a petition to coordinate an add-on case is filed with the chair  
22 of the Judicial Council. Rule 1800 of the California Rules of Court defines a complex action as  
23 follows:

- 24 (a) [Definition] A "complex case" is an action that requires exceptional judicial  
25 management to avoid placing unnecessary burdens on the court or the litigants  
26 and to expedite the case, keep costs reasonable, and promote effective decision  
27 making by the court, the parties, and counsel.  
28 (b) [Factors] In deciding whether an action is a complex case under subdivision  
(a), the court shall consider, among other things, whether the action is likely to  
involve:

- 1 (1) Numerous pretrial motions raising difficult or novel legal  
2 issues that will be time-consuming to resolve;
- 3 (2) Management of a large number of witnesses or a substantial  
4 amount of documentary evidence;
- 5 (3) Management of a large number of separately represented  
6 parties;
- 7 (4) Coordination with related actions pending in one or more  
8 courts in other counties, states, or counties, or in a federal court;  
or
- 9 (5) Substantial postjudgment judicial supervision.

10 (Cal. Rules of Court, Rule 1800.)

11 The CLINTON action, being a class action, requires consideration of a great deal of  
12 evidence, expert and otherwise, dealing with deeply complex subject matter areas. It is  
13 anticipated that numerous motions will be filed by all parties on a number of legal and  
14 evidentiary issues. If each case were tried separately, each would require a management of a  
15 large number of witnesses, a substantial amount of documentary evidence, and a large number of  
16 separately represented parties. In the five already consolidated cases named above, there are a  
17 multitude of parties represented by numerous counsel. Thus, the CLINTON case is properly filed  
18 with the Judicial Council as it is a complex action.

19  
20 **C. All Parties Plaintiff Agree that Coordination is Appropriate.**

21 For all actions involving complex issues, only all the parties plaintiff or all the parties  
22 defendant in one of the actions to be coordinated may submit a petition directly to the chair of  
23 the Judicial Council. (Cal. Code of Civ. Proc., § 404.)

24 For the CLINTON action, all the parties plaintiff agree that coordination is appropriate,  
25 therefore, the parties may submit the petition for coordination directly to the chair of the Judicial  
26 Council.

1 **CONCLUSION**

2 For the foregoing reasons, petitioners CLINTON, et al., respectfully request that their  
3 lawsuit be coordinated for resolution with other included actions.

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5  
6 Dated: July 13, 2004

7  
8 Respectfully submitted,

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11 WAUKEEN Q. McCOY

12 Attorney for Petitioners CLINTON, et. al.