

June 2, 2004

*Via Hand Delivery*

The Honorable Chief Justice Ronald George and the  
Honorable Associate Justices of the California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

**RE: *Lewis, et al. v. Alfaro*, Case No. S122865  
*Lockyer v. City and County of San Francisco, et al.*, Case No. S122923**

Dear Chief Justice George and Associate Justices Kennard, Baxter, Werdegar, Chin, Brown, and Moreno:

Amici Curiae request leave by this letter to bring to the Court's attention a statutory provision relevant to a question raised by the Court during the hearing on May 25, 2004 in the above-referenced original writ proceedings.

During the hearing, in the context of discussing whether there might exist any possible need for the Court to determine the validity of the marriages of same-sex couples not before the Court, the Court raised the question whether same-sex couples who married in San Francisco are eligible to secure for themselves and their families the legal protections provided by California's domestic partnership laws. The most recent domestic partnership statute, AB 205 (2003), clarified existing law on this issue by expressly providing that persons who are otherwise eligible to enter into a domestic partnership together may register together as domestic partners even if they are also married to each other. AB 205's only marriage-based restriction on eligibility for domestic partnership is that a person cannot enter into a registered domestic partnership if the person is married to someone other than the person with whom he or she is registering a domestic partnership.

As amended by AB 205, Family Code subsection 297(b) provides in relevant part:

(b) A domestic partnership shall be established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State pursuant to the division, and, at the time of filing, all of the following requirements are met:

\*\*\*\*

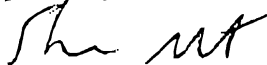
(2) Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.

\*\*\*\*

Cal. Fam. Code § 297(b) (operative Jan. 1, 2005) (emphasis added).<sup>1</sup>

The omission of this relevant statutory provision in response to the Court's question highlights the hazards of addressing the validity of the marriages of couples who have not been given an opportunity to bring to the Court's attention all relevant factual and legal considerations.

Respectfully,



Shannon P. Minter

Shannon P. Minter  
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National Center for Lesbian Rights

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<sup>1</sup> Even in the absence of this clarifying language, being married to one's prospective domestic partner could only be considered to be a barrier to domestic partner registration if the State decided or was required to treat the marriages as valid. As the State currently is not respecting the marriages of same-sex couples entered in San Francisco, it would not be sensible for the State to preclude married same-sex couples from registering as domestic partners due to their marital status. At the very worst, then, those same-sex couples who married in San Francisco and register as domestic partners would only have their domestic partnerships treated as invalid if their marriages were accepted by the State -- in other words, they will either have the rights of domestic partners or the greater rights of married couples. Thus, even apart from the Legislature's recent clarification of this issue, same-sex couples who married in San Francisco will not be harmed by the Court refraining from prematurely, and without their input, ruling on the validity of their marriages.

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Cristal Rivera-Mitchel, Lancy Woo and Cristy Chung,  
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Cooper, Our Family Coalition, and Equality California

cc: All Counsel of Record

**PROOF OF SERVICE**

I, Joanne Park, declare that I am over the age of eighteen years and I am not a party to this action. My business address is 333 Bush Street, San Francisco, California 94104-2878.

On June 2, 2004, I served the document listed below on the interested parties in this action in the manner indicated below:

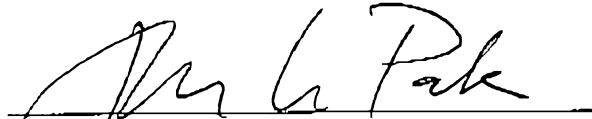
**DOCUMENT SERVED:****LETTER BRIEF ADDRESSED TO THE HONORABLE CHIEF JUSTICE RONALD GEORGE AND THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT**

- BY OVERNIGHT DELIVERY: I caused such envelopes to be delivered to the above parties via FEDERAL EXPRESS PRIORITY OVERNIGHT delivery service.
- BY PERSONAL SERVICE: I caused the document(s) to be delivered by hand.
- 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 at San Francisco, California. I caused the document(s) to be sent by mail via United States Postal Service to the parties identified above.
- BY FACSIMILE: By use of facsimile machine, I served a copy of the above listed document(s) on the above-listed interested parties in the within action by transmitting by facsimile machine to the following: The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2005, I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

**INTERESTED PARTIES:**

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct; that this declaration is executed on June 2, 2004, at San Francisco, California.

  
\_\_\_\_\_  
Joanne Park

## SERVICE LIST

VIA FACSIMILE & U.S. MAIL

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