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27 Attorneys for Petitioner
28 *pro hac vice forthcoming

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

PROPOSITION 22 LEGAL DEFENSE AND
EDUCATION FUND, a California nonprofit
public benefit corporation, on its own behalf and
on behalf of the people of California, RALPH
MONTGOMERY, an individual,

Petitioners,

v.

CITY AND COUNTY OF SAN FRANCISCO,
a charter city and county, GAVIN NEWSOM,
in his official capacity as Mayor of San
Francisco, NANCY ALFARO, in her official
capacity as San Francisco County Clerk, and
DOES 1 through 100,

Respondents.

ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

FEB 19 2004

GORDON PARK-LI, Clerk

BY: _____
Deputy Clerk

K. LIU

CASE NO. CPF-04-503943

**FIRST AMENDED VERIFIED
PETITION FOR WRIT OF
MANDATE AND IMMEDIATE
STAY, AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

IMMEDIATE RELIEF REQUESTED

Action Filed: February 13, 2004
Dept.: 301
Judge: James L. Warren

1 TO THE HONORABLE JUDGES OF THE SUPERIOR COURT:

2 Petitioners hereby apply for an alternative and peremptory writ of mandate and an
3 immediate stay on the grounds that the Respondents have unlawfully issued marriage licenses to,
4 and solemnized marriages of, same-sex couples; and will continue this unlawful behavior if
5 Petitioners' requested relief is not granted. The Petition is made and based on this Amended
6 Verified Petition for Writ of Mandate and Immediate Stay, and Complaint for Injunctive and
7 Declaratory Relief, and the supporting memorandum of points and authorities filed herewith.

8 **FIRST CAUSE OF ACTION**

9 **CODE OF CIVIL PROCEDURE SECTION 1085,**
10 **MANDAMUS AGAINST ALL RESPONDENTS**

11 1. Petitioner Proposition 22 Legal Defense and Education Fund ("Petitioner") is, and
12 at all times herein mentioned was, a California nonprofit public benefit corporation organized
13 under the laws of the State of California, representing the interest of approximately 14,000 of its
14 contributors and supporters who were assessed and paid taxes to the State of California, some of
15 whom reside and have been assessed taxes within the City and County of San Francisco, within
16 one year before the commencement of this action. Petitioner serves the public interest by
17 advocating for the proper application and enforcement of Proposition 22, now codified as Cal.
18 Fam. Code § 308.5. Petitioner's principal place of business is in Sacramento County, California.

19 2. Petitioner Ralph Montgomery, is, and at all times herein mentioned was, a resident
20 of California and the City and County of San Francisco, and paid real property taxes and/or other
21 taxes to the City and County of San Francisco during the past year.

22 3. Respondent City and County of San Francisco is, and at all times herein mentioned
23 was, a political subdivision of California, capable of being sued in its own name.

24 4. Respondent Gavin Newsom is, and at all times herein mentioned was, Mayor of
25 San Francisco, with his principal place of business in the City and County of San Francisco,
26 California.

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1 5. Respondent Nancy Alfaro is, and at all times herein mentioned was, San Francisco
2 County Clerk with her principal place of business in the City and County of San Francisco,
3 California.

4 6. Petitioners are ignorant of the true names and capacities of Respondents, Does 1
5 through 100, inclusive, and therefore sue said Respondents by such fictitious names. Petitioners
6 will amend this petition and complaint to allege their true names and capacities when the same
7 have been ascertained. Petitioners are informed and believe and thereon allege that each of the
8 fictitiously named Respondents is directly and proximately responsible for Petitioners' injuries as
9 hereinafter alleged, by solemnizing marriages of couples other than those constituting an
10 unmarried male and an unmarried female within the City and County of San Francisco, or
11 otherwise failing to perform their lawful duties.

12 7. Petitioners are informed and believe, and based thereon allege, that on or about
13 February 10, 2004, Respondent Newsom requested Respondent Alfaro to begin issuing marriage
14 licenses to same-sex couples.

15 8. Petitioners are informed and believe, and based thereon allege, that on or about
16 February 12, 2004, Respondent Alfaro or her subordinates have issued marriage licenses to
17 persons other than couples constituting an unmarried male and an unmarried female within the
18 City and County of San Francisco.

19 9. Petitioners are informed and believe, and based thereon allege, that on or about
20 February 12, 2004, Respondents Newsom, Alfaro, and Does 1 through 100 began solemnizing
21 marriages of persons other than couples constituting an unmarried male and an unmarried female
22 within the City and County of San Francisco, pursuant to the licenses issued by Respondent
23 Alfaro or her subordinates.

24 10. Petitioners claim that such actions constitute a failure to perform a mandatory duty
25 because Respondents are required to adhere to the statutory requirements for issuing marriage
26 licenses and solemnizing marriages under the Family Code and California Constitution, art. III, §
27 3.5.
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1 11. Respondents' actions as alleged herein are contrary to law. Respondents have a
2 clear, present and ministerial duty to comply with the law and enforce the provisions of the
3 Family Code when issuing marriage licenses. Respondents have failed and refused to do so and
4 continue to fail and refuse to do so.

5 12. Petitioners are beneficially interested in the subject matter of this action and have
6 no plain, speedy or adequate remedy at law. Petitioners have no administrative remedy.

7 13. Unless and until commanded by order of this Court, Respondents will continue to
8 violate the law to Petitioners' substantial injury and detriment and to the substantial injury and
9 detriment of the People of the City and County of San Francisco and the State of California.

10 WHEREFORE, Petitioners pray for a writ of mandate as hereinafter set forth.

11 **SECOND CAUSE OF ACTION**

12 **CODE OF CIVIL PROCEDURE SECTION 526a,**
13 **INJUNCTIVE RELIEF AGAINST ALL RESPONDENTS**

14 14. Petitioners incorporate herein all allegations contained in paragraphs 1 through 15,
15 inclusive.

16 15. Respondents are charged with the duty to enforce sections 300 and 308.5 of the
17 California Family Code in connection with the issuance of marriage licenses.

18 16. By utilizing the taxpayer-funded time, labor and other resources of public
19 employees and offices to act in violation of the state laws governing the issuance of marriage
20 licenses, Respondents have illegally expended and wasted, and threaten and will continue to
21 illegally expend and waste, the public funds of the City and County of San Francisco, to the
22 detriment of local taxpayers.

23 17. Respondents' illegal expenditure and waste of public funds by failing to enforce
24 state laws governing the issuance of marriage licenses should be enjoined.

25 WHEREFORE, Petitioners pray for injunctive relief as hereinafter set forth.
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1 for them, from illegally expending and wasting public funds by issuing marriage licenses and/or
2 solemnizing marriages in violation of the state statutes governing the issuance of marriage
3 licenses and solemnization of marriages;

4 4. For a judicial declaration that any and all marriage licenses issued, and any and all
5 marriages solemnized, for couples other than those constituting only an unmarried male and an
6 unmarried female, are invalid;

7 5. For litigation expenses, including reasonable attorneys' fees and costs pursuant to
8 Civ. Proc. Code § 1021.5, or other applicable law; and

9 6. For such a further relief as this Court deems just and proper.

10 Dated: February 19, 2004

11 Respectfully submitted,

12 Alliance Defense Fund Law Center

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14 By 

15 Robert H. Tyler
16 Attorney for Petitioners
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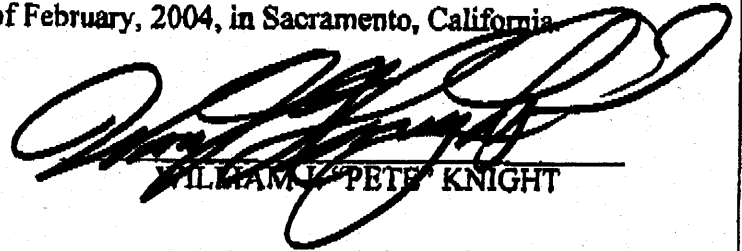
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VERIFICATION

I, William J. "Pete" Knight, am the President of the Proposition 22 Legal Defense and Education Fund, a nonprofit public benefit corporation organized under the laws of the State of California. I am authorized to verify this Petition for Writ of Mandate and Immediate Stay, and Complaint for Injunctive and Declaratory Relief on behalf of the Petitioner. I have read the foregoing Petition for Writ of Mandate and Immediate Stay, and Complaint for Injunctive and Declaratory Relief and know its contents. The facts stated therein are true and are within my personal knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters I believe them to be true.

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

Executed this 19 day of February, 2004, in Sacramento, California

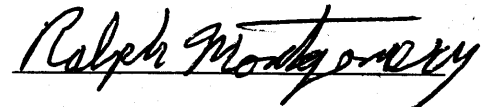

WILLIAM J. "PETE" KNIGHT

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VERIFICATION

I, Ralph Montgomery, a citizen of the United States and a resident of the State of California, have read the foregoing Amended Verified Petition for Writ of Mandate and Immediate Stay, and Complaint for Injunctive and Declaratory Relief and declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 18 day of February, 2004, in San Francisco, California.


Ralph Montgomery

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27 Attorneys for Petitioner

28 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF SAN FRANCISCO

29 PROPOSITION 22 LEGAL DEFENSE AND)
 30 EDUCATION FUND, a California nonprofit)
 31 public benefit corporation, on its own behalf)
 32 and on behalf of the people of California,)
 33)
 34 Petitioner,)
 35)
 36 v.)
 37)
 38 CITY AND COUNTY OF SAN FRANCISCO,)
 39 a charter city and county; GAVIN NEWSOM,)
 40 in his official capacity as Mayor of San)
 41 Francisco, NANCY ALFARO, in her official)
 42 capacity as San Francisco County Clerk, and)
 43 DOES 1 through 100,)
 44)
 45 Respondents.)

Case No. 04-503943
 PROOF OF SERVICE
 Department: 301
 Honorable James L. Warren

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I am over the age of 18 years and not a party to the within action. My business address is 43460 Ridge Park Drive, Suite 220, Temecula, California 92590.

On the date set forth below, I served the document(s) described as:

(1) First Amended Verified Petition for Writ of Mandate and Immediate Stay, and Complaint for Injunctive and Declaratory Relief

on the interested parties in this action by faxing: [] originals [X] true copies thereof as follows:

Therese M. Stewart, Chief Deputy City Attorney
Dennis J. Herrera, City Attorney
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K. Scott Dickey, Deputy City Attorney
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6 D'Amario, and David Scott Chandler and Jeffrey Wayne Chandler

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Facsimile: (415) 675-2530

10 Counsel for Interveners Dr. Anthony Berman, Andrew Neugebauer, Stephanie A. O'Brien and
11 Janet Levy

12 (BY FACSIMILE TRANSMITTAL) I transmitted the above-referenced document(s) by
13 facsimile transmission from (909) 699-5025. A transmission report was properly issued by
the transmitting facsimile machine and the transmission was reported as complete and
14 without error to the facsimile number indicated above.

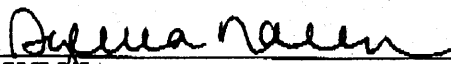
15 (BY MAIL, STATE OR FEDERAL) I am readily familiar with the practice of this office for
collection and processing of correspondence for mailing with the United States Postal
16 Service. Pursuant to that practice, the above referenced document(s) were sealed and placed
for collection and mailing with this office's First Class, Postage Prepaid mail on this date,
17 at my above address in accordance with ordinary office procedure.

18 (BY OVERNIGHT EXPRESS SERVICE) I deposited in a box or other facility regularly
maintained by Federal Express, an express service carrier, a copy of the above referenced
19 documents in an envelope designated by the said express service carrier, with delivery fees
paid or provided for, addressed to the addressee(s) listed above.

20 (BY PERSONAL SERVICE) I delivered such envelope(s) by hand to the office(s) of the
addressee(s).

21 I declare under penalty of perjury under the laws of the State of California and the
22 United States of America that the above is true and correct. Executed at Temecula, California.

23
24 DATE: February 19, 2004


25 SYLVIA NOLEN