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

19 PROPOSITION 22 LEGAL DEFENSE AND
EDUCATION FUND, a California nonprofit
20 public benefit corporation, on its own behalf and
on behalf of the people of California,

21 Petitioner,

22 v.

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

26 Respondents.
27
28

CASE NO. _____

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
VERIFIED PETITION FOR WRIT OF
MANDATE AND IMMEDIATE
STAY, AND INJUNCTIVE AND
DECLARATORY RELIEF**

IMMEDIATE RELIEF REQUESTED

Action Filed:
Hearing Date:
Hearing Time:
Dept.:
Judge:

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1 **INTRODUCTION**

2 This case challenges San Francisco city and county officials who have issued, and
3 continue to issue, marriage licenses to same-sex couples in blatant violation of the California
4 Constitution and California state law.

5 **FACTUAL BACKGROUND**

6 On or about February 10, 2004, Respondent Gavin Newsom, Mayor of San
7 Francisco, requested Nancy Alfaro, San Francisco County Clerk, to begin issuing marriage
8 licenses to same-sex couples. Verified Petition at ¶ 6. On or about February 12, 2004, Respondent
9 Alfaro and/or her subordinates began issuing marriage licenses to same-sex couples within the
10 City and County of San Francisco. Verified Petition at ¶ 7. Subsequently, Respondents Newsom,
11 Alfaro, and Does 1 through 100 began solemnizing marriages of same-sex couples within the City
12 and County of San Francisco, pursuant to the licenses issued by Respondent Alfaro and/or her
13 subordinates. Verified Petition at ¶ 8. As a result, Petitioner filed this lawsuit.

14 **RELIEF REQUESTED**

15 In the First Cause of Action, Petitioners seek an alternative and preemptory writ of
16 mandate commanding Respondents to cease and desist issuing marriage license that fail to
17 comply with state marriage laws.

18 In the Second Cause of Action, Petitioners seek a temporary and a permanent
19 injunction enjoining Respondents, and each of them, and their agents, servants, and employees,
20 and all persons acting under, in concert with, or for them, from illegally expending and wasting
21 public funds by issuing marriage license that fail to comply with state marriage laws.

22 In the Third Cause of Action, Petitioners seek a judicial declaration that
23 Respondents have failed to comply with the clear requirements for issuing valid marriage licenses
24 and solemnizing marriages under the California Family Code; and that all marriage licenses
25 issued and/or marriages solemnized for couples other than those constituting only an unmarried
26 male and an unmarried female are invalid.

1 Petitioners also request litigation expenses, including costs and reasonable
2 attorneys' fees pursuant to Code of Civil Procedure section 1021.5 or other applicable law, and
3 such further and other relief as this Court may deem just and proper.

4 DISCUSSION

5 **A. Petitioner Has Standing To Bring This Action Because The Requirement That** 6 **Petitioner Have A "Beneficial Interest" Is Satisfied.**

7 As a general rule, a petitioner for writ of mandate must be beneficially interested
8 in the subject matter. Cal. Code Civ. Proc. § 1086. Here, Petitioner is a California nonprofit
9 public benefit corporation dedicated to, among other things, the enforcement and legal defense of
10 Proposition 22 (codified as Cal. Fam. Code § 308.5) and related public policies. Verified Petition
11 ¶ 1. As such, Petitioner has an acute beneficial interest in ensuring that Respondents' actions, as
12 government officials, are consistent with, and not contrary to, the statutory provision enacted by
13 Proposition 22. Thus, Petitioner has a special interest to be served that is more pronounced than
14 any right which it may hold in common with the public at large. *Carsten v. Psychology*
15 *Examining Com.*, 27 Cal.3d 793, 796 (1980).

16 Furthermore, since this lawsuit is brought in the "public interest" to seek
17 performance of a public duty, it is said that the requirement that Petitioner be beneficially
18 interested is "relaxed." *American Friends Service Committee v. Proconier*, 33 Cal.App.3d 252,
19 255-256 (1980), overruled on other grounds in *Engelmann v. State Bd. of Education*, 2
20 Cal.App.4th 47, 59 (1991). Petitioner is not required to show any special interest in the outcome
21 of this litigation:

22 "[W]here the question is one of public right and the object of the
23 mandamus is to procure the enforcement of a public duty, the
24 relator need not show that he has any legal or special interest in the
25 result, since it is sufficient that he is interested as a citizen in having
26 the laws executed and the duty in question enforced..." [Citations.]

27 *Common Cause v. Board of Supervisors*, 49 Cal.3d, 432, 439 (1989). The question in this case
28 involves a public right – enforcement of the state laws governing the issuance of marriage
licenses and the validity and recognition of the marriage relationship. Petitioner has standing to
"seek its vindication." *Id.*

1 **Petitioner Has Standing Under Section 526a Of The Code Of Civil Procedure.**

2 As a preliminary matter, California Civil Procedure Code Section 526a permits
3 suits against government actors to restrain illegal expenditures.¹ The purpose of Section 526a is
4 to enable challenges to unauthorized government action that would go unchallenged absent
5 taxpayer standing. *Blair v. Pitchess*, 486 P.2d 1242, 267-68 (1971). “California courts have
6 consistently construed section 526a liberally to achieve this remedial purpose.” *Id.* Plaintiffs
7 have associational taxpayer standing under well-established law. A non-profit organization does
8 not itself need to be a taxpayer. *Warth v. Seldin*, 422 U.S. 490, 515 (1975); *see also Brotherhood*
9 *of Teamsters & Auto Truck Drivers v. Unemployment Ins. Appeals Bd.*, 190 Cal. App. 3d 1515,
10 1521-1522 (1987) (adopting and applying *Warth*); *cf. Proposition 103 Enforcement Project v.*
11 *Quackenbush*, 64 Cal. App. 4th 1473 (1998) (non-profit public interest organization successfully
12 brought suit to enforce Proposition 103). This is because associational standing is based on injury
13 to an organization’s constituents, not just the organization. “Even in the absence of injury to
14 itself, an association may have standing *solely* as the representative of its members.” *Id.* at 511
15 (emphasis added); *Residents of Beverly Glen, Inc. v. City of Los Angeles*, 34 Cal. App. 3d 117, 28
16 (1973) (same). Furthermore, Plaintiffs seek declaratory and injunctive relief, for which
17 associational standing is particularly appropriate. *Warth*, 422 U.S. at 515 (it is reasonably
18 supposed that benefit inures to injured members). Indeed, associational standing is broadly
19 construed; an organization need not even have formal membership to have standing. *Hunt v.*
20 *Washington State Apple Adver. Comm’n*, 432 U.S. 333, 344-45 (1977) (finding that standing
21 exists when association protects collective interests and expressed collective views despite no
22 formal membership). As Petitioner has approximately 14,000 taxpaying members, some of whom
23 reside in San Francisco, there can be no doubt that Petitioner has standing in this case.

24 ¹“An action to obtain a judgment, restraining and preventing any illegal expenditure of,
25 waste of, or injury to, the estate, funds, or other property of a county, town, city or city and
26 county of the state, may be maintained against any officer thereof, or any agent, or other person,
27 acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for
and is liable to pay, or, within one year before the commencement of the action, has paid, a tax
therein. . . .”

28 Cal. Code Civ. Proc. § 526a.

1 **C. Respondents Have A Mandatory Duty To Comply With State Marriage Laws.**

2 Respondent Alfaro, as a county clerk, has a mandatory duty to issue marriage
3 licenses only to “a man and a woman.” See Cal. Fam. Code § 300. “Only marriage between a
4 man and a woman is valid or recognized in California.” Cal. Fam. Code § 308.5. The Legislature
5 has delegated to county clerks the duty of issuing marriage licenses. Cal. Fam. Code § 350.
6 Thus, the clerk’s duty is to issue marriage licenses in a manner that is consistent with state law.
7 Because Respondent Alfaro has a mandatory duty to issue marriage licenses only to a man and a
8 woman, Respondent Alfaro’s violation of the state law requirements governing the issuance of
9 marriage licenses constitutes a failure to perform that mandatory duty.

10 **D. The County Clerk Violated Article III § 3.5 Of The California Constitution By**
11 **Issuing Marriage Licenses To Same-Sex Couples.**

12 Respondent Alfaro’s refusal to enforce a state statute violates Article III, § 3.5 of
13 the California Constitution, which states:

14 An administrative agency, including an administrative agency created by the
15 Constitution or an initiative statute, has no power:

- 16 (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of
17 it being unconstitutional unless an appellate court has made a determination that
18 such statute is unconstitutional;
19 (b) To declare a statute unconstitutional;
20 (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis
21 that federal law or federal regulations prohibit the enforcement of such statute
22 unless an appellate court has made a determination that the enforcement of such
23 statute is prohibited by federal law or federal regulations.

24 Cal. Const. art. III, § 3.5.

25 Counties – as subdivisions of the state according to Cal. Const. art. XI, § 1 – and
26 their officers and clerks are “administrative agencies” of the state and thus subject to the
27 provisions of art. III, § 3.5. See *Billig v. Voges*, 273 Cal. Rptr. 91, 96 (Cal. Ct. App. 1990). In the
28 *Billig* case, plaintiffs sought to compel a city clerk to process and submit a referendum petition to
the city council. *Id.* at 93. The clerk refused the petition because it failed to comply with clear
state law requirements for referendums. (*Id.*) In upholding the clerk’s action, the court said:

The very existence of the statute means it is there to be enforced. Administrative
agencies, **including public officials in charge of such agencies**, are expressly
forbidden from declaring statutes unenforceable, unless an appellate court has

1 determined that a particular statute is unconstitutional. (Cal. Const., art. III, § 3.5.)
2 Section 4052 has not been declared unconstitutional by an appellate court in this
3 state. Consequently, **the offices of city clerks throughout the state are**
4 **mandated by the constitution** to implement and enforce the statute’s procedural
5 requirements. In the instant case, respondent had the clear and present ministerial
6 duty to refuse to process appellants’ petition because it did not comply with the
7 procedural requirements of section 4052.

8 *Id.* at 96. The instant case involves a county clerk – a public office created and controlled directly
9 by the legislature. Cal. Gov’t Code § 24000; *see also Nussbaum v. Weeks*, 263 Cal. Rptr. 360, 364
10 (Cal. Ct. App. 1989), *review den.* (1990) (“[A] public duty is delegated and entrusted to [the
11 public officer], as agent, the performance of which is an exercise of a part of the governmental
12 functions of the particular political unit for which he, as agent, is acting”). Unlike cities, counties
13 are direct political subdivisions of the state. Cal. Const. art. XI, § 1. Therefore, because city
14 clerk offices are “administrative agencies” within the meaning of art. III, § 3.5 (see *Billig*, 273
15 Cal. Rptr. at 96), county clerk offices – with duties mandated by the legislature – are
16 “administrative agencies” as well. As such, county clerks may not refuse to enforce the clear
17 directives of state law. Cal. Const. art. III, § 3.5.

18 In this case, the San Francisco County Clerk has issued marriage licenses that are
19 facially invalid and void according to state law. As noted above, the legislature and voters have
20 already stated that only couples consisting of one man and one woman may obtain a marriage
21 license in California. Cal. Fam. Code §§ 300 (“Marriage is a personal relation arising out of a
22 civil contract between a man and a woman. . . .”); 308.5 (“Only marriage between a man and a
23 woman is valid or recognized in California”) (codifying initiative measure Proposition 22). No
24 appellate court has held these provisions to be unconstitutional. Additionally, a valid marriage
25 “license is a mandatory requirement for a valid marriage in California.” *Estate of DePasse*, 118
26 Cal. Rptr. 2d 143, 151 (Cal. Ct. App. 2002). The legislature has delegated the responsibility for
27 issuing marriage licenses to county clerks. Cal. Fam. Code § 350. However, the legislature and
28 voters have not given county clerks the discretion to issue marriage licenses that fail to comport
with state law.

1 When the legislature has determined that only a man and woman may obtain a
2 valid marriage license, official recognition of same-sex “marriage” is therefore unlawful and
3 void. Even the courts “cannot by construction confer upon any officer an authority that the
4 legislature has seen fit to withhold.” *Bear River Sand & Gravel Corp. v. Placer County*, 258 P.2d
5 543, 546 (Cal. Ct. App. 1953). Certainly a city mayor cannot confer upon a county clerk the
6 authority to ignore the enacted requirements for marriage licenses. In this case, the San Francisco
7 County Clerk has ignored the law and issued marriage licenses to same-sex couples in clear
8 violation of art. III, § 3.5 of the California Constitution.

9 **E. San Francisco’s Authority To Redefine Marriage Is Preempted By State Law.**

10 It is well-established that California cities and counties have limited powers to
11 control only matters of local policy. *See* Cal. Const. art. XI, § 7 (“A county or city may make and
12 enforce within its limits all local, police, sanitary, and other ordinances and regulations **not in**
13 **conflict with general laws**”); *see also* Cal. Const. art. XI, § 5 (emphasis added). “In short, if [a
14 local law] does not deal strictly with ‘municipal affairs,’ it is a matter subject to the general laws,
15 and must be declared unconstitutional and preempted either if it contradicts state law or if it
16 enters a field fully occupied by state law.” *Northern Cal. Psychiatric Society v. City of Berkeley*,
17 178 Cal. App. 3d 90, 100 (1986). Local action that is in conflict with general law is simply void.
18 *People ex rel. Deukmejian v. County of Mendocino*, 36 Cal. 3d 476, 484 (1984) (citing *Chavez v.*
19 *Sargent*, 52 Cal. 2d 162, 176 (1959)).

20
21 Specifically, an act by a California city or county is void if it: 1) it contradicts or
22 duplicates state law; 2) intrudes on a matter of state-wide concern; or 3) goes beyond the limits of
23 the City or County Charter. *Northern Cal. Psychiatric Society*, 178 Cal. App. 3d at 100
24 (recognizing that county or city cannot conflict or limit, or intrude on a matter of state law);
25 *Domar Electric, Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 171 (1994) (an act in violation of
26 charter is void). If a city and county exceeds its authority in any one of these ways, the action is
27
28

1 void. The City and County of San Francisco flagrantly exceeded their authority in all three ways
2 by issuing marriage license to same-sex couples.

3 **1. Respondents' Actions Contradict State Law.**

4 "Local legislation is 'contradictory' to general law when it is inimical thereto."
5 *Smith v. Los Angeles County Bd. of Supervisors*, 104 Cal. App. 4th 1104, 1116 (2002) (quoting
6 *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal.4th 893, 897-98 (1993)). A local law is
7 inimical to state law when it authorizes something that the state prohibits. *Id.* Undoubtedly
8 Respondents' actions are inimical to California law. Indeed, the actions flagrantly contradict the
9 state's marriage laws. California law unambiguously states that "[o]nly marriage between a man
10 and a woman is valid or recognized in California." Cal. Fam. Code § 308.5; *see also* Cal. Fam.
11 Code § 300 "Marriage is a personal relation arising out of a civil contract between a man and a
12 woman." By issuing marriage licenses to same-sex couples, Respondents are directly challenging
13 the state's authority to regulate marriage. Because Defendant's actions are in direct contradiction
14 of state marriage laws, they are void *ab initio* and should be declared so by this Court.

15
16
17 **2. Respondents' Actions Intrude Into A Matter That Is Fully Occupied
18 By the Legislature.**

19 "A local law enters an area that is fully occupied by a general law when the
20 Legislature has expressly manifested its intent to fully occupy the area." *Sherwin-Williams*, 4 Cal.
21 App. 4th at 898. The legislature may "fully occupy" an area of state-wide concern by either
22 expressly or impliedly preempting the field. *Northern Cal. Psychiatric Society*, 178 Cal. App. 3d
23 at 106. By regulating marriage Respondents enter a field of law that is implicitly and fully
24 occupied by the state. Indicia that imply that the Legislature has fully occupied a field of law
25 include:

- 26
27 (1) the subject matter has been so fully and completely covered by general law as
28 to clearly indicate that it has become exclusively a matter of state concern; (2) the
subject matter has been partially covered by general law couched in such terms as
to indicate clearly that a paramount state concern will not tolerate further or

1 additional local action; or (3) the subject matter has been partially covered by
2 general law, and the subject is of such a nature that the adverse effect of a local
3 ordinance on the transient citizens of the state outweighs the possible benefit to the
4 locality.

5 *Los Angeles Lincoln Place Investors, Ltd. v. City of Los Angeles*, 54 Cal. App. 4th 53, 60 (1997)
6 (citations omitted). In this case, implicit state occupation of the field of marriage is certainly
7 found under these criteria.

8 A matter is of state-wide concern if it is affected by state legislation and deals with
9 matters beyond the exclusive control of the county or city. *Horwith v. City of Fresno*, 74 Cal.
10 App. 2d 443, 446-47 (1946). “[I]n an area of statewide concern a local legislative body may act
11 only if the state has not revealed an intention to occupy the field to the exclusion of all local
12 regulation.” *Doe v. City and County of San Francisco*, 136 Cal. App. 3d 509 (1983) (citations
13 omitted). If marriage is not considered an area of statewide concern then it is doubtful any area
14 could be considered so.

15 The state has legislated heavily in the area of family law, and specifically with
16 regard to marriage. It has explicitly excluded not only same-sex marriage, but also incestuous
17 and bigamous marriages. *See* Cal. Penal Code §§ 283, 285 (criminalizing bigamous,
18 polygamous, and incestuous marriages); Cal. Fam. Code §§ 2200, 2201 (voiding bigamous,
19 polygamous, and incestuous marriages; *see also* Cal. Fam. Code § 400 (listing persons authorized
20 to solemnize marriages). The state legislature has controlled every area of marriage and has not
21 left any substantial aspect to the discretion of local government. Thus, the state has clearly
22 indicated that it is exclusively a matter of state-wide concern.

23 Even if the state only partially regulated the field of marriage, Respondents’ action
24 would be *ultra vires* because the state has indicated a paramount interest in regulating marriage.
25 Indeed, the state itself is “an interested party” in the marital relationship. *Deyoe v. Superior*
26 *Court of Mendocino County*, 140 Cal. 476, 482 (1903). “The laws relating to marriage and
27
28

1 divorce . . . have been enacted because of the profound concern of our organized society for the
2 dignity and stability of the marriage relationship.” *Sapp v. Superior Court of Los Angeles*
3 *County*, 119 Cal. App. 2d 645, 650 (1953). The Supreme Court of the United States has also
4 articulated the importance of marriage:

5
6 C]ertainly no legislation can be supposed more wholesome and necessary
7 in the founding of a free, self-governing commonwealth ... than that which
8 seeks to establish it on the basis of the idea of the family, as consisting in
9 and springing from the union for life of one man and one woman in the
10 holy estate of matrimony; the sure foundation of all that is stable and noble
11 in our civilization; the best guaranty of that reverent morality which is the
12 source of all beneficent progress in social and political improvement.

13 *Murphy v. Ramsey*, 114 U.S. 15, 45 (1885).

14 The state’s interest is to protect “the morals of the community, to see that neither
15 by collusion nor connivance the status of marriage will be reduced to a matter of temporary
16 convenience.” *Kegley v. Kegley*, 16 Cal. App. 2d 216, 219-20 (1936). The state’s strong interest
17 in marriage has been re-emphasized: “We reaffirm our recognition of a strong public policy
18 favoring marriage. No similar policy favors the maintenance of nonmarital relationships.”

19 *Norman v. Unemployment Ins. Appeals Bd.*, 34 Cal.3d 1, 9 (1983).

20 Respondents have issued marriage licenses in direct violation of state law. Even if
21 this field were only partially regulated by the state, the legislature has indicated that marriage is a
22 paramount concern that will not tolerate local regulation.

23 **3. Marriage is Not a Matter of Municipal Policy.**

24 Any doubt as to whether an issue is a matter of municipal or state-wide concern is
25 to be resolved in favor of the legislative authority of the state. *Northern Cal. Psychiatric Society*,
26 178 Cal. App. 3d at 100-01 (“ordinances affecting the local use of static property might
27 reasonably prevail, while ordinances purporting to proscribe social behavior of individuals should
28 normally be held invalid if state statutes cover the areas of principal concern with reasonable

1 accuracy”). Such a presumption hardly seems necessary in this case. No city or county has ever
2 before defied state law by attempting to regulate marriage in contravention of express state
3 statutes. The regulation of marriage has effects well beyond the borders of San Francisco and
4 even of California. As noted, the state’s strong interest in marriage makes it a matter beyond
5 municipal policy.
6

7 **4. The Charter of the City and County of San Francisco Does Not Grant
8 the Authority to Regulate Marriage.**

9 In California, any act of a charter city or county “that is violative of or not in
10 compliance with the charter is void.” *Domar Electric, Inc.*, 9 Cal. 4th at 171. City and county
11 charters operate “not as a grant of power, but as an instrument of limitation and restriction on the
12 exercise of power over all municipal affairs which the city is assumed to possess. . . .” *City and
13 County of San Francisco v. Callanan*, 169 Cal. App. 3d 643, 647 (1985) (quotations omitted).

14 The Charter of the City and County of San Francisco does not authorize the
15 County Clerk to issue marriage licenses to same-sex couples. Indeed, the Charter does not even
16 address the topic of marriage or family law. Additionally, the County Clerk’s own web site
17 declares that “[o]nly an unmarried male and an unmarried female may marry in California.”¹
18 Therefore, even if marriage could be considered a matter of local policy, the Charter of the City
19 and County of San Francisco does not grant Respondents the authority to regulate it.
20

21 **F. Mandamus and an Immediate Stay Are Appropriate.**

22 A writ of mandate, even though an extraordinary remedy, should not be denied
23 where issues of great public importance are presented. *Gales v. Superior Court (City of
24 Pasadena)*, 55 Cal. Rptr. 2d 460 (1996). A writ of mandate is proper to compel a governmental
25 official to perform a ministerial act. *California Educational Facilities Authority v. Priest*, 12 Cal.
26

27 ¹ Available at http://www.sfgov.org/site/countyclerk_page.asp?id=5565 (visited February
28 13, 2004).

1 3d 593, 598 (1974). And a public official's functions are ministerial if the statute clearly defines
2 the specific duties or course of conduct that a governing body must take thereby creating a
3 ministerial duty that is mandatory and eliminates any element of discretion. *Rodriguez v. Solis*, 1
4 Cal. App. 4th 495, 504-505 (1991). As set forth above, Respondents have no discretion on who is
5 qualified to receive a marriage license.

6
7 The requirements for a writ are: (1) respondent must have clear duty; (2) petitioner
8 must have beneficial interest in respondent's performance of that duty; (3) respondent must have
9 the ability to perform the duty; (4) respondent must have failed to perform duty or have abused
10 his or her discretion in performing the duty; and (5) petitioner must have no other plain, speedy or
11 adequate remedy. *Agricultural Labor Relations Bd. v. Exeter Packers, Inc.*, 229 Cal. Rptr. 87
12 (1986); Cal Code Civ Pro § 1086. Here, all of these conditions are met. The Clerk has a clear
13 duty to issue only marriage licenses authorized by statute; Petitioner has a beneficial interest in
14 enforcing California's marriage laws; the Clerk clearly has the ability to issue only valid marriage
15 licenses; the Clerk has failed to perform her duty of issuing only valid marriage licenses; and
16 Petitioner has no other plain, speedy or adequate remedy.

17
18 An immediate stay of the Clerk's activities is appropriate because the Clerk and
19 Mayor are intentionally violating state law, and will continue to do so until forced to stop. *Cf.*
20 Cal. Rules of Court § 56(c)(4). If this court does not issue an immediate stay, the Clerk is likely
21 to issue thousands of marriage licenses to same-sex couples, who will in turn use those marriage
22 licenses to initiate litigation throughout the state and the country. Such litigation, based on illegal
23 marriage licenses, can serve only to multiply the workload of already overburdened courts.

24
25 **G. The Illegal Expenditure Of Public Funds Resulting From Respondents' Unlawful**
26 **Actions Should Be Enjoined Pursuant To Section 526a Of The Code Of Civil**
27 **Procedure.**

28 Section 526a of the Code of Civil Procedure, provides in pertinent part:
An action to obtain a judgment, restraining and preventing any
illegal expenditure of, waste of, or injury to, the estate, funds, or

1 other property of a county, town, city or city and county of the
2 state, may be maintained against any officer thereof, or any agent,
3 or other person, acting in its behalf, either by a citizen resident
4 therein, or by a corporation, who is assessed for and is liable to pay,
5 or, within one year before the commencement of the action, has
6 paid, a tax therein. ...

7 Cal. Civ. Proc. Code § 526a.

8 The primary purpose of this section is to enable a large body of the citizenry to
9 challenge governmental action that, like the Respondents' actions in this case, would otherwise
10 go unchallenged in the courts because of the standing requirement. *Blair*, 5 Cal.3d at 268-269.
11 Thus, this section must be liberally construed to achieve its remedial purpose. *Id.* at 269. It is not
12 material that, in obtaining an injunction, the amount of the illegal expenditure or waste be small.
13 *Id.* And, no showing of special damage to the Petitioner is necessary to obtain an injunction. *Id.*

14 Respondents have illegally expended and wasted, and threaten and will continue to
15 illegally expend and waste, the public funds of the City and County of San Francisco by issuing
16 marriage licenses to, and solemnizing marriages of, persons other than couples constituting an
17 unmarried male and an unmarried female within the City and County of San Francisco in
18 violation of law.

19 Thus, Respondents' illegal expenditure and waste of public funds by failing to
20 comply with the state laws governing the issuance of marriage licenses and solemnization of
21 marriages should be enjoined.

22 **H. Declaratory Relief Is Also Appropriate.**

23 An actual controversy has arisen and now exists between Petitioner and
24 Respondents. As the California Supreme Court has stated, when an action meets the
25 requirements of Section 526a of the Code of Civil Procedure, it presents a true case or
26 controversy; and were such taxpayer suits held not to present a controversy unless the plaintiff
27 and the defendant each had a personal interest in the outcome, it would "drastically curtail" the
28 usefulness of such suits as a check on illegal government activity. *Blair*, 5 Cal.3d at 269.

If a plaintiff can establish that a defendant has illegally expended public funds, the
plaintiff "will be entitled, at least, to a declaratory judgment to that effect; if he establishes that

