

**IN THE
SUPREME COURT OF CALIFORNIA**

Coordination Proceeding, Special Title) Case No. S147999
[Rule 1550(b)])
IN RE MARRIAGE CASES.)
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) (JCCP No. 4365)
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First Appellate District, Case Nos. A110449, A110450, A110451,
A110463, A110651, A110652
San Francisco County Superior Court Nos. CGC-04-429539, CGC-04-504038,
CGC-04-429548, CPF-04-503943, CGC-04-428794
Los Angeles County Superior Court Case No. BS-088506
Hon. Richard A. Kramer, Judge

**SUPPLEMENTAL BRIEF OF GOVERNOR ARNOLD SCHWARZENEGGER
AND STATE REGISTRAR OF VITAL STATISTICS TERESITA TRINIDAD
ADDRESSING THE QUESTIONS SET FORTH IN THE COURT'S ORDER
DATED JUNE 20, 2007**

KENNETH C. MENNEMEIER (SBN 113973)
ANDREW W. STROUD (SBN 126475)
KELCIE M. GOSLING (SBN 142225)
MENNEMEIER, GLASSMAN & STROUD LLP
980 9th Street, Suite 1700
Sacramento, CA 95814-2736
Telephone: 916-553-4000
Email: kcm@mgsllaw.com

Attorneys for Respondents
Governor Arnold Schwarzenegger and
State Registrar of Vital Statistics Teresita Trinidad

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Respondents Governor Arnold Schwarzenegger and State Registrar of Vital Statistics Teresita Trinidad (collectively, “the Administration”) respectfully submit their supplemental brief addressing the questions set forth in the Court’s order dated June 20, 2007.

QUESTION NUMBER ONE

What differences in legal rights or benefits and legal obligations or duties exist under current California law affecting those couples who are registered domestic partners as compared to those couples who are legally married spouses? Please list all of the current differences of which you are aware.

RESPONSE TO QUESTION NUMBER ONE

There Are No Differences Between the Legal Rights and Benefits or the Legal Obligations and Duties Provided to Married Couples and Those Provided to Registered Domestic Partners Under California Law.

The Administration is not aware of any differences between the legal rights and benefits and the legal obligations and duties affecting

registered domestic partners under California law and the rights, benefits, duties and obligations given to married couples. As explained in the answer briefs, the State's laws governing domestic partnerships have evolved since 1999 such that there do not appear to be any legal rights, benefits, duties or obligations conferred by state law upon married couples that are not also possessed by registered domestic partners. (Answer Brief of Governor Arnold Schwarzenegger and State Registrar of Vital Statistics Teresita Trinidad on the Merits ("Administration Answer Brief") at pp. 9-11; Answer Brief of State of California and the Attorney General to Opening Briefs on the Merits ("State Answer Brief") at pp. 1, 7-12.)

QUESTION NUMBER TWO

What, if any, are the minimum, constitutionally-guaranteed substantive attributes or rights that are embodied within the fundamental constitutional "right to marry" that is referred to in cases such as *Perez v. Sharp* (1948) 32 Cal.2d 711, 713-714? In other words, what set of substantive rights and/or obligations, if any, does a married couple possess that, because of their constitutionally protected status under the state Constitution, may not (in the absence of a compelling interest) be eliminated or abrogated by the Legislature, or by the people through the initiative process, without amending the California Constitution?

RESPONSE TO QUESTION NUMBER TWO

Married Couples Do Not Possess Any Substantive Rights or Obligations Under California Law that Could Not Be Eliminated by State Action Supported by a Rational Basis.

The Administration is unaware of any opinion of this Court or of the United States Supreme Court that defines the essential minimum attributes of the fundamental right to marry. To the extent that, in the past, civil marriage was necessary to legitimize the conjugal and family

relationships then regarded as the exclusive prerogative of married couples – such as cohabitation, sexual intimacy, mutual lifelong care and support, procreation or child-rearing – such state authorization is no longer required. Thus, the Administration submits that, except for the ability to choose and declare one’s life partner in a reciprocal commitment of mutual support, any of the statutory rights and obligations that are afforded to married couples in California could be abrogated or eliminated by the Legislature or the electorate for any rational legislative purpose.

QUESTION NUMBER THREE

Do the terms “marriage” or “marry” themselves have constitutional significance under the California Constitution? Could the Legislature, consistent with the California Constitution, change the name of the legal relationship of “marriage” to some other name, assuming the legislation preserved all of the rights and obligations that are now associated with marriage?

RESPONSE TO QUESTION NUMBER THREE

No Constitutional Provision Would Prohibit Changing the Name of the Marriage Relationship to Some Other Name.

In response to the Court’s third set of questions, the Administration submits that use of the words “marry” and “marriage” is not required by the California Constitution. Thus, the name of the legal relationship now known as “marriage” could be changed. Because Proposition 22 refers to “marriage,” however, any such change might require a vote of the people.

QUESTION NUMBER FOUR

Should Family Code section 308.5 – which provides that “[o]nly marriage between a man and a woman is valid or recognized in California” – be interpreted to prohibit only the recognition in California of same-sex marriages that are entered into in another state or country or does the provision also apply to and prohibit same-sex marriages entered into within California? Under the Full Faith and Credit Clause and the Privileges and Immunities Clause of the federal Constitution (U.S. Const., art. IV, §§ 1, 2, cl.1), could California recognize same-sex marriages that are entered into within California but deny such recognition to same-sex marriages that are entered into in another state? Do these federal constitutional provisions affect how Family Code section 308.5 should be interpreted?

RESPONSE TO QUESTION NUMBER FOUR

Although Interpretation of Family Code Section 308.5 Is Unnecessary in These Proceedings, the Plain Language of that Statute Prohibits Recognition of Same-Sex Marriages Entered into in California as Well as Those Entered into Outside the State.

As the Court of Appeal correctly held, it is not necessary to decide, in these proceedings, the exact interpretation of section 308.5. Nonetheless, in response to this Court’s question, the Administration responds that section 308.5 applies to both in-state and out-of-state marriages.

In interpreting statutes, courts look first to the language of the statute itself and interpret the words in their usual, ordinary meaning. (*Younger v. Superior Court* (1976) 16 Cal.3d 30, 40.) If the meaning is without ambiguity or uncertainty, then the language controls. (*Halbert Lumber v. Luck Stores* (1992) 6 Cal.App.4th 1233, 1239.) The language of Family Code section 308.5 is clear and unambiguous. It states simply:

“Only marriage between a man and a woman is valid or recognized in California.” Therefore, the plain language of section 308.5 controls this question.

Interpreting section 308.5 to apply to all same-sex marriages avoids unnecessary constitutional issues. If California recognized same-sex marriages entered into within California, it would be obliged to recognize those contracted out of state as well. (*See, e.g., Lunding v. New York Tax Appeals Tribunal* (1998) 522 U.S. 287, 296 [purpose of privilege and immunities clause is to place citizens of different states on equal footing].) Thus, this Court should interpret section 308.5 so as to avoid an unnecessary constitutional question.

Dated: August 17, 2007 MENNEMEIER, GLASSMAN & STROUD LLP
KENNETH C. MENNEMEIER
ANDREW W. STROUD
KELCIE M. GOSLING

By: Kenneth C. Mennemeier
Kenneth C. Mennemeier
Attorneys for Respondents Governor Arnold
Schwarzenegger and State Registrar of Vital
Statistics Teresita Trinidad

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using 13 point Times New Roman typeface. According to the "Word Count" feature in my WordPerfect software, this brief contains 1,076 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 17, 2007.

MENNEMEIER, GLASSMAN & STROUD LLP
KENNETH C. MENNEMEIER
ANDREW W. STROUD
KELCIE M. GOSLING

By: Kenneth C. Mennemeier /cs
Kenneth C. Mennemeier
Attorneys for Respondents Governor Arnold
Schwarzenegger and State Registrar of Vital Statistics
Teresita Trinidad

Case Name: *In re Marriage Cases*
Case No: S147999

**PROOF OF SERVICE
BY MAIL**

I hereby declare:

I am a citizen of the United States and employed in Sacramento County, California; I am over the age of eighteen years, and not a party to the within action; my business address is 980 9th Street, Suite 1700, Sacramento, California 95814-2736. On August 17, 2007, I served the within documents:

**SUPPLEMENTAL BRIEF OF GOVERNOR ARNOLD SCHWARZENEGGER
AND STATE REGISTRAR OF VITAL STATISTICS TERESITA TRINIDAD
ADDRESSING THE QUESTIONS SET FORTH IN THE COURT'S ORDER
DATED JUNE 20, 2007**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepared, in the United States mail at Sacramento, California addressed as set forth below:

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepared in the ordinary course of business.

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

Executed on August 17, 2007, at Sacramento, California.

Angela Knight
(Type or Print Name)

Angela Knight
(Signature)

**SERVICE LIST FOR CONSOLIDATED MARRIAGE CASES,
CALIFORNIA SUPREME COURT CASE NO. S147999
JCCP No. 4365¹**

**City and County of San Francisco v. State of California
California Court of Appeal, First Appellate District Case No. A110449
San Francisco County Superior Court Case No. CGC-04-429539
(Consolidated for Trial with)
San Francisco County Superior Court Case No. CGC-04-429548**

<p>Representing Attorney General Edmund G. Brown Jr.:</p> <p>Edmund G. Brown Jr. Attorney General of the State of California Christopher E. Krueger Supervising Deputy Attorney General 1300 I Street, Suite 125 P.O. Box 944255 Sacramento, CA 94244-2550</p> <p>Telephone: (916) 445-7385 Facsimile: (916) 324-8835</p>	<p>Honorable Richard A. Kramer, Presiding Judge of the Superior Court of California, County of San Francisco:</p> <p>Clerk of the Court, Civil Superior Court of California, County of San Francisco Civic Center Courthouse 400 McAllister Street, Dept. 304 San Francisco, CA 94104-4514</p>
<p>California Court of Appeal:</p> <p>California Court of Appeal First Appellate District, Division Three 350 McAllister Street San Francisco, CA 94102</p>	<p>Representing Petitioner City and County of San Francisco:</p> <p>Danny Yeh Chou Chief of Appellate Litigation OFFICE OF THE CITY ATTORNEY 1390 Market Street, Suite 250 Fox Plaza San Francisco, CA 94102-5402</p>
<p>Representing Defendant and Respondent Gavin Newsom:</p> <p>Sherri Sokeland Kaiser OFFICE OF THE CITY ATTORNEY 1 Dr. Carlton B. Goodlett Place, #234 San Francisco, CA 94102-4682</p>	

1. These cases were consolidated by the Court of Appeal in an order dated December 1, 2005.

<p>Representing Petitioner City and County of San Francisco and Defendant and Respondent Mayor Gavin Newsom:</p> <p>Therese M. Stewart Chief Deputy City Attorney OFFICE OF THE CITY ATTORNEY City Hall, Room 234 1 Dr. Carlton B. Goodlett Pl. San Francisco, California 94102-4682</p> <p>Telephone: (415) 554-4708 Facsimile: (415) 554-4745</p>	<p>Representing Petitioner City and County of San Francisco and Defendant and Respondent Mayor Gavin Newsom:</p> <p>Bobbie J. Wilson Amy E. Margolin HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN Three Embarcadero Center, 7th Floor San Francisco, CA 94111-4024</p> <p>Telephone: (415) 434-1600 Facsimile: (415) 217-5910</p>
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Tyler, et al. v. State of California
California Court of Appeal, First Appellate District Case No. A110450
Los Angeles County Superior Court Case No. BS088506

<p>Representing Petitioners Robin Tyler, et al:</p> <p>Gloria Allred Michael Maroko John S. West ALLRED, MAROKO & GOLDBERG 6300 Wilshire Blvd., Ste. 1500 Los Angeles, CA 90048-5217</p> <p>Telephone: (323) 653-6530 Facsimile: (323) 653-1660</p>	<p>Representing County of Los Angeles:</p> <p>Lloyd W. Pellman, County Counsel Raymond G. Fortner Senior Deputy County Counsel Judy W. Whitehurst Senior Deputy County Counsel 648 Kenneth Hahn Hall of Administration 500 W. Temple St. Los Angeles, CA 90012-2713</p> <p>Telephone: (213) 974-8948 Facsimile: (213) 626-2105</p>
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<p>Representing Respondent Equality California:</p> <p>Stephen V. Bomse Christopher F. Stoll HELLER EHRMAN WHITE & MCAULIFFE LLP 333 Bush Street San Francisco, CA 94104-2878</p> <p>Telephone: (415) 772-6000 Facsimile: (415) 772-6268</p>	<p>Representing Respondent Equality California:</p> <p>Shannon Minter Vanessa H. Eisemann Melanie Rowen Catherine Sakimura NATIONAL CENTER FOR LESBIAN RIGHTS 870 Market Street, Suite 370 San Francisco, CA 94102</p> <p>Telephone: (415) 392-6257 Facsimile: (415) 392-8442</p>
<p>Representing Respondent Equality California:</p> <p>Jon W. Davidson Jennifer C. Pizer LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. 3325 Wilshire Boulevard, Suite 1300 Los Angeles, CA 90010</p> <p>Telephone: (213) 382-7600 Facsimile: (213) 351-6050</p>	<p>Representing Respondent Equality California:</p> <p>Peter J. Eliasberg Clare Pastore ACLU FOUNDATION OF SOUTHERN CALIFORNIA 1616 Beverly Boulevard Los Angeles, CA 90026</p> <p>Telephone: (213) 977-9500 Facsimile: (213) 250-3919</p>
<p>Representing Respondent Equality California:</p> <p>Alan L. Schlosser Alex M. Cleghorn ACLU FOUNDATION OF NORTHERN CALIFORNIA 39 Drumm Street San Francisco, CA 94111</p> <p>Telephone: (415) 621-2493 Facsimile: (415) 255-8437</p>	<p>Representing Respondent Equality California:</p> <p>David C. Codell LAW OFFICE OF DAVID C. CODELL 9200 Sunset Blvd. Penthouse Two Los Angeles, CA 90069</p> <p>Telephone: (310) 273-0306 Facsimile: (310) 273-0307</p>

Woo, et al. v. Lockyer
California Court of Appeal, First Appellate District Case No. A110451
San Francisco County Superior Court Case No. CGC 04-504038

<p>Representing Respondents Lancy Woo, et al.:</p> <p>Stephen V. Bomse Christopher F. Stoll HELLER EHRMAN LLP <i>See listing above under Tyler, et al. v. State of California</i></p>	<p>Representing Respondents Lancy Woo, et al.:</p> <p>Shannon Minter Vanessa H. Eisemann Melanie Rowen Catherine Sakimura NATIONAL CENTER FOR LESBIAN RIGHTS <i>See listing above under Tyler, et al. v. State of California</i></p>
<p>Representing Respondents Lancy Woo, et al.:</p> <p>Alan L. Schlosser Alex M. Cleghorn ACLU FOUNDATION OF NORTHERN CALIFORNIA <i>See listing above under Tyler, et al. v. State of California</i></p>	<p>Representing Respondents Lancy Woo, et al.:</p> <p>David C. Codell LAW OFFICE OF DAVID C. CODELL <i>See listing above under Tyler, et al. v. State of California</i></p>
<p>Representing Respondents Lancy Woo, et al.:</p> <p>Peter J. Eliasberg Clare Pastore ACLU FOUNDATION OF SOUTHERN CALIFORNIA <i>See listing above under Tyler, et al. v. State of California</i></p>	<p>Representing Respondents Lancy Woo, et al.:</p> <p>Jon W. Davidson Jennifer C. Pizer LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. <i>See listing above under Tyler, et al. v. State of California</i></p>
<p>Representing Respondents Lancy Woo, et al.:</p> <p>Dena L. Narbaitz Clyde J. Wadsworth STEEFEL, LEVIT & WEISS, a Professional Corporation One Embarcadero Center, 30th Floor San Francisco, CA 94111</p>	

Proposition 22 Legal Defense and Education Fund v. City and County of San Francisco
California Court of Appeal, First Appellate District Case No. A110651
San Francisco County Superior Court Case No. CGC-04-503943
 consolidated with
Campaign for California Families v. Newsom
California Court of Appeal, First Appellate District Case No. A110652
San Francisco County Superior Court Case No. CGC-04-428794

<p>Representing Proposition 22 Legal Defense and Education Fund:</p> <p>Benjamin W. Bull Glen Lavy ALLIANCE DEFENSE FUND 15333 North Pima Road, Suite 165 Scottsdale, AZ 85260</p> <p>Telephone: (480) 444-0020 Facsimile: (480) 444-0028</p>	<p>Representing Proposition 22 Legal Defense and Education Fund:</p> <p>Timothy Chandler ALLIANCE DEFENSE FUND 101 Parkshore Drive, Suite 100 Folsom, CA 95630</p> <p>Telephone: (916) 932-2850 Facsimile: (916) 932-2851</p>
<p>Representing Proposition 22 Legal Defense and Education Fund:</p> <p>Robert H. Tyler ADVOCATES FOR FAITH AND FREEDOM 24910 Las Brisas Road, Suite 110 Murrieta, CA 92562</p> <p>Telephone: (951) 304-7583 Facsimile: (951) 894-6430</p>	<p>Representing Proposition 22 Legal Defense and Education Fund:</p> <p>Terry L. Thompson LAW OFFICES OF TERRY L. THOMPSON 1804 Piedras Circle Alamo, CA 94507</p> <p>Telephone: (925) 608-3065 Facsimile: (925) 820-6034</p>
<p>Representing Proposition 22 Legal Defense and Education Fund:</p> <p>Andrew P. Pugno LAW OFFICES OF ANDREW P. PUGNO 101 Parkshore Drive, Suite 100 Folsom, CA 95630</p> <p>Telephone: (916) 608-3065 Facsimile: (916) 608-3066</p>	<p>Representing Petitioner City and County of San Francisco:</p> <p>Therese M. Stewart Chief Deputy City Attorney OFFICE OF THE CITY ATTORNEY <i>See listing above under CCSF v. State of California</i></p>

<p>Representing Petitioner City and County of San Francisco:</p> <p>Bobbie J. Wilson Amy E. Margolin HOWARD, RICE, NEMEROVSKI, CANADY, FALK & RABKIN <i>See listing above under CCSF v. State of California</i></p>	<p>Representing Campaign for California Families:</p> <p>Matthew D. Staver LIBERTY COUNSEL Second Floor 1055 Maitland Center Commons Maitland, FL 32751-7214</p> <p>Telephone: (407) 875-2100 Facsimile: (407) 875-0770</p>
<p>Representing Campaign for California Families:</p> <p>Mary E. McAlister LIBERTY COUNSEL P.O. Box 11108 100 Mountain View Road, Suite 2775 Lynchburg, VA 24506</p> <p>Telephone: (434) 592-7000 Facsimile: (434) 592-7700</p>	<p>Representing Campaign for California Families:</p> <p>Ross S. Heckman ATTORNEY AT LAW 1214 Valencia Way Arcadia, CA 91006</p> <p>Telephone: (626) 256-4664 Facsimile: (626) 256-4774</p>
<p>Representing Del Martin, et al.:</p> <p>Stephen V. Bomse Christopher F. Stoll HELLER EHRMAN LLP <i>See listing above under Tyler, et al. v. State of California</i></p>	<p>Representing Del Martin, et al.:</p> <p>Shannon Minter Vanessa H. Eisemann Melanie Rowen Catherine Sakimura NATIONAL CENTER FOR LESBIAN RIGHTS <i>See listing above under Tyler, et al. v. State of California</i></p>
<p>Representing Del Martin, et al.:</p> <p>Alan L. Schlosser Alex M. Cleghorn ACLU FOUNDATION OF NORTHERN CALIFORNIA <i>See listing above under Tyler, et al. v. State of California</i></p>	<p>Representing Del Martin, et al.:</p> <p>David C. Codell LAW OFFICE OF DAVID C. CODELL <i>See listing above under Tyler, et al. v. State of California</i></p>

<p>Representing Del Martin, et al.:</p> <p>Peter J. Eliasberg Clare Pastore ACLU FOUNDATION OF SOUTHERN CALIFORNIA <i>See listing above under Tyler, et al. v. State of California</i></p>	<p>Representing Del Martin, et al.:</p> <p>Jon W. Davidson Jennifer C. Pizer LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. <i>See listing above under Tyler, et al. v. State of California</i></p>
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Clinton, et al. v. State of California, et al.
California Court of Appeal, First Appellate District Case No. A110463
San Francisco County Superior Court Case No. CGC-04-429548

<p>Representing Petitioners Clinton, et al.:</p> <p>Jason Hasley PAUL, HANLEY & HARLEY LLP 1608 Fourth Street, Suite 300 Berkeley, CA 94710</p> <p>Telephone: (510) 559-9980 Facsimile: (510) 559-9970</p>	<p>Representing Petitioners Clinton, et al.:</p> <p>Waukeen Q. McCoy Aldon L. Bolanos LAW OFFICES OF WAUKEEN Q. MCCOY 703 Market Street, Suite 1407 San Francisco, CA 94103</p> <p>Telephone: (415) 675-7705 Facsimile: (415) 675-2530</p>
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In re Marriage Cases
CALIFORNIA SUPREME COURT CASE NO. S147999
JCCP No. 4365
Amicus Curiae

<p>Representing <i>Amicus Curiae</i> Knights of Columbus:</p> <p>Patrick J. Gorman WILD, CARTER & TIPTON 246 W. Shaw Avenue Fresno, CA 93704</p> <p>Telephone: (559) 224-2131</p>	<p>Representing <i>Amicus Curiae</i> Knights of Columbus:</p> <p>Paul Benjamin Linton Special Counsel THOMAS MORE SOCIETY 921 Keystone Avenue Northbrook, IL</p> <p>Telephone: (847) 291-3848</p>
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Representing *Amicus Curiae* Knights of Columbus

Thomas Brejcha
President and Chief Counsel
THOMAS MORE SOCIETY
29 S. La Salle Street Suite 440
Chicago, IL 60603

Telephone: (312) 782-1680

Representing *Amicus Curiae* Judicial Watch, Inc.

Sterling E. Norris
JUDICIAL WATCH, INC.
2540 Huntington Drive, Suite 201
San Marino, CA 91108-2601

Telephone: (626) 287-4540

Facsimile: (626) 237-2003