Nos. A110449, A110450, A110451, A110463, A110651, A110652

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION THREE

COORDINATION PROCEEDING SPECIAL TITLE (RULE 1550(b))
MARRIAGE CASES

LANCY WOO AND CHRISTY CHUNG, ET. AL.,
Respondents,

vs.

STATE OF CALIFORNIA, ET AL.,
Appellants.

SAN FRANCISCO SUPERIOR COURT CASE NO. 504-038
JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4365
CASE NOS. A110449, A110450, A110451, A110463, A110651, A110652
THE HONORABLE RICHARD A. KRAMER, JUDGE

APPLICATION TO FILE AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENTS AND [PROPOSED] AMICI CURIAE BRIEF OF AMICI CONCERNED WITH WOMEN'S RIGHTS

CALIFORNIA WOMEN'S LAW CENTER
VICKY BARKER (BAR NO. 119520)

6300 WILSHIRE BOULEVARD, SUITE 980
LOS ANGELES, CA 90048
PHONE: (323) 951-1041
FAX: (323) 951-9870

LEGAL MOMENTUM
JENNIFER K. BROWN, ESQ.
DEBORAH A. WIDISS, ESQ.

395 HUDSON STREET
NEW YORK, NY 10014
PHONE: (212) 925-6635
FAX: (212) 226-1066

IRELL & MANELLA LLP
LAURA W. BRILL (BAR NO. 195889)
ELIZABETH L. ROSENBLATT (BAR NO. 203196)
DOUGLAS NEJAIME (BAR NO. 229342)

1800 AVENUE OF THE STARS, SUITE 900
LOS ANGELES, CA 90067
PHONE: (310) 277-1010
FAX: (310) 203-7199

ATTORNEYS FOR AMICI CURIAE

Nos. A110449, A110450, A110451, A110463, A110651, A110652

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION THREE

COORDINATION PROCEEDING SPECIAL TITLE (RULE 1550(b))
MARRIAGE CASES

LANCY WOO AND CHRISTY CHUNG, ET. AL.,
Respondents,

vs.

STATE OF CALIFORNIA, ET AL.,
Appellants.

SAN FRANCISCO SUPERIOR COURT CASE NO. 504-038
JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4365
CASE NOS. A110449, A110450, A110451, A110463, A110651, A110652
THE HONORABLE RICHARD A. KRAMER, JUDGE

APPLICATION TO FILE AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENTS AND [PROPOSED] AMICI CURIAE BRIEF OF AMICI CONCERNED WITH WOMEN'S RIGHTS

CALIFORNIA WOMEN'S LAW CENTER
VICKY BARKER (BAR NO. 119520)

6300 WILSHIRE BOULEVARD, SUITE 980
LOS ANGELES, CA 90048
PHONE: (323) 951-1041
FAX: (323) 951-9870

LEGAL MOMENTUM
JENNIFER K. BROWN, ESQ.
DEBORAH A. WIDISS, ESQ.

395 HUDSON STREET
NEW YORK, NY 10014
PHONE: (212) 925-6635
FAX: (212) 226-1066

IRELL & MANELLA LLP
LAURA W. BRILL (BAR NO. 195889)
ELIZABETH L. ROSENBLATT (BAR NO. 203196)
DOUGLAS NEJAIME (BAR NO. 229342)

1800 AVENUE OF THE STARS, SUITE 900
LOS ANGELES, CA 90067
PHONE: (310) 277-1010
FAX: (310) 203-7199

ATTORNEYS FOR AMICI CURIAE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Page(s)

Other Authorities

APPLICATION TO FILE BRIEF AS AMICI CURIAE

Pursuant to Rule 13(c) of the California Rules of Court, California Women's Law Center, Legal Momentum, Professor Herma Hill Kay, Equal Rights Advocates, the Legal Aid Society – Employment Law Center, and Queen's Bench Bar Association of the San Francisco Bay Area (collectively, "*amici*") respectfully request leave to file the attached brief, in support of respondents, to be considered in the above-captioned cases. This application is timely made pursuant to the Court's order of December 1, 2005, setting the deadline for the filing of amicus briefs for January 9, 2006.

A. California Women's Law Center

Founded in 1989, the California Women's Law Center ("CWLC") is the first law center in California solely dedicated to addressing the comprehensive and unique legal needs of women and girls. Using the vehicle of systemic change, CWLC seeks to ensure that life opportunities for women and girls are free from unjust social, economic, and political constraints. CWLC's Issue Priorities are sex discrimination, violence against women, women's health, race and gender, exploitation of women, and women's economic security. CWLC is firmly committed to eradicating invidious discrimination in all forms, including eliminating laws that reinforce traditional gender roles.

B. Legal Momentum

Legal Momentum, the new name of NOW Legal Defense and Education Fund, uses the power of the law and innovative public policy to advance the rights of women and girls. Legal Momentum is dedicated to the rights of all women and men to live and work free of government-enforced gender stereotypes. Legal Momentum has consistently supported the right of lesbians and gay men to be free from discrimination based on, among other things, gender stereotyping.

C. Professor Herma Hill Kay

Herma Hill Kay is the Barbara Nachtrieb Armstrong Professor of Law at the School of Law (Boalt Hall) of the University of California, Berkeley. Her areas of scholarship and teaching include Family Law, Sex-Based Discrimination, and California Marital Property. She has written extensively about the central issues presented in these cases: marriage, divorce, child custody, and marital property rights of both married and unmarried heterosexual couples and gay and lesbian couples and registered domestic partners. Over the course of a 45 year career, she has focused her scholarly research on equality between women and men, and on the eradication of sex stereotypes that limit individual choice and autonomy. For these reasons, she has a substantial interest in the present cases.

D. Equal Rights Advocates

Equal Rights Advocates ("ERA") is a San Francisco-based women's rights organization whose mission is to secure and protect equal rights and economic opportunities for women and girls through litigation and advocacy. Founded in 1974, ERA has litigated historically important gender-based discrimination cases in the state and federal courts, including the U.S. Supreme Court. ERA litigates and serves as amicus curiae in many sex discrimination cases that challenge and oppose sex stereotypes. ERA is firmly committed to the use of litigation and community education to eliminate gender-based stereotyping and discrimination, including the imposition of traditional gender roles that subordinate women and girls.

E. The Legal Aid Society – Employment Law Center

The Legal Aid Society – Employment Law Center ("LAS-ELC") is a non-profit public interest law firm whose mission is to protect, preserve, and advance the workplace rights of individuals from traditionally under-represented communities. Since 1970, the LAS-ELC has represented plaintiffs in cases involving the rights of employees in the workplace, particularly those cases of special import to communities of color, women, recent immigrants, individuals with disabilities, the lesbian, gay, bisexual and transgender communities, and the working poor, and specializes in, among other areas of the law, sex discrimination and sexual harassment.

The LAS-ELC has appeared in discrimination cases on numerous occasions. See, e.g., *Dep't of Health Servs. v. Superior Court (McGinnis)* (2003) 31 Cal.4th 1026; *Aguilar v. Avis Rent A Car Sys.* (1999) 21 Cal.4th 121; *Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 1990; *Hall v. Nomura Sec. Int'l, Inc.* (1990) 219 Cal.App.3d 43, *review denied*, June 20, 1990; *S.G. Borello & Sons, Inc. v. DIR* (1989) 48 Cal.3d 341; *Pickrel v. Gen. Tel. Co.* (1988) 205 Cal.App.3d 1058, *review denied*, 1989 Cal. LEXIS 92; *Dyna-Med, Inc. v. FEHC* (1987) 43 Cal.3d 1379; *Vinson v. Superior Court* (1987) 43 Cal.3d 833; *MacPhail v. Court of Appeal* (1985) 39 Cal.3d 454; *Commodore Home Sys., Inc. v. Superior Court* (1982) 32 Cal.3d 211. The LAS-ELC has a long-standing interest in preserving the protections afforded employees by this state's antidiscrimination laws, including protections against discrimination based on gender stereotyping.

F. Queen's Bench Bar Association of the San Francisco Bay Area

Founded in 1921, Queen's Bench Bar Association of the San Francisco Bay Area (QB) is a non-profit voluntary membership organization whose members are women attorneys, judges, and law students. QB's mission is to promote and ensure equal rights and opportunities for all women through the promotion of collective action in issues of importance to women and their children, and to further the adoption of legislative and judicial reforms fostering the full and equal

participation of women in society and the workplace.

QB has a recognized history of supporting the rights of women and minors, and has fought continuously for gender equality in employment, healthcare, and other areas, for more than eighty years. QB has participated as amicus curiae in many cases, including in support of the freedom of custodial families, the majority of which are headed by women, to pursue opportunities for improving their circumstances and relocate to other areas to seek safety from domestic violence; in a case concerning the rights of a biological mother during the legal waiting period for the adoption of her child; in a case concerning whether refusal of male access by women's domestic violence shelters constitutes unlawful gender discrimination; and in a case in favor of reaffirming the privacy rights of minor women in California. In line with QB's mission and past work, it is equally committed to overcoming invidious sex-based stereotypes.

G. Interests of Amici Curiae

These proceedings raise important issues regarding improper sex stereotyping. *Amici* are dedicated to ending sex discrimination and achieving full equality for women and girls. Each *amicus* has extensive knowledge concerning issues of discrimination based on sex stereotypes. They have a particular interest in protecting women and men, including lesbians and gay men, from gender discrimination and gender-based stereotypes. *Amici* are uniquely situated to expose the way in which

restricting marriage to different-sex couples relies on outmoded, stereotypical, and constitutionally impermissible conceptions of gender.

For these reasons, *amici* have a substantial interest in the present cases.

H. Need For Further Briefing

Amici are familiar with the issues before the Court and the scope of their presentation. *Amici* believe that further briefing is necessary to provide detailed discussion of certain authorities and arguments that the parties did not have the opportunity to fully address. Specifically, *amici* will demonstrate that California's marriage statute not only facially discriminates based on sex, but represents a particularly invidious form of gender discrimination because it relies on and enforces constitutionally impermissible sex stereotypes. *Amici* will explain how the recognition of the right to marry for lesbian and gay Californians is compelled by California jurisprudence mandating the eradication of legislation enforcing sex stereotypes and recognizing the validity of families and familial relationships formed by same-sex couples.

DATED this 6th day of January, 2006.

Respectfully submitted,
IRELL & MANELLA, LLP
By: Elizabeth L. Rosenblatt/DW
Elizabeth L. Rosenblatt
Attorneys for Amici Curiae

SUMMARY OF ARGUMENT

The trial court properly determined that by denying lesbians and gay men the right to marry, section 300 of the California Family Code impermissibly discriminates on the basis of sex, in violation of the California Constitution.

California Family Code section 300 explicitly defines marriage as "a personal relation . . . between a man and a woman."[1] Under California constitutional law, sex-based classifications are presumed invalid. The marriage statute facially discriminates based on sex by denying individuals the right to marry other individuals solely on the basis of their chosen partner's sex and thus is presumed invalid. Because it discriminates against *individuals* on the basis of their sex, the trial court properly rejected appellants' attempts to argue that the purported "equal" application of the statute to men and women saves the statute.

Nor can the sex-based classification in the statute be justified by claims that it protects "traditional" gender roles in families. California courts, as well as the U.S. Supreme Court, have properly found that other

---

[1] *Amici* here focus their argument on section 300. Both sections 301 and 308.5 also make a gender distinction in marriage, but, properly construed, do not limit marriages entered in California. If, however, this Court were to construe either section 301 or 308.5 to affect who may marry in California, the restrictions in those sections would be unconstitutional for the same reasons that section 300 is constitutionally defective, as the Superior Court held in invalidating section 308.5. (*See* Respondents' Brief in *Woo v. California*, A110451, at pp. 17-19.)

laws that perpetuate stereotypes about "appropriate" gender roles either in the workplace or in the home are unconstitutional because the enforcement of such sex-based stereotypes is not a compelling interest. It is clear from sources including the legislative history of the marriage statute and the arguments presented in defense of the statute in this case that the assumption that only different-sex couples should marry is intertwined with assumptions that it is "proper" for a woman to have primary responsibilities for the care of her children and for a man to have primary responsibilities for working outside the home. Supporters of the law, for example, contend that it is necessary to have a man in a marriage to protect a financially-dependent woman, and that a father, simply by virtue of being male, makes a "unique" contribution to the development of children that is necessarily different from the contribution a mother makes simply by virtue of being female.

California courts have properly found that other laws that differentiate between women and men in marriage based on stereotyped assumptions about "proper" or "traditional" family roles, such as a statutory presumption that a widow is dependent on her husband or that a father is not an appropriate custodian for his child, violate guarantees of equal protection. Thus, sex-based classifications have been stricken from such laws as unconstitutional. Similarly, California courts have appropriately granted legal status to families formed by same-sex couples and recognized

that both members of such couples have the rights and responsibilities of parenthood.

The gender stereotypes perpetuated by the current marriage statute's denial of marriage to lesbians and gay men harm Californians more generally. By continuing to give legal support to the belief that a marriage and a family are not proper if they allow a man to act "like a wife" or "like a mother" or a woman to act "like a husband" or "like a father," California's marriage statute hampers the ability of women and men, both heterosexual and homosexual, to make individual decisions regarding their roles in the workplace and the family.

For these reasons, and as set forth in more detail below and in the Respondents' Briefs, the Court should affirm the trial court's decision, hold section 300 of the California Family Code to be unconstitutional under the state Constitution, and permit lesbian and gay couples in California to exercise their fundamental right to marry.

ARGUMENT

I. The California Marriage Statute's Sex-Based Classification Is Presumed Invalid.

Classifications based on sex constitute a suspect classification under the California equal protection clause and are thus subject to strict scrutiny. (*Kiore v. Metro Car Wash* (1985) 40 Cal.3d 24, 37 ["classifications based on sex are considered 'suspect' for purposes of equal protection analysis

under the California Constitution"]; *Sail'er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, 17 ["The instant case compels the application of the strict scrutiny standard of review . . . because classifications based upon sex should be treated as suspect."].) The California Supreme Court has recognized that classifications based on sex harm both women and men and thus cannot survive constitutional scrutiny based on "subjective value judgments about which types of sex-based distinctions are important or harmful." (*Kiore*, 40 Cal.3d at 39.) Rather, a sex-based classification can only survive constitutional scrutiny if it is justified by "a compelling state interest" and "represent[s] the narrowest and least restrictive means by which the objective can be achieved." (*Arp v. Worker's Compensation Appeals Bd.* (1977) 19 Cal.3d 395, 400, 406.)

Moreover, "where a statutory scheme, on its face, employs a suspect classification, the scheme is, on its face, in conflict with the core prohibition of the Equal Protection Clause. It is . . . presumed invalid." (*Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 44.) Section 300 defines marriage as the union "between a man and a woman." By providing that a woman can only marry a person who is male and that a man can only marry a person who is female, the statute facially discriminates on the basis of sex. As the trial court explained, "If a person, male or female, wishes to marry, then he or she may do so as long as the intended spouse is of a different gender. It is the gender of the intended

spouse that is the sole determining factor." (Final Decision on Applications for Writ of Mandate, Motions for Summary Judgment, and Motion for Judgment on the Pleadings, dated April 13, 2005, State's Appendix ("SA") p. 123 ("Final Decision").) Because California's marriage statute facially classifies on the basis of sex, it must be presumed invalid.

II. The Sex-Based Classification in the California Marriage Statute Cannot Be Justified by Its Purported "Equal" Application to Men and Women because It Denies Individuals the Right to Marry the Partner of Their Choice Based on Sex.

The trial court properly rejected appellants' attempt to argue that the purported "equal application" of the marriage statute to women and men exempts the statute from the presumption that sex-based classifications are invalid. (Final Decision, at SA p. 123.) The California Supreme Court was at the forefront of rejecting such arguments with respect to anti-miscegenation laws. In *Perez v. Sharp* (1948) 32 Cal.2d 711, the Court struck down California's anti-miscegenation law, explaining that "[t]he decisive question . . . is not whether different races, each considered as a group, are equally treated." (*Id.* at p. 716.) This was so because "[t]he right to marry is the right of individuals, not racial groups." (*Ibid.*) The individuals in *Perez* were "barred by law from marrying the person of [their] choice and that person to [them] may be irreplaceable." (*Id.* at p. 725.) Almost 20 years after the California Supreme Court's decision in *Perez*, the U.S. Supreme Court came to the same conclusion, holding that

Virginia's anti-miscegenation law unconstitutionally impinged on individuals' right to marry the spouse of their choice and worked an "invidious discrimination." (*Loving v. Virginia* (1967) 388 U.S. 1, 10-11 [87 S.Ct. 1817, 1822-23, 18 L.Ed.2d 1010, 1017-18].) The Court reached this conclusion despite the law's purported "equal" application to different races. (*Ibid.*)

Relying on *Perez* and *Loving*, the trial court in this case appropriately rejected the "equal application" argument:

> If a person, male or female, wishes to marry, then he or she may do so as long as the intended spouse is of a different gender. It is the gender of the intended spouse that is the sole determining factor. To say that all men and all women are treated the same in that each may not marry someone of the same gender misses the point. The marriage laws establish classifications (same gender vs. opposite gender) and discriminate based on those gender-based classifications.

(Final Decision, at SA p. 123.) As the trial court noted, "*Perez* makes it crystal clear that equal protection of the law applies to individuals and not to the groups into which such individuals might be classified and that the question to be answered is whether such individual is being denied equal protection because of his/her characteristics." (*Id.* at SA p. 124.) Here, the respondents, and all who are likewise denied the fundamental right to marry based on their sex, are denied equal protection based on an impermissible gender classification.

III. California Courts Long Have Rejected Sex-Based Stereotypes Regarding "Traditional" Family Structures or "Traditional" Family Roles.

A. The Legislative History of Section 300 Makes Clear That It Perpetuates Impermissible Sex Stereotypes Regarding "Proper" Spousal And Parental Roles for Women and Men

At its core, the California marriage statute's sex-based classification enforces a familiar, but nevertheless impermissible, stereotype: that a man must only marry a woman and that a woman must only marry a man. As one court put it in the context of an employment discrimination case involving harassment of a gay man, "the gender stereotype at work here is that 'real' men should date women, not other men." (*Centola v. Potter* (D.Mass. 2002) 183 F.Supp.2d 403, 410.) Likewise, as another court explained in the same context, a woman who "is attracted to and dates other women" does not conform with the "stereotype of how a woman ought to behave." (*Heller v. Columbia Edgewater Country Club* (D.Or. 2002) 195 F.Supp.2d 1212, 1224.)

This stereotype is rooted in impermissible assumptions regarding the appropriate role of women and men in the family. The legislative history of the 1977 bill amending this state's marriage statute to explicitly define marriage as between a woman and a man reveals that the bill was based on stereotypical notions of a homemaker/caretaker mother and a breadwinner father and was intended to protect and promote two-parent families headed

by different-sex couples.[2] As the legislative history explains, marriage's "special benefits were designed to meet situations where one spouse, typically the female, could not adequately provide for herself because she was engaged in raising children. In other words, the legal benefits granted married couples were actually designed to accommodate motherhood." (See Assem. Com. on Judiciary, Digest of Assem. Bill 607 (1977-1978 Reg. Sess.) April 14, 1977 at pp. 1-2.) Rather than shed the historical and outmoded roots of marriage, supporters of the bill embraced them, arguing that marriage helps "to guarantee the presence of a male parent when a woman produces children" and thereby "protect[s] the children, even though in doing so we indirectly provide special protections for a financially dependent mother." (*Ibid.*)

Similarly, the arguments presented in defense of the statute at the trial court level reveal the way in which supporters of the exclusion of same-sex couples from marriage are urging the State to embrace and help enforce a stereotypical view of men's and women's roles in society and the family. For instance, one declarant claimed:

> Masculine identity has always and everywhere been defined primarily in connection with three functions of men: provider, protector, and progenitor. But women have moved into the public sphere and become providers. Moreover, they have demanded that the state take over from individual men

[2] At its December 22, 2004 hearing, the trial court took judicial notice of the legislative history of section 300, including the 1977 amendment.

> as protectors. That leaves progenitor – fatherhood – as the only possible source of healthy masculine identity.

(Declaration of Katherine Young in Support of Proposition 22's Motion for Summary Judgment / Summary Adjudication, Proposition 22's Clerk's Transcript, Vol. II, at p. 456, ¶ 67.)

Another declarant, noting "unique positive contributions of a father to child development and . . . unique positive contributions of a mother to child development," contended that a "mother contributes differently than a father to the development of children." (Declaration of George A. Rekers in Support of Proposition 22's Motion for Summary Judgment / Summary Adjudication, Campaign for California Families' Appendix, Vol. III, at pp. 576, 578, ¶¶ 12, 16 [emphasis in original].) Specifically, the declarant explained that mothers are generally tasked with "child-rearing, in which they are more involved in routine care such as bathing, changing, helping with homework, and providing meals." (*Id.* at p. 578, ¶ 16.)

The stereotypes used to justify exclusion of same-sex couples from marriage have a long history and a close nexus with the stereotypes once used to justify the exclusion of women from the business world and the denigration of the traditional "female" role within the family. Historically, fears of homosexuality were linked with resistance to women's advancement as America's so-called "purity movement" attempted "to reinforce traditional female gender roles in the face of a generation of 'new

women,' educated and economically independent of men." (William N. Eskridge, Jr., Gaylaw: Challenging the Apartheid of the Closet (1999) p. 20.) Indeed, "[t]he modern stigmatization of homosexuals as violators of gender norms . . . developed simultaneously with widespread anxieties about gender identity in the face of an emerging ideology of gender equality." (Andrew Koppelman, *Why Discrimination Against Lesbians and Gay Men Is Sex Discrimination* (1994) 69 N.Y.U. L. Rev. 197, 240.)

As evidenced by the gender stereotyping at issue in California's marriage statute, these attitudes, and the sex stereotypes they reflect, persist even today. The notion that marriage, a cherished and fundamental institution, is the exclusive domain of heterosexuals relies on a vision of the family based in large part on the preservation of traditional gender norms. Allowing gay men and lesbians to marry "threatens not the family as such, but a certain traditional ideology of the family. That ideology is one in which men, but not women, belong in the public world of work and are not so much members as owners of their families, while women, but not men, should rear children, manage homes, and obey their husbands." (Andrew Koppelman, *The Miscegenation Analogy* (1988) 98 Yale L.J. 145, 159.) Significantly, "[h]omosexuals are a threat to the family only if the survival of the family requires that men and women follow traditional sex roles." (*Id.* at p. 160.)

As the following discussion will demonstrate, California courts have already soundly rejected other statutory structures that relied on and enforced "traditional" sex roles within families formed by both different-sex and same-sex couples. Of course, while individuals and couples are free to embrace "traditional" gender roles and to structure their relationships accordingly, the constitutional guarantee of equal protection prohibits the State from relying on these stereotypical roles to justify sex-based classifications in marriage. The marriage statute is a remnant of the same sex-based classifications which are now properly recognized as unconstitutional. Consistent with the well-established principle that sex-based distinctions enforcing or relying on sex stereotypes cannot find voice in the law, California's marriage statute must fail under the equal protection clause of the California Constitution.

B. State Enforcement of Gender Stereotypes About Appropriate Roles for Women and Men Constitutes Impermissible Sex Discrimination

"Public policy in California strongly supports eradication of discrimination based on sex." (*Kiore v. Metro Car Wash* (1985) 40 Cal.3d 24, 36.) California courts have long recognized that laws that rely on and perpetuate sex-based stereotypes regarding "appropriate" gender roles in either the business world or in the family violate equal protection guarantees. For example, in *Sail'er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, the California Supreme Court held that a law preventing women from

bartending, unless they or their husbands were the bar owners, was unconstitutional because it could only be justified by archaic stereotypes about women. (*Id.* at p. 10.) The Court specifically highlighted – and rejected – legal structures that treated married women as "inferior persons . . . relating to property and independent business ownership and the right to make contracts." (*Id.* at p. 19.) Indeed, the Court was extremely suspicious of any attempt to "protect" women, commenting that "[t]he pedestal upon which women have been placed has all too often, upon closer inspection, been revealed as a cage." (*Id.* at p. 20.) Furthermore, in rejecting the other rationale advanced by the State – that "women bartenders would be an 'unwholesome influence' on the public" – because it was "based upon notions of what is a 'ladylike' or proper pursuit for a woman in our society," the Court made clear that "[s]uch notions cannot justify discrimination against women in employment." (*Id.* at p. 21.)

Likewise, in *Kiore*, *supra*, 40 Cal.3d 24, the California Supreme Court invalidated a sex-based differential pricing scheme in which a car wash gave discounted prices to women on designated "Ladies' Days." In doing so, the Court explained that the sex-based pricing scheme was "detrimental to both men and women, because it reinforces harmful stereotypes," such as an attitude that women must be aided by men's "chivalry." (*Id.* at pp. 34-35.) The Court recognized that sex-based classifications in the law have a significant effect on social expectations

regarding the sexes and supposed sex differences. As the Court explained:

> When the law "emphasizes irrelevant differences between men and women[,] [it] cannot help influencing the content and the tone of the social, as well as the legal, relations between the sexes . . . . As long as organized legal systems, at once the most respected and most feared of social institutions, continue to differentiate sharply, in treatment or in words, between men and women on the basis of irrelevant and artificially created distinctions, the likelihood of men and women coming to regard one another primarily as fellow human beings and only secondarily as representatives of another sex will continue to be remote. When men and women are prevented from recognizing one another's essential humanity by sexual prejudices, nourished by legal as well as social institutions, society as a whole remains less than it could otherwise become."

(*Id.* at pp. 34-35 [quoting Kanowitz, Women and the Law (1969) p. 4]; see also *Rotary Club of Duarte v. Bd. of Directors of Rotary Int'l* (1986) 178 Cal.App.3d 1035, 1062 [striking down the Rotary Club's single sex policy on the ground that "'discrimination based on archaic and overbroad assumptions about the relative needs and capacities of the sexes . . . deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic, and cultural life'"] [quoting *Roberts v. United States Jaycees* (1984) 468 U.S. 609, 625 [104 S.Ct. 3244, 3253, 82 L.Ed.2d 462, 476]].)[3]

---

[3] In a line of cases spanning from *Frontiero v. Richardson* (1973) 411 U.S. 677 [685, 935 S.Ct. 1764, 1769, 36 L.Ed.2d 583, 591] (finding equal protection violation in rebuttable presumption of dependency of female military spouses which was based on "gross, stereotyped distinctions between the sexes"), to *United States v. Virginia* (1996) 518 U.S. 515, 533 [116 S.Ct. 2264, 2274, 135 L.Ed.2d 735, 650] (finding equal

The California Supreme Court similarly has invalidated sex-based distinctions that rely on gender stereotypes regarding family roles. There was a time when statutes and case law conformed to, and in some cases enforced, an expectation that the wife and mother was charged with caring for the children, maintaining the home, and carrying out family obligations, while the husband was tasked with financial and supervisory matters. For instance, in *Sanderson v. Niemann* (1941) 17 Cal.2d 563, 569, the California Supreme Court approved a law that gave the man in a marriage control of the marriage's shared property. Similarly, in considering parenting issues, the court in *White v. White* (1952) 109 Cal.App.2d 522, 523, held that an award of child custody to the mother was proper when the child was of "tender years." In doing so, the court explained that if the child had been "of an age to require education and preparation for labor and business," traditionally male-centered spheres, custody would have been awarded to the father. (*Ibid.*)

---

protection violation in state military academy's exclusion of women because it "rel[ied] on overbroad generalizations about the different talents, capacities, or preferences of males and females"), the U.S. Supreme Court has similarly made clear that classifications based on gender stereotypes violate the federal Constitution's equal protection clause. Thus, courts must scrutinize classifications based on sex by engaging in "reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions about the proper role of men and women." (*Mississippi University for Women v. Hogan* (1982) 458 U.S. 718, 726 [102 S.Ct. 3331, 3336, 73 L.Ed.2d 1090, 1098].)

But as jurists, and society, have reached a deeper understanding of the conditions necessary to achieve true equality under the law, courts have struck down state laws that rely on or enforce gender-stereotypical marital and parental roles. Indeed, just over a half-century ago, the California courts considered and rejected the legal principle that women lose their legal identity when they marry. In holding that this principle violated the California Constitution, the California Court of Appeal explained: "[This] hollow, debasing, and degrading philosophy, which has pervaded judicial thinking for years, has spent its course. These archaic notions no longer obtain." (*Follansbee v. Benzenberg* (1954) 122 Cal.App.2d 466, 476.) Instead, "a husband and wife have, in the marriage relation, equal rights which should receive equal protection of the law." (*Ibid.*)

Likewise, in *Arp v. Worker's Compensation Appeals Bd.* (1977) 19 Cal.3d 395, the California Supreme Court invalidated the statutory presumption of a widow's dependency under both the state and federal equal protection provisions. The Court reasoned that "neither administrative convenience nor 'outdated misconceptions' and 'loosefitting characterizations' will support gender-based classifications." (*Id.* at pp. 400, 409.) The Court acknowledged that the "widow's conclusive presumption of total dependency . . . is the relic of an era in which the majority of persons – certainly the majority of those in positions of power – accepted as axiomatic that 'the God of nature made woman frail, lovely and

dependent . . . .'" (*Id.* at p. 404.) Rejecting this antiquated logic, the Court explained that women no longer need to be "dependent." (*Ibid.*) In finding that the statute was not justified by any compelling state interest, the Court explained that although the statute purported to aid women, it did so at the expense of equality "by perpetuating the paternalistic notion that a woman's financial contribution is unlikely to be of substantial importance to the family unit." (*Id.* at p. 407.) Such a statute, the Court explained, "den[ies] equal protection and clearly . . . conflict[s] with the state policy of abolishing archaic stereotypes" and thus "cannot be said . . . to be necessary to the realization of a compelling state goal." (*Id.* at pp. 407-08; see also *Self v. Self* (1962) 58 Cal.2d 683, 689 [striking common law rule of interspousal tort immunity because its basis – the "legal identity of husband and wife – no longer exists"]; *Follansbee*, *supra*, 122 Cal.App.2d 466 [striking common law rule and instead holding that wife who pays for medical expenses of negligently injured husband can recover reimbursement from tortfeasor].)

California courts also have recognized the impropriety of the government endorsing or enforcing gender-based assumptions about parenting roles. In *Burchard v. Garay* (1986) 42 Cal.3d 531, the California Supreme Court rejected the argument that the father should be awarded custody of the couple's children because the father's new wife did not work and thus "could care for the child in their home," while the children's

mother was employed. (*Id.* at pp. 539-40.) The Court explained that "in an era when over 50 percent of mothers and almost 80 percent of divorced mothers work, the courts must not presume that a working mother is a less satisfactory parent or less fully committed to the care of her child. A custody determination must be based upon a true assessment of the emotional bonds between parent and child." (*Id.* at p. 540.) The Court expressly rejected the "assumption, unsupported by scientific evidence, that a working mother cannot provide such care – an assumption particularly unfair when, as here, the mother has in fact been the primary caregiver." (*Ibid.*)

California courts have acknowledged the way in which government-imposed gender stereotypes about marriage and parenting harm men as well as women. In *In re Marriage of Carney* (1979) 24 Cal.3d 725, the California Supreme Court found that the trial court had erred when it transferred child custody from the father to the mother based on the discriminatory principle that the father's physical handicap prevented him from fulfilling gender-based expectations of what a father should be. The Court explained that the trial court's "belief that there could be no 'normal relationship between father and boys' unless [father] William engaged in vigorous sporting activities with his sons is a further example of the conventional sex-stereotypical thinking that we condemned in another context in [*Sail'er Inn*]." (*Id.* at p. 736.)

Indeed, the Court bluntly demonstrated the restrictive, outdated nature of the trial court's logic:

> For some, the [trial] court's emphasis on the importance of a father's 'playing baseball' or 'going fishing' with his sons may evoke nostalgic memories of a Norman Rockwell cover on the old Saturday Evening Post. But it has at least been understood that a boy need not prove his masculinity on the playing fields of Eton, nor must a man compete with his son in athletics in order to be a good father: their relationship is no less 'normal' if it is built on shared experiences in such fields of interest as science, music, arts and crafts, history or travel, or in pursuing such classic hobbies as stamp or coin collecting. In short, an afternoon that a father and son spend together at a museum or the zoo is surely no less enriching than an equivalent amount of time spent catching either balls or fish.

(*Id.* at pp. 736-37.) Instead of focusing on stereotypical sex-based family roles, the Court focused on the individualized, meaningful interactions between fathers and children free of gendered notions of masculinity and fatherhood. Explaining that the "sex stereotype, of course, cuts both ways," the Court pointed to the similarly restrictive obligations that the trial court's logic would impose on mothers: "If the trial court's approach herein were to prevail, in the next case a divorced mother who became physically handicapped could be deprived of her young daughters because she is unable to participate with them in embroidery, Haute cuisine, or the fine arts of washing and ironing." (*Id.* at p. 737 fn.9.) The Court exposed the senseless nature of using the law to impose antiquated gender stereotypes

and revealed the way in which such stereotypes bear no relation to successful parenting.[4]

C. California Courts Appropriately Have Held That The Rules Regarding Who Is A Parent Must Be Applied Equally, Regardless Of Gender Or Sexual Orientation

Just as California courts have struck down laws that rely on outdated gender roles with respect to families formed by heterosexual couples, they also have made clear that "traditional" assumptions regarding gender and family cannot justify discriminating against same-sex domestic partners or withholding parental rights and responsibilities from both parents in a family formed by a same-sex couple.

Consistent with the basic principle that stereotypes about gender are inappropriate considerations with respect to children and parenting, California courts have held that both members of a same-sex couple can become legal parents to a child through adoption. In *Sharon S. v. Superior Court (Annette F.)* (2003) 31 Cal.4th 417, the California Supreme Court held that a woman could adopt her same-sex partner's biological child through the second-parent adoption statutory scheme. In doing so, the Court explained that "second parent adoptions offer the possibility of

---

[4] In line with the Court's reasoning, the Legislature similarly has found that gender cannot play a role in decisions regarding children. (See, e.g., Fam. Code § 3040 [noting that in making a child custody determination, the court "shall not prefer a parent as custodian because of that parent's sex"].)

obtaining the security and advantages of two parents for some of California's neediest children." (*Id.* at 438.) Rather than express concern that the child would have two parents of the same sex, the Court recognized the importance of "a legal relationship with a second parent," regardless of the parent's gender or sexual orientation. (*Id.* at p. 437.) Indeed, the Court explained that its "decision encourages and strengthens family bonds." (*Id.* at p. 438.)

Furthermore, in one of three consolidated parental rights cases decided by the California Supreme Court last year, *Elisa B. v. Superior Court (Emily B.)* (2005) 37 Cal.4th 108, the Court found that two women who chose to have children together while in a committed relationship were both the children's parents under the Uniform Parentage Act, even though the couple had not completed a second-parent adoption. The couple had formed a viable family unit in which one mother, Emily, "would be the stay-at-home mother" and the other mother, Elisa, "would be the primary breadwinner for the family." (*Id.* at p. 114.) The question presented in the case was whether the non-biological parent, Elisa, was a presumed parent of the children under California Family Code § 7611(d) and the rule established by the California Supreme Court in *In re Nicholas H.* (2002) 28 Cal.4th 56. The Court of Appeal had held that Elisa was not a presumed parent because the rule in *Nicholas H.* could not, according to the court, be applied to a woman when the children already had an identified legal

mother. (*Elisa B. v. Superior Court (Emily B.)* (2004) 118 Cal.App.4th 966, 977-78 [finding *Nicholas H.* "inapposite because . . [h]ere, the twins have a natural, biological mother, Emily, who is not disclaiming her maternal rights and obligations"].) The California Supreme Court rejected this argument, noting that while "most of the decisional law has focused on the definition of the presumed father," the same concept applies "to a woman seeking presumed mother status." (37 Cal 4th at pp. 119-20.) There simply was "no reason," the Court explained, that a child could not have two mothers. (*Id.* at p. 119 ["We perceive no reason why both parents of a child cannot be women."].) Accordingly, the Court concluded that the rule for determining whether a person is a presumed parent under the statutory scheme applied equally, regardless of the gender or sexual orientation of the person, and regardless of the gender of the child's existing legal parent. (*Id.* at pp. 124-25 ["A person who actively participates in bringing children into the world, takes the children into her home and holds them out as her own, and receives and enjoys the benefits of parenthood, should be responsible for the support of those children – regardless of her gender or sexual orientation."].) Because Elisa had received the children into her home and openly held them out as her own, she, like a man subject to the same standard, was a presumed parent charged with parental rights and responsibilities. (*Id.* at pp. 120-22.)

Therefore, the Court recognized that children benefit from having a legal relationship with both of the individuals who are functioning as their parents, regardless of the sex of those two individuals. (*Id.* at p. 122 [explaining that denying parental status to Elisa "would leave [the children] with only one parent and would deprive them of the support of their second parent"]; see also *id.* at p. 123 [noting that "the Legislature implicitly recognized the value of having two parents, rather than one, as a source of both emotional and financial support, especially when the obligation to support the child would otherwise fall to the public"].) The Court thus properly acknowledged that two parents of the same sex can and do form families and that such families must receive legal recognition.

Just as the Court in *Elisa B.* found it necessary to provide legal recognition and protection to families formed by same-sex couples, the Legislature was motivated by similar policy considerations in enacting the Domestic Partner Act, which assigns rights and responsibilities to individuals in committed same-sex relationships.[5] For instance, domestic

---

[5] Of course, even though domestic partnerships and marriage may be justified by the same policy goals, it is abundantly clear that domestic partnerships do not represent an adequate substitute for the fundamental institution of marriage. (See Respondents' Brief in *Woo v. California*, A110451, at pp. 66-72.) First, domestic partnerships do not provide all of the rights of marriage. (See *Knight v. Superior Court (Schwarzenegger)* (2005) 128 Cal.App.4th 14, 30 [explaining that "domestic partners do not receive a number of marital rights and benefits"].) More importantly, as the trial court explained, "[t]he idea that marriage-like rights without marriage is adequate smacks of a concept long rejected by the courts: separate but

partners have the same rights and obligations with respect to each other's children as different-sex spouses do. (Fam. Code § 297.5(d).) As the California Supreme Court explained in *Koebke v. Bernardo Heights Country Club* (2005) 36 Cal.4th 824, a same-sex couple in a committed long-term relationship is supported by the State for the same reasons the State supports marriage, namely "to further the state's interest in promoting stable and lasting family relationships." (*Id.* at p. 838.) Therefore, in finding that the plaintiff lesbian couple, who had registered as domestic partners, could state a marital status discrimination claim under the Unruh Act against the country club that refused to accord one member's domestic partner spousal status, the Court concluded that "the policy favoring marriage is not served by denying registered domestic partners protection from discrimination under the *Unruh Act*." (*Id.* at p. 846.) The Court acknowledged that "the consequences of the decision [to enter into a marriage or a domestic partnership] is the creation of a new family unit with all of its implications in terms of personal commitment as well as legal rights and obligations." (*Ibid.*)

In the cases discussed above, the California courts have recognized the importance of disregarding or overruling sex-based classifications in

---

equal." (Final Decision, *supra*, at SA p. 115.) Indeed, as the trial court concluded, "the existence of marriage-like rights without marriage actually cuts against the existence of a rational government interest for denying marriage to same-sex couples." (*Ibid.*)

statutory or common law that would deny families formed by same-sex couples legal protections. By doing so, the California courts have rejected the outdated, stereotype-based rationales for marriage – the exact rationales upon which section 300 is based and upon which supporters of the current statute rely. Instead, the California courts have shown that far from justifying the exclusion of same-sex couples from marriage, the legitimate policies animating marriage – such as the promotion and protection of family units and the well-being of children – are best served by permitting same-sex couples to marry.

CONCLUSION

The extensive case law discussed above shows the way in which California jurisprudence and public policy have developed as jurists and society have reached a deeper understanding of the conditions necessary to achieve true equality under the law. No longer do California courts allow statutes to rely on or enforce gender-based stereotypes regarding marital and parental roles, such as the expectation that a marital relationship must or should include a homemaker-woman and breadwinner-man. Instead, Californians enjoy increasing freedom to choose their own path and fulfill marital and parental roles in meaningful ways free from state-enforced gender stereotypes. Yet, California's marriage statute lags behind this jurisprudence in denying lesbians and gay men the fundamental right to marry their chosen partners. Just as this state has rejected sex stereotyping

as a basis for discrimination in the fields of employment, matrimony, finance, custody, and many other areas, it is now incumbent on the Court to do the same for the fundamental right to marry. Acknowledging the right of lesbians and gay men to marry would further support – and indeed is required by – the law's rejection of classifications that rely on and enforce stereotypical gender roles in marriage and the family.

For the foregoing reasons, as well as those stated in the Respondents' Briefs, this Court should affirm the decision of the trial court, hold section 300 of the California Family Code to be unconstitutional under the California Constitution, and recognize the right to marry of lesbians and gay men in California.

DATED this 6th day of January, 2006.

Respectfully submitted,
IRELL & MANELLA, LLP
By: Elizabeth L. Rosenblatt/DN
Elizabeth L. Rosenblatt
Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is printed in Times New Roman, 13-point font and that the number of words contained in this brief, including footnotes but excluding the Table of Contents, Table of Authorities, and this Certificate, is 7,301 words, according to the word-count function on Microsoft Word 2003, the program used to create the brief.

By: Elizabeth L. Rosenblatt /DN

Elizabeth L. Rosenblatt
Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90025

Attorneys for Amici Curiae

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1800 Avenue of the Stars, Suite 900, Los Angeles, California 90067.

On January 6, 2006, I served the foregoing document described as **APPLICATION TO FILE AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENTS AND [PROPOSED] AMICI CURIAE BRIEF OF AMICI CONCERNED WITH WOMEN'S RIGHTS** on each interested party, as follows:

SEE ATTACHED SERVICE LIST

[X] (BY MAIL) I placed a true copy of the foregoing document in a sealed envelope addressed to each interested party, as set forth above. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Irell & Manella LLP, Los Angeles, California. I am readily familiar with Irell & Manella LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

Executed on January 6, 2006, at Los Angeles, California.

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

Douglas NeJaime
(Type or print name)

Douglas NeJaime
(Signature)

SERVICE LIST

City and County of San Francisco v. California, et al.
San Francisco Superior Court Case No. CGC-04-429539
Court of Appeal No. A110449

Dennis J. Herrera Therese M. Stewart Sherri Sokeland Kaiser CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE CITY ATTORNEY City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Tel: (415) 554-4700 Fax: (415) 554-4747 *Counsel for the City and County of San Francisco, et al.*	Bobbie J. Wilson Amy E. Margolin HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN Three Embarcadero Center, 7th Floor San Francisco, CA 94111 Tel: (415) 434-1600 Fax: (415) 217-5910 *Counsel for the City and County of San Francisco, et al.*
Bill Lockyer Louis R. Mauro Robert D. Wilson Christopher E. Krueger STATE OF CALIFORNIA, DEPT. OF JUSTICE OFFICE OF THE ATTORNEY GENERAL 1300 I Street, Post Office Box 944255 Sacramento, CA 94244 Tel: (916) 445-7385 Fax: (916) 324-5567 *Counsel for the State of California, et al.*	

Woo, et al. v. California, et al.
San Francisco Superior Court Case No. CPF-04-504038
Court of Appeal Case No. A110451

Stephen V. Bomse Richard Denatale Christopher F. Stoll Ryan R. Tacorda HELLER EHRMAN LLP 333 Bush Street San Francisco, CA 94104 Tel: (415) 772-6000 Fax: (415) 772-6268 *Counsel for the Woo Petitioners*	Shannon Minter Courtney Joslin NATIONAL CENTER FOR LESBIAN RIGHTS 870 Market Street #370 San Francisco, CA 94102 Tel: (415) 392-6257 Fax: (415) 392-8442 *Counsel for the Woo Petitioners*
Jon W. Davidson Jennifer C. Pizer LAMBDA LEGAL DEFENSE AND EDUCATION FUND 3325 Wilshire Boulevard, Suite 1300 Los Angeles, CA 90010 Tel: (213) 382-7600 Fax: (213) 351-6050 *Counsel for the Woo Petitioners*	Christine P. Sun Peter J. Eliasberg ACLU FOUNDATION OF SOUTHERN CALIFORNIA 1616 Beverly Boulevard Los Angeles, CA 90026 Tel: (213) 977-9500 Fax: (213) 250-3919 *Counsel for the Woo Petitioners*
Alan L. Schlosser Tamara Lange ACLU FOUNDATION OF NORTHERN CALIFORNIA 1663 Mission Street, Suite 460 San Francisco, CA 94103 Tel: (415) 621-2493 Fax: (415) 255-1478 *Counsel for the Woo Petitioners*	Clyde J. WADSWORTH STEEFEL, LEVITT & WEISS One Embarcadero Center, 30th Floor San Francisco, CA 94111 Tel: (415) 788-0900 Fax: (415) 788-2019 *Counsel for the Woo Petitioners*

David C. Codell LAW OFFICE OF DAVID C. CODELL 9200 Sunset Boulevard, Penthouse Two Los Angeles, CA 90069 Tel: (310) 273-0306 Fax: (310) 273-0307 *Counsel for the Woo Petitioners*	Bill Lockyer Louis R. Mauro Robert D. Wilson Christopher E. Krueger STATE OF CALIFORNIA, DEPT. OF JUSTICE OFFICE OF THE ATTORNEY GENERAL 1300 I Street, Post Office Box 944255 Sacramento, CA 94244 Tel: (916) 445-7385 Fax: (916) 324-5567 *Counsel for the State of California, et al.*

Tyler, et al. v. California, et al.
Los Angeles Superior Court Case No. BS088506
Court of Appeal Case No. A110450

Michael Maroko John S. West ALLRED, MAROKO & GOLDBERG 6300 Wilshire Boulevard, Suite 1500 Los Angeles, CA 90048 Tel: (323) 653-6530 Fax: (323) 653-1660 *Counsel for Robin Tyler, et al.*	Bill Lockyer Louis R. Mauro Robert D. Wilson Christopher E. Krueger STATE OF CALIFORNIA, DEPT. OF JUSTICE OFFICE OF THE ATTORNEY GENERAL 1300 I Street, Post Office Box 944255 Sacramento, CA 94244 Tel: (916) 445-7385 Fax: (916) 324-5567 *Counsel for the State of California, et al.*
Stephen V. Bomse Richard Denatale Christopher F. Stoll Ryan R. Tacorda HELLER EHRMAN LLP 333 Bush Street San Francisco, CA 94104 Tel: (415) 772-6000 Fax: (415) 772-6268 *Counsel for Intervenor Equality California*	Shannon Minter Courtney Joslin NATIONAL CENTER FOR LESBIAN RIGHTS 870 Market Street #370 San Francisco, CA 94102 Tel: (415) 392-6257 Fax: (415) 392-8442 *Counsel for Intervenor Equality California*

Jon W. Davidson Jennifer C. Pizer LAMBDA LEGAL DEFENSE AND EDUCATION FUND 3325 Wilshire Boulevard, Suite 1300 Los Angeles, CA 90010 Tel: (213) 382-7600 Fax: (213) 351-6050 *Counsel for Intervenor Equality California*	Christine P. Sun Peter J. Eliasberg ACLU FOUNDATION OF SOUTHERN CALIFORNIA 1616 Beverly Boulevard Los Angeles, CA 90026 Tel: (213) 977-9500 Fax: (213) 250-3919 *Counsel for Intervenor Equality California*
Alan L. Schlosser Tamara Lange ACLU FOUNDATION OF NORTHERN CALIFORNIA 1663 Mission Street, Suite 460 San Francisco, CA 94103 Tel: (415) 621-2493 Fax: (415) 255-1478 *Counsel for Intervenor Equality California*	Clyde J. WADSWORTH STEEFEL, LEVITT & WEISS One Embarcadero Center, 30th Floor San Francisco, CA 94111 Tel: (415) 788-0900 Fax: (415) 788-2019 *Counsel for Intervenor Equality California*
David C. Codell LAW OFFICE OF DAVID C. CODELL 9200 Sunset Boulevard, Penthouse Two Los Angeles, CA 90069 Tel: (310) 273-0306 Fax: (310) 273-0307 *Counsel for Intervenor Equality California*	

Clinton, et al. v. California, et al.
San Francisco Superior Court Case No. 429548
Court of Appeal Case No. A110463

Waukeen Q. McCoy LAW OFFICES OF WAUKEEN Q. MCCOY 703 Market Street, Suite 1407 San Francisco, CA 94103 Tel: (415) 675-7705 Fax: (415) 675-2530 *Counsel for Clinton Petitioners*	Bill Lockyer Louis R. Mauro Robert D. Wilson Christopher E. Krueger STATE OF CALIFORNIA, DEPT. OF JUSTICE OFFICE OF THE ATTORNEY GENERAL 1300 I Street, Post Office Box 944255 Sacramento, CA 94244 Tel: (916) 445-7385 Fax: (916) 324-5567 *Counsel for the State of California, et al.*

Proposition 22 Legal Defense and Education Fund v. City and County of San Francisco
San Francisco Superior Court Case No. CPF-04-503943
Court of Appeal Case No. A110651

Robert H. Tyler ADVOCATES FOR FAITH AND FREEDOM 32823 Highway 79 South Temecula, CA 92592 Tel: (909) 461-7860 Fax: (909) 461-9056 *Counsel for Proposition 22 Legal Defense and Education Fund*	Benjamin W. Bull Glen Lavy Christopher R. Stovall Dale Schowengerdt ALLIANCE DEFENSE FUND 15333 North Pima Road, Suite 165 Scottsdale, AZ 85260 Tel: (408) 444-0020 Fax: (408) 444-0025 *Counsel for Proposition 22 Legal Defense and Education Fund*
Andrew P. Pugno LAW OFFICES OF ANDREW P. PUGNO 101 Parkshore Drive, Suite 100 Folsom, CA 95630 *Counsel for Proposition 22 Legal Defense and Education Fund*	Terry L. Thompson LAW OFFICES OF TERRY L. THOMPSON 199 East Linda Mesa, Suite 10 Danville, CA 94526 Tel: (925) 855-1507 Fax: (925) 820-6034 *Counsel for Proposition 22 Legal Defense and Education Fund*

Dennis J. Herrera Therese M. Stewart Sherri Sokeland Kaiser CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE CITY ATTORNEY City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Tel: (415) 554-4700 Fax: (415) 554-4747 *Counsel for the City and County of San Francisco, et al.*	Bobbie J. Wilson Amy E. Margolin HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN Three Embarcadero Center, 7th Floor San Francisco, CA 94111 Tel: (415) 434-1600 Fax: (415) 217-5910 *Counsel for the City and County of San Francisco, et al.*
Stephen V. Bomse Richard Denatale Christopher F. Stoll Ryan R. Tacorda HELLER EHRMAN LLP 333 Bush Street San Francisco, CA 94104 Tel: (415) 772-6000 Fax: (415) 772-6268 *Counsel for Martin Intervenors*	Shannon Minter Courtney Joslin NATIONAL CENTER FOR LESBIAN RIGHTS 870 Market Street #370 San Francisco, CA 94102 Tel: (415) 392-6257 Fax: (415) 392-8442 *Counsel for Martin Intervenors*
Jon W. Davidson Jennifer C. Pizer LAMBDA LEGAL DEFENSE AND EDUCATION FUND 3325 Wilshire Boulevard, Suite 1300 Los Angeles, CA 90010 Tel: (213) 382-7600 Fax: (213) 351-6050 *Counsel for Martin Intervenors*	Christine P. Sun Peter J. Eliasberg ACLU FOUNDATION OF SOUTHERN CALIFORNIA 1616 Beverly Boulevard Los Angeles, CA 90026 Tel: (213) 977-9500 Fax: (213) 250-3919 *Counsel for Martin Intervenors*
Alan L. Schlosser Tamara Lange ACLU FOUNDATION OF NORTHERN CALIFORNIA 1663 Mission Street, Suite 460 San Francisco, CA 94103 Tel: (415) 621-2493 Fax: (415) 255-1478 *Counsel for Martin Intervenors*	Clyde J. Wadsworth STEEFEL, LEVITT & WEISS One Embarcadero Center, 30th Floor San Francisco, CA 94111 Tel: (415) 788-0900 Fax: (415) 788-2019 *Counsel for Martin Intervenors*

David C. Codell LAW OFFICE OF DAVID C. CODELL 9200 Sunset Boulevard, Penthouse Two Los Angeles, CA 90069 Tel: (310) 273-0306 Fax: (310) 273-0307 *Counsel for Martin Intervenors*	

Campaign for California Families v. Newsom, et al.
San Francisco Superior Court Case No. CGC 04-428794
Court of Appeal Case No. A110652

Mathew D. Staver Rena Lindevaldsen Mary McAlister LIBERTY COUNSEL 210 East Palmetto Avenue Longwood, FL 32750 Tel: (407) 875-2100 Fax: (407) 875-0770 *Counsel for Randy Thomasson and Campaign for California Families*	Ross S. Heckmann *ATTORNEY AT LAW* 1214 Valencia Way Arcadia, CA 91006 Tel: (626) 256-4664 Fax: (626) 256-4774 *Counsel for Campaign for California Families*
Dennis J. Herrera Therese M. Stewart Sherri Sokeland Kaiser CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE CITY ATTORNEY City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Tel: (415) 554-4700 Fax: (415) 554-4747 *Counsel for the City and County of San Francisco, et al.*	Bobbie J. Wilson Amy E. Margolin HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN Three Embarcadero Center, 7th Floor San Francisco, CA 94111 Tel: (415) 434-1600 Fax: (415) 217-5910 *Counsel for the City and County of San Francisco, et al.*

Stephen V. Bomse Richard Denatale Christopher F. Stoll Ryan R. Tacorda HELLER EHRMAN LLP 333 Bush Street San Francisco, CA 94104 Tel: (415) 772-6000 Fax: (415) 772-6268 *Counsel for Martin Intervenors*	Shannon Minter Courtney Joslin NATIONAL CENTER FOR LESBIAN RIGHTS 870 Market Street #370 San Francisco, CA 94102 Tel: (415) 392-6257 Fax: (415) 392-8442 *Counsel for Martin Intervenors*
Jon W. Davidson Jennifer C. Pizer LAMBDA LEGAL DEFENSE AND EDUCATION FUND 3325 Wilshire Boulevard, Suite 1300 Los Angeles, CA 90010 Tel: (213) 382-7600 Fax: (213) 351-6050 *Counsel for Martin Intervenors*	Christine P. Sun Peter J. Eliasberg ACLU FOUNDATION OF SOUTHERN CALIFORNIA 1616 Beverly Boulevard Los Angeles, CA 90026 Tel: (213) 977-9500 Fax: (213) 250-3919 *Counsel for Martin Intervenors*
Alan L. Schlosser Tamara Lange ACLU FOUNDATION OF NORTHERN CALIFORNIA 1663 Mission Street, Suite 460 San Francisco, CA 94103 Tel: (415) 621-2493 Fax: (415) 255-1478 *Counsel for Martin Intervenors*	Clyde J. Wadsworth STEEFEL, LEVITT & WEISS One Embarcadero Center, 30th Floor San Francisco, CA 94111 Tel: (415) 788-0900 Fax: (415) 788-2019 *Counsel for Martin Intervenors*
David C. Codell LAW OFFICE OF DAVID C. CODELL 9200 Sunset Boulevard, Penthouse Two Los Angeles, CA 90069 Tel: (310) 273-0306 Fax: (310) 273-0307 *Counsel for Martin Intervenors*	

Clerk of Court California Supreme Court 350 McAllister Street San Francisco, CA 94102 (5 copies)	Honorable Richard A. Kramer c/o Superior Court Clerk Superior Court of San Francisco County 400 McAllister Street San Francisco, CA 94102 (1 copy)