

# LIVELY & ACKERMAN

A PARTNERSHIP OF CHRISTIAN ATTORNEYS

March 4, 2004

Honorable Justices  
CALIFORNIA SUPREME COURT  
350 McAllister Street  
San Francisco, CA 94102

**AMICUS CURIAE LETTER PER CRC 28.1(g)**  
**CALIFORNIA SUPREME COURT CASE NO. S122923**

RE : Amicus Letter in Support of Review & Original Writ Issuance  
People of the State of California v. Gavin Newsom

Honorable Justices of the Supreme Court:

We respectfully submit this *amici curiae* letter in support of the position of the Attorney General of the State of California, and proposed intervenors Campaign for California Families (“CCF”). This letter is written pursuant to California Rules of Court, Rule 28(g) and has been properly served on the parties hereto. The *Amici Curiae* mentioned below are represented by our firm, and by the UNITED STATES JUSTICE FOUNDATION. It is further requested that this letter be received and filed by the Court.

LIVELY & ACKERMAN originally represented Campaign for California Families in related San Francisco Superior Court (CGC04-428794) and California Court of Appeal (A105550) proceedings. Counsel is familiar with the substance and scope of the issues presented on review. Our attorneys have conducted hundreds of hours of research on the issue of same-sex marriage, and the members of our firm are seasoned in the representation of litigants in matters of constitutional concern. Also, our firm is presently involved in *quo warranto* proceedings against two of the Respondents herein. The *quo warranto* proceedings are based on the same core of operative facts as those alleged in the instant petition.

Counsel for *Amici Curiae* respectfully incorporate by reference herein, the Petition for Writ of Mandate/Prohibition or Other Appropriate Relief; Memorandum of Points & Authorities, which was filed in the matter of *Thomasson v. Superior Court*, Appellate Case No. A105550, and which sets forth the legal basis for the position of *Amici Curiae* herein. Per Rule 28(g)(2), the matter referenced by incorporate herein is compliant with Rule 28.1.

The Petition in Case No. A105550 adequately sets forth the legal basis for *Amici Curiae*'s support of the instant petition of Attorney General Bill Lockyer. To wit, the following points are made: A.) There is a need for immediate relief from Newsom's unlawful action; B.) The citizens and voters of the State of California are entitled to have their elected officials abide by the oaths that they took to uphold the laws of the State of California; C.) The Respondents are violating state and local law by issuing same-sex marriage licenses; and, D.) The Judiciary has the right and the obligation to protect against intentional violations of law, which are injurious to the public welfare per se'.

As can be seen from the interests of *Amici Curiae*, LIVELY & ACKERMAN and the UNITED STATES JUSTICE FOUNDATION represent a wide variety of interested persons and organizations. Our clients represent the interests of well over 2,000,000 Californians, most or all of which supported Proposition 22. The views expressed by these persons, through representative organizations, will assist the Court in reviewing this case because *amici curiae* adequately represent a significant cross section of the California public. The public must not be ignored in this case. The issue of same-sex marriage and the intentional failure to enforce existing laws are of high importance to all who voted in favor of Proposition 22, and to those citizens who are obligated to existing marital relations. Indeed, each person who is presently married by law has a constitutional interest in ensuring that the obligations, definitions, and associational freedoms connected with traditional marriage are not defiled or altered by the rogue acts of the Respondents.

*Amici Curiae* have a direct interest in having the laws of the State of California enforced as required by the California Constitution. For whatever reason, the California Judicial Branch has acknowledged that same-sex marriage licenses are not recognized by present California law, and refuses to enforce the law to prevent further abuses of power by Respondent Newsom and those associated with him. *Amici Curiae* implore this Court to interpret and require enforcement of the law of marriage as it presently stands in California. There is no lawful excuse for the knowing violations of law by the Respondents. Indeed, it has been aptly stated that:

Certainly no good reason can be advanced why it is not as wise for the state, by means of a civil action, to prevent an offense, injuriously affecting its rights or the liberties of its citizens, as it would be to wait and punish, or attempt to punish, the offender for a crime after it has been committed. **It is the undoubted duty of the state to preserve, pure and unimpaired, every channel through which powers are exercised necessary for the protection of the rights and liberties of its citizens. Deny this power and the supremacy of the state government is denied.** The rights of citizens which will be impaired if the frauds threatened are committed, are of the most vital importance. If not prevented, then the interest of the state, as well as the interests of those whom it is bound to protect, will be injuriously affected. [...]

**The state is not bound to wait until the object of the illegal combination is effected which will deprive the people of their liberties, and constitutional rights, but may bring an action at once to prevent its consummation; and while the writ of injunction may not be employed to suppress a crime as such, yet when acts, though constituting a crime, will interfere with the liberties, rights, and privileges of citizens, the state not only has the right to enjoin the commission of such acts but it is its duty to do so. [cites]. [emphasis added].” *Pierce v. Superior Court* (1934) 1**

C.2d 759, 766 (Thompson, J., dissenting).

Here, it is not disputed that Mayor Newsom continues to oversee the issuance of same-sex marriage licenses, and that Respondents Mabel S. Teng, and Nancy Alfaro are knowingly assisting in the continued violations of law. Each instance contravenes CALIFORNIA CONSTITUTION, Art. III, Section 3.5, violates the San Francisco Charter, and has violated the “open meetings” requirements of the City & County of San Francisco. (See Petition in California Court of Appeal, First District Case No. A105550). The Respondents have acted without input from the public. Moreover, each of the respondents, as elected officials or civil employees, took an oath to uphold the laws of the State of California. CALIFORNIA CONSTITUTION, Art. XX, Section 3. By refusing to uphold existing law, each Respondent is violating the law and his/her sworn oath of office.

The interests of the *Amici Curiae* are as follows:

**SENATOR DENNIS HOLLINGSWORTH:** Senator Dennis Hollingsworth represents the interests of over 846,000 California voters. He is the California State Senator for the 36<sup>th</sup> Senatorial District. It is a statistical certainty that his constituents overwhelmingly support the enforcement of Proposition 22.

**ASSEMBLY MEMBER TIM LESLIE:** Assembly Member Tim Leslie represents the interests of about 450,000 Californians. He represents the 4<sup>th</sup> Assembly District. It is a statistical certainty that his constituents overwhelmingly support the enforcement of Proposition 22.

**ASSEMBLY MEMBER RAY S. HAYNES:** Assembly Member Ray S. Haynes represents the interests of about 450,000 Californians. He represents the 66<sup>th</sup> Assembly District. It is a statistical certainty that his constituents overwhelmingly support the enforcement of Proposition 22.

**CALIFORNIA REPUBLICAN ASSEMBLY:** The California Republican Assembly is an association of thousands of citizens and leaders in the Republican Party. The CRA was chartered in 1934; it is the state’s oldest and largest Republican volunteer organization. The CRA is dedicated to the preservation and restoration of California’s marriage relationships and the children who are the product of California’s millions of marriages.

**CALIFORNIA REPUBLICAN ASSEMBLY (Murrieta/Temecula):** The Murrieta/Temecula CRA is a local association of persons dedicated to protecting the natural family and promoting the values associated with marriage. This unit of the CRA supports the principles and purposes of the state CRA.

**PASTORS INFORMATION RESOURCE COUNCIL:** This organization from Highland, California, is dedicated to the protection of family and to providing assistance to women who face unintended pregnancies in and out of wedlock. This organization believes that the preservation and restoration of traditional marriages will promote economic security and better social stability in

California. PIRC offers information and education to California's pastors and churches.

**CALIFORNIA FAMILY COUNCIL:** California Family Council (CFC) is a pro-family, public-policy center encouraged by Focus on the Family and the Family Research Council (FRC) as a separate, self-sustaining entity. The mission of CFC is to strengthen and encourage the family as the foundation of society and to promote pro-family policies and values in our culture and government.

**PASTOR DEWIGHT D. RIDDLE:** Pastor Riddle, presently serving as pastor of Olive branch Community Church, Corona, California, has officiated at nearly a thousand weddings in his 30 years of service as a Christian minister. During this time, he has consistently relied on, and educated his congregants about, the legal meaning of marriage as being between one man and one woman. Pastor Riddle's church has approximately 1000 people in attendance every week. Pastor Riddle and members of his church have a First Amendment right to be affiliated with the institution of marriage as presently defined by state law and should not be forced to accept a definition that is inconsistent with the legal contracts of marriage that were officiated by Pastor Riddle.

**EVANGELICAL FREE CHURCH:** This church organization, from Reedley, California, believes that the institution of marriage precedes any governing body in existence today, and precedes cultures deemed as ancient, such as the Roman or Greek civilization. The institution of marriage has always been a "spiritual" institution, not a government-sanctioned program or agency extension. Marriage has always been defined as between a man and a woman. Any government which claims authority to supercede the realm of spiritual institutions is a government that proposes to be in the business of establishing a religion or of forcing established religions to change in order to meet governmentally mandated goals, values and regulations, which are subject to change. The U.S. Constitution prohibits the establishment of religion, and promotes the free exercise thereof, both of which provisions would be impugned by any action by the courts that would establish homosexual marriage.

**REV. SCOTT PEARSON, FIRST BAPTIST CHURCH:** Reverend Pearson pastors approximately 300 congregants at First Baptist Church in Taft, California, and promotes the stability of the natural family within his own church, and to the public as a whole.

**PROTOCOL, LTD.:** *Amicus Curiae* is a business development company (Yorba Linda, California) serving many different industries. Its interest in this case is to protect the rights of society to oversee and regulate the social costs of allowing same-sex marriages, including the increased costs to employers, the incidence of marital instability, and the damage that will be done to the natural family.

**CALIFORNIA EAGLE FORUM:** Eagle Forum is a non-partisan, non-sectarian organization of men and women who believe in God, family, and country. Eagle Forum is dedicated to preserving the political, economic, moral, and social principles upon which our nation was founded. Marriage is considered to be one of the fundamental institutions upon which this nation was built. Eagle

Forum was started in 1970 by attorney Phyllis Schlafly, who has been leading the pro-family charge ever since. She is still going strong as a syndicated columnist, radio talk show host, author, and popular speaker.

**TRADITIONAL VALUES COALITION:** Traditional Values Coalition is an inter-denominational public policy organization comprising over 43,000 member churches. It represents the interests of millions of Americans who support the present definition and legal obligations of traditional marriage and the natural family. The principles of TVC have testified, as invited panelists, before the California State Legislature on same-sex marriage, domestic partnerships and civil unions.

**CALIFORNIA PUBLIC POLICY FOUNDATION:** Since its founding in 1986, The California Public Policy Foundation, a non-profit, non-partisan, educational organization, has supported limited government, individual responsibility, and self-reliance. CPPF encourages excellence, hard work, and personal virtue. CPPF supports and defends the institution of marriage and the obligations of the natural family.

**BOB & ANDREA FRANKLIN; LOREN & CHERRI GARDNER:** These individuals have a direct interest in the enforcement of Proposition 22. Andrea Franklin and Cherri Gardner were official field representatives with the Proposition 22 campaign. As such, they were responsible for educating churches and individuals on Proposition 22 and ensuring its successful passage. These persons and their families, as citizens and voters, support the definition of “marriage” as long-established by existing California law.

**THE PRO-FAMILY LAW CENTER:** PFLC is dedicated to the preservation of the natural family and marriages. PFLC does so by educating the public about attacks on the institution of marriage, and by assisting in litigation of civil rights cases. PFLC is a division of ABIDING TRUTH MINISTRIES.

**PASTOR MARK S. DISBROW:** Pastor Disbrow pastors The Source church in Bishop, California. He and his congregants support the obligations of the natural family and marriage as presently defined by law. Members of The Source believes marriage is an institution created by God, consisting of one man and one woman, for the comfort and benefit of humanity and the preservation and growth of the United States of America.

**BIBLICAL FAMILY ADVOCATES:** This organization is a grassroots nonprofit organization dedicated to protecting families and defending the natural family. BFA believes that society is dependent on the natural family and that any erosion of the family is dangerous to the stability of society.

**ALLYSON SMITH:** Ms. Smith is a writer and journalist who has extensively covered homosexuality and cultural issues for many years. She has written for many publications, including,

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Rule 28.1 *Amici Curiae* Letter

CASE NO. S122923

*Lockyer v. City & County of San Francisco*

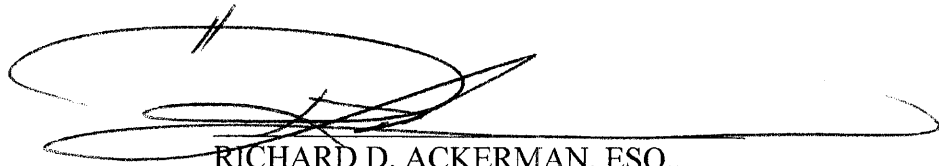
but not limited to, San Diego News Notes, Los Angeles Lay Catholic Mission, San Francisco Faith, WorldNetDaily.com, Agape Press, Culture and Family Report, and the Illinois Family Institute.

It is respectfully requested that the Court immediately grant the relief requested by BILL LOCKYER, Attorney General of the State of California, at Pages 32-33 of the Original Petition for Writ of Mandate, Prohibition, Certiori and/or Other Appropriate Relief; Request for Immediate Cease and Desist Order and/or Stay of Proceedings, as filed herein on or about February 27, 2004.

Respectfully Submitted:

DATED : March 4, 2004

LIVELY & ACKERMAN  
UNITED STATES JUSTICE FOUNDATION

A large, stylized handwritten signature in black ink, appearing to be 'Richard D. Ackerman', is written over the printed name and extends across the width of the text block.

RICHARD D. ACKERMAN, ESQ.,  
SCOTT DOUGLAS LIVELY, ESQ.,  
GARY G. KREEP, ESQ.,  
*Attorneys for Amici Curiae,*  
SENATOR DENNIS HOLLINGSWORTH,  
ASSEMBLYMAN TIM LESLIE,  
ASSEMBLYMAN RAY S. HAYNES,  
CALIFORNIA REPUBLICAN ASSEMBLY,  
CALIFORNIA REPUBLICAN ASSEMBLY (MURRIETA/TEMECULA),  
PASTORS INFORMATION RESOURCE COUNCIL,  
CALIFORNIA FAMILY COUNCIL,  
PASTOR DEWIGHT D. RIDDLE,  
EVANGELICAL FREE CHURCH,  
PASTOR SCOTT PEARSON,  
PROTOCOL, LTD.,  
CALIFORNIA EAGLE FORUM,  
TRADITIONAL VALUES COALITION,  
CALIFORNIA PUBLIC POLICY FOUNDATION,  
BOB & ANDREA FRANKLIN,  
LOREN & CHERRI GARDNER  
THE PRO-FAMILY LAW CENTER,  
PASTOR MARK S. DISBROW,  
BIBLICAL FAMILY ADVOCATES,  
ALLYSON SMITH.

**PROOF OF SERVICE  
STATE OF CALIFORNIA, COUNTY OF RIVERSIDE**

I am employed in the County of Riverside, State of California. I am over the age of eighteen years and not a party to the within entitled action. My business address is 41690 Enterprise Circle North, Suite 200M, Temecula, CA 92590.

On **March 4, 2004**, I served the foregoing documents(s) described as **AMICUS CURIAE LETTER PER CRC 28.1(g), CALIFORNIA SUPREME COURT CASE NO. S122923** on the below interested parties in this action by:

|  |   |
|--|---|
| <p>Bill Lockyer, Esq.<br/>1300 I Street<br/>P.O. Box 944255<br/>Sacramento, CA 94244-2550</p>                                | <p>Waukeen Q. McCoy, Esq.<br/>703 Market St., SUITE 1407<br/>San Francisco, CA 94103</p>                        |
| <p>Benjamin W. Bull, Esq.<br/>Alliance Defense Fund<br/>15333 North Pima Rd, Ste. 165<br/>Scottsdale, AZ 85260</p>           | <p>Robert H. Tyler, Esq.<br/>Alliance Defense Fund<br/>43460 Ridge Park Dr., Ste 220<br/>Temecula, CA 92590</p> |
| <p>Vincent P. McCarthy, Esq.<br/>Center for Marriage Law<br/>8 South Main Street<br/>New Milford, CT 06776</p>               | <p>Terry L. Thompson, Esq.<br/>P.O. Box 1346<br/>Alamo, CA 94507</p>  |
| <p>Shannon Minter, Esq.<br/>870 Market St., Ste 570<br/>San Francisco, CA 94014</p>  | <p>Jon W. Davidson, Esq.<br/>3325 Wilshire Blvd., Ste 1300<br/>Los Angeles, CA 90010</p>                        |
| <p>Tamara Lange, Esq.<br/>1663 Mission St., Ste 460<br/>San Francisco, CA 94103</p>  | <p>Victor M. Marquez, Esq.<br/>250 Montgomery, Ste 110<br/>San Francisco, CA 94104</p>                          |
| <p>Therese M. Stewart, Esq.<br/>City Hall, Room 234<br/>1 Dr. Carlton B. Goodlett Place<br/>San Francisco, CA 94102-4682</p> | <p>Bobbie J. Wilson, Esq.<br/>Three Embarcadero Center<br/>Seventh Floor<br/>San Francisco, CA 94111-4024</p>   |
| <p>Triche &amp; Winston<br/>1954 Shelby Circle<br/>El Dorado Hills, CA 95762</p>   |   |

1 **XXX (BY MAIL)**

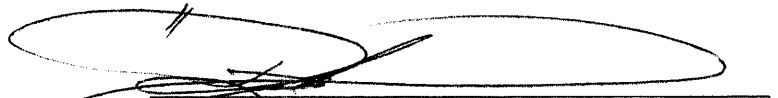
2 I deposited such envelope in the mail at the City of Temecula,  
3 California. The envelope was mailed with postage thereon fully  
4 prepaid.

5 I am "readily familiar" with the firm's practice of  
6 collection and processing correspondence for mailing.  
7 Under that practice it would be deposited with U.S.  
8 postal service on that same day with postage thereon full  
9 prepaid at City of Corona, California in the ordinary  
10 course of business. I am aware that on motion of the  
11 party served, service is presumed invalid if postal  
12 cancellation date or postage meter date is more than one  
13 day after date of deposit for mailing in affidavit.

14 Executed on **March 4, 2004**, at City of Temecula, California.

15 **X (STATE)**

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

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RICHARD D. ACKERMAN