

SUPREME COURT OF THE STATE OF CALIFORNIA

BARBARA LEWIS, CHARLES
MCILHENNY, AND EDWARD MEI,

Petitioners,

vs.

NANCY ALFARO, COUNTY
CLERK OF THE CITY AND
COUNTY OF SAN FRANCISCO IN
HER OFFICIAL CAPACITY,

Respondent.

Case No. S122865

**RESPONDENT'S ANSWER TO PETITION
FOR PEREMPTORY WRIT OF
MANDATE IN THE FIRST INSTANCE**

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ANSWER

Respondent Nancy Alfaro (“Respondent”) answers the Verified Petition for Immediate State and Peremptory Writ of Mandate In the First Instance (“Petition”) filed by Petitioners Barbara Lewis, Charles McIlhenny, and Edward Mei (“Petitioners”) in the above-captioned matter as follows:

1. Answering Paragraph 1 of the Petition, Respondent lacks sufficient knowledge or belief to form a response and on that basis denies each and every allegation contained in Paragraph 1.

2. Answering Paragraph 2 of the Petition, Respondent lacks sufficient knowledge or belief to form a response and on that basis denies each and every allegation contained in Paragraph 2.

3. Answering Paragraph 3 of the Petition, Respondent lacks sufficient knowledge or belief to form a response and on that basis denies each and every allegation contained in Paragraph 3.

4. Answering Paragraph 4 of the Petition, Respondent asserts that the allegations contained therein constitute legal argument or state legal conclusion to which no response is now required, and on that basis denies each and every allegation contained in Paragraph 4.

5. Answering Paragraph 5 of the Petition, Respondent admits that Daryl M. Burton is the San Francisco County Clerk, and that Nancy Alfaro is the Director of the County Clerk’s Office, to whom all of the responsibilities and privileges of County Clerk have been delegated. Answering Paragraph 5 further, Respondent further admits that Petitioners seek this writ and stay against Respondent in her official capacity. Unless

expressly admitted, Respondent denies each and every allegation contained in Paragraph 5.

6. Answering Paragraph 6 of the Petition, Respondent asserts that the allegations contained therein constitute legal argument or state legal conclusion to which no response is now required, and on that basis denies each and every allegation contained in Paragraph 6.

7. Answering Paragraph 7 of the Petition, Respondent asserts that the allegations contained therein constitute legal argument or state legal conclusion to which no response is now required, and on that basis denies each and every allegation contained in Paragraph 7.

8. Answering Paragraph 8 of the Petition, Respondent asserts that the allegations contained therein constitute legal argument or state legal conclusion to which no response is now required, and on that basis denies each and every allegation contained in Paragraph 8.

9. Answering Paragraph 9 of the Petition, Respondent admits that from February 12, 2004, until approximately 2:30 p.m. on March 11, 2004, Respondent issued marriage licenses to same-sex couples. Respondent further alleges that on March 11, 2004, at approximately 2:30 p.m., the California Supreme Court issued an immediate stay preventing the Respondent from issuing same-sex marriage licenses pending the resolution of this petition, and the original writ petition in *Lockyer v. City and County of San Francisco, et al.*, Supreme Court Case Number S122923. Unless expressly admitted, Respondent denies each and every allegation contained in Paragraph 9.

10. Answering Paragraph 10 of the Petition, Respondent asserts that the allegations contained therein constitute legal argument and state legal

conclusions to which no response is now required, and on that basis, denies each and every allegation contained in Paragraph 10.

11. Answering Paragraph 11 of the Petition, Respondent admits that the state-prescribed form for marriage licenses requires that the form be completed by an unmarried man and an unmarried woman. Unless expressly admitted, Respondent denies each and every allegation contained in Paragraph 11.

12. Answering Paragraph 12 of the Petition, Respondent admits that at the direction of Mayor Newsom, by February 12, 2004, Respondent had produced gender-neutral applications for public marriage licenses, and gender neutral marriage licenses and certificates, and that Respondent issued these gender-neutral marriage licenses exclusively to same-sex couples. Unless expressly admitted, Respondent denies each and every allegation contained in Paragraph 12.

13. Answering Paragraph 13 of the Petition, Respondent admit that between February 12, 2004 and March 11, 2004, the County Clerk's Office issued approximately 4,000 gender-neutral marriage licenses to same-sex couples. Unless expressly admitted, Respondent denies each and every allegation contained in Paragraph 13.

14. Answering Paragraph 14 of the Petition, Respondent asserts that the allegations contained therein constitute legal argument and state legal conclusions to which no response is now required, and on that basis, denies each and every allegation contained in Paragraph 14.

15. Answering Paragraph 15 of the Petition, Respondent asserts that the allegations contained therein constitute legal argument or states legal conclusions to which no response is now required, and on that basis denies each and every remaining allegation contained in Paragraph 15.

16. Respondent denies each and every allegation contained in Paragraph 16.

17. Answering Paragraph 17 of the Petition, Respondent asserts that the allegations contained therein constitute legal argument or state legal conclusions to which no response is now required, and on that basis, denies each and every allegation contained in Paragraph 17.

18. Answering Paragraph 18 of the Petition, asserts that the allegations contained therein constitute legal argument or state legal conclusions to which no response is now required, and on that basis, denies each and every allegation contained in Paragraph 18.

19. Answering Paragraph 19 of the Petition, Respondent asserts that the allegations contained therein constitute legal argument or state legal conclusions to which no response is now required, and on that basis, denies each and every allegation contained in Paragraph 19.

20. Answering Paragraph 20 of the Petition, Respondent denies that Respondent's issuance of marriage licenses to same sex couples has resulted in chaos of any kind or has undermined the rule of law. Answering Paragraph 20 further, Respondent asserts that the remaining allegations contained therein constitute legal argument or state legal conclusions to which no response is now required, and on that basis, denies each and every allegation contained in Paragraph 20.

21. Answering Paragraph 21 of the Petition, Respondent asserts that the allegations contained therein constitute legal argument or state legal conclusions to which no response is now required, and on that basis, denies each and every allegation contained in Paragraph 21.

22. Answering Paragraph 22 of the Petition, Respondent asserts that the allegations contained therein constitute legal argument or state legal

conclusions to which no response is now required, and on that basis, denies each and every allegation contained in Paragraph 22.

23. Answering Paragraph 23 of the Petition, Respondent alleges that the question of the constitutionality of the California Family Code provisions concerning marriage is inextricably intertwined with the determination whether the Respondent has the authority to issue same-sex marriage licenses. Answering Paragraph 24 further, Respondent asserts that the allegations contained therein constitute legal argument or state legal conclusions to which no response is now required, and on that basis, denies each and every allegation contained in Paragraph 23.

24. Answering Paragraph 24 of the Petition, Respondent asserts that the allegations contained therein constitute legal argument or state legal conclusions to which no response is now required, and on that basis, denies each and every allegation contained in Paragraph 24.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

As a separate and affirmative defense to the Petition, Respondent alleges that the Petition, and each and every allegation stated therein, whether considered singly or in any combination, fails to state facts sufficient to constitute a cause of action under law.

SECOND AFFIRMATIVE DEFENSE

As a separate and affirmative defense to the Petition, Respondent alleges that the Petition, and each and every allegation stated therein, whether considered singly or in any combination, fails to state a ground for relief because the Respondent acted under a good faith belief that the United States Constitution and the California Constitution – and

Respondent's oath to "support and defend" those constitutions – preclude enforcement of discriminatory marriage laws.

THIRD AFFIRMATIVE DEFENSE

As a separate and affirmative defense to the Petition, Respondent alleges that the Petition, and each and every allegation stated therein, whether considered singly or in any combination, fails to state a ground for relief to the extent Petitioners seek to compel the Respondent to act in violation of the California and United States constitutions.

FOURTH AFFIRMATIVE DEFENSE

As a separate and affirmative defense to the Petition, Respondent alleges that Petitioners, and each of them, lack standing to bring the Petition.

WHEREFORE, Respondent Nancy Alfaro denies that Petitioners are entitled to the relief prayed for in the Petition, and any other relief against them, and pray as follows:

1. The Verified Petition for Immediate State and Peremptory Writ of Mandate In the First Instance be dismissed with prejudice and that Petitioners take nothing thereby;
2. For costs of suit;
3. For attorney's fees; and

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4. For such other and further relief as this Court may deem proper.

Dated: March 18, 2004

Respectfully submitted,

DENNIS J. HERRERA
City Attorney
THERESE M. STEWART
Chief Deputy City Attorney
ELLEN FORMAN
WAYNE K. SNODGRASS
K. SCOTT DICKEY
KATHLEEN MORRIS
SHERRI SOKELAND KAISER

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CANADY FALK & RABKIN
A Professional Corporation

By: 
WAYNE SNODGRASS
Deputy City Attorney

Attorneys for Respondent
NANCY ALFARO

PROOF OF SERVICE

I, DIANA QUAN, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234, San Francisco, CA 94102.

On March 18, 2004, I served the attached:

**RESPONDENT'S ANSWER TO PETITION FOR PEREMPTORY WRIT
OF MANDATE IN THE FIRST INSTANCE**

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

ALLIANCE DEFENSE FUND
BENJAMIN W. BULL
JORDAN W. LORENCE
GARY S. MCCALED
GLEN LAVY
15333 North Pima Road, Suite 165
Scottsdale, AZ 85260
Telephone: (480) 444-0020
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ALLIANCE DEFENSE FUND
ROBERT H. TYLER
38760 Sky Canyon Drive, Suite B
Murrieta, CA 92563
Telephone: (909) 461-7860
Facsimile: (909) 461-9056

CENTER FOR MARRIAGE LAW
VINCENT P. MCCARTHY
8 South Main Street
New Milford, CT 06776
Telephone: (860) 210-1182
Facsimile: (860) 355-8008

LAW OFFICES OF TERRY L. THOMPSON
TERRY L. THOMPSON
199 East Linda Mesa, Suite 10
Danville, CA 94526
Telephone: (925) 855-1507
Facsimile: (925) 820-6034

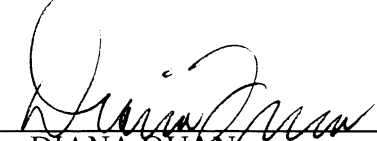
and served the named document in the manner indicated below:

- BY MAIL:** I caused true and correct copies of the above documents, by following ordinary business practices, to be placed and sealed in envelope(s) addressed to the addressee(s), at the City Attorney's Office of San Francisco, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234, City and County of San Francisco, California, 94102, for collection and mailing with the United States Postal Service, and in the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal Service that same day.
- BY PERSONAL SERVICE:** I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered by hand on the office(s) of the addressee(s).
- BY EXPRESS SERVICES OVERNITE:** I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered to EXPRESS SERVICES OVERNITE for overnight courier service to the office(s) of the addressee(s).

- BY FACSIMILE:** I caused a copy(ies) of such document(s) to be transmitted via facsimile machine. The fax number of the machine from which the document was transmitted was (415) 554-4747. The fax number(s) of the machine(s) to which the document(s) were transmitted are listed above. The fax transmission was reported as complete and without error. I caused the transmitting facsimile machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

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

Executed March 18, 2004, at San Francisco, California.



DIANA QUAN