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February 26, 2004

BY HAND DELIVERY

The Honorable Chief Justice Ronald George  
Honorable Associate Justices Baxter, Brown, Chin, Kennard, Moreno and Werdegar  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

Re: Lewis, et al. v. Alfaro, Petition for Immediate Stay and Peremptory Writ, Case No.

Dear Honorable Chief Justice George and Associate Justices Baxter, Brown, Chin, Kennard, Moreno and Werdegar:

The City Attorney's Office represents the Respondent in the above proceeding, San Francisco County Clerk Nancy Alfaro. We write on her behalf to inform the Court that our office will be filing a brief in response to the above-referenced petition and request for immediate stay no later than Monday, March 1, 2004. We respectfully request that the Court refrain from issuing any stay or other relief until we have filed and the Court has had the opportunity to review our responsive brief. If the Court is, for any reason, inclined to consider granting any relief before Monday, March 1, we request the opportunity to be heard before any decision is made.

There is a serious issue whether Petitioners in this case have alleged sufficient facts to establish standing to seek a writ. Further, Respondents have strong legal and factual arguments both as to why the City officials who have issued marriage licenses had the authority to do so and were not barred by Article III, Section 3.5 of the California Constitution and as to why the restrictions in the marriage statutes violate the Equal Protection and Due Process Clauses of the constitution. We will set forth these arguments in our brief in this case.

In addition, there are good jurisprudential reasons why this Court should not exercise its original jurisdiction but should instead allow the cases that are already pending in the Superior Court to be addressed by that court, which is best equipped to address the factual issues the cases raise and, in the first instance, the legal issues. Not only is there no irreparable harm or urgent circumstances meriting preliminary relief, but the issues raised in this Petition have already been addressed in part, and are scheduled to be considered in full, by the Superior Court in short order.

We assume the Court is aware of the fact that there are two cases pending in the San Francisco Superior Court that challenge the same actions of the County Clerk on the same grounds as Petitioners challenge them here: *Thomasson, et al. v. Newsom, et al.*, Superior Court

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Case No. CGC 04-428794 and *Proposition 22 Defense and Education Fund v. City and County of San Francisco*, et al., Superior Court Case No. CPF 04-503943. The Superior Court issued the alternative writ in the *Proposition 22* case and issued an order to show cause re preliminary injunction in the *Thomasson* case, and has set a hearing on both OSC's for March 29. It has also now consolidated those cases, which will therefore be heard together. While the Petitioners herein are not parties to either of those cases, the attorneys and organizations representing Petitioners in this case are also representing the Petitioners in the *Proposition 22* case in Superior Court.

In those cases, before they were consolidated, the Superior Court in two separate hearings before different judges found a complete lack of evidence of irreparable harm or injury, and on that ground denied a stay or TRO. At the same time, the Court made plain that it will move forward expeditiously to resolve these cases, by scheduling a hearing on March 29 on the two OSC's. If the Petitioners feel the Superior Court's denial of immediate relief is incorrect, they of course have recourse in the Court of Appeal by way of an expedited appeal. The Court of Appeal, indeed, has demonstrated its ability to act swiftly in this matter, having promptly (within 24 hours) denied a procedurally defective writ application because Petitioners Thomasson, et al. failed to provide the Court any record of the proceedings. At the time the Court of Appeal did so, the trial court had not yet issued any ruling on the Thomasson Petitioners' request for relief but had merely postponed the hearing due to Petitioners' failure to comply with the rules governing ex parte proceedings. Now that the Superior Court has ruled on requests for preliminary relief in both cases, either set of petitioners could challenge those rulings in the Court of Appeal.

With respect to the provisional relief sought by Petitioners in this case, provisional relief is available only when absolutely necessary to prevent irreparable harm to one of the parties. See, e.g., *Cohen v. Board of Supervisors* (1986) 178 Cal.App.3d 447, 453 ; *Jones v. Superior Court* (2003) 26 Cal.App.4th 92, 101 [finding that issuance of immediate stay on writ was improper because petitioner did not face irreparable harm, cited by petitioners]. Petitioners make no effort to establish irreparable harm to themselves or anyone else, arguing only that the County Clerk's actions "undermine" the rule of law.

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For all of these reasons, we respectfully request that this Court either summarily deny the petition or refrain from hearing any aspect of it, including the request for immediate stay, until Respondents file their brief on Monday.

Thank you for your consideration.

Very truly yours,

DENNIS J. HERRERA  
City Attorney

THERESE M. STEWART  
Chief Deputy City Attorney

A handwritten signature in black ink that reads "Therese M. Stewart". The signature is written in a cursive style with a long horizontal flourish at the end.

cc (by facsimile and mail):  
Benjamin Bull  
Robert H. Tyler  
Vincent P. McCarthy  
Terry L. Thompson

**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 325, San Francisco, CA 94102.

On February 26, 2004, I served the attached:

**LETTER BRIEF ADDRESSED TO THE HONORABLE CHIEF JUSTICE RONALD  
GEORGE, HONORABLE ASSOCIATE JUSTICES BAXTER, BROWN, CHIN,  
KENNARD, MORENO AND WERDEGAR**

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows and served the named document in the manner indicated below:

ALLIANCE DEFENSE FUND  
BENJAMIN W. BULL  
15333 North Pima Road, Suite 165  
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LAW OFFICES OF TERRY L. THOMPSON  
TERRY L. THOMPSON  
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- 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, Fox Plaza Building, 1390 Market Street, 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 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.

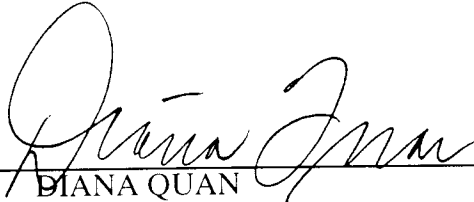
THE HONORABLE RONALD EVANS  
QUIDACHY  
Judge of the Superior Court  
San Francisco Superior Court  
400 McAllister Street, Courtroom 302  
San Francisco, CA 94102

THE HONORABLE JAMES L. WARREN  
Judge of the Superior Court  
San Francisco Superior Court  
400 McAllister Street, Courtroom 301  
San Francisco, CA 94102

**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).

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

Executed February 26, 2004, at San Francisco, California.

  
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DIANA QUAN