

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STEPHEN V. BOMSE (State Bar No. 40686)
RICHARD DENATALE (State Bar No. 121416)
HILARY E. WARE (State Bar No. 194653)
HELLER EHRMAN WHITE & McAULIFFE LLP
333 Bush Street, San Francisco, California 94104
Telephone: (415) 772-6000
Facsimile: (415) 772-6268

SHANNON MINTER (State Bar No. 168907)
COURTNEY JOSLIN (State Bar No. 202103)
NATIONAL CENTER FOR LESBIAN RIGHTS
870 Market Street, Suite 570
San Francisco, CA 94014
Telephone: (415) 392-6257 / Facsimile: (415) 392-8442

[Additional Counsel on Signature Page]

Attorneys for Intervenors/Cross-Complainants DEL MARTIN and PHYLLIS LYON, SARAH CONNER-SMITH and GILLIAN CONNER-SMITH, MARGOT MCSHANE and ALEXANDRA D'AMARIO, DAVE SCOTT CHANDLER and JEFFERY WAYNE CHANDLER, THERESA MICHELLE PETRY and CRISTAL RIVERA-MITCHEL, and EQUALITY CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

RANDY THOMASSON, *et al.*,

Plaintiffs,

v.

GAVIN NEWSOM, *et al.*,

Defendants.

DEL MARTIN and PHYLLIS LYON, *et al.*,

Intervenor-Defendants.

CASE NO. CGC 04-428794

(Consolidated for all purposes with Case No. CPF 04-503943)

Complaint Filed: February 13, 2004

INTERVENORS' CROSS-COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

DIETHEL, LEVITT & WEISS
A PROFESSIONAL CORPORATION
ONE EMBARCADERO CENTER - 30TH FLOOR - SAN FRANCISCO, CA 94111-3719
Telephone: 415/788-0900 - Facsimile: 415/788-2019

1 PROPOSITION 22 LEGAL DEFENSE AND
2 EDUCATION FUND,

Petitioner,

3 v.

4 CITY AND COUNTY OF SAN FRANCISCO,
5 *et al.*

Respondents.

6
7
8 DEL MARTIN and PHYLLIS LYON, *et al.*,

9 Intervenor-Respondents.

10
11 CITY AND COUNTY OF SAN FRANCISCO,

12 Cross-Complainant,

13 v.

14 STATE OF CALIFORNIA, *et al.*,

15 Cross-Defendants.

16 DEL MARTIN and PHYLLIS LYON, DEL
17 MARTIN and PHYLLIS LYON, SARAH
18 CONNER-SMITH and GILLIAN CONNER-
19 SMITH, MARGOT MCSHANE and
20 ALEXANDRA D'AMARIO, DAVE SCOTT
21 CHANDLER and JEFFERY WAYNE
22 CHANDLER, THERESA MICHELLE PETRY
23 and CRISTAL RIVERA-MITCHEL, and
24 EQUALITY CALIFORNIA,

25 Cross-Complainants,

26 v.

27 STATE OF CALIFORNIA, and ROES 1 through
28 100,

Cross-Defendants.

Pursuant to California Code of Civil Procedure sections 387, 525, 526, and 1060,
Intervenors/Cross-Complainants Del Martin and Phyllis Lyon, Sarah Conner-Smith and Gillian

STEEFEL, LEVITT & WEISS

A PROFESSIONAL CORPORATION
ONE EMBARCADERO CENTER · 30TH FLOOR · SAN FRANCISCO, CA 94111-3719
Telephone: 415/788-0900 · Facsimile: 415/788-2019

1 Conner-Smith, Margot McShane and Alexandra D'Amaro, Dave Scott Chandler and Jeffery
 2 Wayne Chandler, Theresa Michelle Petry and Cristal Rivera-Mitchel, and Equality California
 3 (collectively, "Cross-Complainants") hereby cross-complain and allege as follows:
 4

5 **GENERAL ALLEGATIONS**

6 1. On February 12, 2004, based on direction from San Francisco Mayor
 7 Gavin Newsom ("Mayor Newsom"), San Francisco County Clerk Nancy Alfaro began issuing
 8 marriage licenses to same-sex couples. Mayor Newsom concluded that denying licenses to same-
 9 sex couples violated the California Constitution by, among other things, impermissibly
 10 discriminating on the basis of sex and sexual orientation and that, having taken an oath to uphold
 11 the California Constitution, he could not allow the exclusion of same-sex couples to continue. On
 12 information and belief, since February 12, 2004, more than 3,500 same-sex couples have obtained
 13 marriage licenses and married in San Francisco, including four of the Cross-Complainant couples,
 14 as well as many members of Cross-Complainant Equality California.

15 2. Refusal to allow same-sex couples to marry results in the denial to those
 16 couples of hundreds of state law rights, benefits, and responsibilities and more than a thousand
 17 federal rights, benefits, and responsibilities that are automatically accorded to married spouses.
 18 These rights and responsibilities include such things as: decision-making authority for funeral
 19 arrangements and disposition of remains; the right to bereavement leave in the event of a
 20 partner's death; parental rights and responsibilities, including the presumption that both spouses
 21 are the legal parents of a child born during a marriage; access to family courts in the event of
 22 dissolution; community property rights and obligations; evidentiary privileges; protection from
 23 threats and crimes against the families of public officials; death benefits for surviving partners of
 24 firefighters and police officers; responsibility to disclose certain conflicts-of-interest; joint
 25 assessment of income for determining eligibility for state government assistance programs; the
 26 right to social security survivor benefits; and the right to take sick leave to care for a sick partner.
 27 Although some of these rights will be provided to registered domestic partners in California
 28

STEEFEL, LEVITT & WEISS

A PROFESSIONAL CORPORATION

ONE EMBARCADERO CENTER · 30TH FLOOR · SAN FRANCISCO, CA 94111-3719

Telephone: 415/788-0900 · Facsimile: 415/788-2009

1 pursuant to A.B. 205 (2003), many provisions of this law do not become operative until January
 2 1, 2005, approximately ten months from now. Moreover, even when the remaining provisions of
 3 A.B. 205 become operative, registered domestic partners still will be denied many of the rights
 4 and responsibilities of married couples and still will be treated as second-class citizens who are
 5 unworthy to exercise the right to marry.

6 3. In addition to the tangible losses resulting from the denial to same-sex
 7 couples of the legal rights and responsibilities of marriage, denying two people in a loving,
 8 committed relationship the right to marry each other, solely because they are a same-sex couple,
 9 deprives that couple of the enormous personal and social advantages conferred by marriage.
 10 Denying same-sex couples the right to marry deprives them of the opportunity to enter into the
 11 one government-sanctioned relationship that is most widely recognized as a symbol of love and
 12 commitment and that is automatically afforded great societal respect. Being excluded from this
 13 cherished institution brands same-sex couples and their families with a stigma of inferiority.
 14 Moreover, because this stigma is imposed by the government, it sends a powerful message that
 15 discrimination against lesbian and gay people and their families is acceptable, thereby
 16 encouraging private discrimination and bias as well. The negative impact of this stigmatization
 17 on same-sex couples and their children is profound.

18 4. Del Martin and Phyllis Lyon, Sarah Conner-Smith and Gillian Conner-
 19 Smith, Margot McShane and Alexandra D'Amario, Dave Scott Chandler and Jeffery Wayne
 20 Chandler are same-sex couples who married their respective spouses on or after February 12,
 21 2004 in San Francisco. At the respective time that each of these Cross-Complainants obtained his
 22 or her respective marriage license and entered into his or her respective marriage, each such
 23 Cross-Complainant was an unmarried male or an unmarried female over the age of eighteen years
 24 who was not otherwise disqualified from eligibility for marriage and who was capable of
 25 consenting to and consummating marriage. Theresa Michelle Petry and Cristal Rivera-Mitchel
 26 are a same-sex couple who desire and intend to marry one another in San Francisco. They are
 27 unmarried females over the age of eighteen years who are not otherwise disqualified from
 28

STEEFEL, LEVITT & WEISS
 A PROFESSIONAL CORPORATION
 ONE EMBARCADERO CENTER - 30TH FLOOR - SAN FRANCISCO, CA 94111-3719
 Telephone: 415/788-0900 - Facsimile: 415/788-2019

1 eligibility for marriage and who are capable of consenting to and consummating marriage.
 2 Equality California is the leading state-wide advocacy group protecting the needs and interests of
 3 same-sex couples and their children in California. It is also California's largest lesbian, gay,
 4 bisexual, and transgender civil rights organization, with thousands of members throughout the
 5 state. Many Equality California members married their same-sex partners in San Francisco on or
 6 after February 12, 2004. In addition, numerous other Equality California members desire and
 7 intend to marry their same-sex partners in San Francisco, but have not done so yet or have not
 8 been able to do so yet.

9 5. Phyllis Lyon and Del Martin, who are seventy-nine and eighty-three years
 10 old, respectively, are a same-sex couple who have been together for more than fifty-one years.
 11 On February 12, 2004, Phyllis and Del were married in a ceremony at San Francisco City Hall.
 12 Being married has given them important rights and protections that are crucial for senior couples
 13 to protect themselves and to care for each other, such as: the right not to lose their house should
 14 one of them have to go to a nursing home; the ability to live together and be treated respectfully if
 15 they have to go to a nursing home or an assisted living facility; the right to visit each other in the
 16 hospital and to make medical decisions for each other; and the right to make decisions concerning
 17 the disposition of the other's remains. Being married also gives them greater security that their
 18 relationship will be respected if they travel or move out of state.

19 6. Margot McShane and Alexandra D'Amario, who are thirty-four and thirty-
 20 eight years old, are a same-sex couple who have been together in a committed relationship for
 21 three and one-half years. Alexandra is pregnant with twins. On February 12, 2004, Margot and
 22 Alexandra were married in a ceremony at San Francisco City Hall. Their marriage has been the
 23 most proud and affirming event of their relationship; they are overjoyed not just with the
 24 happiness of being married, but with the recognition and validation their marriage has brought
 25 them. Since they married, they have observed that their friends, coworkers, and family members
 26 have treated their relationship with increased respect. In addition, being married has given
 27 Margot and Alexandra an enormous sense of relief because they know that, if one of them
 28

STEEFEL, LEVIT & WEISS
 A PROFESSIONAL CORPORATION
 ONE EMBARCADERO CENTER · 30TH FLOOR · SAN FRANCISCO, CA 94111-3719
 Telephone: 415/788-0900 · Facsimile: 415/788-2019

1 becomes disabled, they will have a protected legal right to care for and make decisions for one
 2 another and that, when one of them dies, the survivor and their children will be protected. Margot
 3 and Alexandra are also relieved because they know that the nature of their relationship and the
 4 depth of their commitment to one another is now much more easily understood by other people in
 5 every aspect of their daily lives. Rather than having to explain what it means to be "domestic
 6 partners," they can simply tell other people that they are married – a status that is immediately
 7 known and understood in our society. And most importantly, they are relieved that their children
 8 will have the legal, financial, and social benefits of having married parents. They do not want
 9 their children to grow up with the burden of knowing that their parents are considered unworthy
 10 to marry.

11 7. Sarah Conner-Smith and Gillian Conner-Smith, who are thirty-four and
 12 thirty-five years old respectively, are a same-sex couple who have been together almost four
 13 years. Sarah is the Manager of Stewardship and Information at California Pacific Medical Center
 14 Foundation. Gillian is the Finance and Administration Associate at the Women's Funding
 15 Network, a non-profit organization. On February 12, 2004, they were married in a ceremony at
 16 San Francisco City Hall. Being married has brought them, and their family and community,
 17 extraordinary joy. It has also brought them greatly enhanced legal protections and security. It is
 18 especially important to Sarah and Gillian that being married greatly increases their ability to care
 19 for one another in the event of illness, disability, or death. Because of their previous experience
 20 supporting one another through a severe disability, they understand the importance of these legal
 21 protections and the extreme vulnerability of couples who do not have them because they are not
 22 married.

23 8. Dave Scott Chandler and Jeffery Wayne Chandler, who are forty and forty-
 24 three years old, respectively, are a same-sex couple who have been in a committed relationship
 25 for eleven years. They have one son, Jacob Chandler, who was born on July 5, 2003. On
 26 February 14, 2004, Dave and Jeffery were issued a marriage license in San Francisco and, on
 27 February 15, 2004, they were married in a ceremony at their church. Dave and Jeffery married
 28

STEEL, LEVITT & WEISS
 A PROFESSIONAL CORPORATION
 ONE EMBARCADERO CENTER · 30TH FLOOR · SAN FRANCISCO, CA 94111-3719
 Telephone: 415/788-0900 · Facsimile: 415/788-2119

1 because they understand the social and legal significance of marriage; they know that it is only
 2 through marriage that their relationship will have the full security and protection they desire. At
 3 the time of their son Jacob's birth, Jacob's twin brother did not survive his premature delivery.
 4 Because Dave and Jefferey were not married, they faced serious difficulties at the hospital with
 5 regard to making medical decisions about the twins (after their birth) and with regard to making
 6 funeral arrangements for the child who did not survive. Their pain at losing a son was
 7 compounded by the lack of validity accorded to their relationship to one another and to their sons.
 8 As Jacob grows older, Dave and Jeffery want to be sure that Jacob has the legal, financial,
 9 emotional, and social security of having married parents; they do not want him to be stigmatized
 10 by having parents who are branded as legally inferior to other people, solely because they are gay
 11 men who are not allowed to marry one another.

12 9. Theresa Michelle Petry and Cristal Rivera-Mitchel, who are both forty-
 13 three years old, are a same-sex couple who have been together for twelve years. They have a son,
 14 Nico Petry-Mitchel, who was born May 25, 2000. Cristal grew up in Los Angeles. Theresa was
 15 raised in Texas. Currently, they live in San Francisco. Before their son Nico was born, Theresa
 16 and Cristal went to an attorney and spent a significant sum of money to have trust documents and
 17 other forms drawn up to reflect their intentions and to protect their child. If they had been
 18 married, many of these documents would have been unnecessary. In addition, there are many
 19 protections they are unable to secure through private agreements, such as the right to community
 20 property, survivor benefits, bereavement leave, pension benefits, and many others. When Theresa
 21 began employment at a new job, she was not advised of a "special" form she needed to fill out to
 22 ensure that Cristal would be covered on Theresa's health insurance. A short time later, Cristal had
 23 a medical emergency and they were forced to go to the county hospital because they were told
 24 that Cristal had no medical coverage. Although the situation was eventually resolved, it was
 25 extremely stressful and exposed Cristal to needless medical risk; they would not have faced this
 26 additional stress and risk if they had been married. Cristal and Theresa would like to marry each
 27 other and intend to do so, but have not been able to do so yet because they have not had time to
 28

STEEBEL, LEVITT & WEISS
 A PROFESSIONAL CORPORATION
 ONE EMBARCADERO CENTER - 30TH FLOOR - SAN FRANCISCO, CA 94111-3719
 Telephone: 415/788-0900 - Facsimile: 415/788-2019

1 plan the kind of wedding they want, which includes their closest family members and dearest
2 friends, many of whom live out of state. Cristal and Theresa know that marriage conveys
3 significant responsibilities and security. They would like to marry so that they can better protect
4 their relationship and their family.

5 10. Equality California was the official sponsor of both A.B. 25 (2001) and
6 A.B. 205 (2003) in the California Legislature. Currently, Equality California is the sponsor of the
7 Marriage License Non-Discrimination Act (A.B. 1967), authored by Assemblymember Mark
8 Leno. By virtue of Equality California's role as legislative sponsor of A.B. 25 (2001), A.B. 205
9 (2003), and A.B. 1967 (2004), Equality California and its members played an important role in
10 the passage of AB 25 and AB 205 and have assumed a continuing role in educating thousands of
11 same-sex couples throughout the State of California about the rights and responsibilities that
12 same-sex couples are denied by being excluded from marriage. Many Equality California
13 members married their same-sex partners in San Francisco on or after February 12, 2004. In
14 addition, many other Equality California members desire and intend to marry their same-sex
15 partners in San Francisco, but have not done so yet or have not been able to do so yet.

16 11. Cross-Complainants allege that Cross-Defendant the State of California is a
17 state organized and existing under the Constitution of the State of California.

18 12. Cross-Defendants named herein as Roes 1 through 100, inclusive, are the
19 entities and/or persons charged by law with the duty of enforcing the California Family Code
20 provisions challenged herein; Cross-Complainants will amend this cross-complaint to substitute
21 their true names as their identities become known.

22 **NATURE OF DISPUTE**

23 13. In 1977, the California Legislature amended Family Code section 300 to
24 provide that "Marriage is a personal relation arising out of a civil contract between a man and a
25 woman." Prior to that amendment, the Family Code did not specify that marriage must be
26 between a man and a woman. Family Code section 301 further provides that "an unmarried male
27 of the age of 18 years or older, and an unmarried female of the age of 18 years or older, and not
28

STEEFEL, LEVITT & WEISS
A PROFESSIONAL CORPORATION
ONE EMBARCADERO CENTER · 30TH FLOOR · SAN FRANCISCO, CA 94111-3719
Telephone: 415/788-0900 · Facsimile: 415/788-2019

1 otherwise disqualified, are capable of consenting to and consummating marriage." Family Code
 2 section 308.5, which was added to the Family Code by voter initiative and became effective on
 3 March 8, 2000, provides that "only marriage between a man and a woman is valid or recognized
 4 in California." These laws have been and are now in full force and effect in the State of
 5 California. Cross-Defendants contend that these laws operate and/or are enforced together to
 6 exclude an entire class of people – namely, adults in same-sex relationships – from marriage. If
 7 Cross-Defendants' interpretation of these laws is correct, lesbian and gay persons who wish to
 8 marry their partners would suffer enormous legal, financial, social, and psychological harms.
 9 They would be denied critically important legal rights, benefits, and responsibilities that help
 10 married couples stay together, care for one another, and protect one another and their children.
 11 They would be denied the legal protections that provide married couples with financial and legal
 12 shelter in times of old age, sickness, disability, and death. They would be denied the social
 13 recognition and respect that marriage bestows on a relationship. They would be denied the
 14 enormous psychological benefits of marriage, as well as the psychological benefits of being
 15 treated as an equal member of one's society and of having the freedom to choose to exercise what
 16 has long been recognized as one of our society's most cherished human rights.

17 14. On February 13, 2004, two actions, which have now been consolidated in
 18 this lawsuit, were filed in San Francisco Superior Court, asking the court to halt San Francisco's
 19 issuance of marriage licenses to same-sex couples and to declare that the licenses already granted
 20 to same-sex couples are invalid. Cross-Complainants were granted leave to participate in the two
 21 actions on February 17, 2004 and February 20, 2004, respectively. In addition, on February 19,
 22 2004, Respondents City and County of San Francisco *et al.* cross-complained against the State of
 23 California, requesting, among other things, a declaration that Family Code sections 300 and 301
 24 violate the California Constitution to the extent they purport to exclude or operate to exclude
 25 same-sex couples from the right to marry. Thus, this Cross-Complaint arises out of the same
 26 transaction, occurrence, or set of transactions or occurrences set forth in the complaints filed in
 27 the two consolidated actions, Case No. 428794 and Case No. 503943.
 28

STEEFEL, LEVITT & WEISS
 A PROFESSIONAL CORPORATION
 ONE EMBARCADERO CENTER · 30TH FLOOR · SAN FRANCISCO, CA 94111-3719
 Telephone: 415/788-0900 · Facsimile: 415/788-2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15. Cross-Defendants have taken the position that California law does not permit same-sex couples to obtain marriage licenses or to marry and that Cross-Defendants will not honor or respect the marriages of same-sex couples entered in California, and will not treat them equally to the marriages of different-sex couples entered in California, including by refusing to record the marriage certificates of Cross-Complainants (or, in the case of Equality California, its members who have married their same-sex partners) or of other same-sex couples who have married in San Francisco. Cross-Defendants also are attempting to interfere with the City and County of San Francisco's issuance of marriage licenses to same-sex couples. Cross-Defendants' refusal to treat the marriages of same-sex couples entered in California equally to the marriages of different-sex couples entered in California, and, if successful, Cross-Defendants' attempts to interfere with the City and County of San Francisco's issuance of marriage licenses to same-sex couples, will deprive Cross-Complainants (and, in the case of Equality California, its members) and other same-sex couples in California of the legal, financial, social, and psychological benefits of being married.

16. Cross-Complainants contend that Family Code section 300, to the extent that it excludes same-sex couples from the right to marry, Cross-Defendants' refusal to honor and respect the marriages of same-sex couples entered in California and to treat them equally to the marriages of different-sex couples, and Cross-Defendants' attempts to interfere with the City and County of San Francisco's issuance of marriage licenses to same-sex couples, all violate the California Constitution because such exclusion, refusal, and interference: (a) impermissibly discriminate on the basis of sex in violation of the Equal Protection and the Privileges and Immunities Clauses of the California Constitution (Article 1, sections 7(a) and 21); (b) impermissibly discriminate on the basis of sexual orientation in violation of the Equal Protection and the Privileges and Immunities Clauses of the California Constitution (Article 1, sections 7(a) and 21); (c) violate liberty interests protected by the Due Process Clause of the California Constitution (Article 1, section 7(a)); and (d) violate privacy interests protected by the Privacy Clause of the California Constitution (Article 1, section 1) and by the Due Process Clause of the

STEEREL, LEVITT & WEISS
 A PROFESSIONAL CORPORATION
 ONE EMBARCADERO CENTER · 30TH FLOOR · SAN FRANCISCO, CA 94111-3719
 Telephone: 415/788-0900 · Facsimile: 415/788-2019

STEEFEL, LEVITT & WEISS
A PROFESSIONAL CORPORATION
ONE EMBARCADERO CENTER · 30TH FLOOR · SAN FRANCISCO, CA 94111-3719
Telephone: 415/788-0900 · Facsimile: 415/788-2019

1 California Constitution (Article 1, section 7(a)). Cross-complainants contend that Family Code
2 section 301 does not exclude same-sex couples from the right to marry or bar the issuance of
3 marriage licenses to same-sex couples in California. Rather, Family Code section 301 simply sets
4 forth certain competency requirements for marriage and expressly establishes that those
5 competency requirements are identical for both males and females, without providing that a male
6 may marry only a female or that a female may marry only a male. In the alternative, if and to the
7 extent that Family Code section 301 is construed to exclude same-sex couples from the right to
8 marry, Cross-Complainants contend that Family Code section 301 would violate the same
9 provisions of the California Constitution (listed above) that Cross-Complainants contend section
10 300 violates. Cross-Complainants contend that Family Code section 308.5 does not apply to
11 marriages entered into the State of California or bar the issuance of marriage licenses to same-sex
12 couples in California because Family Code section 308.5 applies only to marriages entered into,
13 and marriage licenses granted, outside of California. If and to the extent that Family Code section
14 308.5 were interpreted to apply to marriage licenses granted, and marriages entered, in California,
15 Cross-Complainants contend that section 308.5 likewise would violate the provisions of the
16 California Constitution (listed above) that Cross-Complainants contend section 300 violates.

17 17. Cross-Defendants contend that Family Code sections 300, 301, and 308.5
18 all apply to marriages entered into in California; that all of those Family Code sections purport to
19 exclude, and operate to exclude, same-sex couples from the right to marry in California; and that
20 those purported statutory exclusions of same-sex couples from the right to marry in California are
21 consistent with the California Constitution. Cross-Defendants seek to enforce their interpretation
22 of those Family Code sections by refusing to honor or respect the marriages of same-sex couples
23 entered in California, including by refusing to record the marriage certificates of Cross-
24 Complainants as well as other same-sex couples who have married in San Francisco.

25 18. Accordingly, an actual controversy has arisen and now exists between
26 Cross-Complainants and Cross-Defendants concerning their respective rights, duties, and
27
28

1 responsibilities. The controversy is definite and concrete, and touches on the legal relationships
2 of the parties, as well as many thousands of people not before this Court.

3 **FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**
4 **(By All Cross-Complainants Against Cross-Defendants State of California**
5 **and Roes 1 through 100)**

6 19. Cross-Complainants refer to and incorporate by reference herein the
7 allegations of paragraphs 1 through 18, inclusive.

8 20. To resolve this controversy, Cross-Complainants request that, pursuant to
9 Code of Civil Procedure section 1060, this Court declare:

- 10 a. that to comply with the California Constitution, Family Code section 300
- 11 must be construed to allow otherwise qualified same-sex couples to marry;
- 12 in the alternative, if this Court concludes that Family Code section 300
- 13 excludes otherwise qualified same-sex couples from the right to obtain
- 14 marriage licenses or to marry in California, that exclusion is void and
- 15 unenforceable because it violates the state constitutional rights of same-sex
- 16 couples and of individuals who are members of same-sex couples in that,
- 17 among other things, any such exclusion would (i) impermissibly
- 18 discriminate on the basis of sex in violation of the Equal Protection and
- 19 Privileges and the Immunities Clauses of the California Constitution
- 20 (Article 1, section 7(a) and 21); (ii) impermissibly discriminate on the basis
- 21 of sexual orientation in violation of the Equal Protection and the Privileges
- 22 and Immunities Clauses of the California Constitution (Article 1, section
- 23 7(a) and 21); (iii) violate liberty interests protected by the Due Process
- 24 Clause of the California Constitution (Article 1, section 7(a)); and (iv)
- 25 violate privacy interests protected by the Privacy Clause of the California
- 26 Constitution (Article 1, section 1) and by the Due Process Clause of the
- 27 California Constitution (Article 1, section 1);
- 28

STEEFEL, LEVITT & WEISS
A PROFESSIONAL CORPORATION
ONE EMBARCADERO CENTER · 30TH FLOOR · SAN FRANCISCO, CA 94111-3719
Telephone: 415/788-0900 · Facsimile: 415/788-2019

STEEFEL, LEVITT & WEISS
A PROFESSIONAL CORPORATION
ONE EMBARCADERO CENTER · 30TH FLOOR · SAN FRANCISCO, CA 94111-3719
Telephone: 415/788-0900 · Facsimile: 415/788-2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

b. that Family Code section 301 does not exclude same-sex couples from the right to marry and cannot bar the issuance of marriage licenses to same-sex couples in California; in the alternative, if this Court concludes that Family Code section 301 does exclude same-sex couples from the right to obtain marriage licenses or to marry in California, that exclusion is void and unenforceable because it violates the state constitutional rights of same-sex couples and of individuals who are members of same-sex couples in that, among other things, any such exclusion would (i) impermissibly discriminate on the basis of sex in violation of the Equal Protection and the Privileges and the Immunities Clauses of the California Constitution (Article 1, section 7(a) and 21); (ii) impermissibly discriminate on the basis of sexual orientation in violation of the Equal Protection and the Privileges and Immunities Clauses of the California Constitution (Article 1, section 7(a) and 21); (iii) violate liberty interests protected by the Due Process Clause of the California Constitution (Article 1, section 7(a)); and (iv) violate privacy interests protected by the Privacy Clause of the California Constitution (Article 1, section 1) and by the Due Process Clause of the California Constitution (Article 1, section 1); and

c. that Family Code section 308.5 does not apply to the issuance of marriage licenses in the State of California or to marriages entered in the State of California; in the alternative, if this Court concludes that Family Code section 308.5 does exclude same-sex couples from the right to obtain marriage licenses or to marry in California, that exclusion is void and unenforceable because it violates the state constitutional rights of same-sex couples and of individuals who are members of same-sex couples in that, among other things, any such purported exclusion would (i) impermissibly discriminate on the basis of sex in violation of the Equal Protection and the

STEEFEL, LEVITT & WEISS
A PROFESSIONAL CORPORATION
ONE EMBARCADERO CENTER · 30TH FLOOR · SAN FRANCISCO, CA 94111-3719
Telephone: 415/788-0900 · Facsimile: 415/788-2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Privileges and Immunities Clauses of the California Constitution (Article 1, section 7(a) and 21); (ii) impermissibly discriminate on the basis of sexual orientation in violation of the Equal Protection and the Privileges and Immunities Clauses of the California Constitution (Article 1, section 7(a) and 21); (iii) violate liberty interests protected by the Due Process Clause of the California Constitution (Article 1, section 7(a)); and (iv) violate privacy interests protected by the Privacy Clause of the California Constitution (Article 1, section 1) and by the Due Process Clause of the California Constitution (Article 1, section 1);

d. that Cross-Defendants' refusal to honor and respect the marriages of same-sex couples entered in California, and to treat them equally to the marriages of different-sex couples entered in California, including by refusing to record the marriage certificates of Cross-Complainants, and, in the case of Equality California, of its members who have married their same-sex partners, as well as other same-sex couples who have married in San Francisco, and Cross-Defendants' attempts to interfere with the City and County of San Francisco's issuance of marriage licenses to same-sex couples (i) impermissibly discriminate on the basis of sex in violation of the Equal Protection and the Privileges and Immunities Clauses of the California Constitution (Article 1, sections 7(a) and 21); (ii) impermissibly discriminate on the basis of sexual orientation in violation of the Equal Protection and the Privileges and Immunities Clauses of the California Constitution (Article 1, section 7(a) and 21); (iii) violate liberty interests protected by the Due Process Clause of the California Constitution (Article 1, section 7(a)); and (iv) violate privacy interests protected by the Privacy Clause of the California Constitution (Article 1, section 1) and by the Due Process Clause of the California Constitution (Article 1, section 1).

STEEBEL, LEVILLI & WEISS
A PROFESSIONAL CORPORATION
ONE EMBARCADERO CENTER · 30TH FLOOR · SAN FRANCISCO, CA 94111-5719
Telephone: 415/788-0900 · Facsimile: 415/788-2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

same-sex couples and of individuals who are members of same-sex couples in that, among other things, any such exclusion would (i) impermissibly discriminate on the basis of sex in violation of the Equal Protection and the Privileges and Immunities Clauses of the California Constitution (Article 1, section 7(a) and 21); (ii) impermissibly discriminate on the basis of sexual orientation in violation of the Equal Protection and the Privileges and Immunities Clauses of the California Constitution (Article 1, section 7(a) and 21); (iii) violate liberty interests protected by the Due Process Clause of the California Constitution (Article 1, section 7(a)); and (iv) violate privacy interests protected by the Privacy Clause of the California Constitution (Article 1, section 1) and by the Due Process Clause of the California Constitution (Article 1, section 1);

- 2. A declaration that Family Code section 301 does not exclude same-sex couples from the right to marry and cannot bar the issuance of marriage licenses to same-sex couples in California; in the alternative, if this Court concludes that Family Code section 301 does exclude same-sex couples from the right to obtain marriage licenses or to marry in California, a declaration that that exclusion is void and unenforceable because it violates the state constitutional rights of same-sex couples and of individuals who are members of same-sex couples in that, among other things, any such exclusion would (i) impermissibly discriminate on the basis of sex in violation of the Equal Protection and the Privileges and Immunities Clauses of the California Constitution (Article 1, section 7(a) and 21); (ii) impermissibly discriminate on the basis of sexual orientation in violation of the Equal Protection and the Privileges and Immunities Clauses of the California Constitution (Article 1, section 7(a) and 21); (iii) violate liberty interests protected by the Due Process Clause of the California Constitution (Article 1, section 7(a)); and (iv) violate

STEEFEL, LEVITT & WEISS
A PROFESSIONAL CORPORATION
ONE EMBARCADERO CENTER · 30TH FLOOR · SAN FRANCISCO, CA 94111-3719
Telephone: 415/788-1900 · Facsimile: 415/788-2019

1 privacy interests protected by the Privacy Clause of the California
2 Constitution (Article 1, section 1) and by the Due Process Clause of the
3 California Constitution (Article 1, section 1);

4 3. A declaration that Family Code section 308.5 does not apply to the issuance of
5 marriage licenses in the State of California or to marriages entered in the State
6 of California; in the alternative, if this Court concludes that Family Code
7 section 308.5 does exclude same-sex couples from the right to obtain marriage
8 licenses or to marry in California, a declaration that that exclusion is void and
9 unenforceable because it violates the state constitutional rights of same-sex
10 couples and of individuals who are members of same-sex couples in that,
11 among other things, any such purported exclusion would (i) impermissibly
12 discriminate on the basis of sex in violation of the Equal Protection and the
13 Privileges and Immunities Clauses of the California Constitution (Article 1,
14 section 7(a) and 21); (ii) impermissibly discriminate on the basis of sexual
15 orientation in violation of the Equal Protection and the Privileges and
16 Immunities Clauses of the California Constitution (Article 1, section 7(a) and
17 21); (iii) violate liberty interests protected by the Due Process Clause of the
18 California Constitution (Article 1, section 7(a)); and (iv) violate privacy
19 interests protected by the Privacy Clause of the California Constitution (Article
20 1, section 1) and by the Due Process Clause of the California Constitution
21 (Article 1, section 1);

22 4. A declaration that Cross-Defendants' refusal to honor and respect the
23 marriages of same-sex couples entered in California, and to treat them equally
24 to the marriages of different-sex couples entered in California, including by
25 refusing to record the marriage certificates of Cross-Complainants as well as of
26 other same-sex couples who have married in San Francisco, and Cross-
27 Defendants' attempts to interfere with the City and County of San Francisco's
28

STEEFEL, LEVITT & WEISS
A PROFESSIONAL CORPORATION
ONE EMBARCADERO CENTER · 30TH FLOOR · SAN FRANCISCO, CA 94111-3719
Telephone: 415/788-9900 · Facsimile: 415/788-2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

issuance of marriage licenses to same-sex couples (i) impermissibly discriminate on the basis of sex in violation of the Equal Protection and the Privileges and Immunities Clauses of the California Constitution (Article 1, sections 7(a) and 21); (ii) impermissibly discriminate on the basis of sexual orientation in violation of the Equal Protection and the Privileges and Immunities Clauses of the California Constitution (Article 1, section 7(a) and 21); (iii) violate liberty interests protected by the Due Process Clause of the California Constitution (Article 1, section 7(a)); and (iv) violate privacy interests protected by the Privacy Clause of the California Constitution (Article 1, section 1) and by the Due Process Clause of the California Constitution (Article 1, section 1);

- 5. A permanent injunction prohibiting Cross-Defendants, their agents, employees, representatives, and all those acting in concert with them, from (a) refusing to honor and respect the marriage licenses obtained by or the marriages of same-sex couples entered in California, including without limitation refusing to record the marriage certificates of such couples; (b) refusing to treat the marriages of same-sex couples entered in California equally to the marriages of different-sex couples entered in California; and (c) interfering or attempting to interfere with the City and County of San Francisco's issuance of marriage licenses to same-sex couples;

//
//
//
//
//
//

- 1 6. Costs, including but not limited to attorneys' fees; and
- 2 7. For such other and further relief as the Court may deem just and proper.

4 Dated: March 10, 2004

Respectfully submitted,

5 SHANNON MINTER
 6 COURTNEY JOSLIN
 7 NATIONAL CENTER FOR LESBIAN RIGHTS
 8 870 Market Street, Suite 570
 9 San Francisco, CA 94014
 10 Telephone: (415) 392-6257
 11 Facsimile: (415) 392-8442

12 STEPHEN V. BOMSE
 13 RICHARD DENATALE
 14 HILARY E. WARE
 15 HELLER EHRMAN WHITE & McAULIFFE LLP
 16 333 Bush Street, San Francisco, California 94104
 17 Telephone: (415) 772-6000
 18 Facsimile: (415) 772-6268

19 JON W. DAVIDSON
 20 JENNIFER C. PIZER
 21 LAMBADA LEGAL DEFENSE AND
 22 EDUCATION FUND
 23 3325 Wilshire Boulevard
 24 Suite 1300
 25 Los Angeles, CA 90010
 26 Telephone: (213) 382-7600
 27 Facsimile: (213) 351-6063

28 MARTHA MATTHEWS
 ACLU OF SOUTHERN CALIFORNIA
 1616 Beverly Boulevard
 Los Angeles, CA 90026
 Telephone: (213) 977-9500
 Facsimile: (213) 250-3919

TAMARA LANGE
 ALAN L. SCHLOSSER
 ACLU FOUNDATION OF NORTHERN
 CALIFORNIA
 1663 Mission Street, Suite 460
 San Francisco, CA 94103
 Telephone: (415) 621-2493
 Facsimile: (415) 255-1478

DAVID C. CODELL (SBN 200965)
 AIMEE DUDOVITZ (SBN 203914)

STEEFEL, LEVITT & WEISS
 A PROFESSIONAL CORPORATION
 ONE EMBARCADERO CENTER, 30TH FLOOR, SAN FRANCISCO, CA 94111-3719
 Telephone: 415/788-0900 Facsimile: 415/788-2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LAW OFFICE OF DAVID C. CODELL
9200 Sunset Boulevard, Penthouse Two
Los Angeles, California 90069
Telephone: (310) 273-0306
Facsimile: (310) 273-0307

DENA L. NARBAITZ (SBN 176556)
CLYDE J. WADSWORTH (SBN 118928)
STEEFEL, LEVITT & WEISS
a Professional Corporation
One Embarcadero Center, 30th Floor
San Francisco, CA 94111
Telephone: (415) 788-0900
Facsimile: (415) 788-2019

By: 
Shannon Minter

Attorneys for Intervenors
DEL MARTIN and PHYLLIS LYON,
SARAH CONNER-SMITH and GILLIAN
CONNER-SMITH, MARGOT MCSHANE and
ALEXANDRA D'AMARIO, DAVID SCOTT
CHANDLER and JEFFREY WAYNE
CHANDLER, THERESA MICHELLE PETRY and
CRISTAL RIVERA-MITCHEL, and EQUALITY
CALIFORNIA

90298:6381269.1
03/10/04 10:21 AM

STEEFEL, LEVITT & WEISS
A PROFESSIONAL CORPORATION
ONE EMBARCADERO CENTER · 30TH FLOOR · SAN FRANCISCO, CA 94111-3719
Telephone: 415/788-0900 · Facsimile: 415/788-2019

PROOF OF SERVICE

I, Robin Galas, declare that I am over the age of eighteen years and I am not a party to this action. My business address is 870 Market St., Ste. 570, San Francisco, California 94102.

On March 10, 2004, I served the document listed below on the interested parties in this action in the manner indicated below:

DOCUMENT SERVED:

INTERVENORS' CROSS-COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

- BY OVERNIGHT DELIVERY: I caused such envelopes to be delivered to the above parties via **FEDERAL EXPRESS PRIORITY OVERNIGHT** delivery service.
- BY PERSONAL SERVICE: I caused the document(s) to be delivered by hand.
- BY MAIL: I am readily familiar with the business practice for collection and processing correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelopes were sealed, and with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California. I caused the document(s) to be sent by mail via United States Postal Service to the parties identified above.
- BY FACSIMILE: By use of facsimile machine, I served a copy of the above listed document(s) on the above-listed interested parties in the within action by transmitting by facsimile machine to the following: The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2005, I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

INTERESTED PARTIES:

SEE ATTACHED LIST

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct; that this declaration is executed on March 10, 2004, at San Francisco, California.


Robin Galas

SERVICE LIST

Benjamin W. Bull
Gary McCaleb
Glen Lavy
Alliance Defense Fund
15333 North Pima Road, Suite 165
Scottsdale, AZ 85260
Tel.: 480-444-0020
Fax: 480-444-0028

Vincent P. McCarthy
Center for Marriage Law
8 South Main Street
New Milford, CT 06776
Tel.: 860-210-1182
Fax: 860-355-8008

Bobbie J. Wilson
Pamela K. Fulmer
Amy E. Margolin
Sarah M. King
Howard Rice Nemerovski Canady Falk
& Rabkin
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111-4024
Tel.: 415-434-1600
Fax: 415-217-5910

Mathew D. Staver
Joel Oster
Rena Lindevaldsen
Liberty Counsel
210 East Palmetto Avenue
Longwood, FL 32750
Tel.: 407-875-2100
Fax: 407-875-0770

Robert H. Tyler
Alliance Defense Fund
38760 Sky Canyon Drive, Suite B
Murrieta, CA 92563
Tel.: 909-699-5050
Fax: 909-699-5025

Terry L. Thompson
Law Offices of Terry L. Thompson
P.O. Box 1346
Alamo, CA 94507
Tel.: 925-855-1507
Fax: 925-820-6034

Dennis J. Herrera
Therese Stewart
Ellen Forman
Wayne K. Snodgrass
K. Scott Dickey
Kathleen S. Morris
Sherri Sokeland Kaiser
City and County of San Francisco
Office of the City Attorney
1 Dr. Carlton B. Goodlett Place
Room 325
San Francisco, CA 94102-5408
Tel.: 415-554-4700
Fax: 415-554-4747

Ross S. Heckmann
Attorney at Law
1214 Valencia Way
Arcadia, CA 91006
Tel.: 626-256-4664
Fax: 626-256-4774