

FILED
LOS ANGELES SUPERIOR COURT
FEB 23 2004

"BY FAX"

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Attorneys for **PETITIONERS ROBIN TYLER, DIANE OLSON, TROY PERRY,
PHILLIP De BLIECK**

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

"BY FAX"

ROBIN TYLER, an individual, DIANE OLSON, an individual, TROY PERRY, an individual, and PHILLIP De BLIECK, an individual,

Petitioners,

vs.

THE COUNTY OF LOS ANGELES, a Political Body acting through its Registrar-Recorder/County Clerk, and DOES 1 through 100, inclusive,

Defendants.

CASE NO: BS088506

PETITION FOR WRIT OF MANDATE OR PROHIBITION

[Code of Civil Procedure Sections 1085, 1086, 1102, 1103]

CIT/CASE: BS088506 LEA/DEF#: RECEIPT #: CCH243111021
DATE PAID: 02/23/04 10:30:13 AM
PAYMENT: \$296.50 0310
RECEIVED:

CHECK: 296.50
CASH:
CHANGE:
CARD:

Petitioners allege:

Introduction

1. The Courts of the State of California have recognized that the State has a vital interest in the institution of marriage. (See, e.g., Estate of DePasse, 97 Cal.App. 4th 92, 118 Cal.Rptr. 2d 143 (2002). As long ago as 1948, the California Supreme Court recognized that the right to marry is as fundamental as the right to have children, and is one of the basic civil rights of all persons. (See, e.g., Perez v. Sharp, 32 Cal.2d 711, 198 P.2d 17 (1948). That right has specifically been defined to include the right to join in marriage with the person of one's choice. (Id.).

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1 married to one another under California law, but were prevented from doing so by the policies
2 of the County of Los Angeles alleged hereinafter.

3 10. Petitioners are ignorant of the true names, identities or capacities of the
4 respondents named as Docs through 100, inclusive, and have therefore sued those respondents
5 by such fictitious names. Petitioners will seek leave of Court to amend this Petition to reflect
6 the true names, identities or capacities of the fictitiously named respondents when same have
7 been ascertained. Respondents are informed and believe and based upon such information
8 and belief allege that each of the fictitiously named respondents is a municipal organization,
9 county, political body, individual, partnership, joint venture, unincorporated association or
10 other form of legal entity that is liable and/or responsible for the policies, acts and/or
11 omissions alleged hereinafter.

12 11. Petitioners are informed and believe and based upon such information and
13 belief allege that at all times mentioned hereinafter, each of the respondents was the agent,
14 servant, employee, partner, co-venturer or co-conspirator of each of the remaining
15 respondents, and that such respondent acted within the course and scope of such relationship
16 and/or with the ratification and/or approval of its principal, master, employer, partner, co-
17 venturer or fellow co-conspirators.

18 **FIRST CAUSE OF ACTION FOR ISSUANCE OF A WRIT OF MANDAMUS OR**
19 **PROHIBITION AGAINST THE COUNTY OF LOS ANGELES ACTING THROUGH**
20 **ITS OFFICE OF THE REGISTRAR-RECORDER/COUNTY CLERK**

21 12. Pursuant to the provisions of California Family Code section 350, persons who
22 wish to enter into marriage under the laws of this state "shall first obtain a marriage license
23 from the County Clerk."

24 13. On or about February 12, 2004, petitioners Robin Tyler and Diane Olson
25 presented themselves at the Office of the County Clerk in Beverly Hills, California for the
26 purpose of obtaining a marriage license. The two of them requested applications for the
27 issuance of a marriage license from a representative of the County Clerk, and were provided

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1 with the marriage application forms utilized by the County Clerk's office in Los Angeles
2 County. Ms. Olson and Ms. Tyler then filled out the application forms and presented those
3 forms to a representative of the County Clerk. The Clerk's representative refused to accept the
4 completed marriage license applications, and handed Ms. Olson and Ms. Tyler a form which
5 stated that under State law, "marriage" is between a man and a woman. In that manner, Ms.
6 Olson and Ms. Tyler were denied issuance of a marriage license. Said denial was final, and
7 was based solely upon the fact that Ms. Olson and Ms. Tyler are females. Pursuant to policies
8 of the Respondents, Petitioners Olson and Tyler cannot otherwise obtain a marriage license
9 from the County of Los Angeles because both are female.

10 14. On or about February 12, 2004, Troy Perry and Phillip De Blicck presented
11 themselves at the Office of the County Clerk in Beverly Hills, California for the purpose of
12 obtaining a marriage license. The two of them requested applications for the issuance of a
13 marriage license from a representative of the County Clerk, and were provided with the
14 marriage application forms utilized by the County Clerk's office in Los Angeles County. Mr
15 Perry and Mr. DeBlicck then filled out the application forms and presented those forms to a
16 representative of the County Clerk. The Clerk's representative refused to accept the completed
17 marriage license applications, and handed Mr. Perry and Mr. DeBlicck a form which stated
18 that under State law, "marriage" is between a man and a woman. In that manner, Mr. Perry
19 and Mr. DeBlicck were denied issuance of a marriage license. Said denial was final, and was
20 based solely upon the fact that Mr. Perry and Mr. DeBlicck are males. Pursuant to policies of
21 the Respondents, Petitioners Perry and DeBlicck cannot otherwise obtain a marriage license
22 from the County of Los Angeles because both are males.

23 15. The petitioners were prevented from obtaining marriage licenses pursuant to a
24 policy of the County of Los Angeles not to issue marriage licenses to same-sex couples. As a
25 direct result of that policy, the petitioners have been prevented from becoming married under
26 California law in the County of Los Angeles. That same policy operates to prevent all same-
27 sex couples from marrying in the County of Los Angeles, State of California, and is therefore
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1 a matter of great public importance.

2 16. The petitioners are each persons beneficially interested in the issuance of the
3 writ sought herein. Each petitioner has a clear, present and substantial right to the issuance of
4 a marriage license by the Respondents by virtue of the following:

5 a. Marriage is a fundamental right. Marriage is not only a unique
6 and important status, it is also a means of obtaining property rights, including community
7 property and other rights linked to marriage;

8 b. Each petitioner desires to marry;

9 c. Each petitioner is entitled to equal protection of the laws of this State
10 under Article I, Section 7 of the California Constitution, including the fundamental right to
11 marry. Each petitioner is also entitled to the full benefit of Article I, Section 1 of the
12 California Constitution, which bestows upon all people in this State the "inalienable" right to
13 "acquiring, possessing and protecting property, and pursuing and obtaining...happiness and
14 privacy" ;

15 d. Absent equal treatment under the law, petitioners cannot obtain
16 marriage licenses, and cannot marry under California law, in the County of Los Angeles
17 where they reside.

18 17. The policy of the County of Los Angeles of denying marriage licenses to same-
19 sex couples operates to deny individuals involved in same-sex relationships the fundamental
20 rights, benefits and responsibilities of marriage. By virtue of that policy, same-sex couples are
21 (a) denied equal protection of the laws in violation of Article I, Section 7 of the California
22 Constitution, which provides in relevant part as follows: "A person may not be...denied equal
23 protection of the laws...", (b) denied fundamental rights under Article I, Section 1 of the
24 California Constitution and (c) denied substantive due process.

25 18. There is no compelling interest sufficient to distinguish between same-sex
26 couples and opposite gender couples for purposes of restricting the right to marry under
27 California law, and any such distinction violates the Constitution of the State of California.

1 Thus, to the extent that California Family Code section 300 ("Marriage is a personal relation
 2 arising out of a civil contract between a man and a woman, to which the consent of the parties
 3 capable of making that contract is necessary. Consent alone does not constitute marriage.
 4 Consent must be followed by the issuance of a license and solemnization as authorized by this
 5 division...") purports to define marriage exclusively in terms of different gender couples, that
 6 statute is unconstitutional.

7 19. To the extent that the Respondents have refused to issue marriage licenses to
 8 the Petitioners based upon Family Code section 300 or any other statute or ordinance, said
 9 denial amounts to a denial of substantive due process rights which protect an individual
 10 against governmental interference with the fundamental right to life, liberty or property by
 11 unreasonable or arbitrary legislation.

12 20. In the case of petitioners Perry and De Blicck, they also desire to marry under
 13 the laws of the State of California because it appears that their Canadian marriage would not
 14 be recognized in California pursuant to the provisions of California Family Code section
 15 308.5, which provides as follows: "Only marriage between a man and a woman is valid or
 16 recognized in California." That provision violates the Equal Protection Clause of the
 17 California Constitution, violates Article I, section 1 of the California Constitution, and
 18 amounts to a denial of substantive due process.

19 21. Each petitioner has performed all conditions precedent to the filing of this
 20 Petition in that they requested, and were denied issuance of, marriage licenses from the
 21 County Clerk of Los Angeles County.

22 22. Petitioner has no plain, speedy and adequate remedy in the ordinary course of
 23 law. Monetary damages are inadequate to compensate for the denial of a fundamental civil
 24 right such as marriage. Moreover, ordinary legal remedies do not address the denials of equal
 25 protection inherent in the above-alleged policy of the Los Angeles County Clerk, in Family
 26 Code section 300, and in Family Code section 308.5. Those denials are of significant public
 27 importance.

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1 SECOND CAUSE OF ACTION-IN THE ALTERNATIVE, FOR ISSUANCE OF AN
2 INJUNCTION AGAINST THE COUNTY OF LOS ANGELES ACTING THROUGH
3 ITS OFFICE OF THE REGISTRAR-RECORDER/COUNTY CLERK

4 23. By this reference, Petitioners incorporate the allegations of paragraphs 1
5 through 22, inclusive, hereof as though fully set forth at this point.

6 24. The Courts of the State of California have recognized that the State has
7 a vital interest in the institution of marriage. (See, e.g., Estate of DePasse, 97 Cal.App. 4th 92,
8 118 Cal.Rptr. 2d 143 (2002). As long ago as 1948, the California Supreme Court recognized
9 that the right to marry is as fundamental as the right to have children, and is one of the basic
10 civil rights of all persons. (See, e.g., Percz v. Sharp, 32 Cal.2d 711, 198 P.2d 17 (1948).

11 25. Petitioners comprise two same-sex couples who wish to marry under
12 California law. Each of the petitioners seeks to enjoy the benefits of marriage, and is willing
13 to undertake the obligations of marriage, under California law.

14 26. The Respondents maintain a policy of refusing to issue marriage licenses to
15 same sex couples.

16 27. On or about February 12, 2004, petitioners Robin Tyler and Diane Olson
17 presented themselves at the Office of the County Clerk in Beverly Hills, California for the
18 purpose of obtaining a marriage license. The two of them requested applications for the
19 issuance of a marriage license from a representative of the County Clerk, and were provided
20 with the marriage application forms utilized by the County Clerk's office in Los Angeles
21 County. Ms. Olson and Ms. Tyler then filled out the application forms and presented those
22 forms to a representative of the County Clerk. The Clerk's representative refused to accept the
23 completed marriage license applications, and handed Ms. Olson and Ms. Tyler a form which
24 stated that under State law, "marriage" is between a man and a woman. In that manner, Ms.
25 Olson and Ms. Tyler were denied issuance of a marriage license. Said denial was final, and
26 was based solely upon the fact that Ms. Olson and Ms. Tyler are females. Pursuant to policies
27 of the Respondents, Petitioners Olson and Tyler cannot otherwise obtain a marriage license
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1 from the County of Los Angeles because both are female.

2 28. On or about February 12, 2004, Troy Perry and Phillip De Blicek presented
3 themselves at the Office of the County Clerk in Beverly Hills, California for the purpose of
4 obtaining a marriage license. The two of them requested applications for the issuance of a
5 marriage license from a representative of the County Clerk, and were provided with the
6 marriage application forms utilized by the County Clerk's office in Los Angeles County. Mr
7 Perry and Mr. DeBlicek then filled out the application forms and presented those forms to a
8 representative of the County Clerk. The Clerk's representative refused to accept the completed
9 marriage license applications, and handed Mr. Perry and Mr. DeBlicek a form which stated
10 that under State law, "marriage" is between a man and a woman. In that manner, Mr. Perry
11 and Mr. DeBlicek were denied issuance of a marriage license. Said denial was final, and was
12 based solely upon the fact that Mr. Perry and Mr. DeBlicek are males. Pursuant to policies of
13 the Respondents, Petitioners Perry and DeBlicek cannot otherwise obtain a marriage license
14 from the County of Los Angeles because both are males.

15 29. The petitioners were prevented from obtaining marriage licenses pursuant to
16 the above alleged policy of the County of Los Angeles not to issue marriage licenses to same-
17 sex couples. As a direct result of that policy, the petitioners have been prevented from
18 becoming married under California law in the County of Los Angeles. That same policy
19 operates to prevent all same-sex couples from marrying in the County of Los Angeles, State of
20 California, and is therefore a matter of great public importance.

21 30. The policy of the County of Los Angeles of denying marriage licenses to same-
22 sex couples operates to deny individuals involved in same-sex relationships the fundamental
23 rights, benefits and responsibilities of marriage. By virtue of that policy, same-sex couples are
24 (a) denied equal protection of the laws in violation of Article I, Section 7 of the California
25 Constitution, which provides in relevant part as follows: "A person may not be...denied equal
26 protection of the laws...", (b) denied substantive due process, and (c) denied inalienable rights
27 under Article I, Section I of the California Constitution.

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1 31. There is no compelling interest sufficient to distinguish between same-
2 sex couples and opposite gender couples for purposes of restricting the right to marry under
3 California law.

4 32. The conduct of the Respondents in enforcing a policy of denying marriage
5 licenses to same sex couples, unless and until enjoined and restrained by order of this Court,
6 will cause great and irreparable injury to the Petitioners in that the Petitioners are thereby
7 barred from enjoying the fundamental and unique status of marriage under California law,
8 together the rights and privileges attendant to marriage.

9 33. Petitioners have no adequate remedy at law for the denial of fundamental rights
10 which are the direct result of the Respondents' policy. It is extremely difficult to ascertain the
11 monetary damage caused by the inability to become married under California law, and the
12 rights in question amount to basic civil rights.

13 WHEREFORE, Petitioners pray as follows:

14 **On the First Cause of Action:**

15 1. That the Court issue a peremptory writ in the first instance commanding
16 Respondent to issue marriage licenses to the Petitioners, and to other same-sex couples who
17 are otherwise qualified to issuance of such licenses;

18 2. Alternatively, that the Court first issue an alternative writ commanding
19 Respondent to issue marriage licenses to the Petitioners, and to other same-sex couples who
20 are otherwise qualified to issuance of such licenses or, in the alternative, show cause why it
21 should not do so and thereafter issue a peremptory writ commanding the Respondent to issue
22 marriage licenses to the Petitioners, and to other same-sex couples who are otherwise
23 qualified to issuance of such licenses;

24 3. For costs of suit, including reasonable attorneys fees under the Private Attorney
25 General theory, according to proof;

26 4. For such other and further relief as the Court may deem just and proper.

27 **On the Second Cause of Action:**

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1 1. For an injunction (a) enjoining defendants from enforcing their policy of
 2 refusing to issue marriage licenses to same sex couples otherwise qualified for issuance of
 3 such licenses, and/or (b) requiring Respondents to issue marriage licenses to the Petitioners,
 4 and/or (c) requiring Respondents to issue marriage licenses to other same-sex couples who are
 5 otherwise qualified to issuance of such licenses;

6 2. For costs of suit, including reasonable attorneys fees under the Private Attorney
 7 General theory, according to proof;

8 3. For such other and further relief as the Court may deem just and proper.

9 DATED: February 20, 2004

ALLRED, MAROKO & GOLDBERG
 GLORIA ALLRED
 MICHAEL MAROKO
 JOHN STEVEN WEST

Gloria Allred

 GLORIA ALLRED
 Attorneys for Petitioners ROBIN TYLER,
 DIANE OLSON, TROY PERRY, and PHILLIP
 De BLIECK

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VERIFICATION FOR PETITIONERS TYLER AND OLSON

I, GLORIA ALLRED, am counsel for Petitioners ROBIN TYLER and DIANE OLSON.

Ms. Olson and Ms. Tyler are out of the United States on a sea trip together.

At my direction, my office has made numerous efforts to reach them in order to obtain their signatures to verifications pertaining to the accompanying Petition for Writ of Mandate. Despite those efforts, we have been unable to obtain their signatures to the Verifications. We have attempted to contact the Petitioners by telephone, fax and e-mail unsuccessfully.

I have read the foregoing petition and know its contents. I am informed and believe that the matters therein are true, and on that ground allege that the matters stated therein are true.

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

DATED: 2/20/04

Gloria Allred
GLORIA ALLRED

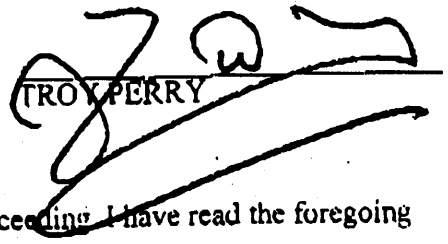
VERIFICATION

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I, TROY PERRY, am a Petitioner in this proceeding. I have read the foregoing petition and know its contents. The facts stated therein are true and within my personal knowledge.

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

DATED: 2/20/04


TROY PERRY

I, PHILLIP DeBLIECK, am a Petitioner in this proceeding. I have read the foregoing petition and know its contents. The facts stated therein are true and within my personal knowledge.

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

DATED: 2/20/04


PHILLIP DeBLIECK