SUPREME COURT OF THE STATE OF CALIFORNIA

In re MARRIAGE CASES Judicial Council Coordination Proceeding No. 4365	Case No. S147999
PROPOSITION 22 LEGAL DEFENSE AND EDUCATION FUND, Plaintiff/Petitioner, vs. CITY AND COUNTY OF SAN FRANCISCO, ET AL., Defendants/Respondents.	First Appellate District No. A110651 Judicial Council Coordination Proceeding No. 4365 San Francisco Superior Court No. 503-943 (Consolidated with *Thomasson v. Newsom*, Superior Court No. 428-794)
DEL MARTIN, ET AL., Intervenors/Defendants/Respondents.	

ANSWER TO PETITION FOR REVIEW

The Honorable Richard A. Kramer
Superior Court for the City and County of San Francisco

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INTRODUCTION

Petitioner Proposition 22 Legal Defense and Education Fund (the Fund) seeks review of the Court of Appeal's holding that it lacks standing to sue the City and County of San Francisco (the City) for a declaration that California's marriage laws are constitutional. (*In re Marriage Cases* (2006) 49 Cal.Rptr.3d 675, 688-691.) Although San Francisco's decision to issue marriage licenses to couples of the same sex in 2004 created an ideological and political conflict between the City and the Fund, whose avowed mission is to ensure the continued restriction of marriage to one man and one woman in California, this disagreement is insufficient to give the Fund standing to seek declaratory relief. Standing requires a showing of potential injury, but the Fund's members face no invasion of their legal interests if the current marriage laws are declared unconstitutional.

Review should be denied. The Court of Appeal's ruling was correct and merely applies the well-settled law of standing to the facts of this case. Contrary to the Fund's contention, it is the Fund, not the Court of Appeal, whose position presents a departure from settled law. At bottom, the Fund asks this Court to create an unprecedented exception to the rules of standing for initiative supporters. It asserts that initiative supporters have purportedly unique "intellectual" and "emotional" connections to the controversy sufficient to confer standing. This novel theory flies in the face of the established principle that standing requires a showing of actual or threatened harm to a legally protected interest, not just to a particularly intense point of view. (*Associated Builders & Contractors, Inc. v. San Francisco Airport Com.* (1999) 21 Cal.4th 352, 362.) Where the Fund, not the court below, seeks to sow confusion and upset settled principles, the Court need not grant review to "secure uniformity of decision." (Cal. R. Ct., Rule 28(b)(1).)

Review should also be denied because the question whether the Fund has standing is not "an important question of law." (*Ibid.*) To the contrary, it is insignificant to this Court's resolution of the *Marriage Cases*. As the Court of Appeal observed, whether the Fund is considered a party or an amicus it could fully present its arguments to the court, and the court fully considered them. The same will be true in this Court. Thus, because the answer to the standing question does not even matter here, the legal question lacks practical importance and is not worthy of review.

FACTUAL AND PROCEDURAL BACKGROUND

On February 12, 2004, the City and County of San Francisco began issuing marriage licenses to and solemnizing marriages of same-sex couples, in spite of contrary state laws, in the belief that placing gender restrictions on the fundamental human right to marry violates the California Constitution. (Augmented Clerk's Transcript ["ACT"] 12.) By the next day, the Fund had filed a petition for writ of mandate and complaint for injunctive and declaratory relief in the San Francisco Superior Court. (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1071.) The Fund sought a writ of mandate compelling the City to comply with Family Code sections 300 and 308.5, an injunction to the same effect, and "a judicial declaration that any and all marriages solemnized, for couples other than those constituting only an unmarried male and an unmarried female, are invalid." (ACT 1027-1028.)

Shortly after the Fund filed its writ petition in Superior Court and before that court had ruled on the merits of the Fund's petition, the California Attorney General (along with several private persons represented by the same counsel as the Fund) challenged the City's authority to permit marriages disallowed under state law in writ proceedings filed directly in this Court. (*Lockyer*, *supra*, 33 Cal.4th at p. 1072.) On March 11, 2004, this Court issued an order to show cause

in those proceedings, stating that while that action was pending before the high court San Francisco must enforce and apply the disputed provisions of Family Code. (*Id.* at p. 1073.) The City fully complied with that order and immediately ceased issuing marriage licenses to, and solemnizing marriages for, same-sex couples.

In the same March 11 Order, this Court stayed all proceedings in the Fund's Superior Court case. (*Ibid.*) It did so without prejudice to any action filed to challenge the constitutionality of the marriage statutes. (*Id.* at pp. 1073-74.) The City filed such an action against the State of California the same day. (*City and County of San Francisco v. State of California* (2004) 128 Cal.App.4th 1030, 1034.) The next day, several same-sex couples and advocacy groups filed a similar lawsuit, *Woo v. Lockyer*. (*Id.*) Those two actions were consolidated. (*Id.* at p. 1035.)

The *CCSF/Woo* actions pose the identical legal question that the Fund seeks to prosecute in its purported declaratory judgment claim against the City: whether the California marriage laws restricting marriage to one man and one woman are constitutional. Of particular import here, the Fund tried to intervene in the *CCSF/Woo* actions[1] as a defendant, but the trial court denied its motion. (*Id.* at p. 1036.) The Fund then appealed to the First District Court of Appeal, which affirmed the trial court and denied intervention. (*Id.* at p. 1039.) The appellate court explained that, as a representative of initiative supporters who themselves would not suffer any tangible harm if Proposition 22 were declared unconstitutional, the Fund's interests were only "philosophical or political," and "California precedents make it clear such an abstract interest is not an appropriate

[1] The Fund did not seek to intervene in the other cases that were later coordinated with *CCSF/Woo*.

basis for intervention." (*Ibid.*) The Fund sought review in this Court, which the Court denied on July 20, 2005.

In the interim, this Court had issued its decision in *Lockyer* and made its March 11, 2004 order permanent. It held that the City had acted beyond its authority in licensing marriages of same-sex couples while a state statute, even if possibly unconstitutional, prohibited that practice. It issued a peremptory writ of mandate "compelling [the City] to comply with the requirements and limitations of the current marriage statutes in performing their ministerial duties under such statutes," and directed the City to take specified "necessary steps to remedy the continuing effect" of the City's earlier issuance of marriage licenses to same-sex couples. (*Lockyer, supra,* 33 Cal.4th at pp. 1120, 1113.) It also ordered that "all same-sex marriages authorized, solemnized, or registered by the city officials must be considered void and of no legal effect from their inception." (*Id.* at p. 1113.)

The resolution of *Lockyer* had the effect of lifting the stay of the Fund's Superior Court case against the City, but it also raised the question of what, if anything, survived of that case, which had turned on the same municipal authority issues the Court resolved in *Lockyer*. After entertaining motions, the Superior Court ruled, over the City's objections, that the Fund's complaint was not entirely mooted because it sought a declaration that the marriage laws are constitutional. (ACT 2713.) The court also ruled that the Fund had standing to pursue that claim because there was a "live controversy" between the Fund and the City on that issue. (CT 344.)

The Court of Appeal reversed. (*Marriage Cases, supra*, 49 Cal.Rptr.3d at pp. 688-691.) It assumed for the sake of argument that the Fund's complaint did

state a claim for declaratory relief that the marriage laws were constitutional.[2] But examining the three available theories of standing—taxpayer standing, citizen standing, and injury-based standing—the lower court could find no basis in existing law for the Fund to pursue such a claim. The court explained that the Fund did not have taxpayer standing under C.C.P. § 526(a) to seek a declaration of constitutionality because that claim did not "identify or challenge any allegedly illegal expenditure of public funds." (*Id.* at p. 690.) Nor did a declaratory relief claim as to constitutionality seek to compel performance of a public duty, making the Fund ineligible for "citizen-suit" standing. (*Id.* at pp. 690-691, citing *Green v. Obledo* (1981) 29 Cal.3d 126, 144.) Recounting its intervention analysis, the court further explained that the Fund could not show the required " 'facts which give rise as a matter of law to an existing or imminent invasion of his rights by the defendant which would result in injury to him.' " (*Id.* at p. 689, quoting *Zetterberg v. State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 662-663.) Indeed, the Fund conceded at oral argument that it was not claiming injury-based standing. (*Id.* at p. 690, fn. 8.) Finally, the court rejected the Fund's invitation to depart from existing law and create a new source of standing based solely on "a strong philosophical or political interest" without any showing of potential injury. (*Id.* at p. 690.)

The Fund now seeks review of this holding.

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[2] The court rightly expressed some doubts on this point. (*Id.* at p. 689, fn.7.) In its complaint, the Fund seeks a declaratory judgment concerning only the City's then-issuance of marriage licenses to same-sex couples and the validity of those couples' marriages. The complaint contains no allegations whatsoever concerning the constitutionality of state marriage laws. Nor does it seek any relief—declaratory or otherwise—as to that issue. (ACT 1027-1028.)

ARGUMENT

This Court should deny review. The Court of Appeal's ruling that the Fund lacks standing is correct and compelled by existing law. In its petition for review, the Fund fails to identify a single case holding that the sort of ideological or political interest it holds in the constitutionality of the marriage laws is sufficient to give it standing to seek a declaratory judgment. Rather, it argues (1) that some of its other claims are still alive and give it standing, (2) there should be a special exception to the rules of standing for initiative supporters, and (3) that the Court of Appeal should have treated the trial court's ruling with greater deference and announced that it was reviewing only for abuse of discretion. None of these arguments has merit, much less provides a ground for review.

I. AFTER *LOCKYER* THE FUND'S ONLY REMAINING CLAIM IS FOR DECLARATORY RELIEF ON THE CONSTITUTIONAL ISSUE, AND THE COURT CORRECTLY RULED THAT IT LACKS STANDING TO PURSUE THAT CLAIM.

The Fund's primary assignment of error to the Court of Appeal is its supposed failure to recognize that the Fund's initial citizen and taxpayer standing still exists because, although the *Lockyer* decision resolved the municipal authority issues, there is still a live controversy over whether the marriage laws are constitutional. (Petition for Review ["Pet."]. at pp.7-12.) Put simply, in the Fund's mistaken view, once at the table, always at the table.

In its petition, as before the Court of Appeal, the Fund does not even attempt to dispute that there is no threat of injury to its members from a decision on the constitutionality of the marriage laws. On the other hand, it is also undisputed that the Fund, to the extent that it represented San Francisco taxpayers,[3] initially had standing on behalf of its members to challenge whether

[3] The Fund does not discuss citizen standing, but the same analysis applies.

the City's actions and expenditures in issuing marriage licenses to same-sex couples comported with the law until that question was definitively resolved in this Court's *Lockyer* opinion.

But that initial taxpayer standing does not extend to a constitutional claim where no unlawful government expenditures of public funds are alleged. Claims rooted in taxpayer standing start and end with the question whether a government entity's actions comport with the governing law. (Code Civ. Proc., § 526(a).) "[T]he essence of a taxpayer action remains an illegal or wasteful expenditure of public funds or damage to public property. The taxpayer action must involve an actual or threatened expenditure of public funds." (*Waste Management of Alameda County v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1240 [internal citations omitted].) Once it is determined whether the government is acting in accordance with the law, relief does or does not issue, the lawfulness of the government's actions is settled, and the taxpayer has no further interest sufficient to support standing. (*Marriage Cases, supra,* 49 Cal.Rptr.3d at p. 691.)

That is exactly what happened to the Fund's standing here. To the extent that it represented taxpayers and citizens, the Fund initially had standing to challenge whether the City was performing its mandatory legal duties and lawfully expending public funds when it issued marriage licenses to same-sex couples. The *Lockyer* decision permanently settled those issues, and because the City's actions and expenditures in the wake of *Lockyer* indisputably comported with the requirements of state law, the Fund could claim no further interest in compelling the City to comply with governing law. Accordingly, the Fund could not resort to citizen or taxpayer standing to support its declaratory relief claim on the constitutional issue. And because the Fund has never been able to show any harm-based interest in the constitutional validity of the marriage laws, all available avenues for showing standing are closed.

The Fund tries to avoid this conclusion in two separate ways. First, it claims that everyone agrees that its initial taxpayer standing extended to support a declaratory relief claim regarding the constitutionality of Proposition 22, and, since the constitutional question remains, so does its standing. (Pet. at p.7.) Beyond the generic observation that taxpayer suits can seek declaratory relief as well as injunctions, damages, and mandamus, the Fund provides no legal support for its argument. (Pet. at pp. 7-10.)

Despite the Fund's wishful thinking, there is no agreement that its taxpayer standing ever supported a constitutional validity claim.[4] But even indulging the notion that the Fund could once have used its taxpayer interests to transform the City's constitutional defense into an affirmative claim against the City, once the *Lockyer* decision eliminated the possibility of any further unlawful expenditure of public funds the Fund's derivative constitutional claim would have lost its jurisdictional foundation as well.[5]

In its second attempt to redeploy its initial standing, the Fund claims that, because it disagrees with the City about marriage of same-sex couples and the validity of Proposition 22, and because it already had its foot in the door, the

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[4] Indeed, as explained in footnote 1, for good reason the City never understood the Fund's complaint even to state such a claim, much less agreed that the Fund had standing to pursue it. After the *Lockyer* decision, when the Fund for the first time claimed that its complaint survived because it included a cause of action for a declaration of constitutionality, the City immediately challenged the Fund's standing to raise that claim. Because it is a jurisdictional issue, a challenge to standing can be raised at any time. (*Common Cause of California v. Board of Supervisors* (1989) 49 Cal.3d 432, 438.)

[5] Moreover, this Court made clear in *Lockyer* that the constitutionality of the marriage statutes was not actually at issue in determining the propriety of the City's expenditures. (*Lockyer, supra*, 33 Cal.4th at p. 1112.) In light of this holding, the Fund cannot credibly claim that a constitutional claim derived from its taxpayer concerns.

Fund is now entitled to litigate the entire "controversy" through to conclusion. (Pet. at pp. 10-11 [because the basis for declaratory relief is "an actual, present controversy," and because the City publicly challenged "the scope and constitutionality of Proposition 22 by issuing marriage licenses to same-sex couples," then there is an ongoing controversy between the Fund and the City that gives it standing for declaratory relief even after *Lockyer*.] This argument would eliminate the standing requirement entirely. If the Fund were correct and only an "actual controversy"—without any concomitant showing of ongoing concerns about the legality of government action or expenditures or an imperiled legal interest—were all that was required to maintain a declaratory judgment action, then every disagreement over the law would belong in court no matter how abstract or hypothetical. That is precisely what the law of standing is designed to prevent.

Try as it might, the Fund can neither morph nor resurrect its initial taxpayer standing to challenge the City's issuance of marriage licenses to same-sex couples into a basis to sue the City for declaratory relief on the constitutionality of the marriage laws, particularly where the *Lockyer* decision eliminated all of its concerns about the City's conduct, and the only controversy that remains between it and the City is a disagreement over the validity of the governing law that affects its members not one bit. The Court of Appeal's decision is correct, and there is no need for this Court to provide further guidance about the impact of the *Lockyer* decision on the Fund's purported constitutional claim.

II. THE FUND ASKS THIS COURT TO IGNORE SETTLED LAW AND ANNOUNCE AN ENTIRELY NOVEL RULE OF STANDING THAT NO COURT HAS EVER ADOPTED.

Ironically, although the Rule governing this Court's grant of review allows review for the need to "secure uniformity of decision," it is the Fund rather than

the appellate court that would depart from a unified body of settled law. The Fund proposes an exception to the law of standing specifically for initiative supporters,[6] who, according to the Fund, have such an intense connection to the issues that this alone should support standing. (Pet at. pp. 13-17.) Adopting this theory, which stands in rank contradiction to both the law of standing and the closely related law of intervention, would secure only confusion in the law, not uniformity.

The Fund does not identify a single case that grants standing to anyone, initiative supporter or otherwise, solely on the basis of a political or philosophical disagreement with the would-be defendant, no matter how intense, no matter how sincere. Indeed, settled California law is entirely to the contrary and, aside from the taxpayer and citizen standing case law discussed above, universally requires a showing of harm or threatened harm to the plaintiff's legal interests. (*Coral Construction, Inc. v. City and County of San Francisco* (2004) 116 Cal.App.4th 6, 15 ["An action challenging a legislative act cannot be brought by any individual or entity that disagrees with it. . . . [A] party [must] prove by a preponderance of the evidence that it has suffered 'an invasion of a legally protected interest.'"

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[6] The Fund claims to "represent[] the proponents and organizers of the campaign to enact Proposition 22" and asserts that the relevant facts are not in the record because the City failed to challenge its standing. (Pet. at p. 13, fn. 6.) This is disingenuous. The representative nature of the Fund has already been fully litigated in both the trial and appellate courts in these coordinated marriage cases. And contrary to the Fund's self-characterization to this Court, "the Fund itself played no role in sponsoring Proposition 22 because the organization was not even created until one year *after* voters passed the initiative." (*City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1038 [emphasis in original].) Nor does the Fund represent any official proponent of the initiative. (*Id.*) At most, then, the Fund represents active "supporters" of Proposition 22.

[quoting *Associated Builders & Contractors, Inc. v. San Francisco Airport Com.* (1999) 21 Cal.4th 352, 262].)

Moreover, in a prior appeal in this case, the Court of Appeal rejected an initiative-supporter theory as insufficient to create a basis for the closely related concept of intervention. As the court explained,

> The Fund's primary argument is that it has an especially strong interest in defending the validity of California's marriage laws because its members were heavily involved in gaining voter approval of Proposition 22. . . . But while the members' campaign involvement and the Fund's charter may bear upon the strength of the asserted interest, they do nothing to change the fundamental *nature* of this interest, which is philosophical or political. . . . [T]here is no evidence its members will be directly harmed by an unfavorable judgment. California precedents make it clear such an abstract interest is not an appropriate basis for intervention.

(*City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1039 [emphasis in original].) This Court declined to review the opinion, which is now law of the case. (*De Anza Santa Cruz Mobile Estates Homeowners Ass'n v. De Anza Santa Cruz Mobile Estates* (2001) 94 Cal.App.4th 890, 906 [prior appellate opinion is law of the case once it is final and review has been denied].)[7]

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[7] As the Court of Appeal also noted, the same intervention cases that the Fund now relies upon in its petition for review for its novel view of standing (Pet. at p. 13, citing *Legislature of State of Cal. v. Eu* (1991) 54 Cal.3d 492, 499-500; *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 812; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1250; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 241) are irrelevant to whether initiative proponents can show a special basis for participating in litigation. Although initiative proponents had intervened in those cases, the reviewing courts did not have occasion to consider whether that intervention was legally proper. (*City and County of San Francisco v. State of California, supra,* at pp. 1041-1042.) The court also discussed and distinguished the federal law that the Fund rehashes in its present brief. The City directs this Court to that analysis. (Compare Pet. at pp. 15-16 to *City and County of San Francisco v. State of California, supra,* at pp. 1043-1044.)

Not only is the Fund's proposed initiative-supporter standing theory contradicted by settled law, and not only has it been rebuffed by a near-identical prior opinion in this case, but it would also make bad law. If the Fund, with its bare political and philosophical interest, could state a justiciable claim against the City here, then any other individuals or organizations who had supported a law and worked for its passage, perhaps by collecting signatures or writing letters or testifying at a legislative hearing or making a campaign contribution, would also be able to prosecute a separate lawsuit against anyone (not just a public entity) who had the temerity to challenge "their" law. Political activists—and not just citizen groups but also political action committees, big campaign contributors, or even talk-radio hosts—should not enjoy the power to sue those who question a law's validity simply because they have a "special" political interest that they once evidenced with "special" participation in the political process. Courts would become free-for-alls, and legitimate challenges to questionable laws by those suffering an actual threat of harm would be reserved for parties with the ability to finance two lawsuits rather than one. The Fund's proposed exception to the law of standing for those with strong political interests poses dangerous consequences. The court below was right to reject it, and this Court should not grant review to entertain it.

III. THE DECISION BELOW DID NOT CREATE A CONFLICT WITH THE STANDARD OF REVIEW APPLIED TO A TRIAL COURT'S DETERMINATION OF THE PROPRIETY OF DECLARATORY RELIEF BECAUSE THAT IS NOT THE ISSUE HERE.

The Fund argues that the Court of Appeal's decision is in conflict with existing California law because a trial court's decision whether to entertain a declaratory judgment action is reviewed for abuse of discretion, whereas the Court of Appeal, it contends, reviewed the standing issue de novo. (Pet. at pp. 17-21.) Even assuming the Fund accurately describes the standard applied by the

Court of Appeal, no conflict results.[8] Standing is a separate legal issue from whether declaratory relief is necessary and proper under the circumstances, the two different standards of review do not create a conflict.

Under established law, where, as here, the relevant facts are undisputed, standing is a question of law subject to do novo review. (*IBM Personal Pension Plan v. City and County of San Francisco* (2005) 131 Cal.App.4th 1291, 1299.) This is consonant with the abuse-of-discretion standard of review in the Fund's cited cases, because those cases have nothing to do with standing. Rather, they stand only for the proposition that, where the statutory criteria for a declaratory judgment action in Code of Civil Procedure Section 1060 have been met, the trial court still retains discretion to decide whether entertaining the action for declaratory relief is, in its view, necessary and proper under the circumstances.

In *Hannula v. Hacienda Homes* (1949) 34 Cal.2d 442, 448, for example, this Court observed that the trial court could have refused to entertain an otherwise proper declaratory judgment action because the parties did not put all of their disputes before it, and future litigation might still result. But the fact that the trial court nonetheless decided the declaratory judgment question was within its discretion. (*Ibid.*) While illuminating, this analysis is irrelevant to the lower court's task in this case of determining the Fund's standing. Moreover, there is no question in *Hannula* that the plaintiff had standing to bring her declaratory

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[8] The Court of Appeal did not announce its standard of review so this Court should assume that it applied the correct legal standard. (cf. *People v. Eubanks* (1996) 14 Cal.4th 580, 598 ["In the absence of contrary evidence, we assume a trial court applied the correct legal standard"].) In any event, the City believes the Court of Appeal would have reached the same conclusion under either standard. Nonetheless, for the sake of argument, the City will assume that the Court of Appeal reviewed the standing question de novo.

judgment action: she was a property owner seeking to settle her property rights. (*Id.* at p. 443.)

Similarly, in *Tehachapi-Cummings County Water Dist. v. Armstrong* (1975) 49 Cal.App.3d 992, 998, the court held only that the trial court had discretion to determine whether a suitable "actual controversy" existed for resolution by declaratory judgment when, although all parties agreed that there had for years been an ongoing overdraft of water that was damaging a water basin, the parties also agreed that there had been no overdraft the prior year. This is irrelevant to an appellate court's review of a standing determination. And, as with the prior case, the party instituting the action in *Tehachapi-Cummings County Water District* indisputably had standing. (*Id.* at p. 995, fn. 1 [identifying the statutory basis for plaintiff's standing].)[9]

Thus, the Fund cannot show that the Court of Appeal's decision created a conflict in California law. Its legal authorities are simply inapposite to the question confronted by the lower court in this case. Here, the Court of Appeal's task was not to review whether the sort of claim raised by the Fund was ultimately suitable for resolution by declaratory judgment (a matter concededly within the discretion of the trial court), but rather whether the Fund had standing to bring a claim against the City concerning the constitutionality of a statute that

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[9] The other cases cited by the Fund also do not address the actual standing question confronting the court in this case. (See *California Physicians' Service v. Garrison* (1946) 28 Cal.2d 790, 801 (Pet. at p. 18) [where a stipulation of facts shows an actual controversy between the parties relating to their respective legal rights and duties, the trial court still has discretion to decide whether a declaratory judgment is necessary and proper]; *Application Group, Inc. v. Hunter Group, Inc.* (1998) 61 Cal.App.4th 881, 893 (Pet. at p. 18) ["Hunter does not appear to challenge AGI's standing"]; *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 433 (Pet. at p. 18) [the trial court retains discretion to refuse to entertain a declaratory relief action, even where it has subject matter jurisdiction, if the court concludes it is not necessary and proper at the time under all of the circumstances].)

caused no harm or threat of harm to the members of the Fund. Because the conflict of decision the Fund attempts to manufacture is illusory, this Court should deny review. Nothing about the decision below conflicts with settled law.

IV. AS THE COURT OF APPEAL OBSERVED, IT IS SIMPLY INSIGNIFICANT WHETHER THE FUND HAS STANDING IN THIS CASE.

Finally, the Fund insists that review should be granted because "the importance of the Fund's participation as a party in these cases should not be underestimated" and indeed is "magnified" by the Attorney General's supposed reluctance to assert state interests. (Pet. at pp. 21-22.)

But as the court below observed, its holding that the Fund lacks standing to seek a declaratory judgment on the constitutional issues actually had no practical significance for its deliberations or its ruling. (*Marriage Cases, supra*, at p. 691.) Rather, it carefully considered the briefs and arguments of all parties and all amici alike. (*Ibid.*) The fact that it then also rejected some of the Fund's arguments had nothing to do with the Fund's status as a party or an amicus. (*Cf.* Pet. at p. 21.)

Should this Court grant review, all of the briefs in the *Marriage Cases* will receive careful consideration, regardless of whether they are penned by a party or an amicus. (*Lockyer, supra*, 33 Cal.4th at 1116 [Amici can "meaningfully participate" in these proceedings and have their arguments "heard and fully considered."].) Thus, whether the Fund's arguments ultimately carry the day will not be a function of the cover page of its brief.

In short, the *Marriage Cases* would provide a particularly poor forum for reconsidering the law of standing because the Fund's standing or lack of it just doesn't matter. For this reason, too, this Court should deny review.

CONCLUSION

For the foregoing reasons, the Court should deny the Fund's petition for review.

Dated: December 4, 2006

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 4,971 words up to and including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on December 4, 2006.

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PROOF OF SERVICE

I, MONICA QUATTRIN, 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, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, California, 94102.

On December 4, 2006, I served the attached:

ANSWER TO PETITION FOR REVIEW

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

SEE ATTACHED SERVICE LIST

and served the named document in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☐ **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).

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

Executed December 4, 2006, at San Francisco, California.

MONICA QUATTRIN

SERVICE LIST

City and County of San Francisco v. State of California, et al.
San Francisco Superior Court Case No. CGC-04-429539
consolidated with
Woo v. Lockyer
San Francisco Superior Court Case No. CPF-04-504038

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Proposition 22 Legal Defense and Education Fund v. City and County of San Francisco
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consolidated with
Thomasson, et al. v. Newsom, et al.
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