

CASE NO. S122923

IN THE
SUPREME COURT OF CALIFORNIA

BILL LOCKYER, Attorney General of the State of California,
Petitioner,

v.

CITY AND COUNTY OF SAN FRANCISCO, GAVIN NEWSOM,
in his official capacity as Mayor of the City and County of San
Francisco; MABEL S. TENG, in her official capacity as Assessor-recorder
of the City and County of San Francisco; and NANCY ALFARO, in her
official capacity as the San Francisco County Clerk,
Respondents.

**APPLICATION FOR PERMISSION TO FILE
AN AMICUS BRIEF IN SUPPORT OF
PETITIONER**

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Pursuant to Rule 29.1 of the California Rules of Court, Randy Thomasson and Campaign for California Families move this Court for Leave to File a Brief of Amicus Curiae in support of Petitioner in the above-captioned case.¹

I. Interest of *Amici*.

Randy Thomasson is Executive Director of Campaign for California Families. In March 17, 1999, Randy Thomasson founded CCF. (Thomasson Decl. ¶ 2)². Prior to that time, he had been Communications Director for Capitol Resource Institute, which is a pro-family values group, based in Sacramento. (*Id.*, ¶ 8).

Since its inception, CCF has been defending the rights of traditional families. It has constituents and supporters throughout the state, including in San Francisco. (*Id.*, ¶ 3). As explained on CCF’s website, CCF “stands up for the values of marriage and family, parental rights, freedom of conscience, back-to-basics education, the sanctity of life and financial freedom for families.”(*Id.*, ¶ 14, ex. 1 thereto). CCF works hard for these values as a pro-family media voice and by lobbying the California State Legislature. (*Id.*, ¶¶

¹ The substance of the accompanying Amicus Brief bears equally with regard to the arguments advanced in the companion case of *Lewis v. Alfaro*, case no. S122865.

² Attached to this application is a copy of the affidavit signed by Randy Thomasson in connection with his motion to intervene in the above-captioned case, which was denied with leave to file an application for permission to file an amicus brief.

10-11). CCF holds news conferences throughout the state, purchases full-page media ads, distributes voter information, educates California citizens on issues of vital concern to families, and has been featured in TV, radio and newspaper stories in every major media market in the state. (*Id.*). As Executive Director of CCF, and before that time, Randy Thomasson has consistently opposed legislation that undermines the definition of marriage as between one man and one woman. In 1997 alone, he led legislative challenges to 18 different bills that would have undermined marriage and family, with all but one being defeated in the legislature. (*Id.*, ¶12).

Randy Thomasson and CCF have been active in litigation impacting the institution of marriage as a man and a woman. After Governor Davis signed AB 205 into law September 2003, Randy Thomasson and CCF immediately commenced suit to prevent implementation of that law. As background, AB 205 by its own terms grants domestic partners the rights, benefits and privileges of marriage. That law directly contravenes Proposition 22, which states that “[o]nly marriage between a man and a woman is valid or recognized in California.” Because Proposition 22 is an initiative statute that gave no amendment powers to the Legislature, it can only be amended by further vote of the people. The Legislature lacked the power to pass AB 205 into law without putting it to a vote of the people. That suit is currently pending in the

Superior Court for Sacramento County. A demurrer to the complaint by Governor Davis, the Secretary of State and the Attorney General was overruled. Summary judgment motions will be heard by the court in July.

Randy Thomasson and CCF also commenced suit to challenge the decision by the Mayor and County Clerk of San Francisco to issue marriage licenses to same-sex couples. The first marriage licenses were issued February 12, a court holiday. Randy Thomasson and CCF filed suit on February 13. Subsequent to that suit, another suit was filed challenging the Mayor's and County Clerk's decision. That case was consolidated, for all purposes, into the first-filed case of Randy Thomasson and CCF.³

II. This Brief Will Assist the Court in Making Its Decision.

Amici previously moved this Court for permission to intervene in the above-captioned case. That motion was denied, without prejudice to their right to make an application for permission to file an amicus brief. In connection with that intervention motion, Randy Thomasson and CCF submitted a memorandum of law in support of the writ petition. That memorandum contained standing arguments not advanced by Petitioner in this case, by the Petitioners in the companion case, or by any other party. *The standing case law*

³ Counsel for *Amici* are involved in litigation defending marriage laws in Oregon, Washington, New York. We also are seeking intervention in litigation challenging marriage laws in Florida and West Virginia.

provides an independent basis for this Court to hold that the county officials must obey the marriage laws as written, regardless of whether they believe those laws are unconstitutional as applied to third parties. The accompanying Amicus Brief again makes that argument, although it has been bolstered with additional federal and state case law on point.

In addition, the Amicus Brief will assist the Court in the above-captioned case because the interests of Randy Thomasson and CCF are different than that of the Attorney General. Significantly, San Francisco's actions infringe upon the constitutional rights of Randy Thomasson and constituents of CCF.

Finally, *Amici* are parties to the first-filed case in the San Francisco Superior Court, which has now been stayed by this Court in favor of the above-captioned case. Granting permission to Randy Thomasson and CCF will continue to allow them to be involved in addressing the issues first raised by them in the court below.

Amici respectfully request that this Court permit them to submit this brief to address the limited issue indicated by this Court's March 11, 2004 order – namely, whether the county officials have authority to disregard state marriage laws as currently written.

Respectfully submitted this 24th day of March, 2004.

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DECLARATION OF SERVICE BY FEDERAL EXPRESS

I, Rena M. Lindevaldsen, declare:

I am, and was at the time of the service hereinafter mentioned, over the age of 18 years and not a party to the above-entitled cause. My business address is 210 East Palmetto Avenue, Longwood, Florida and I am employed in Seminole County, California where the express service carrier deposit occurred.

I served the Application for Permission to file an Amicus Brief, together with the Amicus Brief in Support of Petitioners on March 24, 2004 by depositing a copy of the document in a box or other facility regularly maintained by Federal Express, as express service carrier, in an envelope or package designated by Federal Express with delivery fees paid or provide for, addressed to:

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

Dated: March 24, 2004

RENA M. LINDEVALDSEN