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April 20, 2004

**VIA OVERNITE EXPRESS**

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

Re: *Lewis, et al. v. Alfaro*, Petition for Peremptory Writ of Mandate,  
Case No. S122865

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

Pursuant to this Court's order of April 14, 2004, Petitioners submit the following letter brief supporting a declaration by this Court that, because the Respondent exceeded her authority, the "marriages" and "marriage licenses" at issue are void and have no legal value or effect.

**I. This Court may and should rule on the validity of the same-sex "marriage licenses" and "marriages."**

All transactions conducted *ultra vires* of a local official's authority are void and courts may declare them so. *In re County of Orange*, 31 F. Supp. 2d 768, 774 (C.D. Cal. 1998) (quoting *Los Angeles Dredging Co. v. City of Long Beach*, 210 Cal. 348, 353 (1930) (holding that "contracts wholly beyond the powers of a municipality are void"). As the Respondent's actions are before this Court, so too are the fruits of those actions; the two are inextricably linked. *Cf. Wong Sun v. United States*, 371 U.S. 471, 484-488 (1963) (The "fruit of a poisonous tree doctrine" requires exclusion of evidence obtained as a result of an unlawful search). The point is a crucial one: invalidating the actions on one hand and validating the

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“licenses” and “marriages” on the other would render the decision meaningless. Validating the “marriages” in this case would have the deleterious effect of encouraging local officials to disregard the rule of law wherever a local official’s view conflicts with long-established state law.<sup>1</sup>

To the extent any constitutional claims regarding marriage laws remain viable after this Court’s holding, the cases pending in superior courts will resolve those issues. This Court should not reward Respondent’s errant behavior by giving her *ultra vires* actions legal effect in the meantime. In this case, the factual record is as complete as is necessary for this Court to decide the validity of the same-sex “marriages” performed and “marriage licenses” issued pursuant to Respondent’s deliberate disregard for state laws defining and regulating marriage. Respondents may argue that a determination on the validity of the marriage licenses should be postponed until the constitutionality of California’s present marriage laws are ruled upon. Because the constitutionality of the marriage laws is of “great public importance and must be resolved promptly,” we join the petition filed by the Attorney General and invite this court to consider the constitutionality of the marriage laws in this case. *San Francisco Unified School Dist. v. Johnson*, 3 Cal. 3d 937, 944 (1971) (quotation omitted). Any factual questions may be addressed by a referee as necessary. Cal. Code Civ. Proc. § 639(a)(4); *see also In re Chester*, 51 Cal.2d 87, 88 (1959) (referee was appointed by California Supreme Court).

Finally, invalidating the “marriages” is unlikely to diminish any “right” gained by same-sex couples: every same-sex couple was informed on Respondent’s altered applications that the “licenses” were of questionable validity. *See* Declaration of Nancy Alfaro filed in support of Respondent’s Opposition (attached hereto as Exhibit “A” and hereinafter referred to as “Alfaro Decl.”), at 1 & Ex. A to original declaration (*see* disclaimer language). Moreover, domestic partners were explicitly told that they may lose legal rights by entering into Respondent’s “marriages.” *Id.*

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<sup>1</sup> An example extended from previous briefing further illustrates the point: a mayor decides to grant gun licenses to individuals who, under state law may not obtain such a license, by altering the license form and application. The mayor’s *ultra vires* actions cannot give legal effect to the unlawful licenses. There would be serious legal and policy ramifications for the state if the gun licenses were ratified after the fact (despite their non-conformity) and their holders were allowed to act upon licenses obtained *via* a local official’s contravention of state law.

**II. The “marriages” and their accompanying “marriage licenses” were void *ab initio*.**

Under unambiguous statutory and citizens’ initiative authority, a “marriage” between individuals of the same-sex is void from the start. In some instances the Legislature may declare that certain marriages are void, but legislative action is not necessary for a particular type of marriage to be declared invalid. *Estate of DePasse*, 97 Cal. App. 4th 92, 105-06 (2002).

The distinction between “void” and “voidable” marriages is very instructive here. “Voidable” marriages are defective marriages that may be later “cured” by being brought into compliance with state law. For example, a bigamous marriage is considered “void” but it may be deemed only “voidable” if the former spouse is missing for five years or believed dead. Cal. Fam. Code § 2201. Other “voidable” marriages that may be later ratified include situations where one party did not or could not consent but later does so; where one party lacks mental capacity but later regains it; where consent was obtained by fraud or force but the party freely chooses to remain married after knowledge of all the circumstances. Cal. Fam. Code § 2210. In each case, the “voidable” marriage could eventually meet the procedural requirements for a valid marriage. *See DePasse*, 97 Cal. App. 4th at 106 (listing the five procedural requirements for a valid marriage under Family Code §§ 300, 306: the parties’ consent, a marriage license, solemnization of the marriage, authentication of the license and solemnization, and return of the marriage certificate of registry).

**A. Same-sex unions cannot meet the statutory requirements.**

In contrast, a “void” marriage is one that can never obtain legal status. There is no fuzzy issue of capacity or consent – it is a bright line of demarcation. For example, incestuous marriages are void from the beginning. *Id.* at § 2200. In our case, the Legislature has repeatedly stated that only opposite-sex couples may enter the marital relationship. The Family Code governing marriage is explicit: “Marriage is a personal relation arising out of a civil contract between a man and a woman . . . . Consent must be followed by the issuance of a license.” Cal. Fam. Code § 300 (emphasis added); *see also* § 308.5. The Code specifies who may consent: “[a]n unmarried male of the age of 18 years or older, and an unmarried female of the age of 18 years or older, and not otherwise disqualified, are capable of consenting to and consummating marriage.” Cal. Fam. Code § 301; *see also Welch v. State*, 83 Cal. App. 4th 1374, 1378 (2000) (“a lawful marriage requires the consent of a man and

a woman”). Section 308.5 reinforces California’s position on marriage: “[o]nly marriage between a man and a woman is valid or recognized in California.” Any other combination of individuals is clearly not marriage in California; same-sex “marriages” are, therefore, void.

**B. The marriage licenses and license applications are facially defective and are void.**

“[A]ccording to the plain language of the statutes, a license is a mandatory requirement for a valid marriage in California.” *DePasse*, 97 Cal. App. 4th at 102. With no valid licenses, there is no valid marriage. The forms for marriage licenses and the applications for those licenses “shall”<sup>2</sup> be prescribed by the State Department of Health Services. Cal. Fam. Code § 355; *see also* Cal. Health & Safety Code § 103125 (“The forms for the application for license to marry, the certificate of registry of marriage including the license to marry, and the marriage certificate shall be prescribed by the State Registrar”).

Furthermore, the form listed in Section 355 lists a specific affidavit that “shall” be included on the application, with a signature space for a “bride” and “groom.” *Id.* As a matter of standard statutory construction, “in the absence of specifically defined meaning, a court looks to the plain meaning of a word as understood by the ordinary person, which would typically be a dictionary definition.” *Hammond v. Agran*, 76 Cal. App. 4th 1181, 1189, 90 (1999). According to the dictionary, “bride” means “a newly married woman or a woman about to be married” and “bridegroom” (commonly shortened to “groom”) means “a newly married man or a man about to be married.” Random House Webster’s Unabridged Dictionary 260 (2nd Ed. 1999).

Respondent acknowledges that she changed the form of the applications and licenses from that prescribed by the State Department of Health Services. *See* Alfaro Decl. at 1 ¶ 3 (“I designed a gender-neutral application for public marriage licenses, and a gender-neutral marriage license.”); *see also* Declaration of Gavin Newsom filed in support of Respondent’s Opposition (attached hereto as Exhibit “B” and hereinafter referred to as “Newsom Decl.”), at 1 ¶ 5 (“I instructed . . . Nancy Alfaro . . . to determine what changes should be made to the forms and documents used to apply for and issue marriage licenses”). Respondent altered

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<sup>2</sup> The word “shall” in the Family Code is mandatory, not permissive. Cal. Fam. Code § 12; *see also* *Estate of DePasse*, 97 Cal. App. 4th 92, 102 (2002), *review denied*.

the licenses and applications in numerous places (*See* Alfaro Decl. at 1 ¶ 3 & Ex. A.) and added the following disclaimer:

Please read this carefully prior to completing the application:

By entering into marriage you may lose some or all of the rights, protections, and benefits you enjoy as a domestic partner, including, but not limited to those rights, protections, and benefits afforded by State and local government, and by your employer. If you are currently in a domestic partnership, you are urged to seek legal advice regarding the potential loss of your rights, benefits, protections, and benefits before entering into marriage.

Marriage of lesbian and gay couples may not be recognized as valid by any jurisdiction other than San Francisco, and may not be recognized as valid by any employer. If you are a same-gender couple, you are encouraged to seek legal advice regarding the effect of entering into marriage.

*Id.*

Based on the mandatory statutory language cited above, the “licenses” issued by Respondent are void because they do not conform to state law. Respondent constructed her own forms, deliberately refusing to adhere either to the laws governing the form of marriage licenses and marriage applications, or the laws governing eligibility requirements for marriage.

The syllogism is straightforward: only licenses and applications meeting state law requirements as to form and substance are valid licenses and applications. The Respondent altered both the licenses and applications so they no longer meet state law requirements as to form and substance. Therefore, the Respondent did not issue valid licenses and applications, and the papers issued have no legal effect.

Ultimately, because Respondent exceeded her authority, the Court may and should declare these “licenses” and their accompanying “marriages” void *ab initio*.

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**III. California law does not require recovery of the license fees.**

A voluntary payment of a license fee is generally not recoverable under California law even if the collection of the fee is invalid. *O'Brien v. County of Colusa*, 67 Cal. 503, 504-05 (1885) (“no rule of law authorizes him to recover”); *see also Benson v. City of Long Beach*, 61 Cal. App. 2d 189, 194 (1943) (refund requires invalid tax and involuntary payment), *hearing denied*; and *see Rooney v. Snow*, 131 Cal. 51, 54 (1900) (ordinance allowing refund was invalid), *reh'g denied*. A mutual mistake of law between the official and the parties will not serve as a basis for relief. *Benson*, 61 Cal. App. 2d at 193-94 (quoting *Cooley v. County of Calaveras*, 121 Cal. 482, 486 (1898)). Thus, under California law, there is no authority to order an across-the-board refund. Of course, individuals would not be precluded from seeking recovery on a case-by-case basis, depending on their individual circumstances.

**IV. Conclusion.**

The Respondent's flouting of state law, based on her personal interpretation of the State and U.S. Constitutions, completely removes all legal effect and value from the “licenses” she issued. Petitioners respectfully ask this Court to declare that the issued “licenses” and the subsequent “marriages” are void.

Respectfully submitted,

ALLIANCE DEFENSE FUND

By 

Robert H. Tyler

Attorney for Petitioners

# **Exhibit A**

SUPREME COURT OF THE STATE OF CALIFORNIA

BARBARA LEWIS, CHARLES  
MCILHENNY, and EDWARD MEI,

Petitioners,

vs.

NANCY ALFARO, County Clerk of  
the City and County of San Francisco  
in her official capacity,

Respondents.

Case No. S122865

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DECLARATION OF NANCY ALFARO

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BOBBIE J. WILSON, SBN 148317  
PAMELA K. FULMER, SBN 154736  
AMY E. MARGOLIN, SBN 168192  
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Deputy City Attorneys  
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1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102  
Telephone: (415) 554-4700  
Facsimile: (415) 554-4747



I, NANCY ALFARO, declare as follows:

1. I am the Director of the County Clerk's Office for the City and County of San Francisco. In that capacity, I perform all the duties, and hold all the responsibilities of, the County Clerk. These duties include the issuance of all marriage licenses. I have personal knowledge of the matters stated herein, and if called as a witness, I could and would testify competently thereto.
2. On February 10, 2004, San Francisco Mayor Gavin Newsom sent me a letter instructing me to "determine what changes should be made to the forms and documents used to apply for and issue marriage licenses in order to provide marriage licenses on a non-discriminatory basis, without regard to gender or sexual orientation."
3. Following these instructions, by February 12, 2004, I designed a gender-neutral application for public marriage licenses, and a gender-neutral marriage license. I affixed a warning to the top of the gender-neutral application that stated:

Please read this carefully prior to completing the application:

By entering into marriage you may lose some or all of the rights, protections, and benefits you enjoy as a domestic partner, including, but not limited to those rights, protections, and benefits afforded by State and local government, and by your employer. If you are currently in a domestic partnership, you are urged to seek legal advice regarding the potential loss of your rights, protections, and benefits before entering into marriage.

Marriage of lesbian and gay couples may not be recognized as valid by any jurisdiction other than San Francisco, and may not be recognized as valid by any employer. If you are a same-gender couple, you are encouraged to seek legal advice regarding the effect of entering into marriage.

A true and correct copy of the gender-neutral application is attached hereto as Exhibit A. A true and correct copy of a gender-neutral marriage license also is attached hereto, as Exhibit B.

4. On February 12, 2004, the City began issuing marriage licenses to, and solemnizing the marriages of, same-sex couples.

5. Since the City began issuing same-sex marriage licenses my office has been deluged with applicants. In the days immediately following February 12, thousands of couples lined up outside City Hall to obtain same-sex marriage licenses. Often hundreds of couples would sleep on the sidewalk overnight, in the rain, to obtain a license.

6. The overwhelming interest in same-sex marriage licenses put such a strain on my office that I had to institute an "appointment only" policy for issuing marriage licenses of any kind. Under this policy, couples have to sign up for a time in advance to get a marriage license. As a result of this policy, my office has gone from issuing many hundreds of licenses a day to fewer than 100 a day.

7. The first business day after word of the "appointment only" policy hit the media, my office received so many telephone calls that the voicemail system for the entire City and County of San Francisco crashed. I have since been able to put the reservation request online. Every available time slot Until April 30, 2004 filled within five days after the registration system went online.

8. Since February 12, 2004, the City has issued more than 3,500 marriage licenses to same-sex couples.

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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.

Executed this 4th day of March, 2004 in San Francisco, California

By:   
NANCY ALFARO

**THE CEREMONY MUST BE PERFORMED WITHIN 90 DAYS FROM THE DATE LICENSE WAS ISSUED**  
**APPLICATION FOR PUBLIC MARRIAGE LICENSE**  
**NO REFUNDS**

**1<sup>ST</sup> Applicant's Personal Data**

1A. NAME OF 1 <sup>ST</sup> APPLICANT - FIRST (GIVEN)	1B. MIDDLE	1C. CURRENT LAST (FAMILY)	<del>1D. BIRTH LAST - IF DIFF. FROM 1C</del>	2. DATE OF BIRTH - MONTH, DAY, YEAR	
3A. RESIDENCE - Street Address		3B. CITY	3C. ZIP CODE	3D. COUNTY - IF NOT CAL., ENTER STATE (IF U.S.) OR COUNTRY	4. STATE (IF U.S.) OR COUNTRY OF BIRTH
5. MAILING ADDRESS - IF DIFFERENT		6. NUMBER OF PREVIOUS MARRIAGES	7A. LAST MARRIAGE ENDED BY: DEATH    DISSOLUTION    ANNULMENT		7B. DATE - MM/DD/YYYY
8A. USUAL OCCUPATION		8B. USUAL KIND OF BUSINESS OR INDUSTRY			9. NUMBER OF HIGHEST GRADE COMPLETED (High School 1-12 or Univ. 13 - up)
10A. FULL NAME OF PARENT		10B. STATE (IF U.S.) OR COUNTRY OF BIRTH	11A. FULL NAME OF PARENT		11B. STATE (IF U.S.) OR COUNTRY OF BIRTH

**2<sup>ND</sup> Applicant's Personal Data**

12A. NAME OF 2 <sup>ND</sup> APPLICANT - FIRST (GIVEN)	12B. MIDDLE	12C. CURRENT LAST (FAMILY)	12D. BIRTH LAST (FAMILY) - IF DIFFERENT THAN 12C	13. DATE OF BIRTH - MONTH, DAY, YEAR	
14A. RESIDENCE - Street Address		14B. CITY	14C. ZIP CODE	14D. COUNTY - IF NOT CAL., ENTER STATE (IF U.S.) OR COUNTRY	15. STATE (IF U.S.) OR COUNTRY OF BIRTH
16. MAILING ADDRESS - IF DIFFERENT		17. NUMBER OF PREVIOUS MARRIAGES	18A. LAST MARRIAGE ENDED BY: DEATH    DISSOLUTION    ANNULMENT		18B. DATE - MM/DD/YYYY
19A. USUAL OCCUPATION		19B. USUAL KIND OF BUSINESS OR INDUSTRY			20. NUMBER OF HIGHEST GRADE COMPLETED (High School 1-12 or Univ. 13 - Up)
21A. FULL NAME OF PARENT		21B. STATE (IF U.S.) OR COUNTRY OF BIRTH	22A. FULL NAME OF PARENT		22B. STATE (IF U.S.) OR COUNTRY OF BIRTH

**Affidavit**

We, the undersigned, unmarried individuals, state that the foregoing information is correct and true to the best of our knowledge and belief, that no legal objection to the marriage nor to the issuance of a license is known to us, and hereby apply for a license and certificate of marriage.

23. SIGNATURE OF 1 <sup>ST</sup> APPLICANT	24. SIGNATURE OF 2 <sup>ND</sup> APPLICANT
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*Note: Authorization and license is hereby given to any person duly authorized by the laws of the State of California to perform a marriage ceremony within the State of California to solemnize the marriage of the above named persons. Required consent for the issuance of this license is on file.*

**FOR OFFICE USE ONLY**

25A. ISSUE DATE - MONTH, DAY, YEAR	25B. LICENSE EXPIRES AFTER - MONTH, DAY, YEAR	25C. LICENSE NUMBER	BY: _____	DEPUTY _____
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CITY HALL CEREMONY DATE: \_\_\_\_\_

I acknowledge that I have received the brochure entitled "Your Future Together..."

**AFFIDAVIT**

Signature of 1<sup>st</sup> Applicant

Date

Signature of 2<sup>nd</sup> Applicant

Date

**PRIVACY NOTIFICATION**

The information requested for the marriage certificate is authorized and required by Division 9 of the Health and Safety Code, and related provisions within the Civil Code, Code of Civil Procedures, and Government Code. Civil Code Section 1798.9 et seq. requires each state agency to provide this notice to individuals completing this form.

The principal purpose for this record is:

1. To establish a permanent record that is legally recognized as prima facie evidence of the facts stated therein for each marriage occurring in the State of California.
2. To provide individuals with certified copies from the records to serve their personal needs, such as securing passports and applying for social security or death benefits.
3. To provide information to health authorities and other qualified persons with a valid education or scientific interest in demographic and epidemiological studies for health and social purposes.
4. This information is also provided to the National Center for Health Statistics for compiling national reports.

The record shall be open for examination during regularly scheduled office hours, except when access is specifically prohibited by statute or regulations.

Daytime Phone #: (     ) \_\_\_\_\_

# LICENSE AND CERTIFICATE OF MARRIAGE

STATE FILE NUMBER

MUST BE LEGIBLE - MAKE NO ERASURES, WHITEOUTS OR OTHER ALTERATIONS

LOCAL REGISTRATION NUMBER

<b>FIRST APPLI. PERSONAL DATA</b>	1A. NAME OF 1ST APPLICANT (GIVEN) <b>MARGOT</b>		1B. MIDDLE <b>LOCKWOOD</b>		1C. CURRENT LAST (FAMILY) <b>MC SHANE</b>		2. DATE OF BIRTH - MONTH, DAY, YEAR <b>09/16/1969</b>				
	3A. RESIDENCE - STREET AND NUMBER <b>1357 CALISTOGA AVENUE</b>			3B. CITY <b>NAPA</b>		3C. ZIP CODE <b>94559</b>		3D. COUNTY - OUTSIDE CALIFORNIA, ENTER STATE <b>NAPA</b>			
	5. MAILING ADDRESS - IF DIFFERENT -			6. NUMBER OF PREVIOUS MARRIAGES <b>0</b>		7A. LAST MARRIAGE ENDED BY: <input type="checkbox"/> DEATH <input type="checkbox"/> DISSOLUTION <input type="checkbox"/> ANNULMENT			7B. DATE - MONTH, DAY, YEAR -		
	8A. USUAL OCCUPATION <b>MARKETING DIRECTOR</b>			8B. USUAL KIND OF BUSINESS OR INDUSTRY <b>RETAIL/CLOTHING</b>			9. EDUCATION - YEARS COMPLETED <b>16</b>				
	10A. FULL NAME OF PARENT <b>CREIGHTON MC SHANE</b>			10B. STATE OF BIRTH <b>NEW YORK</b>		11A. FULL NAME OF PARENT <b>LOUISE LOCKWOOD PARRY</b>			11B. STATE OF BIRTH <b>NEW YORK</b>		
<b>SECOND APPLI. PERSONAL DATA</b>	12A. NAME OF 2ND APPLICANT (GIVEN) <b>ALEXANDRA</b>		12B. MIDDLE <b>PHILLIPS</b>		12C. CURRENT LAST (FAMILY) <b>D'AMARIO</b>		12D. BIRTH LAST NAME (IF DIFFERENT THAN 12C) -		12E. DATE OF BIRTH - MONTH, DAY, YEAR <b>03/03/1965</b>		
	14A. RESIDENCE - STREET AND NUMBER <b>1357 CALISTOGA AVENUE</b>			14B. CITY <b>NAPA</b>		14C. ZIP CODE <b>94559</b>		14D. COUNTY - OUTSIDE CALIFORNIA, ENTER STATE <b>NAPA</b>		14E. STATE OF BIRTH <b>MA</b>	
	16. MAILING ADDRESS - IF DIFFERENT -			17. NUMBER OF PREVIOUS MARRIAGES <b>0</b>		18A. LAST MARRIAGE ENDED BY: <input type="checkbox"/> DEATH <input type="checkbox"/> DISSOLUTION <input checked="" type="checkbox"/> ANNULMENT			18B. DATE - MONTH, DAY, YEAR -		
	19A. USUAL OCCUPATION <b>PSYCHOTHERAPIST</b>			19B. USUAL KIND OF BUSINESS OR INDUSTRY <b>PSYCHOTHERAPY</b>			20. EDUCATION - YEARS COMPLETED <b>18</b>				
	21A. FULL NAME OF PARENT <b>ANTHONY D'AMARIO</b>			21B. STATE OF BIRTH <b>RI</b>		22A. FULL NAME OF PARENT <b>BARBARA HICKS</b>			22B. STATE OF BIRTH <b>MA</b>		
<b>AFFIDAVIT</b>											
WE, THE UNDERSIGNED, UNMARRIED INDIVIDUALS, STATE THAT THE FOREGOING INFORMATION IS CORRECT AND TRUE TO THE BEST OF OUR KNOWLEDGE AND BELIEF, THAT NO LEGAL OBJECTION TO THE MARRIAGE NOR TO THE ISSUANCE OF A LICENSE IS KNOWN TO US, AND HEREBY APPLY FOR A LICENSE AND A CERTIFICATE OF MARRIAGE.											
23. SIGNATURE OF 1ST APPLICANT					24. SIGNATURE OF 2ND APPLICANT						
<b>LICENSE TO MARRY</b>											
25A. ISSUE DATE MONTH, DAY, YEAR <b>02/12/2004</b>			25B. LICENSE EXPIRES AFTER MONTH, DAY, YEAR <b>05/12/2004</b>			25C. LICENSE NUMBER <b>04-000521-00</b>		25D. COUNTY OF ISSUE <b>San Francisco</b>			
26A. SIGNATURE OF WITNESS					26B. ADDRESS - STREET AND NUMBER			26C. CITY, STATE AND ZIP CODE			
27A. SIGNATURE OF WITNESS					27B. ADDRESS - STREET AND NUMBER			27C. CITY, STATE AND ZIP CODE			
<b>CERTIFICATION OF PERSON SOLEMNIZING MARRIAGE</b>											
28. I HEREBY CERTIFY THAT THE ABOVE-NAMED INDIVIDUALS WERE JOINED BY ME IN MARRIAGE IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA					28A. SIGNATURE OF PERSON SOLEMNIZING MARRIAGE			28B. RELIGIOUS DENOMINATION (IF CLERGY)			
ON _____ MONTH _____ DAY _____ YEAR					28C. NAME OF PERSON SOLEMNIZING MARRIAGE (TYPE OR PRINT)			28D. OFFICIAL TITLE			
AT _____ CITY OR TOWN _____ COUNTY _____ CALIFORNIA					28E. MAILING ADDRESS			28F. ZIP CODE			
30A. SIGNATURE OF LOCAL REGISTRAR					30B. SIGNATURE OF DEPUTY (IF APPLICABLE)			31. DATE ACCEPTED FOR REGISTRATION			

State of California, Department of Health Services, Office of State Registrar

VS-117C (1-82)

## PUBLIC MARRIAGE LICENSE

PLEASE SEND A CERTIFIED COPY OF OUR PUBLIC MARRIAGE CERTIFICATE. LIC. 2004-0000521  
 1) Fill out and mail form 2) Do not send cash 3) Make Check or Money Order payable to **SF ASSESSOR-RECORDER**

1ST APPLICANT'S FULL NAME: \_\_\_\_\_

2ND APPLICANT'S FULL NAME: \_\_\_\_\_

DATE OF MARRIAGE: \_\_\_\_\_ LICENSE WAS ISSUED AT: **SAN FRANCISCO**

ADDRESS: \_\_\_\_\_ **SF ASSESSOR-RECORDER  
 CITY HALL, #190  
 SAN FRANCISCO, CA 94102-4698  
 (415) 554-4176**

YOU MAY ORDER CERTIFIED COPIES 10 DAYS AFTER THE LICENSE HAS BEEN RECEIVED FOR REGISTRATION BY SUBMITTING THIS REQUEST, \$13 PER COPY FEE, AND A LARGE SELF-ADDRESSED STAMPED ENVELOPE. (PRICE SUBJECT TO CHANGE)

## PRIVACY NOTIFICATION

Civil Code Section 1798 et seq. requires each state agency to provide this notice to individuals completing this form. The information is being requested by: Department of Health Services, Office of State Registrar, 304 S Street, P.O. Box 730241, Sacramento, CA 94244-0241, Telephone (916) 445-2684.

The information requested on this certificate is authorized and required by Division 102 of the Health and Safety Code, and related provisions within the Civil Code, Code of Civil Procedure, and Government Code.

The completion of all items requested on this form is mandatory. Health and Safety Code Section 103775 provides that "Every person, except a parent informant for a certificate of live birth, who is responsible for supplying information who refuses or fails to furnish correctly any information in his or her possession that is required by this part, or furnishes false information affecting any certificate or record required by this part, is guilty of a misdemeanor."

The principal purpose for this vital record is:

1. To establish a permanent record that is legally recognized as prima facie evidence of the facts stated therein for each marriage occurring in the State of California.
2. To provide individuals with certified copies from the records to serve their personal needs, such as securing passports and applying for Social Security or death benefits.
3. To provide information, to health authorities and other qualified persons with a valid education or scientific interest, for demographic and epidemiological studies for health and social purposes.
4. This information is also provided to the National Center for Health Statistics for compiling national statistical reports.

The record shall be open for examination during regularly scheduled office hours, except when access is specifically prohibited by statute or regulations.

## INSTRUCTIONS AND INFORMATION

### To Person Solemnizing Marriage Ceremony

Section 400 of the Family Code states: "Marriage may be solemnized by any of the following who is of the age of 18 years or older: (a) A priest, minister, or rabbi of any religious denomination. (b) A judge or retired judge, commissioner of civil marriages or retired commissioner of civil marriages, commissioner or retired commissioner, or assistant commissioner of a court of record in this state. (c) A judge or magistrate who has resigned from office. (d) Any of the following judges or magistrates of the United States: (1) A justice or retired justice of the United States Supreme Court. (2) A judge or retired judge of a court of appeals, a district court, or a court created by an act of Congress the judges of which are entitled to hold office during good behavior. (3) A judge or retired judge of a bankruptcy court or a tax court. (4) A United States magistrate or retired magistrate. (e) A legislator or constitutional officer of this state or a member of Congress who represents a district within this state, while that person holds office." A marriage may also be solemnized by a person authorized to do so by Sections 401 and 402.

The License and authorization to marry must be used only within the State of California, expires 90 days after date of issue, and cannot be used after the "Expiration Date" shown in Item 25B.

1. Have one or more witnesses to the marriage sign Items 26A and 27A and complete Items 26B, 26C, 27B, and 27C.
2. Enter date and place of marriage in Item 28.
3. Sign your name in Item 29A.
4. Type or print your name, official title, and address in Items 29C, 29D, 29E, and 29F.
5. Enter your denomination in Item 29B (if priest, minister, or rabbi).

The completed LICENSE AND CERTIFICATE OF MARRIAGE must be returned within 10 days (Family Code Section 423) after the marriage ceremony, by the person performing the ceremony, to the local registrar of marriages (county recorder of the county where the license was issued). It can be mailed or delivered in person.

# **Exhibit B**



**SUPREME COURT OF THE STATE OF CALIFORNIA**

**BARBARA LEWIS, CHARLES  
MCILHENNY, and EDWARD MEI,**

**Petitioners,**

**vs.**

**NANCY ALFARO, County Clerk of  
the City and County of San Francisco  
in her official capacity,**

**Respondents.**

**Case No. S122865**

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**DECLARATION OF GAVIN NEWSOM**

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**I, GAVIN NEWSOM, DECLARE AS FOLLOWS:**

1. I am the Mayor of the City and County of San Francisco. As such, I am the City's chief executive officer, responsible for overseeing all departments and governmental units in the executive branch of the City and County. I have personal knowledge of the matters set forth in this declaration. If called to testify under oath, I could do so truthfully and competently.

2. On January 20, 2004, I attended the President's State of the Union address in Washington D.C. as a guest of House Minority Leader Nancy Pelosi. That night, President Bush expressed his concern that some state courts were attempting to define marriage as something other than a union between a man and a woman. The President suggested that if courts continue this practice, a constitutional amendment may be necessary.

3. The President's comments concerned me. In the weeks following the State of the Union Address, I asked my top aides to explore how San Francisco could issue marriage licenses to same-sex couples. During this period, I also consulted the City Attorney's Office and national and local gay rights advocates.

4. I concluded that the California Family Code's definition of marriage as being between a man and a woman was unconstitutional under both the constitutions of California and of the United States. I also concluded that the City could not enforce the unconstitutional provisions of the Family Code.

5. To this end, on February 10, 2004, I instructed the Director of the County Clerk's Office, Nancy Alfaro, to determine what changes should be made to the forms and documents used to apply for and issue marriage licenses in order to provide marriage licenses on a non-

discriminatory basis, without regard to gender or sexual orientation. A true and correct copy of that letter is attached hereto as Exhibit A.

6. On February 12, 2004, the City and County of San Francisco began issuing marriage licenses to, and solemnizing the marriages of, same-sex couples. To date, more than 3,500 same-sex couples have married in the City.

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

Executed this 4th day of March, 2004 in San Francisco, California

By: \_\_\_\_\_

GAVIN NEWSOM

**Office of the Mayor**  
City & County of San Francisco



**Gavin Newsom**

February 10, 2004

Nancy Alfaro  
San Francisco County Clerk  
City Hall, Room 168  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Dear Ms. Alfaro,

Upon taking the Oath of Office, becoming the Mayor of the City and County of San Francisco, I swore to uphold the Constitution of the State of California. Article I, Section 7, subdivision (a) of the California Constitution provides that "[a] person may not be . . . denied equal protection of the laws." The California courts have interpreted the equal protection clause of the California Constitution to apply to lesbians and gay men and have suggested that laws that treat homosexuals differently from heterosexuals are suspect. The California courts have also stated that discrimination against gay men and lesbians is invidious. The California courts have held that gender discrimination is suspect and invidious as well. The Supreme Courts in other states have held that equal protection provisions in their state constitutions prohibit discrimination against gay men and lesbians with respect to the rights and obligations flowing from marriage. It is my belief that these decisions are persuasive and that the California Constitution similarly prohibits such discrimination.

Pursuant to my sworn duty to uphold the California Constitution, including specifically its equal protection clause, I request that you determine what changes should be made to the forms and documents used to apply for and issue marriage licenses in order to provide marriage licenses on a non-discriminatory basis, without regard to gender or sexual orientation.

Respectfully,

  
Mayor Gavin Newsom

cc: Dennis Herrera, City Attorney, City and County of San Francisco  
Matt Gonzalez, President of the Board of Supervisors, City and County of San Francisco  
Bill Lockyer, Attorney General, State of California  
Kevin Shelley, Secretary of State, State of California  
Mabel Teng, Assessor, City and County of San Francisco.

CASE NO. S122865

IN THE  
SUPREME COURT OF CALIFORNIA

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BARBARA LEWIS, CHARLES MCILHENNY, and EDWARD MEI,  
Petitioners,

vs.

NANCY ALFARO, County Clerk of the City and County of  
San Francisco in her official capacity,  
Respondent.

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**CERTIFICATE OF SERVICE**

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**PROOF OF SERVICE**

I am over the age of 18 years and not a party to the within action.  
My business address is 38760 Sky Canyon Drive, Suite B, Murrieta,  
California 92563.

On the date set forth below, I served the document(s) described as:

(1) LETTER BRIEF DATED APRIL 20, 2004

on the interested parties in this action by faxing:  originals  true  
copies thereof as follows:

**SEE ATTACHED SERVICE LIST**

(By Facsimile) I transmitted the above-referenced document(s) by  
facsimile transmission from (909) 461-9056. A transmission report was  
properly issued by the transmitting facsimile machine and the transmission  
was reported as complete and without error to the facsimile number  
indicated above.

(By Mail) I am readily familiar with the practice of this office for  
collection and processing of correspondence for mailing with the United  
States Postal Service. Pursuant to that practice, the above-referenced  
document(s) were sealed and placed for collection and mailing with this  
office's first class, postage prepaid mail on this date, at my above address in  
accordance with ordinary office procedure.

(By Overnight Delivery) I deposited in a box or other facility  
regularly maintained by OverNite Express, an express service carrier, a  
copy of the above-referenced documents in an envelope designated by the

said express service carrier, with delivery fees paid or provided for, addressed to the addressee(s) listed above.

(By Personal Service) I delivered such envelope(s) by hand to the office(s) of the addressee(s).

I declare under penalty of perjury under the laws of the state of California and the United States of America that the above is true and correct. Executed at Murrieta, California.

Date: April 20, 2004

  
SYLVIA NOLEN

**SERVICE LIST**

<p>Therese M. Stewart, Chief Deputy City Attorney Dennis J. Herrera, City Attorney Office of the City Attorney Wayne K. Snodgrass, Deputy City Attorney K. Scott Dickey, Deputy City Attorney Kathleen S. Morris, Deputy City Attorney Sherri Sokeland Kaiser, Deputy City Attorney CITY AND COUNTY OF SAN FRANCISCO City Hall, Room 234 One Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Reception: (415) 554-4700 Facsimile: (415) 554-4715</p>	<p>Attorneys for Defendants CITY AND COUNTY OF SAN FRANCISCO, a charter city and county; GAVIN NEWSOM, in his official capacity as Mayor of San Francisco, NANCY ALFARO, in her official capacity as San Francisco County Clerk</p>
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