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16 Attorneys for Respondents and Cross-Complainants,
CITY AND COUNTY OF SAN FRANCISCO;
17 GAVIN NEWSOM; AND NANCY ALFARO

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

20 PROPOSITION 22 LEGAL DEFENSE
AND EDUCATION FUND, a
California nonprofit public benefit
21 corporation, on its own behalf and on
behalf of the people of California,

22 Petitioner,

23 vs.

24 CITY AND COUNTY OF SAN
FRANCISCO, a charter city and county,
GAVIN NEWSOM, in his official
25 capacity as Mayor of San Francisco,
NANCY ALFARO, in her official
26 capacity as San Francisco County Clerk,
and DOES 1 through 100,

27 Respondents.
28

Case No. 503943

**CITY AND COUNTY OF SAN
FRANCISCO'S CROSS-COMPLAINT FOR
DECLARATORY RELIEF
(To Determine Validity of State Statutes)**

Hearing Judge: Hon. James L. Warren

Date Action Filed: February 13, 2004
Trial Date: To Be Determined

1 CITY AND COUNTY OF SAN
2 FRANCISCO, a charter city and county,

3 Cross-Complainant,

4 vs.

5 STATE OF CALIFORNIA, PROPOSITION
6 22 LEGAL DEFENSE AND EDUCATION
7 FUND, a California nonprofit organization,
8 CAMPAIGN FOR CALIFORNIA
9 FAMILIES, a California nonprofit
10 organization, RANDY THOMASSON, a
11 California resident and taxpayer, and DOES
12 1 through 10,

13 Cross-Defendants.

14 Pursuant to California Code of Civil Procedure section 1060, Respondent and Cross-
15 Complainant City and County of San Francisco cross-complains and alleges as follows:

16 **GENERAL ALLEGATIONS**

17 1. Cross-Complainant City and County of San Francisco (“San Francisco”) is a
18 municipal organization organized and existing under the Constitution and laws of the State of
19 California.

20 2. Cross-Complainant alleges that Cross-Defendant the State of California is a state
21 organized and existing under the Constitution of the State of California and the Constitution of
22 the United States of America.

23 3. Cross-Complainant is informed and believes that Cross-Defendants Proposition
24 22 Legal Defense and Education Fund and Campaign for California Families are California non-
25 profit organizations. Cross-Complainant is informed and believes that Cross-Defendant Randy
26 Thomasson is a California resident and taxpayer and the Executive Director of Campaign For
27 California Families. All of these Cross-Defendants have ongoing lawsuits against Cross-
28 Complainant in which they seek to enjoin Cross-Complainant and its officials from issuing
marriage licenses to and/or solemnizing marriages of same-sex couples. Cross-Defendants Does
1-10 are the entities and/or persons charged by law with the duty of enforcing the California

1 Family Code provisions challenged herein; Cross-Complainant will amend this cross-complaint
2 to substitute their true names as their identities become known.

3 **NATURE OF DISPUTE**

4 4. In 1977, the California Legislature amended Family Code section 300 to provide
5 that “Marriage is a personal relation arising out of a civil contract between a man and a woman.”
6 Prior to that amendment, the Family Code did not specify that marriage must be between a man
7 and a woman. Family Code section 301 further provides that “an unmarried male” and an
8 “unmarried female” are “capable of consenting to and consummating marriage.” Finally, Family
9 Code section 308.5, which was added to the Code by voter initiative and became effective on
10 March 8, 2000, provides that “[o]nly marriage between a man and a woman is valid or
11 recognized in California.” These Family Code provisions have been and are now in full force
12 and effect in California. Accordingly, since 1977 the Family Code has prevented an entire class
13 of adults, namely adults in same-sex relationships, from entering into the legal institution of
14 marriage.

15 5. On February 10, 2004, San Francisco Mayor Gavin Newsom sought to end this
16 discrimination by directing San Francisco County Clerk Nancy Alfaro to arrange for the issuance
17 of marriage licenses to eligible same-sex couples. Two days later, the San Francisco County
18 Clerk’s Office began issuing marriage licenses to eligible same-sex couples who applied for
19 them.

20 6. On February 13, 2004, Cross-Defendants filed this action and another lawsuit,
21 Randy Thomasson and Campaign for California Families v. Gavin Newsom, in his official
22 capacity as Mayor of the City and County of San Francisco, Nancy Alfaro, in her official
23 capacity as San Francisco County Clerk, in San Francisco Superior Court, Case No. 428794,
24 seeking to enjoin Cross-Complainant from issuing marriage licenses to same-sex couples in
25 violation of the Family Code. Thus this cross-complaint arises out of the same transaction,
26 occurrence, or set of transactions or occurrences set forth in the complaints filed in this case and
27 in Case No. 428794.

1 7. Cross-Complainant contends that Family Code section 308.5 does not apply and
2 cannot bar the issuance of same-sex marriage licenses in California. Cross-Complainant also
3 contends that Family Code sections 300 and 301, which require City officials to deny same-sex
4 couples marriage licenses, are unconstitutional in that they violate same-sex couples' rights under
5 article I, section 7 of the California Constitution, in that they (a) discriminate on the basis of
6 sexual orientation in violation of the State Equal Protection Clause; (b) discriminate on the basis
7 of gender in violation of the State Equal Protection Clause; (c) violate liberty interests protected
8 by the State Due Process Clause; and (d) violate privacy interests protected by the State Due
9 Process Clause. If and to the extent that the court holds that Family Code section 308.5 does
10 apply to in-state marriages, Cross-Complainant contends that it is likewise unconstitutional under
11 the same provisions of the California Constitution. If forced to comply with these statutes, City
12 officials could face civil liability for violation of the constitutional rights of same-sex couples.

13 8. Cross-Defendants contend that Family Code sections 300, 301 and 308.5 are
14 constitutional, and Cross-Defendants seek to enforce those code sections through court orders in
15 this case, in Case No. 428794, and by other means.

16 9. Accordingly an active controversy has arisen and now exists between Cross-
17 Complainant and Cross-Defendants concerning their respective rights, duties and
18 responsibilities. The controversy is definite and concrete, and touches on the legal relations of
19 the parties, as well as many thousands of people not before this Court whom Cross-Complainant
20 is legally bound to serve.

21 10. Cross-Complainant desires a declaration of its rights and duties with respect to the
22 application of Family Code sections 300, 301 and 308.5, with particular reference to the
23 inapplicability of Family Code section 308.5 and the unconstitutionality of denying marriage
24 licenses to eligible same-sex couples. Such a declaration is necessary and appropriate at this
25 time under the circumstances in order that Cross-Complainant and its officials may ascertain
26 their rights and duties as a public entity and public servants.

DECLARATION SOUGHT

1
2 11. In order to resolve this controversy, Cross-Complainant requests that, pursuant to
3 Code of Civil Procedure section 1060, this Court declare the respective rights and duties of the
4 parties in this matter and, in particular, this Court declare that Family Code section 308.5 does
5 not apply to in-state marriages and that Family Code sections 300, 301, and 308.5 if it applies,
6 violate the Equal Protection Clause and Due Process Clause of the State Constitution and thus
7 are void and unenforceable.

PRAYER FOR RELIEF

8
9 For the reasons set forth above, Cross-Complainant prays for relief as follows:

- 10 1. A declaration that Family Code section 308.5 does not apply to in-state marriages;
11 2. A declaration that Family Code sections 300 and 301 are unconstitutional, void
12 and unenforceable;
13 3. Costs, including but not limited to attorneys' fees; and
14 4. Any and all other relief to which Cross-Complainant may be justly entitled.

15 DATED: February 19, 2004

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21
22 By: _____
23 THERESE M. STEWART
24 Chief Deputy City Attorney
25
26 Attorneys for Cross-Complainant
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PROOF OF SERVICE

The undersigned hereby declares:

I am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am employed at the San Francisco City Attorney's Office, 1 Dr. Carlton B. Goodlett Place, City Hall, Room 234, San Francisco, CA 94102.

On February 19, 2004, I served the within on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

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7 Attorney for Campaign for California Families, and Randy Thomasson

8 and served the named document in the manner indicated below:

- 9 **BY MAIL:** I caused true and correct copies of the above documents, by following ordinary business
10 practices, to be placed and sealed in envelope(s) addressed to the addressee(s), at the San Francisco City
11 Attorney's Office, City Hall, San Francisco, California, 94102, for collection and mailing with the United
12 States Postal Service, and in the ordinary course of business, correspondence placed for collection on a
13 particular day is deposited with the United States Postal Service that same day.
- 14 **BY FAX:** I caused the within document to be faxes to all parties by faxing to their attorneys of record at
15 the fax numbers listed below.
- 16 **BY PERSONAL SERVICE:** I caused true and correct copies of the above documents to be placed
17 and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered by
18 hand on the office(s) of the addressee(s).

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

21 Executed February 19, 2004, at San Francisco, California.

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25
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27
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Gloria K. Spurgeon-Smith