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April 21, 2004

*Via Hand Delivery*

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The Honorable Chief Justice Ronald George and the
Honorable Associate Justices of the California Supreme Court
350 McAllister Street
San Francisco, CA 94102

**RE: *Lockyer v. City and County of San Francisco, et al.*, Case No. S122923**

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

On April 14, 2004, the Court issued orders requesting the parties in the above-entitled actions to file supplemental briefs directed to whether the Court in these original writ proceedings may and should determine the validity of the marriages of same-sex couples that already have been performed and registered by respondents, as well as several related questions.

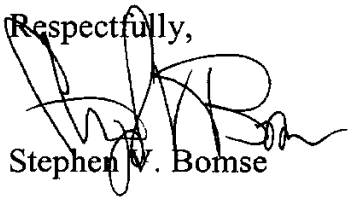
On March 1, 2004, we, along with our co-counsel the National Center for Lesbian Rights, Lambda Legal Defense and Education Fund, the ACLU Foundations of Northern and Southern California, and the Law Office of David C. Codell, moved to intervene in both of the above-entitled actions on behalf of four same-sex couples who were married in San Francisco on or shortly after February 12, 2004 (including Del Martin and Phyllis Lyons, the first same-sex couple to marry in San Francisco), one same-sex couple who desired and intended to marry in San Francisco, and Equality California, California's leading advocacy organization protecting the needs and interests of same-sex couples and their children, which has many members who married their same-sex partners in San Francisco on or after February 12, 2004. This Court denied those motions for leave to intervene on March 12, 2004.

We respectfully submit that, having denied our clients the right to intervene and to participate as parties in these proceedings, it would be inappropriate for this Court to determine the validity of their marriages. Indeed, determining the validity of ***any*** couple's marriage without giving that couple an opportunity to appear and be heard would violate minimum requirements of due process under both the California and United States Constitutions. *See McClure v. Donovan* (1949) 33 Cal.2d 717, 725; *Phillips Petroleum Co v. Shutts* (1985) 472 U.S. 797, 811-12.

On behalf of Del Martin and Phyllis Lyon, Sarah Conner and Gillian Smith, Margot McShane and Alexandra D'Amario, Dave Scott Chandler and Jeffrey Wayne Chandler, Theresa Michelle Petry and Cristal Rivera-Mitchel, and Equality California, we join in the arguments presented in the amicus brief of Marriage Equality California and Twelve Married, Same-Sex Couples, which this court accepted for filing on March 26, 2004, that petitioners in these proceedings do not have standing to challenge the validity of marriages entered by same-sex couples; that this Court should not, and constitutionally cannot, adjudicate the validity of those marriages without those couples being provided an opportunity to appear and be heard; and that this Court should not issue an opinion in these proceedings that in any way draws into question the validity of those marriages and, instead, should explicitly state that the marriages are valid unless and until declared otherwise in a court proceeding in which a challenge to a particular marriage properly is presented.

In all events, Amici urge the Court to defer resolution of validity issues until the core constitutional questions are more directly presented. Pursuant to the Court's order of March 11, 2004, which expressly authorized the filing of a challenge to the constitutionality of the marriage statutes, two consolidated cases that directly challenge the exclusion of same-sex couples from marriage are currently pending before the San Francisco Superior Court. That being so, we respectfully submit that it is unnecessary, and would be needlessly disruptive to the lives of our clients and the thousands of other couples whose marital status would otherwise be called into question, for this Court to address the validity of their marriages prior to resolving the underlying constitutional issues. If it becomes necessary, there will be time enough to resolve questions regarding the validity of Amici's marriages after the constitutionality of the state's exclusion of same-sex couples from marriage is resolved. As counsel for plaintiffs in San Francisco cases, we intend to do everything within our power to have those constitutional issues addressed and resolved as promptly as possible.

Respectfully,



Stephen V. Bomse

cc (by facsimile and mail): All Counsel of Record

## PROOF OF SERVICE

I, Joanne Park, declare that I am over the age of eighteen years and I am not a party to this action. My business address is 333 Bush Street, San Francisco, California 94104-2878.

On April 21, 2004, I served the document listed below on the interested parties in this action in the manner indicated below:

DOCUMENT SERVED:

**LETTER BRIEF ADDRESSED TO THE HONORABLE CHIEF JUSTICE RONALD GEORGE AND THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT**

[ ] BY OVERNIGHT DELIVERY: I caused such envelopes to be delivered to the above parties via FEDERAL EXPRESS PRIORITY OVERNIGHT delivery service.

[ ] BY PERSONAL SERVICE: I caused the document(s) to be delivered by hand.

[X] BY MAIL: I am readily familiar with the business practice for collection and processing correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelopes were sealed, and with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California. I caused the document(s) to be sent by mail via United States Postal Service to the parties identified above.

[X] BY FACSIMILE: By use of facsimile machine, I served a copy of the above listed document(s) on the above-listed interested parties in the within action by transmitting by facsimile machine to the following: The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2005, I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

INTERESTED PARTIES:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct; that this declaration is executed on April 21, 2004, at San Francisco, California.

Joanne Park