



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

Consent
October 16, 2007

Honorable Mayor and
Members of the City Council

Title: City of Sacramento Amicus Support in the "In re Marriage Cases"

Location/Council District: City-Wide

Recommendation: Authorize the City Attorney's Office to take the necessary steps to have the City of Sacramento join as amicus curiae with fifteen California cities and three California counties in support of the position that Family Code Section 300, which provides that "[m]arriage is a personal relation arising out of a civil contract between a man and a woman" and Section 308.5, which provides that "[o]nly marriage between a man and a woman is valid or recognized in California" are unconstitutional under the California Constitution. This issue is currently before the California Supreme Court in the combined cases known and referred to as "In re: Marriage Cases."¹

This matter is being brought forward pursuant to Councilmember Tretheway's request at the October 2nd Council meeting.

Contact: Eileen Teichert, City Attorney (916) 808-5346

Presenters: Eileen Teichert, City Attorney (916) 808-5346

Department: City Attorney's Office

Division: N/A

Organization No: 0500

Description/Analysis

Issue: The constitutionality of Family Code Section 300, which provides that "[m]arriage is a personal relation arising out of a civil contract between a man and a woman" and Family Code Section 308.5, which provides that "[o]nly marriage between a man and a woman is valid or recognized in California," is currently pending before the California Supreme Court in the combined cases known and referred to as the "In re Marriage Cases." Pursuant to the request made by Councilmember Tretheway at the October 2nd Council meeting, the City of Sacramento has been asked to join as amicus curiae with fifteen other California cities and three California counties in support of the petitioners' contention that Sections 300 and 308.5 are unconstitutional under the California Constitution. The list of cities and counties that have currently agreed to join as

¹ In re Marriage Cases, Judicial Council Coordination Proceeding No. 4365

amicus in support of San Francisco and the other petitioners is set forth in the discussion in Attachment 1.

Policy Considerations: Joining as amicus in the Marriage Cases is consistent with the City of Sacramento's commitment to inclusion and diversity.

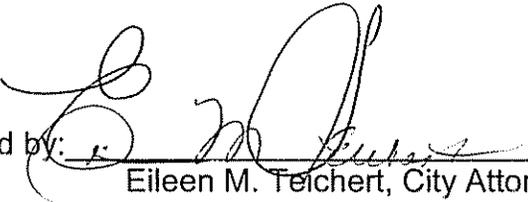
Environmental Considerations: N/A

Commission/Committee Action: N/A

Rationale for Recommendation: The City of Sacramento has a long history of supporting diversity and inclusion and domestic partnerships, and opposing discrimination on the basis of sexual orientation. This includes the prohibition on discrimination based on sexual orientation found in Chapter 9.20 of the City Code, first enacted in 1986; the prohibition on discrimination against victims of AIDS and AIDS-related conditions found in Chapter 9.20 of the City Code, first enacted in 1987; and the domestic partnership program found in Chapter 2.120 of the City Code, first enacted in 1992.

Financial Considerations: The recommendation contained in this report does not result in a fiscal impact. The amicus brief is being prepared by attorneys for another city.

Emerging Small Business Development (ESBD): No goods or services are being provided under this report.

Respectfully Submitted by: 
Eileen M. Teichert, City Attorney

Recommendation Approved:

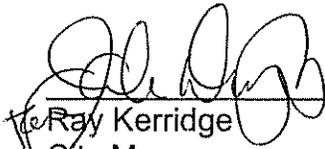

Ray Kerridge
City Manager

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ATTACHMENT 1

The City of Sacramento has been asked to join as amicus curiae in support of the contention that Sections 300 and 308.5 of the Family Code are unconstitutional under the California Constitution in the combined cases known and referred to as "In re: Marriage Cases" currently pending before the California Supreme Court.²

Enacted by voter initiative in 2000, Section 308.5 provides:

Only marriage between a man and a woman is valid or recognized in California.

Section 300, enacted by statute in 1992, provides that "[m]arriage is a personal relation arising out of a civil contract between a man and a woman."

The City and County of San Francisco and others challenged the provision in state court, and prevailed at the trial court level. The court ruled that Family Code provisions limiting marriage in California to opposite-sex unions are subject to strict judicial scrutiny because they rest on a suspect classification (gender) and because they impinge upon the fundamental right to marry. After considering interests advanced by the state and other parties and searching for additional interests in relevant legislative history and ballot materials, the court concluded the marriage statutes' opposite-sex requirement does not pass strict scrutiny, or even the more deferential review accorded under the rational basis test, because it does not further any legitimate state interest.

On appeal, the Court of Appeals for the First Appellate District reversed the trial court decision and found Sections 300 and 308.5 constitutional. Following is a summary of the court's holding.

The constitutionality of the State's marriage statutes was reviewed under the rational basis test. In upholding their constitutionality, the court concluded that the State's historical definition of marriage did not deprive individuals of a vested fundamental right or discriminate against a suspect class. The opposite-sex requirement was rationally related to the State's interest in preserving the institution of marriage in its historical opposite-sex form, while also providing comparable rights to same-sex couples through domestic partnership laws. The trial court's decision, although purporting to apply rational basis review, essentially redefined marriage to encompass unions that had never before been considered as such in the state. It was beyond the judiciary's realm of authority to redefine a statute or to confer a new right where none previously

² In re Marriage Cases, Judicial Council Coordination Proceeding No. 4365

existed. The legislature's power to regulate marriage was exclusive and subject only to constitutional restrictions. If marriage were to be extended to same-sex couples, such a change would have to come from the people - either directly, through a voter initiative, or through their elected representatives in the legislature.

The City and County of San Francisco and others filed petitions for review with the California Supreme Court, and these petitions were granted. The City of Sacramento has been requested to join with the following fifteen cities and three counties as Amicus Curiae in support of the position asserted by San Francisco.

The City of Berkeley
The City of Cloverdale
The Town of Fairfax
The City of Long Beach
The City of Los Angeles
The County of Marin
The City of Oakland
The City of Palm Springs
The City of San Diego
The City of San Jose

The County of San Mateo
The County of Santa Clara
The City of Santa Cruz
The County of Santa Cruz
The City of Santa Monica
The City of Santa Rosa
The City of Sebastopol
The City of Signal Hill
The City of West Hollywood

The City and County of San Francisco and other petitioners are challenging the provisions of the Family Code on a series of grounds, primarily on equal protection and due process grounds under the California Constitution. While there is debate over the standard of review (strict scrutiny, heightened scrutiny or rational basis), the basic contention of San Francisco and other petitioners is that there is no legally adequate justification for the prohibition on same sex marriage. The brief drafted for amicus curiae supports this contention, with an emphasis on the history of discrimination on this issue.