Case Nos. S122865, S122923

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

BARBARA LEWIS, *et al.*,
Petitioners,

v.

NANCY ALFARO, as County Clerk etc.,
Respondent.

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

v.

CITY AND COUNTY OF SAN FRANCISCO, *et al.*,
Respondents.

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF, AND BRIEF OF *AMICI CURIAE* MARRIAGE EQUALITY CALIFORNIA, INC. AND TWELVE MARRIED, SAME-SEX COUPLES IN SUPPORT OF ALL RESPONDENTS

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APPLICATION TO FILE *AMICUS CURIAE* BRIEF

Pursuant to Rule 29.1(f) of the California Rules of Court, Marriage Equality California, Inc. and twelve same-sex couples who were issued marriage licenses and certificates by respondents respectfully request leave to file the attached brief and personal statements of *amici curiae* in support of all respondents. This application is timely made pursuant to the Court's orders of March 11, 2004, permitting such briefs on or before March 25, 2004.

A. Marriage Equality California

Marriage Equality California, Inc. ("MECA") is a California not-for-profit corporation that leads a nonpartisan, grassroots effort to end marriage discrimination affecting gay and lesbian couples. MECA is an official chapter of Marriage Equality USA, a national organization also dedicated to ending sex-based and sexual orientation-based discrimination in civil marriage laws. MECA educates the public on issues related to such marriage discrimination through educational and outreach programs, media presentations, collaborating with other organizations, building alliance partnerships with other groups that support equality, and through its strong membership base. Many of MECA's members are same-sex couples who were issued marriage licenses and certificates by respondents.

B. Married Couples

Amy Brown and Lisa White were married in San Francisco on February 13, 2004. They have been together for eleven years. (*See* Attachments: Personal Statements of *Amici Curiae*, *infra*, at PS 1–2.)

Robyn Caruso and Karen Parker were married in San Francisco on February 16, 2004. They have been together for ten years and are raising a child together. (*See id.* at PS 3–4.)

David Ellenberg and Cuauhtémoc Andrade were married in San Francisco on February 12, 2004. They have been together for sixteen years. (*See id.* at PS 5–6.)

Chris Elwell and Kory Odell were married in San Francisco on February 16, 2004. They have been together for two years. (*See id.* at PS 7–8.)

Stuart Gaffney and John Lewis were married in San Francisco on February 12, 2004. They have been together for seventeen years. (*See id.* at PS 9.)

Tim Hartley and Jason Lyon were married in San Francisco on February 14, 2004. They have been together for five years. (*See id.* at PS 10–11.)

Douglas Okun and Eric Ethington were married in San Francisco on February 13, 2004. They have been together for eight years and are raising twin daughters. (*See id.* at PS 12–15.)

Fernando Orlandi and William Wilson were married in San Francisco on February 12, 2004. They have been together for seventeen years. (*See id.* at PS 16.)

Pamela Postrel and Mindy Blum were married in San Francisco on February 18, 2004. They have been together for sixteen years. They have a daughter who is seven and a son who is five. (*See id.* at PS 17–19.)

Amy Shore and Sherri Rybak were married in San Francisco on February 13, 2004. They have been together for nineteen years. (*See id.* at PS 20–21.)

Amy Silverstein and Angela Padilla were married in San Francisco on February 14, 2004. They have been together for four years. (*See id.* at PS 22–23.)

Susan Thomas and Mily Trabing were married in San Francisco on February 13, 2004. They have been together for twelve years. (*See id.* at PS 24–26.)

C. Interests Of *Amici Curiae*

These proceedings implicate issues of marriage discrimination that go to the heart of MECA's mission as a not-for-profit corporation. MECA has extensive knowledge concerning issues of marriage discrimination based on sex and sexual orientation, including the importance of equal marital opportunities to same-sex couples. Furthermore, because petitioner Lockyer asks the Court to invalidate the marriages of same-sex couples

who were issued marriage licenses and certificates from respondents, the Court's decisions in these proceedings potentially could have a direct impact on the *amici* couples and on married, same-sex couples who are members of MECA. The *amici* couples have a strong interest in ensuring that their marriages are not invalidated, or otherwise cast in doubt, in these proceedings. As shown by the personal statements of the *amici* couples attached to this brief, these couples have been profoundly moved and affected by having been able to enter into civil marriages and currently enjoy the rights and social approval, and bear the significant responsibilities, that the institution of marriage provides. They would be gravely harmed if their marriages were invalidated or if the public perceived that these proceedings had invalidated or cast doubt on the validity of their marriages. For these reasons, *amici* have a substantial interest in the present matter.

D. Need For Further Briefing

Amici are familiar with the issues before the Court. *Amici* believe that further briefing is necessary to address matters not fully addressed by the parties' briefs. Specifically, *amici* will explain that the issue of the validity of the marriages is not before the Court and should not, and properly cannot, be adjudicated in these proceedings. *Amici* will demonstrate that any decision by the Court invalidating or casting doubt on the validity of the marriages entered into by the *amici* couples (and other

same-sex couples) would harm them by depriving them of the emotional benefits and social recognition that have attended their marriages, and by depriving them of critical legal protections. In their brief and attached personal statements, the *amici* couples provide specific examples to illuminate the importance of their marital status to them. Finally, *amici* urge the Court to avoid potential misunderstandings about the effect of any ruling on the petitions by explicitly stating in any such ruling that the existing marriages of same-sex couples are valid pending final determination of that issue if and when the validity of individual marriages is properly raised in the courts.

Amici further believe that the personal statements of each of the twelve *amici* couples that are attached to this brief provide important information regarding matters addressed in their proposed brief that is not provided by the parties' submissions. The statements convey the personal perspective of the *amici* couples regarding the importance of their marriages to them and their families, and the harm that they and their families would suffer if this Court were to invalidate or otherwise cast doubt on the validity of their marriages. Accordingly, *amici* request that

the Court consider the personal statements attached to the brief, as well as the brief itself.

Dated: March 25, 2004

RUTH N. BORENSTEIN
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By: 
Ruth N. Borenstein

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BRIEF OF *AMICI CURIAE* MARRIAGE EQUALITY CALIFORNIA, INC. AND TWELVE MARRIED, SAME-SEX COUPLES IN SUPPORT OF ALL RESPONDENTS

INTRODUCTION

Like other married couples in California, the same-sex couples who recently married in San Francisco love and honor their spouses and respect the institution of marriage. Indeed, because the opportunity to marry previously had been denied to them, these couples have a unique appreciation of the exalted and cherished status that the institution of marriage is accorded in our society, as well as the legal rights and responsibilities it bestows. Like the *amici* couples, many of the couples who married had been in committed relationships for years, had registered as domestic partners with the State, and had created wills, powers of attorney, and other legal documents to protect each other and their dependent family members. Some had celebrated their relationships with commitment ceremonies attended by their families and friends. Yet to a person, the *amici* spouses acknowledge that the act of getting married and the status of being married have had a profound effect on them. The *amici* couples' personal statements that are attached to this brief demonstrate a deepening of the bonds between the spouses as well as increased respect and support for their relationships among their families, friends, co-workers, and others.

California law and the Due Process Clauses of the state and federal constitutions mandate that marriages that are entered into pursuant to licenses issued and recorded by a county clerk — like those of the *amici* couples and other same-sex couples who married in San Francisco — are valid unless and until they are declared otherwise in a court proceeding that properly presents the issue. This is not such a proceeding. The Court does not need to adjudicate the validity of the marriages in order to resolve the issue before it, which involves whether respondents were required to abide by discriminatory marriage laws in advance of a judicial ruling that those provisions are unconstitutional. The issues involved in determining whether respondents acted within their authority are distinct from those involved in adjudicating the validity of each individual marriage, as the validity of the existing marriages does not hinge only upon whether respondents were in fact authorized to issue marriage licenses and certificates to same-sex couples.

Nor should the Court adjudicate the validity of the marriages in these proceedings. Petitioners lack standing to attack the validity of the marriages in these (or any) proceedings. Moreover, as a matter of state law and constitutional mandate, the couples would be necessary parties to any proceeding to invalidate their marriages, but are absent here.

Although the validity of the marriages need not, should not, and properly cannot, be adjudicated in these proceedings, petitioners and their

supporters have attempted to cast doubt on the validity of the marriages by, for example, seeking an order declaring the marriages invalid in the *Lockyer* proceedings. Any cloud upon the validity of the marriages arising from these proceedings would cause grave harm, both tangible and intangible, to the *amici* couples and other same-sex couples who married. For the same reasons that marriage enjoys the exalted status that it does, depriving married, same-sex couples of the status accorded other marriages necessarily would harm them.

Given that petitioners have disparaged the marriages of *amici* and other same-sex couples, and given that the *Lockyer* petition takes the position that a ruling on respondents' authority to issue the licenses and certificates necessarily would determine the validity of the marriages, any ruling by the Court on the petitions could be interpreted as an adjudication of the validity of the *amici* couples' and other same-sex couples' marriages. Because the issue of validity need not, should not, and properly cannot, be adjudicated in these proceedings, if the Court issues any ruling on the petitions, *amici* respectfully urge the Court to state explicitly that the marriages are to be considered valid unless and until they are declared otherwise in a court proceeding that properly presents the issue. In the absence of a clear statement to that effect, the marriages of *amici* and other same-sex couples may needlessly, and erroneously, be called into question.

ARGUMENT

I. THE COURT SHOULD NOT ADJUDICATE IN THESE PROCEEDINGS THE VALIDITY OF THE MARRIAGES ENTERED INTO BY *AMICI* AND OTHER SAME-SEX COUPLES.

A. The Validity Of The Marriages Need Not Be Adjudicated To Resolve The Issue That Is Before The Court.

The issue before the Court does not require the Court to determine the validity of the *amici* couples' and other same-sex couples' marriages. The Court's Orders to Show Cause directed respondents to address the issue of whether they were required to abide by specified statutory provisions regarding marriage in advance of a judicial ruling that those provisions are unconstitutional. Respondents assert, and *amici* agree, that any determination of whether respondents were required to comply with those provisions necessarily will require a determination of whether the provisions are constitutional. (*See* Oppn. to Pet. for Writ of Mandate at p. 31 [hereinafter "Oppn. to Lockyer Pet."].)[1] Deciding the issue before the Court concerning respondents' conduct, including the underlying constitutionality of the specified marriage statutes, will require interpretation and application of provisions of the state and federal constitutions to determine whether respondents were obligated to apply and abide by discriminatory marriage laws. (*See, e.g.*, Original Pet. for Writ of

[1] Unless otherwise noted, cited records materials are from *Lockyer v. City and County of San Francisco* (No. S122923).

Mandate at pp. 4–5, [hereinafter "Lockyer Pet."] [discussing Cal. Const., art. III, § 3.5]; Oppn. to Lockyer Pet. at pp. 18-31 [discussing Cal. Const., art. III, § 3.5, art. XI; U.S. Const. art. VI, cl. 2].)

Contrary to petitioner Lockyer's suggestion, a decision in favor of petitioners regarding respondents' obligation to abide by the specified marriage statutes would not (and, based on well-settled legal principles, could not) automatically invalidate the existing marriages of same-sex couples. (*See* Lockyer Pet. at p. 5 ¶ 2 [seeking order declaring invalid the licenses and certificates issued to same-sex couples].)[2] Any assumption to the contrary would be incorrect as a matter of law. As discussed more fully in Part I.B, *infra*, under California marriage law and the Due Process Clauses of the state and federal constitutions, the existing marriages of same-sex couples are valid unless and until declared otherwise in a proper proceeding that is brought by a party with standing to challenge the marriages and in which the couples whose marriages are challenged participate as parties. Determining the validity of the marriages would involve the interpretation and application of California statutory provisions and case law that, *inter alia*, create a presumption that marriages entered

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[2] Although the *Lockyer* petition asks that the marriages be declared invalid, petitioner fails to present any argument concerning the grounds to invalidate the marriages. Even if he had attempted to present any such argument, these are not proper proceedings in which to seek that relief, as shown below in Part I.B *infra*.

into pursuant to licenses issued by and recorded by a county clerk are valid (*see, e.g., Estate of DePasse* (2002) 97 Cal.App.4th 92, review den. June 26, 2002); provide that a non-party's failure to comply with the procedural requirements of marriage does not invalidate the marriage (Fam. Code, § 306); and limit the parties who may challenge the validity of a marriage and the manner in which they may do so (*see, e.g.*, Fam. Code, § 2250(b).)

Thus, the issues involved in determining the validity of the marriages entered into by same-sex couples are different than the issue before the Court regarding respondents' conduct in issuing and recording marriage licenses and certificates for those couples. As a result, any decision by the Court on the petitions will not require the Court to determine the validity of the marriages.

B. The Validity Of The Marriages Cannot Be Adjudicated In These Proceedings Because *Amici* And Other Married, Same-Sex Couples Are Absent, Indispensable Parties.

If a determination of the validity of the existing marriages were necessary to dispose of the petitions (which it is not), then the petitions would have to be dismissed because petitioners lack the standing to seek such a declaration of invalidity. Moreover, even if petitioners were authorized to seek a judicial declaration of invalidity of particular marriages, such an action could not proceed without the joinder of the married couples as parties, which has not occurred in these proceedings.

1. California law does not permit petitioners to challenge the validity of the marriages.

The general rule in this State is that the only persons permitted to be parties to a proceeding to dissolve or annul a marriage are the spouses themselves. (*See* Fam. Code, § 2250, subd. (b) [specifying that a "copy of the petition" for an annulment "shall be served upon the *other* party to the marriage" (emphasis added)]; *In re Estate of Gregorson* (1911) 160 Cal. 21, 27–28.)

California law expressly provides the method for determining whether a marriage is invalid. Section 2250 of the Family Code provides that a proceeding to obtain a "judgment" that a marriage is a "nullity" because it is either a "void or voidable marriage" shall be "commenced by filing a petition entitled "In re the marriage of _____ and _____." (*Id.*, § 2250, subd. (a); *see also* Fam. Code, § 2255.) As noted above, the statute goes on to provide that a copy of the petition shall be served on "the other party to the marriage," indicating that the proceeding must be initiated by one of the parties to the marriage. (*Id.*, at § 2250, subd (b).)

The Legislature's intent that only parties to a marriage normally have standing to bring an action to declare a marriage a nullity is confirmed by Family Code Section 2211, which enumerates limited exceptions when a non-party to a marriage may initiate such a proceeding. The Legislature

has authorized only non-parties with a substantial pre-existing relationship with one of the spouses to initiate such an action. (*See* Fam. Code, § 2211, subd. (a)(2) [parent of underage child], subd. (b)(2) [former spouse when prior marriage not dissolved], subd. (c) [relative or conservator of person of unsound mind]; *see also Greene v. Williams* (1970) 9 Cal.App.3d 559, 563-64 [explaining that the statutory standing of third-party to initiate an annulment action is "wholly derivative and is designed to permit one person to act on behalf of another at a time when the latter is presumed incapable of acting prudently on his own behalf"].[3]

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[3] No statute expressly deems marriages between persons of the same-sex "voidable" or "void from the beginning," and thus there is no legislative determination that such marriages should be treated as such for any purpose. (*See, e.g., Argonaut Ins. Co. v. Industrial Accident Com.* (1962) 204 Cal.App.2d 805, 810 ["In view of the policy of the law to promote and protect the marriage relationship, it cannot be held that the Legislature meant to declare by inference an additional ground upon which a marriage must be found void."].

Even if the Legislature had declared that marriages between persons of the same-sex were void or voidable, third parties would lack standing to nullify them on that basis. Section 2211 enumerates the only circumstances in which third parties have standing to annul marriages that are deemed by the Legislature to be "voidable," (Fam. Code, § 2210), none of which is applicable to these proceedings. No statutory provision authorizes third parties to commence a proceeding for nullifying a marriage deemed "void from the beginning." (*See, e.g.*, Fam. Code, § 2200 [incestuous marriages].) Because Section 2250 applies to proceedings to nullify both void and voidable marriages, and Section 2211 allows third-party standing only as to certain voidable marriages, standard doctrines of statutory construction dictate that third parties lack standing to initiate a civil action seeking annulment of a void marriage. (*See Gikas v. Zolin* (1993) 6 Cal.4th 841, 852 [discussing doctrine of *expressio unius est exclusio alterius*].)

Apart from those now-codified exceptions, this Court has long rejected attempts by strangers, even public officials, to challenge the validity of others' marriages. In *In re Estate of Gregorson*, this Court denied the attempt of a public probate administrator to assert that a marriage was invalid. (*In re Estate of Gregorson, supra*, 160 Cal. at pp. 21-22.) In holding that the public official "had no standing to question the validity of the marriage," this Court stated that "if the parties who are alone recognized by the statutes as entitled to have the marriage annulled do not, during its existence, see fit to avoid it, a stranger to the marriage should not be permitted to question its validity in a collateral proceeding." (*Id.* at pp. 27-28.) Indeed, *amici* have found no California case permitting someone without a personal interest in the marriage, *e.g.*, a spouse, putative spouse, child, or person with a property interest affected by the marriage, to bring an action to have a marriage declared invalid on any basis.

The absence of either statutory or judicial authority for a stranger to a marriage to pursue such an action is not surprising. The statutory presumption that a marriage is valid (*see* Evid. Code, § 663), is a "presumption established to implement [a] public policy" in favor of matrimonial repose, and is not merely intended to be a rule of evidence (*see* Evid. Code, § 605). Similarly, when the parties to a marriage have complied with statutory requirements, the fact that *non-parties* may have

acted improperly does not render the marriage invalid. (*See* Fam. Code, § 306 ["[n]oncompliance with this part by a nonparty to the marriage does not invalidate the marriage"].) Like these other provisions, the statutory and judicial limits on who may challenge the validity of a marriage further the State's overriding interest in reducing burdens on marriages, thereby contributing to their stability. "In perhaps no other area of law is the need for stability and finality greater than marriage and family law." (*In re Marriage of Sheldon* (1981) 124 Cal.App.3d 371, 379–80.)[4]

2. Granting petitioner Lockyer's request to declare the marriages invalid when the parties to the marriages are not parties to these proceedings would violate California law as well as the couples' procedural due process rights.

Even assuming, *arguendo*, that petitioners could initiate a proceeding to invalidate the existing marriages already entered into by the *amici* couples and other same-sex couples, those couples plainly would be indispensable parties to any such proceeding. As this Court explained over 50 years ago, both parties to a marriage are "necessary parties" to an action seeking to declare the marriage void, and both must be joined before

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[4] Because the marriages are presumed valid under California law and their validity need not and should not be considered in these proceedings, petitioner Lockyer's assertions that the married couples are currently being harmed by uncertainty surrounding their marriages (Lockyer Pet. at pp. 3, 15-18) deserve no credence from the Court. California law provides the certainty that the couples need; it is only efforts to invalidate or disparage their marriages that harm the couples.

the court may adjudicate the issue. "The judgment of the annulment action, brought for the purpose of dissolving the marriage . . . would necessarily affect [his] rights and so would require his presence before the court." (*McClure v. Donovan* (1949) 33 Cal.2d 717, 725; *see also* Fam. Code, § 309 ["[I]f either party to a marriage denies the marriage, or refuses to join in a declaration of the marriage, the other party may proceed, by action, to have the validity of the marriage determined and declared"].) Because the *amici* couples are not parties to these proceedings, the validity of their already-registered marriages cannot be addressed in this action as a matter of state law. Indeed, no married same-sex couples are parties to these proceedings and, therefore, no such marriages can be declared invalid in these proceedings.[5]

The *Lockyer* petition's request that this Court invalidate the thousands of marriages already licensed by respondents also violates basic procedural demands of due process required by Article I, Section 7(a) of the California Constitution and the Fourteenth Amendment of the United States Constitution, by seeking to deprive the *amici* couples (and other married, same-sex couples) of their marriage licenses in proceedings to which they are not parties.

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[5] On March 12, 2004, the Court issued orders denying motions for leave to intervene filed by Del Martin and Phyllis Lyon, and other same-sex couples.

As discussed below (*see* Part II.A, *infra*), marriage has enormous social and emotional importance for the individuals involved that cannot be quantified. The State's recognition of a marriage is embodied in the grant of a marriage license, which in turn confers a plethora of state-granted rights and state-imposed obligations. This Court has held that a vast array of government-issued licenses that confer far less significant rights than do marriage licenses trigger the requirements of procedural due process.[6] A marriage license, with its attendant rights and responsibilities, plainly is entitled to at least the same procedural protections.

One of the foundational requirements of due process is that, when the government seeks to take away a previously-granted liberty or property interest, the individual who holds that interest must have been given formal

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[6] (*See, e.g., Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, 43 ["the holder of a professional license 'has a property interest in the right to practice his profession that cannot be taken from him without due process'"]; *Traverso v. People ex rel. Dept. of Transportation* (1993) 6 Cal.4th 1152, 1162 ["Once a permit (to build a billboard) has been issued, its continued possession becomes a significant factor in the billboard owner's legitimate pursuit of a livelihood. The revocation of a permit thus involves state action affecting important interests of its owner, and therefore cannot be accomplished without affording the procedural due process required by the U.S. Constitution."]; *see also Bell v. Burson* (1971) 402 U.S. 535, 539 ["Suspension of issued (drivers) licenses . . . involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment."]; *Barry v. Barchi* (1979) 443 U.S. 55, 64 [horse trainer "had a property interest in his license sufficient to invoke the protection of the Due Process Clause"].)

notice and an opportunity to participate as a party in the relevant proceeding. (*See In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 651; *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811–12 ["The (affected person) must receive notice plus an opportunity to be heard and participate in the litigation, whether in person or through counsel."].) This Court's decision in *McClure* confirms that any effort to invalidate or revoke marriage licenses must be done in compliance with the state and federal Due Process Clauses. In that case, a woman brought an action against her brother's wife to annul her brother's marriage on the ground that he was mentally incompetent. This Court held that an action to annul the marriage could not proceed without the husband as a party. The Court explained that "[t]o annul such marriage on the ground of [the husband's] unsoundness of mind without giving him any 'notice or an opportunity for a hearing' on that issue would clearly involve considerations of due process, and a judgment so rendered in avoidance of his marital status would be contrary to all recognized rules of fairness in procedure." (*McClure v. Donovan, supra*, 33 Cal.2d at p. 725 [citations omitted]; *see also Cugat v. Cugat* (1951) 102 Cal.App.2d 760, 762 ["The property of an individual may not constitutionally be taken from him by a court order or judgment without due process — which embodies legal notice — whether the action is one for divorce or otherwise."].)

The right of a person whose liberty or property is at issue to participate as a party in a judicial proceeding furthers the goal of ensuring that all relevant facts and arguments are before the court. (*See Blonder-Tongue Laboratories, Inc. v. Univ. of Ill. Foundation* (1971) 402 U.S. 313, 329 [due process requires that individuals have "a chance to present their evidence and arguments on the claim"]; *American Surety Co. v. Baldwin* (1932) 287 U.S. 156, 168 ["due process requires that there be an opportunity to present every available defense"].) In addition, due process "affords a litigant a right to be heard, 'not only because he might contribute to accurate determinations, but also because a lack of personal participation causes alienation and a loss of that dignity and self-respect that society properly deems independently valuable.'" (*Dodds v. Com. on Jud. Performance* (1995) 12 Cal.4th 163, 176–77.)

Any proceeding that purported to address the validity of the existing marriage licenses without the formal intervention of the license holders would itself be a nullity. As the United States Supreme Court has explained, the Fourteenth Amendment's Due Process Clause embodies:

> the general consensus in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process. This rule is part of our deep-rooted historic tradition that everyone should have his own day in court. As a consequence, [a] judgment or decree among parties to a lawsuit resolves issues as among

> them, but it does not conclude the rights of strangers to those proceedings.

(*Richards v. Jefferson County, Ala.* (1996) 517 U.S. 793, 798 [citations and quotation marks omitted]; *see also Galpin v. Page* (1873) 85 U.S. 350, 368–69 ["It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is justly administered."].)

Here, the *Lockyer* petition contends that the licenses possessed by *amici* and thousands of other same-sex couples should be invalidated because they never should have been issued in the first instance. Even assuming that the licenses should not have been issued in the first instance (a premise with which *amici* wholeheartedly disagree), that would not determine the current due process rights of the *amici* couples and the other licensed, same-sex spouses.

Amici couples have been married by the appropriate county officials and hold their government-issued licenses in hand. In such circumstances, it is incumbent on the government, should it wish to alter the status quo and deprive them of what they now possess, to comply with the requirements of

due process. (*Cf. Fuentes v. Shevin* (1972) 407 U.S. 67, 86 [explaining that a person who had only a "possessory interest in the goods" and who "lacked full legal title" was still entitled to due process before the goods could be seized by the government because "the Fourteenth Amendment protection of 'property' . . . has never been interpreted to safeguard only the rights of undisputed ownership"]; *Traverso v. People, ex rel. Dept. of Transportation, supra,* 6 Cal.4th at p. 1161 [fact that billboard may have been constructed in violation of state law is not relevant "to the threshold question whether a protectible property interest exists" for purposes of procedural due process].)

Individuals are entitled to due process before revocation of a permit, even if the government alleges that the permit was not lawfully issued in the first place. As courts have explained in situations involving government permits implicating less significant individual interests than marriage, even a license that may have been issued improperly can create a "vested right" that is protected by "the United States and California constitutional protection against deprivation of property rights without due process of law." (*Stanson v. San Diego Coast Regional Com.* (1980) 101 Cal.App.3d 38, 49 [individual obtained "vested right" when he obtained building permit and spent money in reliance on permit even though permit was improperly issued]; *see also Kerley Industries, Inc. v. Pima County* (9th Cir. 1986) 785 F.2d 1444, 1446 ["Having granted

appellant a permit to operate its plant, the county could not take it away . . . without appropriate procedural safeguards" even though the permit "might have violated the county's zoning ordinance" and been "null and void" when issued].)

Thus, even assuming that petitioner Lockyer was authorized by statute to institute an action to invalidate marriage licenses already issued to same-sex couples (a proposition we have shown in Part I.B.1, *infra,* to be incorrect), the proper respondents to any such action would be the married persons who currently hold the licenses. In such a proceeding, each married couple would be entitled, at a minimum, to argue not only that the license was properly issued, but also that their particular marriage had "vested" and could not be invalidated in light of the significant reliance that they had placed on the license in ordering their lives. (*See Stanson v. San Diego Coast Regional Com., supra,* 101 Cal.App.3d at p. 49; *Anderson v. City of La Mesa* (1981) 118 Cal.App.3d 657, 660 [government prohibited from rescinding illegal building permit issued by government when individual acted in good faith reliance]; *cf. Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) 505 U.S. 833, 857 [noting that "[t]he Constitution serves human values" and even when reliance cannot "be exactly measured," a court should be loath to disrupt legal arrangements under which "people have organized intimate relationships

and made choices that define their views of themselves and their places in society"].)[7]

II. ANY OPINION THAT THE COURT ISSUES IN THESE PROCEEDINGS SHOULD NOT DRAW INTO QUESTION THE VALIDITY OF THE MARRIAGES ENTERED INTO BY *AMICI* AND OTHER SAME-SEX COUPLES.

A. The *Amici* Couples Would Be Irreparably Harmed By Any Decision In These Proceedings Casting Doubt On The Validity Of Their Marriage Licenses

1. Marriage promotes values of stability and dignity that benefit individuals, couples, and society as a whole.

The tangible and intangible benefits of marriage — which enrich individuals, couples, families, and society as a whole — have been widely recognized. This Court has described marriage as "the most socially productive and individually fulfilling relationship that one can enjoy in the course of a lifetime." (*Elden v. Sheldon* (1988) 46 Cal.3d 267, 274–75.)

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[7] The application for public marriage licenses provided by respondents to the *amici* couples and other same-sex couples stated that entering into marriages might affect the applicants' domestic partner benefits and that marriages of lesbian and gay couples might not be recognized by jurisdictions other than San Francisco or by employers. (*See* Oppn. to Lockyer Pet. Ex. A [Alfaro Decl.] at ¶ 3.) Those statements have no effect on California laws mandating that any marriage is presumed valid and providing that third parties' noncompliance with marriage procedures does not invalidate a marriage. Their relevance, if any, to the reasonableness of the reliance that *amici* and other same-sex couples have placed on their marriages is a matter to be raised if, and only if, the validity of any marriage is raised in court proceedings initiated by one of the spouses, or by a statutorily-authorized third party, against the other spouse. (*See* Part I.B., *supra*.)

For this reason, it "is the public policy of this state to foster and promote the institution of marriage. The structure of society itself largely depends upon the institution of marriage[.]" (*In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 287–88 [citation omitted]; *see also Cohen v. Cohen* (1946) 73 Cal.App.2d 330, 335 ["Because under the American philosophy of government the state itself springs from the family, it can only exist so long as the solemnity of marriage and the stability of the family and home ideal ~~endure."~~].)

The State's strong policy supporting marriage is largely driven by the understanding that committed relationships sanctioned by the state will promote stability. In turn, this stability will benefit married individuals as well as society as a whole. As recently explained by the Massachusetts Supreme Judicial Court, stable relationships have "private and social advantages" that benefit all:

> Civil marriage anchors an ordered society by encouraging stable relationships over transient ones. It is central to the way the [state] identifies individuals, provides for the orderly distribution of property, ensures that children and adults are cared for and supported whenever possible from private rather than public funds. . . . Marriage also bestows enormous private and social advantages on those who choose to marry. Civil marriage is at once a deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family.

(*Goodridge v. Dept. of Public Health* (2003) 440 Mass. 309, 322 [798 N.E.2d 941, 954].) Stability and dignity play an equally important role in the marriage laws of the State of California. (*See Borelli v. Brusseau* (1993) 12 Cal.App.4th 647, 651 ["'The laws relating to marriage and divorce . . . have been enacted because of the profound concern of our organized society for the dignity and stability of the marriage relationship.'"] [citation omitted]; *see also In re Karen C.* (2002) 101 Cal.App.4th 932, 938 [judicial paternity determination is, *inter alia*, an "implementation of the strong public polic[y] favoring marriage and family stability"].)

2. The *amici* couples are currently enjoying the emotional and other benefits of marriage.

The benefits of marriage that the State has recognized and promoted are currently being enjoyed by the *amici* couples and other same-sex couples who married in San Francisco, as shown in the personal statements attached to this brief. Although the *amici* couples come from a wide variety of geographic, ethnic, social, and financial backgrounds, they have in common a devotion to the values of commitment and stability arising out of a married relationship. The *amici* also share a desire for equal treatment, dignity, and respect for their relationships and their families under the law. By entering into marriage, these couples sought to promote the values of individual and social stability that form the foundation of the marriage

relationship. As explained by married *amici* Tim Hartley and Jason Lyon: "The security and stability of our relationship makes us better citizens, which in turn enriches our community." (Attachments: Personal Statements of *Amici Curiae, infra,* at p. PS 11 [Hartley/Lyon].)

Marriage has transformed the amici couples' relationships. Though they were already completely committed, many of the *amici* couples found that getting legally married deepened their feelings for one another. To their surprise, after five years of being together, Tim Hartley and Jason Lyon discovered that the acts of obtaining a license and saying vows in public gave new weight to their feelings for one another:

> But there was something indefinable about standing there before God and our families and this stranger who generously donated his time to perform our ceremony that changed us both. Suddenly, we *felt* married in a way that we hadn't before. There is something to the legality of it, the 'officialness' of it, the willingness to be legally bound to this one other person, the willingness to make that commitment publicly.

(*Id.* at p. PS 10 [Hartley/Lyon]; *see, e.g., id.* at p. PS 5 [Ellenberg/Andrade], p. PS 8 [Elwell/Odell], p. PS 13 [Okun/Ethington], p. PS 18 [Postrel/Blum], p. PS 20 [Shore/Rybak], p. PS 24 [Trabing/Thomas].)

Marriage has demonstrated to the world the seriousness of the amici couples' relationships. Marriage also transformed how society views the *amici* couples' relationships. Mily Trabing and Susan Thomas believe that

being married made their relationship "real" to the world at large in a way that their long-term domestic partnership could not:

> There is a huge difference between being Domestic Partners and being married. Being married is something the general public can understand. If you tell someone you're Domestic Partners, it's like saying you registered your car at DMV: big deal. However, if you tell a co-worker or family member that you were married, they get it.

(*Id.* at p. PS 25 [Trabing/Thomas], *see id.* at p. PS 20 [Shore & Rybak] [marriage "is not limited by race, religion or borders. Yes the definitions may vary but the word itself is powerful, acknowledged and understood."], p. PS 8 [Elwell/Odell] ["Our relationship now has a public quality our relationship did not before. . . ."], p. PS 13 [Okun/Ethington] ["Marriage is not just a private affair — people regard you and treat you differently when you are married."].)

Similarly, being married makes it easier for the *amici* couples to demonstrate that their relationships are worthy of the seriousness and respect afforded to other committed relationships. As Mily and Susan explain:

> When you are "partners" or refer to each other as "girlfriends" it keeps you in a state of perpetual adolescence. You're not taken as seriously. The fact is, we are 41 and 48 years old – we are not teenagers or young adults who are "dating" – we are middle aged women who are in a lifelong marriage and we deserve the right to be legally married.

(*Id.* at p. PS 25 [Trabing/Thomas]; *see id.* at p. PS 4 [Caruso/Parker], p. PS 5 [Ellenberg/Andrade] ["We want to be viewed by people as spouses and not as partners.", p. PS 8 [Elwell/Odell] ["We were inspired to get married in a way we have not been inspired to register as domestic partners or otherwise solemnize our relationship. Marriage means more."], p. PS 16 [Orlandi/Wilson].)

Although Tim Hartley and Jason Lyon did not expect that their marriage would make any difference in how their friends and family viewed their relationship, they found that people seemed to view them in a new light after they got married:

> At both [of our workplaces], they had parties celebrating our marriage. People started asking if we planned to have children, when many had not asked before. Suddenly, people seemed to want to celebrate our love publicly.

(*Id.* at p. PS 10 [Hartley/Lyon]; *see also id.* at p. PS 4 [Caruso/Parker] [a marriage is the state saying, "'We honor you and your relationship and as a result, here are some privileges and rights we are going to extend to you.'"].)

Marriage provides added stability and protection to amici couples who have, or who want to have, children. For some of the *amici*, the stability of being in a legal marriage has encouraged them to have children. Tim Hartley and Jason Lyon plan to become parents by adopting a child together later this year, and cherish the fact that being married will work an

enormous improvement in the stability of their child's life. As they see it, "[o]ur child deserves all the stability that the civil contract of marriage can offer his parents." (*Id.* at p. PS 11 [Hartley/Lyon].)

Those *amici* who have children know that their marriages benefit their children. For example, Douglas Okun and Eric Ethington say that while the financial benefits of marriage will help them protect their twin daughters, "[m]ost significant is the effect on our daughters of being a part of a family headed by a married couple." (*Id.* at p. PS 14 [Okun/Ethington].)

Amy Silverstein and Angela Padilla knew the importance of the stability afforded by a legal marriage when they adopted their daughter Isabella. (*See id.* at p. PS 22 [Silverstein/Padilla].) But this stability became even more important when Angela was diagnosed with breast cancer, which made the couple consider what would happen if Amy was forced to raise their daughter on their own. (*Id.*) Indeed, the advantages of a stable legal marital relationship are apparent to all the *amici* with children. (*See id.* at p. PS 3–4 [Caruso/Parker], p. PS 17–18 [Postrel/Blum], p. PS 12–14 [Okun/Ethington], p. PS 22–23 [Silverstein/Padilla].)

Marriage has reduced the stigma felt by the amici couples. For many of the *amici*, the fact that they could not marry their committed partners felt degrading and humiliating. Although Cuauhtémoc Andrade and David Ellenberg have been together for 16 years, when they went to

register as domestic partners several years ago, they felt like second-class citizens as they stood beside different-sex couples who were getting marriage licenses. They were denied the same license as the other couples, not because they were any less committed, but because their commitment was to another man. (*Id.* at p. PS 5 [Ellenberg/Andrade], *see id.* at p. PS 25 [Trabing/Thomas], p. PS 17 [Postrel/Blum], p. PS 3 [Caruso/Parker].)

The fact that Cuauhtémoc and David were not married until recently made even their families and friends who support their relationship treat them differently. During a visit to his brother's family last year, David asked who would have custody of his nephew Ellis should David's brother and sister-in-law die. Their personal statement explains:

> David's sister in-law said, "David we wanted to name you and [Cuauhtémoc], but you're not legally married. I know that you're the best choice, but I believe legally we wouldn't be able to do it." I was so hurt that my eyes swelled with tears.

(*Id.* at p. PS 5–6 [Ellenberg/Andrade].)

For some *amici*, being unmarried meant not having a relationship at all in the eyes of many institutions. Like many of the *amici* couples, Amy Shore and Sherri Rybak have purchased property together. In these important transactions, however, the status of their permanent relationship was not even acknowledged:

> [E]very document we completed stated next to our names "Amy June Shore an un-married woman, Sherri Ann Rybak an un-married woman." . . . [W]e were

> labeled as two unmarried women. Not two domestic partners, not two people committed to one another for nineteen years, but two people with no relationship according to the State.

(*Id.* at p. PS 20-21 [Shore/Rybak].)

It is not only the *amici* themselves who have been made to feel that they are second-class citizens. Pamela Postrel and Mindy Blum have two children who know the effects of living in a household headed by two mothers, who are not legally married to each other:

> While our relationship *per se* doesn't affect the children negatively in any discernible way, the stigma brought down on us by those who insist on treating us like second-class citizens, namely in not allowing us legal marriage, most definitely doe shave a deleterious effect on our children. They do get the message that our family is not "real," that there is something about their parents' relationship that is not deemed credible by society.

(*Id.* at p. PS 17–18 [Postrel/Blum].)

Marriage provides many tangible benefits to the amici couples.

Prior to marrying, the *amici* couples had been denied a host of advantages available to married couples, including certain employment benefits, insurance coverage, and more advantageous credit terms made available only to married couples. Particularly upsetting to many of the *amici* couples is having suffered discrimination when one of them needed health care. For example, when they were an unmarried couple, Amy Shore and Sherri Rybak faced repeated frustration in trying to care for each other in

the hospital and during recovery when they each suffered illnesses — even though their relationship was as permanent and committed as any marriage. (*Id.* at p. PS 20 [Shore/Rybak].) During their respective times of illness, Amy and Sherri were forced to carry their health care power-of-attorney documents with them, simply to justify remaining at the other's sickbed. (*Id.*)

Similarly, when Cuauhtémoc Andrade suffered a medical emergency in the past, his partner David Ellenberg had to sit in the waiting room rather than attend him in the emergency room, because the hospital did not recognize their relationship. Now that they are married, David expects that there will be no hesitation in letting him be with his spouse during times of illness. (*Id.* at p. PS 5 [Ellenberg/Andrade].)

With respect to financial benefits, Angela Padilla and Amy Silverstein previously had individual personal umbrella liability policies because, as unmarried persons, they could not be carried on the same policy. Now, Amy is canceling her policy because she can be insured under Angela's policy as her spouse. (*Id.* at p. PS 23 [Silverstein/Padilla].) Amy and Angela also are considering applying for a mortgage jointly, in order to take advantage of favorable rates offered to married couples. (*Id.*)

Amy Brown and Lisa White just bought their first new car as newlyweds. Lisa remembers that, "[a]s the salesman was filling out the ownership documentation, he paused when he reached the marital status

portion and asked, 'Married?' 'Yes,' I said, for the first time in my entire 44-year life, 'I am, indeed, married.'" (*Id.* at p. PS 2 [Brown/White].) Likewise Cuauhtémoc Andrade and David Ellenberg are planning to buy a car, and will file a joint credit application (for the first time) and be able to get car insurance with married rates. (*Id.* at p. PS 6 [Ellenberg/Andrade].)

In short, the reasons that the *amici* couples chose to get married — including love, commitment, care-giving, stability, children, validation, responsibility, and dignity — are the same reasons that couples get married every day in California. The benefits of being married, both intangible and tangible, that the *amici* couples now enjoy are likewise the same as enjoyed by other couples.

3. Casting doubt on or invalidating the marriages of the *amici* couples would cause them irreparable harm.

When they married, the *amici* couples obtained the status that this State not only makes available, but encourages, for different-sex couples. As a result of their marriages, the *amici* couples' lives have been transformed in their own eyes and in the eyes of others; they have celebrated their love and commitment with their friends and family; they have signed contracts and financial documents reflecting their status as married persons; and they have made plans in reliance on their new status. To withdraw this most socially productive and individually fulfilling relationship from the *amici* couples would cause them irreparable harm.

Every benefit of marriage corresponds to a harm that the *amici* couples would suffer if their marriages were invalidated. For example, a central benefit for many of the *amici* is assurance of health care privileges that are only available to legal spouses. Sherri Rybak, who has multiple sclerosis, fears that if her condition worsens her family may try to gain control of the assets that she and Amy Shore have accumulated, or disregard the healthcare wishes that she has expressed to her spouse. (*Id.* at p. PS 20 [Shore/Rybak].)

Depriving the *amici* couples of their status as married couples would cause potentially irreparable financial harm to them as well. Robyn Caruso and Karen Parker note that, under the terms of Karen's pension, Robyn will not inherit the pension unless they are married at Karen's death. (*Id.* at p. PS 3 [Caruso/Parker].) Similarly, Tim Hartley observes that unless he remains married to Jason Lyon, the homes they own together would be subject to reassessment upon one spouse's death causing potentially huge tax consequences for the survivor. (*Id.* at p. PS 11 [Hartley/Lyon].)

The *amici* couples would lose more than just money or other tangible benefits, though. Invalidation of their existing marriages would tell the *amici* couples that their relationships are not worthy of the inherent dignity and respect that the laws of California accord to all different-sex marriages. *Amici* Stuart Gaffney and John Lewis know that marriage restrictions are a stamp of inferiority. Stuart's parents were prohibited from

marrying 52 years ago by California's anti-miscegenation statutes because one was white, while the other was Chinese-American. (*Id.* at p. PS 9 [Gaffney/Lewis].) Until recently, Stuart and John suffered the same loss of dignity:

> In addition to the many rights and benefits we lost [by not being married], we suffered a very real cost to our dignity as human beings. A heterosexual couple who had known each other for 17 days could get married; yet, we, as gay men, together for 17 years, could not do the same thing. The City of San Francisco removed this badge of inferiority when it treated us as fully equal citizens by allowing us to marry.

(*See id.* at p. PS 16 [Orlandi/Wilson][(invalidation of their existing marriage "would say that our love is not the same as two people of opposite sex."].)

Chris Elwell and Kory Odell describe how they would feel if their marriage were invalidated:

> We also dread the thought that we might be deemed divorced, or unmarried — an involuntary annulment to tell the world ... what? That our relationship is a delusion? That we don't deserve the dignity? Would we cancel our reception and send back the gifts and send out an announcement that we are not married after all? Would we go to another jurisdiction and have a second marriage, as if to admit that the first one did not take place?

(*Id.* at p. PS 8 [Elwell/Odell].) Chris and Kory, like all the other *amici*, simply "hope to be left to live in peace and as we are meant to be — married." (*Id.*)

4. Refraining from ruling on validity is consistent with the general policy of preserving the status quo pending a determination on the merits.

The procedural rules and decisions of California appellate courts show a clear preference for preserving the status quo pending a final determination on the merits of an issue — a preference that should apply with special force here. (*See, e.g.*, Code Civ. Proc. § 923 [enabling appellate courts "*to make any order appropriate to preserve the status quo* . . . ."] [emphasis added]; Code Civ. Proc. § 916(a) [providing for a stay of trial court proceedings, under certain circumstances, when appeal perfected]; *McFarland v. City of Sausalito* (1990) 218 Cal.App.3d 909, 912 [litigant can request writ of supersedeas "to preserve the status quo" when important rights may be impaired prior to final appellate determination of an issue].)

Indeed, this Court has recognized that "justice requires" it to preserve the status quo where "difficult questions of law are involved" and where an appellant's rights would be denied if the status quo were not maintained prior to a final determination on the merits. (*People ex rel. San Francisco Bay Conservation and Development Com.* (1968) 69 Cal.2d 533, 536–37 [staying order that would have allowed landfill operations to proceed before Court could make final determination on the merits].) Justice requires preservation of the status quo with respect to questions regarding the validity of the marriages of *amici* and other same-sex couples

in light of the important questions of law presented in the pending constitutional challenges to the exclusion of same-sex couples in California's marriage statutes. Certainly it would make little sense to disrupt the established marital relationships of *amici* and other same-sex couples only to confirm in later proceedings that they — like all other Californians — are entitled to exercise the constitutional right to marry.

The importance of maintaining the status quo applies with even greater force in these proceedings because, as discussed above, the validity of the marriages is not properly before the Court. A decision invalidating the marriages or calling them into question thus needlessly would reach beyond the immediate issues presented to disrupt important rights.

The Court should be particularly reluctant to disrupt the status quo with respect to marital status, which is entitled to a presumption of validity under California law. (*See, e.g., Vargas v. Superior Court* (1970) 9 Cal.App.3d 470, 473–474.) In an analogous family law context involving custody of a child, a court deemed it necessary to use its inherent power to preserve the status quo pending a final determination on the merits to protect a "father-child relationship and thereby the welfare of the child." (*In re Marriage of Dover* (1971) 15 Cal.App.3d 675, 680 [staying trial court proceedings pending appeal].) Existing marriages are just as deserving of judicial treatment that preserves the status quo.

Finally, refraining from adjudicating the validity of the marriages is consistent with decisions of the lower courts denying emergency relief to prevent the issuance of marriage licenses in San Francisco. As outlined in other briefs in these proceedings, the lower courts denied emergency relief after finding that the plaintiffs had failed to demonstrate irreparable harm justifying such relief.[8] In light of the serious disruption to the married couples that would result if the validity of their marriages were called into question, and the complete absence of harm to other parties from the existence of those marriages, there is no basis for altering the status quo unless and until the validity issue is properly presented and finally decided on the merits.

B. To Avoid Needless Harm To *Amici* And Other Couples Who Have Married, The Court 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 Is Properly Presented.

Although the validity of the marriages entered into by *amici* and other same-sex couples need not, should not, and properly cannot, be decided in these proceedings, petitioners and their supporters have nevertheless called the validity of those marriages into question. The *Lockyer* petition expressly seeks an order "declaring the invalidity of the same-sex marriage licenses and certificates issued and registered by

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[8] (*See* Oppn. to Lockyer Pet. at pp. 4–5.)

respondents." (Lockyer Pet. at p. 5 ¶ 2.) While the *Lewis* petitioners do not seek the same relief, they nevertheless denigrate the marriages by using quotation marks when referring to the "'marriages'" entered into by same-sex couples. (*See, e.g.*, Notice of Application for Immediate Stay at p. 1, *Lewis v. Alfaro* (No. S122865) [referring to the "same-sex 'marriages'. . . . performed in San Francisco"]) Likewise, the proposed intervenors in support of the Lockyer petition repeatedly use quotation marks to refer to the "'marriages'" and "'marriage'" licenses issued to same-sex couples. (Mem. of Law in Supp. of Writ Relief Requested by Pet. [filed by proposed intervenors Thomasson, *et al.*] at pp. 1–2.)

Although the statements of petitioners and their supporters that question the validity of the marriages should not inform any ruling of the Court on the issue before it — which does not include the validity of the marriages — those statements necessarily will inform the public perception of any ruling by the Court on the petitions. By seeking an order declaring the marriages invalid as part of the relief sought in his petition, petitioner Lockyer has taken the position that the validity of the marriages hinges on whether the respondents acted properly in issuing the marriage licenses and certificates to the same-sex spouses. If Attorney General Lockyer, who is the chief law officer of the State (*see* Cal. Const., art. V, § 13), assumes that a ruling on the issue of respondents' authority would encompass a ruling on the validity of the marriages, it can be expected that the thousands of same-

sex couples who married in San Francisco, along with their families, neighbors, friends, and employers, and the public at large, have made — or will make — similar false assumptions.

The Court may rightly expect that the parties to these proceedings, who either are themselves lawyers or have benefit of legal counsel, will be able to understand the subtleties of the complex legal issues presented by the petitions and any ruling on them. However, the same-sex couples are not parties to these proceedings. They, and the public at large, likely will rely on press reports and statements from the parties and their supporters in trying to understand any ruling by the Court. As a result, they may erroneously interpret any ruling by the Court concerning respondents' authority and the underlying constitutionality of the marriage statutes to be a ruling on the validity of the marriages.

Accordingly, in ruling on the petitions, *amici* respectfully urge the Court to take into account the potential for grave harm to same-sex spouses from any ruling that might unintentionally cast doubt on the validity of their marriages, as detailed in Part II.A.3, *supra*. *Amici* submit that the potential harm is a factor supporting respondents' request to delay any hearing or ruling on the petitions at this time, and instead allowing any issues concerning respondents' authority, the constitutionality of the marriage statutes, and (if raised in a proper proceeding) the validity of the marriages, to proceed first in the superior court.

Should the Court determine that the petitions should be adjudicated at this time, *amici* respectfully request that the Court explicitly state in its ruling that, in accordance with California law, the existing marriages of same-sex couples are to be considered valid unless and until they are declared otherwise in a court proceeding that properly presents the issue. A clear statement to that effect is required to ensure that the marriages of the *amici* couples and other same-sex couples will not needlessly, and erroneously, be called into question.

CONCLUSION

To avoid needless harm to *amici* and to other same-sex couples who married in San Francisco, *amici* respectfully urge the Court to delay any hearing or issuance of a ruling in these proceedings until the underlying issues of respondents' authority and the constitutionality of the marriage statutes are resolved by the lower courts. Should the Court issue a ruling on the petitions, *amici* respectfully request that the Court explicitly state that, in accordance with California law, the marriages entered into by same-sex couples in San Francisco are valid unless and until they are declared

otherwise in appropriate court proceedings in which the couples are named as parties.

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