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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

SENATOR WILLIAM J. KNIGHT et al.,
Plaintiffs,

v.

ARNOLD SCHWARZENEGGER et al.,
Defendants,

and

EQUALITY CALIFORNIA et al.,
Defendant-Intervenors.

Consolidated Cases:

Case No. 03AS05284

Case No. 03AS07035

ORDER ON MOTIONS FOR
SUMMARY JUDGMENT

RANDY THOMASSON et al.,
Plaintiffs,

v.

ARNOLD SCHWARZENEGGER et al.,
Defendants,

and

EQUALITY CALIFORNIA,
Defendant-Intervenor.



1 This matter is before the Court on the parties' cross-
2 motions for summary judgment. Plaintiff Proposition 22
3 Legal Defense and Education Fund sued Governor Gray Davis
4 (now Arnold Schwarzenegger) and other state officials for
5 injunctive and declaratory relief seeking a determination
6 that AB 205 was unlawfully enacted by the Legislature in
7 violation of California Constitution, article II, section
8 10, subdivision (c), because it amends Proposition 22 but
9 was not presented to the voters for approval. Plaintiffs
10 Randy Thomasson and Campaign for California Families filed a
11 similar action seeking similar relief, but challenging AB 25
12 in addition to AB 205. The two actions have been
13 consolidated. Equality California, and several individuals,
14 intervened in the actions supporting the Defendants'
15 position and defending AB 25 and AB 205. Each party has
16 filed a motion for summary judgment. All parties
17 essentially agree that there are no disputed material facts.
18 Instead, the motions present a pure question of law: whether
19 AB 25 and/or AB 205 amend, repeal, or may conflict with the
20 subject matter of Proposition 22 as enacted by the voters in
21 2002. The court finds that these new statutes do not amend,
22 repeal, or potentially conflict with the subject matter of
23 Proposition 22, so their enactment without voter approval
24 did not violate the California Constitution.

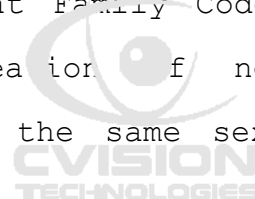
25 In order to determine whether or not AB 25 or AB 205
26 impermissibly amend Family Code section 308.5 without
27 submitting the matter to the voters, the Court must first
28 determine the meaning, purpose, scope, and effect of Family

1 Code section 308.5. At oral argument, all parties agreed
2 that section 308.5 was clear and unambiguous on its face.
3 However, each side's position is that the statute's meaning
4 is diametrically opposed to the interpretation given it by
5 their opponent.

6 Proposition 22, codified as Family Code section 308.5,
7 provides as follows: "Only marriage between a man and a
8 woman is valid or recognized in California." AB 25 and 205
9 confer most, but not all, of the rights and duties of
10 marriage to people who register as domestic partners. The
11 procedures for formation and termination of qualifying
12 domestic partnerships under the new law also vary from those
13 governing marriage.

14 Plaintiffs argue that Family Code section 308.5
15 proclaims that the legal rights, benefits, duties, and
16 responsibilities attendant and exclusive to "marriage" may
17 not be conferred upon any relationship of persons other than
18 one comprised of one man and one woman. Plaintiffs argue
19 that the statute was intended to prohibit new types of
20 marriage in the state. Consequently, plaintiffs contend
21 that any law which confers the benefits and detriments
22 exclusively attendant to "marriage" upon a same-sex
23 relationship must be approved by the voters of this state in
24 adherence with California Constitution, article II, section
25 10, subdivision (c).

26 Defendants essentially argue that Family Code section
27 308.5 does not prohibit the creation of new legal
28 relationships between two people of the same sex endowed



1 with substantially all of the same legal rights, benefits,
2 duties, and responsibilities previously attendant and
3 exclusive to "marriage," so long as the new relationship is
4 not called "marriage" and is formed and terminated through
5 different procedures. Thus, Defendants argue that neither
6 AB 25 nor AB 205 operated to amend Proposition 22, because
7 domestic partnerships are not called "marriage" and are
8 formed and terminated through different procedures. Further,
9 Defendants contend that Family Code section 308.5 was
10 specifically intended to prohibit the legal recognition of
11 foreign "marriages" of same-sex couples, not to prohibit the
12 legislative creation of new legal relationships within the
13 state.

14 When a statute enacted by the initiative process is
15 involved, the Legislature may amend it only if the voters
16 specifically give the Legislature that power, and then only
17 upon whatever conditions the voters attach to the
18 Legislature's amendatory powers. Cal.Const., art. II, § 10,
19 subd. (c); *Proposition 103 Enforcement Project v.*
20 *Quackenbush* (1998) 64 Cal.App.4th 1473, 1483-1484. The
21 purpose of California's constitutional limitation on the
22 Legislature's power to amend initiative statutes is to
23 "protect the people's initiative powers by precluding the
24 Legislature from undoing what the people have done, without
25 the electorate's consent." *Proposition 103 Enforcement*
26 *Project v. Quackenbush*, *supra*, 64 Cal.App.4th at p. 1484.
27 Here, Proposition 22 provided no amendatory power to the
28 Legislature, its amendment must obtain voter approval.

1 An "amendment" of an initiative statute for purposes of
2 analysis under California Constitution, article II, section
3 10, subdivision (c) has been defined as "any change of the
4 scope or effect of an existing statute, whether by addition,
5 omission, or substitution of provisions, which does not
6 wholly terminate its existence, whether by an act purporting
7 to amend, repeal, revise, or supplement, or by an act
8 independent and original in form,..." [Citation.] A statute
9 which adds to or takes away from an existing statute is
10 considered an amendment. [Citation.]'... [A]n amendment [is]
11 "'a legislative act designed to change some prior or
12 existing law by adding or taking from it some particular
13 provision.'" [Citation.]" *Proposition 103 Enforcement*
14 *Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1484,
15 quoting *Mobilepark West Homeowners Assn. v. Escondido*
16 *Mobilepark West* (1995) 35 Cal.App.4th 32, 40, and *Franchise*
17 *Tax Bd. v. Cory* (1978) 80 Cal.App.3d 772, 776-777. An
18 amendment of an initiative may be accomplished by some
19 action other than by the subsequent enactment of a statute;
20 the question is whether the action in question adds to or
21 takes away from the initiative. *Proposition 103 Enforcement*
22 *Project v. Quackenbush, supra*, 64 Cal.App.4th at p. 1484-
23 1485. In determining whether a particular action constitutes
24 an amendment, the court must keep in mind that "[i]t is
25 "the duty of the courts to jealously guard [the people's
26 initiative and referendum power]"... "[I]t has long been our
27 judicial policy to apply a liberal construction to this
28 power wherever it is challenged in order that the right [to

1 local initiative or referendum] be not improperly
2 annulled.'" [Citation.]" *DeVita v. County of Napa*, supra,
3 9 Cal.4th at p. 776, quoting *Associated Home Builders etc.,*
4 *Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591. "'Any
5 doubts should be resolved in favor of the initiative and
6 referendum power, and amendments which may conflict with the
7 subject matter of initiative measures must be accomplished
8 by popular vote, as opposed to legislatively enacted
9 ordinances, where the original initiative does not provide
10 otherwise.'" *Proposition 103 Enforcement Project v.*
11 *Quackenbush*, supra, 64 Cal.App.4th at p. 1486.

12 Thus, the Court is called upon to determine whether AB
13 25 and/or AB 205 "may conflict with the subject matter" of
14 Family Code section 308.5 by taking something away from it,
15 or adding to it. In performing this task the Court must
16 resolve all doubts in favor of the initiative power leaving
17 amendment to be accomplished, if at all, by popular vote as
18 opposed to legislative enactment.

19 Many well-established principles guide the court in
20 achieving an interpretation of Family Code 308.5, from which
21 the court may then determine whether the subject acts may
22 conflict with its subject matter. These principles deserve
23 full recitation since they form the primary foundation of
24 the court's ultimate conclusion in this matter.

25 "A fundamental rule of statutory construction is that a
26 court should ascertain the intent of the Legislature so as
27 to effectuate the purpose of the law.[Citations.] In
28 construing a statute, our first task is to look to the

1 language of the statute itself.[Citation.] When the language
2 is clear and there is no uncertainty as to the legislative
3 intent, we look no further and simply enforce the statute
4 according to its terms.[Citations.][P] Additionally,
5 however, we must consider the [statutory language] in the
6 context of the entire statute [citation] and the statutory
7 scheme of which it is a part. The court is "required to give
8 effect to statutes 'according to the usual, ordinary import
9 of the language employed in framing them.'
10 [Citations.]"[Citations.] "'If possible, significance should
11 be given to every word, phrase, sentence and part of an act
12 in pursuance of the legislative purpose.'" [Citation.]...
13 'When used in a statute [words] must be construed in
14 context, keeping in mind the nature and obvious purpose of
15 the statute where they appear.' [Citations.] Moreover, the
16 various parts of a statutory enactment must be harmonized by
17 considering the particular clause or section in the context
18 of the statutory framework as a whole.[Citations.]'" "
19 *Phelps v. Stostad* (1997) 16 Cal.4th 23, 32; see also *People*
20 *v. Coronado* (1995) 12 Cal.4th 145, 151; *People v. Jenkins*
21 (1995) 10 Cal.4th 234, 246. In determining that intent, the
22 court must first examine the words of the respective
23 statutes: 'If there is no ambiguity in the language of the
24 statute, "then the Legislature is presumed to have meant
25 what it said, and the plain meaning of the language
26 governs." [Citation.]' 'Where the statute is clear, courts
27 will not "interpret away clear language in favor of an
28 ambiguity that does not exist." [Citation.]' *Lennane v.*

1 *Franchise Tax Bd.* (1994) 9 Cal.4th 263, 268; *State Bd. of*
2 *Equalization v. Wirick* (2001) 93 Cal.App.4th 411, 416. If,
3 however, the terms of a statute provide no definitive
4 answer, then courts may resort to extrinsic sources,
5 including the ostensible objects to be achieved and the
6 legislative history. See *Granberry v. Islay Investments*
7 (1995) 9 Cal.4th 738, 744. The court must select the
8 construction that comports most closely with the apparent
9 intent of the Legislature, with a view to promoting rather
10 than defeating the general purpose of the statute, and avoid
11 an interpretation that would lead to absurd consequences.
12 *People v. Jenkins, supra*, 10 Cal.4th at p. 246.

13 In *People v. Thomas* (1992) 4 Cal.4th 206, 210 and
14 *People v. Pieters* (1991) 52 Cal.3d 894, 898-899, the
15 California Supreme Court states: “[i]t is a settled
16 principle of statutory interpretation that language of a
17 statute should not be given a literal meaning if doing so
18 would result in absurd consequences which the Legislature
19 did not intend.’ *Younger v. Superior Court* (1978) 21 Cal.3d
20 102, 113; see also *People v. Davis* (1985) 166 Cal.App.3d
21 760, 766 (although reasonable doubts as to ambiguous
22 criminal statute should normally be resolved in favor of
23 defendant, rule does not apply where result is absurd or
24 contrary to legislative intent.) Thus, “[t]he intent
25 prevails over the letter, and the letter will, if possible,
26 be so read as to conform to the spirit of the act.’ *Lungren*
27 *v. Deukmejian* (1988) 45 Cal.3d 727, 735. Finally, the
28 courts do not construe statutes in isolation, but rather

1 read every statute "with reference to the entire scheme of
2 law of which it is part so that the whole may be harmonized
3 and retain effectiveness. (*Clean Air Constituency v.*
4 *California State Air Resources Bd.* (1974) 11 Cal.3d 801,
5 814)." *People v. Thomas* (1992) 4 Cal.4th 206, 210. ""The
6 court should take into account matters such as context, the
7 object in view, the evils to be remedied, the history of the
8 times and of legislation upon the same subject, public
9 policy, and contemporaneous construction.'" *Cossack v.*
10 *City of Los Angeles* (1974) 11 Cal.3d 726, 733." *Marshall M.*
11 *v. Superior Court* (1999) 75 Cal.App.4th 48.

12 "[T]he statements of an individual legislator,
13 including the author of a bill, are generally not considered
14 in construing a statute, as the court's task is to ascertain
15 the intent of the Legislature as a whole in adopting a piece
16 of legislation." *Quintano v. Mercury Casualty Co.* (1995) 11
17 Cal.4th 1049, 1062. "In construing a statute we do not
18 consider the motives or understandings of individual
19 legislators who cast their votes in favor of it.
20 [Citations.] Nor do we carve an exception to this principle
21 simply because the legislator whose motives are proffered
22 actually authored the bill in controversy [citation]; no
23 guarantee can issue that those who supported his proposal
24 shared his view of its compass." *California Teachers Assn.*
25 *v. San Diego Community College Dist.* (1981) 28 Cal.3d 692,
26 700, quoting *In re Marriage of Bouquet* (1976) 16 Cal.3d 583,
27 589-590.

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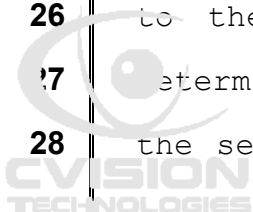
1 “A legislator’s statement is entitled to consideration,
2 however, when it is a reiteration of legislative discussion
3 and events leading to adoption of proposed amendments rather
4 than merely an expression of personal opinion.” *California*
5 *Teachers Assn. v. San Diego Community College Dist.* (1981)
6 28 Cal.3d 692, 700; *In re Marriage of Bouquet* (1976) 16
7 Cal.3d 583, 590. The statement of an individual legislator
8 has also been accepted when it gave some indication of
9 arguments made to the Legislature and was printed upon
10 motion of the Legislature as a “letter of legislative
11 intent.” *In re Marriage of Bouquet, supra*, 16 Cal.3d, at pp.
12 590-591.

13 “[A] court may disregard the plain meaning of a statute
14 and resort to its legislative history to aid in
15 interpretation when applying the literal meaning of the
16 statutory language ‘would inevitably (1) produce absurd
17 consequences which the Legislature clearly did not intend or
18 (2) frustrate the manifest purposes which appear from the
19 provisions of the legislation when considered as a whole in
20 light of its legislative history. . ..’ (*Faria v. San Jacinto*
21 *Unified School Dist.* (1996) 50 Cal.App.4th 1939, 1945, fn.
22 and citations omitted.) But ‘[i]f the legislative history
23 gives rise to conflicting inferences as to the legislation’s
24 purposes or intended consequences, then a departure from the
25 clear language of the statute is unjustified....’
26 [citation]” *Lewis v. County of Sacramento* (2001) 93
27 Cal.App.4th 107, 120.

28

1 The rules of statutory construction are the same for
2 initiative enactments as for legislative enactments.
3 *Williams v. Superior Court* (2001) 92 Cal.App.4th 612, 622.
4 The goal is to determine and effectuate voters' intent.
5 *Ibid.*; *Westly v. Board of Administration* (2003) 105
6 Cal.App.4th 1095, 1109. The Court is directed to look to
7 the language of the enactment first, giving the words their
8 usual and ordinary meaning. *Williams v. Superior Court,*
9 *supra*, at p.623. Only if the statutory language is
10 susceptible of more than one reasonable interpretation may
11 the Court resort to extrinsic evidence to determine the
12 intent of the voters. *Ibid.* When the language is ambiguous,
13 the Court may refer to other *indicia* of the voters' intent,
14 particularly the analyses and arguments contained in the
15 official ballot pamphlet. *People v. Rizo* (2000) 22 Cal.4th
16 681, 685; *Robert L. v. Superior Court* (2003) 30 Cal.4th 894,
17 900-909. If the statutory language is clear and unambiguous
18 there is no need for construction, nor is it necessary to
19 resort to *indicia* of the intent of the voters. *People v.*
20 *Salazar-Merino* (2001) 89 Cal.App.4th 590, 596. When
21 interpreting statutory language, courts may neither insert
22 language that has been omitted, nor ignore language that has
23 been inserted. *People v. Frontier Pacific Ins. Co.* (1998)
24 63 Cal.App.4th 889, 892.

25 Applying the foregoing rules, the Court must first look
26 to the actual language of Family Code section 308.5 to
27 determine and effectuate the voters' intent. The words of
28 the section must be given their usual and ordinary meaning.



1 If Family Code section 308.5 is clear and unambiguous there
2 is no need to examine the *indicia* of the intent of the
3 voters.

4 Family Code section 308.5 provides in full:

5 "Only marriage between a man and a woman
6 is valid
7 or recognized in California."

8 Of course, the operative word in the statute is
9 "marriage." Thus, the parties' obvious fundamental dispute
10 is whether a domestic partnership under the new statutes
11 constitutes a "marriage." The court concludes that it does
12 not. In the end, although the two relationships now share
13 many, if not most, of the same functional attributes they
14 are inherently distinct. And, despite the plaintiffs'
15 arguments to the contrary, the least important of the
16 distinctions between the two relationships is not the name
17 given to the union. While "marriage" consists of rights and
18 duties, the institution is not solely defined by those
19 components. The word "marriage" imports much more than its
20 entitlements as necessarily conceded by plaintiff
21 Proposition 22 Legal Defense and Education Fund at oral
22 argument.

23 Marriage has been the keystone of civilized society,
24 predating governmental regulation. It has been in society's
25 interest to maintain the institution of marriage for a broad
26 spectrum of contemporary societal goals ranging from
27 certainty in property rights to procreation. Over the
28 centuries marriage has assumed both religious and civil

1 status. While it is difficult to describe marriage in a
2 sentence or two, it is true, as pointed out by the Attorney
3 General in oral argument, that even a young child can
4 understand the concept.

5 The term "marriage" has been defined as "the civil
6 status, condition, or relation of one man and one woman
7 united in law for life, for the discharge to each other and
8 the community of the duties legally incumbent upon those
9 whose association is founded on the distinction of sex."
10 Black's Law Dictionary, 4th Ed., p.1123. Marriage has been
11 described as an important institution that is fundamental to
12 our very existence and survival. *Loving v. Virginia* (1967)
13 388 U.S. 1, 87; *Skinner v. Oklahoma* (1942) 316 U.S. 535. As
14 put in *Maynard v. Hill* (1888) 125 U.S. 190, 211:

15
16 Other contracts may be modified,
17 restricted, or enlarged, or entirely
18 released upon the consent of the
19 parties. Not so with marriage. The
20 relation once formed, the law steps in
21 and holds the parties to various
22 obligations and liabilities. It is an
23 institution, in the maintenance of which
24 in its purity the public is deeply
25 interested, for it is the foundation of
26 the family and of society, without which
27 there would be neither civilization nor
28 progress.

23 At the core, the common understanding of marriage in
24 this country is that two parties have undertaken to
25 establish a life together and assume certain duties and
26 obligations. *Lutwak v. U.S.* (1953) 344 U.S. 604.



1 However, the bundle of rights, duties, benefits, and
2 detriments of marriage have not remained constant in this
3 state, or across our nation. The only element of "marriage"
4 that has remained constant and immutable throughout our
5 nation's history - until recently - has been that the legal
6 union has consisted only of a man and a woman.¹

7 Consequently, it appears to this Court that "marriage"
8 cannot be simply and absolutely defined by the bare bundle
9 of rights and responsibilities conferred exclusively upon
10 that relationship, because those components seem in
11 continuous flux to meet the evolving mores, dynamics and
12 demands of society. Instead, marriage is more essentially
13 defined currently by the one historically constant element,
14 i.e. the union between man and woman.² A marriage is no less
15 or more a marriage, when government adds or subtracts yet
16 another restriction, duty, or benefit exclusive to the
17 marital relationship. The relationship remains a "marriage",
18 in name and nature, nonetheless. Thus, the title of
19 "marriage" is much more than just a word, and it is this
20 very special title that was preserved by Proposition 22.

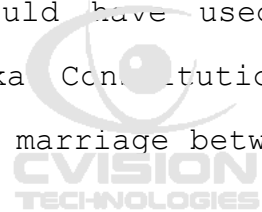
21 The plain language of Family Code section 308.5 means
22 that California cannot recognize a "marriage" between same-
23 sex partners that has taken place in another state, and
24

25 ¹ However in *Baehr v. Lewin* (Haw. 1996) 910 P.2d 112, the Hawaii Supreme Court
26 struck down as violating the Equal Protection Clause of the Hawaii Constitution a Hawaii
27 statute that denied marriage licenses to same sex couples. This holding was subsequently
28 overturned by an amendment to that state's constitution.

29 ² The Court expresses no view on the constitutionality of a law that limits marriage to a
man and a woman, such as Proposition 22, since that matter is not before the Court for
decision.

1 cannot enact law authorizing same-sex couples to enter
2 "marriage" in California unless first approved by the
3 voters. The statute says nothing about what rights may be
4 given or denied persons recognized as domestic partners in
5 California. Since the language is clear and unambiguous on
6 its face, the Court sees no need to resort to aids to
7 construction, and hence does not consider the arguments of
8 the proponents and opponents submitted to the voters or the
9 other less compelling extrinsic evidence variously proffered
10 by parties.

11 In 1999, the year before Proposition 22 was placed
12 before the voters, the California Legislature created a
13 state-wide domestic partner registry. 1999 Stat. Ch. 588.
14 By virtue of that legislation, domestic partners were given
15 some rights that previously had been extended only to
16 persons who were married. For example, Family Code section
17 297 permitted domestic partners hospital visitation on the
18 same terms as married spouses, and health insurance coverage
19 for partners of certain government employees. The drafters
20 of Proposition 22 knew of the prevailing status of domestic
21 partners, and that they had been given some rights
22 previously enjoyed only by married couples. If the drafters
23 of Proposition 22 had intended to limit the future rights
24 and duties of domestic partners, language plainly stating
25 that goal would necessarily have been included in the
26 measure. For example, the drafters could have used the
27 language employed to amend the Nebraska Constitution in
28 2000. That amendment provides that "only marriage between a



1 man and a woman shall be valid or recognized in Nebraska.
2 The uniting of two persons of the same sex in a civil union,
3 domestic partnership, or other similar same-sex relationship
4 shall not be valid or recognized in Nebraska." Nebraska
5 Constitution, Article 1, section 29. The drafters of
6 Proposition 22 did not.

7 The fact that such limiting language was not used in
8 Proposition 22 persuades the court that it was not intended
9 to serve as an absolute limit upon the Legislature's power
10 to confer rights and benefits upon citizens of the state.
11 Since nothing in the words of Proposition 22 limit any
12 rights that may be conferred on persons who register as
13 domestic partners, except that they may not enter
14 "marriage," the only conclusion to be drawn is that AB 25
15 and AB 205 do not amend, limit, or otherwise conflict with
16 Family Code section 308.5. It would be improper for this
17 Court to interpret Proposition 22 as denying such rights to
18 domestic partners since to do so would require the Court to
19 add language to the statute that was purposefully omitted.
20 *People v. Frontier Pacific Ins. Co.* (1998) 63 Cal.App.4th
21 889, 892.

22 The Court notes that in enacting AB 25 and AB 205, the
23 Legislature, consistent with Proposition 22, provided that
24 the state would not recognize same-sex marriage. AB 205,
25 section 9. Domestic partners are required to state that
26 they are "single" when filing a Federal or State tax return;
27 they are prohibited from asserting that they are married on
28 such forms. (Fam.Code, § 297.5(g).) Furthermore, the

1 legislation contains a specific finding that nothing therein
2 shall be construed as amending Proposition 22. (Fam. Code,
3 § 297.5(j)). Findings of the Legislature interpreting the
4 state's constitution are entitled to deference. See *Amwest*
5 *Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243.

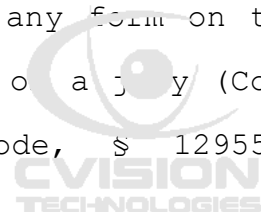
6 The Court finds that nothing in AB 25 or AB 205
7 "conflict with the subject matter" of Family Code section
8 308.5. The Legislature has taken nothing away from what was
9 enacted by the people, nor has it amended, or in any way
10 qualified Proposition 22. Simply because the Legislature
11 deemed it to be in the best interest of the State of
12 California to give domestic partners rights that are
13 substantially the same as those enjoyed by persons who are
14 married, does not change the definition of marriage
15 contained in Proposition 22. Persons registered as domestic
16 partners are not married, are not recognized as being
17 married (e.g., Fam Code § 299.2), in at least one instance
18 are prohibited from claiming that they are married (Fam.
19 Code, § 297.5(g), and cannot be married in this state unless
20 the measure authorizing such is approved by the voters.
21 Proposition 22 denied same-sex couples the right to be
22 married and prohibits the State of California from
23 recognizing any marriage between same-sex couples; it did
24 not preclude the Legislature from giving certain rights to
25 persons who have registered as domestic partners and have
26 met the statutory requirements of that status. Proposition
27 22 was directed at the status of being married; not that

28

1 rights the Legislature could withhold or provide to other
2 citizens.

3 The Court is compelled to reach this result for yet
4 another reason. If the Court interprets Family Code section
5 308.5 in the manner that Plaintiffs' contend is appropriate,
6 it would result in an unconstitutional application of the
7 law. However, the court must construe statutes in a manner
8 that upholds their constitutionality. See *People v. Amor*
9 (1974) 12 Cal.3d 20, 30. If, as Plaintiffs' urge, the
10 Legislature is powerless to grant those rights embodied in
11 AB 25 and AB 205 without returning to the voters for
12 approval, Proposition 22 would likely violate Article 1
13 sections 1 and 7 of the California Constitution because it
14 would deprive to a class of citizens rights, privileges and
15 immunities accorded another class of citizens solely on the
16 ground of gender and/or sexual orientation. Such a result
17 is constitutionally impermissible. *Gay Law Students Assn v.*
18 *Pacific Telephone* (1979) 24 Cal.3d 458 (Equal Protection
19 Clause contained in California Constitution bars
20 discrimination on the basis of sexual orientation).

21 The public policy of California, which is reflected by
22 its constitution, statutes, and appellate decisions favors
23 marriage in general. *Hendricks v. Hendricks* (1954) 125
24 Cal.App.2d 239. However, that same public policy recognizes
25 and advances the rights of same-sex couples by clearly and
26 unequivocally prohibiting discrimination in any form on the
27 basis of sexual orientation. E.g., service of a jury (Code
28 Civ. Proc., § 231.5), housing (Gov. Code, § 12955),



1 employment Government Code section 12940). In addition the
2 Canons of Judicial Ethics prohibit judges, by words or
3 conduct, from showing bias based upon one's sexual
4 orientation and requires a judge to prohibit lawyers and
5 court staff from showing any such bias. Canon 3(B)5, 6.
6 Both the civil and criminal statutes prohibit acts of
7 violence and "hate crimes" against anyone because of his or
8 her sexual orientation. Civil Code section 51.7. Penal Code
9 section 422.6. Just last year the California Supreme Court
10 acknowledged this public policy by holding that domestic
11 partners can utilize second-parent adoption procedures.
12 *Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 438-439.

13 The Court is not unmindful of the decision of the Court
14 of Appeal, Third Appellate District in *Hinman v. Department*
15 *of Personnel Administration* (1985) 162 Cal.App.3d 516,
16 wherein the court upheld the denial of dental benefits to
17 unmarried same sex partners of state employees. The
18 appellate court determined that such policy distinguished
19 eligibility on the basis of marriage rather than unlawfully
20 discriminated against persons on the basis of their sexual
21 orientation. However, it is clear to this court that
22 subsequent legislation and court decisions have called into
23 question the continued validity of *Hinman*. See, e.g. *Romer*
24 *v. Evans* (1996) 517 U.S. 620, 633 ("A law declaring that in
25 general it shall be more difficult for one group of citizens
26 than for all others to seek aid from the government is
27 itself a denial of equal protection of the laws in the most
28 literal sense.") and *Smith v. Fair Employment and Housing*

1 *Comm.* (1996) 12 Cal.4th 1143 (landlord cannot discriminate on
2 basis of marital status by refusing to rent to an unmarried
3 couple). Indeed, the decision in *Hinman* has been superseded
4 by statute. In any event, it is questionable in light of
5 recent statutes and court decisions whether the State may
6 articulate a rational basis to deny rights to same-sex
7 couples that are granted to persons who are married.

8 Since Proposition 22 would likely be held to be
9 unconstitutional if interpreted in the manner requested by
10 the Plaintiffs, that construction must be rejected in favor
11 of the plain meaning of the words themselves which do not
12 restrict the grant of rights and benefits to persons who
13 have registered as domestic partners, even if those rights
14 closely parallel the rights enjoyed only by married persons.

15 The parties' various requests for judicial notice and
16 evidentiary objections are ruled upon as follows:

17 Judicial Notice:

18 The Request for Judicial Notice In Support of
19 Opposition To Plaintiff's Motion for Summary Judgment (Case
20 No. 03AS07035) by Defendants Schwarzenegger, Jefferds, and
21 Brandt, is granted. The Request for Judicial Notice In
22 Support of Opposition To Plaintiff's Motion for Summary
23 Judgment (Case No. 03AS05284) by Defendants Schwarzenegger,
24 Jefferds, and Brandt, is granted as to A, denied as to B.

25 The Request for Judicial Notice in Support of
26 Plaintiff's Motion for Summary Judgment by plaintiff
27 Proposition 22 Legal Defense and Education Fund is granted
28 as to B, C, J. Otherwise the request is denied.

1 The Plaintiff's Request for Judicial Notice in Support
2 of Motion for Summary Judgment by plaintiff Campaign for
3 California Families (Case No. 03AS07035) is granted as to D,
4 F, G, H, I, J, L, M, N, and R. Otherwise the request is
5 denied. The Plaintiff's Request for Judicial Notice in
6 Support of Opposition to Defendants' Motions for Summary
7 Judgment by plaintiff Campaign for California Families (Case
8 No. 03AS07035) is granted as to D, F, G, H, I, J, L, M, N,
9 R, and W. Otherwise the request is denied.

10 The Requests for Judicial Notice of Defendant
11 Intervenors (Equality California) in support of motions for
12 summary judgment (Case Nos. 03AS07035 and 03AS05284) are
13 granted as to A, B, C, D, F, G, H, and J, Otherwise the
14 request is denied.

15 The Requests for Judicial Notice of Defendant
16 Intervenors (Equality California) in opposition to
17 plaintiffs motions for summary judgment (Case Nos. 03AS07035
18 and 03AS05284) is granted as to A, B, C, D, and K. The
19 requests are denied as to E, F, G, H, I, J, L, M, and N.

20 Notwithstanding the grant of judicial notice as
21 referenced above, the Court has not considered extrinsic
22 material in determining the meaning of Proposition 22,
23 finding it clear and unambiguous on its face.

24 Evidentiary Objections:

25 Defendants', Schwarzenegger, Jefferds, and Brandt,
26 evidentiary objection to the Declaration of Lynn D. Wardle,
27 is sustained.

28



1 Plaintiff Campaign for California Families' (Case No.
2 03AS07035) evidentiary objections Nos. 1, 2, and 3, are
3 sustained.

4 Defendant Intervenors' (Equality California)
5 evidentiary objections (Case Nos. 03AS07035) Nos. 1, 2, 3,
6 4, 5, 6, 7, and 8 are sustained. Defendant Intervenors'
7 (Equality California) evidentiary objections (Case Nos.
8 03AS05284) Nos. 1 through 27 are sustained.

9 Defendants' motions for summary judgment are granted.
10 Plaintiffs' motions for summary judgment are denied.
11 Intervenors' motions for summary judgment are granted.
12 Defendants and Intervenors shall prepare formal Judgments
13 for the Court's signature dismissing Plaintiffs' complaints.

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15 DATED: September 8, 2004
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LOREN E. McMASTER
Judge of the Sacramento Superior Court
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