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11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 12 IN AND FOR THE COUNTY OF SACRAMENTO

Case No. **05CS01123**

13 Larry Bowler, Ed Hernandez,
 Randy Thomasson
 14
 15 Petitioners,
 16 and
 17 Bill Lockyer, as Attorney General of the
 State of California

Case No. **05CS01123**
 PETITION FOR WRIT OF MANDATE TO
 AMEND TITLE AND SUMMARY
 [Election Code §§ 9004, 9050-9053;
 California Code of Civil Procedure §§ 1085-
 1086]
 Department:
 Hearing Date:
 Hearing Time:

20 Petitioners allege:

21 1. Petitioner Larry Bowler is a voter duly registered voter in Sacramento County, State
 22 of California, and a proponent of a state initiative measure that will amend the California
 23 Constitution to specify that only marriage between one man and one woman is valid or recognized
 24 in California, prohibit government entities and officials from abolishing the civil institution of
 25 marriage or from diminishing marriage by bestowing the statutory rights or incidents of marriage
 26 upon unmarried persons, or by requiring private entities to bestow rights or incidents of marriage
 27 upon unmarried persons (the Initiative).
 28

1 2. Petitioner Ed Hernandez is a duly registered voter in Yolo County, State of California,
2 and a proponent of the Initiative.

3 3. Petitioner Randy Thomasson is a duly registered voter in Yolo County, State of
4 California and a proponent of the Initiative.

5 4. Respondent Bill Lockyer is the State Attorney General for California and is
6 responsible by law for preparing the title and summary for statewide initiative measures.

7 5. After Petitioners filed the proposed initiative, by letter dated May 19, 2005, the State
8 Attorney General advised Petitioners that they could submit a proposed ballot title and summary for
9 the Attorney General's consideration.

10 6. By letter dated June 3, 2005, Petitioners submitted a suggested title and summary. A
11 true and correct copy of that letter is attached as Exhibit A, and incorporated herein by this reference.

12 7. Respondent has prepared the title and Summary for the Initiative, a statewide
13 measure, File number SA2005RF0077, MARRIAGE. ELIMINATION OF DOMESTIC
14 PARTNERSHIP RIGHTS. INITIATIVE CONSTITUTIONAL AMENDMENT.

15 8. A true and correct copy of the Title and Summary for the Initiative is attached as
16 Exhibit B. and incorporated herein by this reference.

17 9. A true and correct copy of the text of the Initiative is attached as Exhibit C, and
18 incorporated herein by this reference.

19 10. A true and correct copy of the LAO Fiscal Analysis is attached as Exhibit D, and
20 incorporated herein by this reference.

21 11. On or about July 25, 2005, the State Attorney General delivered to petitioners a copy
22 of the Title and Summary for the Initiative.

23 12. The Title and Summary is false, misleading, biased and likely to create prejudice
24 against the Initiative in that (1) the Title incorrectly makes the main purpose of the Initiative (a)
25 "marriage", rather than "marriage rights," and (b) the "elimination of domestic partnership rights"
26 even though the many of the "rights" identified for elimination will not be eliminated; (2) the
27 Summary incorrectly states that domestic partners will have certain "rights" voided or restricted,
28 including ownership and transfer of property, inheritance, adoption, medical decisions, child custody,

1 health benefits, insurance benefits, hospital visitation and employment benefits, when in fact, the law
2 will remain unchanged in many respects on these issues.

3 13. Attached as Exhibit E is petitioner's declaration that establishes that the Title and
4 Summary for the Initiative is false, misleading, biased and inconsistent with the text of the Initiative
5 because it does not express the true purpose of the measure in an impartial manner, and is thereby
6 likely to create prejudice against the measure.

7 14. A true and correct copy of two other initiatives concerning marriage, together with
8 their July 27, 2005 titles and summaries are attached as Exhibits F and G.

9 15. Under Election Code section 336, Petitioners have 150 days from the official
10 summary date in which to gather signatures to qualify the Initiative for the ballot. Unless the writ
11 issues, the false and misleading nature of the current Title and Summary will prejudice Petitioners'
12 efforts at signature gathering, thereby interfering with their efforts to gather the requisite number of
13 signatures to qualify the Initiative for the election ballot.

14 16. The issuance of a preemptory writ of mandate requiring respondent to prepare the
15 Title and Summary in a manner consistent with Election Code §§ 9004 and 9051 may be issued by
16 this Court and will not substantially interfere with the conduct of the election for which Petitioners
17 seek to qualify the initiative, which is in June 2006.

18 WHEREFORE, Petitioners pray:

19 1. That the Court issue a preemptory writ of mandate in the first instance commanding
20 respondent to amend the Title and Summary of the Initiative at issue to reflect its true purpose and
21 to remove the language that is not impartial and has created prejudice against the Initiative so that
22 its text is not false, misleading or inconsistent with the requirements of Election Code §§ 9004 and
23 9051; or

24 2. That the Court issue an alternative writ of mandate commanding respondent to show
25 cause why he should not do so, and thereafter issue a preemptory writ commanding respondent to
26 amend the Title and Summary to reflect its true purpose and to remove the language that is not
27 impartial and has created prejudice against the Initiative so that its text is not false, misleading or
28 inconsistent with the requirements of Election Code §§ 9004 and 9051;

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3. That the Court set this matter for hearing at the earliest available date so that issuance of the writ will not substantially interfere with the conduct of the election, as required Election Code § 336;

4. For the costs and attorneys fees generated by this proceeding; and

5. For such other and further relief as the court may deem proper.

DATED: July 29, 2005

BY: Mary McAlister Law
Mary McAlister
Attorney for Petitioners

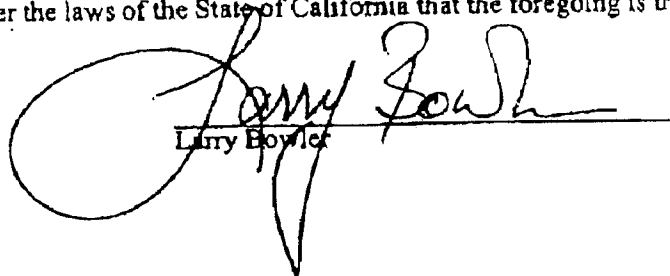
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VERIFICATION

I, Larry Bowler, am a petitioner in the above-entitled action. I have read the foregoing writ and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true

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

DATED: July 28, 2005


Larry Bowler

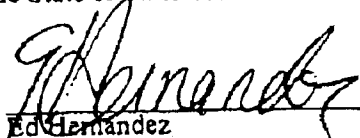
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VERIFICATION

I, Ed Hernandez, am a petitioner in the above-entitled action. I have read the foregoing writ and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

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

DATED: July 28, 2005


Ed Hernandez

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VERIFICATION

I, Randy Thomasson, am a petitioner in the above-entitled action. I have read the foregoing writ and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

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

DATED: July 28, 2005


Randy Thomasson

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MEMORANDUM OF POINTS AND AUTHORITIES

I. THE WRIT SHOULD ISSUE BECAUSE NO PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW TO ENSURE THAT THE TITLE AND SUMMARY COMPLIES WITH ELECTION CODE 9004 AND 9051.

A Writ of Mandate may issue from any court to compel the performance of an act the respondent has a duty to perform upon the verified petition of a party who has a right to the performance of the act sought, and where petitioner has no plain, speedy and adequate remedy in the ordinary course of law. CCP §§ 1085, 1086; Conlan v. Bonta (2002) 102 Cal. App.4th 745, 752, 125 Cal. Rptr.2d 788; Payne v. Superior Court (1976) 17 Cal.3d 908, 925, 132 Cal. Rptr. 405.

Pursuant to Election Code §§ 9004 and 9051, it is Respondent's duty to prepare an initiative title and summary that "shall give a true and impartial statement of the purpose of the measure in such language that the ballot title shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure." Election Code § 9051; Lungren v. Superior Court (1996) 48 Cal. App.4th 435, 438, 443, 55 Cal. Rptr.2d 690. As set forth below, Respondent has not prepared an impartial title and summary, and consequently Petitioners have the right to seek redress pursuant to CCP §§ 1085-1086 so that signatures can be collected to attempt to qualify the Initiative for the election ballot under circumstances that do not prejudice Petitioners' efforts at doing so.

The failure of Respondent to comply with Election Code §§ 9004 and 9051 leaves Petitioners with no plain, speedy or adequate remedy at law in that the normal legal process would eat away precious time that would otherwise be available to gather signatures pursuant to Election Code § 336. Section 336 mandates that petitions with signatures must be filed no later than 150 days after the title and summary is delivered to the initiative proponent. If Petitioners were to file a civil complaint and give notice of a motion, the notice requirement alone would cause 21 days to pass before a hearing on the matter could be held.

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1 II. THE TITLE AND SUMMARY PREPARED BY THE ATTORNEY GENERAL IS
2 NOT A SUMMARY OF THE CHIEF PURPOSE AND CHIEF POINTS OF THE
3 INITIATIVE NOR IS IT A TRUE AND IMPARTIAL STATEMENT OF THE
4 PURPOSE OF THE MEASURE.

5 A. The Title is Inaccurate and Misleading.

6 The chief purpose of the Initiative is to protect marriage rights. The chief points of the
7 Initiative are threefold. First, the Initiative would amend the California Constitution to specify that
8 only marriage between one man and one woman is valid or recognized in California. Second, the
9 Initiative would prohibit governmental entities and officials from abolishing the civil institution of
10 marriage or from diminishing the civil institution of marriage by bestowing statutory rights or
11 incidents of marriage upon unmarried persons. Third, the Initiative would prohibit governmental
12 entities and officials from diminishing the civil institution of marriage by requiring private entities
13 to bestow rights or incidents of marriage upon unmarried persons. *See* Petition, Ex. C.

14 The chief purpose of the Initiative is to protect marriage rights, in order to protect marriage.
15 The chief purpose of the Initiative is *not* to eliminate anyone's rights, but to protect and preserve the
16 statutory rights of marriage for the married. Thus, regardless of what the unmarried relationship is
17 called – domestic partners, civil unions, reciprocal beneficiaries, or live-in boyfriends/girlfriends –
18 they cannot be granted the statutory rights of marriage.

19 At the request of the Attorney General's office, on May 31, 2005 we submitted the following
20 suggested language to the Attorney General as a proper Title and Summary, which is consistent with
21 the chief purpose and points of our text:

22 **Protection of Marriage. Government Prohibited from Abolishing or**
23 **Diminishing Marriage. Initiative Constitutional Amendment.**

24 Amends California Constitution to specify that only marriage between one man and
25 one woman is valid or recognized in California. Prohibits government entities and
26 officials from abolishing the civil institution of marriage or from diminishing the
27 civil institution of marriage by bestowing statutory rights or incidents of marriage
28 upon unmarried persons or by requiring private entities to bestow rights or incidents

1 of marriage upon unmarried persons.

2 (Petition, Ex. A).

3 The LAO, in its July 11, 2005 letter to the Attorney General clearly and succinctly explained
4 the "Major Provisions" of the Initiative as

5 This measure amends the State Constitution to recognize marriage only between a
6 man and a woman. In addition, the measure prohibits the Legislature, courts, and
7 state and local government agencies from granting the rights of marriage to any
8 unmarried persons. The measure also prohibits government agencies from requiring
9 private entities to extend the rights of marriage to unmarried persons.

10 (Petition, Ex. D). The LAO's description is consistent with the title and summary suggested by
11 petitioners.

12 **The Title of the Initiative is false and misleading for four reasons.** *First*, the Title
13 improperly begins with "Marriage." Given a highly-publicized, recent ruling of the Third Appellate
14 District, "marriage" under California law refers only to the title of marriage, not the rights of
15 marriage. *Knight v. Superior Court*, (2005) 128 Cal. App.4th 14, 26 Cal. Rptr.3d 687. That case
16 concerned legal challenges to the validity of AB 205, which confers virtually all rights of marriage
17 upon domestic partners, in light of Proposition 22, which the people passed in 2000 providing that
18 "Only marriage between a man and a woman is valid or recognized in California." Those who
19 challenged AB 205 argued that AB 205 improperly amended Proposition 22 without a vote of the
20 people. The Attorney General's office defended the litigation – and won. As a result, the Third
21 Appellate District concluded that "the plain, unambiguous language of Proposition 22 is concerned
22 only with who is entitled to obtain the status of marriage, and not with the rights and obligations
23 associated with marriage"

24 The plain language of this Initiative demonstrates that it is about more than just the title of
25 marriage, but is about marriage rights. "Marriage" in the Title is therefore inaccurate. The Initiative
26 could state "Marriage Rights for One Man and One Woman." but even then it would not be precise
27 insofar as the Initiative is really about protecting marriage rights. Thus, to be accurate and not
28 misleading, the Title should state "Protection of Marriage Rights for One Man and One Woman."

1 *Second*, the Title **incorrectly identifies the purpose** of the initiative as the "Elimination of
2 Domestic Partnership Rights." This is incorrect because nowhere in the Initiative is Domestic Partner
3 or Domestic Partnership even mentioned. Instead, the Initiative states that the statutory rights of
4 marriage cannot be given to unmarried persons. The Title portrays the Attorney General's negative
5 view of the Initiative, rather than the positive view of Initiative. In addition, the Attorney General's
6 Title is incorrect and misleading insofar as it suggests that only domestic partners will be prevented
7 from obtaining the statutory rights of marriage, when in fact, all unmarried relationships, regardless
8 of what they are called, are treated the same. Thus, if the Legislature were to create civil unions,
9 reciprocal beneficiaries or some other legal status for unmarried couples, those couples would not
10 be able to receive the statutory rights of marriage. The fact is the Initiative make clear that marriage
11 rights cannot legally or logically be bestowed upon unmarried persons.

12 *Third*, the Title **fails to mention either of the other two chief points** of the Initiative - to
13 ensure private entities have the autonomy to decide whether to bestow rights or incidents of marriage
14 on unmarried persons, and to ensure that only a marriage between one man and one woman is valid
15 or recognized in California, whether contracted in this state or elsewhere. Petitioners suggested
16 including in the Title "Government Prohibited from Abolishing or Diminishing Marriage." At a
17 minimum, the Title must reflect the chief purpose, perhaps stating that "Government Prohibited from
18 Granting Marriage Rights to the Unmarried."

19 *Fourth*, the Title is **prejudicial**. There is no dispute that the Initiative touches on an issue that
20 is hotly debated, and litigated, in California. In 2000, the California electorate overwhelmingly
21 passed Proposition 22, which was codified as Family Code § 308.5. That statutory initiative stated,
22 "Only marriage between a man and a woman is valid or recognized in California." Because the
23 initiative did not grant the Legislature the authority to amend it, any subsequent bill that would
24 change the scope or effect of § 308.5 needed to be approved by the people. Nevertheless, the
25 Legislature passed AB 205 in 2003, that expressly grants the rights of married spouses to registered
26 domestic partners. Litigation challenging AB 205 as an unconstitutional amendment of § 308.5, has
27 thus far resulted in a decision by the Third Appellate District stating that "marriage" refers only to
28 the title of marriage, not the rights of marriage. *See Knight, supra*.

1 In addition, there are six separate lawsuits pending in California state court over the
2 constitutionality of the marriage laws. That litigation grew out of Mayor Newsom's decision to
3 "marry" more than 4,000 same-sex couples. The issues involved are sensitive ones. For that reason,
4 the Attorney General's task of creating a Title that is not prejudicial for or against the Initiative is
5 all the more difficult. To create a title that simply states "Marriage. Elimination of Domestic
6 Partnership Rights" is to prejudice readers against the Initiative by expressing the positive points of
7 the Initiative in false, misleading and negative terms. The Title negatively plays on the emotions of
8 the California electorate. The Attorney General is saying it is not about protecting marriage, but only
9 about eliminating rights, which stands in stark contrast to the fair description of the Initiative by the
10 LAO. The Attorney General did not carry out his task.¹ The current Title must be amended.

11 **B. The Summary is False, Misleading and Likely to Create Prejudice.**

12 **The Summary is also false, misleading and likely to create prejudice against the**
13 **Initiative.** Using only 89 of the 100 words allocated to create a title and summary, the Attorney
14 General allocates 9 words for the title, 28 words of the summary to state that the Initiative "Amends
15 the California Constitution to provide that only marriage between one man and one woman is valid
16 or recognized in California, whether contracted in this state or elsewhere," but uses 43 words to list
17 "rights" that allegedly will be taken away from domestic partners. The Summary does not refer to
18 the chief purpose of the Initiative, which is to protect marriage rights.

19 Nor does the Summary refer to two of three chief points in the Initiative, which are ways to
20 protect marriage rights – namely, that no government official or entity can bestow the statutory rights
21 of marriage on unmarried persons, and no private entity can be required by the government to bestow
22 rights of marriage on unmarried persons. The Attorney General could have used 11 more words to
23 address one of these chief points, but chose not to do so. For example, an important objective of the
24 Initiative to ensure that the Legislature does not abolish the civil institution of marriage altogether.

25
26 ¹ There is no question that the Attorney General sometimes misses the mark in properly
27 summarizing the chief purpose and points. Just last week the Attorney General amended the Title
28 and Summary for Proposition 26 at the urging of Governor Schwarzenegger who accused the
Attorney General's office of selecting ballot language that improperly emphasized the proposition's
impact on education funding more than its impact on overall state spending.

1 Such a bill has been introduced in New York for several years, and considered in South Africa.
2 Instead of using all 100 words, the Attorney General stopped short, focusing almost entirely on his
3 perceived negatives of the Initiative. In fact, the Attorney General dedicated nearly half of the
4 Summary to listing the various rights that allegedly would be voided and restricted. The Summary
5 is plainly misleading as to the chief purpose and effect of the Initiative.

6 **Even more troubling is that the Summary is inaccurate and misleading for ten distinct**
7 **reasons.** The Summary states that the Initiative “voids and restricts registered domestic partner rights
8 and obligations, for certain same-sex and heterosexual couples” and then proceeds to list (using 33
9 words) those domestic partner rights that will allegedly be voided or restricted. The Summary is
10 inaccurate and misleading for the following ten reasons:

11 *First*, the Summary states that it “voids and restricts” certain rights. **It is impossible to void**
12 **and restrict a right** at the same time. Once it is void, there is nothing left to restrict. Thus, to the
13 extent this Court determines it is appropriate at all for the Attorney General to indicate that the
14 Initiative voids certain rights or restrict certain rights, the two words must be joined by “or,” not
15 “and.” If the Summary did state that the Initiative “voids or restricts” certain rights, the Summary
16 would then need to be specific as to which rights are voided and which rights are restricted. Mere
17 substitution of “or” for “and” in the present Summary would leave the reader guessing which of the
18 “rights” identified are voided or restricted. Under those circumstances, it would be misleading and
19 prejudicial to the Initiative.

20 *Second*, it is inaccurate, misleading and prejudicial to state in the Summary that the Initiative
21 voids and restricts registered domestic partner rights for “certain same-sex and heterosexual
22 couples.” It is not clear what is meant by voids and restricts for “certain same-sex . . . couples.”
23 Domestic partner and same-sex couple are not synonyms in California law. Same-sex couples can
24 register as domestic partners, but do not have to. Yet, the Initiative has the same impact on all
25 unmarried couples, regardless of whether they are registered as domestic partners. In addition,
26 including in the Summary that “certain . . . heterosexual couples” will lose rights is vague. Is this a
27 reference to married or unmarried heterosexual couples? Perhaps the Attorney General means those
28 heterosexual couples who choose not to marry. Because the Summary does not state this, it is

1 confusing to the reader.

2 *Third*, simply stating in the Summary that the Initiative voids and restricts **ownership and**
3 **transfer of property** "rights" is inaccurate, misleading and prejudicial against the Initiative. In
4 California, there are four types of property ownership: joint tenants, business partnership, tenants in
5 common, and community interest. Cal. Civ. Code § 682. Under the initiative, three of the four
6 remain intact for unmarried persons. Unmarried persons are free to own property as joint tenants,
7 business partners or tenants in common. The Summary makes no reference to the fact that three of
8 the four ways in which Californians may own property remain unaltered for unmarried persons.

9 *Fourth*, stating in the Summary that the Initiative voids and restricts **inheritance rights**" is
10 inaccurate, misleading and prejudicial against the Initiative. Although unmarried, unrelated persons
11 will not inherit through statutory inheritance, they remain able to devise property by will or trust. The
12 Summary misleadingly suggests that domestic partners will no longer be able to do this.

13 *Fifth*, stating in the Summary that the Initiative voids and restricts **adoption** "rights" is
14 inaccurate, misleading and prejudicial against the Initiative. Even before AB 205 passed, the
15 California Supreme Court held that a same-sex partner can utilize California's second-parent
16 adoption statute to adopt their partner's child. California's Department of Social Services has long
17 permitted adoption without regard to marital status. Although AB 205 gave domestic partners the
18 same right as spouses to use step-parent adoption procedures, the fact is, the Initiative would not
19 prohibit same-sex couples from adopting using the same procedures in place prior to passage of AB
20 205.

21 *Sixth*, stating in the Summary that the Initiative voids and restricts **medical decision** "rights"
22 is inaccurate, misleading and prejudicial against the Initiative. Although AB 205 put domestic
23 partners in the same position as a spouse for purposes of making emergency health care decision,
24 the fact is, the Initiative would still permit an adult to execute a power of attorney for health care
25 decisions. Cal. Prob. Code § 4671 ("An adult having capacity may execute a power of attorney for
26 health care . . .").

27 *Seventh*, it is inaccurate, misleading and prejudicial to state in the Summary that the Initiative
28 voids and restricts **child custody** "rights." Under California's August 2003 Supreme Court ruling

1 in *Sharon S v. Superior Court*, 31 Cal.4th 417, 2 Cal. Rptr.3d 699, a domestic partner who chooses
2 to adopt her partner's child will be considered a legal parent and entitled to custody in the same
3 manner as any other parent – whether married or not. Even if the domestic partner does not adopt
4 her partner's child, the non-married partner can seek custody pursuant to Family Code § 3040 to the
5 extent the child is not placed into the custody of a legal parent. Furthermore, those who marry are
6 not automatically “parents” of children their spouse brought into the marriage. They must use step-
7 parent adoption procedures to become legal parents. Because there are circumstances under
8 California law where an unmarried partner can seek custody, the Summary should be amended.

9 *Eighth*, stating in the Summary that the Initiative voids and restricts **health and insurance**
10 **benefits** is inaccurate, misleading and prejudicial against the Initiative. Although the Initiative would
11 prohibit government entities and officials from bestowing the statutory rights of marriage concerning
12 insurance and health benefits on unmarried couples, the Initiative in no way prevents a private
13 employer from providing spousal-equivalent employee benefits to unmarried people. A private
14 employer can continue to provide life or health insurance coverage, sick leave, retirement benefits
15 or other employment benefits to the unmarried partner of an employee. Even with respect to the
16 government entities and officials, the Initiative does not prohibit granting those benefits that are not
17 based on marital status – for example, designating in a company life insurance policy one's
18 unmarried partner as the beneficiary.

19 *Ninth*, stating in the Summary that the Initiative voids and restricts **hospital visitation** is
20 inaccurate, misleading and prejudicial. Hospital visitation is an issue that is frequently cited by those
21 supporting marital rights for same-sex couples as something they are denied. In the ballot arguments
22 over Proposition 22, hospital visitation was repeatedly mentioned by opponents of the initiative. The
23 fact is that hospital visitation is not a statutory right of marriage.

24 In 1999, when California created the domestic partner registry, through AB 26, the
25 Legislature expressly stated that “Existing law does not specify requirements concerning patient
26 visitation in all health facilities.” Thus, nothing in the statutory code reserved hospital visitation
27 solely for married persons. Rather, health facilities created policies that restricted hospital visitation
28 to a patient's spouse or immediate family member. AB 26, therefore, provides that “A health facility

1 shall allow a patient's domestic partner, the children of the patient's domestic partner, and the
2 domestic partner of the patient's parent or child to visit" unless "No visitors are allowed," "The
3 facility reasonably determines that the presence of a particular visitor would endanger the health or
4 safety of a patient, member of the health facility staff, or other visitor to the health facility, or would
5 significantly disrupt the operations of a facility," or "The patient has indicated to health facility staff
6 that the patient does not want this person to visit." Ca. Health & Safety Code § 1261(a). Because
7 domestic partners will continue to have the statutory right of visiting at health care facilities, the
8 Summary is incorrect.

9 *Tenth*, it is inaccurate, misleading and prejudicial to state in the Summary that the Initiative
10 voids and restricts **employment benefit** "rights." As discussed above, although the Initiative would
11 prohibit government entities and officials from bestowing the statutory rights or incidents of
12 marriage concerning employment benefits on the unmarried, the Initiative in no way prevents a
13 private employer from providing spousal-equivalent employee benefits to unmarried persons. A
14 private employer can continue to provide employment benefits to the unmarried partner of an
15 employee. Even with respect to the government entities and officials, the Initiative does not prohibit
16 bestowing those employment benefits on the unmarried that are not based on marital status.

17 A review of Titles and Summaries released on July 27, 2005 reveals the prejudicial language
18 used by the Attorney General in preparing the Title and Summary for the Initiative. An initiative with
19 File number SA2005RF0082 would amend the California Constitution to state that "A marriage
20 between a man and a woman is the only legal union that shall be valid or recognized in this state."
21 (Petition, Ex. F at 1). The title and summary prepared by the Attorney Generals provides:

22 MARRIAGE. INVALIDATION OF DOMESTIC PARTNERSHIPS. INITIATIVE
23 CONSTITUTIONAL AMENDMENT. Amends the California Constitution to
24 provide that a marriage between a man and a woman is the only legal union that shall
25 be valid or recognized in California. Amendment bars domestic partnerships from
26 being valid or recognized as legal unions in California. Summary of estimate by
27 Legislative Analyst and Director of Finance of fiscal impact on state and local
28 governments: Unknown, but probably not significant, fiscal effect on state and local

1 governments. The impact would depend in large part on future court interpretations.

2 (Petition, Ex. F at 2).

3 Thus, even though the initiative's stated goal is to render invalid all legal unions other than
4 a marriage between a man and a woman, the Attorney General does not mention that domestic
5 partners will lose rights. In fact, **the summary does not mention a single right that would be**
6 **effected.** To the extent domestic partnerships are deemed invalid under this initiative, rights
7 available to domestic partners would be taken away. Yet, the title and summary, states in neutral,
8 non-prejudicial terms the chief purpose and points of the initiative.

9 Similarly, another initiative, with File number SA2005RF0083, provides that "Only a man
10 and a woman in a lawful marriage shall have the legal status of married spouses in California."

11 (Petition, Ex. G at 1).

12 The title and summary prepared by the Attorney General states:

13 MARRIAGE. EXCLUSIVE LEGAL STATUS FOR MARRIED SPOUSES.

14 INITIATIVE CONSTITUTIONAL AMENDMENT. Amends the California

15 Constitution to provide that only a man and a woman in a lawful marriage shall have

16 the legal status of married spouses in California. Makes same-sex marriage

17 unconstitutional. Summary of estimate by Legislative Analyst and Director of

18 Finance of fiscal impact on state and local governments: Unknown, but probably not

19 significant, fiscal effect on state and local governments. The impact: would depend

20 in large part on future court interpretations.

21 (Petition, Ex. G at 2).

22 Again, the title and summary use accurate, non-prejudicial language to describe the chief
23 purposes and points of the initiative. The distinctions in the language and tone between these two
24 titles and summaries contrasted with the Title and Summary for this Initiative are stark. The
25 language in the Title and Summary is not only inaccurate, but prejudicial against the Initiative.

26 III. CONCLUSION

27 As set forth above, and as set forth in the declaration of Larry Bowler and accompanying
28 exhibits, Petitioners have shown by clear and convincing evidence that the Title and Summary of the

1 Initiative as prepared by the respondent is false and misleading. Therefore a writ of mandate should
2 issue as Petitioner has requested.

3 DATED: July 29, 2005

By: Mary McAlister by RM
Mary McAlister
Attorneys for Petitioners

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VoteYesMarriage.com
California Marriage Amendment

The Voters' Right to Protect Marriage Initiative

June 3, 2005

Ms. Tricia Knight
Initiative Coordinator
Office of the Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550

RE: #SA2005RF0077
Proposed Title and Summary

Dear Tricia,

As you know, we have amended our proposed Constitutional Amendment, the Voters' Right to Protect Marriage Initiative, within the 15-day period outlined in your letter dated May 19, 2005. The changes will not affect our suggested title and summary which is below. Our proposed language reflects the chief purposes and points of the Voters' Right to Protect Marriage Initiative (SA2005RF0077) in a simple statement that accurately and briefly presents an impartial title and summary of the initiative text. We hope you will give it serious consideration.

Thank you kindly,

Ed Hernandez
Proponent, VoteYesMarriage.com
P.O. Box 511
Sacramento, CA 95812

Suggested title and summary (79 words):

Protection of Marriage. Government Prohibited from Abolishing or Diminishing Marriage. Initiative Constitutional Amendment.

Amends California Constitution to specify that only marriage between one man and one woman is valid or recognized in California. Prohibits government entities and officials from abolishing the civil institution of marriage or from diminishing the civil institution of marriage by bestowing statutory rights or incidents of marriage upon unmarried persons or by requiring private entities to bestow rights or incidents of marriage upon unmarried persons.

07/25/2005 12:09 FAX 0163248835

GOVERNMENT SECTION

002

Date: July 25, 2005
File: SA2005RF0077,
Amndt. #2-NS

The Attorney General of California has prepared the following title and purpose and points of the proposed measure:

MARRIAGE. ELIMINATION OF DOMESTIC PARTNERSH.

CONSTITUTIONAL AMENDMENT. Amends the California Co.

marriage between one man and one woman is valid or recognized in

contracted in this state or elsewhere. Voids and restricts registered dom. partner rights and

obligations, for certain same-sex and heterosexual couples, in areas such as: ownership and

transfer of property, inheritance, adoption, medical decisions, child custody and child support,

health and death benefits, insurance benefits, hospital visitation, employment benefits, and

recovery for wrongful death and other tort remedies. Summary of estimate by Legislative

Analyst and Director of Finance of fiscal impact on state and local governments: Unknown, but

probably not significant, fiscal effect on state and local governments. The impact would depend

in large part on future court interpretations.

EX B

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SA2005 RFOOT?,
AMDT. #2-NS

Section 1: Title

This amendment shall be known and cited as the Voters' Right to Protect Marriage Initiative.

Section 2: Declaration of Findings and Purposes

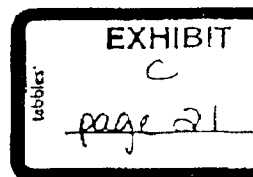
The People of California have a compelling responsibility to protect the essence of marriage by ensuring that the civil institution of marriage between one man and one woman is not abolished or diminished. The People find that marriage between one man and one woman is diminished when government bestows statutory rights or incidents of marriage on unmarried persons or when government requires private entities to offer or provide rights or incidents of marriage to unmarried persons. The People further find and declare it is in a child's best interest to have a mother and a father, and that marriage rights for one man and one woman should be protected for the well-being of children, families and society.

Section 3: Marriage Protection

Section 1.1 of Article I of the Constitution is added to read:

SEC. 1.1. a) Only marriage between one man and one woman is valid or recognized in California, whether contracted in this state or elsewhere.

b) Neither the Legislature nor any court, government institution, government agency, initiative statute, local government or government official shall abolish the civil institution of marriage between one man and one woman, or bestow statutory rights or incidents of marriage on unmarried persons, or require private entities to offer or provide rights or incidents of marriage to unmarried persons. Any public act, record, or judicial proceeding, from within this state or another jurisdiction, that violates this section is void and unenforceable.





July 11, 2005

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative regarding marriage (File No. SA2005RF0077, Amdt. #2-NS).

Background

Federal Laws. The U. S. Constitution does not define marriage nor does it require states to define marriage. For the receipt of federal benefits or for federal tax purposes, current federal law only recognizes marriage between a man and a woman.

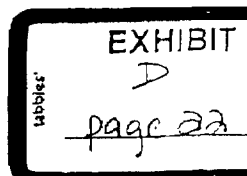
State Laws. The State Constitution currently does not define marriage. Under current California statute, only marriage between a man and a woman is valid and recognized. Couples of the same sex or unmarried couples of the opposite sex where at least one partner is 62 years or older may register as domestic partners. In most instances, registered domestic partners are provided the same rights and benefits as married couples. Rights of marriage include, but are not limited to, alimony, community property rights, and child custody.

Major Provisions

This measure amends the State Constitution to recognize marriage only between a man and a woman. In addition, the measure prohibits the Legislature, courts, and state and local government agencies from granting the rights of marriage to any unmarried persons. The measure also prohibits government agencies from requiring private entities to extend the rights of marriage to unmarried persons.

Fiscal Effect

The measure would repeal some provisions of existing law and prohibit state and local government agencies from authorizing some rights to domestic partners in the future. For example, the state could no longer provide community property rights to



Hon. Bill Lockyer

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July 11, 2005

domestic partners since only married couples would have these rights. The fiscal effect of the measure would depend on future interpretation by the courts of what constitutes "rights or incidents of marriage," both under existing law and under the measure. For instance, the extension of health benefits to domestic partners of government employees has tended to be considered an employee benefit, rather than an incident of marriage. If the courts, however, determined that this measure would affect these benefits, state and local governments could experience some savings from reduced health benefit costs. For this reason, the fiscal effect of the measure is unknown. Overall, however, we would not expect the measure to have a significant net fiscal effect on state and local governments.

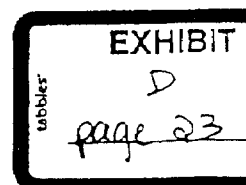
Fiscal Summary. This measure would have the following fiscal impact:

- Unknown, but probably not significant, fiscal effect on state and local governments. The impact would depend in large part on future court interpretations.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Tom Campbell
Director of Finance



1 Attorney captions

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

13

14

Larry Bowler, Ed Hernandez,
Randy Thomasson)

Case No.

15

Petitioners,)

DECLARATION IN SUPPORT OF
PETITION FOR WRIT OF MANDATE TO
AMEND TITLE AND SUMMARY

16

17

and)

[Election Code §§ 9004, 9050-9053;
California Code of Civil Procedure §§ 1085-
1086]

18

Bill Lockyer, as Attorney General of the
State of California)

Department:
Hearing Date:
Hearing Time:

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I, LARRY BOWLER, declare:

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1. I am a proponent of the Initiative at issue in this matter, File number SA2005RF0077.

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2. We have brought this action by way of writ because the use of normal litigation

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procedures would mean that this Initiative could not qualify for the June 2006 election, instead

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pushing it off five months later until the November 2006 election. In fact, a delay of even a week

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from the date of the ex parte hearing on the requested writ relief would prejudice our efforts to place

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the Initiative on the June 2006 ballot. The Initiative process has certain recommended deadlines and

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1 every day that passes without an impartial and accurate title and summary harms our democratic
2 efforts to be on the June 2006 ballot, which requires us to collect nearly 600,000 valid signatures.

3 3. The chief purpose of the Initiative is to protect marriage rights. The primary means
4 of accomplishing this, as provided for as the chief points in the Initiative, are threefold. First, the
5 Initiative would amend the California Constitution to specify that only marriage between one man
6 and one woman is valid or recognized in California.

7 4. Second, the Initiative would prohibit governmental entities and officials from
8 abolishing the civil institution of marriage or from diminishing the civil institution of marriage by
9 bestowing statutory rights or incidents of marriage upon unmarried persons.

10 5. Third, the Initiative would prohibit governmental entities and officials from
11 diminishing the civil institution of marriage by requiring private entities to bestow rights or incidents
12 of marriage upon unmarried persons.

13 6. The chief purpose of the Initiative is to protect marriage rights, in order to protect
14 marriage. The chief purpose of the Initiative is not to eliminate anyone's rights, but to protect and
15 preserve the statutory rights of marriage for the married. Thus, regardless of what the unmarried
16 relationship is called – domestic partners, civil unions, reciprocal beneficiaries, or live-in
17 boyfriends/girlfriends – they cannot be granted the statutory rights of marriage. Similarly, the
18 Initiative seeks to protect the autonomy of private employers – by permitting them to determine
19 whether to grant spousal benefits to unmarried couples. Governmental entities could not require
20 private employers to grant spousal benefits to unmarried couples as a condition of doing business
21 with the government.

22 7. At the request of the Attorney General's office, on May 31, 2005 we submitted the
23 following suggested language to the Attorney General as a proper Title and Summary, consistent
24 with the chief purpose and points of our text:

25 **Protection of Marriage. Government Prohibited from Abolishing or**
26 **Diminishing Marriage. Initiative Constitutional Amendment.**

27 Amends California Constitution to specify that only marriage between one man and
28 one woman is valid or recognized in California. Prohibits government entities and

1 officials from abolishing the civil institution of marriage or from diminishing the
 2 civil institution of marriage by bestowing statutory rights or incidents of marriage
 3 upon unmarried persons or by requiring private entities to bestow rights or incidents
 4 of marriage upon unmarried persons.

5 (Petition, Ex. A).

6 8. The LAO, in its July 11, 2005 letter to the Attorney General clearly and succinctly
 7 explained the "Major Provisions" of our Initiative as

8 This measure amends the State Constitution to recognize marriage only between a
 9 man and a woman. In addition, the measure prohibits the Legislature, courts, and
 10 state and local government agencies from granting the rights of marriage to any
 11 unmarried persons. The measure also prohibits government agencies from requiring
 12 private entities to extend the rights of marriage to unmarried persons.

13 (Petition, Ex. D).

14 9. How the LAO described the Initiative is instructive insofar as they too have an
 15 obligation to accurately characterize the Initiative.

16 10. **The Title of the Initiative is false and misleading for four reasons.** *First*, the Title
 17 improperly begins with "Marriage." Given a recent ruling of the Third Appellate District, "marriage"
 18 under California law refers only to the title of marriage, not the rights of marriage. *Knight v. Superior*
 19 *Court*, (2005) 128 Cal. App.4th 14, 26 Cal. Rptr.3d 687 ("Because the plain, unambiguous language
 20 of Proposition 22 is concerned only with who is entitled to obtain the status of marriage, and not with
 21 the rights and obligations associated with marriage . . ."). The Initiative could state "Marriage
 22 Rights for One Man and One Woman," but even then it would not be precise insofar as the Initiative
 23 is really about protecting marriage rights. Thus, to be accurate and not misleading, the Title should
 24 state "Protection of Marriage Rights for One Man and One Woman."

25 11. *Second*, the Title **incorrectly identifies the chief purpose** of the initiative as the
 26 "Elimination of Domestic Partnership Rights." This is incorrect because nowhere in the Initiative
 27 is Domestic Partner or Domestic Partnership even mentioned. Instead, the Initiative states that the
 28 statutory rights of marriage cannot be given to unmarried persons. The Attorney General's Title is

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1 incorrect and misleading insofar as it suggests that only domestic partners will be prevented from
2 obtaining the statutory rights of marriage, when in fact, all unmarried relationships, regardless of
3 what they are called, are treated the same. Thus, if the Legislature were to create civil unions,
4 reciprocal beneficiaries or some other legal status for unmarried couples, those couples would not
5 be able to receive the statutory rights of marriage. The fact is the Initiative make clear that marriage
6 rights cannot legally or logically be bestowed upon unmarried persons.

7 12. *Third*, the Title fails to mention either of the other two chief points of the Initiative
8 – to ensure private entities have the autonomy to decide whether to bestow rights or incidents of
9 marriage on unmarried persons, and to ensure that only a marriage between one man and one woman
10 is valid or recognized in California, whether contracted in this state or elsewhere. Petitioners
11 suggested including in the Title “Government Prohibited from Abolishing or Diminishing Marriage.”
12 At a minimum, the Title must reflect the chief purpose, perhaps stating that “Government Prohibited
13 from Granting Marriage Rights to the Unmarried.”

14 13. *Fourth*, the Title is prejudicial. There is no dispute that the Initiative touches on an
15 issue that is hotly debated, and litigated, in California. In 2000, the California electorate
16 overwhelmingly passed Proposition 22, which was codified as Family Code § 308.5. That statutory
17 initiative stated, “Only marriage between a man and a woman is valid or recognized in California.
18 Because the initiative did not grant the Legislature the authority to amend it, any subsequent bill that
19 would change the scope or effect of § 308.5 needed to be approved by the people. Nevertheless, the
20 Legislature passed AB 205 in 2003, that expressly grants the rights of married spouses to registered
21 domestic partners. Litigation challenging AB 205 as an unconstitutional amendment of § 308.5, has
22 thus far resulted in a decision by the Third Appellate District stating that marriage refers only to the
23 title of marriage, not the rights of marriage. *See Knight, supra.*

24 14. In addition, there are six separate lawsuits pending in California state court over the
25 constitutionality of the marriage laws insofar as they prohibit same-sex couples from marrying. That
26 litigation grew out of Mayor Newsom’s decision to “marry” more than 4,000 same-sex couples. The
27 issues involved are sensitive ones. For that reason, the Attorney General’s task of creating a Title that
28 is not prejudicial for or against the Initiative is all the more difficult. To create a title that simply

1 states "Marriage. Elimination of Domestic Partnership Rights" is to prejudice readers against the
2 Initiative by expressing the positive points of the Initiative in false, misleading and negative terms.
3 The Title negatively plays on the emotions of the California electorate. The Attorney General is
4 saying it is not about protecting marriage, but only about eliminating rights, which stands in stark
5 contrast to the fair description of the Initiative by the LAO. The Attorney General did not carry out
6 his task. The current Title must be amended.

7 15. The Summary is also false, misleading and likely to create prejudice against the
8 Initiative.

9 16. Using only 89 of the 100 words allocated to create a title and summary, the Attorney
10 General allocates 9 words for the title, 28 words of the summary to state that the Initiative "Amends
11 the California Constitution to provide that only marriage between one man and one woman is valid
12 or recognized in California, whether contracted in this state or elsewhere," but uses 43 words to list
13 "rights" that allegedly will be taken away from domestic partners. The Summary does not refer to
14 the chief purpose of the Initiative, which is to protect marriage.

15 17. Nor does the Summary refer to two of three chief points, which are ways in which
16 the Initiative will protect marriage – namely, that no government official or entity can bestow the
17 statutory rights of marriage on unmarried persons, and no private entity can be required by the
18 government to bestow rights of marriage on unmarried persons. The Attorney General could have
19 used 11 more words to address one of these purposes, but chose not to do so. For example, an
20 important objective of the Initiative to ensure that the Legislature does not abolish the civil
21 institution of marriage altogether. Such a bill has been introduced in New York for several years, and
22 considered in South Africa. Instead of using all 100 words, the Attorney General stopped short,
23 focusing almost entirely on his perceived negatives of the Initiative. In fact, the Attorney General
24 dedicated nearly half of the Summary to listing the various rights that allegedly would be voided and
25 restricted. The Summary is plainly misleading as to the chief purpose and effect of the Initiative.

26 18. Even more troubling is that the Summary is inaccurate and misleading for ten distinct
27 reasons. The Summary states that the Initiative "voids and restricts registered domestic partner rights
28 and obligations, for certain same-sex and heterosexual couples" and then proceeds to list (using 33

1 words) those domestic partner rights that will allegedly be voided or restricted. Although I maintain
 2 that the list in the Summary is inaccurate, at a minimum, this Court should conclude that the list is
 3 misleading.

4 19. *First*, the Summary states that it “voids and restricts” certain rights. **It is impossible**
 5 **to void and restrict a right at the same time.** Once it is void, there is nothing left to restrict. Thus,
 6 to the extent this Court determines it is appropriate at all for the Attorney General to indicate that
 7 the Initiative voids certain rights or restrict certain rights, the two words must be joined by “or,” not
 8 “and.” If the Summary did state that the Initiative “voids or restricts” certain rights, the Summary
 9 would then need to be specific as to which rights are voided and which rights are restricted. Mere
 10 substitution of “or” for “and” in the present Summary would leave the reader guessing which of the
 11 “rights” identified are voided or restricted. Under those circumstances, it would be misleading and
 12 prejudicial to the Initiative.

13 20. *Second*, it is inaccurate, misleading and prejudicial to state in the Summary that the
 14 Initiative voids and restricts registered domestic partner rights for “certain same-sex and heterosexual
 15 couples.” Even I do not understand what is meant by voids and restricts for “certain same-sex . . .
 16 couples.” Domestic partner and same-sex couple are not synonyms in California law. Same-sex
 17 couples can register as domestic partners, but do not have to. Yet, the Initiative has the same impact
 18 on all unmarried couples, regardless of whether they are registered as domestic partners. In addition,
 19 including in the Summary that “certain . . . heterosexual couples” will lose rights is vague. Is this a
 20 reference to married or unmarried heterosexual couples? Perhaps the Attorney General means those
 21 heterosexual couples who choose not to marry. The Summary, however does not state this so it is
 22 confusing to the reader.

23 21. *Third*, simply stating in the Summary that the Initiative voids and restricts **ownership**
 24 **and transfer of property** “rights” is inaccurate, misleading and prejudicial against the Initiative.
 25 In California, there are four types of property ownership: joint tenants, business partnership, tenants
 26 in common, and community interest. Under the initiative, three of the four remain intact for
 27 unmarried persons. Unmarried persons are free to own property as joint tenants, business partners
 28 or tenants in common. The Summary makes no reference to the fact that three of the four ways in

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1 which Californians may own property remain unaltered for unmarried persons.

2 22. *Fourth*, stating in the Summary that the Initiative voids and restricts **inheritance**
3 **rights**" is inaccurate, misleading and prejudicial against the Initiative. Although unmarried, unrelated
4 persons will not inherit through statutory inheritance, they remain able to devise property by will or
5 trust. The Summary misleadingly suggests that domestic partners will no longer be able to do this.

6 23. *Fifth*, stating in the Summary that the Initiative voids and restricts **adoption "rights"**
7 is inaccurate, misleading and prejudicial against the Initiative. Even before AB 205 passed, the
8 California Supreme Court held that a same-sex partner can utilize California's second-parent
9 adoption statute to adopt their partner's child. California's Department of Social Services has long
10 permitted adoption without regard to marital status. Although AB 205 gave domestic partners the
11 same right as spouses to use step-parent adoption procedures, the fact is, the Initiative would not
12 prohibit same-sex couples from adopting using the same procedures in place prior to passage of AB
13 205.

14 24. *Sixth*, stating in the Summary that the Initiative voids and restricts **medical decision**
15 **"rights"** is inaccurate, misleading and prejudicial against the Initiative. Although AB 205 put
16 domestic partners in the same position as a spouse for purposes of making emergency health care
17 decision, the fact is, the Initiative would still permit an adult to execute a power of attorney for health
18 care decisions.

19 25. *Seventh*, it is inaccurate, misleading and prejudicial to state in the Summary that the
20 Initiative voids and restricts **child custody "rights."** Under California's August 2003 Supreme Court
21 ruling in *Sharon S v. Superior Court*, 31 Cal.4th 417, 2 Cal. Rptr.3d 699, a domestic partner who
22 chooses to adopt her partner's child will be considered a legal parent and entitled to custody in the
23 same manner as any other parent – whether married or not. Even if the domestic partner does not
24 adopt her partner's child, the non-married partner can seek custody pursuant to Family Code § 3040
25 to the extent the child is not placed into the custody of a legal parent. Furthermore, those who marry
26 are not automatically "parents" of children their spouse brought into the marriage. They must use
27 step-parent adoption procedures to become legal parents. Because there are circumstances under
28 California law where an unmarried partner can seek custody, the Summary should be amended.

1 26. *Eighth*, stating in the Summary that the Initiative voids and restricts **health and**
 2 **insurance benefits** is inaccurate, misleading and prejudicial against the Initiative. Although the
 3 Initiative would prohibit government entities and officials from bestowing the statutory rights of
 4 marriage concerning insurance and health benefits on unmarried couples, the Initiative in no way
 5 prevents a private employer from providing spousal-equivalent employee benefits to unmarried
 6 people. A private employer can continue to provide life or health insurance coverage, sick leave,
 7 retirement benefits or other employment benefits to the unmarried partner of an employee. Even with
 8 respect to the government entities and officials, the Initiative does not prohibit granting those
 9 benefits that are not based on marital status – for example, designating in a company life insurance
 10 policy one’s unmarried partner as the beneficiary.

11 27. *Ninth*, stating in the Summary that the Initiative voids and restricts **hospital visitation**
 12 is inaccurate, misleading and prejudicial. Hospital visitation is an issue that is frequently cited by
 13 those supporting marital rights for same-sex couples as something they are denied. In the ballot
 14 arguments over Proposition 22, hospital visitation was repeatedly mentioned by opponents of the
 15 initiative. The fact is that hospital visitation is not a statutory right of marriage.

16 28. In 1999, when California created the domestic partner registry, through AB 26, the
 17 Legislature expressly stated that “Existing law does not specify requirements concerning patient
 18 visitation in all health facilities.” Thus, nothing in the statutory code reserved hospital visitation
 19 solely for married persons. Rather, health facilities created policies that restricted hospital visitation
 20 to a patient’s spouse or immediate family member. AB 26, therefore, provides that “A health facility
 21 shall allow a patient's domestic partner, the children of the patient's domestic partner, and the
 22 domestic partner of the patient's parent or child to visit” unless “No visitors are allowed,” “The
 23 facility reasonably determines that the presence of a particular visitor would endanger the health or
 24 safety of a patient, member of the health facility staff, or other visitor to the health facility, or would
 25 significantly disrupt the operations of a facility,” or “The patient has indicated to health facility staff
 26 that the patient does not want this person to visit.” Because domestic partners will continue to have
 27 the statutory right of visiting at health care facilities, the Summary is incorrect.

28 29. *Tenth*, it is inaccurate, misleading and prejudicial to state in the Summary that the

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 page 3!

1 Initiative voids and restricts **employment benefit "rights."** As discussed above, although the
 2 Initiative would prohibit government entities and officials from bestowing the statutory rights or
 3 incidents of marriage concerning employment benefits on the unmarried, the Initiative in no way
 4 prevents a private employer from providing spousal-equivalent employee benefits to unmarried
 5 persons. A private employer can continue to provide employment benefits to the unmarried partner
 6 of an employee. Even with respect to the government entities and officials, the Initiative does not
 7 prohibit bestowing those employment benefits on the unmarried that are not based on marital status.

8 30. A review of Titles and Summaries released on July 27, 2005 reveals the prejudicial
 9 language used by the Attorney General in preparing the Title and Summary for the Initiative. An
 10 initiative with File number SA2005RF0082 would amend the California Constitution to state that
 11 "A marriage between a man and a woman is the only legal union that shall be valid or recognized
 12 in this state." (Petition, Ex. F at 1). The title and summary prepared by the Attorney Generals
 13 provides:

14 **MARRIAGE. INVALIDATION OF DOMESTIC PARTNERSHIPS. INITIATIVE**
 15 **CONSTITUTIONAL AMENDMENT.** Amends the California Constitution to
 16 provide that a marriage between a man and a woman is the only legal union that shall
 17 be valid or recognized in California. Amendment bars domestic partnerships from
 18 being valid or recognized as legal unions in California. Summary of estimate by
 Legislative Analyst and Director of Finance of fiscal impact on state and local
 governments: Unknown, but probably not significant, fiscal effect on state and local
 governments. The impact would depend in large part on future court interpretations.

19 (Petition, Ex. F at 2).

20 31. Thus, even though the initiative's stated goal is to render invalid all legal unions other
 21 than a marriage between a man and a woman, the Attorney General does not mention that domestic
 22 partners will lose rights. In fact, the summary does not mention a single right that would be
 23 effected. To the extent domestic partnerships are deemed invalid under this initiative, rights
 24 available to domestic partners would be taken away. Yet, the title and summary, states in neutral,
 25 non-prejudicial terms the chief purpose and effect of the initiative.

26 32. Similarly, another initiative, with File number SA2005RF0083, provides that "Only
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1 a man and a woman in a lawful marriage shall have the legal status of married spouses in
2 California." (Petition, Ex. G at 1).

3 33. The title and summary prepared by the Attorney General states:
4 MARRIAGE. EXCLUSIVE LEGAL STATUS FOR MARRIED SPOUSES.
5 INITIATIVE CONSTITUTIONAL AMENDMENT. Amends the California
6 Constitution to provide that only a man and a woman in a lawful marriage shall have
7 the legal status of married spouses in California. Makes same-sex marriage
8 unconstitutional. Summary of estimate by Legislative Analyst and Director of
9 Finance of fiscal impact on state and local governments: Unknown, but probably not
10 significant, fiscal effect on state and local governments. The impact would depend
11 in large part on future court interpretations.

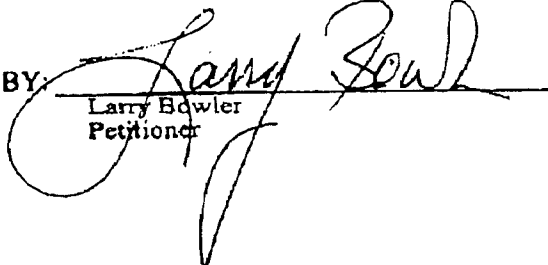
12 (Petition, Ex. G at 2).

13 34. Again, the title and summary use accurate, non-prejudicial language to describe the
14 chief purposes and effects of the initiative. The distinctions in the language and tone between these
15 two titles and summaries contrasted with our Title and Summary are stark. The language in our Title
16 and Summary is not only inaccurate, but prejudicial against the Initiative.

17 35. I respectfully suggest that the Title and Summary must be amended.

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

20 DATED: July 28, 2005

21 BY: 
Larry Bowler
Petitioner

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SA2005 RF 0082
Initiative #1

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the Attorney General. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

To the Honorable Secretary of State of California

We, the undersigned, registered, qualified voters of California, residents of _____ County (or City and County), hereby propose an amendment to the Constitution of California relating to marriage, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed constitutional amendment reads as follows:

SECTION 1. Title

This measure shall be known and may be cited as the "California Marriage Protection Act."

SECTION 2. Article I, Section 7.5 is added to the California Constitution, to read:

Sec. 7.5. A marriage between a man and a woman is the only legal union that shall be valid or recognized in this state.

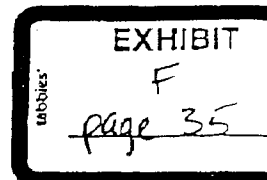
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Date: July 27, 2005
File: SA2005RF0082

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

MARRIAGE. INVALIDATION OF DOMESTIC PARTNERSHIPS. INITIATIVE

CONSTITUTIONAL AMENDMENT. Amends the California Constitution to provide that a marriage between a man and a woman is the only legal union that shall be valid or recognized in California. Amendment bars domestic partnerships from being valid or recognized as legal unions in California. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Unknown, but probably not significant, fiscal effect on state and local governments. The impact would depend in large part on future court interpretations.



SA2005 RFO083

Initiative #2

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the Attorney General. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

To the Honorable Secretary of State of California

We, the undersigned, registered, qualified voters of California, residents of _____ County (or City and County), hereby propose an amendment to the Constitution of California relating to marriage, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed constitutional amendment reads as follows:

SECTION 1. Title

This measure shall be known and may be cited as the "California Marriage Protection Act."

SECTION 2. Article I, Section 7.5 is added to the California Constitution, to read:

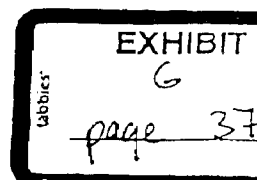
Sec. 7.5. Only a man and a woman in a lawful marriage shall have the legal status of married spouses in California.

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Date: July 27, 2005
File: SA2005RF0083

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

MARRIAGE. EXCLUSIVE LEGAL STATUS FOR MARRIED SPOUSES. INITIATIVE
CONSTITUTIONAL AMENDMENT. Amends the California Constitution to provide that only a man and a woman in a lawful marriage shall have the legal status of married spouses in California. Makes same-sex marriage unconstitutional. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Unknown, but probably not significant, fiscal effect on state and local governments. The impact would depend in large part on future court interpretations.



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 4 Attorneys for PETITIONERS

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF SACRAMENTO

Larry Bowler, Ed Hernandez,
 Randy Thomasson

Petitioners,

and

Bill Lockyer, as Attorney General of the
 State of California

Respondent.

) Case No. 05cs01123

)
) CORRECTED EXHIBIT B TO
) PETITION FOR WRIT OF
) MANDATE

) Department:
) Hearing Date:
) Hearing Time:

PLEASE TAKE NOTICE that Petitioners have attached hereto a corrected Exhibit B to the
 Petition for Writ of Mandate to Amend Title and Summary. The corrected Exhibit B is being filed
 to replace the original and copy filed with the court on August 1, 2005, which Exhibit B
 inadvertently had a small portion of the text covered.

The version originally filed with the court, and this corrected Exhibit B has been served on
 Respondent.

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1 DATED: August 2, 2005

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BY: Mary McAlister *[Signature]*
Mary McAlister
Attorneys for Petitioners

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8 Attorneys for PETITIONERS
 9

10
 11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 12 IN AND FOR THE COUNTY OF SACRAMENTO

13 Larry Bowler, Ed Hernandez,
 14 Randy Thomasson
 15
 16 Petitioners,
 17
 18 and
 19 Bill Lockyer, as Attorney General of the
 State of California
 20
 21 Respondent.

) Case No. 05cs01123
)
) [PROPOSED] ORDER FOR ISSUANCE
) OF ALTERNATIVE WRIT OF MANDATE
)
) [Election Code §§ 9004, 9050-9053;
) California Code of Civil Procedure §§ 1085-
) 1086]
)
) Hearing:
) Date:
) Time:
) Dept: 25
) Date of Filing: August 1, 2005
) Trial Date: None Set
) Hearing Time:

22
 23 Good cause appearing from the verified petition on file in this action that Petitioners are
 24 entitled to an Alternative Writ of Mandate directing Respondent to amend the Title and Summary
 25 prepared for the initiative, File number SA2005RF0077, specifically, (1) to amend the Title to read
 26 Protection of Marriage Rights for One Man and One Woman. Government Prohibited from
 27 Abolishing or Diminishing Marriage. Initiative Constitutional Amendment, and (2) to amend the
 28

1 Summary to accurately state the chief purpose and points of the Initiative in a manner that does not
 2 prejudice the Initiative, Petitioners having no other plain, speedy and adequate remedy in the
 3 ordinary course of law;

4 IT IS HEREBY ORDERED that the Alternative Writ of Mandate and Order to Show Cause
 5 issue from the Court to Respondent; and

6 IT IS FURTHER ORDERED that this Order be served on Respondent by ____ a.m./p.m. on
 7 August ____, 2005; and that the responses, if any, be served on Petitioners by overnight federal
 8 express delivery to their counsel of record, Mary McAlister, Liberty Counsel, 210 East Palmetto
 9 Avenue, Longwood, Florida 32750, no later than ____ a.m./p.m. on August ____, 2005;

10 IT IS FURTHER ORDERED that petitioners recover the costs of this proceeding.

11 IT IS SO ORDERED.

12 DATED: August ____, 2005

13 BY: _____
 14 JUDGE OF THE SUPERIOR COURT

15 APPROVED AS TO FORM:

16 _____
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 10

11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 12 IN AND FOR THE COUNTY OF SACRAMENTO
 13

14 Larry Bowler, Ed Hernandez,
 Randy Thomasson)
 15)
 Petitioners,)
 16)
 and)
 17)
 18)
 Bill Lockyer, as Attorney General of the)
 19 State of California)
 20)
 Respondent.)
 21)
 22)

Case No. 05cs01123

ALTERNATIVE WRIT OF MANDATE

[Election Code §§ 9004, 9050-9053;
 California Code of Civil Procedure §§ 1085-
 1086]

Hearing:
 Date:
 Time:
 Dept: 25
 Date of Filing: August 1, 2005
 Trial Date: None Set
 Hearing Time:

23 This cause came on regularly for hearing before this Court on August __, 2005, pursuant to
 24 petition filed by Petitioners Larry Bowler, Ed Hernandez and Randy Thomasson, proponents for File
 25 number SA2005RF0077. Mike Millen appeared as counsel for Petitioners, Deputy Attorney General
 26 _____, appeared on behalf of Respondent Bill Lockyer.

27 This cause having been argued and submitted for decision, the court being fully advised,
 28 having read and considered all the points and authorities, declarations and evidence submitted, and

1 good cause appearing therefore, and having directed that judgment and peremptory writ of mandate
2 be granted,

3 IT IS ORDERED:

4 1. That the Title of the Initiative, File number SA2005RF0077, be amended to read:
5 Protection of Marriage Rights for One Man and One Woman. Government Prohibited from
6 Abolishing or Diminishing Marriage. Initiative Constitutional Amendment.

7 2. That the Summary of the Initiative, File number SA2005RF0077, be amended as
8 follows:

9 Amends California Constitution to specify that only marriage between one man and
10 one woman is valid or recognized in California. Prohibits government entities and
11 officials from abolishing the civil institution of marriage or from diminishing the
12 civil institution of marriage by bestowing statutory rights or incidents of marriage
13 upon unmarried persons or by requiring private entities to bestow rights or incidents
14 of marriage upon unmarried persons.

15 3. That the Attorney General shall promptly issue an amended Title and Summary in
16 accordance with this Order, transmit the same to the proponents, and notify the Secretary of State
17 of the same.

18 4. That the Official Summary Date shall be the date when the Attorney General
19 transmits the amended Title and Summary to the Proponents.

20 5. That Petitioners recover the costs and attorneys fees related to this proceeding.

21 Dated: August __, 2005

22 BY: _____

23 JUDGE OF THE SUPERIOR COURT

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9
 10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 11 IN AND FOR THE COUNTY OF SACRAMENTO

12 Larry Bowler, Ed Hernandez,)
 Randy Thomasson)
 13)
 14) Petitioners,)
 15)
 16) and)
 17)
 18) Bill Lockyer, as Attorney General of the)
 State of California)
 19)
 20) Respondent.)

Case No. 05cs01123

[PROPOSED] ORDER FOR ISSUANCE
 OF ALTERNATIVE WRIT OF MANDATE

[Election Code §§ 9004, 9050-9053;
 California Code of Civil Procedure §§ 1085-
 1086]

Hearing:
 Date:
 Time:
 Dept: 25
 Date of Filing: August 1, 2005
 Trial Date: None Set
 Hearing Time:

21 Good cause appearing from the verified petition on file in this action that Petitioners are
 22 entitled to an Alternative Writ of Mandate directing Respondent to amend the Title and Summary
 23 prepared for the initiative, File number SA2005RF0077, specifically, (1) to amend the Title to read
 24 Protection of Marriage Rights for One Man and One Woman. Government Prohibited from
 25 Abolishing or Diminishing Marriage. Initiative Constitutional Amendment, and (2) to amend the
 26 Summary to state "Amends California Constitution to specify that only marriage between one man
 27 and one woman is valid or recognized in California. Prohibits government entities and officials from
 28 abolishing the civil institution of marriage or from diminishing the civil institution of marriage by

1 bestowing statutory rights or incidents of marriage upon unmarried persons or by requiring private
 2 entities to bestow rights or incidents of marriage upon unmarried persons." Petitioners have no other
 3 plain, speedy and adequate remedy in the ordinary course of the law;

4 IT IS HEREBY ORDERED that the Alternative Writ of Mandate and Order to Show Cause
 5 issue from the Court to Respondent; and

6 IT IS FURTHER ORDERED that this Order be served on Respondent by _____ a.m./p.m.
 7 on August ___, 2005; and that the responses, if any, be served on Petitioners by federal express,
 8 overnight deliver to the office of their counsel of record, Mary McAlister, Liberty Counsel, 210 East
 9 Palmetto Avenue, Longwood, Florida 32750, no later than ___ a.m./p.m. on August ___, 2005;

10 IT IS FURTHER ORDERED that petitioners recover the costs of this proceeding.

11 IT IS SO ORDERED.

12 Dated: August ___, 2005

13 By: _____
 14 Judge of the Superior Court

15 APPROVED AS TO FORM:
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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
 Mary McAlister, State Bar No. 148570
 210 East Palmetto Avenue
 Longwood, Florida 32750
 TELEPHONE NO.: 407-875-2100 FAX NO.: 407-875-0770

ATTORNEY FOR (Name): Petitioners Larry Bowler, Ed Hernandez, Randy Thomasson

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento
 STREET ADDRESS: 720 Ninth Street
 MAILING ADDRESS:
 CITY AND ZIP CODE: Sacramento, CA 95814
 BRANCH NAME: Gordon D. Schaber Downtown Courthouse

CASE NAME: Larry Bowler, et al. v. Bill Lockyer, as Attorney General

CIVIL CASE COVER SHEET

<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)	CASE NUMBER: 05CS01123 JUDGE: DEPT:
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All five (5) items below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PUPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PUPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|---|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial post-judgment judicial supervision |
3. Type of remedies sought (check all that apply):
 a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 1 - writ requiring Attorney General to amend title and summary
5. This case is is not a class action suit.

Date: July 29, 2005

Mary McAlister
(TYPE OR PRINT NAME)

Mary McAlister by Rmk
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Form Assigned for Mandatory Use
Judicial Council of California
CM-010 (Rev. July 1, 2002)

CIVIL CASE COVER SHEET

American LegalNet, Inc.
www.USCourtForms.com

Cal. Rules of Court, rules 201.8, 1800-1812;
Standards of Judicial Administration, § 19
www.courtinfo.ca.gov