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11 Chandler, and Thersea Michelle Petry and Cristal Rivera-Mitchel

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF SAN FRANCISCO

14 PROPOSITION 22 LEGAL DEFENSE AND) Case No. JLW 04-03943 _____
15 EDUCATION FUND, a California nonprofit)
16 public benefit corporation, on it own behalf and on)
17 behalf of the people of California,)
Petitioner,) Complaint Filed: February 13, 2004
18 vs.)

19 CITY AND COUNTY OF SAN FRANCISCO, a) COMPLAINT IN INTERVENTION OF DEL
20 charter city and county, GAVIN NEWSOM, in his) MARTIN AND PHYLLIS LYON, SARAH
21 official capacity as Major of San Francisco,) CONNER AND GILLIAN SMITH,
NANCY ALFARO, in her official capacity as the) MARGOT MCSHANE AND ALEXANDRA
22 San Francisco County Clerk, and DOES 1 through) D'AMARIO, DAVID SCOTT CHANDLER
23 100,) AND JEFFERY WAYNE CHANDLER,
24 Respondents.) AND THERESA MICHELLE PETRY AND
25) CRISTAL RIVERA-MITCHEL

26 -----)
27 PROPOSITION 22 LEGAL DEFENSE AND)
28 EDUCATION FUND,)
Petitioner,)
vs.)

29 DEL MARTIN AND PHYLLIS LYON, SARAH)
30 CONNER AND GILLIAN SMITH, MARGOT)
31 MCSHANE AND ALEXANDRA D'AMARIO,)
32 DAVID SCOTT CHANDLER AND JEFFERY)
33 WAYNE CHANDLER, AND THERESA)
34 MICHELLE PETRY AND CRISTAL RIVERA-)
35 MITCHEL,)
36 Intervenor-Respondent.)
37 -----)

1 By leave of court, Intervenor-Respondents Del Martin and Phyllis Lyon, Sarah Conner and
2 Gillian Smith, Margot McShane and Alexandra D'Amario, David Scott Chandler and Jeffery
3 Wayne Chandler, and Theresa Michelle Petry and Cristal Rivera-Mitchel (collectively,
4 "Intervenors") hereby intervene in this action and hereby unite with Respondents in resisting the
5 claims of Petitioner.

6 OVERVIEW

7 1. This action was commenced by Petitioner Proposition 22 Legal Defense and
8 Education Fund ("Petitioner") on February 13, 2004. The action seeks to prevent the City and
9 County of San Francisco ("San Francisco") and various local officials from granting marriage
10 licenses to same-sex couples and from solemnizing their marriages. The action also seeks to
11 invalidate the marriage licenses that have been issued to same-sex couples and to invalidate those
12 couples' marriages.

13 2. Petitioner named as Respondents San Francisco, a charter city and county; Gavin
14 Newsom, in his official capacity as Mayor of San Francisco; and Nancy Alfaro, in her official
15 capacity as San Francisco County Clerk, and DOES 1 through 100 (collectively, "Respondents").

16 3. On February 12, 2004, based on direction from San Francisco Mayor Gavin
17 Newsom ("Mayor Newsom"), San Francisco County Clerk Nancy Alfaro ("Alfaro") began issuing
18 marriage licenses to same-sex couples. Mayor Newsom concluded that denying licenses to same-
19 sex couples violated the California Constitution by, among other things, discriminating on the
20 basis of sex and sexual orientation and that, having taken an oath to uphold the California
21 Constitution, he could not allow the exclusion of same-sex couples to continue. Refusal to allow
22 same-sex couples to marry results in the denial of hundreds of rights, benefits, and responsibilities
23 that are automatically accorded to married spouses. These rights and responsibilities include such
24 things as: decision-making authority for funeral arrangements and disposition of remains, parental
25 rights and responsibilities, access to family courts in the event of dissolution, community property
26 rights and obligations, evidentiary privileges available to spouses, the ability to file income taxes
27 jointly, protection from threats and crimes against the families of public officials, death benefits
28 for surviving partners of firefighters and police officers, responsibility to disclose certain

1 conflicts-of-interest, joint assessment of income for determining eligibility for state government
2 assistance programs, the denial of social security survivor benefits, and the right to take leave from
3 work to care for a sick partner under the Family Medical Leave Act. Although some of these
4 rights will be provided to registered domestic partners pursuant to A.B. 205 (2003), most of the
5 provisions of this law will not go into effect for 10 months. In addition, Petitioner in this case is
6 currently challenging the validity of A.B. 205 in a separate, unrelated lawsuit. Although Petitioner
7 has been unsuccessful in that lawsuit thus far, that litigation is still pending. Even when most of
8 the provisions of A.B. 205 go into effect, registered domestic partners will still be denied hundreds
9 of rights and responsibilities of married couples. In addition to the denial of these tangible
10 benefits, denying two people in a loving, committed relationship the right to marry denies the
11 couple the opportunity to express their commitment in the most serious way that society provides;
12 it denies them the opportunity to enter into a relationship that is universally respected and
13 recognized as a symbol of their love and commitment. Being excluded from this institution also
14 brands same-sex couples with a stigma of inferiority.

15 3. Intervention is proper under Code of Civil Procedure section 387(b) because
16 Intervenor each have a direct interest in the transactions at issue in this litigation and disposition
17 of the action may as a practical matter impair or impede their ability to protect that interest, which
18 is not adequately represented by existing parties. In the alternative, intervention is proper under
19 section 387(a) because Intervenor have an interest in the matter in litigation and in the success of
20 Respondents.

21 4. Del Martin and Phyllis Lyon are a same-sex couple who have been together for 51
22 years. They obtained a marriage license in San Francisco and were married in a civil ceremony on
23 Thursday February 12, 2004. Margot McShane and Alexandra D' Amario are a same-sex couple
24 who have been together three and one-half years. Alexandra is currently pregnant with twins. On
25 February 12, 2004, Margot and Alexandra obtained a marriage license in San Francisco and were
26 married in a civil ceremony. Sarah Conner and Gillian Smith are a same-sex couple who have
27 been together almost four years. On February 12, 2004, they obtained a marriage license in San
28 Francisco and were married in a civil ceremony. David Scott Chandler and Jeffery Wayne

1 Chandler are a same-sex couple who have been in a committed relationship for 11 years. David
2 and Jeffery have a son who is approximately 6 months old. On February 14, 2004, David and
3 Jeffery obtained a marriage license in San Francisco and were married in a civil ceremony. This
4 lawsuit directly challenges the validity of their marriages. Theresa Michelle Petry and Cristal
5 Rivera-Mitchel are a same-sex couple who have been together for 12 years. They have a son,
6 Nico Petry-Mitchel, who is almost four years old. Theresa and Cristal would like to marry one
7 another. This lawsuit seeks to prevent Theresa and Cristal from being able to a marriage license in
8 San Francisco and from being able to marry one another there. The Intervenors are therefore
9 uniting with Respondents in resisting the claims of Petitioner.

10 **PROPOSED INTERVENORS**

11 5. Phyllis Lyon and Del Martin, who are seventy-nine and eighty-three years old,
12 have been together for 51 years. On February 12, 2004, Phyllis and Del obtained a marriage
13 license and were married in a ceremony at San Francisco City Hall. Phyllis and Del are registered
14 domestic partners with the state of California. This lawsuit directly challenges the validity of their
15 marriage license and their marriage.

16 6. Margot McShane and Alexandra D'Amario are a same-sex couple who have been
17 together three and one-half years. Margot and Alexandra have lived together since December
18 2001. They registered as domestic partners with the state of California in March 2003. Alexandra
19 is currently pregnant with twins. On February 12, 2004, Margot and Alexandra obtained a
20 marriage license and were married in a civil ceremony at San Francisco City Hall. This lawsuit
21 directly challenges the validity of their marriage license and their marriage.

22 7. Sarah Conner and Gillian Smith are a same-sex couple who have been together
23 almost four years. Sarah Conner is the Manager of Stewardship and Information at California
24 Pacific Medical Center Foundation. Gillian Smith is the Finance and Administration Associate at
25 the Women's Funding Network, a non-profit organization. They have been registered domestic
26 partners with the state of California since September, 2000. On February 12, 2004, they obtained
27 a marriage license and were married in a civil ceremony at San Francisco City Hall. This lawsuit
28 directly challenges the validity of their marriage license and their marriage.

1 both have to go to a nursing home or an assisted living facility. Specifically, although they are
2 registered domestic partners with the state of California, they are concerned that their rights as
3 domestic partners – including the right to visit each other in the hospital and the right to make
4 medical decisions for each other – will not be respected should something happen to one of them
5 outside of California. In addition, they are fearful that they would not be able to make decisions
6 concerning the disposition of the other’s remains – a right that is not currently granted to
7 registered domestic partners. Although A.B. 205 will provide this and certain other rights, most of
8 the provisions of A.B. 205 will not go into effect until January 1, 2005, which is more than ten
9 months away. Del and Phyllis worry that something might happen to one of them before A.B. 205
10 goes into effect. In addition, Del and Phyllis are aware that the Petitioner in the instant case has
11 brought another lawsuit challenging the validity of A.B. 205. While Petitioner’s attempts to stop
12 the implementation of A.B. 205 has been unsuccessful so far, that litigation is continuing. Finally,
13 Del and Phyllis are concerned about the federal protections that they do not and will not receive as
14 domestic partners, including social security survivor benefits. This lawsuit directly challenges the
15 validity of their marriage and their access to the security and all of the rights, protections, and
16 responsibilities the law affords those who are married.

17 12. Margot McShane and Alexandra D’Amario are a same-sex couple who have been
18 together three and one-half years. Margot, who is 34 years old, and Alexandra, who is 38 years
19 old, have lived together since December 2001. They registered as domestic partners with the state
20 of California in March 2003. Alexandra is currently pregnant with twins. On February 12, 2004,
21 Margot and Alexandra were married in a civil ceremony at San Francisco City Hall. Their
22 marriage has been the most proud and affirming event of their relationship and they are overjoyed
23 not just with the happiness of being married, but with feeling of recognition and validation
24 marriage has brought them. Being married has given Margot and Alexandra an enormous sense of
25 relief because they know that, if one of them becomes disabled, they will be better able to take
26 care of each other and their children as a result of being married and that, when one of them dies,
27 the survivor and their children will be better protected because Margot and Alexandra were
28 married. Their marriage will assist them financially, by among other things, saving them taxes.

1 Although they are provided some rights by being registered domestic partners, they fear that,
2 without marriage, their relationship and their rights will not be respected because many people do
3 not regard domestic partners as equivalent to spouses and because of ignorance about domestic
4 partnership laws. Margot and Alexandra also are worried about how they will be treated outside of
5 California if they are not married. This lawsuit directly challenges the validity of their marriage
6 and threatens to take away everything marriage has provided them and in the future will provide
7 them and the children they are expecting.

8 13. Sarah Conner and Gillian Smith are a same-sex couple who have been together
9 almost four years. Sarah Conner is 34 years old and is the Manager of Stewardship and
10 Information at California Pacific Medical Center Foundation. Gillian Smith is 35 years old and is
11 the Finance and Administration Associate at the Women's Funding Network, a non-profit
12 organization. They have been registered domestic partners with the state of California since
13 September 2000. On February 12, 2004, they were married in a civil ceremony at San Francisco
14 City Hall. Being married has brought them, and their family and community, extraordinary joy.
15 They cannot imagine having that taken away from them; it would be a pronouncement that they
16 are unequal and unworthy that would deprive them of human dignity and would encourage
17 discrimination against them. Sarah and Gillian know that they will be better able to take care of
18 each other because they now are married. The protections marriage uniquely provides to spouses
19 and surviving spouses at times of disability and death are particularly important to them due to
20 their previous experience supporting one another through a severe disability. They also want the
21 security of knowing that they can share confidential information with one another protected by
22 privileges available to spouses. Sarah and Gillian live in a rent-controlled apartment and their
23 marriage will provide them all the protections rent control provides other married couples. This
24 lawsuit directly challenges the validity of their marriage and seeks to strip them of all of the
25 tangible and intangible benefits their marriage already has conferred upon them and will confer
26 upon them in the future.

27 14. David Scott Chandler and Jeffery Wayne Chandler are a same-sex couple who have
28 been in a committed relationship for 11 years. David is 40 years old and Jeffrey is 43 years old.

1 They have one son, Jacob Chandler, who was born on July 5, 2003. David and Jeffery had a
2 commitment ceremony on May 5, 1995. On February 14, 2004, they were issued a marriage
3 license in San Francisco and on February 15, 2004 they were married in a ceremony at their
4 church. David and Jeffery got married because they understand the social and legal significance of
5 marriage and they know that it is only through marriage that their relationship will have the full
6 security and protection they desire. David and Jeffery had actually been expecting twins, but one
7 of the twins did not survive his premature delivery. While at the hospital, David and Jeffery
8 experienced difficulties because they were not a married couple. Not being married also caused
9 difficulties for making funeral arrangements for the twin that did not survive. Their pain at losing
10 a son was compounded by the lack of validity accorded to their relationship to one another and to
11 their sons. If their marriage is invalidated, David and Jeffery will lose many important rights and
12 protections necessary to protect their family. David and Jeffery also fear that if their marriage is
13 invalidated it will foment greater intolerance towards lesbian and gay couples. This lawsuit
14 directly challenges the validity of their marriage and seeks to deprive them of the rights, benefits,
15 protections to which they became entitled when they married and to prevent them from continuing
16 to assume the legal responsibilities the law uniquely imposes on legal spouses.

17 15. Theresa Michelle Petry and Cristal Rivera-Mitchel are a same-sex couple who have
18 been together for 12 years. They have a son, Nico Petry-Mitchel, who was born May 25, 2000.
19 Cristal is 43 and grew up in Los Angeles. Theresa is 43 and was raised in Texas. Currently, they
20 live in San Francisco. Before their son Nico was born, Theresa and Cristal went to an attorney and
21 spent a significant sum of money to have trust documents and other forms drawn up to reflect their
22 intentions and to protect their child. If they had been a legally married couple, many of these
23 documents would have been unnecessary. When Theresa began employment at a new job, she was
24 not advised of a “special” form she needed to fill out to assure that Cristal would be covered on
25 Theresa’s health insurance. A short time later, Cristal had a medical emergency and they were
26 forced to go to the county hospital because they were told that Cristal had no medical coverage.
27 The situation was eventually resolved, but this extremely difficult situation would not have
28 happened if they had been married. Cristal and Theresa would like to marry, but have not been

1 able to do so yet because there has not been enough time to plan the kind of wedding they want,
2 which would include having their closest family members and dearest friends, many of whom live
3 out of state. Cristal and Theresa know that marriage conveys significant responsibilities and
4 security. They would like to marry so that they can better protect their relationship and their
5 family. This lawsuit seeks to prevent Theresa and Cristal from marrying each marrying the one
6 person in the world they love enough to marry, which for each of them is the other.

7 16. Intervenors are entitled to mandatory intervention under section 387(b). They have
8 a direct interest in the transaction that is the subject of this action – issuance of marriage licenses
9 to same-sex couples and the validity of such licenses. Petitioner specifically has asked this Court
10 to make a determination as to the validity of Intervenors’ marriages. Although Respondents are
11 concerned with the protection of the residents of San Francisco, their interest in this case is
12 primarily defending their authority and this action, while Intervenors’ interest stems from concern
13 for their own rights and the well-being of their families and themselves. Thus, Intervenors’ ability
14 to defend the validity of their marriages would be impaired or impeded if they were not allowed to
15 intervene in this action.

16 17. Intervenors also are entitled to permissive intervention under section 387(a) of the
17 Code of Civil Procedure. Intervenors do not seek affirmative relief in this lawsuit, but rather seek
18 to challenge the relief that Petitioner seeks, including Petitioner’s request for injunctive relief that
19 would preclude Theresa Michelle Petry and Cristal Rivera-Mitchel from marrying one another and
20 Petitioner’s request for declaratory relief that the marriage licenses that were issued to and the
21 marriages of Del Martin and Phyllis Lyon, Sarah Conner and Gillian Smith, Margot McShane and
22 Alexandra D’Amario, David Scott Chandler and Jeffery Wayne Chandler, and all other same-sex
23 couples who have married in San Francisco, are invalid. Accordingly, the participation of the
24 Intervenors as parties will not enlarge the issues raised in this litigation.

25 18. Similarly, the reasons for Intervenors’ participation are significant and are in no
26 way outweighed by the rights of the original parties to conduct the lawsuit on their own terms.
27 Intervenors seek to defend their interests and the interests of their families by contesting the
28 precise claims that Petitioner has brought in this lawsuit. Intervenors’ participation in this lawsuit

1 will in no way detract from Petitioner's and Respondents' rights to conduct the lawsuit on their
2 own terms. Furthermore, Petitioner's interests in this lawsuit are the undifferentiated,
3 representative interests of taxpayers, not interests particular to Petitioner. Because Petitioner seeks
4 no relief of unique importance to it, there is no reason to be concerned here that Petitioner will be
5 inhibited by Intervenors' intervention from pursuing any form of relief of special or particular
6 importance to the Petitioner.

7
8 WHEREFORE, Intervenors pray for relief as follows:

- 9 (A) That Petitioner's Petition for Writ of Mandate and Immediate Stay, and Complaint
10 for Injunctive and Declaratory Relief be dismissed with prejudice and judgment be
11 entered against Petitioner's claims for declaratory and injunctive relief, and against
12 every other prayer for relief contained in Petitioner's Petition and Complaint; and
13 (B) That this Court grant such other and further relief as the Court deems just and
14 equitable.

15
16 Dated: February 16, 2004

Respectfully submitted,

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18 Courtney Joslin
19 National Center for Lesbian Rights

20 Jon W. Davidson
21 Jennifer C. Pizer
22 Lambda Legal Defense and Education Fund

23 Tamara Lange
24 Alan L. Schlosser
25 ACLU Foundation of Northern California

26 By: _____
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