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16
17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF LOS ANGELES

19 RANDY THOMASSON; CAMPAIGN FOR) Case No. BC 302928
20 CALIFORNIA FAMILIES; MANUEL)
ALDANA, JR.; BETTY CORDOBA; LIANE) Complaint Filed: September 23, 2003
21 GALVIN; CLARENCE CHAPPELL,)
Plaintiffs,)
22 vs.) Assigned for all purposes to the
Honorable Lee Edmon, Dept. 68
23 GRAY DAVIS in his official capacity as)
Governor of the State of California, KEVIN)
24 SHELLEY in his official capacity as Secretary)
of State of the State of California; WILLIAM)
25 J. JEFFERDS in his official capacity as)
director of general services; and GEOFF)
26 BRANDT, in his official capacity as acting)
state printer of the office of state publishing,)
27 Defendants.)
28)

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1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 *Amici Curiae*¹ respectfully urge this Court to deny plaintiffs’ motion for preliminary
3 injunctive relief on two grounds. First, plaintiffs are unlikely to succeed on the merits of their
4 claims. The domestic partnership legislation plaintiffs challenge does not repeal or in any way
5 amend Proposition 22, the initiative statute providing that only marriages between different-sex
6 couples are valid or recognized in California. Second, plaintiffs have not made and cannot make
7 the required showing of irreparable injury.

8 **II. STATUTORY BACKGROUND**

9 **A. Domestic Partnership Is a Distinct Legal Status in California.**

10 In 1999, recognizing certain basic needs of families headed by same-sex couples (as well
11 as older different-sex couples who could not marry without substantially reducing their Social
12 Security benefits), the California Legislature passed AB 26, which created a statewide domestic
13 partner registry. (See Stats. 1999, ch. 588 [enacting Fam. Code §§ 297-299.6, Gov’t Code §§
14 22687-22877, and Health & Saf. Code § 1261]). The very first sentences of AB 26 make it clear
15 that domestic partnership is a separate and distinct legal status from marriage:

16 Domestic partners. (1) Existing law sets forth the requirements of a valid
17 marriage, and specifies the rights and obligations of spouses during marriage.
18 This bill would provide that a domestic partnership shall be established between
19 2 adults of the same sex or, if both persons are over the age of 62 and meet
specified eligibility criteria, opposite sexes, who have a common residence and
meet other specified criteria and would provide for the registration of domestic
partnerships with the Secretary of State

20 (Stats. 1999, ch. 588.) To be eligible to register as domestic partners, AB 26 explicitly required
21 that “neither person is married.” (Fam. Code § 297(a)(3), added by Stats. 1999, ch. 588, § 2.) To
22 register as domestic partners under AB 26, couples are required to indicate by public declaration,
23 in documents filed with the Secretary of State, their common residence and commitment to each
24 other according to criteria established by the California Legislature. (See Fam. Code § 298.5(b),
25 added by Stats. 1999, ch. 588, § 2.) AB 26 provided only a few substantive rights to registered
26 domestic partners, including rights of hospital visitation equal to those of spouses and other family

27 ¹ The statements of interest of *Amici Curiae* are set forth in the Application for Leave to
28 file Brief of Amici Curiae in Opposition to Motion for Preliminary Injunction, submitted
concurrently with this Brief.

1 members, and health insurance benefits for government employees' domestic partners. (See Heath
2 & Saf. Code § 1261, added by Stats. 1999, ch. 588, § 4; Gov't Code § 22867, added by Stats.
3 1999, ch. 588, § 3.) However, AB 26 expressly contemplated that the state legislature and/or local
4 legislative bodies might provide domestic partners with additional rights and duties in the future
5 (See Fam. Code § 299.6(c) [enacted by Stats. 1999, ch. 588, § 2] ["Any local jurisdiction may
6 retain or adopt ordinances, policies, or laws that offer rights within that jurisdiction to domestic
7 partners as defined by Section 297 . . . that are in addition to the rights and duties set out in this
8 division".].)

9 **B. Proposition 22 Governs Marriage Recognition, Not Domestic Partnership**
10 **Protections.**

11 California voters passed Proposition 22 in March 2000. Proposition 22 amended the
12 Family Code to provide that "[o]nly marriage between a man and a woman is valid or recognized
13 in California." (Fam. Code § 308.5.) A few months before the voters considered Proposition 22, a
14 holding of the Vermont Supreme Court had raised the possibility that the Vermont legislature
15 might permit same-sex couples to marry in that state. (*Baker v. State* (Vt. 1999) 744 A.2d 864.)
16 The stated purpose of Proposition 22 was to establish that California would not recognize any
17 marriage contracted in another state or country if such marriage were not between a man and a
18 woman. Accordingly, Proposition 22 was codified as section 308.5 of the Family Code,
19 immediately after section 308, which is entitled "Foreign marriages; validity" and which provides:
20 "A marriage contracted outside this state that would be valid by the laws of the jurisdiction in
21 which the marriage was contracted is valid in this state." Proposition 22 was intended to ensure
22 that another state's decision to allow same-sex couples to marry would not require California,
23 pursuant to Family Code section 308, to recognize such a marriage as valid within California.

24 Proposition 22 says nothing about the rights of registered domestic partners under
25 California law. To the contrary, the proponents of Proposition 22 repeatedly advised the
26 California electorate that the measure would in no way interfere with the rights of domestic
27 partners or prevent future laws from providing domestic partners with legal rights, benefits, or
28 responsibilities. For example, the rights of registered domestic partners at the time Proposition 22

1 was pending included hospital visitation. The official ballot materials in favor of Proposition 22
2 expressly advised voters, with emphasis: “It does not take away anyone’s right to inheritance or
3 hospital visitation.” (See Defendant Secretary of State Kevin Shelley’s Request for Judicial
4 Notice in Opposition to Motion for Preliminary Injunction (“RQN”), Exhibit (“Ex.”) B.)

5 The official ballot materials also included the following arguments in support of
6 Proposition 22, all of which make clear that the measure was concerned with whether California
7 would have to recognize any out-of-state marriages that might someday exist between same-sex
8 couples:

9 • “Proposition 22 is exactly 14 words long: ‘Only marriage between a man and a
10 woman is valid or recognized in California.’ That’s it! No legal doubletalk, no
11 hidden agenda. Just common sense: Marriage should be between a man and a
12 woman.”

13 • “Opponents claim 22 will take away hospital visitation and inheritance rights,
14 even throw people out of their homes. THAT’S ABSOLUTELY FALSE! Do
15 they really expect voters to believe that? THE TRUTH IS, PROPOSITION 22
16 DOESN’T TAKE AWAY ANYONE’S RIGHTS.”

17 • “When people ask, ‘Why is this necessary?’ I say that even though California law
18 already says only a man and a woman may marry, it also recognizes marriages
19 from other states. However, judges in some of those states want to define
20 marriages differently than we do. If they succeed, California may have to
21 recognize new kinds of marriages”

22 • “THE TRUTH IS, UNLESS WE PASS PROPOSITION 22, LEGAL
23 LOOPHOLES COULD FORCE CALIFORNIA TO RECOGNIZE ‘SAME-SEX
24 MARRIAGES’ PERFORMED IN OTHER STATES.”²

25 The ballot arguments in favor of Proposition 22 further stated that Proposition 22’s
26 purpose was to clarify how the word marriage and the unique institution of marriage would be
27 defined by statute:

28 • “[Some people] say I have to accept that marriage can mean whatever anyone
29 says it means, and if I don’t agree then I’m out of touch, even an extremist.”

30 • “It’s tough enough for families to stay together these days. Why make it harder
31 by telling children that marriage is just a word anyone can re-define again and
32 again until it no longer has any meaning?”

33 • “THE TRUTH IS, we respect EVERYONE’S freedom to make lifestyle choices,
34 but draw the line at re-defining marriage for the rest of society.”³

35 _____
36 ² See RQN, Ex. B.

37 ³ *Id.*

1 In sum, the Proposition’s plain text, its placement in the Family Code, and the statements
2 of its proponents in the official voter guides, all confirm that Proposition 22 was concerned with
3 recognition of out-of-state marriages between persons of the same sex, not the rights and
4 responsibilities of Californians who entered into the separate state-law status of domestic
5 partnership.

6 **C. Assembly Bills 25 and 205**

7 Since 1999, the California Legislature gradually has extended further rights and
8 responsibilities to domestic partners. None of the laws that increased the rights and duties
9 applicable to domestic partners has changed the legal nature of domestic partnership or the legal
10 nature of marriage. Instead, the Legislature has maintained a clear distinction between domestic
11 partnership and marriage.

12 In October 2001, Governor Gray Davis signed Assembly Bill 25 (“AB 25”) into law.
13 (Stats. 2001, ch. 893.) AB 25 expanded the legal protections provided to registered domestic
14 partners in California to include basic employment, health care, and estate planning rights, and the
15 right to use the stepparent adoption procedure for adoption of a domestic partner’s children.

16 On September 19, 2003, Governor Gray Davis signed into law Assembly Bill 205 (“AB
17 205”), also known as “The California Domestic Partner Rights and Responsibilities Act of 2003.”
18 (See Stats. 2003, ch. 421.) AB 205 amended numerous provisions of the Family Code and added
19 new provisions relating to domestic partnerships to the Family Code and other state laws. AB 205
20 created a significantly expanded set of rights, benefits, and obligations for registered domestic
21 partners and their families, including: joint assessment of income for determining eligibility for
22 state government assistance programs; joint assessment of income in determining eligibility for
23 student aid; rent-control protections and access to student family housing programs; the right to
24 make decisions for funeral arrangements and disposition of remains for a deceased domestic
25 partner; the ability to avoid probate of jointly owned property; death benefits for surviving
26 partners of firefighters and police officers; application of community property laws to property
27 acquired during a domestic partnership; mutual responsibility for debts; access to family courts to
28 resolve disputes concerning custody, visitation, and support of children born or adopted during a

1 domestic partnership; the presumption that both partners are parents of children born during a
2 domestic partnership; and the right to authorize medical treatment of a domestic partner's children.
3 (See Stats. 2003, ch. 421.)

4 Together, AB 25 and AB 205 define the rights, benefits, and obligations of registered
5 domestic partners and their children in many complex legal situations faced by California families
6 involving childbirth, adoption, child custody, visitation and support issues, property distribution,
7 disability, and death.

8 These provisions of AB 205 do not go into effect until January 1, 2005. (See *id.*) Before
9 that time, AB 205 obliges the Secretary of State to send letters to all registered domestic partners
10 (hereinafter "Notice Letters") informing them of these important changes in the law, and
11 explaining that domestic partners who do not wish to be subject to these new rights and
12 responsibilities must terminate their registrations before January 1, 2005. (See Fam. Code §
13 299.3, added by Stats. 2003, ch. 421, § 10.) AB 205 requires the Secretary of State to send out
14 these Notice Letters "on or before June 30, 2004, and again on or before December 1, 2004, and
15 again on or before January 31, 2005." (*Id.*)

16 **D. Other Post-Proposition-22 Domestic Partnership Legislation**

17 In addition to AB 25 and AB 205, the concept of domestic partnership as a familial status
18 separate from marriage has been incorporated into numerous other bills enacted between 1999 and
19 2003, primarily concerning benefits such as health insurance, pensions, inheritance, housing, and
20 family leave. (See Stats. 2000, ch. 1004; Stats. 2001, ch.146; Stats. 2002, ch. 373; Stats. 2002,
21 ch. 377; Stats. 2002, ch. 412; Stats. 2002, ch. 901; Stats. 2002, ch. 914; Stats. 2002, ch. 447; Stats.
22 2003, ch. 32; Stats. 2003, ch. 444; Stats. 2003, ch. 630; Stats. 2003, ch. 673; Stats. 2003, ch. 752;
23 Stats. 2003, ch. 764; Stats. 2003, ch. 780.) In addition, the concept of domestic partnership has
24 been incorporated into numerous California administrative regulations other than those adopted
25 pursuant to AB 25 or AB 205, as well as in court rules. (See Cal. Code Regs., tit. 2, §§ 599.911,
26 599.913, 599.920.5, 18531.7, 21922; Cal. Code Regs., tit. 13, § 20.04; Cal. Code Regs., tit. 16, §
27 1833; Cal. Code Regs., tit. 22, §§ 1253.12-1, 1256-9; Cal. Rules of Court, appen. Standards 2 and
28 7.)

1 Thus, under AB 26, domestic partnership already existed in California as a civil
2 status separate and distinct from marriage before Proposition 22 was presented to the voters. After
3 Proposition 22 was enacted, the California legislature continued to develop and expand the rights
4 and duties of those who register with the state as members of a domestic partnership, which
5 remains a status separate from civil marriage in California.

6 **III. PLAINTIFFS FAIL TO MEET THE LEGAL STANDARD FOR PRELIMINARY**
7 **INJUNCTIVE RELIEF.**

8 Plaintiffs fail to meet the legal standard for preliminary injunctive relief. The standard
9 used to determine whether a preliminary injunction should issue depends on two factors: “(1) the
10 likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is
11 likely to result from the granting or denial of interim injunctive relief.” (*White v. Davis* (2003) 30
12 Cal.4th 528, 554.) Further, the plaintiff “ordinarily is required to present evidence of the
13 irreparable injury or interim harm that it will suffer if an injunction is not issued pending an
14 adjudication of the merits.” (*Id.*)

15 **A. Plaintiffs are Unlikely to Succeed on the Merits Because AB 205 Does Not**
16 **Amend Proposition 22.**

17 Plaintiffs are unlikely to succeed on the merits because AB 205 does not violate article II,
18 section 10 of the California Constitution by amending an initiative without the consent of the
19 voters. AB 205 does not repeal, amend, thwart, or change in any way the laws governing marriage
20 or limiting marriage to different-sex couples.

21 Article II, section 10, subdivision (c) of the California Constitution states that the
22 Legislature “may amend or repeal an initiative statute by another statute that becomes effective
23 only when approved by the electors unless the initiative statute permits amendment or repeal
24 without their approval.” (*Amwest Surety Insurance Co. v. Wilson* (1995) 11 Cal. 4th 1243 [48
25 Cal.Rptr.2d 12].) The legal standard for determining whether a statute impermissibly amends or
26 repeals an initiative is whether the statute would “add to or take away from” the initiative.
27 (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1485 [576
28 Cal.Rptr.2d 342, 348] [citing *Franchise Tax Bd. v. Cory* (1978) 80 Cal.App.3d 772, 777 [145
Cal.Rptr. 819]].) Last year, the Supreme Court affirmed and clarified this standard, holding that

1 an “amendment,” in this context, “is a legislative act designed to change an existing initiative
2 statute by adding or taking from it some particular provision.” (*People v. Cooper* (2002) 27
3 Cal.4th 38, 44 [115 Cal.Rptr.2d 219, 225] [citing *Proposition 103 Enforcement Project*, 64
4 Cal.App.4th at p. 1485].) However – and critically important to the resolution of this case – as
5 long as the intended operation of the initiative is undisturbed, new legislation may proceed in a
6 “related but distinct area” without constituting an impermissible amendment of the initiative.
7 (*Mobilepark West Homeowners Ass’n. v. Escondido Mobilepark West* (1995) 35 Cal.App.4th 32,
8 43 [41 Cal.Rptr.2d 393].); *California Chiropractic Assn. v. Board of Administration* (1974) 40
9 Cal.App.3d. 701, 704 [115 Cal.Rptr. 286].)

10 In order to determine the meaning and scope of an initiative statute, the general rules of
11 statutory construction apply. Courts refer first to the language of the initiative, giving the words
12 their ordinary meaning, and then construe the language in the context of the statute as a whole and
13 the overall statutory scheme. When the language is ambiguous, the court may also consider other
14 indicia of the voters’ intent, particularly the analyses and arguments contained in the official ballot
15 pamphlet. (See *People v. Rizo* (2000) 22 Cal.App.4th 681 [94 Cal.Rptr.2d 375]; *McLaughlin v.*
16 *State Board of Equalization* (1999) 75 Cal.App.4th 196 [89 Cal.Rptr.2d 295].)

17 AB 205 does not amend or repeal Proposition 22. AB 205 extends to registered domestic
18 partners many of the rights and duties of spouses under California law, but it does not amend
19 Proposition 22 by adding or taking to away any from that initiative. AB 205 does not allow same-
20 sex couples to marry, and does not qualify them as “spouses” under California law. It does not
21 affect who may marry, or how an eligible couple marries. It does not in any way affect the legal
22 rights or duties of married couples under California law. And it does not amend California law
23 regarding which out-of-state marriages receive legal recognition in California.

24 **1. The Plain Meaning of Proposition 22 is Not Affected by AB 205.**

25 The plain meaning of Proposition 22, its placement in the Family Code, the ballot
26 measure’s summary, and the statements of its proponents in the official voter guides, all confirm
27 that the purpose of the initiative was to prevent recognition of out-of-state marriages between
28 persons of the same sex. This reading comports with the governing rule of construction that

1 requires avoiding “surplusage” when selecting among competing interpretations. (See *Lungren v.*
2 *Superior Court* (1996) 14 Cal.4th 294, 302 [58 Cal.Rptr.2d 855] [“Statutes, whether enacted by
3 the people or the Legislature, will be construed so as to eliminate surplusage.”].) Before
4 Proposition 22 went before the voters, California Family Code section 300 already provided that
5 “marriage is a personal relation arising out of a civil contract between a man and a woman”
6 To construe the initiative as imposing yet another different-sex requirement for marriage, on top of
7 the explicit requirement already in place, would make Proposition 22 redundant and reduce it to
8 mere surplusage.

9 AB 205 does not address in any way California’s laws concerning recognition of out-of-
10 state marriages. In fact, AB 205 contains an explicit limitation that it will **not** create recognition
11 in California for any marriages same-sex couples may enter into in other jurisdictions in the future.
12 (See Fam. Code § 299.2, added by Stats. 2003, ch. 421, § 9: “A legal union of two persons of the
13 same sex, other than a marriage, that was validly formed in another jurisdiction, and that is
14 substantially equivalent to a domestic partnership as defined in this part, shall be recognized as a
15 valid domestic partnership in this state regardless of whether it bears the name domestic
16 partnership.”].) Because AB 205 expressly respects and follows Proposition 22’s central “non-
17 recognition” command, it is clear that AB 205 neither repeals nor amends the plain meaning of
18 Proposition 22.

19 2. AB 205 Does Not “Add to or Take Away from” Proposition 22.

20 AB 205 neither “adds to or takes away from” Proposition 22, because marriage and
21 domestic partnership are separate and distinct legal institutions. They also have different social
22 meanings, different histories, and different relationships to religion. AB 205 does not alter the
23 laws regarding marriage in California in any respect. It does not alter the laws regarding who may
24 marry in California, the qualifications for marriage in California, or the legal rights and duties of
25 spouses or former spouses in California. It does not alter a single code section concerning the
26 creation, recognition or legal rights of marriage, explicitly or by implication. (See *People v.*
27 *Cooper*, 27 Cal.4th at p. 44.) The legal effects of marriage and of domestic partnership are
28 dramatically different.

1 Domestic partnership, as a familial status separate and distinct from marriage, already
2 existed in California before Proposition 22 was presented to the voters. (See Stats. 1999, ch. 588.)
3 As discussed above, after Proposition 22 was enacted, the California legislature continued to
4 develop and to expand the rights and duties of domestic partners through AB 25, AB 205, and
5 other bills concerning benefits such as health insurance, pensions, inheritance, housing, and family
6 leave.

7 The fact that marriage and domestic partnership are each recognized as a separate and
8 distinct familial status in California is also plain from the difference between the eligibility criteria
9 for domestic partnership set forth in Family Code section 297 and the eligibility criteria for
10 marriage in section 301, et seq. For example, minors may marry with parental permission, but
11 only adults may enter into domestic partnerships. Domestic partners, but not married couples,
12 must share a common residence. The process for registering a domestic partnership set forth in
13 Family Code section 298 involves completing a sworn declaration and filing the notarized
14 document with the California Secretary of State's office, the same agency that maintains records
15 of corporate filings. In contrast, the process for entering into a marriage set forth in Family Code
16 sections 350 through 360 and 400 through 425, involves obtaining a license from the county clerk,
17 participating in a solemnization ceremony before an official deputized by the State, and recording
18 the endorsed license with the county recorder. These county officials are responsible for retaining
19 records of births, deaths, and other vital statistics of family relationships. Thus, the eligibility
20 requirements, processes, and government agencies charged to administer and record marriages and
21 domestic partnerships are entirely distinct. Moreover, the methods by which couples may end
22 marriages and domestic partnerships differ. Married couples may obtain a judgment of dissolution
23 or legal separation only through an action in Superior Court. In contrast, if certain conditions are
24 met, domestic partners may terminate their partnership simply by filing a Notice of Termination
25 with the Secretary of State.

26 Domestic partners and married couples are treated differently for purposes of state income
27 tax laws, and domestic partners are excluded from some benefits that are provided to spouses of
28 state employees. Registered domestic partners must still file as "single" on both their state and

1 federal tax returns. Marriages, unlike domestic partnerships, receive automatic recognition by the
2 federal government, and are linked to over 1,000 federal rights and benefits. (See Stats. 2003, ch.
3 421 [“This section does not amend or modify federal laws or the benefits, protections, and
4 responsibilities provided by those laws.”].) For example, California domestic partners do not
5 qualify for federal Social Security payments, veterans’ benefits, pensions, or other benefits offered
6 to married couples. Domestic partnership has no effect on federal income tax liability or any other
7 federal right, benefit, or duty. Marriages that are valid in California are automatically recognized
8 in all other states, by employers and other private parties, and in other countries. In contrast, it is
9 unclear to whether California domestic partnerships will receive recognition by other states or
10 countries.

11 All of these distinctions between marriage and domestic partnership were discussed in the
12 analyses prepared for various legislative committees when AB 205 was pending.⁴ They also were
13 the basis for the conclusion of the California Legislative Counsel that AB 205 does not amend or
14 conflict with Proposition 22 in the formal opinion Legislative Counsel provided in response to the
15 inquiry on this issue by the sponsor of AB 205, Assemblymember Goldberg. (See RQN, Ex. A.)
16 This opinion is entitled to deference. (*See North Hollywood Project Area Com. v. City of Los*
17 *Angeles* (1998) 61 Cal.App.4th 719, 724 (“Though not binding, opinions of the Legislative
18 Counsel are entitled to great weight”); *Santa Clara County Local Transportation Authority v.*
19 *Guardino* (1995) 11 Cal.4th 220, 238 (“an opinion of the Legislative Counsel is entitled to
20 respect”). Thus, the legislature, in enacting AB 205, analyzed the question carefully, and reached
21 the correct conclusion that expanding the rights and responsibilities of domestic partners did not in
22 any way alter California’s laws governing marriage and limiting marriage to different-sex couples.

23 Moreover, there is no confusion in the mind of the public about the distinction between
24 marriage and domestic partnership. Marriage has a long history of legal, social, and religious
25 significance. Domestic partnership, in contrast, is a relatively recent concept, developed for the
26 specific purpose of providing some legal protections for unmarried couples and their families.

27

28 ⁴ These committee reports are all available at <http://www.lginfo.ca.gov> by searching for AB 205 under the (2003-2004) Current Session.

1 Marriage has had significance in most religious traditions throughout recorded history. In
2 contrast, there are no longstanding religious traditions concerning domestic partnership, and
3 religious denominations vary widely in their views of whether gay and lesbian couples should
4 receive recognition and support within the spiritual community. California’s domestic partnership
5 laws create a new civil status entirely apart from religious traditions or church-state collaboration,
6 and do not deputize religious figures to play any role in the creation of domestic partnerships. The
7 domestic partnership laws make no provision for officiants at all, let alone religious ones. Thus,
8 the proposed law would not amend, repeal, or alter in any way the role of religious figures under
9 California’s marriage laws.

10 For the above legal, social, historical, and religious reasons, domestic partnership is legally
11 and factually distinct from marriage, and legislation regarding domestic partnership does not “add
12 to or take away from” Proposition 22 or in any way conflict with the limitation of marriage in
13 California to different-sex couples. Further, AB 205 does not alter in any respect the legal rights
14 and duties of married spouses, or former spouses. Not one single code section concerning
15 creation, recognition, or legal privileges of marriage would be changed by this legislation,
16 implicitly or explicitly. Not one “particular provision” of the laws governing married couples, nor
17 any of the laws’ effects for those who are married, would be altered. (See *People v. Cooper*, 27
18 Cal.4th at p. 44.).

19 **3. AB 205 Does Not Conflict with the Voters’ Intent in Passing**
20 **Proposition 22.**

21 The only way to imagine a conflict between AB205 and Proposition 22 would be to
22 interpret the initiative as embodying a state policy against protecting gay and lesbian couples and
23 their families through legal devices other than marriage. Such an interpretation is untenable,
24 because the text of Proposition 22 says nothing about domestic partnership. As discussed in
25 section II.B, *supra*, the ballot arguments in support of Proposition 22 stated unequivocally that the
26 measure was **not** intended to harm lesbian and gay couples and their families, to encourage
27 discrimination, or to prevent legal protection of same-sex couples through means other than
28 marriage.

1 The proponents of Proposition 22 gave similar, clearly-worded statements throughout the
2 “Yes on 22” campaign, disclaiming any intention to cause discrimination or otherwise to prevent
3 recognition and protection of gay and lesbian couples and their families through legal vehicles
4 other than marriage. (See, e.g., Herscher, *400 Clergy to Protest State Initiative Banning Gay*
5 *Marriage*, S.F. Chronicle (Feb. 11, 2000) p. A5 [quoting Proposition 22 campaign spokesman
6 Robert Glazier as saying “people understand that gays and lesbians have a right to have the
7 protections they have and live the lifestyle of their choice, but they don’t have the right to redefine
8 marriage for anyone else”]; Warren, *Cast of Sitcom Appears in Ad Against Prop. 22*, Los Angeles
9 Times (Dec. 8, 1999) p. A3 [also quoting Robert Glazier as saying, “The measure is ‘not about
10 discriminating against anybody. . . . It’s simply a reaffirmation of the importance of a man and a
11 woman in marriage.”]; *The Edge with Paula Zahn* (interview of Robert Glazier) Fox Television
12 (March 6, 2000) (Transcript #030603cb.260, available in LEXIS News library) [containing
13 statements by campaign spokesman Robert Glazier that “this campaign is about the definition of
14 marriage. It’s not about the other rights, which gays and lesbians currently enjoy in California and
15 which will not be affected when Prop 22 passes” and that “Proposition 22 was so narrowly defined
16 with just 14 words, not just for simplicity’s sake, but for the legal impact. **It will not affect**
17 **domestic partner rights**, it will not affect hospital visitation rights or child custody rights or
18 inheritance rights”] [emphasis added]; Churchill, *Same Sex Couples Cheer New Law*,
19 Riverside Press Enterprise (Jan. 5, 2000) p. B3 [“Robert Glazier, spokesman for the statewide
20 initiative campaign, said **he sees no problems with the domestic-partnership registration and**
21 **does not want any confusion with his campaign and the partnership registry.** ‘Our campaign
22 is to strictly preserve marriage,’ he said.”] [emphasis added]; Rowland, *Varying Views of*
23 *Marriage*, Modesto Bee (Feb. 20, 2000) p. A1 [“The Yes on 22 campaign is quick to point out that
24 the initiative’s limited language means it would not attack the new state registry. Robert Glazier,
25 spokesman for Yes on 22, said other states used broad language so lawsuits could be filed trying
26 to repeal other gay-friendly legislation”].) The proponents also repeatedly stated that, like most
27 other people, they understood there was clear difference between marriage and domestic
28 partnerships. (See, e.g., *Good Morning America*, ABC Television (March 7, 2000) (available in

1 LEXIS News library) [containing statement by Robert Glazier that “I guess I would quote Barbara
2 Boxer, one of our more liberal politicians, who said that from the standpoint of society
3 recognizing a long-term relationship between gay people, it’s called domestic partnerships, and
4 that recognizes long-term relationships while marriage is the long-term relationship for people of
5 the opposite sex. We would agree with Barbara Boxer. Marriage is between one man and one
6 woman.”]; Pyle, *State Begins Accepting Gays’ Domestic Partner Sign-Ups*, L.A. Times (Jan. 4,
7 2000) [“Proposition 22 spokesman Robert Glazier said the campaign has taken no position on
8 domestic partner registration”]; Savage, *Vt. Court Backs Equal Rights for Gay Couples*, L.A.
9 Times (Dec. 21, 1999) [quoting Rob Stutzman, campaign manager for Proposition 22, as stating
10 that “the notion of giving legal protections to same-sex couples does not set off alarms. ‘We
11 **don’t have an opinion on domestic partnerships. For us, it is either a marriage or isn’t,**
12 Stutzman said.”] [emphasis added].⁵

13 A statute violates article II, section 10 of the California Constitution only if it amends an
14 initiative without the consent of the voters. AB 205, however, does not amend Proposition 22; no
15 provision of this legislation would repeal, amend, thwart, or change in any way the laws governing
16 marriage and married couples. This legislation does not “add to or take away from” California
17 laws governing marriage or limiting marriage to different-sex couples. (See *Cooper*, 27 Cal.4th at
18 p. 44.)

19 As plaintiffs point out, this Court must “jealously guard” the people’s right to legislate by
20 initiative. But this right should be protected by interpreting the voters’ intent in enacting
21 Proposition 22 *accurately*, in light of the language of the initiative, its placement in the Family
22 Code, its statutory and historical context and the ballot materials and other indications of voter
23 intent – not by distorting the meaning and scope of Proposition 22 to attack later legislation to
24 which plaintiffs are politically opposed. For these reasons, *Amici Curiae* urge this Court to deny
25 plaintiffs’ motion for preliminary injunctive relief, because they have little chance of success on
26 the merits of their claims.

27
28 ⁵ These news articles are attached as Exhibit Q to the Declaration of G. Scott Emblidge
in Opposition to Motion for Preliminary Injunction.

1 **B. Plaintiffs Have Not Made the Required Showing of Irreparable Injury.**

2 Regardless of the likelihood or unlikelihood of plaintiffs’ success on the merits of
3 their claims, this Court should deny plaintiffs’ motion for preliminary injunctive relief for a
4 separate and independent reason. Plaintiffs have not made and cannot make a showing of
5 irreparable injury. The California Supreme Court held that the type of ‘injury’ plaintiffs allege in
6 this case – a fiscal injury to their interests as taxpayers – is almost never sufficient to justify
7 preliminary injunctive relief:

8 [A] taxpayer’s general interest in not having public funds spent unlawfully
9 (including not having such funds spent in alleged contravention of fundamental
10 constitutional restrictions) while sufficient to afford standing to bring a
11 taxpayer’s action ... and to obtain a permanent injunction after a full
12 adjudication on the merits, ordinarily does not in itself constitute the type of
13 irreparable harm that warrants the granting of preliminary injunctive relief.”

14 (*White v. Davis* (2003) 30 Cal.4th 528, 554-557 [133 Cal.Rptr.2d 648] [discussing *Cohen v. Board*
15 *of Supervisors* (1986) 178 Cal.App.3d 447 [225 Cal.Rptr. 114]; *Loder v. City of Glendale* (1989)
16 216 Cal.App.3d 777 [265 Cal.Rptr. 66]; and *Leach v. City of San Marcos* (1989) 213 Cal.App.3d
17 648 [261 Cal.Rptr. 805].) The fiscal injury claimed by plaintiffs is not a type of injury that
18 permits preliminary injunctive relief to be granted, and no other type of injury is or could be
19 claimed by plaintiffs. Since no irreparable injury exists, the preliminary injunction should be
20 denied.

21 **IV. CONCLUSION**

22 For all the reasons stated above, *Amici Curiae* respectfully urge this Court to deny
23 plaintiffs’ motion for preliminary injunctive relief . Plaintiffs are unlikely to succeed on the merits
24 of their claims, because AB 205 does not in any way repeal or amend Proposition 22. Moreover,
25 plaintiffs have not made and cannot make the required showing of irreparable injury.
26
27
28

1 Dated: October 29, 2003

Respectfully submitted,

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PROOF OF SERVICE BY U.S. MAIL

I, TITO GOMEZ, declare:

That I am a resident of the County of Los Angeles, California; that I am over eighteen (18) years of age and not a party to this action; that I am employed in the County of Los Angeles, California; and that my business address is 3325 Wilshire Blvd., Suite 1300, Los Angeles, CA 90010.

On October 29, 2003, I served a copy of the attached document, described as BRIEF OF AMICI CURIAE IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION, on the parties of record in Case Number BC 302928 by fax and by placing true and correct copies thereof in sealed envelopes, with first-class postage thereon fully prepaid, addressed as follows:

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I am readily familiar with the office's practice of collecting and processing correspondence for mailing. Under that practice, this correspondence would be deposited with the U.S. Postal Service on that same day. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing stated in this affidavit.

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

Dated: October 29, 2003


Tito Gomez