SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

SENATOR WILLIAM J. KNIGHT et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER et al., Defendants, and EQUALITY CALIFORNIA et al., Defendant-Intervenors.	Consolidated Cases: Case No. 03AS05284 Case No. 03AS07035 ORDER ON MOTIONS FOR SUMMARY JUDGMENT
RANDY THOMASSON et al., Plaintiffs, v. ARNOLD SCHWARZENEGGER et al., Defendants, and EQUALITY CALIFORNIA, Defendant-Intervenor.	

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Family Code section 308.5 provides in full:

> "Only marriage between a man and a woman
> is valid
> or recognized in California."

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

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

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

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

> Other contracts may be modified, restricted, or enlarged, or entirely released upon the consent of the parties. Not so with marriage. The relation once formed, the law steps in and holds the parties to various obligations and liabilities. It is an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress.

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

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

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

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

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

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

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

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

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

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

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

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

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

rights the Legislature could withhold or provide to other citizens.

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

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

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

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

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

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

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

Judicial Notice:

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

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

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

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

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

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

Evidentiary Objections:

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

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

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

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

DATED: September 8, 2004

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LOREN E. McMASTER
Judge of the Sacramento Superior Court