



# CITY ATTORNEY DENNIS HERRERA NEWS RELEASE

FOR IMMEDIATE RELEASE  
WEDNESDAY, MAY 28, 2008

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## **Herrera Files Opposition to Prop 22 Group's Petition to Stay Marriage Equality Ruling**

***City Attorney Says Delaying Constitutional Right to Marry  
By Gay and Lesbian Couples is 'Inappropriate,' 'Inhumane'***

SAN FRANCISCO (May 28, 2008)—City Attorney Dennis Herrera today filed the City's opposition to an arch-conservative legal organization's request that the California Supreme Court postpone the effective date of its landmark decision recognizing marriage equality for lesbians and gay couples until after the November 2008 election, when a proposed amendment may go before state voters to write marriage discrimination into the California Constitution. The Proposition 22 Legal Defense and Education Fund, which had been a party to litigation against the City in case beginning in 2004, filed its request for a stay with the high court on May 22.

"It is now established that the California Constitution guarantees marriage equality for same-sex couples," Herrera argued in his 17-page brief. "It is further established that this right is of exceeding, fundamental importance. To deny this fundamental right to same-sex couples based on speculation about what might happen in November would not merely be inappropriate. It would be inhumane."

Herrera also argued that the true purpose behind the organization's motion was to influence the November election. "The Proposition 22 Fund knows full well that once gay and lesbian partners begin to wed, more and more Californians will come to realize that marriage equality harms no one—which is exactly what happened in Massachusetts," Herrera said. "Marriage between same-sex couples may be the last thing proponents of a Constitutional amendment want, but it is no basis for the Court to stay its ruling. I am confident that our high court will not allow itself to be used as a political tool by deviating from its normal rules."

The Proposition 22 Fund's motion cited press reports that some county clerks and local officials had expressed reluctance to comply promptly with the Supreme Court's ruling. In response, Herrera pointed out that, under the Supreme Court's ruling in *Lockyer v. City and County of San Francisco*, county clerks and local officials have a "mandatory and ministerial" duty to issue marriage licenses on equal terms once the Court's decision becomes final. Thus, the campaign by the Campaign for California Families—another party to the *Marriage Cases* that had been found to lack standing—which aggressively urges defiance of the Court's ruling by local officials is not only improper, it is illegal. See <http://www.savecalifornia.com/getactive/alertmain.php?alid=201>

The case is *In re Marriage Cases*, California Supreme Court, No. S147999.

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SUPREME COURT OF THE STATE OF CALIFORNIA

**Coordination Proceeding Special  
Title (Rule 1550(b))  
IN RE MARRIAGE CASES**

**Case No. S147999**

Judicial Council Coordination  
Proceeding No. 4365

First Appellate District  
No. A110449  
(Consolidated on appeal with case  
nos. A110540, A110451,  
A110463, A110651, A110652)

San Francisco Superior Court Case  
No. 429539  
(Consolidated for trial with San  
Francisco Superior Court Case No.  
429548)

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**CITY AND COUNTY OF SAN  
FRANCISCO'S ANSWER TO  
PROPOSITION 22 LEGAL DEFENSE AND  
EDUCATION FUND'S PETITION FOR  
REHEARING**

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The Honorable Richard A. Kramer  
Superior Court for the City and County of San Francisco

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## INTRODUCTION

Proposition 22 Legal Defense and Education Fund ("the Fund") lacks standing to seek rehearing or to seek a stay of the Court's ruling. Only a "party" may seek such relief. This Court has ruled unanimously that the Fund has no standing in the litigation, and the Fund has not challenged that ruling. Accordingly, the Fund is not a proper party, and the Court should strike the petition on that basis alone.

In any event, the petition is meritless. First, there is nothing confusing about the nature or timing of the remedy ordered by this Court. Once the ruling becomes final, counties will have a ministerial duty to issue marriage licenses on equal terms to same-sex couples. Just today, the State confirmed this obvious fact by issuing a memorandum to all counties, informing them of their duty to comply with the Court's ruling as of June 17, 2008, and providing counties with forms that enable them to comply. (*See City and County of San Francisco's Request for Judicial Notice, Ex. 1 at 1* ["Effective June 17, 2008, only the enclosed new forms may be used for the issuance of marriage licenses in California"].) To the extent any county officials may have expressed confusion about the elementary process of complying with a ruling by the California Supreme Court, this memorandum from the State eliminates the confusion. There is simply no need for the Court to clarify anything.

Nor is there any basis for staying the ruling until November 2008. It is now established that the California Constitution guarantees marriage equality for same-sex couples. It is further established that this right is "of the deepest and utmost importance." (Slip Op. at 62.) To deny this fundamental constitutional right to same-sex couples based on speculation

about what might happen in November would not merely be inappropriate. It would be inhumane.

Once the frivolity of the Fund's legal arguments is unmasked, it becomes clear that the organization's real motivation is to use this Court as a political tool in the campaign to amend the Constitution in November. The Fund knows full well that, just as occurred in Massachusetts, once same-sex couples begin getting married, more and more Californians will come to realize that marriage equality simply does not harm anyone. That may be the last thing the Fund wants to happen before the election, but it is no basis for staying the Court's ruling. The Court should not allow itself to be used as the Fund's campaign tool by deviating from its normal rules.

### **LEGAL STANDARD**

Rule 8.268(a)(1) of the California Rules of Court provides: "On petition of a party or on its own motion, a reviewing court may order rehearing of any decision that is not final in that court on filing." Rule 8.540(c)(2) provides: "On a party's or its own motion and for good cause, the court may stay a remittitur's issuance for a reasonable period . . ."

### **DISCUSSION**

#### **I. THE FUND LACKS STANDING TO SEEK REHEARING ON THE NATURE AND TIMING OF THE REMEDY, AND IT LACKS STANDING TO SEEK A STAY OF THE COURT'S RULING.**

The rule governing petitions for rehearing and motions to stay the issuance of a remittitur both make clear only a "party" may make such requests. (CRC 8.268(a)(1); CRC 8.540(c)(2).) The Fund is not a "party" to this case. The Court has held unanimously that the Fund lacks standing, its claims having been rendered moot by the Court's ruling in *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055. And the Fund has not challenged that holding. Accordingly, the Fund has no standing to

seek rehearing or to move for a stay of the ruling, and the Court should simply strike the petition for that reason.

**II. THERE IS NOTHING CONFUSING ABOUT THE NATURE OR TIMING OF THE REMEDY ORDERED BY THE COURT.**

The Fund spends the bulk of its brief asserting that the remedy ordered by this Court is unclear, and that the effective date of the ruling is uncertain. These assertions are simply untrue. As for the nature of the remedy, the State and counties simply must ensure that marriage licenses are issued in a nondiscriminatory fashion. As for the timing, after the Court's ruling becomes final on June 16, 2008, counties will no longer be required by state law to deny marriage equality to same-sex couples; rather, they will have a ministerial duty to issue licenses to same-sex couples. This Court has already made clear that the duties of the county clerk and county recorder relating to the issuance of marriage licenses are mandatory and ministerial, not discretionary. (*Lockyer*, 33 Cal.4th at 1081-82.) And the memorandum sent by the State to the 58 counties making clear that they must comply with the Court's ruling by June 17, 2008 confirms that obvious fact. (RJN Ex. 1.) Accordingly, there is nothing for this Court to clarify, and therefore no basis for granting rehearing on the nature or timing of the remedy.

**III. A STAY OF THE COURT'S RULING WOULD GREATLY HARM THE PREVAILING PARTIES IN THIS CASE, AS WELL AS THE GENERAL PUBLIC INTEREST.**

**A. Allowing The State To Continue Denying Marriage Equality Based On Speculation About What Might Happen In November Would Do Great Harm To Same-Sex Couples And Their Families.**

The Court may only stay its ruling for "good cause." (CRC 8.540(c)(2)). The City is aware of no case in which this Court or a District Court of Appeal has stayed the issuance of a remittitur when doing so

would inflict harm upon the parties that prevailed in the appeal. (*Cf. Severns Drilling Co. v. Superior Court* (1936) 16 Cal.App.2d 435, 437 [granting stay only upon being assured that no harm would come to prevailing party]; *Reynolds v. E. Clemens Horst Co.* (1918) 36 Cal.App.529, 530 [same].) Yet here, a stay would inflict great harm, not only upon the parties who prevailed in the appeal, but upon the public in general. It would allow the State to continue violating the fundamental constitutional rights of tens of thousands of lesbians and gay men. And it would force entities like the City and County of San Francisco to continue violating the rights of their citizens when they want nothing more than to stop doing so.

In the wake of this Court's ruling, the importance of the constitutional right here involved cannot seriously be questioned. The right to marry is a "vitaly important attribute of the fundamental interest in liberty and personal autonomy that the California Constitution secures to all persons for the benefit of both the individual and society." (Slip Op. at 7.) As the Court explained, "our cases recognize that the opportunity to establish an officially recognized family with a loved one and to obtain the substantial benefits such a relationship may offer is of the deepest and utmost importance to any individual and couple who wish to make such a choice." (*Id.* at 62.)

It is equally clear that the victims of the denial of this fundamental constitutional right suffer great harm. Excluding same-sex couples from marriage inflicts "appreciable harm on same-sex couples and their children, because denying such couples access to the familiar and highly favored designation of marriage is likely to cast doubt on whether the official family relationship of same-sex couples enjoys dignity equal to that of

opposite-sex couples." (*Id.* at 11.) Worse still, the exclusion of same-sex couples from marriage reflects "an official view that their committed relationships are of lesser stature than the comparable relationships of opposite-sex couples," and perpetuates the notion that "gay individuals and same-sex couples are in some respects 'second class citizens' who may, under the law, be treated differently from, and less favorably than, heterosexual individuals or opposite-sex couples." (*Id.* at 11-12.)

The Fund is asking the Court to allow the State to continue inflicting this constitutional harm upon same-sex couples and their families based on speculation that the voters might amend the Constitution in November. In other words, the Fund is asking the Court to change its constitutional ruling based on a finger-in-the-wind political analysis about how a majority of the electorate might view the matter. The Court declined to engage in such political speculation in deciding this case on the merits, and it would be equally inappropriate to do so here. "For a court to decline protection until popular attitudes have reached that point of consensus at which its decisions will be readily accepted is to shirk its essential duty and contradict its critical function as the government agency of last resort for the guardianship of constitutional liberties." (Brief of Professor Jesse H. Choper in Support of Petitioners (Choper Br.) 5.)

Moreover, "[j]udges are, generally speaking, not trained to make social-scientific predictions, and even those who are so trained will often get it wrong." (Choper Br. 7.) A brief look at the political landscape on marriage equality underscores this point. In this litigation, the vast majority

of California's major cities joined a brief in support of marriage equality.<sup>1</sup> This includes the City of San Diego, whose Republican mayor proclaimed his support for the Cities' Brief on the ground that the principles of equality should not be compromised for the sake of political expediency.<sup>2</sup> The California Legislature has twice voted to lift the marriage ban. And as the Equality Federation explained in its amicus brief, while national opposition to marriage for same-sex couples briefly spiked amidst anti-gay rhetoric following the Massachusetts ruling, it has now reached an all-time low as society has begun to realize that it causes no harm.<sup>3</sup> Meanwhile, more than 10,000 same-sex couples have been married in Massachusetts, and opponents of marriage equality in that state were not even able to secure the votes of a mere 25% of the state legislature to place the matter on the ballot. Indeed, the current governor of Massachusetts campaigned as a strong and vocal supporter of the Supreme Judicial Court's ruling. (See generally City Reply 29-31.)

Indeed, a Field Poll released just today shows that, even at this early stage following the Court's ruling, a majority of Californians now supports marriage equality. (See J. Wildermuth, California Majority Backs Gay

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<sup>1</sup> (See Brief of City of Los Angeles, City of San Diego, City of San Jose, City of Long Beach, City of Oakland, City of Santa Rosa, City of Berkeley, City of Santa Monica, City of Santa Cruz, City of Palm Springs, City of West Hollywood, City of Signal Hill, City of Sebastopol, Town of Fairfax, City of Cloverdale, County of Santa Clara, County of San Mateo, County of Santa Cruz, and County of Marin in Support of the City and County of San Francisco (Cities' Brief).)

<sup>2</sup> Available at <http://youtube.com/watch?v=VAOkwjQdm6Q> [as of November 12, 2007].

<sup>3</sup> (Brief of Equality Federation and Gay and Lesbian Advocates & Defenders in Support of Respondents (Equality Federation Br.) 17.)

Marriage, San Francisco Chronicle at A1, [May 28, 2008].) As the poll's director stated, "[t]here's a certain validation when the state Supreme Court makes a ruling that you can't discriminate when it comes to marriage . . . . That may have been enough to move some people who were on the fence about same-sex marriage." (*Id.*) It is therefore inappropriate to assume – as the Fund does and urges the Court to do – that the California voters will repudiate marriage equality.

In fact, given the foregoing, it is likely that the real reason the Fund has filed this petition is to try to use the Court as a political tool in its campaign to amend the Constitution. The Fund knows full well that, just as occurred in Massachusetts, once same-sex couples are permitted to marry, more and more Californians will come to realize that marriage equality simply does not harm anyone. That may be the last thing the Fund wants to happen before the election, but it is no basis for staying the Court's ruling. The Court should not allow itself to be used as the Fund's campaign tool by deviating from its normal rules and altering its decision here.

Furthermore, even if it *were* likely that the constitution would be amended in November, that would not be a legitimate reason for a stay of this Court's ruling. Today, the law is clear that the constitution requires the State to provide marriage licenses on an equal basis to same-sex and opposite-sex couples. Denial of such a fundamental constitutional right *per se* constitutes irreparable harm. (*See, e.g., Robbins v. Superior Court* (1985) 38 Cal.3d 199, 207; *U.C. Nuclear Weapons Labs Conversion Project v. Lawrence Livermore Laboratory* (1984) 154 Cal.App.3d 1157, 1172; *Nelson v. National Aeronautics and Space Admin.* (9th Cir. 2008) 512 F.3d 1134, 1147.) To allow the State to inflict such constitutional harm on lesbians and gay men for an extra five months would be manifestly

unjust. It would be akin to a ruling that the Japanese internment camps were unconstitutional, but that the government could continue holding the prisoners for an additional five months on the assumption that the voters will amend the Constitution to allow it. Or to a ruling that the free speech rights of California citizens were being violated, but that the State could continue to silence those citizens on the assumption the voters would take away their rights by initiative five months later.

Against all this, the Fund cites *Lucas v. Forty-Fourth General Assembly of the State of Colorado* (1964) 377 U.S. 713, but that case is totally inapposite. In *Lucas*, the United States Supreme Court stated in *dicta* that if an ongoing constitutional violation might be *remedied* by an impending election on a ballot measure, a court might temporarily avoid *imposing its own remedy* prior to the election. (*Id.* at 736.) The Court's *dicta* was understandable in the context of that case, which involved a state apportionment scheme. A decision by a federal court to temporarily "stay its hand" while the state devised its own remedy would promote federal-state comity. But the Court in *Lucas* did not even come close to suggesting that courts should allow states to continue violating the fundamental constitutional rights of their citizens based on the possibility that the Constitution might at a later date be amended or reinterpreted to eliminate those rights.

The Fund also cites rulings on marriage equality in New Jersey, Vermont and Massachusetts as support for the proposition that "this Court should temporarily stay its decision to permit the people of California to amend their constitution . . ." (Petn. at 14.) Those three rulings stand for nothing of the sort. Rather, in each of these cases the court: (i) held same-sex couples' constitutional rights were violated because they were denied

the rights and incidents of marriage; but (ii) did not explicitly hold that a separately-named institution would violate the constitution; and therefore (iii) submitted the matter to the legislature so that body could determine how to remedy the violation found by the court. In contrast, as this Court recognized in its opinion, the present case involves the question whether "the failure to designate the official relationship of same-sex couples as marriage violates the California Constitution." (Slip Op. at 4.) The answer is yes, and there is only one remedy for that violation: grant same-sex couples marriage licenses. In contrast to the other marriage cases, therefore, there is no reason to defer the ruling, because there is nothing left for the Legislature to decide. This Court, as the arbiter of constitutional rights in this State, has the authority – indeed the obligation – to order that the State promptly provide the relief sought.

In sum, it would inflict great harm on same-sex couples and their families to confirm that they have a fundamental right to marriage equality, only to tell them they may not exercise their rights in the coming months because of an effort by some to strip those rights away.

**B. No Harm Will Come When This Court's Ruling Takes Effect.**

In contrast to the harm a stay would inflict, no harm will come when the Court's ruling takes effect. As the Court has already noted, "permitting same-sex couples access to the designation of marriage will not deprive opposite-sex couples of any rights and will not alter the legal framework of the institution of marriage." (Slip Op. at 11.)

The Fund, however, attempts to manufacture "harms" that would result from marriage equality on June 16th. For example, it contends that if out-of-state couples get married in California, questions will arise about

whether their home states will recognize their relationships. Such uncertainties would be obviated, the Fund suggests, if the Court stays its ruling and if the voters will reject marriage equality in November. In most states, the law is clear that marriages by same-sex couples elsewhere would not be recognized in their home state.<sup>4</sup> But even if there were uncertainty in some states, that is simply no basis for denying fundamental constitutional rights. Constitutional rights in California are not defined by the amount of litigation that might be generated in other states. If they were, the Court could not have ruled the way it did 60 years ago in *Perez v. Sharp* (1948) 32 Cal.2d 711.

The Fund also argues that uncertainty surrounds the question whether any marriages performed in the next five months would be nullified by the November ballot initiative. Again, this question would only arise if the proposed constitutional amendment is enacted, which as discussed above, is hardly likely. But if the question did arise, it could be answered at that time. And the answer would be an easy one. The City is aware of no case which suggests that citizens may be retroactively stripped of fundamental constitutional rights.

The Fund cites the *Lockyer* for the proposition that legal uncertainty militates in favor of a stay. It is true that the Court cited uncertainty and potential confusion as a reason to invalidate the marriages from 2004 rather than deferring the question. (33 Cal.4th at 1117.) But the Court's discussion was based on the uncertainty of the existence of a constitutional right *at all*. Now, after this Court's holding on the question, nobody can

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<sup>4</sup> ([http://www.hrc.org/documents/marriage\\_prohibit\\_20070919.pdf](http://www.hrc.org/documents/marriage_prohibit_20070919.pdf) [as of May 26, 2008].)

dispute that the California Constitution guarantees marriage equality. The Court's discussion in *Lockyer* provides no basis to deny same-sex couples their undisputed fundamental rights based on speculation about future events.

Furthermore, the Fund ignores the primary reason the Court declined to defer the question of the validity of the 2004 marriages, a reason that is now totally absent. The Court, after discussing the uncertainty that would result from deferring the issue, held as follows as follows:

In any event, we believe such a delay in decision is unwarranted on more fundamental grounds. As we have explained, because Family Code section 300 clearly limits marriage in California to a marriage between a man and a woman and flatly prohibits persons of the same sex from lawfully marrying in California, the governing authorities establish that the same-sex marriages that have already been performed are void and of no legal effect *from their inception* . . . In view of this well-established rule, we do not believe it would be responsible or appropriate for this court to fail at this time to inform the parties to the same-sex marriages and other persons whose legal rights and responsibilities may depend upon the validity or invalidity of these marriages that these marriages are invalid, notwithstanding the pendency of numerous lawsuits challenging the constitutionality of California's marriage statutes.

(*Id.* [emphasis in original].) In contrast, the marriages performed after June 16th will not be "void and of no legal effect from their inception." Rather, the marriages performed after June 16th are *a constitutionally guaranteed right*.

Finally, the Fund argues that allowing same-sex couples to marry after June 16th will create "innumerable administrative hardships" for the State of California. (Petn. at 19.) Of these "innumerable" alleged hardships, the Fund identifies only one: the printing of new marriage license forms that may be completed by same-sex couples. (*Id.*) However,

the Fund has not explained how such a simple word processing task could justify denying same-sex couples of their fundamental constitutional rights. Furthermore, the State has not claimed that this is a hardship. To the contrary, as already explained, the State has unequivocally informed counties of their ministerial duty to comply with the Court's ruling, and has furnished forms that allows the counties to do so. (RJN Ex. 1.)

### **CONCLUSION**

The Court should strike the petition for lack of standing, or in the alternative deny it.

Dated: May 28, 2008

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 3,451 words up to and including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on May 28, 2008.

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SUPREME COURT OF THE STATE OF CALIFORNIA

**Coordination Proceeding Special  
Title (Rule 1550(b))  
IN RE MARRIAGE CASES**

**Case No. S147999**

Judicial Council Coordination  
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First Appellate District  
No. A110449  
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A110463, A110651, A110652)

San Francisco Superior Court Case  
No. 429539  
(Consolidated for trial with San  
Francisco Superior Court Case No.  
429548)

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**CITY AND COUNTY OF SAN  
FRANCISCO'S REQUEST FOR JUDICIAL  
NOTICE IN SUPPORT OF ANSWER TO  
PETITION FOR REHEARING**

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The Honorable Richard A. Kramer  
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Petitioner and Respondent City and County of San Francisco ("City") hereby requests that the Court take judicial notice of the memorandum from the California Department of Public Health to all California counties, a true and correct copy of which is attached hereto as Exhibit 1. This memorandum is noticeable under Evidence Code section 452(c), which permits courts to take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States."

The memorandum is relevant to the issues presented by the petition for rehearing filed by the Proposition 22 Legal Defense and Education Fund ("Fund"). The Fund argues that there is confusion surrounding the nature and timing of the remedy ordered by this Court in its May 15, 2008 ruling. The attached memorandum from the State refutes that contention.

Dated: May 28, 2008

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May 28, 2008

08-07

TO: COUNTY CLERKS  
COUNTY RECORDERS

SUBJECT: RULING BY THE CALIFORNIA SUPREME COURT REGARDING SAME-SEX MARRIAGES

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**Introduction**

On May 15, 2008, the California Supreme Court ruled that statutes limiting marriage to opposite-sex couples are unconstitutional. (*In re Marriage Cases* [Six consolidated appeals], Case No. S147999.)

Pursuant to the California Supreme Court's decision in the Marriage Cases, and also pursuant to its decision in *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, local governments have a ministerial duty to comply with California's marriage laws in a manner consistent with the directions of the California Supreme Court.

In order to ensure uniformity throughout the state in complying with the California Supreme Court's directions, the State Office of Vital Records (OVR) issues the following instructions for all counties.

The California Rules of Court provide that the California Supreme Court has until the close of business on June 16, 2008, to issue an order for rehearing. Effective June 17, 2008, County Clerks are authorized to begin using the enclosed new marriage license forms for all Public licenses, Confidential licenses, Denominations not Having Clergy licenses, and Declaration of Marriage licenses. The Affidavit to Amend a Marriage Form (VS 24C) has also been revised and is enclosed. Effective June 17, 2008, only the enclosed new forms may be used for the issuance of marriage licenses in California.

A Registered Domestic Partnership (RDP) need not be dissolved prior to the issuance of a marriage license if the parties to the RDP and the parties to the marriage are identical.

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RULING BY THE CALIFORNIA SUPREME COURT REGARDING SAME-SEX MARRIAGES

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**Revised  
Marriage  
License  
Forms**

Based on Health & Safety Code Section 102200, the OVR has approved the enclosed marriage license forms. These forms were developed in conjunction with input from the County Clerks and County Recorder Associations.

The OVR will send all County Clerk offices a supply of the new paper marriage certificates for use beginning June 17, 2008. If the paper form is being used, the personal data for the applicants must be typed.

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**Electronic  
Forms  
Approval  
Process**

OVR approval to electronically produce these marriage forms must be obtained individually by each participating county. Any county that does not obtain approval to electronically produce the new forms must issue marriage licenses on paper forms provided by the State until approval is obtained.

Please find enclosed copies of the new marriage forms and the Protocol for submitting electronic marriage forms for approval.

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**Transmittal  
form**

The enclosed transmittal form should be used when forwarding electronically produced forms to the state office for approval. The electronically produced forms should be forwarded to the attention of the appropriate Policy Analyst.

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**Updated  
Handbook  
Pages**

Revised pages to the Marriage Handbook will follow at a later date.

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SEX MARRIAGES

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**Questions**

If you have any questions regarding this matter, please contact your  
Policy/County Analyst.

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Original signed by Linette Scott:

Janet McKee  
Deputy State Registrar and  
Chief, Office of Vital Records

Enclosures

## **Protocol for Submitting Electronic Marriage Forms for Approval**

**Health and Safety Code Section 102200.** Record Forms. The State Registrar shall prescribe and furnish all record forms for use in carrying out the purposes of this part, or shall prescribe the format, quality, and content of forms electronically produced in each county, and no record forms or formats other than those prescribed shall be used.

Pursuant to Health and Safety Code Section 102200, the only forms that may be electronically produced and used to license a marriage in California are State approved marriage license forms. Copies of the approved marriage license forms were revised pursuant to the California Supreme Court Ruling on May 15, 2008. Please take the following steps to proceed with approval to electronically produce the current forms:

### **PAPER SPECIFICATIONS**

1. All marriage forms must be printed on white 28-pound ledger stock. The forms must be on acid-free archival paper.
2. Paper size is 8 ½" x 11".
3. Counties approved to produce forms electronically shall purchase the required paper stock identified above and distribute their own paper supplies.

### **FONTS AND DATA ELEMENTS**

1. The size and type of fonts used must be in compliance with specifications set forth by the Office of Vital Records. Five to twelve point Arial fonts, as used on the enclosed forms, are required for the new marriage forms (Rev. 6/08).
2. Strict adherence to the position layout of the data elements on the OVR forms is required.

### **SUBMISSION TO OVR FOR APPROVAL**

1. After electronic systems have been programmed to print the new marriage forms, you must submit the attached transmittal sheet to OVR requesting State approval to electronically produce the new forms. With this letter you must submit five blank copies and five completed copies (data filled) of each marriage certificate you plan to electronically produce. Also needed are copies of the Privacy Notification and Instructions and Information sections that are on the backs of the certificates. This information may be provided for review by printing it on the backs of the appropriate certificates or on separate sheets of paper. Each county is responsible for ensuring that the certificate forms submitted for review have undergone inspection and quality control to

- ensure that they are as nearly identical to the State forms as possible prior to submission.
2. OVR will review your marriage forms and, if acceptable, will grant authorization for your county to electronically produce the new forms.
  3. If your marriage forms are not acceptable, OVR will advise of the changes that are needed to make them acceptable. OVR will also request five copies of the corrected certificate(s) both data filled and blank, and those sections on the back (Privacy Notification and Instruction Section) that require a change. Once your forms are acceptable, OVR will respond as stated above in Item 2.

*Please be aware that OVR will approve each county individually, rather than providing blanket approval for a vendor. It is the County's responsibility to work with their vendor to ensure that each form generated by the county is acceptable to OVR.*

## Transmittal Form for Electronically Produced Marriage Forms

To: Office of Vital Records – MS 5103  
P.O. Box 997410  
Sacramento, CA 95899-7410

Attention: \_\_\_\_\_  
Policy Analyst

Approval is requested to electronically produce the following type of marriage certificate(s):

- License and Certificate of Marriage (VS 117)
- Confidential License and Certificate of Marriage (VS 123)
- License and Certificate of Declaration of Marriage (VS 116)
- License and Certificate of Marriage for Denominations Not Having Clergy (VS 115)
- Affidavit to Amend a Marriage Certificate (VS 24C)

The attached marriage certificates have been electronically produced by:

\_\_\_\_\_  
(System Vendor)

I hereby certify that I have reviewed the certificate(s) for accuracy and it/they is/are an exact replica of the state issued form:

\_\_\_\_\_  
(Certifier's Name)

\_\_\_\_\_  
(Agency Name)

\_\_\_\_\_  
(Mailing Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Telephone Number)

Attached are five blank copies of each type of marriage certificate and five completed copies (data filled) for each type of marriage certificate being requested for approval.