

Case No. S147999
IN THE
Supreme Court of the State of California

In re MARRIAGE CASES

Judicial Council Coordination Proceeding No. 4365

After a Decision by the Court of Appeal,
First Appellate District, Division Three,
Consolidated on Appeal with Case Nos.
A110449, A110450, A110451, A110463, A110652
San Francisco Superior Court Case Nos. 503943, 428794
Honorable Richard A. Kramer

**PROPOSITION 22 LEGAL DEFENSE AND EDUCATION FUND'S
REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PETITION FOR REHEARING;
DECLARATION OF TIMOTHY D. CHANDLER; [PROPOSED ORDER]**

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INTRODUCTION

Pursuant to Rule 8.252 of the California Rules of Court and California Evidence Code sections 452 and 459, Respondent Proposition 22 Legal Defense and Education Fund (“Fund”) requests this Court to take judicial notice of the California Secretary of State’s qualification of the Marriage Protection Act for the November 04, 2008 ballot. This qualification was memorialized by the Secretary of State’s press release, a true and correct copy of which is attached hereto as Exhibit A.

ARGUMENT

This Court Should Judicially Notice Exhibit A, Press Release from the California Secretary of State’s Qualification of the Marriage Protection Act.

The Fund requests that this Court take judicial notice of the California Secretary of State’s qualification of the Marriage Protection Act for the November 04, 2008 ballot. This official act is memorialized in the attached Exhibit A. This act by the Secretary of State should be judicially noticed under California Evidence Code, section 452(c), (g) and (h), which authorizes the taking of judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”

The information contained in Exhibit A is an official press release published by the California Secretary of State. (http://www.sos.ca.gov/executive/press_releases/2008/DB08_068.pdf [as of June 03, 2008]). The official press release reflects the current status of the valid signatures necessary to place the California Marriage Protection Act on the November 04, 2008 ballot. The document from the Secretary of State’s website is

particularly significant since it confirms that the proposed constitutional amendment to define marriage as the union of a man and a woman will appear on the ballot in the November 2008 election. That constitutional amendment, if passed, will state that “[o]nly marriage between a man and a woman is valid or recognized in California”.

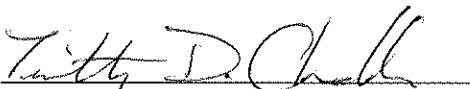
Judicial notice of this qualification by the Secretary of State is appropriate and may be considered by this Court for its authoritative or persuasive value. Moreover, judicial notice of the press release itself carries the same authoritative or persuasive value. (*People v. Roman* (2001) 92 Cal.App.4th 141, 145, fn. 4 [111 Cal.Rptr.2d 553] [“Defendant requests we take judicial notice of a press release setting forth Special Directive 00-02. The directive is undated, although the press release is dated December 19, 2000. We grant the motion for judicial notice.”]; *Kagan v. Kearney* (1978) 85 Cal.App.3d 1010, 1016 [149 Cal.Rptr.867] [“[W]e take judicial notice of the fact that the Registrar disseminated election information through press releases to all the media.”]; *Hurvitz v. Hoefflin, et al.* (2000) 84 Cal.App.4th 1232, 1235, fn. 1 [101 Cal.Rptr.2d 558] [Court can take judicial notice of the content of what has been reported in news articles.]).

CONCLUSION

For the foregoing reasons, the Fund respectfully requests that the Court take judicial notice of both the qualifications by the Secretary of State and its press release regarding the same (Exhibit A).

Dated: June 03, 2008.

Respectfully submitted,

By: 
Timothy D. Chandler

*Attorney for the Plaintiff-Respondent
Proposition 22 Legal Defense and
Education Fund*

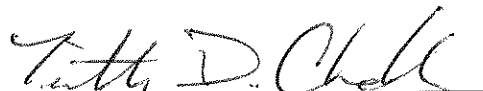
DECLARATION OF TIMOTHY D. CHANDLER

I, Timothy D. Chandler, declare as follows:

1. I am an attorney licensed to practice before this Court, and am employed as Legal Counsel for the Alliance Defense Fund. I am an attorney for the Respondents in the above-named action. I have personal knowledge of the facts stated herein, and if called as a witness I would testify competently thereto.
2. I make this declaration in support of the attached Request for Judicial Notice in Support of Petition for Rehearing.
3. Attached hereto as Exhibit A is true and correct copies of the Press Release from the Secretary of State Announcing the Qualification of the Marriage Protection Act.

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

Executed in Folsom, California on June 03, 2008.


Timothy D. Chandler

[PROPOSED] ORDER

AFTER DUE CONSIDERATION, for good cause shown, this Court **GRANTS** Plaintiff and Respondent Proposition 22 Legal Defense and Education Fund's request for judicial notice.

Dated: _____, 2008.

Chief Justice

PROOF OF SERVICE

I, declare that I am over the age of 18 years and not a party to the within action. My business address is 101 Parkshore Drive, Suite 100; Folsom, California 95630.

I served the document(s) described as:

Proposition 22 Legal Defense and Education Fund's Request for Judicial Notice in Support of Petition for Rehearing; Declaration of Timothy D. Chandler; and [Proposed] Order

on the interested parties in this action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

and served the document(s) in the manner indicated below:

BY ELECTRONIC TRANSMISSION

BY FACSIMILE TRANSMISSION

(BY UNITED STATES POSTAL SERVICE) I am readily familiar with the practice for collection and processing of correspondence for mailing and deposit on the same day in the ordinary course of business with the United States Postal Service. Pursuant to that practice, the above referenced document(s) were sealed in an envelope, with postage paid, and deposited in a post office, mail box, subpost office, substation, mail chute or other like facility regularly maintained by the United States Postal Service on June 3, 2008, at Folsom, California.

BY OVERNIGHT MAIL SERVICE

BY PERSONAL SERVICE

DATE: June 3, 2008


Michele L. Schmidt

Service List

<p>Clerk of Court Superior Court of California County of San Francisco Civic Center Courthouse 400 McAllister Street San Francisco, California 94102 [One (1) copy for delivery to the Honorable Richard A. Kramer]</p>	<p>Superior Court</p>
<p>Clerk of Court California Court of Appeals 1st Appellate District 350 McAllister Street San Francisco, California 94102</p>	<p>Appellate Court</p>
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<p>Christopher Edward Krueger Office of the Attorney General 1300 I Street, Room 125 P.O. Box 944255 Sacramento, California 94244-2550</p>	<p>State of California, et al.: Respondents CA</p>

<p>Kenneth C. Mennemeier Mennemeier Glassman & Stroud 980 9th Street, Suite 1700 Sacramento, California 95814</p>	<p>Schwarzenegger, Arnold, et al.: Respondents CA</p>
<p>Therese Marie Stewart Sherri Sokeland Kaiser Office of the City Attorney 1 Dr. Carlton B. Goodlett Place City Hall, Room 234 San Francisco, California 94102-4682</p>	<p>Newsom, Gavin: Petitioner CA</p>
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<p>Gloria Rachel Allred Michael Maroko Allred Maroko & Goldberg 6300 Wilshire Boulevard, Suite 1500 Los Angeles, California 90048-5217</p>	<p>Tyler, Robin, et al.: Petitioners CA</p>
<p>Shannon Minter Vanessa Helene Eisemann National Center for Lesbian Rights 870 Market Street, Suite 570 San Francisco, California 94102</p> <p>Stephen Victor Bomse Heller Ehrman White & McAuffe, LLP 333 Bush Street, Suite 3100 San Francisco, California 94104</p> <p>Jon Warren Davidson Jennifer Carol Pizer Lambda Legal Defense & Education Fund 3325 Wilshire Boulevard, #1300 Los Angeles, California 90010-1729</p> <p>Peter J. Eliasberg ACLU Foundation of Southern California 1616 Beverly Boulevard Los Angeles, California 90026-5752</p>	<p>Rymer, Joshua: Petitioner CA</p>

<p>Alan L. Schlosser ACLU Foundation of Northern California 39 Drumm Street San Francisco, California 94111</p> <p>David Charles Codell 9200 Sunset Boulevard, Penthouse Two Los Angeles, California 90069</p>	<p>Rymer, Joshua: Petitioner CA (Cont'd)</p>
<p>Shannon Minter National Center for Lesbian Rights 870 Market Street, Suite 570 San Francisco, California 94102</p> <p>Stephen Victor Bomse Heller Ehrman White & McAuffe, LLP 333 Bush Street, Suite 3100 San Francisco, California 94104</p>	<p>Frazer, Tim: Petitioner CA</p>
<p>Shannon Minter National Center for Lesbian Rights 870 Market Street, Suite 570 San Francisco, California 94102</p>	<p>Equality California, et al.: Petitioners CA</p>
<p>Waukeen Q. McCoy Law Offices of Waukeen McCoy 703 Market Street, Suite 1407 San Francisco, California 94103</p> <p>Jason Elkins Hasley Paul, Hanley & Harley LLP 1608 4th Street, Suite 300 Berkeley, California 94710</p>	<p>Clinton, Gregory: Petitioner CA</p>
<p>Waukeen Q. McCoy Law Offices of Waukeen McCoy 703 Market Street, Suite 1407 San Francisco, California 94103</p>	<p>Morris, Gregory, et al.: Petitioners CA</p>

EXHIBIT A

DEBRA BOWEN

CALIFORNIA SECRETARY OF STATE NEWS RELEASE

DB08:068

FOR IMMEDIATE RELEASE

June 2, 2008

CONTACT: Kate Folmar
(916) 653-6575

Secretary of State Debra Bowen Certifies Eighth Measure for November 4, 2008, General Election

SACRAMENTO— Secretary of State Debra Bowen today certified the eighth initiative for the November 4, 2008, General Election ballot. The measure would amend California's Constitution to define marriage as a union "between a man and a woman."

The first seven propositions to qualify for the November ballot were a high-speed rail bond, a measure relating to the treatment of farm animals, a children's hospital bond, a parental notification for abortion measure, a measure involving the sentencing of nonviolent offenders, a measure regarding increased criminal penalties and public safety funding, and a renewable energy measure.

In order to qualify for the ballot, the marriage definition measure needed 694,354 valid petition signatures, which is equal to 8% of the total votes cast for governor in the November 2006 General Election. The initiative proponents submitted 1,120,801 signatures in an attempt to qualify the measure, and it qualified through the random sample signature check.

County elections officials have 30 working days to verify the validity of the signatures filed with their offices using a random sampling method. The state Elections Code requires elections officials to verify 500 signatures, or 3% of the number of signatures filed in their county, whichever is greater. Counties receiving fewer than 500 petition signatures are required to verify all the signatures filed in their offices.

A measure can qualify via random sampling, without further verification, if the sampling projects a number of valid signatures greater than 110% of the required number. This measure needed at least 763,790 projected valid signatures to qualify by random sampling, and it exceeded that threshold today with 764,063 projected valid signatures.

The Attorney General's official title and summary of the initiative is as follows:

LIMIT ON MARRIAGE. CONSTITUTIONAL AMENDMENT. Amends the California Constitution to provide that only marriage between a man and a woman is valid or recognized in California. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: The measure would have no fiscal effect on state or local governments. This is because there would be no change to the manner in which marriages are currently recognized by the state. (Initiative 07-0068.)

— MORE —

DB08:068

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June 2, 2008

The initiative proponents, Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Hak-Shing William Tam, and Mark A. Jansson, can be reached at (916) 608-3065.

The last day to qualify a measure for the November General Election ballot is June 26.

For more information about how an initiative qualifies for the ballot in California, go to http://www.sos.ca.gov/elections/initiative_guide.htm.

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