

# CITY OF OAKLAND



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July 17, 2007

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Honorable City Council  
Oakland, California

City Council President Ignacio De La Fuente and Members of the City Council:

**Subject: Report and Resolution Authorizing City of Oakland to Sign onto an Amicus Brief in Support of San Francisco's Lawsuit Challenging the Constitutionality of California's Exclusion of Same-Sex Couples from Marriage in *In Re Marriage Cases*, California Supreme Court Case No. S147999**

## **Summary of Action Requested**

San Francisco has asked that the City of Oakland sign onto an amicus brief in the California Supreme Court supporting the City and County of San Francisco's lawsuit challenging the constitutionality of the California statutes that limit marriage to a union between a man and a woman.

San Francisco and same-sex couples filed an action challenging the constitutionality of California's marriage laws in the Superior Court. The Superior Court ruled in San Francisco's favor, but the Court of Appeal reversed. The California Supreme Court granted San Francisco's petition seeking review of the Court of Appeal's decision. Several cities, including Los Angeles, Berkeley, Santa Cruz, Santa Monica, West Hollywood, and the counties of Santa Cruz, San Mateo and Marin have agreed to sign onto the amicus brief.

## **Background**

After the California Supreme Court ruled that local officials lacked the authority to conduct marriages between same-sex couples based on their belief that California's marriage laws are unconstitutional, San Francisco and same-sex couples pursued separate actions challenging the validity of those laws (Family Code sections 300 and 308.5). The Superior Court held that the marriage limitation is subject to strict scrutiny as it is based on a suspect classification (gender) and impinges on a fundamental right (the right to marry the person of one's choice) and that the marriage exclusion does not

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pass strict scrutiny or even the more deferential rational basis test; therefore it violates the California Constitution.

The California Court of Appeal reversed the Superior Court's decision in a two-to-one divided decision, holding that the state's historical definition of marriage as a legal union between a man and a woman does not deprive individuals of a vested fundamental right or discriminate against a suspect class. The Court of Appeal reviewed the constitutionality of the state's marriage statutes under the rational basis test, finding that the opposite-sex requirement is rationally related to the state's interest in preserving the institution of marriage in its historical opposite-sex form, while also providing comparable rights to same-sex couples through domestic partnership laws.

The Court of Appeal also found that the Superior Court's decision essentially redefined marriage to encompass unions that had never before been considered such in the state and that it is beyond the judiciary's realm of authority to redefine a statute or to confer a new right where none previously existed. The Court of Appeal declared that if marriage is to be extended to same-sex couples, this change must come from the people either directly through a voter initiative or through the people's elected representatives in the state legislature. The California Supreme Court granted review of the Court of Appeal's decision.

**Fiscal Impact**

None. The brief will be prepared and filed at no cost to the City of Oakland.

**Recommendation**

We recommend that the City Council authorize the City Attorney to sign onto the amicus brief in the California Supreme Court asking the Court to reverse the Court of Appeal's decision that the California law limiting marriage to unions between a man and a woman does not violate the California Constitution.

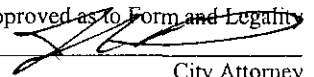
Respectfully submitted,



JOHN A. RUSSO  
City Attorney

Attorney Assigned:  
Barbara J. Parker

OFFICE OF THE CITY ATTORNEY  
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Approved as to Form and Legality  
  
City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER  
\_\_\_\_\_

**Resolution Authorizing City of Oakland to Sign onto an Amicus Brief in Support of San Francisco’s Lawsuit Challenging the Constitutionality of California’s Exclusion of Same-Sex Couples from Marriage in *In Re Marriage Cases*, California Supreme Court Case No. S147999**

**WHEREAS**, the City and County of San Francisco filed a complaint for declaratory relief and a petition for writ of mandate in the San Francisco Superior Court challenging the validity of a California law (Family Code sections 300 and 308.5) that limits marriage in California to unions between a man and a woman; and

**WHEREAS**, groups of same-sex couples filed two similar actions alleging that California law prevents them from marrying in California, or that California does not recognize their out-of-state marriages; and

**WHEREAS**, the Judicial Council coordinated the three actions challenging the constitutionality of California’s marriage laws into a single proceeding and assigned them to Superior Court judge and subsequently added a fourth action filed by another group of same-sex couples to the proceeding as well as two other cases; and

**WHEREAS**, the trial court (Superior Court) ruled that the statutes violate the California Constitution because the opposite-sex requirement does not pass the strict scrutiny test or even the less stringent rational basis test; and

**WHEREAS**, the Court of Appeal reversed the Superior Court, holding that the state's historical definition of marriage as a legal union between a man and a woman does not deprive individuals of a vested fundamental right or discriminate against a suspect class; and

**WHEREAS**, the Court of Appeal reviewed the constitutionality of the state's marriage statutes under the rational basis test, finding that the opposite-sex requirement is rationally related to the state's interest in preserving the institution of marriage in its historical opposite-sex form, while also providing comparable rights to same-sex couples through domestic partnership laws; and

**WHEREAS**, the Court of Appeal also found that the Superior Court’s decision, although purporting to apply rational basis review, essentially redefined marriage to encompass unions that had

never before been considered as such in the state and that it is beyond the judiciary's realm of authority to redefine a statute or to confer a new right where none previously existed; and

**WHEREAS**, the Court of Appeal also declared that the Legislature's power to regulate marriage is exclusive and subject only to constitutional restrictions and that If marriage is to be extended to same-sex couples, this change must come from the people--either directly, through a voter initiative, or through their elected representatives in the Legislature; and

**WHEREAS**, the California Supreme Court granted review of the Court of Appeal's decision; and

**WHEREAS**, the City of Oakland is home to one of the most diverse populations in this nation and values the diversity and the gifts and richness of our City that results from the different cultures, languages, heritages of all of our residents; and

**WHEREAS**, the City of Oakland has a policy of prohibiting discrimination on the basis of race, gender, sexual orientation, disability, color, age, national origin, religion, and any other arbitrary classifications; and

**WHEREAS**, Oakland stands with San Francisco in supporting the Superior Court's decision that California's limitation of marriage to a union between a man and a woman is unconstitutional because the marriage exclusion is subject to strict scrutiny as it is based on a suspect classification (gender) and impinges on a fundamental right (the right to marry the person of one's choice) and that the marriage exclusion does not pass strict scrutiny or even the more deferential rational basis test; now therefore be it

**RESOLVED:** that the City Council authorizes the City Attorney to sign onto an amicus brief asking the California Supreme Court to reverse the Court of Appeal's decision in *In re Marriage Cases*, California Supreme Court Case No. S147999, that California's limitation of marriage to unions of a man and a woman does not violate the California Constitution.

**IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_ 2007**

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
PRESIDENT DE LA FUENTE

NOTES-

ABSENT-

ABSTENTION-

Attest: \_\_\_\_\_

LATONDA SIMMONS  
CITY CLERK AND CLERK OF THE COUNCIL  
OF THE CITY OF OAKLAND, CALIFORNIA