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OAKLAND CITY COUNCIL

RESOLUTION NO. _____

C. M. S.

OFFICE OF THE CITY CLERK
OAKLAND

2004 APR -9 AM 9:03

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RESOLUTION AUTHORIZING FILING OF AMICUS BRIEFS (FRIEND OF THE COURT) BRIEFS AND LETTERS SUPPORTING THE POSITION OF CITY AND COUNTY OF SAN FRANCISCO IN *CITY AND COUNTY OF SAN FRANCISCO V. STATE OF CALIFORNIA, ET AL.*, SAN FRANCISCO (SAN FRANCISCO SUPERIOR COURT NO. CGC-04-429539), LITIGATION IN WHICH SAN FRANCISCO HAS ASKED THE SUPERIOR COURT, AMONG OTHER THINGS, TO DECLARE STATE MARRIAGE STATUTES THAT REQUIRE SAN FRANCISCO TO DENY MARRIAGE LICENSES TO SAME-SEX COUPLES VOID, UNENFORCEABLE AND UNCONSTITUTIONAL

WHEREAS, in February of this year, Attorney General Bill Lockyer filed a petition for writ of mandate, prohibition, certiorari and/or other appropriate relief in the California Supreme Court (*City and County of San Francisco v. State of California*, requesting, among other things, that the Supreme Court issue an order (1) directing San Francisco to cease and desist issuing or registering license and certificate of marriage forms to same-sex couples and (2) declaring the invalidity of the same-sex marriage licenses and certificates that San Francisco has issued; and

WHEREAS, Lockyer argues that San Francisco cannot ignore California law and encourage others to ignore those state laws without any controlling judicial determination that the state laws are unconstitutional; and

WHEREAS, Lockyer contends that a county, as a political subdivision of the state, is charged with administering state government and local registrars of vital statistics act as state officers and state agents, who cannot refuse to enforce state law, because they have a ministerial duty to perform their duties in conformity with state law; and

WHEREAS, the California Supreme Court asked San Francisco to brief the question whether San Francisco and its officials are exceeding or acting outside the scope of their

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authority in refusing to enforce the provisions of the Family Code (hereinafter, the “marriage statutes”) in the absence of a judicial determination that such provisions are unconstitutional; and

WHEREAS, San Francisco has filed a complaint for declaratory relief and a petition for writ of mandamus asking the San Francisco Superior Court to declare that one of the state’s marriage statutes does not apply to in-state marriages and two other marriage statutes (a) discriminate on the basis of sexual orientation in violation of the Equal Protection Clause; (b) discriminate on the basis of gender in violation of the Equal Protection Clause; (c) violate liberty interests protected by the Due Process Clause; and (d) violate constitutionally protected privacy interests; and

WHEREAS, San Francisco’s lawsuit also asks that the Superior Court order the State Registrar to (1) issue marriage license forms that do not discriminate against same-sex couples, (2) include in the state index all marriages recorded by San Francisco and (3) instruct local registrars throughout California not to deny eligible same-sex couples the right to marry; and

WHEREAS, the City Council has adopted non-discrimination policies and laws that prohibit discrimination on the basis of gender and sexual orientation; and

WHEREAS, the City’s domestic partners policy provides benefits without regard to whether the partners are same-sex or heterosexual couples; and

WHEREAS, the City Council desires to support San Francisco’s position in the pending litigation that state laws that require counties to deny marriage licenses to same-sex couples are unconstitutional; now therefore be it

RESOLVED: that the Council of the City of Oakland authorizes the City Attorney to file amicus briefs and letters supporting the position of San Francisco in *City and County of San Francisco v. State of California*, and in any subsequent appellate proceedings

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

AYES –

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

CEDA FLOYD

City Clerk and Clerk of the Council of the
City of Oakland, California