

RESOLUTION NUMBER R- 303015

DATE OF FINAL PASSAGE SEP 19 2007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO IN SUPPORT OF CITY OF SAN DIEGO SIGNING ONTO THE *AMICUS CURIAE* BRIEF IN *IN RE: MARRIAGE CASES*.

WHEREAS, the City of San Diego has, by local policy and ordinance, demonstrated its commitment to fair and equitable treatment of all persons regardless of gender or sexual orientation; and

WHEREAS, the City of San Diego is home to numerous families headed by same sex couples, many with children; and

WHEREAS, both the United States Constitution and California Constitution clearly state that no laws will be made depriving any person of life, liberty, or property without due process of law; and

WHEREAS, both the United States Constitution and California Constitution clearly state that no laws will be made or enforced that abridge the privileges and immunities of citizens of the United States; and

WHEREAS, both the United States Constitution and California Constitution clearly state that no person within its jurisdiction will be denied equal protection of the laws; and

WHEREAS, marriage is recognized as one of the fundamental elements of individual liberty; and

WHEREAS, marriage is a unique civil contract, separate and distinct from any religious, ethnic, or other traditions; and

WHEREAS, the opportunity to publicly and legally commit to share one's life with a person of one's choice is for many persons one of the most central aspects of human experience, and the denial of marriage rights to same sex couples is a denial of fundamental civil rights; and

WHEREAS, denying civil marriage to gay and lesbian families deprives them of thousands of state and federal rights, privileges, immunities, protections, and responsibilities; and

WHEREAS, gay and lesbian families deserve the same rights and legal protections as other families under the law, including the protection of their spousal rights and privileges and protection of their children's economic interests by ensuring their access to the resources of both parents; and

WHEREAS, civil marriage ensures state rights, protections, and responsibilities, and should ensure federal rights, that are otherwise unavailable to gay and lesbian families; and

WHEREAS, suffering the inability to access these legal protections results in significant harm to these families, including financial insecurity, lack of retirement and death benefits, and lack of access to family court for dissolutions; and

WHEREAS, no resident of the City of San Diego should be refused equal protection under the law; and

WHEREAS, discriminatory marriage laws result, especially, in significant harm to lesbian, gay, bisexual, and transgender people by perpetuating homophobia, just as anti-miscegenation laws barring people of different races from marrying, legal in the United States until 1967, perpetuated racism and social ostracism; and

WHEREAS, discriminatory marriage laws undermine the State of California's commitment to equality, privacy, and justice for all of its citizens, as well as undermining marriage itself; and

WHEREAS, the California Supreme Court rule in 2004 that local officials lack the authority to conduct marriages between same sex couples based on such officials' belief that the state law limitation on marriages to persons of the opposite sex is unconstitutional. (Lockyer v. City and County of San Francisco (2004) 33 Cal.4th 1055, 1069-1070, 17 Cal.Rptr.3d 225, 95 P.3d 459 (Lockyer)); and

WHEREAS, as a result of *Lockyer*, the City and County of San Francisco and same sex couples pursued separate actions that they had filed while *Lockyer* was pending; and

WHEREAS, those actions (known as the *In re Marriage Cases*, Cal. Supreme Court Case No. S147999) challenged the constitutionality of California's exclusion of same-sex couples from marriage; and

WHEREAS, the trial court held that the marriage exclusion is subject to strict scrutiny because it is based on a suspect classification (gender) and because it impinges on a fundamental right (the right to marry the person of one's choice); and

WHEREAS, the trial court held that the marriage exclusion does not pass strict scrutiny or even the more deferential rational basis test. Therefore the trial court declared that the limitation of marriage to a union between a man and a woman was unconstitutional; and

WHEREAS, the Court of Appeal reversed the decision of the trial court in a two-to one divided decision; and

WHEREAS, there was a vigorous dissent that would have upheld the trial court decision. The appellate decision is cited as: *In re Marriage Cases* 49 Cal.Rptr.3d 675, Review Granted, Previously published at: 143 Cal.App.4th 873; and

WHEREAS, the Supreme Court has granted review, and the City and County of San Francisco has recently filed its opening brief on the merits; and

WHEREAS, the San Francisco City Attorney is organizing a larger group of cities and counties from across the state to sign on to an *amicus curiae* brief in support of San Francisco that will be filed in the Supreme Court; and

WHEREAS, the *amicus* brief is due to be filed with the Court no later than September 26, 2007. So far, the Cities of Los Angeles, San Jose, Oakland, Berkeley, Santa Cruz, Santa Monica, and West Hollywood have agreed to join. In addition, the Counties of Santa Clara, Santa Cruz, San Mateo and Marin have agreed to join. In addition, many other local governments are currently considering joining the *amici*. NOW, THEREFORE,

BE IT RESOLVED that the Council of the City of San Diego does hereby declare its support for eliminating discrimination against same sex couples in the state of California's civil marriage laws, acknowledges the initiative of the City and County of San Francisco in its appeal to the California Supreme Court and directs the City Attorney to sign on to the *amicus curiae* brief on behalf of the City of San Diego in support of San Francisco with all deliberate speed.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Alex W. Sachs
Deputy City Attorney

AWS:mm
09/17/07
Or.Dept: Council District 3
R-2008-183
MMS#5264

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of Sept. 18. 2007

ELIZABETH S. MALAND
City Clerk

By *Sara Richardson*
Deputy City Clerk

Approved: 9.19.07
(date)

J.S.
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor