



1           This matter is before the Court on the parties' cross-  
2 motions for summary judgment. Plaintiff Proposition 22  
3 Legal Defense and Education Fund sued Governor Gray Davis  
4 (now Arnold Schwarzenegger) and other state officials for  
5 injunctive and declaratory relief seeking a determination  
6 that AB 205 was unlawfully enacted by the Legislature in  
7 violation of California Constitution, article II, section  
8 10, subdivision (c), because it amends Proposition 22 but  
9 was not presented to the voters for approval. Plaintiffs  
10 Randy Thomasson and Campaign for California Families filed a  
11 similar action seeking similar relief, but challenging AB 25  
12 in addition to AB 205. The two actions have been  
13 consolidated. Equality California, and several individuals,  
14 intervened in the actions supporting the Defendants'  
15 position and defending AB 25 and AB 205. Each party has  
16 filed a motion for summary judgment. All parties  
17 essentially agree that there are no disputed material facts.  
18 Instead, the motions present a pure question of law: whether  
19 AB 25 and/or AB 205 amend, repeal, or may conflict with the  
20 subject matter of Proposition 22 as enacted by the voters in  
21 2002. The court finds that these new statutes do not amend,  
22 repeal, or potentially conflict with the subject matter of  
23 Proposition 22, so their enactment without voter approval  
24 did not violate the California Constitution.

25           In order to determine whether or not AB 25 or AB 205  
26 impermissibly amend Family Code section 308.5 without  
27 submitting the matter to the voters, the Court must first  
28 determine the meaning, purpose, scope, and effect of Family

1 Code section 308.5. At oral argument, all parties agreed  
2 that section 308.5 was clear and unambiguous on its face.  
3 However, each side's position is that the statute's meaning  
4 is diametrically opposed to the interpretation given it by  
5 their opponent.

6 Proposition 22, codified as Family Code section 308.5,  
7 provides as follows: "Only marriage between a man and a  
8 woman is valid or recognized in California." AB 25 and 205  
9 confer most, but not all, of the rights and duties of  
10 marriage to people who register as domestic partners. The  
11 procedures for formation and termination of qualifying  
12 domestic partnerships under the new law also vary from those  
13 governing marriage.

14 Plaintiffs argue that Family Code section 308.5  
15 proclaims that the legal rights, benefits, duties, and  
16 responsibilities attendant and exclusive to "marriage" may  
17 not be conferred upon any relationship of persons other than  
18 one comprised of one man and one woman. Plaintiffs argue  
19 that the statute was intended to prohibit new types of  
20 marriage in the state. Consequently, plaintiffs contend  
21 that any law which confers the benefits and detriments  
22 exclusively attendant to "marriage" upon a same-sex  
23 relationship must be approved by the voters of this state in  
24 adherence with California Constitution, article II, section  
25 10, subdivision (c).

26 Defendants essentially argue that Family Code section  
27 308.5 does not prohibit the creation of new legal  
28 relationships between two people of the same sex endowed

1 with substantially all of the same legal rights, benefits,  
2 duties, and responsibilities previously attendant and  
3 exclusive to "marriage," so long as the new relationship is  
4 not called "marriage" and is formed and terminated through  
5 different procedures. Thus, Defendants argue that neither  
6 AB 25 nor AB 205 operated to amend Proposition 22, because  
7 domestic partnerships are not called "marriage" and are  
8 formed and terminated through different procedures. Further,  
9 Defendants contend that Family Code section 308.5 was  
10 specifically intended to prohibit the legal recognition of  
11 foreign "marriages" of same-sex couples, not to prohibit the  
12 legislative creation of new legal relationships within the  
13 state.

14 When a statute enacted by the initiative process is  
15 involved, the Legislature may amend it only if the voters  
16 specifically give the Legislature that power, and then only  
17 upon whatever conditions the voters attach to the  
18 Legislature's amendatory powers. Cal.Const., art. II, § 10,  
19 subd. (c); *Proposition 103 Enforcement Project v.*  
20 *Quackenbush* (1998) 64 Cal.App.4th 1473, 1483-1484. The  
21 purpose of California's constitutional limitation on the  
22 Legislature's power to amend initiative statutes is to  
23 "protect the people's initiative powers by precluding the  
24 Legislature from undoing what the people have done, without  
25 the electorate's consent." *Proposition 103 Enforcement*  
26 *Project v. Quackenbush, supra*, 64 Cal.App.4th at p. 1484.  
27 Here, Proposition 22 provided no amendatory power to the  
28 Legislature, its amendment must obtain voter approval.

1           An "amendment" of an initiative statute for purposes of  
2 analysis under California Constitution, article II, section  
3 10, subdivision (c) has been defined as "any change of the  
4 scope or effect of an existing statute, whether by addition,  
5 omission, or substitution of provisions, which does not  
6 wholly terminate its existence, whether by an act purporting  
7 to amend, repeal, revise, or supplement, or by an act  
8 independent and original in form,..." [Citation.] A statute  
9 which adds to or takes away from an existing statute is  
10 considered an amendment. [Citation.]'... [A]n amendment [is]  
11 "'a legislative act designed to change some prior or  
12 existing law by adding or taking from it some particular  
13 provision.'" [Citation.]" *Proposition 103 Enforcement*  
14 *Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1484,  
15 quoting *Mobilepark West Homeowners Assn. v. Escondido*  
16 *Mobilepark West* (1995) 35 Cal.App.4th 32, 40, and *Franchise*  
17 *Tax Bd. v. Cory* (1978) 80 Cal.App.3d 772, 776-777. An  
18 amendment of an initiative may be accomplished by some  
19 action other than by the subsequent enactment of a statute;  
20 the question is whether the action in question adds to or  
21 takes away from the initiative. *Proposition 103 Enforcement*  
22 *Project v. Quackenbush, supra*, 64 Cal.App.4th at p. 1484-  
23 1485. In determining whether a particular action constitutes  
24 an amendment, the court must keep in mind that "[i]t is  
25 "'the duty of the courts to jealously guard [the people's  
26 initiative and referendum power]"..."[I]t has long been our  
27 judicial policy to apply a liberal construction to this  
28 power wherever it is challenged in order that the right [to

1 local initiative or referendum] be not improperly  
2 annulled.'" [Citation.]" *DeVita v. County of Napa*, supra,  
3 9 Cal.4th at p. 776, quoting *Associated Home Builders etc.,*  
4 *Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591. "'Any  
5 doubts should be resolved in favor of the initiative and  
6 referendum power, and amendments which may conflict with the  
7 subject matter of initiative measures must be accomplished  
8 by popular vote, as opposed to legislatively enacted  
9 ordinances, where the original initiative does not provide  
10 otherwise.'" *Proposition 103 Enforcement Project v.*  
11 *Quackenbush*, supra, 64 Cal.App.4th at p. 1486.

12 Thus, the Court is called upon to determine whether AB  
13 25 and/or AB 205 "may conflict with the subject matter" of  
14 Family Code section 308.5 by taking something away from it,  
15 or adding to it. In performing this task the Court must  
16 resolve all doubts in favor of the initiative power leaving  
17 amendment to be accomplished, if at all, by popular vote as  
18 opposed to legislative enactment.

19 Many well-established principles guide the court in  
20 achieving an interpretation of Family Code 308.5, from which  
21 the court may then determine whether the subject acts may  
22 conflict with its subject matter. These principles deserve  
23 full recitation since they form the primary foundation of  
24 the court's ultimate conclusion in this matter.

25 "A fundamental rule of statutory construction is that a  
26 court should ascertain the intent of the Legislature so as  
27 to effectuate the purpose of the law.[Citations.] In  
28 construing a statute, our first task is to look to the

1 language of the statute itself.[Citation.] When the language  
2 is clear and there is no uncertainty as to the legislative  
3 intent, we look no further and simply enforce the statute  
4 according to its terms.[Citations.][P] Additionally,  
5 however, we must consider the [statutory language] in the  
6 context of the entire statute [citation] and the statutory  
7 scheme of which it is a part. The court is "required to give  
8 effect to statutes 'according to the usual, ordinary import  
9 of the language employed in framing them.'  
10 [Citations.]"[Citations.] "'If possible, significance should  
11 be given to every word, phrase, sentence and part of an act  
12 in pursuance of the legislative purpose.'" [Citation.]...  
13 'When used in a statute [words] must be construed in  
14 context, keeping in mind the nature and obvious purpose of  
15 the statute where they appear.' [Citations.] Moreover, the  
16 various parts of a statutory enactment must be harmonized by  
17 considering the particular clause or section in the context  
18 of the statutory framework as a whole.[Citations.]""  
19 *Phelps v. Stostad* (1997) 16 Cal.4th 23, 32; see also *People*  
20 *v. Coronado* (1995) 12 Cal.4th 145, 151; *People v. Jenkins*  
21 (1995) 10 Cal.4th 234, 246. In determining that intent, the  
22 court must first examine the words of the respective  
23 statutes: 'If there is no ambiguity in the language of the  
24 statute, "then the Legislature is presumed to have meant  
25 what it said, and the plain meaning of the language  
26 governs." [Citation.]' 'Where the statute is clear, courts  
27 will not "interpret away clear language in favor of an  
28 ambiguity that does not exist." [Citation.]' *Lennane v.*

1     *Franchise Tax Bd.* (1994) 9 Cal.4th 263, 268; *State Bd. of*  
2     *Equalization v. Wirick* (2001) 93 Cal.App.4th 411, 416. If,  
3     however, the terms of a statute provide no definitive  
4     answer, then courts may resort to extrinsic sources,  
5     including the ostensible objects to be achieved and the  
6     legislative history. See *Granberry v. Islay Investments*  
7     (1995) 9 Cal.4th 738, 744. The court must select the  
8     construction that comports most closely with the apparent  
9     intent of the Legislature, with a view to promoting rather  
10    than defeating the general purpose of the statute, and avoid  
11    an interpretation that would lead to absurd consequences.  
12    *People v. Jenkins, supra*, 10 Cal.4th at p. 246.

13             In *People v. Thomas* (1992) 4 Cal.4th 206, 210 and  
14    *People v. Pieters* (1991) 52 Cal.3d 894, 898-899, the  
15    California Supreme Court states: “[i]t is a settled  
16    principle of statutory interpretation that language of a  
17    statute should not be given a literal meaning if doing so  
18    would result in absurd consequences which the Legislature  
19    did not intend.’ *Younger v. Superior Court* (1978) 21 Cal.3d  
20    102, 113; see also *People v. Davis* (1985) 166 Cal.App.3d  
21    760, 766 (although reasonable doubts as to ambiguous  
22    criminal statute should normally be resolved in favor of  
23    defendant, rule does not apply where result is absurd or  
24    contrary to legislative intent.) Thus, “[t]he intent  
25    prevails over the letter, and the letter will, if possible,  
26    be so read as to conform to the spirit of the act.’ *Lungren*  
27    *v. Deukmejian* (1988) 45 Cal.3d 727, 735. Finally, the  
28    courts do not construe statutes in isolation, but rather



1 read every statute "with reference to the entire scheme of  
2 law of which it is part so that the whole may be harmonized  
3 and retain effectiveness. (*Clean Air Constituency v.*  
4 *California State Air Resources Bd.* (1974) 11 Cal.3d 801,  
5 814)." *People v. Thomas* (1992) 4 Cal.4th 206, 210. ""The  
6 court should take into account matters such as context, the  
7 object in view, the evils to be remedied, the history of the  
8 times and of legislation upon the same subject, public  
9 policy, and contemporaneous construction.'" *Cossack v.*  
10 *City of Los Angeles* (1974) 11 Cal.3d 726, 733." *Marshall M.*  
11 *v. Superior Court* (1999) 75 Cal.App.4th 48.

12 "[T]he statements of an individual legislator,  
13 including the author of a bill, are generally not considered  
14 in construing a statute, as the court's task is to ascertain  
15 the intent of the Legislature as a whole in adopting a piece  
16 of legislation." *Quintano v. Mercury Casualty Co.* (1995) 11  
17 Cal.4th 1049, 1062. "In construing a statute we do not  
18 consider the motives or understandings of individual  
19 legislators who cast their votes in favor of it.  
20 [Citations.] Nor do we carve an exception to this principle  
21 simply because the legislator whose motives are proffered  
22 actually authored the bill in controversy [citation]; no  
23 guarantee can issue that those who supported his proposal  
24 shared his view of its compass." *California Teachers Assn.*  
25 *v. San Diego Community College Dist.* (1981) 28 Cal.3d 692,  
26 700, quoting *In re Marriage of Bouquet* (1976) 16 Cal.3d 583,  
27 589-590.

28

1           “A legislator’s statement is entitled to consideration,  
2 however, when it is a reiteration of legislative discussion  
3 and events leading to adoption of proposed amendments rather  
4 than merely an expression of personal opinion.” *California*  
5 *Teachers Assn. v. San Diego Community College Dist.* (1981)  
6 28 Cal.3d 692, 700; *In re Marriage of Bouquet* (1976) 16  
7 Cal.3d 583, 590. The statement of an individual legislator  
8 has also been accepted when it gave some indication of  
9 arguments made to the Legislature and was printed upon  
10 motion of the Legislature as a “letter of legislative  
11 intent.” *In re Marriage of Bouquet, supra*, 16 Cal.3d, at pp.  
12 590-591.

13           “[A] court may disregard the plain meaning of a statute  
14 and resort to its legislative history to aid in  
15 interpretation when applying the literal meaning of the  
16 statutory language ‘would inevitably (1) produce absurd  
17 consequences which the Legislature clearly did not intend or  
18 (2) frustrate the manifest purposes which appear from the  
19 provisions of the legislation when considered as a whole in  
20 light of its legislative history. . ..’ (*Faria v. San Jacinto*  
21 *Unified School Dist.* (1996) 50 Cal.App.4th 1939, 1945, fn.  
22 and citations omitted.) But ‘[i]f the legislative history  
23 gives rise to conflicting inferences as to the legislation’s  
24 purposes or intended consequences, then a departure from the  
25 clear language of the statute is unjustified....’  
26 [citation]” *Lewis v. County of Sacramento* (2001) 93  
27 Cal.App.4th 107, 120.

28

1           The rules of statutory construction are the same for  
2 initiative enactments as for legislative enactments.  
3 *Williams v. Superior Court* (2001) 92 Cal.App.4th 612, 622.  
4 The goal is to determine and effectuate voters' intent.  
5 *Ibid.*; *Westly v. Board of Administration* (2003) 105  
6 Cal.App.4th 1095, 1109. The Court is directed to look to  
7 the language of the enactment first, giving the words their  
8 usual and ordinary meaning. *Williams v. Superior Court*,  
9 *supra*, at p.623. Only if the statutory language is  
10 susceptible of more than one reasonable interpretation may  
11 the Court resort to extrinsic evidence to determine the  
12 intent of the voters. *Ibid.* When the language is ambiguous,  
13 the Court may refer to other *indicia* of the voters' intent,  
14 particularly the analyses and arguments contained in the  
15 official ballot pamphlet. *People v. Rizo* (2000) 22 Cal.4th  
16 681, 685; *Robert L. v. Superior Court* (2003) 30 Cal.4th 894,  
17 900-909. If the statutory language is clear and unambiguous  
18 there is no need for construction, nor is it necessary to  
19 resort to *indicia* of the intent of the voters. *People v.*  
20 *Salazar-Merino* (2001) 89 Cal.App.4th 590, 596. When  
21 interpreting statutory language, courts may neither insert  
22 language that has been omitted, nor ignore language that has  
23 been inserted. *People v. Frontier Pacific Ins. Co.* (1998)  
24 63 Cal.App.4th 889, 892.

25           Applying the foregoing rules, the Court must first look  
26 to the actual language of Family Code section 308.5 to  
27 determine and effectuate the voters' intent. The words of  
28 the section must be given their usual and ordinary meaning.

1 If Family Code section 308.5 is clear and unambiguous there  
2 is no need to examine the *indicia* of the intent of the  
3 voters.

4 Family Code section 308.5 provides in full:

5 "Only marriage between a man and a woman  
6 is valid  
7 or recognized in California."

8 Of course, the operative word in the statute is  
9 "marriage." Thus, the parties' obvious fundamental dispute  
10 is whether a domestic partnership under the new statutes  
11 constitutes a "marriage." The court concludes that it does  
12 not. In the end, although the two relationships now share  
13 many, if not most, of the same functional attributes they  
14 are inherently distinct. And, despite the plaintiffs'  
15 arguments to the contrary, the least important of the  
16 distinctions between the two relationships is not the name  
17 given to the union. While "marriage" consists of rights and  
18 duties, the institution is not solely defined by those  
19 components. The word "marriage" imports much more than its  
20 entitlements as necessarily conceded by plaintiff  
21 Proposition 22 Legal Defense and Education Fund at oral  
22 argument.

23 Marriage has been the keystone of civilized society,  
24 predating governmental regulation. It has been in society's  
25 interest to maintain the institution of marriage for a broad  
26 spectrum of contemporary societal goals ranging from  
27 certainty in property rights to procreation. Over the  
28 centuries marriage has assumed both religious and civil

1 status. While it is difficult to describe marriage in a  
2 sentence or two, it is true, as pointed out by the Attorney  
3 General in oral argument, that even a young child can  
4 understand the concept.

5 The term "marriage" has been defined as "the civil  
6 status, condition, or relation of one man and one woman  
7 united in law for life, for the discharge to each other and  
8 the community of the duties legally incumbent upon those  
9 whose association is founded on the distinction of sex."  
10 Black's Law Dictionary, 4th Ed., p.1123. Marriage has been  
11 described as an important institution that is fundamental to  
12 our very existence and survival. *Loving v. Virginia* (1967)  
13 388 U.S. 1, 87; *Skinner v. Oklahoma* (1942) 316 U.S. 535. As  
14 put in *Maynard v. Hill* (1888) 125 U.S. 190, 211:

15  
16 Other contracts may be modified,  
17 restricted, or enlarged, or entirely  
18 released upon the consent of the  
19 parties. Not so with marriage. The  
20 relation once formed, the law steps in  
21 and holds the parties to various  
22 obligations and liabilities. It is an  
institution, in the maintenance of which  
in its purity the public is deeply  
interested, for it is the foundation of  
the family and of society, without which  
there would be neither civilization nor  
progress.

23  
24 At the core, the common understanding of marriage in  
25 this country is that two parties have undertaken to  
26 establish a life together and assume certain duties and  
27 obligations. *Lutwak v. U.S.* (1953) 344 U.S. 604.

28

1           However, the bundle of rights, duties, benefits, and  
2 detriments of marriage have not remained constant in this  
3 state, or across our nation. The only element of "marriage"  
4 that has remained constant and immutable throughout our  
5 nation's history - until recently - has been that the legal  
6 union has consisted only of a man and a woman.<sup>1</sup>

7           Consequently, it appears to this Court that "marriage"  
8 cannot be simply and absolutely defined by the bare bundle  
9 of rights and responsibilities conferred exclusively upon  
10 that relationship, because those components seem in  
11 continuous flux to meet the evolving mores, dynamics and  
12 demands of society. Instead, marriage is more essentially  
13 defined currently by the one historically constant element,  
14 i.e. the union between man and woman.<sup>2</sup> A marriage is no less  
15 or more a marriage, when government adds or subtracts yet  
16 another restriction, duty, or benefit exclusive to the  
17 marital relationship. The relationship remains a "marriage",  
18 in name and nature, nonetheless. Thus, the title of  
19 "marriage" is much more than just a word, and it is this  
20 very special title that was preserved by Proposition 22.

21           The plain language of Family Code section 308.5 means  
22 that California cannot recognize a "marriage" between same-  
23 sex partners that has taken place in another state, and  
24

---

25           <sup>1</sup> However in *Baehr v. Lewin* (Haw. 1996) 910 P.2d 112, the Hawaii Supreme Court  
26 struck down as violating the Equal Protection Clause of the Hawaii Constitution a Hawaii  
27 statute that denied marriage licenses to same-sex couples. This holding was subsequently  
28 overturned by an amendment to that state's constitution.

<sup>2</sup> The Court expresses no view on the constitutionality of a law that limits marriage to a  
man and a woman, such as Proposition 22, since that matter is not before the Court for  
decision.

1 cannot enact law authorizing same-sex couples to enter  
2 "marriage" in California unless first approved by the  
3 voters. The statute says nothing about what rights may be  
4 given or denied persons recognized as domestic partners in  
5 California. Since the language is clear and unambiguous on  
6 its face, the Court sees no need to resort to aids to  
7 construction, and hence does not consider the arguments of  
8 the proponents and opponents submitted to the voters or the  
9 other less compelling extrinsic evidence variously proffered  
10 by parties.

11 In 1999, the year before Proposition 22 was placed  
12 before the voters, the California Legislature created a  
13 state-wide domestic partner registry. 1999 Stat. Ch. 588.  
14 By virtue of that legislation, domestic partners were given  
15 some rights that previously had been extended only to  
16 persons who were married. For example, Family Code section  
17 297 permitted domestic partners hospital visitation on the  
18 same terms as married spouses, and health insurance coverage  
19 for partners of certain government employees. The drafters  
20 of Proposition 22 knew of the prevailing status of domestic  
21 partners, and that they had been given some rights  
22 previously enjoyed only by married couples. If the drafters  
23 of Proposition 22 had intended to limit the future rights  
24 and duties of domestic partners, language plainly stating  
25 that goal would necessarily have been included in the  
26 measure. For example, the drafters could have used the  
27 language employed to amend the Nebraska Constitution in  
28 2000. That amendment provides that "only marriage between a

1 man and a woman shall be valid or recognized in Nebraska.  
2 The uniting of two persons of the same sex in a civil union,  
3 domestic partnership, or other similar same-sex relationship  
4 shall not be valid or recognized in Nebraska." Nebraska  
5 Constitution, Article 1, section 29. The drafters of  
6 Proposition 22 did not.

7 The fact that such limiting language was not used in  
8 Proposition 22 persuades the court that it was not intended  
9 to serve as an absolute limit upon the Legislature's power  
10 to confer rights and benefits upon citizens of the state.  
11 Since nothing in the words of Proposition 22 limit any  
12 rights that may be conferred on persons who register as  
13 domestic partners, except that they may not enter  
14 "marriage," the only conclusion to be drawn is that AB 25  
15 and AB 205 do not amend, limit, or otherwise conflict with  
16 Family Code section 308.5. It would be improper for this  
17 Court to interpret Proposition 22 as denying such rights to  
18 domestic partners since to do so would require the Court to  
19 add language to the statute that was purposefully omitted.  
20 *People v. Frontier Pacific Ins. Co.* (1998) 63 Cal.App.4th  
21 889, 892.

22 The Court notes that in enacting AB 25 and AB 205, the  
23 Legislature, consistent with Proposition 22, provided that  
24 the state would not recognize same-sex marriage. AB 205,  
25 section 9. Domestic partners are required to state that  
26 they are "single" when filing a Federal or State tax return;  
27 they are prohibited from asserting that they are married on  
28 such forms. (Fam.Code, § 297.5(g).) Furthermore, the



1 legislation contains a specific finding that nothing therein  
2 shall be construed as amending Proposition 22. (Fam. Code,  
3 § 297.5(j)). Findings of the Legislature interpreting the  
4 state's constitution are entitled to deference. See *Amwest*  
5 *Surety Ins. Co. v. Wilson* (1995) 11 Cal.4<sup>th</sup> 1243.

6 The Court finds that nothing in AB 25 or AB 205  
7 "conflict with the subject matter" of Family Code section  
8 308.5. The Legislature has taken nothing away from what was  
9 enacted by the people, nor has it amended, or in any way  
10 qualified Proposition 22. Simply because the Legislature  
11 deemed it to be in the best interest of the State of  
12 California to give domestic partners rights that are  
13 substantially the same as those enjoyed by persons who are  
14 married, does not change the definition of marriage  
15 contained in Proposition 22. Persons registered as domestic  
16 partners are not married, are not recognized as being  
17 married (e.g., Fam Code § 299.2), in at least one instance  
18 are prohibited from claiming that they are married (Fam.  
19 Code, § 297.5(g), and cannot be married in this state unless  
20 the measure authorizing such is approved by the voters.  
21 Proposition 22 denied same-sex couples the right to be  
22 married and prohibits the State of California from  
23 recognizing any marriage between same-sex couples; it did  
24 not preclude the Legislature from giving certain rights to  
25 persons who have registered as domestic partners and have  
26 met the statutory requirements of that status. Proposition  
27 22 was directed at the status of being married; not what  
28

1 rights the Legislature could withhold or provide to other  
2 citizens.

3 The Court is compelled to reach this result for yet  
4 another reason. If the Court interprets Family Code section  
5 308.5 in the manner that Plaintiffs' contend is appropriate,  
6 it would result in an unconstitutional application of the  
7 law. However, the court must construe statutes in a manner  
8 that upholds their constitutionality. See *People v. Amor*  
9 (1974) 12 Cal.3d 20, 30. If, as Plaintiffs' urge, the  
10 Legislature is powerless to grant those rights embodied in  
11 AB 25 and AB 205 without returning to the voters for  
12 approval, Proposition 22 would likely violate Article 1  
13 sections 1 and 7 of the California Constitution because it  
14 would deprive to a class of citizens rights, privileges and  
15 immunities accorded another class of citizens solely on the  
16 ground of gender and/or sexual orientation. Such a result  
17 is constitutionally impermissible. *Gay Law Students Assn v.*  
18 *Pacific Telephone* (1979) 24 Cal.3d 458 (Equal Protection  
19 Clause contained in California Constitution bars  
20 discrimination on the basis of sexual orientation).

21 The public policy of California, which is reflected by  
22 its constitution, statutes, and appellate decisions favors  
23 marriage in general. *Hendricks v. Hendricks* (1954) 125  
24 Cal.App.2d 239. However, that same public policy recognizes  
25 and advances the rights of same-sex couples by clearly and  
26 unequivocally prohibiting discrimination in any form on the  
27 basis of sexual orientation. E.g., service on a jury (Code  
28 Civ. Proc., § 231.5), housing (Gov. Code, § 12955),

1 employment Government Code section 12940). In addition the  
2 Canons of Judicial Ethics prohibit judges, by words or  
3 conduct, from showing bias based upon one's sexual  
4 orientation and requires a judge to prohibit lawyers and  
5 court staff from showing any such bias. Canon 3(B)5, 6.  
6 Both the civil and criminal statutes prohibit acts of  
7 violence and "hate crimes" against anyone because of his or  
8 her sexual orientation. Civil Code section 51.7. Penal Code  
9 section 422.6. Just last year the California Supreme Court  
10 acknowledged this public policy by holding that domestic  
11 partners can utilize second-parent adoption procedures.  
12 *Sharon S. v. Superior Court* (2003) 31 Cal.4<sup>th</sup> 417, 438-439.

13 The Court is not unmindful of the decision of the Court  
14 of Appeal, Third Appellate District in *Hinman v. Department*  
15 *of Personnel Administration* (1985) 162 Cal.App.3d 516,  
16 wherein the court upheld the denial of dental benefits to  
17 unmarried same sex partners of state employees. The  
18 appellate court determined that such policy distinguished  
19 eligibility on the basis of marriage rather than unlawfully  
20 discriminated against persons on the basis of their sexual  
21 orientation. However, it is clear to this court that  
22 subsequent legislation and court decisions have called into  
23 question the continued validity of *Hinman*. See, e.g. *Romer*  
24 *v. Evans* (1996) 517 U.S. 620, 633 ("A law declaring that in  
25 general it shall be more difficult for one group of citizens  
26 than for all others to seek aid from the government is  
27 itself a denial of equal protection of the laws in the most  
28 literal sense.") and *Smith v. Fair Employment and Housing*

1     *Comm.* (1996) 12 Cal.4<sup>th</sup> 1143 (landlord cannot discriminate on  
2 basis of marital status by refusing to rent to an unmarried  
3 couple). Indeed, the decision in *Hinman* has been superseded  
4 by statute. In any event, it is questionable in light of  
5 recent statutes and court decisions whether the State may  
6 articulate a rational basis to deny rights to same-sex  
7 couples that are granted to persons who are married.

8             Since Proposition 22 would likely be held to be  
9 unconstitutional if interpreted in the manner requested by  
10 the Plaintiffs, that construction must be rejected in favor  
11 of the plain meaning of the words themselves which do not  
12 restrict the grant of rights and benefits to persons who  
13 have registered as domestic partners, even if those rights  
14 closely parallel the rights enjoyed only by married persons.

15             The parties' various requests for judicial notice and  
16 evidentiary objections are ruled upon as follows:

17             Judicial Notice:

18             The Request for Judicial Notice In Support of  
19 Opposition To Plaintiff's Motion for Summary Judgment (Case  
20 No. 03AS07035) by Defendants Schwarzenegger, Jefferds, and  
21 Brandt, is granted. The Request for Judicial Notice In  
22 Support of Opposition To Plaintiff's Motion for Summary  
23 Judgment (Case No. 03AS05284) by Defendants Schwarzenegger,  
24 Jefferds, and Brandt, is granted as to A, denied as to B.

25             The Request for Judicial Notice in Support of  
26 Plaintiff's Motion for Summary Judgment by plaintiff  
27 Proposition 22 Legal Defense and Education Fund is granted  
28 as to B, C, J. Otherwise the request is denied.

1           The Plaintiff's Request for Judicial Notice in Support  
2 of Motion for Summary Judgment by plaintiff Campaign for  
3 California Families (Case No. 03AS07035) is granted as to D,  
4 F, G, H, I, J, L, M, N, and R. Otherwise the request is  
5 denied. The Plaintiff's Request for Judicial Notice in  
6 Support of Opposition to Defendants' Motions for Summary  
7 Judgment by plaintiff Campaign for California Families (Case  
8 No. 03AS07035) is granted as to D, F, G, H, I, J, L, M, N,  
9 R, and W. Otherwise the request is denied.

10           The Requests for Judicial Notice of Defendant  
11 Intervenors (Equality California) in support of motions for  
12 summary judgment (Case Nos. 03AS07035 and 03AS05284) are  
13 granted as to A, B, C, D, F, G, H, and J, Otherwise the  
14 request is denied.

15           The Requests for Judicial Notice of Defendant  
16 Intervenors (Equality California) in opposition to  
17 plaintiffs motions for summary judgment (Case Nos. 03AS07035  
18 and 03AS05284) is granted as to A, B, C, D, and K. The  
19 requests are denied as to E, F, G, H, I, J, L, M, and N.

20           Notwithstanding the grant of judicial notice as  
21 referenced above, the Court has not considered extrinsic  
22 material in determining the meaning of Proposition 22,  
23 finding it clear and unambiguous on its face.

24           Evidentiary Objections:

25           Defendants', Schwarzenegger, Jefferds, and Brandt,  
26 evidentiary objection to the Declaration of Lynn D. Wardle,  
27 is sustained.

28

1 Plaintiff Campaign for California Families' (Case No.  
2 03AS07035) evidentiary objections Nos. 1, 2, and 3, are  
3 sustained.

4 Defendant Intervenors' (Equality California)  
5 evidentiary objections (Case Nos. 03AS07035) Nos. 1, 2, 3,  
6 4, 5, 6, 7, and 8 are sustained. Defendant Intervenors'  
7 (Equality California) evidentiary objections (Case Nos.  
8 03AS05284) Nos. 1 through 27 are sustained.

9 Defendants' motions for summary judgment are granted.  
10 Plaintiffs' motions for summary judgment are denied.  
11 Intervenors' motions for summary judgment are granted.  
12 Defendants and Intervenors shall prepare formal Judgments  
13 for the Court's signature dismissing Plaintiffs' complaints.

14

15 DATED: September 8, 2004

16

17

18

19

---

LOREN E. McMASTER  
Judge of the Sacramento Superior Court

20

21

22

23

24

25

26

27

28