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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

LARRY BOWLER, ED HERNANDEZ, RANDY THOMASSON,

Petitioners,

vs.

BILL LOCKYER, as Attorney General of the State of California,

Respondent.

EQUALITY FOR ALL; EQUALITY CALIFORNIA; KIMBERLY SWINDLE-BAUTISTA and CYPRESS GUECO BAUTISTA; and JOHN SYMONS and WILLIAM RODGERS,

Intervenors.

No.: 05CS01123

Action Filed: August 1, 2005

OPPOSITION TO PETITION FOR WRIT OF MANDATE

Hearing:

Date: August 12, 2005
Time: 9:00 a.m.
Dept: 25

(The Honorable Raymond M. Cadei)

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INTRODUCTION

Nowhere in their papers do petitioners cite the legal standard they must overcome to justify a judicial revision of the Attorney General's title and summary for their measure, nor any authority lending credence to their claims that the title and summary is inaccurate, misleading or prejudicial within the meaning of that standard. Intervenors apply that standard here to demonstrate that petitioners have raised nothing more substantial than political disputes that might have a place in ballot arguments, but certainly do not justify judicial revision of this title and summary.

The challenged title and summary states that a proposed constitutional initiative would amend the California Constitution to provide that California would recognize only marriages between one man and one woman, and that it would void and restrict registered domestic partner rights and obligations. The proposed initiative would in fact do both of those things.

Boiled down to its essentials, petitioners' complaints fall into three categories. First, they express what might be described as questions of opinion on which are the "chief" provisions of the initiative that must be included in the title and summary, and which are merely "subsidiary." (*See e.g.*, Petition for Writ of Mandate to Amend Title and Summary ["Pet."] at 11 [arguing that title should state that private entities may no longer be required to offer unmarried couples the "rights or incidents of marriage"].) Yet the California Supreme Court has made clear that "the determination of the attorney-general should be accepted" on such matters when reasonable minds may differ on the importance of the provision. (*Epperson v. Jordan* (1938) 12 Cal.2d 61, 70.) Second, petitioners propose ways to edit the title and summary – such as emphasizing that it "protects" marriage and deemphasizing the rights it would abolish – to convey their vision of "the positive view of the Initiative" rather than the "negative view of the Initiative." (Pet. at 11.) Yet the Third District Court of Appeal has declared that the Attorney General may justifiably avoid such "amorphous, value-laden" phrases where other phrases will do. (*Lungren v. Superior Court* (1996) 48 Cal.App.4th 435, 442-443.) Third, petitioners catalogue a series of purported inaccuracies in the summary, virtually all of which they nevertheless concede are truthful in their essentials. An essentially truthful title and summary must survive scrutiny, given that courts uphold even those summaries that are "technically imprecise." (*Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978)

22 Cal.3d 208, 243.) "[A]ll legitimate presumptions should be indulged in favor of the propriety of the attorney-general's actions" in drafting a title and summary. (*Epperson v. Jordan* (1938) 12 Cal.2d 61, 66.) Petitioners present no basis for overcoming those presumptions, and their petition should be denied.

ARGUMENT

I.

STANDARD OF REVIEW

The Attorney General has the authority and obligation to prepare a title and summary of "the chief purposes and points" of any proposed initiative before its proponents may circulate it among the voters to seek the support necessary to qualify it for the ballot.[1] (Elec. Code, §§ 9002, 9004.) In no more than 100 words, the Attorney General must provide "a true and impartial statement of the purpose of the measure in such language that the ballot title shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure." (*Id.* at §§ 9002, 9051.) The title and summary must "avoid misleading the public with inaccurate information." (*Amador Valley Joint Union High School Dist. v. State Bd. of Equalization, supra,* 22 Cal.3d at 243.)

The courts have long granted the Attorney General great deference in deciding which provisions of initiatives qualify as "chief" purposes or points, and how to describe them.[2] As the California Supreme Court has emphasized, "the title and summary need not contain a complete catalogue or index of all of the measure's provisions." (*Id.*) Nothing more than "a statement of the major objectives" is required. (*Brennan v. Board of Supervisors* (1981) 125 Cal.App.3d 87, 92.) The

[1] Petitioners' reliance on the Legislative Analyst's description of the initiative is inapposite. The Elections Code gives the Attorney General, not the Legislative Analyst, the duty to draft the title and summary.

[2] That deference is in no way undermined because the Attorney General may have taken a public position on matters encompassed within an initiative. The Third District Court of Appeal has squarely held that a court owes a public official charged with preparing an impartial analysis of an initiative deference even if that public official has expressed an opinion on a measure. (*Lungren v. Superior Court, supra*, 48 Cal.App.4th at 440, fn. 1.) The title and summary of this measure was drafted by the Attorney General as part of his official duties. (Elec. Code, §§ 9002, 9004.) "It is presumed that an official duty has been regularly performed." (Evid. Code, § 664.) Nothing in the title and summary as drafted suggests that the Attorney General was affected by unlawful bias or prejudice against the measure.

Attorney General may exclude matters deemed to be "subsidiary and auxiliary." (*Epperson v. Jordan, supra,* 12 Cal.2d at 70.) Whether a provision is "chief" or "subsidiary" is "obviously many times a question of opinion. *If reasonable minds can differ as to whether a particular provision is or is not a 'chief point' of the measure the determination of the attorney-general should be accepted.* (*Id.*, emphasis added.)

Courts ask only whether the Attorney General has substantially complied with the Election Code's provisions. (*Id.*) In so determining, "all legitimate presumptions should be indulged in favor of the propriety of the attorney-general's actions." (*Id.* at 66; *see also Amador Valley Joint Union High School Dist. v. State Bd. of Equalization*, *supra*, 22 Cal.3d at 243 ["As a general rule, the title and summary prepared by the Attorney General are presumed accurate. . . ."]; *Zaremberg v. Superior Court* (2004) 115 Cal.App.4th 111, 117.)

In practice this means that a summary violates the law only if it "clearly" misrepresents a major purpose of the measure, such as one that told voters a measure would "rescind[ ]" and "abolish[ ]" taxes without providing any notice that the rescinded and abolished taxes would be replaced with other taxes. (*Clark v. Jordan* (1936) 7 Cal.2d 248, 250-251; *see also Boyd v. Jordan* (1934) 1 Cal.2d 468, 472-473 [invalidating title that described measure as a "Gross Receipts Act" while providing "no information" that measure would levy substantial new taxes].) On the other hand, a summary does "compl[y] with the law" so long as it fairly represents the major thrust of the measure, even if "technically imprecise." (*Amador Valley Joint Union High School Dist. v. State Bd. of Equalization*, *supra*, 22 Cal.3d at 243.) Thus, in *Amador Valley*, the Court deferred to the Attorney General's title and summary because it summarized a measure's impact on property taxes even though it failed to mention the impact on other state and local taxes. (*Id.*; *Zaremberg v. Superior Court*, *supra*, 115 Cal.App.4th at 118 [approving title and summary; "[T]he Attorney General's summary, while "technically imprecise," nonetheless fairly represents the Act."]; *Brennan v. Board of Supervisors*, *supra*, 125 Cal.App.3d at 96-97.)

II.

THE ATTORNEY GENERAL'S TITLE AND SUMMARY OF PETITIONERS' MEASURE

Petitioners' measure would amend the Constitution by adding the following two new provisions:

> SEC. 1.1. a) Only marriage between one man and one woman is valid or recognized in California, whether contracted in this state or elsewhere.
>
> b) Neither the Legislature nor any court, government institution, government agency, initiative statute, local government or government official shall abolish the civil institution of marriage between one man and one woman, or bestow statutory rights or incidents of marriage on unmarried persons, or require private entities to offer or provide rights or incidents of marriage to unmarried persons. Any public act, record, or judicial proceeding, from within this state or another jurisdiction, that violates this section is void and unenforceable.

The Attorney General assigned the following title to petitioners' measure:

> MARRIAGE. ELIMINATION OF DOMESTIC PARTNERSHIP RIGHTS. INITIATIVE CONSTITUTIONAL AMENDMENT.

The Attorney General's summary then describes the first provision by repeating it verbatim, and the second provision by summarizing its effects on current law:

> Amends the California Constitution to provide that only marriage between one man and one woman is valid or recognized in California, whether contracted in this state or elsewhere. Voids and restricts registered domestic partner rights and obligations, for certain same-sex and heterosexual couples, in areas such as: ownership and transfer of property, inheritance, adoption, medical decisions, child custody and child support, health and death benefits, insurance benefits, hospital visitation, employment benefits, and recovery for wrongful death and other tort remedies. . . .

Thus petitioners' measure essentially does two things: (1) it creates a constitutional definition of marriage that includes only unions between one man and one woman; and (2) it strips domestic partners of rights. The Attorney General's title and summary tells voters exactly that.

III.

PETITIONERS MAY DISAGREE WITH THE ATTORNEY GENERAL'S TITLE AND SUMMARY BUT THE LAW DOES NOT ENTITLE THEM TO A DIFFERENT ONE

A. The Attorney General's Title Is Accurate And Impartial

Under any standard, the current title is neither false nor misleading in the four ways identified by petitioners.

First, petitioners dispute whether it is accurate to describe their initiative through the introductory term "Marriage," given their understanding that "Marriage" "refers only to the title of marriage, not the rights of marriage." (Pet. at 10.) Yet even if this constrained understanding of the term "marriage" were a matter of fact rather than opinion,[3] no authority requires the Attorney General to convey multiple concepts in the opening word of his title. The summary plainly proceeds to discuss the rights of marriage, providing ample notice to voters that more is at stake than the word "marriage."

Petitioners' alternative proposal – "Protection of Marriage Rights for One Man and One Woman" – is far worse. It would be misleading to some, false to many and otherwise violates the Election Code. To some voters, the term "protection" may suggest that the initiative supports marriage in some material way, such as increasing tax deductions for married couples, making the process of receiving a divorce more cumbersome, or improving access to marriage counseling or child care. Petitioners' measure does nothing of the kind. To many other voters, including intervenors, the term "protection" in this context is downright false. These Californians flatly reject the notion that excluding some couples from the institution of marriage and its associated benefits "protects"

[3] Petitioners misconstrue the Court's holding in *Knight v. Superior Court* (2005) 128 Cal.App.4th 14, to support this interpretation. Contrary to petitioners' description of the case, the Court in *Knight* did not hold that marriage "refers only to the title of marriage, not the rights of marriage." Rather, in holding that A.B. 205 (2003) did not violate Proposition 22, the Court relied in part on the fact that couples in a registered domestic partnership are not provided with all of the rights and responsibilities provided to different-sex married couples. (*See id.* at pp. 30-31 [discussing differences between domestic partnerships and marriage, and nothing: "Contrary to petitioners' suggestion, the Legislature has not created a 'marriage' by another name or granted domestic partners a status equivalent to married spouses. In fact, domestic partners do not receive a number of marital rights and benefits."].)

marriage; to the contrary it limits marriage and renders the institution discriminatory.[4] Given the politically-charged nature of the term "protection of marriage," its use here would tend to "create prejudice, for . . . the proposed measure" in violation of section 9051 of the Elections Code.

Second, petitioners dislike the use of the phrase "Elimination of Domestic Partnership Rights" in the Title, even though they concede – again and again (see pp. 9-13 below) – that the initiative would indeed eliminate such rights. For example, petitioners admit that AB 205 "expressly grants the rights of married spouses to registered domestic partners." (Pet. at 11.) That law proclaims that "Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law . . . as are granted to and imposed upon spouses." (Stats. 2003, ch. 421, sec. 297.5(a) [Assem. Bill 205] amending Family Code § 297.5(a).) Petitioners' measure would nullify those rights by prohibiting the state from "bestow[ing] statutory rights or incidents of marriage on unmarried persons," and from requiring private entities to do the same, and rendering "void and unenforceable" any judicial decree or public act bestowing such rights. There is, of course, no authority preventing the Attorney General from telling voters that a measure would do exactly what it would in fact do.

Had the Attorney General failed to disclose this fact, many voters might believe the measure concerns only the rights of married persons without understanding that the measure would void important statutory rights currently granted to unmarried couples. Such an omission would be so profoundly misleading that it may have rendered the summary defective. (*Cf. Clark v. Jordan*, *supra*, 7 Cal.2d at 250-251 [failure to tell voters that measure would increase their taxes invalidated the title].)

Petitioners' dispute is therefore less with substance, and more with word choice and emphasis. They point out that "nowhere in the Initiative is Domestic Partner or Domestic Partnership even mentioned" and express the fear that "The title portrays the Attorney General's negative view of

[4] One could further argue that including the phrase "Protection of Marriage" would be false and misleading given that courts have found that traditional marriage is not undermined by the extension of rights and benefits to same-sex or unmarried couples. (*Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 438-439, cert. den. (2004) 540 U.S. 1220 [rejecting argument that approving second-parent adoptions for unmarried couples would offend state's strong public interest in promoting and protecting marriage]; *Knight v. Superior Court, supra,* 128 Cal.App.4th at 28-29 ["Granting such rights [associated with marriage] to domestic partners of the same sex will not impede the state's interest in promoting and protecting marriage . . ."].)

the Initiative, rather than the positive view of Initiative." (Pet. at 11.) Yet here too there is no authority restricting the Attorney General's selection of terms so long as the chosen phrase, like this one, "fairly represents the Act." (*Zaremberg v. Superior Court, supra,* 115 Cal.App.4th at 118.) Moreover, the Attorney General has broad discretion to determine which of a measure's provisions are "chief" provisions and which are subsidiary. (*Epperson v. Jordan, supra*, 12 Cal.2d at 70.) His decision to focus on the deprivation of existing domestic partner rights – rather than the less straightforward concept that "the statutory rights of marriage cannot be given to unmarried persons" or the ban on creating civil unions in the future – is entitled to deference from this Court. (*Amador Valley Joint Union High School Dist. v. State Bd. of Equalization, supra*, 22 Cal.3d at 243 ["[T]he title and summary need not contain a complete catalogue . . . of all of the measure's provisions . . . [it is] presumed accurate, and substantial compliance with the 'chief purpose and points' provision is sufficient."].)

Third, petitioners complain that the Title fails to mention either the provision abolishing any obligation that private entities provide benefits to unmarried persons, or the provision requiring "that only a marriage between one man and one woman is valid or recognized in California . . . ." (Pet. at 11.) Yet the latter concept is announced in the first word of the title and spelled out verbatim in the first sentence of the summary: "MARRIAGE. . . Amends the California Constitution to provide that only marriage between one man and one woman is valid or recognized in California, whether contracted in this state or elsewhere." And the former concept is encompassed within the summary's listing of rights that would be lost, many of which are commonly understood to be offered by private entities, including health, death, insurance and employment benefits, and hospital visitation. Whether the measure's impact on private entities should be conveyed explicitly as petitioners wish, or implicitly as the Attorney General has done is squarely within the Attorney General's discretion. (*Fox Bakersfield Theatre Corp. v. City of Bakersfield* (1950) 36 Cal.2d 136, 145 [city may explain that initiative would impose a tax without describing "the method of computing the tax as to some

businesses but not others"];[5] *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra*, 22 Cal.3d 208 at 243 [summary may describe measure's impact on property taxes but omit impact on other state and local taxes; "The title and summary need not contain a complete catalogue or index of all of the measure's provisions."].)

Fourth, petitioners claim the Title is prejudicial because it suggests the measure is "not about protecting marriage, but only about eliminating rights . . . ." (Pet. at 11-12.) But the request to replace "marriage" with "protection of marriage," and to strike the reference to "eliminating rights" would unduly draw the Attorney General into the politics of the measure. Indeed, "Protection of Marriage" is precisely the kind of "amorphous, value-laden term" that a court has refused to fault the Attorney General for avoiding. (*Lungren v. Superior Court, supra,* 48 Cal.App.4th at 442-443.) The *Lungren* Court considered a challenge to the summary for Proposition 209, which prohibited racial and other preferences in the public sector. The Attorney General's summary stated that Proposition 209 prohibited certain entities "from discriminating against or giving preferential treatment to any individual or group . . . on the basis of race, sex, color, ethnicity, or national origin." Opponents instead wanted the summary to emphasize that the measure would prohibit "affirmative action." (*Id.* at 439.) Although the Court acknowledged that affirmative action programs could be affected, it refused to order the change because it "fail[ed] to see why the term *must* be added to describe 'the character and real purpose of the proposed measure.' [citation]." (*Id.* at 442, emphasis added.) The same holds true here. It is not necessary to use "Protection of Marriage" to convey to voters that this measure changes the laws governing marriage. "Marriage" conveys the same concept without taking sides in what petitioners' concede is a "hotly debated" and "sensitive" issue. (Pet. at 11, 12.) Such conflicting opinions are for proponents and opponents of a measure to present in their ballot arguments. They have no place in an Attorney General's title.

[5] *Fox Bakersfield Theatre Corp. v. City of Bakersfield, supra*, 36 Cal.2d 136 considered a city's summary. The standard of review for summaries by cities is the same as that for summaries prepared by the Attorney General. (*Horneff v. City & County of San Francisco* (2003) 110 Cal.App.4th 814, 819-820.)

B. The Attorney General's Summary Is Accurate And Impartial

All parties agree that petitioners' measure will deprive registered domestic partners of rights that the Attorney General has enumerated. No one disputes that they will lose rights to **child support, death benefits**, and the **right to recover for wrongful death and other tort remedies**. Furthermore, petitioners concede that registered domestic partners will lose community property rights (**ownership and transfer of property**); the right to "inherit through statutory **inheritance**," access to stepparent **adoption** procedures; the right to be regarded as a spouse for purposes of making emergency health care decisions (**medical decisions**); **child custody** rights; **health and insurance benefits** from "government entities and officials"; and **employment benefits** from "government entities and officials."

Because the Attorney General has plainly and accurately listed rights that would be lost under the initiative, the analysis should end here with these undisputed facts. Petitioners cannot sidestep this truth by parsing through the categories trying to identify rights that domestic partners might be able to keep as part of the rights that are generally available to all Californians, such as the right to enter a contract or execute a will. First, the summary does not say that the measure "Voids and restricts ***all*** registered domestic partner rights and obligations"; it states only that it "Voids and restricts registered domestic partner rights and obligations." The retention of a handful of rights neither undermines the truth of the statement, nor meets the standard justifying revision. (*See, e.g., Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra*, 22 Cal.3d at 243 [Court deferred to Attorney General's title and summary because it summarized a measure's impact on property taxes even though it failed to mention the impact on other state and local taxes; "title and summary need not contain a complete catalogue . . . . of all of the measure's provisions."].) Second, "all legitimate presumptions should be indulged in favor of the propriety of the attorney-general's actions." (*Epperson v. Jordan, supra*, 12 Cal.2d at 70.)

In this context, intervenors address each of petitioners' eleven challenges to the summary. First, at pages 12 and 13 of their brief, petitioners complain that the summary does not describe the provision that would prohibit the government from "abolish[ing] the civil institution of marriage between one man and one woman." Yet no one is threatening to abolish marriage for

heterosexual couples in California, and it is reasonable to suspect that neither the courts, Legislature or voters ever will. In fact, it is not even clear that the government could abolish marriage given that marriage has been deemed a fundamental right under the federal and California constitutions. (*Zablocki v. Redhail* (1978) 434 U.S. 374, 383; *Ortiz v. Los Angeles Police Relief Assn.* (2002) 98 Cal.App.4th 1288.) The Attorney General therefore has the discretion to classify this provision as "subsidiary and auxiliary" and so decline to mention it in the title and summary. (*Epperson v. Jordan*, *supra*, 12 Cal.2d at 70; *see also Zaremberg v. Superior Court*, *supra*, 115 Cal.App.4th at 116-117.)

Next, petitioners enumerate ten challenges. None have merit.

1. It is more accurate to say that the measure "voids ***and*** restricts" rights as the Attorney General has done, rather than saying it "voids ***or*** restricts" rights as petitioners prefer. (Pet. at 13.) The measure will "void" existing rights and "restrict" efforts to regain or expand those rights in the future. Thus, for example, intervenors Ms. Bautista-Swindle and Ms. Bautista would lose their right to accumulate community property, while Equality California could not fight to restore those rights by lobbying the government or bringing litigation in the courts.

2. Petitioners fault the wording in the summary stating that the measure voids and restricts rights "for certain same-sex and heterosexual couples." (*Id.* at 13-14.) Petitioners find this wording confusing for reasons that are themselves confusing. The measure would not have "the same effect on all unmarried couples." Those couples who are currently registered domestic partners would lose rights they possess, and unmarried couples who are not registered domestic partners may lose different but other kinds of rights.

3. Petitioners dispute the extent to which rights in the area of "**ownership and transfer of property**" would be lost because domestic partners might retain, for example, the right to own property jointly through a business partnership. (Pet. at 14.) Yet they concede that the measure

voids the ability of registered domestic partners to hold title as community property, which is sufficient to uphold the accuracy of the summary. (*Id.*)

4. Petitioners challenge the inclusion of "**inheritance** rights" even though they admit unmarried persons could no longer "inherit through statutory inheritance." (Pet. at 14.) Specifically, domestic partners would lose the statutory right of inheritance for separate property, currently permitted under AB 2216 (Stats. 2002, ch. 447) and community property, currently allowed under AB 205 (Stats. 2003, ch. 421). This means, for example, that because Ms. Swindle-Bautista and Ms. Bautista have not yet completed their wills, should anything happen to one of them after the initiative passes but before they execute their wills, their family will lose the critical protection provided to families through the intestate succession laws.

5. Petitioners challenge the inclusion of **adoption** rights on the theory that second-parent adoption procedures might still be available, even though they agree that AB 25 would no longer authorize stepparent adoptions for domestic partners. (Pet. at 14.) This is a critical loss. Unlike stepparent adoptions, second-parent adoptions treat the parent as a stranger to the child and require the parent to submit to a home visit. For Ms. Bautista, who currently intends to complete a step-parent adoptions, this would mean less certainty, more expense and time, and the necessity of having to prove a social worker that she is fit to care for the child she has raised as her daughter since birth.

6. Petitioners dispute the inclusion of "**medical decisions**" even though they concede that their measure would void AB 25's provision granting registered domestic partners the right to make emergency health care decisions for an incapacitated partner. (Pet. Mem. at 14.) Thus, although Mr. Symons and Mr. Rodgers have already executed medical directives to protect themselves in emergencies, Ms. Bautista and Ms. Swindle-Bautista and other registered domestic partners who have not yet incurred this expense could lose their default protection to be cared for by their partners in medical emergencies. The fact that there are other ways that same-sex and other unmarried partners may be able to obtain protections that are currently provided automatically to registered domestic partners does not undermine the accuracy of the statement that rights to make medical decisions would be voided.

7. Petitioners dispute the extent of the loss of **child custody** rights, yet they do not dispute that rights would be lost. (Pet. at 15.) The losses are far greater than petitioners suggest. Domestic partners would be stripped of AB 205's presumption that a child born into a domestic partnership is the legal child of both partners. (Stats. 2003, ch. 421.) That means that any parent who has not yet completed an adoption of his or her child might have limited recourse for seeking custody. In addition, the initiative's proposed finding that it is in every child's best interest as a matter of law to have one parent of each sex, irrespective of the actual needs of each individual child, could mean that a person who is lesbian or gay is at risk of losing custody of their children in disputes with former different-sex spouses who have remarried solely because of their sexual orientation.

8. Petitioners flatly admit that their initiative "would prohibit government entities and officials from bestowing . . . **insurance and health benefits** on unmarried couples" but argue that some private entities might still provide benefits to unmarried couples, and that public employees could still designate their domestic partners as beneficiaries on their life insurance policies. (Pet. at 15.) In fact, registered domestic partners would lose the protection of AB 2208 (Stats. 2004, ch. 488), which requires health plans and insurers to provide equal coverage to domestic partners and spouses. As a result, Ms. Swindle-Bautista might lose the health insurance she receives through Ms. Bautista's private sector employer. The initiative would also prevent all public employers, including Mr. Rodgers municipal employer, from providing health benefits to domestic partners.

9. Petitioners ignore the language of their own proposed initiative to argue that domestic partners might not lose their **hospital visitation** rights. (Pet. Mem. at 15.) Petitioners claim that because hospital visitation rights have never been a statutory right for married couples, the initiative would not affect the right of registered domestic partners to hospital visitation. Contrary to petitioners' argument, however, the initiative specifically says that, if passed, it would void and prohibit the passage of legislation requiring private entities to bestow "marital" rights on unmarried couples. It is certainly a plausible argument that AB 26 did exactly that, by requiring that hospitals provide visitation to registered domestic partners in a manner equal to the visitation they allow

married, different-sex spouses. (*See, e.g.,* 199 Leg. Sess. ch. 588, sec. 1; Health & Saf. Code, § 1261.) Consequently, under the initiative, private hospitals no longer would be required to permit domestic partner visitation. That interpretation is entitled to deference. (*Zaremberg v. Superior Court, supra,* 115 Cal.App.4th at 117 [applying presumption to Attorney General's interpretation given his "difficult task" in describing a measure that gives rise to "multiple reasonable interpretations of the referendum and the complex underlying legislation . . ."].)

10. Petitioners flatly admit that their initiative "would prohibit government entities and officials from bestowing" **employment benefits** on unmarried couples, but argue that private entities could still provide benefits, and all employers could bestow employment benefits that are not based on marital status. (Pet. at 16.) Regardless whether some private employers continue to offer benefits, many existing benefits for registered domestic partners would undoubtedly be lost, such as Labor Code section 233(a)'s right to use sick domestic partner or child. By way of further illustration, Mr. Symons is listed as the beneficiary on Mr. Rodger's government employee pension plan. Currently, because of A.B. 205, Mr. Symons would be entitled to the same pension payment as a surviving spouse. (Stats. 2003, ch. 421.) Under the initiative, Mr. Symons would lose that equal pension right and would only be entitled to the amount that Mr. Rodgers actually paid into the plan.

Finally, petitioners' comparison of the Attorney General's Title and Summary of another pending initiative pertaining to marriage and domestic partnerships is irrelevant to this case. The parties have not briefed the possible legal effects of that initiative, the language of those initiatives are quite different from the language in this initiative, and the propriety of those titles and summaries are not before this Court.[6]

[6] Intervenors object to any request petitioners may make to extend the time period they have in which to circulate their initiative petition seeking qualification for the ballot. Petitioners delayed in bringing this litigation: they waited a week to file their petition; waited a day or more to serve it; and then scheduled the hearing over two weeks later. There is no justification for requesting such time under such circumstances.

CONCLUSION

For these reasons, intervenors respectfully request that the Court deny the petition.

Dated: August 10, 2005

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On August 10, 2005, I served a true copy of the following document(s):

Opposition to Petition for Writ of Mandate

on the following party(ies) in said action:

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☒ **BY FACSIMILE:** By causing said document(s) to be faxed to said party(ies) at the fax number(s) listed.

☐ **BY E-MAIL**: By causing said document(s) to be faxed to said party(ies) at the e-mail address(es) listed.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on August 10, 2005, in San Leandro, California.

G. Allen Brandt