Appellate Case No. G038437

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE

---

**DARRIN ELLIS,**
**Petitioner, Appellant,**

**vs.**

**DAVID JAMES ARRIAGA,**
**Respondent.**

---

Orange County Superior Court Case No. 06D008042
The Honorable Mark S. Millard, Judge

---

# APPELLANT'S OPENING BRIEF

---


Jennifer C. Pizer (SBN 152327)
Tara L. Borelli (SBN 216961)
LAMBDA LEGAL DEFENSE & EDUCATION FUND, INC.

3325 Wilshire Blvd., Ste. 1300
Los Angeles, CA 90010
Telephone: (213) 382-7600
Facsimile: (213) 351-6050

Rebecca J. Birmingham (SBN 192383)
A. Stephanie Loftin (SBN 147311)
Sharon L. Taylor (SBN 196716)
LONG BEACH LAW, INC., APLC

3233 East Broadway
Long Beach, CA 90803-5817
Telephone: (562) 621-6300
Facsimile: (562) 621-1001

***Attorneys for Petitioner, Appellant Darrin Ellis***


*Service on the Office of the Attorney General, California Department of Justice required by California Rule of Court 8.29(c)(1).*

# TABLE OF CONTENTS

**Page**

**TABLE OF CONTENTS**
(continued)

**Page**

**TABLE OF CONTENTS**
(continued)

**Page**

# TABLE OF AUTHORITIES

**Page**

**CASES**

## TABLE OF AUTHORITIES
(continued)

**Page**

## TABLE OF AUTHORITIES
(continued)

**Page**

## TABLE OF AUTHORITIES
(continued)

**Page**

## TABLE OF AUTHORITIES
(continued)

**Page**

## TABLE OF AUTHORITIES
(continued)

**Page**



**CONSTITUTIONAL PROVISIONS**

# TABLE OF AUTHORITIES
(continued)

**Page**

## STATUTES

## TABLE OF AUTHORITIES
(continued)

**Page**



## OTHER AUTHORITIES

## TABLE OF AUTHORITIES
(continued)

**Page**

## I. Introduction

This appeal presents one question of law: whether California's putative spouse doctrine or protections analogous to it ever can be available to assist a person who had a reasonable, good faith but mistaken belief that he or she was in a valid California registered domestic partnership. The Superior Court answered this question in the negative, granting judgment on the pleadings without making any factual findings. That legal ruling was erroneous and should be reversed and this action remanded so that Plaintiff and Appellant Darrin Ellis ("Ellis" or "Appellant") may show as a factual matter why he should be allowed to proceed as a putative registered domestic partner in an action against his former domestic partner.

As explained in more detail in the Statement of Facts below, Ellis lived in a committed, intimate relationship for five-and-a-half years with his same-sex domestic partner, David Arriaga ("Arriaga" or "Respondent") before they separated. During their relationship, Ellis wished to formalize the couple's emotional and financial commitments to each other by registering as domestic partners with the State, and believed the desire was mutual. In 2003, two years after the couple began their relationship, they together completed the required registration form and had it notarized, and Ellis understood that Arriaga thereafter sent it to the California Secretary of State. After living and making plans with Arriaga for years, Ellis was shocked to learn in 2006, when the couple separated, that Arriaga never transmitted the form to the Secretary of State, and that the couple had never had their domestic partnership validly registered.

Ellis found himself exposed to precisely the unfair surprise and financial vulnerability that the California courts acted to resolve through the judicial creation of the putative spouse doctrine many decades ago. The

courts crafted this doctrine to shield innocent parties who invest themselves and their resources in a committed relationship with the good faith belief that it validly had acquired formal government sanction — only to discover later that a previously unknown, technical defect threatened to leave the separating couple as legal strangers, without access to standard court processes for fair resolution of their financial matters. For Ellis, this meant the sudden and distressing discovery that, among other things, he might not receive an appropriate distribution of what he understood to be his community property interest in the family home and the couple's jointly acquired personal property.

Ellis filed a dissolution of domestic partnership action in the trial court, which the court dismissed based on its view that California's domestic partnership law does not make putative relationship protections applicable to domestic partners. The trial court's interpretation of California's principal domestic partnership statute, however, was founded on several errors warranting reversal. For example, the trial court held that Ellis could not be recognized as a putative domestic partner under the domestic partnership law because the court interpreted the law as providing family law rights and responsibilities only to validly registered domestic partners. The domestic partnership law, however, expressly applies to domestic partners the rules of nullity, which are by definition rules that operate only when a relationship has failed validly to acquire formal legal sanction. Similarly, the trial court failed to appreciate that the domestic partnership law, by its broad and systematic application of "the same rights" and "the same responsibilities" of spouses to domestic partners, is not a law of enumerated *rights,* but rather a law that enumerates the specific *exceptions* to its general rule. The putative spouse doctrine is not among

the domestic partnership law's limited exceptions. Each of these issues reveals the underlying ambiguity in the law warranting an examination of the legislative intent, which the trial court entirely failed to consider.

Ellis filed the instant appeal to challenge these and other errors, and accordingly presents the Court with three related issues:

(1) Does the California Domestic Partner Rights and Responsibilities Act of 2003, which affords "the same rights" and "the same responsibilities" of spouses to domestic partners, provide domestic partners with the protections of California's putative spouse statute such that they must be afforded an opportunity to prove their status as "putative registered domestic partners" in a dissolution or nullity action?

(2) Alternatively, should a person with a good faith but mistaken belief that he or she was in a registered domestic partnership be able to proceed as a putative domestic partner as a matter of equity?

(3) If protections comparable to those afforded to heterosexuals through the putative spouse doctrine were not available under California law to lesbians and gay men who innocently but mistakenly believed they entered a valid registered domestic partnership, would that denial of comparable protection constitute a violation of the California Constitution's equal protection guarantee?[1]

[1] Ellis does not challenge in this appeal the constitutionality of California law's present exclusion of same-sex couples from civil marriage — a separate and distinct legal question that is currently pending before the

## II. Statement of Appealability

Appellant Darrin Ellis appeals from the Order Granting Respondent's Motion to Dismiss Petition for Dissolution of Domestic Partnership ("Order") entered by the Superior Court of Orange County on February 2, 2007. (Clerk's Transcript ("CT"), p. 59.) As a "written order signed by the court and filed in the action," the Order constitutes a final appealable judgment pursuant to Code of Civil Procedure section 581d. (*Ibid.*)

## III. Statement of Facts

The simple facts of Ellis and Arriaga's relationship and separation are no different than the circumstances that lead many other couples who are married or in domestic partnerships to separate and unwind their assets and lives together. The former couple entered into an intimate, long-term relationship in 2001 and, after five-and-a-half years as a committed couple, separated on May 1, 2006. (CT, p. 1.) Ellis testified that, for the first two-and-a-half years of their relationship, the couple shared a mutual desire to register with the State of California as domestic partners.[2] (CT, p. 27:12-17.) On August 14, 2003, Ellis and Arriaga met with an attorney who

---

California Supreme Court. (See *In re Marriage Cases*, (S147999, review granted).) Ellis challenges instead the constitutional infirmity that exists in a scheme of family protection laws that affords putative spouses the critical protections of that legal rule, but denies those protections to similarly situated domestic partners.

[2] The factual testimony in the record consists solely of the declarations each party submitted as part of the briefing relating to Respondent's motion to dismiss. The trial judge resolved the case as a matter of law at the hearing on Respondent's motion to dismiss, and did not take any live, sworn testimony.

assisted them with estate planning matters, advised them that a bill was pending in the California Legislature ("Legislature") that could significantly change the nature of registered domestic partnership in California, and prepared a Declaration of Domestic Partnership ("Declaration") that Ellis and Arriaga each executed and had duly notarized. (CT, pp. 27:18-25 – 28:6; 38.) Ellis left the attorney's office with the understanding that Arriaga had agreed to mail the Declaration to the California Secretary of State as required to complete the registration process. (CT, p. 20:6-11.) Ellis testified that he did not discover until the couple separated on April 28, 2006 that Arriaga had not mailed the Declaration to the Secretary of State, and that the couple's domestic partnership therefore had never been validly registered. (CT, p. 29:10-11.) Having labored under the illusion that their relationship had formal legal sanction, Ellis testified that he was shocked to make this discovery. (CT, p. 28:26-27.)

Arriaga's testimony about the underlying circumstances differs. In particular, he contests Ellis's claim that Ellis was ignorant of the lack of a valid registration. (CT, p. 17:6-10.) Because the trial court granted judgment on the pleadings, however, this Court "accepts as true all material factual allegations" in Ellis's complaint, "giving them a liberal construction." (*Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1254.) Thus, for purposes of this appeal, it must be accepted that, although both parties agree that the couple did not validly register as domestic partners with the California Secretary of State (CT, pp. 18:10-12; 29:6-8), Ellis innocently believed that they had. (CT, p. 28:10-16.)

## IV. Procedural History

On September 8, 2006 Ellis filed a Petition for Dissolution of Domestic Partnership ("Petition") in the Superior Court of Orange County seeking a fair and equitable distribution of the domestic partnership assets, including each partner's community property share of the couple's home and jointly acquired personal property, and termination of the court's jurisdiction to award Arriaga spousal support. (CT, pp. 1-2.) On October 24, 2006, Arriaga filed a motion to dismiss for failure to state a claim, arguing that no domestic partnership was validly formed, that the putative spouse doctrine is not applicable to domestic partners under California law, and that the facts do not support a determination that Ellis is a putative registered domestic partner. (CT, pp. 12-20.) Ellis responded that the California Domestic Partner Rights and Responsibilities Act of 2003 ("AB 205") (Stats. 2003 ch. 421, eff. Jan. 1, 2005) requires the application of the putative spouse doctrine for recognition of putative domestic partners, and that his Petition should be sustained on that theory. (Reporter's Transcript ("RT"), p. 5:4-12.)

The court granted Arriaga's motion to dismiss after oral argument during a noticed hearing on December 8, 2006, ruling as a "clear issue of law" that the putative spouse doctrine does not apply to domestic partners, and expressly declining to reach any factual issues. (RT, p. 13:19-22.) The trial court rested its ruling upon a reading of the following two provisions of AB 205, as codified in Family Code section 297.5:

- "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."

(Fam. Code § 297.5(a).)

- "Former 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 former spouses."

(Fam. Code § 297.5(b).)

The trial court relied on a literal reading of these two sections to reach its holding, observing that Family Code section 297.5(a) provides that "'*Registered* domestic partners shall have the same rights…'" and Family Code section 297.5(b) provides that "'*Former registered* domestic partners shall [have the same rights]…'" (RT, p. 3:18-22) (emphasis added). The court concluded that AB 205 therefore requires domestic partners to validly register with the state to receive the same rights and responsibilities as those afforded to spouses. (RT, pp. 3:23-4:2.) The court reasoned that the Legislature's failure similarly to incorporate "putative domestic partners" into the text of AB 205 evinces its intent to exclude those in same-sex relationships from that protection, stating that if "the legislature intended to apply putative domestic partnerships, then it could have said so." (RT, p. 4:3-8.)

The trial court signed and entered an Order Granting Respondent's Motion to Dismiss Petition for Dissolution of Domestic Partnership on February 2, 2007, sustaining Arriaga's motion to dismiss, and dismissing Ellis's Petition. Ellis timely filed a Notice of Appeal in the Superior Court of Orange County on March 28, 2007. (CT, pp. 76-77.)

## V. Argument

### A. Standard of Review

This appeal asks the Court to consider several issues: the proper construction of AB 205, whether principles of equity should protect a party who innocently believed he was in a registered domestic partnership and allow him to access the family court procedures available to those who validly enter that status, and the constitutionality of providing putative relationship protections to a person who believed in good faith that he was validly married, and denying those putative relationship protections to a person who believed in good faith that he was in a validly registered California domestic partnership. All of these issues present pure questions of law and therefore the ruling below must be reviewed *de novo.* (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1032 [issues of law are reviewed *de novo*]; *People ex rel Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432 [construction of a statute is "a pure question of law" that "is examined de novo"]; *Redevelopment Agency of City of Long Beach v. County of Los Angeles* (1999) 75 Cal.App.4th 68, 74 [the proper interpretation of statutory language is a question of law subject to *de novo* review "independent of the trial court's ruling or reasoning"] [internal citations omitted]; *Townsel v. San Diego Metro. Transit Dev. Bd.* (1998) 65 Cal.App.4th 940, 946 [constitutional issues are reviewed *de novo*].) On this appeal, therefore, the Court is to consider each issue presented herein "'anew; afresh; over again.'" (*Wieser v. Board of Retirement* (1984) 152 Cal.App.3d 775, 782 [internal citation omitted].)

### B. The Trial Court Erred in Holding That AB 205 Does Not Protect Putative Domestic Partners in the Same Ways that Putative Spouses Are Protected, Despite AB 205's Extension of the "Same Rights" and "Same Responsibilities" of Spouses to Domestic Partners.

The trial court's interpretation of AB 205 and its ruling that AB 205 does not extend the protections and obligations of the putative spouse statute to similarly situated domestic partners is founded on several errors, including a failure to apply the proper rules of statutory construction to effectuate the Legislature's clear intent (RT, pp. 4:26 – 5:3; p. 5:4-12), and a fundamental misapprehension of the broad, remedial nature of the statute's law reform purpose (RT, p. 4:3-4). Each error of statutory construction is a sufficient ground for reversal, and all must be examined independently by this reviewing Court.

#### 1. Standard Rules of Statutory Construction Require That Effect Be Given to the Legislative Intent That Animates AB 205.

Statutory analysis "starts from the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent." (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1007; see also *In re Derrick B.* (2006) 39 Cal.4th 535, 539 [same]; Code Civ. Proc., § 1859 ["In the construction of a statute the intention of the Legislature … is to be pursued, if possible …"].) And this legislative "intent is critical. Those who write statutes seek to solve human problems. Fidelity to their aims requires us to approach an interpretive problem not as if it were a purely logical game, like a Rubik's Cube, but as an effort to divine the human *intent* that underlies the statute." (*Burris v. Superior Court* (2005) 34 Cal.4th 1012, 1017.)

In determining legislative intent, courts look first to the words of the statute themselves, giving the language its usual, ordinary meaning. (*People v. Trevino* (2001) 26 Cal.4th 237, 241.) When the statutory language is clear and unambiguous, the courts need look no further. (*People v. Flores* (2003) 30 Cal.4th 1059, 1063.) But when statutory language contains a latent ambiguity, or may reasonably be interpreted in more than one way, courts look "to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (*Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340; see also *Granberry v. Islay Invs.* (1995) 9 Cal.4th 738, 744 ["When the language is susceptible of more than one reasonable interpretation, however, we look to a variety of extrinsic aids, including … the legislative history …"]; *Cequell III Communications I, LLC v. Local Agency Formation Commission of Nevada County* (2007) 149 Cal.App.4th 310, 318 ["Where, however, the statutory language is ambiguous on its face or is shown to have a latent ambiguity such that it does not provide a definitive answer, we may resort to extrinsic sources to determine legislative intent."].)

A court's review of potentially ambiguous language does not begin and end with a literal reading of statutory terms, but rather recognizes that ambiguity often emerges from overall context. (*People v. Goodloe* (1995) 37 Cal.App.4th 485, 491 ["whether a statute is ambiguous is not always readily ascertainable"]; *Tarpy v. County of San Diego* (2003) 110 Cal.App.4th 267, 273 ["whether a statute is ambiguous is not always readily ascertainable and, in determining this issue, we must consider it in the context of the relevant statutory framework"].)

In this case, the trial court recognized that it was selecting one of two plausible interpretations of ambiguous statutory language. The court ruled that the statute's recitation of the protections to be afforded "registered domestic partners" and "former registered domestic partners" should be seen as a limiting principle precluding any rights and duties for those who do not qualify as one of the groups delineated expressly in the statute. (RT, p. 5:4-2.) The court acknowledged, however, the plausibility of Ellis's interpretation, which relies on the Legislature's unequivocal statement of purpose in the uncodified portions of AB 205 that the statute intended to reduce discrimination against lesbians, gay men and their families by granting "the same" rights and responsibilities to domestic partners as are afforded to spouses. (RT, p. 13:22-25 [granting Arriaga's motion to dismiss, the trial court commented that "I disagree with [Ellis's] position, but I wouldn't certainly be offended if someone disagreed with me in a higher court"].)

Because AB 205's language is ambiguous on this central point, it is necessary to consider AB 205's legislative history in order to "to give effect to manifest purposes that, in light of the statute's legislative history, appear from its provisions considered as a whole." (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1335, fn. 7.) Even if this Court were to disagree with Appellant and the Superior Court and find no ambiguity in AB 205's terms, however, an examination of the legislative history remains clearly appropriate to answer the questions raised by Appellant, for "the intent of the Legislature is the end and aim of all statutory construction." (*Title Ins. & Trust Co. v. County of Riverside* (1989) 48 Cal.3d 84, 95.)

### 2. The Legislature Intended AB 205 to Equalize the Rights and Responsibilities Afforded to Spouses and Domestic Partners, Using Broad Terms to Accomplish This Purpose Rather Than an Enumeration of Rights as the Trial Court Mistakenly Assumed.

The legislative history of AB 205 has been considered in some detail by the California Supreme Court in a recent decision involving registered domestic partners who raised a marital status discrimination claim under California's Unruh Act. (*Koebke v. Bernardo Heights Country* Club (2005) 36 Cal.4th 824 (*Koebke*).) The Supreme Court's observations were guided by the Legislature's expressly stated intent and the broad remedial nature of the rights and responsibilities afforded by AB 205 — both of which reveal the error in the trial court's formalistic reading of the statute in this case.

#### a. The Legislature Stated a Clear Intent to Provide Domestic Partners the Same Means For Orderly Division of Assets Upon Separation That Spouses Receive — the Protection Upon Which the Putative Spouse Doctrine is Founded.

The California Supreme Court noted in *Koebke* that the Legislature's clearly stated purpose in enacting AB 205 was to protect "all caring and committed couples" regardless of sex and sexual orientation by providing them with the "essential rights, protections, and benefits" to shelter them "from the economic and social consequences of abandonment, separation" and "other life crises." (Stats. 2003, ch. 421, § 1, subd. (a); Stats. 2003, ch. 421, § 1, subd. (b) [recognizing the need for family protections for "lesbian, gay and bisexual Californians" who have "formed lasting, committed, and caring relationships with persons of the same sex"].) This intent to shield

couples from the difficult and sometimes calamitous circumstances precipitated by a couple's separation also is reflected in the Assembly Floor Analysis of AB 205, which chronicles the author's statement that the bill provides an "urgently needed measure of equity to registered domestic partners" who "experience the same range of life challenges as married couples do. They pool their financial resources to make ends meet … Some of them separate and disagree about their respective obligations. There is no good reason to deny these couples the legal rights and duties that have been designed to help families care for each other and cope with crises." (Assembly Floor Analysis, August 30, 2003, p. 3, *available at* <http://www.leginfo.ca.gov/pub/03-04/bill/asm /ab_0201-0250/ab_205 _cfa_20030830_144813_asm_floor.html>). (See also Senate Judiciary Committee Analysis, July 2, 2007, p. 8 ["taking unresolved issues to court under the current rules governing legal separations and dissolutions or nullity of marriage would be a more organized approach to dealing with [the complications that arise from the termination of long-term domestic partnerships], especially where children and property are involved"], *available at* <http://www.leginfo.ca.gov/pub/ 03-04/bill/asm/ab_0201-0250/ab_205_cfa_20030702_125401_sen_comm. html>.)

The putative spouse doctrine was developed to safeguard innocent parties from precisely these types of hardships. The putative spouse doctrine originally was a judicial creation of equity. The Legislature subsequently codified the doctrine in the Family Code (Fam. Code § 2251; Stats. 1992, ch. 162 § 10), and the doctrine has been affirmed by modern courts as central to helping the state ensure innocent parties' access to an orderly system for recovering their investments in a relationship, such that separating parties are better able to build independent, stable lives. (See *In*

*re Marriage of Vryonis* (1988) 202 Cal.App.3d 712, 723, fn.7 ["the putative marriage doctrine operates to protect expectations in property acquired through joint efforts"]; *Estate of Levie* (1975) 50 Cal.App.3d 572, 576 [the right of a putative spouse "is derived instead from '[equitable] considerations arising from the reasonable expectation of the continuation of benefits attending the status of marriage entered into in good faith . . .'"] [internal citation omitted], rev'd on other grounds by *Estate of Leslie* (1984) 37 Cal.3d 186, 197-199.)

Providing domestic partners with protections analogous to those of putative spouses is the best way of satisfying the Legislature's intent to provide domestic partners with a methodical ordering and transferring of property interests should their relationship end.[3]

**b. The Trial Court Erred in Holding That AB 205 Must Enumerate Putative Domestic Partner Protections Expressly.**

---

[3] The California Supreme Court noted in *Koebke* that "the Legislature has made it abundantly clear that an important goal of [AB 205] is to create substantial legal equality between domestic partners and spouses." (*Koebke*, *supra*, 32 Cal.4th at p. 845.) The Legislature's intent to provide domestic partners with a fair, predictable set of rules for holding and transferring property also is manifest in other legislative enactments. Senate Bill 565, enacted in 2005 to shield domestic partners from real property reappraisals upon death or separation, expressly stated its intent to expand "the rights of registered domestic partners with respect to property ownership [to] further California's interests in promoting family relationships and protecting family members during life crises." (Stats. 2005, ch. 416 §§ 1(b), 1(c) (SB 565); see also Senate Bill 1827, enacted in 2006 to protect domestic partners' property interests by providing them access to the same potentially favorable tax treatment available to spouses who report earned income as community property and may file a joint state income tax return [Stats. 2006, ch. 802 § 1 (SB 1827)].)

The trial court concluded that domestic partners may not claim protections comparable to those of the putative spouse doctrine, reasoning that if "the legislature intended to apply putative domestic partnerships, then it could have said so." (RT, p. 4:3-4.) The trial court's ruling mistakenly assumes that AB 205 is a statute of enumerated rights, though an examination of the express language of the statute makes apparent that the Legislature neither intended nor attempted to state all of the rights, responsibilities and presumptions that were affected by the enactment. Rather, AB 205 "effectuates the legislative intent by using the broadest terms possible to grant to, and impose upon, registered domestic partners the same rights and responsibilities as spouses," and provides expressly that it "shall be construed liberally" for these purposes. (*Koebke, supra,* 32 Cal.4th at p. 838.) These broadly encompassing terms provide that domestic partners generally shall receive the same rights and be subject to the same responsibilities throughout the successive stages of their lives and relationship "whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law." (Fam. Code § 297.5 et seq.) Indeed, the Legislature hardly could have effected the same changes through enumeration in any practicable way, as the trial court presumed, since a legislative itemization of each such benefit and obligation would have required AB 205 to amend individually hundreds if not thousands of California statutes throughout each of California's numerous and lengthy codes.[4]

[4] See "California's Domestic Partnership Laws: An Overview," for a listing of many of the major rights and duties afforded to spouses under California law (*available at* <http://www.lambdalegal.org/our-work/publications/facts-backgrounds/page.jsp?itemID=31985503>).

No reasonable dispute exists that many spousal rights and responsibilities, none of which was named expressly in AB 205, have in fact been extended to registered domestic partners. (See *Koebke, supra,* 32 Cal.4th at p. 838 [discussing AB 205's application of the "full range" of rights and responsibilities to registered domestic partners as "the laws of California extend to and impose upon spouses"].)[5] By extension of the trial court's logic, none of the non-enumerated rights and duties of spouses would have been conferred upon registered domestic partners, though this conclusion runs clearly contrary to the widely acknowledged effect of AB 205. (See *Knight v. Superior Court* (2005) 128 Cal.App.4th 14, 28-29 ["by registering as domestic partners, [couples] agree to accept the responsibilities imposed on a spouse in exchange for receiving the associated benefits"].) The same principle inheres in AB 205's extension of the non-enumerated putative spouse protections to unregistered domestic partners who find themselves in the same situation as unmarried couples.

**(1)** ***The Larger Legislative Scheme Enacted to Protect Same-Sex Couples Makes Clear That AB 205 Is Not a Statute of Enumerated Rights.***

---

[5] By way of further example, an August 27, 2007 Senate Floor Analysis of AB 205 details several of the substantive rights and responsibilities conferred upon registered domestic partners by AB 205, including, "The right to financial support during and after the relationship has terminated," and "[c]ustody, support and visitation of children of either or both partners born before or after the registration of the partnership or adopted after the registration of the partnership." (Senate Floor Analysis, August 27, 2003, p. 4, *available at* <http://www.leginfo.ca.gov/pub/03-04/ bill/asm/ab_0201-0250/ab_205_cfa_20030827_132305_sen_floor.html>.) Not one of these rights was mentioned expressly in AB 205, and not one of the relevant code sections was amended explicitly by specific reference.

A thorough evaluation of the legislative intent and the proper construction of AB 205 requires an examination of the overall statutory scheme of benefits and obligations the Legislature has provided to same-sex couples. The courts "'do not construe statutes in isolation, but rather read every statute "with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness."'" (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 83, quoting *In re Marriage of Harris* (2004) 34 Cal.4th 210, 222 [internal citation omitted]; see also *Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063 ["we consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part"].)

The Legislature's intent to equalize the status of domestic partners and spouses through broadly inclusive, non-enumerated terms also is evident through a comparison of AB 205 with prior legislative enactments providing rights to domestic partners. (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313 ["our goal is to divine and give effect to the Legislature's intent … We begin with a comparison and analysis of the language of the old and new statutes"]; *Koebke, supra,* 36 Cal.4th at p. 852, fn. 10 [noting that "prior versions of the domestic partner law were not comparable to the Domestic Partner Act in scope, intent, or procedure"].) AB 205's expansive terms stand in stark contrast to the far more limited measures that preceded it, which provided circumscribed rights to domestic partners through a true enumeration of those specific rights.

California's first statewide domestic partnership measure, Assembly Bill 26 ("AB 26"), was enacted in 1999 and established the State's domestic partner registry. (Stats. 1999 ch. 588, (AB 26).) AB 26 offered registered domestic partners the ability to visit each other in the hospital, and for

eligible state and local employees, the ability to provide health insurance benefits to a domestic partner. AB 26 was a statute of enumerated rights, providing both benefits expressly through a specific amendment of Health and Safety Code section 1261 and Government Code section 22867, et seq., respectively. As a statute of enumerated rights, AB 26 "conferred no other rights" than the ones expressly granted. (*Armijo v. Miles* (2005) 127 Cal.App.4th 1405, 1412 (*Armijo*).) Similarly, the Legislature's next domestic partnership enactment in 2000 expressly amended the definition of "cohabitants" in Civil Code section 51.3 to include domestic partners among those eligible to live in senior citizen housing developments — once again granting only this enumerated right by express amendment of the code. (Stats. 2000, ch. 1004, § 3 (SB 2011).)

In 2001, the Legislature enacted another measure to provide domestic partners important, although limited, additional protections, including for example medical decision-making rights, standing to bring wrongful death claims, participation in conservatorship proceedings and use of sick leave to care for an ill domestic partner. (Stats. 2001, ch. 893 (AB 25).) In similar fashion, this statute effected these changes to California law through an explicit grant of each individual right by enactment and amendment of the relevant code sections,[6] and the statute

[6] For example, see Stats. 2001, ch. 893, section 1 (AB 25), enacting Civil Code section 1714.01 to provide domestic partners standing for a negligent infliction of emotional distress cause of action; Section 2, amending Code of Civil Procedure section 377.60 to provide domestic partners standing for a wrongful death cause of action; Sections 5 through 8, amending Family Code sections 9000, 9002, 9004 and 9005 to provide domestic partners access to California's stepparent adoption procedure; Section 9, amending Government Code section 22871.2 to permit continuing health care

expressly provided that registration would not establish any rights "other than those expressly provided." (*Id.* at § 4.)

In 2002, the year before AB 205 was enacted, the Legislature enacted several additional measures to reduce in small ways the unequal treatment of domestic partners under California law. Once again, each bill — without exception — granted these rights through the express enactment, amendment or repeal of a specifically-enumerated right or responsibility.[7]

In stark contrast to the laws that came before it, AB 205 "recasts" prior laws affecting domestic partners that granted "*specified,* but limited, rights and benefits" and "extends to registered domestic partners *substantially all* rights, benefits and obligations of married persons under state law." (Senate Floor Analysis, August 27, 2003, p. 2, *available at* <http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_0201-0250/ab_205_cfa_20030827_132305_sen_floor.html> [emphasis added]; see also *Armijo, supra*, 127 Cal.App.4th at p. 1413 ["Specifically, (AB 205) 'extend[ed] the rights and duties of marriage to persons registered as domestic partners on and after January 1, 2005.' (Legis. Counsel's Digest, Assem. Bill 205.)"].) As such, the Legislature enumerated in AB 205 only the rights that are

---

coverage for the domestic partners and children of deceased public employees; et cetera.

[7] See Assembly Bill 2216 (Stats 2002 ch 447 (AB 2216)) [intestate inheritance rights]; Assembly Bill 2777 (Stats 2002 ch 373 (AB 2777)) [county employee death benefits]; Senate Bill 247 (Stats 2002 ch 914 (SB 247)) [copies of domestic partner's birth and death records]; Senate Bill 1265 (Stats 2002 ch 377 (SB 1265)) [copies of domestic partner's domestic violence incident reports]; Senate Bill 1575 (Stats 2002 ch 412 (SB 1575)), [exemption from prohibition against donative gifts for drafter of will]; and,

*excluded* from its reach, not those that are *included* within its reach. Both the language of the statute and the legislative analyses of AB 205 make clear that AB 205 intended to exempt from the broad sweep of its provisions solely those rights expressly excluded[8] and the "rights, benefits, and obligations accorded only to married persons by federal law, the California Constitution, or initiative statutes" that are beyond the authority of the Legislature to amend. (Senate Floor Analysis, August 27, 2003, p. 2; Fam. Code § 297.5(j) [AB 205 excludes provisions of California Constitution and statutes adopted by initiative]; and Fam. Code § 297.5(k) [AB 205 excludes federal law].) The trial court therefore should have analyzed not whether the putative spouse doctrine is included in AB 205, but rather whether it is expressly excluded — as it plainly is not.

**(2)** ***AB 205 Must Be Read to Include Putative Spouse Protections to Avoid an Otherwise Absurd Result That Would Defeat the Intent of the Legislature.***

The rules of statutory construction require that the trial court's ruling be overturned to avoid an absurd result. It is a well-settled maxim that a literal reading of a statute will not be permitted to defeat the overall intent of a legislative enactment. (*McLaughlin v. State Bd. of Educ.* (1999) 75 Cal.App.4th 196, 211 [internal citations omitted]; see also *Lungren v.*

---

Senate Bill 1661 (Stats 2002 ch 901 (SB 1661)) [wage replacement benefits to workers who care for an ill domestic partner].

[8] The rights expressly excluded from AB 205 included the ability to file joint state income tax returns to treat earned income as community property for state income tax purposes — which has been modified by subsequent legislation to apply the same joint filing rules and laws as spouses to domestic partners — and eligibility of state employees for long-term care insurance for their domestic partners (AB 205, § 4).

*Deukmejian* (1988) 45 Cal.3d 727, 735 ["Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act."]; *Gomez v. Superior Court* (2005) 35 Cal.4th 1125, 1147 ["'[s]tatutes are to be given a reasonable and commonsense interpretation consistent with the apparent legislative purpose and intent "and which, when applied, will result in wise policy rather than mischief or absurdity."'"] [internal citations omitted].) But the trial court's ruling supplies precisely the "illogical result[] … [that] would fail to promote the Legislature's clear purpose" in a way that the rules of statutory construction should preclude. (*People v. Langston* (2004) 33 Cal.4th 1237, 1242.)

First, the trial court's reasoning would require domestic partners to be validly registered in order to avail themselves of all of the rights and responsibilities provided to spouses, including the putative spouse doctrine. This "logic," however, is nonsensical. It is illogical to require domestic partners to become validly registered to be afforded access to the safe harbor of the putative spouse doctrine, which by its very definition applies only to couples whose relationship lacks a valid legal status. (RT, pp. 7:25 – 8:4; see Cal. Fam. Code § 2251 [defining status of putative spouse as dependent upon a determination "that a marriage is void or voidable"].) In fact, validly registered domestic partners would have as much use for a putative status as validly married couples — none. Under AB 205's application of the same rights and responsibilities, domestic partners should no more have to be validly registered than married couples must be validly married to seek a putative relationship determination.

Second, it would strain the boundaries of common sense to find that AB 205 leaves domestic partners bereft of putative spouse protections when the fundamental intent underlying AB 205 was to protect domestic partners "from the economic and social consequences of abandonment, separation … and other life crises" (Stats. 2003, ch. 421, § 1, subd. (a)), and to provide these protections across the spectrum of ways in which couples unwind their relationships, including dissolution, legal separation and nullity.

Indeed, the trial court's conclusion that AB 205 shelters only validly registered domestic partnerships[9] is impossible to reconcile with AB 205's application of the nullity rules to domestic partners. Nullity actions provide individuals access to the family courts on the basis of marriages or partnerships that are "voidable," and thus not validly formed for one or more reasons, including several statutorily-specified grounds.[10] Harmonizing the trial court's ruling with domestic partners' standing for nullity actions requires one to accept that the Legislature intended to protect domestic partners in circumstances involving incapacity and fraud, but not

---

[9] AB 205 specifies that the "dissolution of a domestic partnership, nullity of a domestic partnership, and legal separation of partners in a domestic partnership shall follow the same procedures … as apply to the dissolution of marriage, nullity of marriage, and legal separation of spouses." (AB 205, § 8.) While AB 205's reference to nullity makes apparent that the rules of nullity apply to domestic partners, this effect is similarly non-enumerated, as are the other rights granted to domestic partners, since it is conferred neither by an affirmative grant nor express amendment of any nullity statute.

[10] The statutorily-specified grounds for nullity include: (a) incapacity for consent; (b) existing marriage to another person who was absent and believed to be deceased for at least the five preceding years or was generally reputed to be deceased; (c) unsoundness of mind; (d) consent obtained by fraud; (e) consent obtained by force; or (f) physical incapability of entering into the marriage. (Fam. Code § 2210.)

those innocent parties who believed reasonably and in good faith that the domestic partnership was validly registered — a distinction that cannot logically be sustained.

Third, a domestic partner could conceivably seek precisely the same relief by simply filing a nullity action on the ground that he or she is a putative domestic partner. California Family Code Division 6, Part 2, Chapter 3 includes six statutes that comprise the "Procedural Provisions" for a judicial determination of a void or voidable marriage in a nullity action, as follows: section 2250 (procedure for filing a petition for judgment of nullity); section 2251 (procedure for division of property where court finds one or more spouses to qualify as a putative spouse); section 2252 (defining liability of property divided between putative spouses for quasi-community debts); section 2253 (procedure for custody determinations in a nullity action); section 2254 (providing for spousal support award in nullity action); and section 2255 (attorney's fees in nullity action). (*Ibid.*) The trial court's ruling would seem to abolish for domestic partners the nullity procedures relating to putative domestic partners, while leaving the neighboring nullity provisions intact, despite AB 205's unqualified application of *all* nullity procedures and rights to domestic partners. At least one noted commentator has observed the puzzling effect of such an interpretation. (See Cal. Practice Guide Family Law (The Rutter Group 2007) ("Rutter") § 19:152.1 [the procedural provisions for nullity actions "seem difficult to reconcile with a case law decision that parties to a legally ineffective registered domestic partnership (because domestic partnership was not properly registered) have *no* 'putative partner' rights

comparable to those granted a 'putative spouse'"].)[11] The rules of statutory construction require this Court to avoid such illogical results by construing AB 205 to provide domestic partners the same protections as are provided to different-sex partners through the putative spouse statute.

### 3. The Only Other California Court to Address This Question Did So on Factually Distinguishable Grounds, and Succumbed to Errors of Analysis Similar to Those of the Trial Court Here.

The First Appellate District is the only Court of Appeal to have considered the applicability of the putative spouse doctrine to domestic partners as of the time of this brief's filing. (*Velez v. Smith* (2006) 142 Cal.App.4th 1154, *review denied* November 29, 2006 (*Velez*).) The *Velez* court did so, however, on entirely distinguishable factual grounds and committed several of the same errors of analysis as the trial court here.

---

[11] The "case law decision" to which this noted commentator refers is *Velez v. Smith* (2006) 142 Cal.App.4th 1154, *review denied* November 29, 2006, a First Appellate District decision described in the next section of this brief, which reached the same erroneous conclusion as the trial court here. The *Velez* decision also involved a petition for dissolution of a domestic partnership filed by a would-be putative domestic partner. Rutter notes that the *Velez* decision is difficult to reconcile with the rules of nullity even based on the distinction that *Velez* involved a petition for dissolution rather than nullity. (See Rutter, § 19:40.5 ["*Velez* involved a *dissolution* proceeding. Although the court made a broad sweeping ruling that there is presently no 'putative domestic partner' doctrine under California law, *query* whether a claim for 'putative partner' rights equivalent to 'putative spouse' rights might be cognizable in a *nullity* action between domestic partners."].) There appears to be no principled way to explain why a putative domestic partner is allowed to maintain an action if she selects a nullity cause of action, but not if she files a dissolution action, particularly where the family courts may exercise discretion to render a judgment of nullity even where a dissolution petition was initially filed.

This Court is not bound to follow the decision reached by the *Velez* court under the principles of *stare decisis,* and the errors of the *Velez* court, as described below, provide "good reason to disagree" with it. (See *Henry v. Associated Indemnity Corp.* (1990) 217 Cal.App.3d 1405, 1416 ["decisions, however, are not binding under principles of stare decisis on … a court of the same level"]; *People v. Landry* (1989) 212 Cal.App.3d 1428, 1436 [respect for *stare decisis* may be set aside if there is "good reason to disagree"].)

The *Velez* case involved a lesbian couple, Lena Velez ("Ms. Velez") and Krista Smith ("Ms. Smith"), who met in 1989 and soon thereafter formed a committed domestic partnership with each other. (*Velez, supra,* 142 Cal.App.4th at p. 1159.) Ms. Velez and Ms. Smith lived and purchased real property together and commingled their funds in joint bank accounts. (*Ibid*.) The couple held a commitment ceremony in 1994 and registered as domestic partners with the City and County of San Francisco the same year, and registered as domestic partners again with the City and County in 1996. (*Ibid.*) The couple never attempted to register as domestic partners with the State of California. (*Ibid.*) On November 23, 2004 Ms. Smith filed a "Notice for Ending a Domestic Partnership" with the San Francisco County Clerk and mailed a copy by certified mail to Ms. Velez. (*Ibid.*)

Ms. Velez filed a petition for dissolution of domestic partnership in the Mendocino Superior Court on December 6, 2004, which listed the date of separation as November 23, 2004. (*Ibid.*) Ms. Velez filed an amended petition for dissolution on January 31, 2005, after AB 205's provisions took effect on January 1, 2005, seeking a division of the partnership assets on the theory that she qualified for this relief as a putative domestic partner. (*Ibid.*) Ms. Velez argued that a good faith belief that the couple has

registered as domestic partners with the State of California was not a "jurisdictional prerequisite" to filing a petition under a putative domestic partner theory, maintaining instead that her "good faith belief in the *bona fides* of the Domestic Partnership" and her "intent" to enter into a valid domestic partnership should suffice. (*Id.* at pp. 1160, 1162.)

This circumstance alone renders the *Velez* case distinguishable from the case at bar. Unlike Ms. Velez, Appellant here alleged a good faith belief that the prerequisites for valid registration with the State of California were satisfied (CT, p. 29:7-8), in the same way that a putative spouse must allege a good faith belief that he or she was validly married. (*Estate of Hafner* (1986) 184 Cal.App.3d 1371, 1382 [putative spouse status "belongs only to the party or parties to a void marriage who the trial court finds to have believed in good faith in the validity of the void marriage"].)

Because Ms. Velez did not accept, as does the Appellant here, that a putative spouse or putative domestic partner status may not be found where the couple has "made no attempt whatsoever to comply with the procedural requirements for a lawful California marriage" or domestic partnership, that alone should have been a sufficient ground to reject Ms. Velez's standing under the putative spouse doctrine. (*Welch v. State of California* (2000) 83 Cal.App.4th 1374, 1379.) The *Velez* court did in fact recognize that, "Local law and the state Domestic Partner Act are not equivalent; compliance with one is not compliance with the other." (*Velez, supra,* 142 Cal.App.4th at p. 1167.) Under the principles of judicial restraint, the court should have ended its inquiry upon that dispositive ground. (See *Matrixx Initiatives, Inc. v. Doe* (2006) 138 Cal.App.4th 872, 881 ["'In an emerging area of the law, we do well to tread carefully and exercise judicial restraint, deciding

novel issues only when the circumstances require.'"] [internal citation omitted]; *Carlson v. Blatt* (2001) 87 Cal.App.4th 646, 648 ["In this emerging area of the law … we exercise judicial restraint."].) The *Velez* court also could have ended its inquiry based on the separate dispositive ground that Ms. Smith's termination of the domestic partnership relationship with Ms. Velez on November 23, 2004 was an adequate method of termination at that time under both the state domestic partnership statute and the San Francisco administrative code. (*Velez, supra,* 142 Cal.App.4th at pp. 1167-69.)

Instead, the *Velez* court proceeded to consider the merits of Ms. Velez's claim and concluded that AB 205 confers no rights or responsibilities on domestic partners in the absence of "[valid,] formal registration." (*Velez, supra,* 142 Cal.App.4th at p. 1165.) The *Velez* court rested its conclusion upon (i) the fact that AB 205 specifies particular procedures for registration with the Secretary of State; (ii) a dubious characterization of two Court of Appeals decisions regarding standing for wrongful death claims; and (iii) the absence of the putative spouse doctrine among AB 205's "enumerated rights." (*Id.* at pp. 1165-67, 1173.) Not one of these grounds is sufficient to support the *Velez* court's holding.

The existence of specified procedures for domestic partnership registration does not defeat the application of a putative domestic partner theory, any more than the specification of requirements for solemnizing a marriage defeats the application of a putative spouse theory. Perplexingly, the *Velez* opinion echoes this confusion again in the decision, stating, "If spouses do not follow the specified legal procedures to effectuate and prove a valid marriage, the court has no jurisdictional foundation for a dissolution proceeding to adjudicate the res of the marriage." (*Id.* at p. 1169 [citing

*Zaragoza v. Superior Court* (1996) 49 Cal.App.4th 720, 724-725].) This statement, however, describes precisely the circumstances (i.e., a failure to "follow the specified legal procedures") upon which the court *can* operate in order to dissolve a voidable marriage.[12]

Second, the *Velez* court cited two Court of Appeals decisions for the proposition that one must be registered to have standing to bring a wrongful death claim. (*Velez, supra,* 142 Cal.App.4th at pp. 1165-66 [citing *Armijo, supra,* 127 Cal.App.4th at p. 1414 and *Holguin v. Flores* (2004) 122 Cal.App.4th 428, 432-437 (*Holguin*)].) The court's characterization of these opinions, however, is not persuasive. The *Armijo* opinion found that, while registration would have been a prerequisite for domestic partner standing to bring a wrongful death claim under the wrongful death statute as it existed in 2002, the passage of Assembly Bill 2580 retroactively afforded the plaintiff in that case standing to sue *without* registration. (*Armijo, supra,* 127 Cal.App.4th at p. 1411.)

The *Holguin* court ruled upon an equal protection challenge brought by a man who was involved in a committed different-sex relationship, and who wished to bring a wrongful death claim following the killing of his former girlfriend though they never had married and were precluded from registering as domestic partners with the state because neither he nor his different-sex partner was over the age of 62. (*Holguin, supra,* 122 Cal.App.4th at pp. 431-32.) The *Holguin* opinion concluded that domestic

---

[12] The *Zaragoza* opinion cited for this proposition does not shed further light on the *Velez* court's approach. The decision involved a couple that had obtained a valid, final decree of dissolution in Nevada in 1985, and then sought a dissolution in a California court again in 1993. (*Id.* at pp. 722-23.) The court resolved the case based on a collateral estoppel theory, without any reference to the putative spouse doctrine. (*Id.* at p. 726.)

partners must be registered to have standing under the wrongful death statute, but was ruling in 2004 upon the prior, limited domestic partnership statute that was operative before AB 205 took effect in 2005, and before Assembly Bill 2580 amended the wrongful death statute to permit the retroactive standing for certain domestic partners *who had not registered.*[13]

The *Velez* court failed to acknowledge that the operation of AB 205 fundamentally changes the prior analysis. For example, the wrongful death statute provides standing to putative spouses. (Code Civ. Pro. § 377.60(b) ["A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by any of the following persons … (including a person who was) dependent on the decedent, the putative spouse"].) In light of AB 205's mandate that all spousal rules and presumptions be applied to domestic partners, why would this legal rule applicable to putative spouses not apply equally to putative domestic partners? Disappointingly, the *Velez* court neither broached nor answered this question.

Finally, the *Velez* court yielded to the same "enumerated rights" error of analysis, stating that "nothing in the statutory scheme includes within the enumerated rights granted to domestic partners any form of putative spouse recognition." (*Velez, supra,* 142 Cal.App.4th at p. 1173.) As discussed above, searching for putative spouse protections among the "enumerated rights" in AB 205 is simply a misguided exercise. The *Velez*

---

[13] The holding in *Holguin* is even further removed from the issue before this Court because the plaintiff in that matter could never have qualified for a putative domestic partner status, since he could not have reasonably believed he had validly registered with the State as a member of a different-sex partnership where both partners were under 62 years of age, when the law did not permit such couples to register.

court sought to bolster its conclusion by stating that, "[i]n fact, domestic partners do not receive a number of marital rights and benefits," noting that as the law existed then domestic partners were not permitted to: (i) file joint state income tax returns or treat earned income as community property for state income tax purposes, (ii) obtain the rights and responsibilities provided to spouses under federal law; or (iii) enter a domestic partnership through the same mechanism for entering the institution of marriage. (*Id.* at p. 1173.) These points are inapposite, however. The unavailability of *federal* rights and responsibilities for domestic partners is not instructive as to the Legislature's intent with regard to the *state* benefits over which it has authority, and the putative spouse doctrine is plainly a matter of state law. Nor does the separate process for entering a domestic partnership render the putative spouse doctrine inapplicable *per se,* any more than it renders inapplicable the hundreds of other spousal rights and responsibilities that AB 205 extended to domestic partners.

Appellant submits that the *Velez* analysis rests on a basic misreading of AB 205, and urges the Court to adopt the better-reasoned conclusion that the Legislature's explicit purpose in passing AB 205 requires inclusion of putative domestic partner protections for those lesbians and gay men whose circumstances parallel heterosexuals who have protection as putative spouses.

### C. Alternatively, The Court Should Exercise Its Inherent Equitable Power To Recognize Putative Domestic Partners As Courts Recognized Putative Spouses Historically.

If the Court declines to find that AB 205 requires application of the putative spouse rules to similarly situated domestic partners as a matter of

statutory construction, the Court should provide same-sex couples the critical protection of a putative domestic partner doctrine through the Court's inherent power to fashion equitable remedies. The putative spouse doctrine was created by the courts acting in equity to provide innocent parties with a basic measure of fairness in the division of family assets. Before the putative spouse doctrine came to reside in California's Family Code, it was adopted by the California Supreme Court in 1911 as an equitable "conclusion … dictated by simple justice, for where persons domiciled in [a community property] jurisdiction, believing themselves to be lawfully married to each other, acquire property as the result of their joint efforts, they have impliedly adopted … the rule of an equal division of their acquisitions, and the expectation of such a division should not be defeated in the case of innocent persons." (*Schneider v. Schneider* (1920) 183 Cal. 335, 339-40; *Coats v. Coats* (1911) 160 Cal. 671, 675 ["To say that the woman (seeking the status of a putative spouse) … even though she may be penniless and unable to earn a living, is to receive nothing, while the man with whom she lived and labored in the belief that she was his wife, shall take and hold whatever he and she have acquired, would be contrary to the most elementary conceptions of fairness and justice."].)

While the common law putative spouse doctrine since has been codified, the Court retains its inherent authority to craft equitable solutions that provide a measure of fairness and justice to the parties before it. The Legislature's codification of a rule accordingly does not deprive the Court of the ability to solve an analogous problem in a similar way in the future. (See *Sharon S. v. Superior Court* (2003) 31 Cal.4th 417 [holding that a "second parent" or "limited consent" adoption is a valid procedure despite Family Code section's 8617 default rule that adoption usually terminates

the rights of existing parents]; *Marshall v. Marshall* (1925) 196 Cal. 761, 767 [upholding the validity of stepparent adoption despite the default rule codified in Family Code section 8617's precursor that the rights of existing parents are terminated by adoption]; see also *In re Marriage of Fogarty and Rasbeary* (2000) 78 Cal.App.4th 1353, 1360 ["family law courts have traditionally been regarded as courts of equity"]; accord *Vasquez v. Hawthorne* (2001) 145 Wn.2d 103 [holding there should be no discrimination based on sex or sexual orientation in application of existing equitable rule by which Washington State courts apportion property accumulated by long-term cohabiting non-marital partners, such that former same-sex partner should be afforded the same opportunity as former different-sex non-marital partner to meet the burden of proof for equitable protections].)

Notwithstanding codification of the putative spouse rule in the Family Code, this Court retains the equitable authority over matters relating to putative relationships with which the Supreme Court developed the putative spouse doctrine in the first instance. Recognizing a putative domestic partner doctrine is nothing more than a logical extension of the original equitable remedy, and one that is critical to remedy the manifest injustice that would result were the legislative scheme to be construed as leaving those in same-sex relationships without such protection.

### D. The Court Should Treat Domestic Partners Equally Through Statutory Interpretation or Equity to Avoid the Constitutional Violation That Otherwise Would Result.

#### 1. The Court Should Construe These Statutes Or Fashion an Equitable Remedy to Avoid the Constitutional Infirmity.

If the Court were to find that AB 205 does not protect putative domestic partners, and then were to refuse equitable relief of the sort provided to heterosexual partners before codification of the putative spouse doctrine, the Court would be faced with a serious constitutional infirmity. Were those in a same-sex partnership denied the putative relationship protections that the Family Code affords heterosexuals, California law would deprive lesbians and gay men of the equal protection of the law. The Court thus should resolve the questions of equitable doctrine and AB 205's statutory construction, by taking into account the significant reluctance of reviewing courts "to reach out and unnecessarily pronounce upon the constitutionality of any duly enacted statute." (*Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 65; see also *People v. Giles* (2007) 40 Cal.4th 833, 857 ["Constitutional analysis should not be embarked on lightly and never when a case's resolution does not demand it … 'if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.'"] [internal citation omitted]; *Santa Clara County Local Transp. Auth. v. Guardino* (1995) 11 Cal.4th 220, 230 [""""this Court will not decide constitutional questions where other grounds are available and dispositive of the issues of the case""""] [internal citations omitted].)

To avoid the unnecessary constitutional question, the Court should follow the "fundamental canon of statutory interpretation," which "requires that a statute be construed to avoid unconstitutionality if it can reasonably be so interpreted." (*In re Klor* (1966) 64 Cal.2d 816, 821; see also *Metromedia, Inc. v. City of San Diego* (1982) 32 Cal.3d 180, 186 ["If 'the terms of a statute are by fair and reasonable interpretation capable of a meaning consistent with the requirements of the Constitution, the statute will be given that meaning, rather than another in conflict with the Constitution.'"] [internal citation omitted].)

It also is appropriate for the Court, in "cases of uncertain meaning," to consider the consequences of a particular interpretation with regard to the "impact [of that interpretation] on public policy." (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1190; *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 426 ["'[T]he court may [also] consider the impact of an interpretation on public policy, for "[w]here uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation"'"] [internal citations omitted].) In this instance, construing AB 205 to extend putative spouse protections to domestic partners not only effectuates the legislative intent of equalizing the rights and responsibilities of domestic partners and spouses, but also avoids an interpretation that leaves lesbians and gay men vulnerable to an unconstitutional deprivation of the equal protection of the laws.

### 2. It Would Offend the Equal Protection Clause of the California Constitution Were the State to Fail to Provide Putative Domestic Partners the Same Protections Afforded to Putative Spouses.

If this Court were to reject Appellant's equitable and statutory construction arguments, the Court then will have to consider Appellant's constitutional challenge that it would violate Article I, section 7(a) of the California Constitution to fail to provide unregistered domestic partners who innocently believed they were registered with the same protections afforded unmarried couples who innocently believed they were married. Were California's laws governing domestic partnerships interpreted to exclude protection for innocent putative same-sex domestic partners, thus thwarting their reasonable expectations concerning jointly acquired assets and a fair process for managing their separation, while innocent putative heterosexual spouses enjoy such protections through the equitable principles now codified in Family Code section 2251, the result would offend the equal protection guarantee of the California Constitution. The state has no legitimate interest, let alone a compelling one, in maintaining a system of such inequity based solely on the sex and sexual orientation of the state's residents.

#### a. A Preclusion of Putative Relationship Protections for Domestic Partners Would Classify Lesbians and Gay Men for Unequal Treatment Based on Their Sex and Sexual Orientation.

The Legislature adopted AB 205 to provide committed same-sex couples the opportunity to obtain the same critical rights and important obligations that the Family Code provides to heterosexual, married couples.

(See Stats. 2003, ch. 421, § 1, subd. (a).) While the Legislature over time has developed an important, comprehensive system of family protections for heterosexual, married couples in the Family Code, AB 205 was born of the recognition that lesbians and gay men have been excluded from most Family Code sections by virtue of their inability to marry, though they form devoted couples and families equally in need of those essential protections, and equally vulnerable in their absence. AB 205 is the system the Legislature has fashioned to meet the needs of families that the current marriage law in California recognizes as a separate class — those families formed with a same-sex partner by lesbians and gay men. AB 205 acknowledges that the separate system of family protection for lesbians and gay men classifies them on the basis of their sex in relation to their partner as well as their sexual orientation. (Stats. 2003, ch. 421, § 1, subd. (b) ["Expanding the rights and creating responsibilities of registered domestic partners would … reduce discrimination on the bases of sex and sexual orientation in a manner consistent with the requirements of the California Constitution."]; *Koebke, supra,* 32 Cal.4th at p. 846 [the Legislature has found that AB 205 would reduce sex- and sexual orientation-based discrimination].) AB 205 helps mitigate the Family Code's discrimination on those bases, but concomitantly, to the extent California law still treats lesbians and gay men unequally, such provisions of the law perpetuate discrimination on those grounds. Therefore, if California law were to fail to provide putative relationship protections, so that those in same-sex relationships cannot claim those protections as putative spouses, such provisions of the law would have to be seen as classifying lesbians and gay men for differential and lesser treatment based on their sex and sexual orientation.

This discrimination against lesbians and gay men is sex-based because they are prevented from marrying or obtaining putative spouse protections under the Family Code, and are limited to the family protections afforded by AB 205, based on their sex in relation to the sex of their committed life partner. (See Fam. Code § 300 [restricting marriage to a "civil contract between a man and a woman"]; Fam. Code § 301 [limiting the parties capable of consenting to a marriage to "[a]n unmarried male" and "an unmarried female"]; *Lockyer v. City and County of San Francisco* (2005) 33 Cal.4th 1055 [declaring marriage licenses issued to same-sex couples by San Francisco in 2004 void from the inception because state law prohibits same-sex couples from marrying].) Since lesbians and gay men by definition form loving relationships with a life partner of the same sex, any provisions of state law that offer putative relationship protection to those in different-sex relationships while withholding it from those in same-sex relationships, classify and discriminate based upon each person's sex in relation to the sex of his or her life partner.

For the same reasons, the laws governing marriage and domestic partnerships also create sexual orientation classifications on their face, as the Legislature expressly acknowledged. (Stats. 2003, ch. 421, § 1, subd. (b); see also *Lockyer, supra,* 33 Cal.4th at p. 1128, fn. 2 (conc. & dis. opn. of Kennard, J.) [California law expressly limits marriage to "heterosexual couples"]; *Lawrence v. Texas* (2003) 539 U.S. 558, 581 (conc. opn. of O'Connor, J.) [noting that unequal treatment of people in same-sex relationships constitutes sexual orientation discrimination].) In sum, AB 205 specifies the discriminatory classifications it was intended to remedy — sex and sexual orientation — and where California law relating to domestic partnerships is construed to provide unequal treatment by denying

an important benefit, those laws must be recognized as doing so on the basis of those same classifications.

**b. Putative Domestic Partners are Similarly Situated to Putative Spouses.**

"The guarantees of equal protection embodied in … article I, section 7 of the California Constitution 'compel[] recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.'" (*Darces v. Woods* (1984) 35 Cal.3d 871, 885 [internal citation omitted] (*Darces*).) As a threshold matter, a party must establish that "'the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner.'" (*People v. Guzman* (2005) 35 Cal.4th 577, 591-92 [internal citation omitted].) The inquiry does not require a demonstration that the relevant classes are similarly situated for all purposes, but rather "'are similarly situated for purposes of the law challenged.'" (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253 [internal citation omitted].)

A gay or lesbian individual who in good faith believes that he or she is a validly registered domestic partner is similarly situated in every relevant respect to the putative spouse who sincerely believes he or she is lawfully married. The putative spouse doctrine affords innocent parties access to family court for a fair and equitable division of the assets they have invested and acquired in the relationship, allowing them to begin building stable lives after separation. Access to a predictable system for dividing assets and debts permits separating couples to avoid spending their resources on protracted, uncertain battles in court, and to spend those resources in more productive ways such as establishing separate living arrangements and caring for any children they may have. These needs

apply equally to all innocent parties who believe they validly entered an institution providing enforceable family law rights and obligations, irrespective of sex and sexual orientation and of whether that institution is marriage or domestic partnership. In this respect, lesbians and gay men like Appellant are simply no different than their heterosexual counterparts.

The California courts and Legislature have recognized that same-sex couples enter into relationships that are formed of bonds equally committed, mutually supportive, and enduring as those of couples who seek to marry. (See *Koebke, supra,* 36 Cal.4th at p. 843 ["In both (marriage and domestic partnership), the consequences [*sic*] of the decision is the creation of a new family unit with all of its implications in terms of personal commitment as well as legal rights and obligations."]; Stats. 2003, ch. 421, § 1, subd. (b) ["The Legislature hereby finds and declares that … many lesbian, gay, and bisexual Californians have formed lasting, committed, and caring relationships with persons of the same sex."].)

Committed same-sex couples share the same joys and weather the same challenges of family life as do committed different-sex couples. They form family households together,[14] and in California, are raising over 70,500 children. ("*Race and Ethnicity of Same-Sex Couples in California, Data From Census 2000*," Gary Gates, *et al.* (February 2006), *available at*

---

[14] Approximately 594,690 same-sex headed households were reported in the 2000 United States Census (Pawelski, James G., *et al.,* "The Effects of Marriage, Civil Union and Domestic Partnership Laws on the Health and Well-being of Children," PEDIATRICS, Vol. 118, No. 1, p. 2, July 2006, *available at* <http://pediatrics.aappublications.org/cgi/reprint/118/1/349>), with 92,138 of those households located in California. (Gates, Gary J. and Jason Ost (2004), "The Gay and Lesbian Atlas." Washington, DC: Urban Institute Press, *available at* <http://www.urban.org/UploadedPDF/1000491_gl_partner_households.pdf>.)

<http://www.law.ucla.edu/williamsinstitute/publications/Race_and_ ethnicity_of_same-sex_couples_in_california.pdf>.) In short, "[t]hese couples share lives together, participate in their communities together, and many raise children and care for other dependent family members together." (Stats. 2003, ch. 421, § 1, subd. (b).)

As do married couples, same-sex couples also combine their finances and build property interests together, forming the same expectations in jointly acquired assets. (Stats. 2005 ch. 416 (SB 565) ["[same-sex] couples build lives together, as do spouses, by purchasing property and creating and operating family businesses"], *available at* <http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_0551-0600/sb_565_bill_20050929_chaptered.html>.) These expectations are enshrined in AB 205's extension of legal presumptions regarding community property and debt, as well as the potential obligation to pay partner support after a dissolution of the domestic partnership. (Assembly Floor Analysis, June 3, 2003, p. 3 ("the purpose of the bill is to ensure that domestic partners have the opportunity to obtain the rights … and duties of a number of laws, including … rights and obligations of financial support during and after the relationship, community property …"), *available at* <http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_0201-0250/ab_205_ cfa_20030604_010231_asm_ floor.html>.)

**c. A Denial of Putative Domestic Partner Protections to Lesbians and Gay Men Does Not Further Any Legitimate State Interest, Let Alone A Compelling One.**

Should California law be found not to provide lesbians and gay men with the putative relationship protections that heterosexual putative spouses

enjoy, that failure should be subject to strict scrutiny. Classifications based upon sex are strictly scrutinized under California's equal protection jurisprudence, and while the appropriate level of scrutiny for sexual orientation- based classifications remains an open question,[15] the characteristic of sexual orientation meets each element of California's test for suspect classifications.

**(1) *Sex-Based Classifications Are Subject to Strict Scrutiny.***

Under the California Constitution, sex-based distinctions are subject to the most rigorous standard of constitutional review. (*Catholic Charities v. Superior Court* (2004) 32 Cal.4th 527, 564 ["We long ago concluded that discrimination based on gender violates the equal protection clause of the California Constitution ... and triggers the highest level of scrutiny."]; *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 643 ["under the California Constitution sex-based distinctions are subject to strict scrutiny"]; *Sail'er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, 17 ["classifications based upon sex should be treated as suspect"].) Because California law would be classifying individuals for favored or adverse treatment on the basis of each one's sex in relation to the sex of his or her cherished life partner, the difference in "putative partner" protection afforded to those in unregistered domestic partnerships as compared with unmarried couples by Family Code

[15] Appellant recognizes that this question of is one of several pending before the California Supreme Court in the *In re Marriage Cases* matter, the First Appellate District's treatment of the question in that case having been vacated by the Supreme Court's grant of review. (*In re Marriage Cases* (2006) 143 Cal.App.4th 873, 936, review granted (2006) 53 Cal.Rptr.3d 317.)

section 2251 should be reviewed under this most exacting form of constitutional scrutiny.

### (2) *Classifications Based on Sexual Orientation Should Be Subject to Strict Scrutiny.*

While the appropriate level of scrutiny for sexual orientation classifications remains an undecided question under both California and federal equal protection jurisprudence, sexual orientation satisfies each of the criteria the California courts use for recognizing suspect classifications. As with California's equal protection jurisprudence generally, the courts' analysis of suspect classifications is possessed of an independent vitality such that "the courts of this state traditionally extend strict scrutiny to a broader range of classifications than are so rigorously reviewed under identical provisions of the federal constitution." (*King v. McMahon* (1986) 186 Cal.App.3d 648, 656 [listing illustrative cases].)

To determine whether a classification is suspect under California's equal protection jurisprudence, the courts examine whether the "'alleged discrimination and the class it defines have [any] of the traditional indicia of suspectness: [such as a class] saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.'" (*Bowens v. Superior Court* (1991) 1 Cal.4th 36, 42 [internal citation omitted] [bracketed modifications in original].) The courts place particular emphasis on whether the characteristic is one that "frequently bears no relation to ability to perform or contribute to society." (*Meredith v. Workers' Comp. Appeals Bd.* (1977) 19 Cal.3d 777, 781 [declining to find incarcerated people a suspect class on

the ground that the status does bear a relationship to the ability to contribute to society].)

Lesbians and gay men fulfill each of these criteria, though the California Supreme Court has never held that all must be present to find a classification suspect. Lesbians and gay men unquestionably have been subjected to a history of purposeful discrimination. (See *People v. Garcia* (2000) 77 Cal.App.4th 1269 [finding that lesbians and gay men "share a history of persecution comparable to that of Blacks and women"; and, observing that, "Outside of racial and religious minorities, we can think of no group which has suffered such 'pernicious and sustained hostility' (*Rowland v. Mad River Local Sch. Dist.* (1985) 470 U.S. 1009, 1014 [105 S. Ct. 1373, 1377, 84 L. Ed. 2d 392] (dis. opn. of Brennan, J.) [dissenting from denial of certiorari]), and such 'immediate and severe opprobrium' (*ibid.*) as homosexuals"]; *High Tech Gays v. Defense Indus. Sec. Clearance Office* (9th Cir. 1990) 895 F.2d 563, 573 ["we do agree that homosexuals have suffered a history of discrimination"]; *Watkins v. United States Army* (9th Cir. 1989) 875 F.2d 699, 724 (conc. opn. of Norris, J.) ["Discrimination against homosexuals has been pervasive in both the public and private sectors"] (*Watkins*).)

The political process has been used repeatedly to enact majority bias to strip lesbians and gay men of basic individual and family protections. (See, e.g., *Romer v. Evans* (1996) 517 U.S. 620 [striking down Colorado state referendum designed to prevent any level of state government from enacting or maintaining measures prohibiting sexual orientation discrimination].) Appellant's claims here underscore an area in which lesbians and gay men have suffered particularly painful losses in legislatures and at ballot boxes — that of relationship recognition for same-

sex couples. As of November 2006, lesbians and gay men had been powerless to stop 26 states from amending their respective constitutions to prohibit recognition of their marriages, and 19 additional states from enacting laws expressly restricting marriage to different-sex couples.[16] Lesbians and gay men similarly were unable to defeat California's Proposition 22 in 2000, an initiative banning state recognition of same-sex couples' valid marriages from other jurisdictions (codified as Family Code section 308.5), as described above. (*Armijo, supra,* 127 Cal.App.4th at p. 1424.)

The sexual orientation of individuals has no bearing on their ability to contribute to society. California prohibits sexual orientation discrimination in a great many arenas because the Legislature has determined that this personal characteristic is irrelevant in all those contexts, and thus has taken these steps to ensure all people, regardless of their sexual orientation, will be provided the ability to enjoy fuller participation in and make their largest contribution to society. With these protections, everyone in California is promised, for example, the ability to work without reprisal based on their sexual orientation (Gov. Code § 12920), to seek housing and public accommodations free from discriminatory exclusion (e.g., Civ. Code §§ 51 and 782), and to attend school without suffering intimidation and discrimination based on their sexual orientation (Cal. Ed. Code § 220). AB 205 underscores this recognition, acknowledging that same-sex couples' sexual orientation has

---

[16] See *State Prohibitions on Marriage for Same-Sex Couples,* Human Rights Campaign, *available at* <http://hrc.org/Template.cfm?Section=Center&CONTENTID=28225&TEMPLATE=/ContentManagement/ContentDisplay.cfm>.

no bearing on their ability to assume "the same rights" and "the same responsibilities" as are afforded to spouses. (AB 205, § 4.)

Immutability, while referenced in some equal protection analysis regarding suspect classifications, has never been held by either the California Supreme Court or the United States Supreme Court to be a prerequisite for strict scrutiny of a particular classification. (See *Watkins, supra,* 875 F.2d at p. 725 [the United States Supreme Court has "never held that only classes with immutable traits can be deemed suspect"] [conc. opn. of Norris, J.].) Indeed, both the state and federal supreme courts have found a number of classifications to warrant heightened scrutiny where the characteristics at issue obviously *are* subject to change. (See *Serrano v. Priest,* 18 Cal.3d 728 [wealth of a school district]; *Owens v. City of Signal Hill,* (1984) 154 Cal.App.3d 123, 128 [religion and alienage]; *Clark v. Jeter* (1988) 486 U.S. 456, 461 [noting that the United States Supreme Court applies intermediate scrutiny to classifications based on sex and legitimacy].)

Even if the Court were to consider immutability in its analysis, the assessment should appreciate the meaning and role of that factor in equal protection analysis. Thus, many courts have explained that immutability does not refer to a specific genetic characteristic or personal trait that is absolutely unchangeable. (See, e.g., *Hernandez-Montiel v. INS* (2000) 225 F.3d 1084, 1092 [immutability refers to a characteristic that an individual "either cannot change, or should not be required to change because it is fundamental to … individual identities or consciences"], rev'd on other grounds by *Thomas v. Gonzales* (2005) 409 F.3d 1177, 1187; *Karouni v. Gonzales* (2005) 399 F.3d 1163 [sexual orientation is an innate characteristic so fundamental to one's identity or conscience that one

should not be required to change it].) Abundant expert evidence exists, however, that sexual orientation actually does satisfy even the most simplistic definition of immutability as "unchangeable." (See, e.g., American Psychological Association, *Just the Facts About Sexual Orientation & Youth: A Primer for Principals, Educators and School Personnel* (2007) [the notion that lesbians' and gay men's sexual orientation can be changed or cured "has been rejected by all the major health and mental health professions"] [*available at* <http://www.apa.org/pi/lgbc/publications/justthefacts.html#1k>]; see also American Psychiatric Association, *[Commission on Psychotherapy by Psychiatrists] Position Statement on Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies)* (2000) [noting that no rigorous scientific research supports the claim that sexual orientation can be "changed"; recommending that therapists refrain from attempting so-called "reparative" therapy because of the risk it poses for psychological harm to the patient] [*available at* <http://www.psych.org/psych_pract/copptherapyaddendum83100.cfm>]; *Watkins, supra,* 875 F.2d at p. 725 (conc. opn. of Norris, J.) ["it seems appropriate to ask whether heterosexuals feel capable of changing *their* sexual orientation"] [emphasis in original].)

Under a strict scrutiny analysis, "'*the state* bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its purpose.'" (*D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 17 [internal citation omitted].) A discriminatory withholding of putative partner protections from lesbian and gay people cannot be sustained under this standard because, as described below, its exclusion of lesbians and gay

men is not supported by even a plausible state interest, let alone a compelling one.

### (3) *A Denial of Putative Relationship Protections To Same-Sex Couples Cannot Survive Even Rational Basis Review.*

Should the Court decline to find that sexual orientation classifications should be strictly scrutinized, the Court should still find an equal protection violation because a blanket denial of "putative domestic partner" protection to lesbians and gay men who thought they were in validly registered partnerships cannot withstand any meaningful judicial review. Classifications subject to rational basis review by the courts must bear "'some rational relationship to a conceivable legitimate state purpose.'" (*Kasler v. Lockyer* (2000) 23 Cal.4th 472, 480 [internal citations omitted].) The classification must be supported, at a minimum, by "'plausible reasons.'" (*Warden v. State Bar of California* (1999) 21 Cal.4th 628, 644 [internal citation omitted].) While the trial court did not consider the equal protection infirmities of denying those who have been in same-sex relationships the protections afforded to putative spouses, any such analysis would have foundered upon a consideration of the need for at least some plausible legitimate state interest for maintaining such a denial. Dissolution of a committed domestic relationship nearly always is a painful, difficult process, and no legitimate state interest can be posited that would justify interpreting California law so as to burden lesbians and gay men unfairly by denying them access to a neutral tribunal to enforce their rights and to pursue a fair division of the domestic partnership assets.

A rational basis level of review generally permits the Court to engage in reasonable speculation about the State's plausible reasons for a particular classification, but here, the Legislature has foreclosed that exercise by expressly answering the question. The Legislature made detailed findings in AB 205 about the important state reasons for extending the same comprehensive rights and responsibilities to committed same-sex couples as previously were afforded only to spouses. In light of the Legislature's findings that the state's interests lie in providing equal treatment to lesbians and gay men, and in ending the discrimination against them in the family law arena, the Court is precluded from identifying hypothetical interests that contravene those plain findings. Because there is no state interest to justify denying same-sex couples the protections of a putative domestic partner doctrine, a construction of AB 205 that precludes such protections would cause a denial of equal protection to lesbians and gay men that would require a remedy.

Accordingly, the appropriate remedy in this case is a ruling that California law offers putative registered domestic partner protections analogous to those afforded to putative spouses, rather than an invalidation of any statute such as AB 205. (See *Lockyer, supra,* 33 Cal.4th at p. 1132 [noting that "an unconstitutional statute may be judicially reformed to retroactively extend its benefits to a class that the statute expressly but improperly excluded"] (conc. & dis. opn. of Kennard, J.).) While the Court may have a choice of remedies when it finds a violation of equal protection guarantees, its primary objective should be to adopt the remedy the Legislature would prefer. (*People v. Hofsheier* (2006) 37 Cal.4th 1185, 1207.) As discussed in detail above, the Legislature's express intent to extend the same rights and responsibilities to domestic partners as

California law provides to spouses dictates only one logical result — that the benefits and obligations provided to domestic partners be made more equal through the recognition of a putative registered domestic partner status, rather than largely eliminated as they would be were AB 205 to be invalidated.

## VI. Conclusion

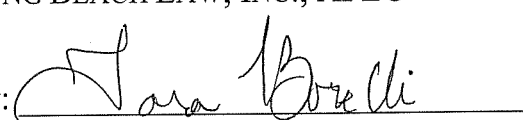
For all the foregoing reasons, Appellant requests that the Court reverse the trial court's Order Granting Respondent's Motion to Dismiss Petition for Dissolution of Domestic Partnership and remand this matter to the trial court with specific instructions to permit Appellant the opportunity to make a showing that he qualifies to proceed as a putative registered domestic partner.

Dated: July 20, 2007

Respectfully submitted,

Jennifer C. Pizer (SBN 152327)
Tara L. Borelli (SBN 216961)
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.

Rebecca J. Birmingham (SBN 192383)
A. Stephanie Loftin (SBN 147311)
Sharon L. Taylor (SBN 196716)
LONG BEACH LAW, INC., APLC

By: 
Tara L. Borelli
Counsel for Appellant