

1 David C. Codell (SBN 200965)  
Aimee Dudovitz (SBN 203914)  
2 Law Office of David C. Codell  
9200 Sunset Boulevard, Penthouse Two  
3 Los Angeles, California 90069  
Telephone: (310) 273-0306 / Facsimile: (310) 273-0307  
4

5 Shannon Minter (SBN 168907)  
Courtney Joslin (SBN 202103)  
National Center for Lesbian Rights  
6 870 Mission Street, Suite 570, San Francisco, California 94014  
Telephone: (415) 392-6257 / Facsimile: (415)392-8442  
7

[Additional attorneys listed on following page]

8 Attorneys for Intervenors  
9 Equality California, Michele Graham-Newlan, Debrah Armitage, Willard Kim Halm, Marcellin  
Simmard, Donna Hitchens, Nancy Davis, Deborah Lynn Johnson, Valerie Joi Fiddmont, Christine  
10 Kehoe, Julie Warren, Phyllis Lyon, Del Martin, William Rogers, and John Griffith Symons

11 Jon W. Davidson (SBN 89301)  
Jennifer C. Pizer (SBN 152327)  
12 Lambda Legal Defense and Education Fund  
3325 Wilshire Boulevard, Suite 1300, Los Angeles, California 90010  
13 Telephone: (213) 382-7600 / Facsimile: (213) 351-6063

14 Attorneys for Intervenors  
Brittany Bouchet, Deven Bouchet, Christopher G. Caldwell, Richard H. Lewellyn, Jr., Frederick  
15 Echeverria, Clinton Oie, Mina Meyer, Sharon Raphael, Kay B. Smith, and Carolyn Confer

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 FOR THE COUNTY OF SACRAMENTO

18 SENATOR WILLIAM J. KNIGHT; ) Case No. 03AS05284  
PROPOSITION 22 LEGAL DEFENSE AND )  
19 EDUCATION FUND, a California nonprofit ) Complaint Filed: September 22, 2003  
public benefit corporation, )  
20 Plaintiffs, )  
21 vs. ) DEFENDANT-INTERVENORS'  
MEMORANDUM OF POINTS &  
22 GRAY DAVIS in his official capacity as ) AUTHORITIES IN OPPOSITION TO  
Governor of the State of California, KEVIN ) PLAINTIFFS' MOTION FOR  
23 SHELLEY in his official capacity as Secretary ) PRELIMINARY INJUNCTION  
of State; WILLIAM J. JEFFERDS in his )  
24 official capacity as Director of General ) DATE: November 13, 2003  
Services; and GEOFF BRANDT, in his ) TIME: 9:00A.M.  
25 official capacity as acting state printer of the ) DEPT: 54  
office of state publishing, DOES 1 to 100, )  
26 Defendants. )  
27 )  
28 )

1 SENATOR WILLIAM J. KNIGHT; )  
 2 PROPOSITION 22 LEGAL DEFENSE AND )  
 3 EDUCATION FUND, a California nonprofit )  
 public benefit corporation, )  
 4 Plaintiffs, )  
 vs. )  
 5 EQUALITY CALIFORNIA, BRITTANY )  
 BOUCHET, DEVEN BOUCHET, )  
 6 CHRISTOPHER G. CALDWELL, RICHARD )  
 H. LEWELLYN, JR., FREDERICK )  
 7 ECHEVERRIA, CLINTON OIE, MICHELE )  
 GRAHAM-NEWLAN, DEBRAH )  
 8 ARMITAGE, WILLARD KIM HALM, )  
 MARCELLIN SIMARD, DONNA )  
 9 HITCHENS, NANCY DAVIS, DEBORAH )  
 LYNN JOHNSON, VALERIE JOI )  
 10 FIDDMONT, CHRISTINE KEHOE, JULIE )  
 WARREN, PHYLLIS LYON, DEL MARTIN, )  
 11 MINA MEYER, SHARON RAPHAEL, )  
 WILLIAM ROGERS, JOHN GRIFFITH )  
 12 SYMONS, KAY B. SMITH AND )  
 CAROLYN CONFER, )  
 13 Intervenors. )

14  
 15 Additional Counsel for Intervenors  
 Equality California, Michele Graham-Newlan, Debrah Armitage, Willard Kim Halm, Marcellin  
 16 Simnard, Donna Hitchens, Nancy Davis, Deborah Lynn Johnson, Valerie Joi Fiddmont, Christine  
 Kehoe, Julie Warren, Phyllis Lyon, Del Martin, William Rogers, and John Griffith Symons  
 17 Martha Matthews (SBN 130088)  
 ACLU Foundation of Southern California  
 18 1616 Beverly Boulevard  
 Los Angeles, California 90026  
 19 Telephone: (213) 977-5269 / Facsimile: (213) 250-3919  
 20 Tamara Lange (SBN 177949)  
 Alan L. Schlosser (SBN 49957)  
 21 ACLU Foundation of Northern California  
 1663 Mission Street, Suite 460  
 22 San Francisco, California 94103  
 Telephone: (415) 621-2493 / Facsimile: (415) 255-1478  
 23 Jordan C. Budd (SBN 144288)  
 24 ACLU of San Diego  
 110 West C Street, Suite 901, San Diego, California 92101  
 25 Telephone: (619) 232-2121 / Facsimile: (619) 232-0036  
 26 James D. Esseks (SBN 159360)  
 American Civil Liberties Union Foundation, Lesbian & Gay Rights Project  
 27 125 Broad Street, 18th Floor, New York, New York, 10004  
 Telephone: (212) 549-2627 / Facsimile: (212) 549-2650  
 28

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**I. INTRODUCTION**

Intervenors are registered domestic partners and Equality California, the leading statewide advocacy organization for same-sex couples and their children in California. Equality California has hundreds of members who are registered domestic partners, and co-sponsored the domestic partnership legislation challenged by plaintiffs. Intervenors will suffer serious harm if plaintiffs are granted a preliminary injunction. Many of the intervenor couples have children, or are caring for elderly parents, or are of advanced age and have serious health care and estate planning concerns. The continued delay and uncertainty concerning the legal effect of intervenors' status as domestic partners that would be caused by enjoining defendants from taking steps to implement AB 205 would seriously impair intervenors' ability to provide emotional and financial security for themselves and their dependent children and other family members, and to take steps to provide for each other's needs in the event of serious illness, disability, or death.

Moreover, the specific harms that the intervenor couples will suffer if implementation of AB 205 is enjoined are illustrative of the harm that will be caused to the hundreds of members of intervenor Equality California who are registered domestic partners, and to the tens of thousands of Californians who are or will become registered domestic partners.

By this lawsuit, plaintiffs seek to deprive intervenors and all similarly situated Californians of the legal protections afforded by AB 205. Plaintiffs erroneously allege that AB 205 amends Proposition 22 and is therefore unconstitutional. Plaintiffs seek a preliminary injunction enjoining defendants from taking any steps to implement AB 205, such as sending notices about the effect of AB 205 to persons who are currently registered as domestic partners.

**II. SUMMARY OF ARGUMENT**

Defendant-intervenors respectfully urge this Court to deny plaintiffs' motion for preliminary injunctive relief on two grounds. First, plaintiffs are unlikely to succeed on the merits of their claims. The domestic partnership legislation plaintiffs challenge does not repeal



1  
2 or in any way amend Proposition 22, which is the initiative statute providing that only marriages  
3 between different-sex couples are valid or recognized in California. Second, plaintiffs have not  
4 made and cannot make the required showing of irreparable injury, and the balance of hardships  
5 greatly favors defendants, defendant-intervenors, and members of the public who will be harmed  
6 by delay and uncertainty concerning the legal effect of domestic partnership registration in  
7 California.

8  
9 **III. STATUTORY BACKGROUND**

10 **A. Domestic Partnership is a Distinct Legal Status in California.**

11 In 1999, recognizing certain basic needs of families headed by same-sex couples (as well  
12 as older different-sex couples who could not marry without substantially reducing their Social  
13 Security benefits), the California Legislature passed AB 26, which created a statewide domestic  
14 partner registry. (*See* Stats. 1999, ch. 588 (enacting Fam. Code §§ 297-299.6, Gov't Code §§  
15 22867-22877, and Health & Saf. Code § 1261).)

16 The very first sentences of AB 26 make it clear that domestic partnership is a separate and  
17 distinct legal status from marriage:

18 Domestic partners. (1) Existing law sets forth the requirements of a valid marriage, and  
19 specifies the rights and obligations of spouses during marriage. This bill would provide  
20 that a domestic partnership shall be established between 2 adults of the same sex or, if  
21 both persons are over the age of 62 and meet specified eligibility criteria, opposite sexes,  
22 who have a common residence and meet other specified criteria and would provide for  
23 the registration of domestic partnerships with the Secretary of State.

24 (Stats. 1999, ch. 588.) To be eligible to register as domestic partners, AB 26 explicitly required  
25 that "neither person is married." (Fam. Code § 297(a)(3), added by Stats. 1999, ch. 588, § 2.) To  
26 register as domestic partners under AB 26, couples are required to indicate by public declaration,  
27 in documents filed with the Secretary of State, their common residence and commitment to each  
28 other according to criteria established by the California Legislature. (*See* Fam. Code § 298.5(b),  
added by Stats. 1999, ch. 588, § 2.) AB 26 provided only a few substantive rights to registered  
domestic partners, including rights of hospital visitation equal to those of spouses and other

1  
2 family members, and health insurance benefits for government employees' domestic partners.  
3 (See Health & Saf. Code § 1261, added by Stats. 1999, ch. 588, § 4; Gov't Code § 22867, added  
4 by Stats. 1999, ch. 588, § 3.) However, AB 26 expressly contemplated that the state legislature  
5 and/or local legislative bodies might provide domestic partners with additional rights and duties  
6 in the future (See Fam. Code § 299.6(c) (enacted by Stats. 1999, ch. 588, § 2) ("Any local  
7 jurisdiction may retain or adopt ordinances, policies, or laws that offer rights within that  
8 jurisdiction to domestic partners as defined by Section 297 . . . that are in addition to the rights  
9 and duties set out in this division".))

10 **B. Proposition 22 Governs Marriage Recognition, Not Domestic Partnership**  
11 **Protections.**

12 California voters passed Proposition 22 in March 2000. Proposition 22 amended the  
13 Family Code to provide that "[o]nly marriage between a man and a woman is valid or recognized  
14 in California." (Fam. Code § 308.5.) A few months before the voters considered Proposition 22,  
15 a holding of the Vermont Supreme Court had raised the possibility that the Vermont legislature  
16 might permit same-sex couples to marry in that state. (*Baker v. State* (Vt. 1999) 744 A.2d 864.)  
17 The stated purpose of Proposition 22 was to establish that California would not recognize any  
18 marriage contracted in another state or country if such marriage were not between a man and a  
19 woman. Accordingly, Proposition 22 was codified as section 308.5 of the Family Code,  
20 immediately after section 308, which is entitled "Foreign marriages; validity" and which  
21 provides: "A marriage contracted outside this state that would be valid by the laws of the  
22 jurisdiction in which the marriage was contracted is valid in this state." Proposition 22 was  
23 intended to ensure that another state's decision to allow same-sex couples to marry would not  
24 require California, pursuant to Family Code section 308, to recognize such a marriage as valid  
25 within California.

26 Proposition 22 says nothing about the rights of registered domestic partners under  
27 California law. To the contrary, the proponents of Proposition 22 repeatedly advised the  
28 California electorate that the measure would in no way interfere with the rights of domestic

1  
2 partners or prevent future laws from providing domestic partners with legal rights, benefits, or  
3 responsibilities. For example, the rights of registered domestic partners at the time Proposition  
4 22 was pending included hospital visitation. The official ballot materials in favor of Proposition  
5 22 expressly advised voters, with emphasis: "It does not take away anyone's right to inheritance  
6 or hospital visitation." (See Intervenors' Request for Judicial Notice, Exhibit A (Official Voter  
7 Information Guide for Proposition 22, dated March 7, 2000).)<sup>1</sup>

8 The official ballot materials also included the following arguments in support of  
9 Proposition 22, all of which make clear that the measure was concerned with whether California  
10 would have to recognize any out-of-state marriages that might someday exist between same-sex  
11 couples:

- 12 • "Proposition 22 is exactly 14 words long: 'Only marriage between a man and a woman is  
13 valid or recognized in California.' That's it! No legal doubletalk, no hidden agenda. Just  
common sense: Marriage should be between a man and a woman."
- 14 • "Opponents claim 22 will take away hospital visitation and inheritance rights, even throw  
15 people out of their homes. THAT'S ABSOLUTELY FALSE! Do they really expect  
16 voters to believe that? THE TRUTH IS, PROPOSITION 22 DOESN'T TAKE AWAY  
ANYONE'S RIGHTS."
- 17 • "When people ask, 'Why is this necessary?' I say that even though California law already  
18 says only a man and a woman may marry, it also recognizes marriages from other states.  
However, judges in some of those states want to define marriages differently than we do.  
If they succeed, California may have to recognize new kinds of marriages . . . ."
- 19 • "THE TRUTH IS, UNLESS WE PASS PROPOSITION 22, LEGAL LOOPHOLES  
20 COULD FORCE CALIFORNIA TO RECOGNIZE 'SAME-SEX MARRIAGES'  
PERFORMED IN OTHER STATES."

21 (See Intervenors' Request for Judicial Notice, Exhibit A (Official Voter Information Guide for  
22 Proposition 22, dated March 7, 2000).) The ballot arguments in favor of Proposition 22 further  
23

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24 <sup>1</sup> Proposition 22 spokespersons also emphasized this message to the electorate through  
25 numerous media interviews. (Pyle, *State Begins Accepting Gays' Domestic Partner Sign-Ups*,  
26 L.A. Times (Jan. 4, 2000) ("Proposition 22 spokesman Robert Glazier said the campaign has  
27 taken no position on domestic partner registration . . . ."); Savage, *Vt. Court Backs Equal Rights*  
28 *for Gay Couples*, L.A. Times (Dec. 21, 1999) (quoting Rob Stutzman, campaign manager for  
Proposition 22, as stating that "the notion of giving legal protections to same-sex couples does  
not set off alarms. **'We don't have an opinion on domestic partnerships. For us, it is either  
a marriage or isn't,'** Stutzman said.") (emphasis added).) (See Declaration of Aimee Dudovitz  
in Support of Intervenors' Opposition ("Dudovitz Decl."), Exhibit A, parts g, h.)

1  
2 stated that Proposition 22's purpose was to clarify how the word marriage and the unique  
3 institution of marriage would be defined by statute:

- 4 • "[Some people] say I have to accept that marriage can mean whatever anyone says it  
5 means, and if I don't agree then I'm out of touch, even an extremist."
- 6 • "It's tough enough for families to stay together these days. Why make it harder by telling  
7 children that marriage is just a word anyone can re-define again and again until it no  
8 longer has any meaning?"
- 9 • "THE TRUTH IS, we respect EVERYONE's freedom to make lifestyle choices, but draw  
10 the line at re-defining marriage for the rest of society."

11 *Id.* In sum, the Proposition's plain text, its placement in the Family Code, the ballot  
12 measure's summary, and the statements of its proponents in the official voter guides, all confirm  
13 that Proposition 22 was concerned with recognition of out-of-state marriages between persons of  
14 the same sex, not the rights and responsibilities of Californians who entered into the separate  
15 state-law status of domestic partnership.

16 **C. Assembly Bills 25 and 205 Expanded the Rights and Duties of Domestic  
17 Partners, but Maintained a Clear Distinction between Domestic Partnership  
18 and Marriage.**

19 Since 1999, the California Legislature has gradually extended further rights and  
20 responsibilities to domestic partners. None of the laws that increased the rights and duties  
21 applicable to domestic partners has changed the legal nature of domestic partnership or the legal  
22 nature of marriage. Instead, the Legislature has maintained a clear distinction between domestic  
23 partnership and marriage. In October 2001, Governor Gray Davis signed Assembly Bill 25 ("AB  
24 25") into law. (Stats. 2001, ch. 893.) AB 25 expanded the legal protections provided to  
25 registered domestic partners in California to include basic employment, health care, and estate  
26 planning rights such as:

- 27 • The right to use the stepparent adoption procedure for adoption of a domestic  
28 partner's children (*See* Fam. Code § 9000, as amended by Stats. 2000, ch. 893, §  
5);
- The right to make medical decisions for a partner who is incapacitated (*See* Prob.  
Code § 4716, added by Stats. 2000, ch. 893, § 49);

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- Preference for domestic partners in appointment as conservator, and rights of notice and ability to contest conservatorship over a partner (*See* Prob. Code § 1812, as amended by Stats. 2000, ch. 893, § 15);
- The right to sue for wrongful death of a partner (*See* Prob. Code § 2504, as amended by Stats. 2000, ch. 893, § 36);
- The right to sue for negligent infliction of emotional distress in connection with injury to a partner (*See* Civ. Code § 1714.01, added by Stats. 2000, ch. 893, § 1);
- The ability to use form wills (*See* Prob. Code § 6240, as amended by Stats. 2000, ch. 893, § 52);
- Priority for appointment as the administrator of a deceased partner’s estate (*See* Prob. Code § 8461, as amended by Stats. 2000, ch. 893, § 53);
- The right to receive unemployment insurance when relocating because of a partner’s job (*See* Unemp. Ins. Code § 1030(a)(4), as amended by Stats. 2000, ch. 893, § 57);
- Exemption from state income taxes on the value of health insurance benefits provided to cover an employee’s domestic partner (*See* Rev. & Tax. § 17021.7, as amended by Stats. 2000, ch. 893, § 56].
- The right to use sick leave to care for an ill partner or ill child of a partner (*See* Lab. Code § 233, as amended by Stats. 2000, ch. 893, § 12);
- The requirement that insurers offer insurance plans that cover employees’ domestic partners and their children, on the same terms as plans covering spouses and children (*See* Ins. Code § 10121.7, added by Stats. 2000, ch. 893, § 11); and
- Continued health insurance coverage for state employees’ domestic partners and their children after the death of the employee (*See* Gov’t Code § 22871.2, as amended by Stats. 2000, ch. 893, § 9.)

On September 19, 2003, Governor Gray Davis signed into law Assembly Bill 205 (“AB

1  
2 205”), also known as “The California Domestic Partner Rights and Responsibilities Act of  
3 2003.” (See Stats. 2003, ch. 421.) AB 205 amended numerous provisions of the Family Code  
4 and added new provisions relating to domestic partnerships to the Family Code and other state  
5 laws. AB 205 created a significantly expanded set of rights, benefits, and obligations for  
6 registered domestic partners and their families, including:

- 7 • Joint assessment of income for determining eligibility for state government  
8 assistance programs;
- 9 • Joint assessment of income in determining eligibility for student aid;
- 10 • Rent-control protections and access to student family housing programs;
- 11 • The right to make decisions for funeral arrangements and disposition of remains  
12 for a deceased domestic partner;
- 13 • Identification of partner on death certificate;
- 14 • The ability to avoid probate of jointly owned property; and
- 15 • Death benefits for surviving partners of firefighters and police officers.
- 16 • Application of community property laws to property acquired during a domestic  
17 partnership;
- 18 • Mutual responsibility for debts;
- 19 • Access to family courts to resolve disputes concerning custody, visitation, and  
20 support of children born or adopted during a domestic partnership;
- 21 • The presumption that both partners are parents of children born during a domestic  
22 partnership;
- 23 • The right to authorize medical treatment of a domestic partner’s children.

24 (See Stats. 2003, ch. 421; Fam. Code §§ 297.5, 299.3.) Together, AB 25 and AB 205 define the  
25 rights, benefits, and obligations of registered domestic partners and their children in many  
26 complex legal situations faced by California families involving childbirth, adoption, child  
27 custody, visitation and support issues, property distribution, disability, and death.

28 These provisions of AB 205 do not go into effect until January 1, 2005. (See *id.*) Before

1  
2 that time, AB 205 obliges the Secretary of State to send letters to all registered domestic partners  
3 (hereinafter "Notice Letters") informing them of these important changes in the law, and  
4 explaining that domestic partners who do not wish to be subject to these new rights and  
5 responsibilities must terminate their registrations before January 1, 2005. (*See* Fam. Code §  
6 299.3, added by Stats. 2003, ch. 421, § 10.) AB 205 requires the Secretary of State to send out  
7 these Notice Letters "on or before June 30, 2004, and again on or before December 1, 2004, and  
8 again on or before January 31, 2005." (*Id.*)

9 **D. Other Post-Proposition 22 Domestic Partnership Legislation**

10 In addition to AB 25 and AB 205, the concept of domestic partnership as a familial status  
11 separate from marriage has been incorporated into numerous other bills enacted between 1999  
12 and 2003, primarily concerning benefits such as health insurance, pensions, inheritance, housing,  
13 and family leave. (*See* Stats. 2000, ch. 1004; Stats. 2001, ch.146; Stats. 2002, ch. 373; Stats.  
14 2002, ch. 377; Stats. 2002, ch. 412; Stats. 2002, ch. 901; Stats. 2001, ch. 914; Stats. 2002, ch.  
15 447; Stats. 2003, ch. 32; Stats. 2003, ch. 444; Stats. 2003, ch. 630; Stats. 2003, ch. 673; Stats.  
16 2003, ch. 752; Stats. 2003, ch. 764; Stats. 2003, ch. 780.) In addition, the concept of domestic  
17 partnership has been incorporated into numerous California administrative regulations other than  
18 those adopted pursuant to AB 25 or AB 205. (*See* Cal. Code Regs., tit. 2, §§ 599.911, 599.913,  
19 599.920.5, 18531.7, 21922; Cal. Code Regs., tit. 13, § 20.04; Cal. Code Regs., tit. 16, § 1833;  
20 Cal. Code Regs., tit. 22, §§ 1253.12-1, 1256-9; *see also* Cal. Rules of Court, appen. Standards 2  
21 and 7 [requiring neutral arbitrators in contractual arbitration to disclose family relationships with  
22 a party or with a lawyer in the arbitration, defined to include registered domestic partners].)

23 Thus, as a result of AB 26, domestic partnership already existed in California as a civil  
24 status separate and distinct from marriage, before Proposition 22 was presented to the voters.  
25 After Proposition 22 was enacted, the California legislature continued to develop and expand the  
26 rights and duties of domestic partners through AB 25 and AB 205 as well as numerous other  
27 laws.

28 Plaintiffs do not challenge either the domestic partnership laws that existed before

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2 Proposition 22 was enacted or, other than AB 205, those enacted after Proposition 22. Rather,  
3 plaintiffs challenge only the protections established by AB 205. Plaintiffs allege that AB 205  
4 amended Proposition 22 without voter approval and is therefore unconstitutional. Their  
5 arguments are meritless, and this Court should deny plaintiffs' motion for a preliminary  
6 injunction enjoining defendants from taking any steps to implement AB 205.  
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9 **IV. PLAINTIFFS FAIL TO MEET THE LEGAL STANDARD FOR PRELIMINARY**  
10 **INJUNCTIVE RELIEF**

11 Plaintiffs fail to meet the legal standard for preliminary injunctive relief. The standard  
12 used to determine whether a preliminary injunction should issue depends on two factors: "(1) the  
13 likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is  
14 likely to result from the granting or denial of interim injunctive relief." (*White v. Davis* (2003)  
15 30 Cal.4th 528, 554.) Further, the plaintiff "ordinarily is required to present evidence of the  
16 irreparable injury or interim harm that it will suffer if an injunction is not issued pending an  
17 adjudication of the merits." (*Id.*)

18 **A. Plaintiffs are Unlikely to Succeed on the Merits Because AB 205 Does Not**  
19 **Amend Proposition 22.**

20 Plaintiffs are unlikely to succeed on the merits because AB 205 does not violate article II,  
21 section 10 of the California Constitution by amending an initiative without the consent of the  
22 voters. AB 205 does not repeal, amend, thwart, or change in any way the laws governing  
23 marriage or limiting marriage to different-sex couples.

24 Article II, section 10, subdivision (c) of the California Constitution states that the  
25 Legislature "may amend or repeal an initiative statute by another statute that becomes effective  
26 only when approved by the electors unless the initiative statute permits amendment or repeal  
27 without their approval." (*Amwest Surety Insurance Co. v. Wilson* (1995) 11 Cal. 4th 1243.) The  
28 legal standard for determining whether a statute impermissibly amends or repeals an initiative is



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2 whether the statute would “add to or take away from” the initiative. (*Proposition 103*  
3 *Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1485 (citing *Franchise Tax*  
4 *Bd. v. Cory* (1978) 80 Cal.App.3d 772, 777).) Last year, the Supreme Court affirmed and  
5 clarified this standard, holding that an “amendment,” in this context, “is a legislative act designed  
6 to change an existing initiative statute by adding or taking from it some particular provision.”  
7 (*People v. Cooper* (2002) 27 Cal.4th 38, 44 (citing *Proposition 103 Enforcement Project*, 64  
8 Cal.App.4th at 1485).) However, as long as the intended operation of the initiative is  
9 undisturbed, new legislation may proceed in a “related but distinct area” without constituting an  
10 impermissible amendment of the initiative. (*Mobilepark West Homeowners Ass’n. v. Escondido*  
11 *Mobilepark West* (1995) 35 Cal.App.4th 32, 43); *California Chiropractic Assn. v. Board of*  
12 *Administration* (1974) 40 Cal.App.3d. 701, 704.)

13 In order to determine the meaning and scope of an initiative statute, the general rules of  
14 statutory construction apply. Courts refer first to the language of the initiative, giving the words  
15 their ordinary meaning, and then construe the language in the context of the statute as a whole  
16 and the overall statutory scheme. When the language is ambiguous, the court may also consider  
17 other indicia of the voters’ intent, particularly the analyses and arguments contained in the  
18 official ballot pamphlet. (See *People v. Rizo* (2000) 22 Cal.App.4th 681; *McLaughlin v. State*  
19 *Board of Equalization* (1999) 75 Cal.App.4th 196.)<sup>2</sup>

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21 <sup>2</sup> Plaintiffs incorrectly claim that the California Supreme Court has held that, in a  
22 challenge to legislation on the grounds that it impermissibly amended an initiative, all doubts  
23 must be resolved in favor of the initiative. To support this argument, Plaintiffs cite a number of  
24 California Supreme Court cases, but all these cases concerned constitutional challenges to the  
25 validity of an initiative itself; none involved a challenge to later legislation that allegedly  
26 amended an initiative. (See, e.g., *DeVita v. County of Napa* (1995) 9 Cal.4th 763; *Kennedy*  
*Wholesale, Inc., v. State Board of Equalization* (1991) 53 Cal.3d 245; *Brosnahan v. Brown*  
*County* (1979) 25 Cal.3d 33; *Amador Valley Joint Union High School District v. State Board of*  
*Equalization* (1978) 22 Cal.3d 208; *Associated Home Builders of Greater Eastbay, Inc., v. City*  
*of Livermore* (1976) 18 Cal.3d 582.)

27 Contrary to plaintiffs’ argument, any doubts regarding the constitutionality of a statute  
28 must be resolved in favor of the legislation. The Legislature’s acts are presumed to be  
constitutional. (See *Kraus v. Trinity Management Services, Inc.*, (2000) 23 Cal.4th 116.),  
because the Legislature is presumed to understand and intend to act within its constitutional  
limits. (See *id.*; *People v. Zandrion*, (2002) 100 Cal.App.4th 74, 86 (starting with the premise

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AB 205 does not amend or repeal Proposition 22. AB 205 extends to registered domestic partners many of the rights and duties of spouses under California law, but it does not amend Proposition 22 by adding or taking to away any from that initiative. AB 205 does not allow same-sex couples to marry, and does not qualify them as “spouses” under California law. It does not affect who may marry, or how an eligible couple marries. It does not in any way affect the legal rights or duties of married couples under California law. And it does not amend California law regarding which out-of-state marriages receive legal recognition in California.

**1. The Plain Meaning of Proposition 22 is Not Affected by AB 205.**

The plain meaning of Proposition 22, its placement in the Family Code, the ballot measure’s summary, and the statements of its proponents in the official voter guides, all confirm that the purpose of the initiative was to prevent recognition of out-of-state marriages between persons of the same sex. This reading comports with the governing rule of construction that requires avoiding “surplusage” when selecting among competing interpretations. (*See Lungren v. Superior Court* (1996) 14 Cal.4th 294, 302 (“Statutes, whether enacted by the people or the Legislature, will be construed so as to eliminate surplusage.”).) Before Proposition 22 went before the voters, California Family Code section 300 already provided that “marriage is a personal relation arising out of a civil contract between a man and a woman . . . .” To construe the initiative as imposing yet another different-sex requirement for marriage, on top of the explicit requirement already in place, would make Proposition 22 redundant and reduce it to mere surplusage.

AB 205 does not address in any way California’s laws concerning recognition of out-of-state marriages. In fact, AB 205 contains an explicit limitation that it will **not** create recognition in California for any marriages same-sex couples may enter into in other jurisdictions in the

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that the legislation is valid, the court “resolve[s] all doubts in favor of its constitutionality, and [the court] uphold[s] it unless it is in clear and unquestionable conflict with state or federal Constitutions.”(citations omitted).) Thus, this Court should presume that in passing AB 205, the Legislature acted within the boundaries set by article II, section 10 of the California Constitution.

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2 future. (*See* Fam. Code § 299.2, added by Stats. 2003, ch. 421, § 9: “A legal union of two  
3 persons of the same sex, other than a marriage, that was validly formed in another jurisdiction,  
4 and that is substantially equivalent to a domestic partnership as defined in this part, shall be  
5 recognized as a valid domestic partnership in this state regardless of whether it bears the name  
6 domestic partnership.”.) Because AB 205 expressly respects and follows Proposition 22’s central  
7 “non-recognition” command, it is clear that AB 205 neither repeals nor amends the plain  
8 meaning of Proposition 22.

9                   **2. AB 205 Does Not “Add to or Take Away from” Proposition 22.**

10           AB 205 neither “adds to or takes away from” Proposition 22, because marriage and  
11 domestic partnership are separate and distinct legal institutions. They also have different social  
12 meanings, different histories, and different relationships to religion.

13                   **a. AB 205 does not change the legal meaning of marriage.**

14           AB 205 does not alter the laws regarding marriage in California in any respect. It does  
15 not alter the laws regarding who may marry in California, the qualifications for marriage in  
16 California, or the legal rights and duties of spouses or former spouses in California. It does not  
17 alter a single code section concerning the creation, recognition or legal rights of marriage,  
18 explicitly or by implication. (*See People v. Cooper*, 27 Cal.4th at 44.) Moreover, the legal effects  
19 of marriage and of domestic partnership are dramatically different.

20           Domestic partnership, as a familial status separate and distinct from marriage, already  
21 existed in California before Proposition 22 was presented to the voters. (*See* Stats. 1999, ch.  
22 588.) As discussed above, after Proposition 22 was enacted, the California legislature continued  
23 to develop and to expand the rights and duties of domestic partners through AB 25, AB 205, and  
24 other bills concerning benefits such as health insurance, pensions, inheritance, housing, and  
25 family leave.

26           The fact that marriage and domestic partnership are each recognized as a separate and  
27 distinct familial status in California is also plain from the difference between the eligibility  
28 criteria for domestic partnership set forth in Family Code section 297 and the eligibility criteria

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2 for marriage in section 301, et seq. For example, minors may marry with parental permission,  
3 but only adults may enter into domestic partnerships. Domestic partners, but not married  
4 couples, must share a common residence. The process for registering a domestic partnership set  
5 forth in Family Code section 298 involves completing a sworn declaration and filing the  
6 notarized document with the California Secretary of State's office, the same agency that  
7 maintains records of corporate filings. In contrast, the process for entering into a marriage set  
8 forth in Family Code sections 350 through 360 and 400 through 425, involves obtaining a license  
9 from the county clerk, participating in a solemnization ceremony before an official deputized by  
10 the State, and recording the endorsed license with the county recorder. These county officials are  
11 responsible for retaining records of births, deaths, and other vital statistics of family  
12 relationships. Thus, the eligibility requirements, processes, and government agencies charged to  
13 administer and record marriages and domestic partnerships are entirely distinct.

14 Moreover, the methods by which couples may end marriages and domestic partnerships  
15 differ. Married couples may obtain a judgment of dissolution or legal separation only through an  
16 action in Superior Court. In contrast, if certain conditions are met, domestic partners may  
17 terminate their partnership simply by filing a Notice of Termination with the Secretary of State.  
18 (*See* Stats. 2003, ch. 421, § 8.)

19 Domestic partners and married couples are treated differently for purposes of state  
20 income tax laws, and domestic partners are excluded from some benefits that are provided to  
21 spouses of state employees. Registered domestic partners must still file as "single" on both their  
22 state and federal tax returns, and may not be entitled to the same long-term care benefits provided  
23 to married government employees. (*Id.* § 4 (adding new Fam. Code §§ 297.5(g) and (h).)  
24 Marriages, unlike domestic partnerships, receive automatic recognition by the federal  
25 government, and are linked to over 1,000 federal rights and benefits. (*See* Stats. 2003, ch. 421  
26 ("This section does not amend or modify federal laws or the benefits, protections, and  
27 responsibilities provided by those laws.")) For example, California domestic partners do not  
28 qualify for federal Social Security payments, veterans' benefits, pensions, or other benefits

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2 offered to married couples. Domestic partnership has no effect on federal income tax liability or  
3 any other federal right, benefit, or duty. Marriages that are valid in California are automatically  
4 recognized in all other states, by employers and other private parties, and in other countries. In  
5 contrast, it is unclear whether California domestic partnerships will receive recognition by other  
6 states or countries.

7 All of these distinctions between marriage and domestic partnership were discussed in the  
8 analyses prepared for various legislative committees when AB 205 was pending. (*See*  
9 *Intervenors' Request for Judicial Notice, Exhibit B, parts a–h (Bill Analyses of AB 205).*)  
10 Moreover, the sponsor of AB 205, Assemblymember Goldberg received a Legislative Counsel  
11 opinion that was distributed to other legislators, which concluded that AB 205 does not amend or  
12 conflict with Proposition 22. (*See Intervenors' Request for Judicial Notice, Exhibit C; see also*  
13 *Declaration of Jackie Goldberg and Exhibit A thereto (Legislative Counsel Opinion dated March*  
14 *24, 2003).*) This opinion is entitled to deference. (*See North Hollywood Project Area Com. v.*  
15 *City of Los Angeles* (1998) 61 Cal.App.4th 719, 724 (“Though not binding, opinions of the  
16 Legislative Counsel are entitled to great weight”); *Santa Clara County Local Transportation*  
17 *Authority v. Guardino* (1995) 11 Cal.4th 220, 238 (“an opinion of the Legislative Counsel is  
18 entitled to respect”). The legislature, in enacting AB 205, analyzed the question carefully, and  
19 reached the correct conclusion that expanding the rights and responsibilities of domestic partners  
20 did not in any way alter California’s laws governing marriage and limiting marriage to different-  
21 sex couples.

22 **b. AB 205 does not change the social or religious meaning of**  
23 **marriage.**

24 There is no confusion in the mind of the public about the distinction between marriage  
25 and domestic partnership. Marriage has a long history of legal, social, and religious significance.  
26 Domestic partnership, in contrast, is a relatively recent concept, developed for the specific  
27 purpose of providing some legal protections for unmarried couples and their families.

28 Marriage has had significance in most religious traditions throughout recorded history. In  
contrast, there are no longstanding religious traditions concerning domestic partnership, and

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2 religious denominations vary widely in their views of whether gay and lesbian couples should  
3 receive recognition and support within the spiritual community. California's domestic  
4 partnership laws create a new civil status entirely apart from religious traditions or church-state  
5 collaboration, and do not deputize religious figures to play any role in the creation of domestic  
6 partnerships. The domestic partnership laws make no provision for officiants at all, let alone  
7 religious ones. Thus, the proposed law would not amend, repeal, or alter in any way the role of  
8 religious figures under California's marriage laws.

9 For the above legal, social, historical, and religious reasons, domestic partnership is  
10 legally and factually distinct from marriage, and legislation regarding domestic partnership does  
11 not "add to or take away from" Proposition 22 or in any way conflict with the limitation of  
12 marriage in California to different-sex couples. Further, AB 205 does not alter in any respect the  
13 legal rights and duties of married spouses, or former spouses. Not one single code section  
14 concerning creation, recognition, or legal privileges of marriage would be changed by this  
15 legislation, implicitly or explicitly. Not one "particular provision" of the laws governing married  
16 couples, nor any of the laws' effects for those who are married, would be altered. (See *People v.*  
17 *Cooper*, 27 Cal.4th at 44.) This Court should therefore conclude that plaintiffs are unlikely to  
18 prevail on the merits of their claim that AB 205 impermissibly amends Proposition 22 in  
19 violation of article II, section 10 of the California Constitution.

20 **3. Plaintiffs' Challenge to AB 205 is Not Supported by Case Law from**  
21 **Other States, Nor by California Case Law Concerning the State's**  
22 **Interest in Marriage.**

23 This conclusion is in accord with numerous prior cases in other states, in which courts  
24 rejected taxpayer challenges to city or county domestic partnership ordinances on the grounds  
25 that they conflict with state laws concerning marriage. The courts in these cases easily  
26 distinguished between domestic partnership and marriage. (See, e.g., *Tyma v. Montgomery*  
27 *County* (Ct.App.Md. 2002) 369 Md. 497, 801 A.2d 148; *Heinsma v. City of Vancouver*  
28 (S.Ct.Wa. 2001) 144 Wash.2d 556, 29 P.3d 709; *Lowe v. Broward County* (Ct.App.Fl. 2000) 766  
So.2d 1199; *Supreme Judicial Court of Mass. v. Commors* (S.J.C. Mass. 1999) 430 Mass.31,

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2 fn.11, 714 N.E.2d 335; *Slattery v. City of New York* (1999) 266 A.D.2d 24, 697 N.Y.S.2d 603;  
3 *Crawford v. City of Chicago* (Ct.App.Ill. 1999) 304 Ill.App.3d 818, 710 N.E.2d 91; *Scheafer v.*  
4 *City and County of Denver* (Ct.App.Co. 1999) 973 P.2d 717; *City of Atlanta v. Morgan* (S.Ct.  
5 Ga. 1997) 268 Ga. 586, 492 S.E.2d 193.)

6 In particular, the *Lowe* court noted that, as with Proposition 22, the “primary impetus” for  
7 Florida’s defense of marriage statute was “the fear that the full faith and credit clause of the  
8 federal constitution would require Florida to recognize same-sex marriages if another state  
9 recognized such a notion . . . . This supports a reading of the statute where the term ‘marriage’  
10 connotes a marriage in the traditional sense, with all the accompanying rights and obligations.”  
11 (*Lowe*, 766 So.2d at 1208.) Also, *Scheafer* emphasizes the commonsense point that extending  
12 rights and duties to a separate group of people who cannot marry does not undermine the state’s  
13 interest in promoting marriage among those eligible to marry: “The ordinance qualifies a  
14 separate and distinct group of people who are not eligible to contract a state-sanctioned marriage  
15 [to receive certain benefits] . . . . Therefore, the ordinance does not adversely impact the integrity  
16 and importance of the institution of marriage.” (*Scheafer*, 973 P.2d at 721.)

17 Moreover, the cases plaintiffs cite regarding the state’s interest in marriage, *Elden v.*  
18 *Sheldon* (1988) 46 Cal.3d 267, and *Nieto v. City of Los Angeles* (1982) 138 Cal.App.3d 464, hold  
19 only that the state has an interest in reserving certain rights (such as the right to sue for loss of  
20 consortium) to couples who have *chosen* to enter into the “solemn and binding” contract of  
21 marriage and to bear mutual legal responsibilities for each other, rather than simply to cohabit as  
22 an unmarried couple. These cases neither hold nor imply that the state of California does not  
23 *also* have an interest in domestic partnership, which is parallel to and compatible with its interest  
24 in promoting marriage among couples who are eligible to marry. This parallel state interest in  
25 granting legal rights and duties to same-sex couples who wish to enter into lifelong partnerships  
26 but are not eligible to marry, is clearly evident from the extensive history of legislation creating  
27 and expanding upon the status of domestic partnership, but keeping it distinct from marriage.

28 Based on the clear distinctions between marriage and domestic partnership established by

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2 California law and also by longstanding social and religious traditions, this Court should  
3 conclude that plaintiffs are unlikely to prevail on their claim that the domestic partnership  
4 legislation embodied in AB 205 amends Proposition 22 in violation of article II, section 10 of the  
5 California Constitution.

6 **4. AB 205 Does Not Conflict With the Voters' Intent in Passing**  
7 **Proposition 22.**

8 The only way to imagine a conflict between AB205 and Proposition 22 would be to  
9 interpret the initiative as embodying a state policy against protecting gay and lesbian couples and  
10 their families through legal devices other than marriage. Such an interpretation is untenable,  
11 because the text of Proposition 22 says nothing about domestic partnership. The ballot  
12 arguments in support of Proposition 22 stated unequivocally that the measure was **not** intended  
13 to harm lesbian and gay couples and their families, to encourage discrimination, or to prevent  
14 legal protection of same-sex couples through means other than marriage.<sup>3</sup>

15 The proponents of Proposition 22 gave similar, clearly-worded statements throughout the  
16 "Yes on 22" campaign, disclaiming any intention to cause discrimination or otherwise to prevent  
17 recognition and protection of gay and lesbian couples and their families through legal vehicles  
18 other than marriage. (See Dudovitz Decl., Exhibit A, parts a-f (Herscher, *400 Clergy to Protest*  
19 *State Initiative Banning Gay Marriage*, S.F. Chronicle (Feb. 11, 2000) p. A5 (quoting  
20 Proposition 22 campaign spokesman Robert Glazier as saying "people understand that gays and  
21 lesbians have a right to have the protections they have and live the lifestyle of their choice, but  
22 they don't have the right to redefine marriage for anyone else"); Warren, *Cast of Sitcom Appears*  
23 *in Ad Against Prop. 22*, Los Angeles Times (Dec. 8, 1999) p. A3 (also quoting Robert Glazier as  
24 saying, "The measure is 'not about discriminating against anybody. . . . It's simply a  
25 reaffirmation of the importance of a man and a woman in marriage."); *The Edge with Paula Zahn*

26 <sup>3</sup> Rebuttal to Argument Against Proposition 22 states: "Opponents say anybody  
27 supporting traditional marriage is guilty of . . . hatred and discrimination towards gays, lesbians  
28 and their families. That's unfair and divisive nonsense! THE TRUTH IS, we respect  
EVERYONE'S freedom to make lifestyle choices, but draw the line at re-defining marriage."  
(See Intervenors' Request for Judicial Notice, Exhibit A (Official Voter Information Guide for  
Proposition 22, dated March 7, 2000).)



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2 (interview of Robert Glazier) Fox Television (March 6, 2000) (containing statements by  
3 campaign spokesman Robert Glazier that “this campaign is about the definition of marriage. It’s  
4 not about the other rights, which gays and lesbians currently enjoy in California and which will  
5 not be affected when Prop 22 passes” and that “Proposition 22 was so narrowly defined with just  
6 14 words, not just for simplicity’s sake, but for the legal impact. **It will not affect domestic  
7 partner rights**, it will not affect hospital visitation rights or child custody rights or inheritance  
8 rights . . . .”) (emphasis added); Churchill, *Same Sex Couples Cheer New Law*, Riverside Press  
9 Enterprise (Jan. 5, 2000) p. B3 (“Robert Glazier, spokesman for the statewide initiative  
10 campaign, said **he sees no problems with the domestic-partnership registration and does not  
11 want any confusion with his campaign and the partnership registry**. ‘Our campaign is to  
12 strictly preserve marriage,’ he said.”) (emphasis added); Rowland, *Varying Views of Marriage*,  
13 Modesto Bee (Feb. 20, 2000) p. A1 (“The Yes on 22 campaign is quick to point out that the  
14 initiative’s limited language means it would not attack the new state registry. Robert Glazier,  
15 spokesman for Yes on 22, said other states used broad language so lawsuits could be filed trying  
16 to repeal other gay-friendly legislation”).) The proponents also repeatedly stated that, like most  
17 other people, they understood there was clear difference between marriage and domestic  
18 partnerships. (See, e.g., *Good Morning America*, ABC Television (March 7, 2000) (containing  
19 statement by Robert Glazier that “I guess I would quote Barbara Boxer, one of our more liberal  
20 politicians, who said that from the standpoint of society recognizing a long-term relationship  
21 between gay people, it’s called domestic partnerships, and that recognizes long-term  
22 relationships while marriage is the long-term relationship for people of the opposite sex. We  
23 would agree with Barbara Boxer. Marriage is between one man and one woman.”).

24 A statute violates article II, section 10 of the California Constitution only if it amends an  
25 initiative without the consent of the voters. AB 205, however, does not amend Proposition 22;  
26 no provision of this legislation would repeal, amend, thwart, or change in any way the laws  
27 governing marriage and married couples. This legislation does not “add to or take away from”  
28 California laws governing marriage or limiting marriage to different-sex couples. (See *Cooper*,

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2 27 Cal.4th at 44.) As plaintiffs point out, this Court must “jealously guard” the people’s right to  
3 legislate by initiative. But this right should be protected by interpreting the voters’ intent in  
4 enacting Proposition 22 *accurately*, in light of the language of the initiative, its placement in the  
5 Family Code, its statutory and historical context and the ballot materials and other indications of  
6 voter intent – not by distorting the meaning and scope of Proposition 22 to attack later legislation  
7 to which plaintiffs are politically opposed. For these reasons, defendant-intervenors urge this  
8 Court to deny plaintiffs’ motion for preliminary injunctive relief, because they have little chance  
9 of success on the merits of their claims.

10 **B. Plaintiffs Have Not Made the Required Showing of Irreparable Injury, and**  
11 **the Balance of Hardships Strongly Favors Defendants and Defendant-**  
12 **Intervenors.**

12 Regardless of the likelihood or unlikelihood of plaintiffs’ success on the merits of their  
13 claims, this Court should deny plaintiffs’ motion for preliminary injunctive relief for a separate  
14 and independent reason. Plaintiffs cannot show irreparable injury, and the balance of hardships  
15 strongly favors defendants and defendant-intervenors.

16 Plaintiffs have not made and cannot make a showing of irreparable injury. The California  
17 Supreme Court held that the type of ‘injury’ plaintiffs allege in this case – a fiscal injury to their  
18 interests as taxpayers – is almost never sufficient to justify preliminary injunctive relief:

19 [A] taxpayer’s general interest in not having public funds spent unlawfully (including not  
20 having such funds spent in alleged contravention of fundamental constitutional  
21 restrictions) while sufficient to afford standing to bring a taxpayer’s action . . . and to  
22 obtain a permanent injunction after a full adjudication on the merits, ordinarily does not  
23 in itself constitute the type of irreparable harm that warrants the granting of preliminary  
24 injunctive relief.

25 (*White v. Davis* (2003) 30 Cal.4th 528, 554-557 (discussing *Cohen v. Board of Supervisors*  
26 (1986) 178 Cal.App.3d 447); *Loder v. City of Glendale* (1989) 216 Cal.App.3d 777; and *Leach v.*  
27 *City of San Marcos* (1989) 213 Cal.App.3d 648.) The fiscal injury claimed by plaintiffs is not a  
28 type of injury that permits preliminary injunctive relief to be granted, and no other type of

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2 cognizable injury is or could be claimed by plaintiffs. Since no irreparable injury exists, the  
3 preliminary injunction should be denied.

4 Further, the balance of hardships strongly favors defendants and defendant-intervenors,  
5 rather than the plaintiffs. If an injunction is denied, plaintiffs will suffer only a trivial injury to  
6 their interests as taxpayers, in that defendant Shelley will spend a small amount of public funds  
7 in January 2004 to send out the first of three Notice Letters to registered domestic partners  
8 concerning AB 205. On the other hand, if an injunction is granted, and defendants are barred  
9 from sending Notice Letters or in any other way implementing AB 205, intervenors will suffer  
10 concrete and serious harms due to the prolonged delay and uncertainty concerning the legal  
11 effects of domestic partnership registration in California.

12 If the Secretary of State is enjoined from sending out notices regarding domestic  
13 partnership, intervenor Equality California's hundreds of members will be subjected to continued  
14 delay and uncertainty concerning the availability of legal protections for their families, and  
15 deprived of accurate and certain information regarding the legal effects of domestic partnership  
16 during the crucial "window" between January 2004 and January 2005. This is a crucial time  
17 period during which same-sex couples in California must decide whether to register as domestic  
18 partners, or if they are already registered under prior law, whether to accept or opt out of the new  
19 rights and duties created by AB 205.

20 The intervenor couples and their families will suffer specific, concrete harms if  
21 implementation of AB 205 is enjoined. For example, intervenors Christopher Caldwell and  
22 Richard H. Llewellyn, Jr. and their two children, and Intervenors Frederick Echeverria and  
23 Clinton Oie, and their two children, would be harmed by a preliminary injunction in that they  
24 would be unable to plan for their family's emotional and financial security due to uncertainty  
25 whether the provisions of AB 205 governing community property, inheritance, homestead  
26 protections from creditors, child custody, visitation, and support will go into effect. (*See*  
27 Declaration of Christopher G. Caldwell ¶¶ 5, 10; Declaration of Frederick Echeverria ¶¶ 8-9.)

28 Similarly, Intervenors Willard Halm and Marcellin Simard would be far less secure and

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face greater difficulty in caring for and protecting each other and their three children if implementation of AB 205 were enjoined. Will and Marcellin are very concerned about providing for their children in the event that something happens to either or both of them. (*See* Declaration of Willard Halm ¶ 6.) They have drawn up wills, health care directives, and a co-parenting agreement, and are working on setting up a trust for their children. (*Id.* ¶ 6.) Even though Will and Marcellin have spent substantial time and money drawing up these documents, they are still concerned about what might happen if the documents were lost, or if someone were to contest their validity. (*Id.* ¶ 7.) For this reason, they registered as domestic partners as soon as they heard that the Governor signed AB 205. (*Id.*) An injunction would deprive these intervenors and their family of the security and peace of mind provided by knowing that the community property and inheritance provisions of AB 205, and the provisions regarding health care decisionmaking and parental relationships will go into effect in 2005. (*Id.*)

Intervenors the Honorable Donna Hitchens and the Honorable Nancy Davis would be deprived of the security provided by AB 205's financial protections if implementation of AB 205 were enjoined. (*See* Declaration of the Honorable Donna Hitchens ¶¶ 1-7.) AB 205 would ensure that, were Judge Hitchens to pass away, Judge Davis would be entitled to receive twenty-five to thirty-seven and a half percent of Judge Hitchens' annual salary for the rest of Judge Davis' life. (*Id.* ¶ 9.) In the absence of AB 205, the current pension rules would apply, under which Judge Davis would be entitled to receive only the monies that Judge Hitchens had contributed to her retirement without any interest payment or state-provided benefit. (*Id.* ¶ 8.) Judge Hitchens is concerned that in the event of her death, without these and other financial protections provided by AB 205, Judge Davis would lack the resources to ensure that their two daughters finish college and to provide for the other financial needs of the family. (*Id.* ¶ 7.)

Intervenors William Rogers and John Griffith Symons ("Johnny"), along with their two young children, would also face serious financial insecurity if implementation of AB 205 were enjoined. (*See* Declaration of William Rogers ¶¶ 1, 3, 7-10, 13.) An injunction would deprive, William and Johnny and their children of the assurance that if William were to die, Johnny

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2 would be able to support their young children through William's pension benefits, which would  
3 be greatly reduced in the absence of AB 205. (*Id.* ¶ 10.)

4         Intervenors Michelle Graham-Newlan and Debrah Armitage will likewise be harmed if  
5 implementation of AB 205 is enjoined, in that Debrah also would be denied the assurance that  
6 she will receive death and retirement benefits equivalent to those paid to surviving spouses of  
7 public employees. (*See* Declaration of Michelle Graham-Newlan ¶ 14.)

8         Intervenors Phyllis Lyon and Del Martin, who are seventy-eight and eighty-two years old,  
9 respectively, and intervenors Kay Smith and Connie Confer, who are also senior citizens, would  
10 be irreparably harmed were this Court to enjoin implementation of AB 205 because they would  
11 be denied the security and peace of mind of knowing that each would have the right to make  
12 decisions concerning funeral arrangements and disposition of remains for each other. (*See*  
13 Declaration of Kay Smith ¶¶ 6, 8, 10; Declaration of Phyllis Lyon ¶¶ 5-13.)

14         Intervenors Mina Meyer and Sharon Raphael, who are also of advanced age, will be  
15 harmed if implementation of AB 205 is enjoined, because they are currently attempting to plan  
16 for their mutual care, as well as caring for Mina's eighty-eight-year-old mother, who has  
17 Alzheimer's disease. (*See* Declaration of Mina Meyer ¶¶ 2, 6.) If implementation AB 205 is  
18 enjoined, Mina and Sharon will be deprived of the assurance of homestead protection against  
19 creditors should either of them accumulate large debts due to health care needs, of the right to  
20 hold their major as community property and thereby avoid probate in the event one of them dies;  
21 and of the right to make decisions concerning funeral arrangements and disposition of remains  
22 for each other. (*Id.* ¶¶ 9, 12.)

23         The specific harms listed above merely provide an illustration of the serious hardships  
24 that would be caused by enjoining the implementation of AB 205, thereby causing continued  
25 delay, uncertainty and confusion concerning the legal effect of domestic partnership – hardships  
26 that would not only be suffered by the individual intervenors in this case, but by the hundreds of  
27 members of intervenor Equality California who are registered domestic partners, and by the tens  
28 of thousands of Californians who are, or may become during the pendency of this action,

1  
2 registered domestic partners. These real and concrete hardships clearly outweigh the minimal  
3 fiscal injury alleged by the plaintiffs in this case. In addition to the other reasons stated above,  
4 this Court should deny plaintiffs' motion for a preliminary injunction for the separate and  
5 independent reason that the balance of hardships clearly favors the defendants and defendant-  
6 intervenors.

7 **V. CONCLUSION**

8 For the reasons stated above, defendant-intervenors respectfully urge this Court to deny  
9 plaintiffs' motion for preliminary injunctive relief. Plaintiffs are unlikely to succeed on the  
10 merits of their claims, because AB 205 does not in any way repeal or amend Proposition 22.  
11 Moreover, plaintiffs have not made and cannot make the required showing of irreparable injury,  
12 and the balance of hardships greatly favors defendants, defendant-intervenors, and other  
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members of the public who will be harmed by continued delay and uncertainty concerning California's domestic partnership laws.

Dated: October 30, 2003

Respectfully submitted,  
David C. Codell  
Aimee Dudovitz  
Law Office of David C. Codell

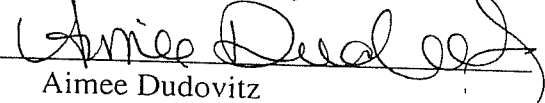
Shannon Minter  
Courtney Joslin  
National Center for Lesbian Rights

Martha Matthews  
ACLU Foundation of Southern California

Tamara Lange  
Alan L. Schlosser  
ACLU Foundation of Northern California

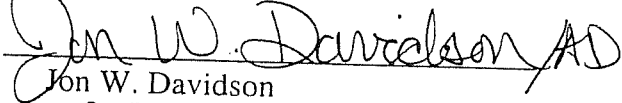
Jordan Budd  
ACLU of San Diego

James D. Esseks  
American Civil Liberties Union Foundation  
Lesbian & Gay Rights Project

By:   
Aimee Dudovitz

Attorneys for Intervenors Equality California,  
Michele Graham-Newlan and Debrah Armitage,  
Willard Kim Halm and Marcellin Simard, Donna  
Hitchens and Nancy Davis, Deborah Lynn Johnson  
and Valarie Joi Fiddmont, Christine Kehoe and  
Julie Warren, Phyllis Lyon and Del Martin, and  
William Rogers and John Griffith Symons

Jon W. Davidson  
Jennifer C. Pizer  
Lambda Legal Defense and Education Fund

By:   
Jon W. Davidson

Attorneys for Intervenors Brittany Bouchet and  
Deven Bouchet, Christopher G. Caldwell and  
Richard H. Lewellyn, Jr., Frederick Echeverria and  
Clinton Oie, Mina Meyer and Sharon Raphael, and  
Kay B. Smith and Carolyn Confer