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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF SAN FRANCISCO

19 UNLIMITED CIVIL JURISDICTION

20 COORDINATION PROCEEDING
21 SPECIAL TITLE [RULE 1550(b)]:

22 MARRIAGE CASES

23 COORDINATED CASES:

24 See attached list.

Judicial Council Coordination Proceeding
No. 4365

**JOINT SUPPLEMENTAL CASE
MANAGEMENT STATEMENT**

The Honorable Richard A. Kramer
Coordination Trial Judge

Date: October 26, 2004
Time: 1:30 p.m.
Dept.: 304
Trial Date: None Set

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1 Pursuant to the Court's request at the most recent Case Management Conference, the
2 parties submit the following Joint Supplemental Case Management Statement.

3 **I. CURRENT STATUS OF THE ACTIONS**

4 1. On September 2, 2004, CCSF and the *Woo* Petitioners filed their opening briefs and
5 supporting declarations.

6 2. On October 8, 2004, the State Defendants in the *Woo* and *CCSF* actions filed their
7 responsive brief ("Opposition").

8 3. On September 21, 2004, Intervenors moved to dismiss the *Thomasson* and *Fund*
9 actions as moot. That motion was denied on October 15, 2004.

10 4. On or about September 24, 2004, Plaintiffs in the *Thomasson* and *Fund* actions moved
11 to discharge their alternative writs with costs and to amend their complaints. On October 15,
12 2004, the Court held that those existing complaints state a live claim for declaratory relief
13 regarding the constitutionality of California laws regarding marriage by same-sex couples. It
14 denied the motions to discharge the alternative writs with costs as premature and denied the
15 motions to amend as moot.

16 5. Plaintiffs in the *Thomasson* and *Fund* actions have been ordered to file their briefs
17 regarding the constitutional issues raised by their complaints on or before November 4, 2004.
18 The Court further directed Defendants and Intervenors to respond on or before November 24,
19 2004.

20 **II. PROPOSAL REGARDING FUTURE PROCEEDINGS**

21 **A. Schedule**

22 1. The *CCSF* and *Woo* Petitioners request November 22, 2004, as the date for their
23 respective replies to the State's Opposition. The State does not object to that date.

24 2. The City and Intervenors request that the November 24 date for their response to the
25 briefs in *Thomasson* and *Fund* be extended to December 10, 2004. The *Thomasson* and *Fund*
26 Plaintiffs do not object to extending the date for the City and Intervenors' response briefs.

27 However, due to the holidays, *Thomasson* and *Fund* request the right to file their respective reply
28

1 briefs on January 7, 2005. CCSF and the *Woo* Petitioners do not agree that the *Thomasson* and
2 *Fund* Plaintiffs should be given leave to file reply briefs under the circumstances of this case.
3 CCSF and the *Woo* Petitioners specifically object to any filings that would extend or delay the
4 hearing date from that proposed jointly by CCSF, *Woo* and the State. See the following
5 paragraph.

6 3. All parties to the *CCSF* and *Woo* actions request the Court to set a hearing to address
7 the merits of the petitions in those cases during the week of December 20, 2004. If this Court
8 will entertain amicus briefs, the State requests time to respond to those briefs and a later hearing
9 date.

10 4. The *Thomasson* and *Fund* Plaintiffs object to a hearing on the merits during the week
11 of December 20, 2004, and maintain that the Court should not hold a hearing before the January
12 2005 time-frame it has previously mentioned. The *Thomasson* and *Fund* Plaintiffs propose that
13 the Court set a hearing date to address the merits of the various requests for relief during the
14 week of January 24, 2005.

15 **B. Nature of the Hearing**

16 The State and the *Woo* Petitioners agree that, on the present state of the record, no
17 evidentiary hearing is necessary. Intervenors reserve the right to take a different position based
18 on the papers filed in the *Thomasson* and *Fund* case, although they do not now anticipate doing
19 so. The State reserves the right to object to any evidence submitted by any parties.

20 CCSF contends that on the current state of the record it may be unnecessary for the Court
21 to hold an evidentiary hearing, but reserves the right to request an evidentiary hearing and proffer
22 testimony and other evidence if either or both of the following occur: (a) this or any higher court
23 decides that all of the claims raised by CCSF and the *Woo* Petitioners must be decided by
24 applying the rational basis standard and that CCSF and the *Woo* Petitioners have the burden of
25 demonstrating that the State's refusal to allow lesbians and gay men to marry the person of their
26 choice is irrational, and/or (b) the *Thomasson/Fund* Plaintiffs proffer evidence and the court
27 concludes such evidence is material to the constitutional issues presented by these coordinated
28

1 cases. The State believes that what CCSF is proposing is a bifurcated proceeding, and the State
2 does not agree with CCSF's proposed approach.

3 The *Thomasson* and *Fund* Plaintiffs agree that on the current state of the record, no
4 evidentiary hearing is necessary. However, the *Thomasson* and *Fund* Plaintiffs reserve the right
5 to request discovery from any of the *CCSF/Woo* Petitioners' experts whose affidavits this Court
6 decides are relevant, in order to oppose or counter the evidence.

7 **C. Evidence Proffered To Date**

8 CCSF has proffered the following evidence in support of its opening brief, which it
9 contends is material for the reasons set forth below:

10 a. Expert and lay declarations demonstrating that lesbians and gay men are
11 members of a discrete, identifiable class that has historically been subject to deep, pervasive and
12 pernicious discrimination and have lacked the political power to prevent such discrimination.

13 CCSF contends this evidence is material to whether strict or heightened scrutiny should be
14 applied to laws that facially or otherwise discriminate against lesbians and gay men.

15 b. Legislative history of the marriage laws demonstrating that the exclusion
16 of lesbians and gay men from marriage was based on sexually discriminatory stereotypes and
17 was designed specifically to exclude lesbians and gay men from obtaining the rights and benefits
18 that flow from marriage. CCSF has also submitted ballot materials in support of the Privacy
19 Clause of the California Constitution. CCSF contends this evidence is material to whether strict
20 or heightened scrutiny should be applied to California's marriage laws and to whether such laws
21 were based on and justified by nondiscriminatory rationales.

22 c. Expert and lay declarations demonstrating that historically many facets of
23 so-called "traditional" marriage were based on sexually and racially discriminatory assumptions
24 and stereotypes that have since been rejected, that judicial decisions and changes in marriage
25 laws have rejected aspects of the marriage laws that reflected or embodied sex-based or race-
26 based discrimination, that the remaining gender and sexual orientation based discrimination
27 incorporated in the marriage laws is inconsistent with current constitutional norms of equality of
28 all persons regardless of gender and sexual orientation, that prior changes in the marriage laws to

1 move them toward racial and sexual equality have not harmed or destroyed marriage, and that
2 the trend in international law is toward marriage equality. CCSF contends this evidence is
3 material to the issue of whether the continued refusal of the State to allow lesbians and gay men
4 to marry the persons of their choice is nondiscriminatory and constitutionally justifiable.

5 d. Expert and lay declarations demonstrating that domestic partnership and
6 marriage are separate and unequal, and that denial to lesbians and gay men of the right to marry
7 the person of their choice has historically, continues to be, and will continue to be harmful and
8 injurious to lesbians, gay men, their families and friends, society generally and the government
9 in all kinds of ways, including but not limited to economically, psychologically, emotionally,
10 socially, physically and otherwise. CCSF contends this evidence is material to the issue of
11 whether the California marriage laws discriminate based on sexual orientation, whether such
12 laws can be justified on any basis, rational, compelling or otherwise, and whether any
13 constitutional defect in the California marriage laws can be remedied while gay men and lesbians
14 remain excluded from the institution of civil marriage.

15 e. Expert declarations demonstrating that the City and County of San
16 Francisco has had a longstanding commitment to ending discrimination against its gay and
17 lesbian residents, and that marriage discrimination has an adverse impact on the public fisc.
18 CCSF contends this evidence is material to establishing its beneficial interest in challenging the
19 statutes at issue in this case.

20 The *Woo* Petitioners have also proffered lay declarations on some of the subjects
21 addressed by the CCSF declarations. The State disagrees with the foregoing description of the
22 proffered evidence. The *Thomasson* and *Fund* Plaintiffs also disagree with the description of the
23 proffered evidence.

24 **III. NATURE OF RELIEF REQUESTED**

25 CCSF and the *Woo* Petitioners seek a writ of mandate for the reasons set forth in their
26 opening papers. They do not seek writ relief under Code of Civil Procedure Sections 1094.5 or
27 1094.8.

1 The parties to the *Clinton* case stipulate that the rulings on the *CCSF* and *Woo* petitions
2 will apply to *Clinton* as well.

3 The *Thomasson* and *Fund* Plaintiffs seek a declaratory judgment that the marriage laws
4 are constitutional, and that CCSF's expenditures of funds in connection with the issuing of
5 marriage licenses to same-sex couples in February and March, 2005, was a waste of taxpayer
6 funds.

7 Dated: October 21, 2004

Respectfully submitted,

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