

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re MARRIAGE CASES

A110449, A110450, A110451, A110463,  
A110651, A110652

(JCCP No. 4365)

[Six consolidated appeals.\*]

**ORDER MODIFYING OPINIONS AND  
DENYING REHEARING  
[NO CHANGE IN JUDGMENT]**

**BY THE COURT:**

The majority opinion filed herein on October 5, 2006, is modified as follows:

1. In the last sentence in the text on page 44, replace the clause after the word “and” with the following: “no clear factual record was developed addressing the three suspect classification factors.”
2. In the first sentence on page 45, replace the word “evidence” with the words “lower court findings.”

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\* *City and County of San Francisco v. State of California* (A110449 [S.F. City & County Super. Ct. No. CGC-04-429539]); *Tyler v. State of California* (A110450 [L.A. County Super Ct. No. BS-088506]); *Woo v. Lockyer* (A110451 [S.F. City & County Super. Ct. No. CGC-04-504038]); *Clinton v. State of California* (A110463 [S.F. City & County Super. Ct. No. CGC-04-429548]); *Proposition 22 Legal Defense and Education Fund v. City and County of San Francisco* (A110651 S.F. City & County Super. Ct. No. CPF-04-503943); *Campaign for California Families v. Newsom* (A110652 [S.F. City & County Super. Ct. No. CGC-04428794]).

The concurring and dissenting opinion of Kline, J.,\* filed herein on October 5, 2006, is modified as follows:

1. At the end of the last sentence of the paragraph commencing at the bottom of page 34 and ending at the top of page 35 (first full paragraph of part II), add as footnote 13 the following footnote, which will require renumbering of all subsequent footnotes in the concurring and dissenting opinion:

<sup>[13]</sup> The majority’s statement that “no clear factual record was developed [in the trial court] addressing the three suspect classification factors” (maj. opn., *ante*, at p. \_\_\_\_ [*see modification No. 1, above, to page 44 of majority opinion*]) is inaccurate. Although the trial court did not hold an evidentiary hearing and found it unnecessary to determine the issue, the City proffered declarations addressing each of the three factors. With respect to immutability—the only one of the factors the majority questions—these declarations state that homosexuality is not a mental illness, that attempts to change an individual’s sexuality have not been demonstrated empirically to be effective or safe, and that such interventions can be harmful psychologically. The state presented no evidence to the contrary, although other parties submitted declarations taking an opposing view.

These modifications do not affect the judgment.

Rehearing petitions filed by respondents City and County of San Francisco, Gregory Clinton and Lancy Woo, and by respondent-interveners Equality California and Del Martin, are denied.

Dated: \_\_\_\_\_ P.J.

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\* Presiding Justice of the Court of Appeal, First Appellate District, Division Two, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.