

Case No. S211990

In The Supreme Court Of The State of California

DENNIS HOLLINGSWORTH; GAIL J. KNIGHT; MARTIN F. GUTIERREZ,
MARK A. JANSSON; AND PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF
CALIFORNIA RENEWAL,

Petitioners,

v.

PATRICK O'CONNELL, IN HIS OFFICIAL CAPACITY AS AUDITOR-CONTROLLER/COUNTY
CLERK-RECORDER OF ALAMEDA COUNTY, ET AL.,

Respondents,

and

EDMUND G. BROWN, JR., IN HIS OFFICIAL CAPACITY AS
GOVERNOR OF THE STATE OF CALIFORNIA, ET AL.,

REAL PARTIES IN INTEREST.

**MOTION FOR JUDICIAL NOTICE IN SUPPORT OF PRELIMINARY
OPPOSITION TO PETITION FOR WRIT OF MANDATE OF TWENTY
RESPONDENT CLERK-RECORDERS***

* List of Respondents on Next Page

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Case No. S211990

In The Supreme Court Of The State of California

DENNIS HOLLINGSWORTH, ET AL.

Petitioners,

v.

PATRICK O'CONNELL, IN HIS OFFICIAL CAPACITY AS AUDITOR-CONTROLLER/COUNTY
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REAL PARTIES IN INTEREST.

**MOTION FOR JUDICIAL NOTICE IN SUPPORT OF PRELIMINARY
OPPOSITION TO PETITION FOR WRIT OF MANDATE OF
KIMBERLY L. GRADY, in her official capacity as Clerk/Recorder/Registrar of
Voters/Commissioner of Civil Marriages of Amador County; MADALINE KRASKA,
in her official capacity as County Clerk recorder of Calaveras County; JOSEPH E.
CANCIAMILLA, in his official capacity as County Clerk-Recorder-Registrar of
Contra Costa County; WILLIAM E. SCHULTZ, in his official capacity as
Recorder-Clerk and Elections Official and Commissioner of Marriages of El
Dorado County; CAROLYN CRNICH, in her official capacity as County
Clerk/Recorder/Registrar of Voters of Humboldt County; KAMMI FOOTE, in her
official capacity as Clerk/Recorder and Registrar of Voters of Inyo County;
CATHY SADERLUND, in her official capacity as Auditor-Controller and County
Clerk of County of Lake; SUSAN M. RANOCHAK, in her official capacity as
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Monterey; JOHN TUTEUR, in his official capacity as Assessor-Recorder-County
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KENNETH W. BLAKEMORE, in his official capacity of Recorder/County Clerk of
San Joaquin County; GAIL PELLERIN, in her official capacity ad County Clerk of
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County Clerk/Registrar of Voters of Shasta County; HEATHER FOSTER, in her
official capacity as County Clerk-Recorder of Sierra County; WILLIAM F.
FOUSSEAU, in his official capacity as Sonoma County Clerk-Recorder-Assessor;
BEV ROSS, in her official capacity as Clerk-Recorder of Tehama County; and
ROLAND P. HILL, in his official capacity as Assessor/Clerk-Recorder of Tulare
County**

MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code section 452, subdivision (c), the Respondents listed on the prior page move and request that the Court take judicial notice of the following documents, attached as Exhibits A through E:

1. All County Letter 08-07, issued to all County Clerks and County Recorders by the California Department of Public Health on May 28, 2008. This issuance provided instructions to County Clerks and County Recorders following the ruling in *In re Marriage Cases* (2008) 43 Cal. 4th 757. A true and correct copy is attached hereto as Exhibit A.
2. The *California Marriage License and Certificate Handbook*, issued by the California Department of Public Health-Vital Records, on September 1, 2011. This official document provides guidance on a wide variety of issues related to marriage licenses, and includes forms and other supporting documents. A true and correct copy is attached hereto as Exhibit B.
3. An electronic mail message regarding All County Letter 08-07, issued on May 28, 2008 to all County Clerks and County Recorders via electronic mail from Ms. Linette T. Scott, Deputy Director of Health Information and Strategic Planning for the California Department of Public Health, providing marriage forms to be used effective June 17, 2008; All County Letter 08-09, issued to all County Clerks and County Recorders by the California Department of Public Health on June 5,

2008, directing the use of new State marriage license forms beginning at 5:01 p.m. on June 16, 2008; All County Letter 08-15, issued to all County Clerks and County Recorders by the California Department of Public Health on October 3, 2008, distributing amended marriage license forms, and directing they be used effective November 17, 2008; and All County Letter 08-18, issued to all County Clerks and County Recorders by the California Department of Public Health on October 21, 2008, implementing a change to the forms regarding the optional designation of bride and groom. A true and correct copy of each of these letters is attached hereto as Exhibit C.

4. An invitation sent by Ms. Linette T. Scott, Deputy Director of Health Information and Strategic Planning for the California Department of Public Health on October 3, 2008 via electronic mail to all County Clerks and County Recorders to participate in a conference call to discuss new marriage forms; and an electronic mail to all County Clerks and County Recorders from Karen J. Roth, Chief, Policy, Compliance & Standards Section in the Office of Vital Records of the California Department of Public Health advising that marriage certificates submitted to the State via priority mail must be properly addressed in order to be timely received. A true and correct copy of each of these documents is attached hereto as Exhibit D.

5. Electronic mail correspondence between Alicia R. Sotelo, Assistant County Clerk/Recorder, Monterey County Clerk/Recorder's Office and Karen J. Roth,

Chief, Policy, Compliance & Standards Section in the Office of Vital Records of the California Department of Public Health, dated January 14, 2011, in which Ms. Roth provides guidance to the Monterey County Clerk/Recorder's Office on whether a minister may perform his own wedding ceremony. A true and correct copy of this document is attached hereto as Exhibit E.

July 19, 2013

Respectfully submitted,

COUNTY OF MONTEREY

By 

CHARLES J. McKEE

County Counsel

Counsel for Respondents

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE REQUESTED JUDICIAL NOTICE IS APPROPRIATE

Evidence Code section 452, subdivision (c) provides that courts may judicially notice “[o]fficial acts of the legislative, executive, and judicial departments [] of any state of the United States. This includes official publications of an agency, and reports and letters issued by various department of the Executive Branch, although the court does not necessarily take notice that the contents therein are true. (*Carleton v. Tortosa* (1993) 14 Cal.App.4th 745; *Shaeffer v. State* (1970) 3 Cal.App.3d 348; *Jay v. Dollarhide* (1970) 3 Cal.App.3d 1001.) Furthermore, courts may notice “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code, § 452, subd. (h).)

“Judicial notice is the recognition and acceptance by the court, for use by [] the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter. (*Lockley v. Law Office of Cantrell* (2001) 91 Cal.App.4th 875, 882.) The underlying theory is that a matter judicially noticed is a law or fact that is not reasonably subject to dispute.

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II. NOTICE OF THE ATTACHED EXHIBITS WILL AID THIS COURT'S DETERMINATION OF THE PENDING PETITION

The documents attached to this motion as Exhibits A through E reflect the actual practice and pattern of the relationship between the State and the County Clerks and Recorders. A fundamental question behind both the pending petition and the opposition filed by Respondents is whether the County Clerks and Records are subject to the direction of the California Department of Public Health in relation to issuing and registering marriage licenses. The attached documents aid in understanding how directives, guidance and instructions are issued by the State to the Clerks and Recorders, and are directly relevant to the Court's determination of the issue pending in this matter.

III. THIS MOTION COMPLIES WITH RULE 8.252

This motion complies with California Rules of Court, rule 8.252. First, the materials for which notice is sought are subject to judicial notice under Evidence Code section 452, subdivision (c), and they are relevant to the Preliminary Opposition to the Petition for Writ of Mandate filed herewith. Each supports Respondent's argument that County Clerks and Recorders are subject to the supervision of the California Department of Public Health with respect to the administration of California's marriage laws. Accordingly, this motion complies with California Rules of Court, rule 8.252.

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IV. CONCLUSION

Therefore, Respondents respectfully submit that this Court should grant this motion and take judicial notice of the materials attached as Exhibits A through E.

July 19, 2013

Respectfully submitted,

COUNTY OF MONTEREY

By 

CHARLES J. McKEE

County Counsel

Counsel for Respondents

DECLARATION OF COUNSEL

[Calif. Rules of Court, Rule 8.54(a)(2)]

I, Charles J. McKee, hereby declare the following to be true and correct.

1. That I am attorney of record for the twenty Respondents filing this Motion for Judicial Notice, and that I am duly licensed to practice before this and all other courts in the State of California.
2. Attached hereto as Exhibit A is a true and correct copy of California Department of Public Health All County Letter 08-07 (May 28, 2008).
3. Attached hereto as Exhibit B is a true and correct copy of *The California Marriage License and Certificate Handbook*, issued by the California Department of Public Health-Vital Records, on September 1, 2011.
4. Attached hereto as Exhibit C is a true and correct copy of an electronic mail message sent to all County Clerks and County Recorders on May 28, 2008, California Department of Public Health All County Letter 08-09 (June 5, 2008), California Department of Public Health All County Letter 08-15 (Oct. 3, 2008), and California Department of Public Health All County Letter 08-18 (Oct. 21, 2008).
5. Attached hereto as Exhibit D is a true and correct copy of an invitation sent by Ms. Linette T. Scott, Deputy Director of Health Information and Strategic Planning for the California Department of Public Health on October 3, 2008 via

electronic mail to all County Clerks and County Recorders to participate in a conference call to discuss new marriage forms; and an electronic mail to all County Clerks and County Recorders from Karen J. Roth, Chief, Policy, Compliance & Standards Section in the Office of Vital Records of the California Department of Public Health on June 4, 2008.

5. Attached hereto as Exhibit E is electronic mail correspondence between Alicia R. Sotelo, Assistant County Clerk/Recorder, Monterey County Clerk/Recorder's Office and Karen J. Roth, Chief, Policy, Compliance & Standards Section in the Office of Vital Records of the California Department of Public Health, dated January 14, 2011.

I declare under penalty of perjury under the laws of the Staet of California that the foregoing is true and correct.

Executed this 19th day of July, 2013, in Salinas, California.

By: Charles J. McKee

Charles J. McKee

DECLARATION OF SERVICE BY MAIL

Case Name: *Hollingsworth, et al. v. O'Connell, et al.*

Case No.: **S211990**

I am employed in the office of the County Counsel, County of Monterey, which is the office of a member of the California State Bar, at which member's direction this service is made. I am over the age of 18 years and not a party to the within action. My business address is 168 West Alisal Street, 3rd Floor, Salinas, California.

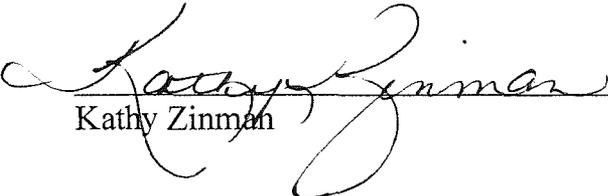
On **July 22, 2013**, I served a true copy of the following document:

**MOTION FOR JUDICIAL NOTICE IN SUPPORT OF PRELIMINARY
OPPOSITION TO PETITION FOR WRIT OF MANDATE OF TWENTY
RESPONDENT CLERK-RECORDERS**

on the interested parties to said action by the following means:

- (BY PERSONAL DELIVERY)** By causing a true copy thereof, enclosed in a sealed envelope, to be hand-delivered on the interested parties as shown below.
- (BY MAIL)** By placing true copies thereof, enclosed in a sealed envelope, for collection and mailing on that date following ordinary business practices, in the United States Mail at the Office of the County Counsel, 168 West Alisal Street, 3rd Floor, Salinas, California, addressed as shown below. I am readily familiar with this business's practice for collection and processing of correspondence for mailing with the United States Postal Service, and in the ordinary course of business, correspondence would be deposited with the United States Postal Service the same day it was placed for collection and processing.
- (BY FACSIMILE TRANSMISSION)** By transmitting a true copy thereof by facsimile transmission from facsimile number (831) 755-5978 to the interested parties to said action at the facsimile number(s) shown below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **July 22, 2013**, at Salinas, California.


Kathy Zinman

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