[Resolution urging Governor Schwarzenegger to submit amicus brief to New York Supreme Court of Appeals in support of the right of same-sex civil marriage.]

Resolution urging Governor Schwarzenegger to submit an amicus brief to the New York Court of Appeals in support of the right of same-sex civil marriage.

WHEREAS, The issue of same-sex civil marriage will soon be before New York State's highest court, the Court of Appeals; and

WHEREAS, The Board of Supervisors urges you to write an amicus brief to the New York Court of Appeals in support of the proposition that civil marriage is a right granted in the equal protection clause of the New York Constitution, and, as such, the courts can and must interpret whether or not marriage applies to same-sex couples; and

WHEREAS, Civil marriage for same-sex couples should not merely be granted as a statutory right via the New York State Legislature; and

WHEREAS, In February, 2006, trial court judge Doris Ling-Cohen ruled in favor of civil marriage for same-sex couples in the City of New York based on the equal protection clause of the New York State Constitution; and

WHEREAS, A New York City (First Department) appellate court struck down this ruling, claiming that the equal protection clause did not confer the right of same-sex civil marriage -- nor did the State Legislature ever intend for civil marriage to be between same-sex couples; and

WHEREAS, An Albany appellate court (Third Department) made a similar ruling earlier in March, 2006; and

**Supervisor Tom Ammiano**
BOARD OF SUPERVISORS
WHEREAS, These cases will now be combined and the right of same-sex civil
marriage will be heard in the New York Court of Appeals; and

WHEREAS, The trend in New York courts is to claim that the New York equal
protection clause was never envisioned to encompass civil marriage for same-sex couples
and only the State Legislature can create this right; and

WHEREAS, The situation in California is reversed since the California State
Legislature enacted legislation which would allow same-sex couples the right of civil
marriage; and

WHEREAS, Governor Schwarzenegger vetoed that legislation basing his veto on the
Fact: “that the ultimate issue regarding the constitutionality of (California Family Code)
Section 308.5 and its prohibition against same-sex marriage is currently before the Court of
Appeal in San Francisco and will likely be decided by the Supreme Court”; and

WHEREAS, Governor Schwarzenegger went on to argue that “The bill simply adds
confusion to a constitutional issue, and if the ban of same-sex marriage is unconstitutional,
this bill is not necessary, and if the ban is constitutional, the bill is ineffective”; and

WHEREAS, While the constitutional argument is different than New York’s, the
bottom line is that Governor Schwarzenegger believed that the courts should determine the
constitutionality of civil marriage and any action by the Legislature is premature, and possibly
not even necessary; and

WHEREAS, It is not consistent that New York is claiming the Legislature must act
first, while California claims the courts must act first, and the end result is that same-sex
couples are denied the right of civil marriage in both states; and
WHEREAS, Same-sex marriage opponents cannot have it both ways; and

WHEREAS, The Board of Supervisors takes Governor Schwarzenegger at his word when he states in his veto message that he believes lesbian and gay couples are entitled to full protection under the law and should not be discriminated against based upon their relationships, and that is why his help is now needed in New York; and

WHEREAS, An amicus brief by Governor Schwarzenegger to the New York Court of Appeals urging them to decide the constitutional issues of civil marriage, and that the equal protection clause of the New York State Constitution confers the right of same-sex civil marriage, will go a long way in helping countless gay and lesbian New Yorkers; now, therefore, be it

RESOLVED, That the Board of Supervisors of the City and County of San Francisco urges Governor Schwarzenegger to submit an amicus brief to the New York Court of Appeals in support of the right of same-sex civil marriage.
Resolution urging Governor Schwarzenegger to submit an amicus brief to the New York Court of Appeals in support of the right of same-sex civil marriage.

March 21, 2006  Board of Supervisors — ADOPTED

  Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 060340 I hereby certify that the foregoing Resolution was ADOPTED on March 21, 2006 by the Board of Supervisors of the City and County of San Francisco.

File Number: 060340 Date Passed: 

Date Approved

Gloria L. Young
Clerk of the Board

Mayor Gavin Newsom