

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

3 **Resolution urging Governor Schwarzenegger to submit an amicus brief to the New**
4 **York Court of Appeals in support of the right of same-sex civil marriage.**
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6 WHEREAS, The issue of same-sex civil marriage will soon be before New York State's
7 highest court, the Court of Appeals; and

8 WHEREAS, The Board of Supervisors urges you to write an amicus brief to the New
9 York Court of Appeals in support of the proposition that civil marriage is a right granted in the
10 equal protection clause of the New York Constitution, and, as such, the courts can and must
11 interpret whether or not marriage applies to same-sex couples; and
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13 WHEREAS, Civil marriage for same-sex couples should not merely be granted as a
14 statutory right via the New York State Legislature; and

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

18 WHEREAS, A New York City (First Department) appellate court struck down this
19 ruling, claiming that the equal protection clause did not confer the right of same-sex civil
20 marriage -- nor did the State Legislature ever intend for civil marriage to be between same-
21 sex couples; and
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23 WHEREAS, An Albany appellate court (Third Department) made a similar ruling earlier
24 in March, 2006; and
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1 WHEREAS, These cases will now be combined and the right of same-sex civil
2 marriage will be heard in the New York Court of Appeals; and

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

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

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

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

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

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

1 WHEREAS, Same-sex marriage opponents cannot have it both ways; and

2 WHEREAS, The Board of Supervisors takes Governor Schwarzenegger at his word
3 when he states in his veto message that he believes lesbian and gay couples are entitled to
4 full protection under the law and should not be discriminated against based upon their
5 relationships, and that is why his help is now needed in New York; and
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7 WHEREAS, An amicus brief by Governor Schwarzenegger to the New York Court of
8 Appeals urging them to decide the constitutional issues of civil marriage, and that the equal
9 protection clause of the New York State Constitution confers the right of same-sex civil
10 marriage, will go a long way in helping countless gay and lesbian New Yorkers; now,
11 therefore, be it
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13 RESOLVED, That the Board of Supervisors of the City and County of San
14 Francisco urges Governor Schwarzenegger to submit an amicus brief to the New York
15 Court of Appeals in support of the right of same-sex civil marriage.
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