

**SUPREME COURT COPY**

---

**IN THE CALIFORNIA SUPREME COURT**

**CASE NO. S189476.**

Kristin M.Perry, et al  
Plaintiff and Respondent

v

Dennis Hollingsworth, et al,  
Defendant and Appellant

**SUPREME COURT  
FILED**

**MAY 06 2011**

Frederick K. Ohrich Clerk  
Deputy

---

**APPLICATION FOR LEAVE TO FILE BRIEF  
AND  
BRIEF OF AMICUS CURIAE MARGIE REILLY  
IN SUPPORT OF DEFENDANTS AND APPELLANTS**

---

**ON CERTIFIED QUESTION OF CALIFORNIA LAW**

**From the 9<sup>th</sup> U.S. Circuit Court of Appeal**

**Case # 10-16696**

JAMES JOSEPH LYNCH, JR.  
Attorney At Law (85805)  
POB4144  
Sacramento, CA 95821-8802  
(916) 312-7369

Counsel fof Amicus Curiaë

RECEIVED

MAY - 3 2011

CLERK SUPREME COURT

---

**IN THE CALIFORNIA SUPREME COURT**

**CASE NO. S189476.**

Kristin M.Perry, et al  
Plaintiff and Respondent

v

Dennis Hollingsworth, et al,  
Defendant and Appellant

---

**APPLICATION FOR LEAVE TO FILE BRIEF  
AND  
BRIEF OF AMICUS CURIAE MARGIE REILLY  
IN SUPPORT OF DEFENDANTS AND APPELLANTS**

---

**ON CERTIFIED QUESTION OF CALIFORNIA LAW  
From the 9<sup>th</sup> U.S. Circuit Court of Appeal  
Case # 10-16696**

JAMES JOSEPH LYNCH, JR.  
Attorney At Law (85805)  
POB4144  
Sacramento, CA 95821-8802  
(916) 312-7369

Counsel for Amicus Curiae

**Table Of Contents**

Table Of Contents ..... i

Table of Authorities ..... ii

APPLICATION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE  
MARIE REILLY..... i

STATEMENT OF THE ISSUES ..... 1

    A. CERTIFIED QUESTION:..... 1

    B. OTHER, REASONABLY RELATED, QUESTION: ..... 1

SUMMARY OF THE ARGUMENTS..... 1

ARGUMENTS ..... 3

I.    SOVEREIGNTY IS VESTED IN THE PEOPLE; THUS THEY  
    HAVE STANDING TO DEFEND LAWS THEY PASS..... 3

II.  WHERE A MAJORITY OF SOVEREIGNTY PASS A LAW, THOSE  
    OPPOSED MUST SHOW A CONSTITUTIONAL VIOLATION,  
    AND SOME MINIMAL INJURY ..... 4

CONCLUSION ..... 5

CERTIFICATION OF WORD COUNT [CRC, RULE 8.2041(c)(1)] ..... 6

## Table of Authorities

### Cases

<i>Jacobson v. Massachusetts</i> (1905), 197 U.S. 11 .....	3
<i>Pacific Gas &amp; Electric Co. v. Bear Stearns &amp; Co.</i> (1990) 50 Cal.3d 1118.....	2, 4
<i>Pacific Legal Foundation v. California Coastal Com.</i> (1982) 33 Cal.3d 158.....	33, 5
<i>People v. Canty</i> (2004) 32 Cal.4th at p. 1280.....	3
<i>Selinger v. City Council</i> (1989) 216 Cal.App.3d 259.....	4
<i>Selinger v. City Council</i> (1989) 216 Cal.App.3d 259, 272.....	2

### Treatises

Constitution of the United States of America; Analysis and Interpretation.....	3
-----------------------------------------------------------------------------------	---

### Constitutional Provisions

Article I, §§ 3 & 24.....	1
Article II, Section 8 .....	1, 2
Calif. Const., Article 1, §§ 3 and 24 .....	4
California Constitution, Preamble .....	3
California, Article 1, §§ 3 and 24.....	2

**APPLICATION FOR LEAVE TO FILE BRIEF OF  
AMICUS CURIAE MARIE REILLY**

To the Honorable Chief Justice:

Amicus hereby applies to this court for leave to file the accompanying brief on the following grounds:

1. Amicus was originally granted leave to file an amicus brief in this Court, in support of Proposition 8, on the related California Supreme Court Case, which is now before the 9<sup>th</sup> Circuit Court of Appeals in this case.

2. She is already an amicus in the 9<sup>th</sup> Circuit case that certified the questions to this court.

3. It goes without saying that she has an interest in preserving a decision made in this court, before the 9<sup>th</sup> Circuit.

4. The proposed brief addresses the issues raised by the certified questions, by virtue of Counsel's and Amicus's familiarity with the issues, and counsel's understanding of the constitutional issues..

5. No party or counsel to the proceedings below, in the 9<sup>th</sup> circuit, or any stranger to this litigation, contributed any financial assistance in the production of this brief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on the date beside each signature.

Margie Reilly      Dated: \_\_\_\_\_

James Joseph Lynch, Jr. Dated: \_\_\_\_\_

To the Honorable Chief Justice, and the Honorable Associate Justices of the Supreme Court of the State of California:

### **STATEMENT OF THE ISSUES**

#### **A. CERTIFIED QUESTION:**

Whether under Article II, Section 8 of the California Constitution, or otherwise under California law, the official proponents of an initiative measure possess either a particularized interest in the initiative's validity or the authority to assert the State's interest in the initiative's validity, which would enable them to defend the constitutionality of the initiative upon its adoption or appeal a judgment invalidating the initiative, when the public officials charged with that duty refuse to do so.?

#### **B. OTHER, REASONABLY RELATED, QUESTION:**

Whether under Article II, Section 8 of the California Constitution, or otherwise under California law, the official opponents of an initiative measure who claims that the initiative in question is unconstitutional and claims injury arising from the implementation of the Initiative, has standing to challenge the initiative's validity?

### **SUMMARY OF THE ARGUMENTS**

A. Whether under Article II, Section 8 of the California Constitution, or otherwise under California law, by virtue of Article I, §§ 3 & 24 the proponents of an initiative measure do possess standing to petition for redress on the issue of

whether a proposition or initiative is constitutional under California Law, or Federal 14th Amendment grounds, with a particularized interest in the initiative's validity or the authority to assert the State's interest in the initiative's validity, which would enable them to defend the constitutionality of the initiative upon its adoption or appeal a judgment regarding the initiative, when the public officials charged with that duty refuse to do so. See generally, *Selinger v. City Council* (1989) 216 Cal.App.3d 259, 272; ("Our system of government places a high value on the freedom of the public to petition the government, and such activity will not be curtailed without some extraordinary showing of abuse." (Id. at p. 859.)); *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, fn. 14., ("This doctrine relies on the constitutional right to petition for redress of grievances to establish that there is no antitrust liability for petitioning any branch of government, even if the motive is anticompetitive").

a. Article 1, §§ 3 and 24 protects the rights of the People to assemble for the purpose of instructing government and their representatives, on how to provide for the common good, in this case, the promotion of traditional families for the production of new life so that the state can endure, and to promote monogamy to prevent the spread of dangerous diseases in the community, and § 24.

B. Under Article II, Section 8 of the California Constitution, or otherwise under California law, the opponents of an initiative measure who claims that the initiative in question is unconstitutional and claims injury

arising from the implementation of the Initiative, has standing to challenge the initiative's validity. See e.g., *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170 [188 Cal.Rptr. 104, 655 P.2d 306].

## ARGUMENTS

### I.

#### **SOVEREIGNTY IS VESTED IN THE PEOPLE; THUS THEY HAVE STANDING TO DEFEND LAWS THEY PASS**

Titles of Nobility, monarch, kings, queens, etc, have been abolished. U.S. Const., Preamble (“We the People”), Art. I, Section 9, clause 8 (Limit on federal power) & Section 10, last clause (limit on State Power). The Preamble of the U.S. Const. establishes the People as the paramount authority, subject to the laws enacted by the legislative branches of government. See, *Constitution of the United States of America; Analysis and Interpretation* (1992) page 53, fn 1; *Jacobson v. Massachusetts*, 197 U.S. 11, 22 (1905); See *id*, fn 2 & 3. California Constitution, Preamble (“We, the People of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.) In considering the purpose of legislation, statements of the intent of the enacting body contained in a preamble, while not conclusive, are entitled to consideration. *People v. Canty* (2004) 32 Cal.4th at p. 1280, AT 1280-81.) As American Citizens who are part of the sovereignty of the Federal government, there is no doubt that the People of California exercised that right in creating a new state, that was subsequently ratified by the Congress.

"Our system of government places a high value on the freedom of the public to petition the government, and such activity will not be curtailed without some extraordinary showing of abuse." *See generally, Selinger v. City Council* (1989) 216 Cal.App.3d 259, 272; (Id. at p. 859.); *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, fn. 14., ("This doctrine relies on the constitutional right to petition for redress of grievances to establish that there is no antitrust liability for petitioning any branch of government, even if the motive is anticompetitive"). Calif. Const., Article 1, §§ 3 and 24 protects the rights of the People to assemble for the purpose of instructing government and their representatives, on how to provide for the common good, in this case, the promotion of traditional families for the production of new life so that the state can endure, and to promote and to promote monogamy to prevent the spread of dangerous diseases in the community.

It would be pointless should the people require a course of action, if state officer were to ignore the will of the People and refuse to enforce that law as willed by the People, unless clearly in violation of a federal constitutional provision, or otherwise contra bono mores. Moreover, standing is presumed by virtue of their participation in securing the law in first place, and injury should the law be declared invalid.

## II.

**WHERE A MAJORITY OF SOVEREIGNTY PASS A LAW, THOSE  
OPPOSED MUST SHOW A CONSTITUTIONAL VIOLATION, AND  
SOME MINIMAL INJURY**

The requirement of ripeness prevents courts from issuing purely advisory opinions. "[T]he ripeness doctrine is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy. On the other hand, the requirement should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question. [Citations.]" (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170 [188 Cal.Rptr. 104, 655 P.2d 306].)

It is clear that in a democratic society, majority rule prevails, so long as it does not defeat fundamental rights. It is also clear that we should not have to tolerate "sore" losers.

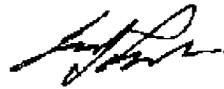
### CONCLUSION

WHEREFORE, AMICUS CURÆ Ææ suggests that the court respond to the certified question in the affirmative noting that under California Law, that those supporting a law passed by a majority of the People of the State of California have presumed standing to support and defend that law, even in the absence of support from State Officials charged with its enforcement.

As to the reasonably related question, Amicus Curiae suggests that the Court respond to that question in the affirmative noting those who oppose a law passed by a majority of the voters must, at a minimum, show that the enactment violates a fundamental right of individuals generally, and that the petitioner has suffered injury from the enactment.

Dated: May 1, 2011.

Respectfully submitted,



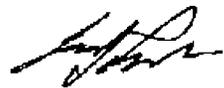
James Joseph Lynch, Jr.  
Attorney At Law (85805)  
4144 Winding Way, Suite 4  
Sacramento, CA 95841-4413

Attorney for Amicus Curiae

**CERTIFICATION OF WORD COUNT  
[CRC, RULE 8.2041(c)(1)]**

Relying on the word count of Microsoft Word, the number of words in this DOCUMENT, is 1,697, which is less than the 14,00 words permitted by rule.

Dated: 5/1/2011



James Joseph Lynch, Jr.  
Attorney At Law

---

**IN THE CALIFORNIA SUPREME COURT**

**CASE NO. S189476.**

Kristin M. Perry, et al  
Plaintiff and Respondent

v

Dennis Hollingsworth, et al,

Defendant and Appellant

**PROOF OF SERVICE**

I, James Joseph Lynch, Jr. declare that I am an American Citizen, over the age of 18 and not a party to this action.

In served, on May 2, 2011, the application for leave to file BRIEF and BRIEF OF AMICUS CURIAE MARGIE REILLY

By: Placing a true copy thereof into a self-addressed, stamped envelope, then sealing the envelope and depositing it into a facility of the U.S. Postal Service, addressed as follows:

<b>Party</b>	<b>Attorneys</b>	<b>Attorneys</b>
Perry, Kristin M. : Plaintiff and Respondent	Rosanne C. Baxter Boies Schiller & Flexner, LLP 333 Main Street Armonk, NY 10504-1812	Theodore J. Boutrous Gibson Dunn & Crutcher, LLP 333 S. Grand Avenue Los Angeles, CA 90071-1504
	Richard Jason Bettan Boies Schiller & Flexner, LLP 575 Lexington Ave, 7th Flr New York, NY 10022 -	Sarah Elizabeth Piepmeier Gibson Dunn & Crutcher, LLP 555 Mission Street, Suite 3000 San Francisco, CA 94105-0921
	David Boies Boies Schiller & Flexner, LLP 333 Main Street Armonk, NY 10504-1812	Joshua Irwin Schiller Boies Schiller & Flexner, LLP 575 Lexington Avenue, 5th Flr New York, NY 10022
	Jeremy Michael Goldman Boies Schiller & Flexner, LLP 1999 Harrison Street, Suite 900 Oakland, CA 94612-3520	Amir Cameron Tayrani Gibson Dunn & Crutcher, LLP 1050 Connecticut Avenue, N.W. Washington, DC 20036-5306
	Matthew McGill Gibson Dunn & Crutcher, LLP 1050 Connecticut Avenue, N.W. Washington, DC 20036-5306	Theodore Hideyuki Uno Boies Schiller & Flexner, LLP 2435 Hollywood Boulevard Hollywood, FL 33020-6605
Zarrillo, Jeffrey J. : Plaintiff	Theodore B. Olson Gibson Dunn & Crutcher, LLP	Ethan Douglas Dettmer Gibson Dunn & Crutcher, LLP

---

and Respondent	1050 Connecticut Avenue, N.W. Washington, DC 20036-5306	555 Mission Street, Suite 3000 San Francisco, CA 94105-0921
	Theano Diana Kapur Gibson Dunn & Crutcher, LLP 333 S. Grand Avenue Los Angeles, CA 90071-1504	Christophe Dean Dusseault Gibson Dunn & Crutcher, LLP 333 S. Grand Avenue Los Angeles, CA 90071-1504
Katami, Paul T. : Plaintiff and Respondent Stier, Sandra B. : Plaintiff and Respondent	David Boies Boies Schiller & Flexner, LLP 333 Main Street Armonk, NY 10504-1812	Matthew McGill Gibson Dunn & Crutcher, LLP 1050 Connecticut Avenue, N.W. Washington, DC 20036-5306
		Theodore B. Olson Gibson Dunn & Crutcher, LLP 1050 Connecticut Avenue, N.W. Washington, DC 20036-5306
	Theodore B. Olson Gibson Dunn & Crutcher, LLP 1050 Connecticut Avenue, N.W. Washington, DC 20036-5306	
	David Boies Boies Schiller & Flexner, LLP 333 Main Street Armonk, NY 10504-1812	Matthew McGill Gibson Dunn & Crutcher, LLP 1050 Connecticut Avenue, N.W. Washington, DC 20036-5306
	Theodore B. Olson Gibson Dunn & Crutcher, LLP 1050 Connecticut Avenue, N.W. Washington, DC 20036-5306	
City & County of San Francisco : Plaintiff and Respondent	Erin Brianna Bernstein Office of the City Attorney 1390 Market Street, 7th Floor San Francisco, CA 94102-5302	Enrique Antonio Monagas Gibson Dunn & Crutcher, LLP 555 Mission Street, Suite 3000 San Francisco, CA 94105-0921
	Vince Chhabria Office of the City Attorney	Danny Yeh Chou Office of the City Attorney 1390 Market Street, 7th Floor

	City Hall, Room 234 1 Dr. Carlton B. Goodman Pl San Francisco, CA 94102	San Francisco, CA 94102-5302
	Ronald Patrick Flynn Office of the City Attorney 1390 Market Street, 7th Floor San Francisco, CA 94102-5302	Dennis Jose Herrera, City Attorney, City & County of San Francisco City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102
	Mollie Mindes Lee Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102	Therese Marie Stewart Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102
	Christine Bohrer Van Aken Office of the City Attorney 1390 Market Street, 7th Floor San Francisco, CA 94102-5302	
Brown, Jerry : Defendant	Daniel Joe Powell Tamar Pachter Office of the Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102	
Backer, Howard : Defendant Horton, Mark B. : Defendant	Kenneth C. Mennemeier Mennemeier Glassman & Stroud, LLP 980 Ninth Street, Suite 1700 Sacramento, CA 95814	
Logan, Dean C. : Defendant	Judy Welch Whitehurst Office of the Los Angeles County	

	Counsel 500 W. Temple Street, 6th Flr Los Angeles, CA 90012-2713	
O'Connell, Patrick : Defendant	Claude F. Kolm Office of the Alameda County Counsel 1221 Oak Street, Suite 450 Oakland, CA 94612-4296	
Scott, Linette : Defendant	Andrew Walter Stroud Kenneth C. Mennemeier Mennemeier Glassman & Stroud, LLP 980 Ninth Street, Suite 1700 Sacramento, CA 95814	
Hollingsworth, Dennis : Defendant and Appellant	James Andrew Campbell Alliance Defense Fund 15100 North 90th Street Scottsdale, AZ 85029	Charles J. Cooper Cooper & Kirk, PLLC 1523 New Hampshire Avenue, N.W. Washington, DC 20036
	Nicole Jo Moss Cooper & Kirk, PLLC 1523 New Hampshire Avenue, N.W. Washington, DC 20036	Brian W. Raum Alliance Defense Fund 15100 North 90th Street Scottsdale, AZ 85260
	Howard C. Nielson Cooper & Kirk, PLLC 1523 New Hampshire Avenue, N.W. Washington, DC 20036	Jesse Panuccio Cooper & Kirk, PLLC 1523 New Hampshire Avenue, N.W. Washington, DC 20036
	Pugno – see below	Peter A. Patterson Cooper & Kirk, PLLC 1523 New Hampshire Avenue, N.W.

		Washington, DC 20036
	David H. Thompson Cooper & Kirk, PLLC 1523 New Hampshire Avenue, N.W. Washington, DC 20036	
Gutierrez, Martin F. : Defendant and Appellant	Charles J. Cooper Cooper & Kirk, PLLC 1523 New Hampshire Avenue, N.W. Washington, DC 20036  Andrew P. Pugno See below	David H. Thompson Cooper & Kirk, PLLC 1523 New Hampshire Avenue, N.W. Washington, DC 20036
Hak-Shing, William Tam : Defendant and Appellant	Charles J. Cooper Cooper & Kirk, PLLC 1523 New Hampshire Avenue, N.W. Washington, DC 20036	Terry L Thompson Attorney at Law P.O. Box 1346 Alamo, CA
		Andrew P. Pugno – See below.
Knight, Gail J. : Defendant and Appellant Protectmarriage.com : Defendant and Appellant Jansson, Mark A. : Defendant and Appellant	Charles J. Cooper Cooper & Kirk, PLLC 1523 New Hampshire Avenue, N.W. Washington, DC 20036	Jesse Panuccio Cooper & Kirk, PLLC 1523 New Hampshire Avenue, N.W. Washington, DC 20036
	Andrew P. Pugno See below	David H. Thompson Cooper & Kirk, PLLC 1523 New Hampshire Avenue, N.W. Washington, DC 20036
Protectmarriage.com : Defendant and Appellant Hollingsworth, Dennis Gutierrez, Martin F. : Defendant and Appellant Hak-Shing, William Tam : Defendant and Appellant Jansson, Mark A. : Defendant and Appellant Knight, Gail J. : Defendant and Appellant	Andrew P. Pugno Law Offices of Andrew P. Pugno 101 Parkshore Drive, Suite 100 Folsom, CA	

--	--	--

I declare, under penalty of perjury, under the laws of the State of California  
ia, that the foregoing is true and correct and that this declaration was executed on 5/1/2011

JAMES JOSEPH LYNCH, JR.  
Attorney at Law