In the Supreme Court of the State of California

IN RE MARRIAGE CASES, Judicial Council Coordination Proceeding No. 4365	)	No. S147999

APPLICATION FOR PERMISSION TO FILE AN AMICUS CURIAE BRIEF

And

BRIEF OF AMICI CURIAE ASIAN AMERICAN BAR ASSOCIATION OF THE GREATER BAY AREA AND 62 ASIAN PACIFIC AMERICAN ORGANIZATIONS IN SUPPORT OF RESPONDENTS CHALLENGING THE MARRIAGE EXCLUSION

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(Part 1)

The undersigned counsel certifies, pursuant to Rule 8.208 of the California Rules of Court, that he represents the following entities, each of which is a bar association joining in the attached application and amicus brief:

- Asian American Bar Association of the Greater Bay Area
- Asian Pacific American Bar Association of Los Angeles County
- Asian Pacific Bar Association of Silicon Valley
- Japanese American Bar Association of Greater Los Angeles
- Korean American Bar Association of Southern California
- National Asian Pacific American Bar Association
- Pan Asian Lawyers of San Diego
- Philippine American Bar Association
- South Asian Bar Association of Northern California
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The undersigned counsel certifies, pursuant to Rule 8.208 of the California Rules of Court, that she represents the following entities, each of which is an organization joining in the attached application and amicus brief:

- Asian Pacific Islander Legal Outreach
- API Equality
- API Equality - SF
- Asian Communities for Reproductive Justice
- Asian Law Alliance
- Asian Law Caucus
- Asian Pacific American Labor Alliance - Alameda
- Asian Pacific Islander Family Pride
- Asian Pacific Islander Wellness Center
- Asian Women's Shelter
- Chinese for Affirmative Action (CAA)
- Chinese Progressive Association
- Filipinos for Affirmative Action
- Gay Asian Pacific Alliance
- Institute for Leadership Development and Study of Pacific Asian North American Religion (PANA Institute)

- Korean Community Center of the East Bay
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- Asian Pacific American Legal Center
- Asian/Pacific Bar of California
- API Equality - LA
- Asian American Institute
- Asian American Justice Center
- Asian American Legal Defense and Education Fund
- Asian American Psychological Association
- Asian American Queer Women Activists
- Asian and Pacific Islander American Health Forum
- Asian and Pacific Islander Lesbian, Bisexual Women and Transgender Network
- Asian and Pacific Islander Parents and Friends of Lesbians and Gays
- Asian Pacific AIDS Intervention Team
- Asian Pacific American Labor Alliance - Los Angeles
- Asian Pacific Americans for Progress - Los Angeles
- Asian Pacific Islander Pride Council
- Asian Pacific Policy & Planning Council
- Asian Pacific Women's Center
- Center for the Pacific Asian Family
- Conference of Asian Pacific American Law Faculty

- Gay Asian Pacific Support Network
- Japanese American Citizens League
- Khmer Girls in Action
- Korean Resource Center
- Koreatown Immigrant Workers Alliance
- National Asian Pacific American Law Student Association
- National Asian Pacific American Women's Forum
- National Korean American Service & Education Consortium
- Orange County Asian Pacific Islander Community Alliance
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In the Supreme Court of the State of California

IN RE MARRIAGE CASES, Judicial Council Coordination Proceeding No. 4365	)	No. S147999

APPLICATION FOR PERMISSION TO FILE AN AMICUS CURIAE BRIEF

To the Honorable Ronald M. George, Chief Justice of California, and to the Honorable Associate Justices of the Supreme Court of the State of California:

Pursuant to Rule of Court 8.520(f), the Asian American Bar Association of the Greater Bay Area ("AABA") and the other Asian Pacific American organizations listed in the Certificates of Interested Parties on pages i through vi herein (collectively, "Amici") respectfully request permission to file the attached amicus curiae brief in support of the parties challenging the marriage exclusion ("Respondents").

Counsel for Amici are familiar with the questions involved and the scope of their presentation in the proceedings below and to this Court, and believe there is necessity for additional argument. Most notably, the attached brief demonstrates that:

(1) Classifications affecting fundamental interests are subject to strict scrutiny under the California Equal Protection Clause. *Serrano v. Priest*, 5 Cal. 3d 584, 597 (1971).

(2) Marriage is such a fundamental interest, because of its important role in fostering formation of family units and integration of those new families into society. The experience of Asian Americans in California illustrates the important role of marriage in fostering formation of families and their integration into society.

(3) Because marriage is a fundamental interest, strict scrutiny should be applied to classifications affecting marriage. Here, the State's statutory scheme cannot survive strict scrutiny.

Amici believe that ending marriage discrimination is an important, necessary step for an excluded group to integrate fully into society, and that such integration is essential for an excluded group to achieve security within the larger society. Amici strongly support the right of same-sex couples to marry.

Amici are organizations based in California, or with a significant membership or other presence in California, that work on behalf of or in California's diverse Asian Pacific American communities. Amici include bar associations, non-profit legal organizations, civil rights advocacy groups, and health and social service organizations. More detailed statements of interest for each amicus are attached in the Appendix hereto.

As Asian Pacific American organizations, Amici are familiar with the history of discrimination against Asian Pacific Americans, especially California's history of anti-miscegenation laws and exclusionary efforts

targeted at Asian immigrants. These past laws and policies excluded and marginalized Asian immigrants for decades, making it difficult for Asian immigrants to marry, establish families, have children, build communities and integrate into the larger American society.

Amici see important parallels between the contemporary exclusion of lesbians and gay men from marriage in California and the restrictions that historically prevented Asian immigrants from integrating fully into American society by restricting their ability to marry and form legally secure families. Despite the many differences between Asian Pacific American history and the contemporary gay and lesbian experience, both minority groups have been subjected to negative stereotypes, which often have been invoked as justification for different treatment in law. Moreover, for both groups, different treatment in law has perpetuated social perceptions of difference. In particular, for both groups, government policies that mark the group as different and less worthy of marriage than the majority population have seemed to give tacit approval to other forms of public and private discrimination.

In light of the parallels between the marriage discrimination experienced historically by California's Asian immigrants and that faced by lesbian and gay Californians today, Amici strongly support the right of same-sex couples to marry.

Accordingly, Amici respectfully request permission to file the attached amicus curiae brief.

Dated: September 26, 2007.

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In the Supreme Court of the State of California

IN RE MARRIAGE CASES, Judicial Council Coordination Proceeding No. 4365	No. S147999

BRIEF OF AMICI CURIAE ASIAN AMERICAN BAR ASSOCIATION OF THE GREATER BAY AREA AND 62 ASIAN PACIFIC AMERICAN ORGANIZATIONS IN SUPPORT OF RESPONDENTS CHALLENGING THE MARRIAGE EXCLUSION

INTRODUCTION

Amici curiae, the Asian American Bar Association of the Greater Bay Area and the other Asian Pacific American organizations listed in the Certificates of Interested Parties on pages i through vi herein (collectively, "Amici"), fully support the position of the parties challenging the marriage exclusion ("Respondents").[1]

However, Amici submit that there is a necessity for additional argument. As discussed below, classifications affecting fundamental interests are subject to strict scrutiny under the California Equal Protection Clause. *Serrano v. Priest* (*Serrano I*), 5 Cal. 3d 584, 596-597 & n.11 (1971). Marriage is such a fundamental interest, because of its important

[1] Amici also fully support the position of amici curiae Mexican American Legal Defense and Education Fund et al., set forth in their amicus brief submitted to this Court by O'Melveny & Myers LLP.

role in fostering integration into society. Indeed, the experience of Asian Americans in California illustrates the important role of marriage in fostering integration into society.[2]

Because of its key role in fostering integration into society, marriage is important both to individuals **and to society**.[3] The parties' briefs already address the myriad ways that marriage is of critical importance to individuals. In this brief, Amici focus upon marriage's importance to society as a whole and, in particular, the way marriage fosters formation of new families and integration of those families into society. Conversely, the discriminatory denial of marriage necessarily impedes integration of an excluded group.

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2 The terms "Asian Americans" and "Asian Pacific Americans" are used interchangeably and inclusively in this brief to refer to the diverse ethnic groups who trace their ancestry to Asia. As a community of predominantly immigrants, Asian Americans have faced specific challenges—as immigrants—in their ability to marry and integrate into American society, and those challenges are the focus of this brief. Although the Asian Pacific American community is often defined to include Pacific Islanders, this brief does not specifically address their unique and different experiences as a primarily indigenous community.

This brief uses, as examples, the experience of Chinese Americans, Japanese Americans, Filipino Americans, and South Asian Americans to illustrate the important role of marriage in fostering integration into society. We use these examples because those groups came to California in significant numbers in the first century of California's statehood and were subject to California's anti-miscegenation statutes and other discriminatory measures impeding family formation.

3 *Cf. Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n,* 475 U.S. 1, 8 (1986) (noting that the constitutional guarantee of free speech "serves significant societal interests" apart from the speaker's interest in self-expression, and that by protecting individuals who wish to enter the marketplace of ideas, the First Amendment protects the public's interest in receiving information).

Thus, strict scrutiny should be applied to classifications affecting marriage.

ARGUMENT

I. CLASSIFICATIONS AFFECTING FUNDAMENTAL INTERESTS ARE SUBJECT TO STRICT SCRUTINY UNDER THE CALIFORNIA EQUAL PROTECTION CLAUSE.

In the Rymer Respondents' Opening Brief on the Merits, Respondents argue that "California's statutory exclusion of same-sex couples from marriage is subject to strict scrutiny because it denies equal access to a fundamental right." Respondents' Opening Br. on the Merits, p. 50. That argument should be dispositive in this case, regardless of whether this Court concludes that strict scrutiny is required because of the other constitutional grounds set forth in Respondents' Opening Brief on the Merits.

In *Serrano I*,[4] this Court recognized that "in cases . . . touching on 'fundamental interests,' . . . the court has adopted an attitude of active and critical analysis, subjecting the classification to strict scrutiny." 5 Cal. 3d at 597. "Under the strict standard applied in such cases, the state bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its purpose." *Id.*

In *Serrano I*, this Court considered whether education is a "fundamental interest." *Id.* at 604. This Court began by acknowledging that there was no "direct authority" supporting the contention that education

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[4] Cited in Respondents' Consolidated Reply Br. on the Merits, p. 18.

is a fundamental interest. *Id.* Nonetheless, this Court proceeded to "examin[e] the indispensable role which education plays in the modern industrial state." *Id.* at 605. Among other things, "education is a unique influence on a child's development as a citizen and his participation in political and community life." *Id.* In the course of its decision in *Serrano I*, this Court reviewed prior cases addressing the important role education plays both in an individual's life and in society; this Court noted that the United States Supreme Court in *Brown v. Board of Education,* 347 U.S. 483, 493 (1954), declared that education is a "principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment." This Court further noted its prior observation that "[u]nequal education . . . leads to unequal job opportunities, disparate income, and handicapped ability to participate in the social, cultural, and political activity of our society." *San Francisco Unified Sch. Dist. v. Johnson,* 3 Cal. 3d 937, 950 (1971).

This Court focused on the "factual . . . significance of learning" and the "fundamental importance of education," even though there were no legally controlling cases on point. 5 Cal. 3d at 605. After reviewing those facts,[5] this Court was "convinced that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a 'fundamental interest.'" *Id.* at 608-609.[6]

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[5] For example, this Court noted that "education is unmatched in the extent to which it molds the personality of the youth of society." 5 Cal. 3d at 609-610.

[6] Notably, this Court's inquiry in *Serrano I* did not focus on whether education is a right that is protected by a specific constitutional provision. (continued...)

Thus, in determining what is a "fundamental interest" that triggers strict scrutiny of any classifications, this Court considers the factual significance that the interest has on an individual and on society. In *Serrano I*, this Court found, in essence, that education plays an important role in enabling individuals to thrive in society and fostering their integration into society. Thus, education is a "fundamental interest," and classifications affecting that fundamental interest are subject to strict scrutiny.[7]

The crucial inquiry, then, is whether marriage is similarly a fundamental interest because of its role in helping to create families that are recognized, and can thrive, in society and fostering integration of those families into society.

II. MARRIAGE IS A FUNDAMENTAL INTEREST.

A. Marriage Plays an Important Role in Fostering Formation of Families and Their Integration into Society.

The State of California concedes, as it must, that "[m]arriage is an important institution in our society." Reply of the State of California and Attorney General to Supplemental Briefs, p. 8.

Marriage undeniably plays an important role in creating recognized family units and fostering their integration into society. As in *Serrano I*, it is the factual significance of marriage that is critical. Like education,

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(...continued)
Instead, this Court considered the factual significance that education has in society and, based on that, found that education is a "fundamental interest."

[7] The "fundamental interest" test for triggering strict scrutiny has been applied by this Court in cases both before and after *Serrano I*. *See Westbrook v. Mihaly*, 2 Cal. 3d 765, 784-785 (1970), *vacated on other grounds*, 403 U.S. 915 (1971); *Weber v. City Council of Thousand Oaks*, 9 Cal. 3d 950, 959 (1973); *Darces v. Woods*, 35 Cal. 3d 871, 885 (1984).

marriage plays an indispensable role in modern society. Marriage can have a unique influence on an individual's participation in community life.

The "distinctive and priceless function" of marriage in our society is fully explained by Respondents in their briefs to this Court and in the record below.[8] Of particular interest to Amici, however, is how the experience of Asian Americans in California illustrates the important role of marriage in building families and fostering integration into society.

B. The Experience of Asian Americans in California Illustrates the Important Role of Marriage in Fostering Integration into Society.

The institution of marriage is fundamental to the formation of families and the development of kinship and other social networks. Marriage, family, and kinship networks all play crucial roles in integrating individuals into communities and democratic society. As a result, restrictions on the institution of marriage impede the development of these networks and affect the social, political, and economic integration of individuals into communities and society.

The historical experience of Asian Americans in California illustrates the important role of marriage in fostering integration into

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[8] Judy Baker, the mother of Respondent Devin Baker and also a marriage and family therapist, described the role of marriage based on her experience and professional work: "[W]hile couples can create families without marriage, the marriage rituals create a family unit in a clear, deliberate way. From what I have seen, those rituals create a sense of welcome and belonging, a framework for working together. . . . [T]his sense of connection helps couples and families to take care of each other, and builds wider networks or relationships, caring and support, which can be of great benefit to society." Respondents' App., No. A110451, at 177-178 (J. Baker Decl. ¶¶ 14, 18).

society. As discussed below, laws limiting the ability to marry can limit the growth of a community and impede integration into society.

1. The Experience of Chinese Americans.

The Chinese were drawn to California by the Gold Rush and other economic opportunities. In addition, civil strife in certain regions of China led to increased emigration from China to the United States. By 1880, the Census listed the number of Chinese in the United States as 100,000.[9] Although most Chinese were drawn initially to mining, they soon began to work in other industries—primarily railroad construction, agriculture, common labor, manufacturing, domestic service, and laundering.[10]

Soon after their arrival in the United States in the mid-1800s, Chinese immigrants were subjected to exclusionary laws affecting virtually every aspect of their lives—immigration, naturalization, marriage, taxation, employment and profession, education, the courts, and residence.[11] Many

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[9] *See* Roger Daniels, *Asian America: Chinese and Japanese in the United States since 1850*, at 9-13, 15 (1988).

[10] *Id.* at 19.

[11] *Immigration. See, e.g.*, Page Act of 1875, ch. 141, 18 Stat. 477 (repealed 1974); Chinese Exclusion Acts of 1882 (ch. 126, 22 Stat. 58), 1884 (ch. 220, 23 Stat. 115), and 1892 (ch. 60, 27 Stat. 25) (repealed 1943). The Chinese Exclusion Act and subsequent exclusionary immigration laws were applied against most Asian immigrant groups and were not repealed until 1943 for Chinese, 1946 for Filipinos and South Asians (Indians), and 1952 for Japanese and Koreans. Pat K. Chew, *Asian Americans: The "Reticent" Minority and Their Paradoxes*, 36 Wm. & Mary L. Rev. 1, 17 n.59 (1994). It was not until 1965 that Asian Americans were allowed to immigrate into the United States in substantial numbers. *See id.* at 18 n.61.

Naturalization. See In re Ah Yup, 1 F. Cas. 223 (C.C.D. Cal. 1878) (No. 104) (denying "the first application made by a native Chinaman for naturalization" because a "Mongolian" is not a "white person"); Chinese Exclusion Act of 1882.

(continued...)

of these laws were directed toward maintaining the status of Chinese immigrants as temporary laborers and to deny them a place in American society. Further, much of this exclusionary legislation directly or indirectly impeded marriage and the formation of families in the Chinese immigrant community in California, where most Chinese immigrants had settled. As a result, Chinese male immigrants were faced with the choice of abandoning

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(...continued)

Marriage. Cal. Civ. Code, § 60 (adding "Mongolians" in 1905 to the list of groups barred from marrying "white persons"; such marriages were "illegal and void") (Deering 1949) (repealed 1959) and § 69 (prohibiting the issuance of a license authorizing the marriage of a white person with a Mongolian) (West 1957) (amended in 1959 to omit this prohibition).

Taxation. Foreign Miners Tax, ch. 97, 1850 Cal. Stat. 221, ch. 37, 1852 Cal. Stat. 84 (repealed 1872); *see* Sucheng Chan, *Asian Americans: An Interpretive History* 46 (1991).

Employment and Profession. *See* Chin Kim & Bok Lim C. Kim, *Asian Immigrants in American Law: A Look at the Past and the Challenge Which Remains*, 26 Am. U. L. Rev. 373, 399 n.146 (1977) ("By the start of World War II, nearly all jurisdictions had instituted some form of citizenship requirements for the occupations of certified public accountant and lawyer, while about half required citizenship of dentists and physicians; somewhat under one-half the jurisdictions required citizenship of pharmacists, architects, teachers, optometrists, and engineers and/or surveyors.") (citation omitted).

Education. Cal. Educ. Code, §§ 8003, 8004 (authorizing the segregation of children of Chinese, Japanese, or Mongolian parentage, and Indians under certain circumstances) (Deering 1944) (repealed 1947), *cited in Westminster Sch. Dist. v. Mendez*, 161 F.2d 774, 780 (9th Cir. 1947).

Courts. *See, e.g.*, *People v. Hall*, 4 Cal. 399 (1854) (holding testimony of Chinese witnesses inadmissible against white defendant).

Residence. Robert C. Berring, Book Review, 2 Asian L.J. 87, 92, 99 (1995) (reviewing Charles J. McClain, *In Search of Equality: The Chinese Struggle Against Discrimination in Nineteenth-Century America* (1994)).

the United States or living alone in bachelor societies without the hope of ever having families.

The issuance of marriage licenses to Chinese and Caucasian couples was prohibited in 1880.[12] The 1880 restriction created some ambiguity, though, because the particular provision dealing with anti-miscegenation was section 60 of the California Civil Code.[13] This ambiguity was cleared up in 1905, when section 60 was amended to include "Mongolians" among those groups whose marriage with whites was declared void.[14]

The federal government also acted to prevent marriage between Chinese immigrant men and white women. In 1907, Congress passed a law stripping the citizenship of "any American woman who marries a foreigner."[15] Although this statute was "partially repealed in 1922 to alleviate the perceived harshness of expatriating women who married German nationals denied naturalization as 'alien enemies' during World War I, . . . that law 'continued to require the expatriation of any woman who married a foreigner racially barred from citizenship.'"[16] Though these

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12 1880 Code Amendments, p. 3, ch. XLI, § 1 (amending Cal. Civ. Code, § 69).

13 Irving G. Tragen, Comment, *Statutory Prohibitions against Interracial Marriage,* 32 Cal. L. Rev. 269, 272 nn.17-18 (1944).

14 Act of March 21, 1905, 1905 Cal. Stat. 554. An earlier attempt to amend the statute in 1901 was declared unconstitutional on procedural grounds. *See Lewis v. Dunne,* 134 Cal. 291 (1901).

15 *See* Act of March 2, 1907, ch. 2534, § 3, 34 Stat. 1228, 1228-29 (providing that "any American woman who marries a foreigner shall take the nationality of her husband").

16 Kevin R. Johnson, *Racial Restrictions on Naturalization: The Recurring Intersection of Race and Gender in Immigration and Citizenship Law,* 11 Berkeley Women's L.J. 142, 148 n.36 (1996) (book review) (citing Ian F. Haney Lopez, *White by Law: The Legal Construction of Race* 47

(continued...)

federal citizenship-stripping provisions supplemented the operation of state anti-miscegenation statutes directed against "Mongolians," they also "made it a real liability for American-born women of Asian ancestry to marry immigrant men."[17]

Thus, marriages between Chinese men and white American women were both outlawed by the State of California and placed outside the bounds of American society by federal law.

At the same time, the ability of Chinese immigrant men to marry Chinese women was effectively denied through a series of laws that severely curtailed the immigration of women from China. The Page Act of 1875 forbade "the entry of Chinese, Japanese, and Mongolian contract laborers, women for the purpose of prostitution, and felons."[18] Though the law was ostensibly directed against prostitution, "immigration officials relied on images of Chinese moral decadence . . . , thereby converting it [the Page Act] into what amounted to a female exclusion law."[19] This exacerbated the already skewed gender ratio in the Chinese immigrant community in the United States—the gender ratio for Chinese Americans

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(...continued)
(1996)); *see* Act of Sept. 22, 1922, ch. 411, § 3, 42 Stat. 1021, 1022 (providing that "any woman citizen who marries an alien ineligible to citizenship shall cease to be a citizen of the United States") (repealed 1931).

17 Chan, *supra* note 11, at 106.

18 *Id.* at 54.

19 George Anthony Peffer, *If They Don't Bring Their Women Here: Chinese Female Immigration Before Exclusion* 9 (1999).

Following the Page Act of 1875, Congress in 1882 passed the Chinese Exclusion Act, which forbade the entry of male Chinese laborers for ten years. The Chinese Exclusion Act was amended and renewed on several occasions and was not repealed until 1943. *See supra* note 11; *see also* Daniels, *supra* note 9, at 55-58.

went from 1 female to every 13 males in 1870, to 1 female to every 21 males in 1880, to 1 female to every 27 males in 1890.[20]

The exclusion of immigrants from Asia was completed by the Immigration Act of 1924,[21] which forbade entry of any alien ineligible for citizenship, a provision that applied at that time only to persons of Asian ancestry. As a result, Chinese women who were married to men in the United States, could not join their spouses:

> "'The necessity [for this provision],' a congressman stated, 'arises from the fact that we do not want to establish Oriental families here.' This restriction closed tightly the gates for the immigration of Chinese women. 'We were beginning to repopulate a little now,' a Chinese man said bitterly, 'so they passed this law to make us die out altogether.'"[22]

These barriers to the formation of families had a destructive effect on the Chinese immigrant community as the aging male population died or was forced to return to China in order to rejoin their spouses or to marry. The number of persons of Chinese ancestry in the United States in 1890 was 107,488. By 1920, that number had dropped to 61,639.[23]

Restrictions on marriage were an integral part of a broader system that excluded and isolated Chinese Americans, ultimately forcing many to repatriate. Marriage restrictions, and related barriers to the formation of

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20 Daniels, *supra* note 9, at 69.

21 Ch. 190, 43 Stat. 153 (codified at 8 U.S.C. §§ 201-231) (repealed 1952).

22 Ronald Takaki, *Strangers from a Different Shore* 235 (1989).

23 *See* Robert S. Chang, *Disoriented: Asian Americans, Law, and the Nation-State* 82-83 (1999).

families, prevented the development of stable and growing Chinese American communities in the United States, resulting instead in pockets of Chinese Americans who were isolated socially, politically, and economically.

The experience of Chinese Americans in California illustrates that limitations on the ability to marry can, in fact, impede a group's integration into society, thus confirming the important role of marriage.

2. The Experience of Japanese Americans.

The Japanese American experience includes both early laws that facilitated formation of families, and later laws that interfered with marriage and undermined the Japanese American community's integration into California society.[24]

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[24] Like Chinese immigrants, Japanese immigrants in the United States faced an array of exclusionary laws. *See supra* note 11.

Immigration. Gentlemen's Agreement of 1907, whereby the Japanese government agreed to stop issuing visas to male laborers in exchange for the U.S. government's interceding with state and local authorities in California not to subject children of Japanese ancestry to segregated public education. *See* Bill Ong Hing, *Making and Remaking Asian America Through Immigration Policy 1850-1990,* at 29, 207-212, 243 n.95 (1993); Chan, *supra* note 11, at 16.

Naturalization. See Ozawa v. United States, 260 U.S. 178 (1922).

Marriage. Cal. Civ. Code, § 60 (adding "Mongolians" in 1905 to the list of groups barred from marrying "white persons"; such marriages were "illegal and void") (Deering 1949) (repealed 1959) and § 69 (prohibiting the issuance of a license authorizing the marriage of a white person with a Mongolian) (West 1957) (amended in 1959 to omit this prohibition).

Employment and Profession. See, e.g., Takahashi v. Fish & Game Comm'n, 334 U.S. 410 (1948).

(continued...)

Japanese immigration to the United States proceeded at a slow pace until the late nineteenth century, when rapid industrialization in Japan and related events led to displacement of Japanese farmers.[25] Many Japanese emigrants were drawn to the United States because wages were higher in the United States than in Japan.[26]

One major difference between the Chinese and Japanese immigration experience was that "the U.S. government restricted Japanese immigration in stages, thereby allowing Japanese men more time to decide whether or not to bring women to America."[27] Before 1915, farmers or merchants with sufficient income and capital were permitted to send for

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Landownership. See generally Keith Aoki, *No Right to Own?: The Early Twentieth-Century "Alien Land Laws" as a Prelude to Internment,* 40 B.C. L. Rev. 37 (1998).

Education. Based on the Gentlemen's Agreement of 1907, children of Japanese ancestry were for a time not subject to segregated public education. This protection disappeared, though, at a later time. *See* Hing, *supra* this note, at 29, 207-212, 243 n.95.

Residence. See Hans J. Hacker & William D. Blake, *The Neutrality Principle: The Hidden Yet Powerful Legal Axiom at Work in* Brown versus Board of Education, 8 Berkeley J. Afr.-Am. L. & Pol'y 5, 31 (2006) ("Although most restrictive covenants targeted blacks, records indicate that restrictive covenants were used to exclude 'Mexicans, Armenians, Chinese, Japanese, Jews, Persians, Syrians, Filipinos, [and] American Indians.'") (citation omitted).

25 Chan, *supra* note 11, at 9.

26 *Id.* at 12.

27 *Id.* at 107.

"picture brides."[28] In 1915, Japanese men in other occupations were also permitted to do so, and the financial requirements were reduced.[29]

The entry of Japanese women during this period, immigrating as wives of Japanese men already in the United States, permitted the formation of families. That, in turn, made possible the success of Japanese immigrant farmers who relied on unpaid family labor to be competitive.[30] The ability to form families initially afforded Japanese Americans a measure of economic power. They were able to be their own "bosses" on their farms and create a growing community of Japanese farmers.[31]

However, anti-Japanese sentiment, in part fueled by the success of Japanese Americans, brought efforts that undermined Japanese American family formation and interfered with their integration into society. The entry of "picture brides" was cut off in 1920, when the Japanese government, responding to anti-Japanese sentiment in the United States, stopped issuing visas to "picture brides."[32]

Successful Japanese farmers were targeted by laws limiting the ownership or long-term lease of agricultural land by aliens ineligible for citizenship.[33] The progress of the Japanese American communities was

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28 *Id.*

29 *Id.*

30 *Id.*

31 In the face of societal discrimination, more recent Asian immigrants have often adopted a strategy of entrepreneurship through small family-owned and -operated businesses. *See generally* Ivan Light & Edna Bonacich, *Immigrant Entrepreneurs: Koreans in Los Angeles, 1965-1982* (1988).

32 Chan, *supra* note 11, at 108.

33 *See* Chang, *supra* note 23, at 52-53.

seen as a threat to whites. One commentator has noted, in the context of alien land laws, that:

> "Progressives in California believed that economic self-preservation was closely united with racial preservation. It was believed that, if the Japanese were allowed to make economic inroads, it would only be a matter of time before they would make racial inroads. Inter-marriage and propagation of their race would impair the Anglo-Saxon racial purity so important to the Progressives' concept of economic leadership."[34]

Anti-miscegenation laws and other restrictions had the effect of fostering segregated communities that were unable to integrate more broadly into society. Thus, the families and kinship/social networks remained largely ethnically Japanese.

This social isolation and relative lack of integration created a vulnerability that made possible the internment of Japanese Americans during World War II. The United States Supreme Court implicitly acknowledged this point about social isolation and its effects in its decision upholding Gordon Hirabayashi's conviction for violating the curfew regulations.[35] The Supreme Court stated: "There is support for the view

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[34] Herbert P. Le Pore, *Prelude to Prejudice: Hiram Johnson, Woodrow Wilson, and the California Alien Land Law Controversy of 1913,* 61 S. Cal. Q. 99, 100 (1979), *reprinted in Japanese Immigrants and American Law: The Alien Land Laws and Other Issues* 265, 266 (Charles McClain ed., 1994).

[35] *See Hirabayashi v. United States*, 320 U.S. 81, 96 (1943). The curfew regulations were part of the web of legal restrictions that culminated in nearly 120,000 Japanese Americans being confined to internment camps

(continued...)

that social, economic and political conditions which have prevailed since the close of the last century, when the Japanese began to come to this country in substantial numbers, have intensified their solidarity and have in large measure prevented their assimilation as an integral part of the white population."[36] In its supporting footnote, the "conditions" referred to included legal restrictions with regard to immigration, naturalization, land ownership, marriage, and employment.[37] Though conceding the government's role in creating these conditions, the Court then conjectured that the social isolation of Japanese Americans could have provided a reasonable basis for Congress and the Executive, including the military commander, to doubt the loyalty of Japanese Americans and to take appropriate proactive protective measures.[38] The social isolation of Japanese Americans, though not "causing" their internment, was essentially a precondition for the internment. More generally, this example illustrates that laws impeding integration into society can create a vulnerability that can lead to further discrimination.

The story of Japanese Americans in California illustrates that the ability to marry can be an important component of economic success and the growth of communities, though without the opportunity for full integration, the story is one of only limited success.

(...continued)
pursuant to Executive Order 9066 (7 Fed. Reg. 1407 (Feb. 19, 1942)), issued by President Roosevelt after Pearl Harbor was attacked. *Hirabayashi*, 320 U.S. at 88-89; Eric Yamamoto et al., *Race, Rights and Reparation: Law and the Japanese American Internment* 100-101 (2001).

36 *Hirabayashi*, 320 U.S. at 96.

37 *Id.* at 96 n.4.

38 *Id.* at 98-99.

3. The Experience of Filipino Americans.

Similar themes can be seen in the treatment of Filipino immigrants. In particular, the Legislature's amending the state's anti-miscegenation statute to specifically include Filipinos illuminates the racial prejudice that underlay many of these restrictive laws.

Significant immigration from the Philippines to the United States did not take place until several years after the United States annexed the Philippines at the conclusion of the Spanish-American War in 1898.[39] Unlike immigrants from other Asian countries, Filipinos initially were not subject to the various Asian exclusion acts because they were considered, until the Tydings-McDuffie Act of 1934,[40] U.S. nationals.[41]

Filipino laborers were recruited in significant numbers by Hawaiian plantation owners as replacement workers after a long strike by Japanese workers in 1909.[42] In the 1920s and 1930s, "[w]hen Filipinos realized that work could be had not only in Hawaii but also on the [U.S.] mainland, more than 50,000—a third of them reemigrants from Hawaii—headed for the [mainland]."[43] By 1930, of the 108,260 Filipinos in the United States, 30,470 resided in California.[44]

Similar to the earlier populations of Chinese and Japanese immigrants, the early wave of laborers were largely male, with females

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39 Chan, *supra* note 11, at 16-18.

40 Ch. 84, 48 Stat. 456.

41 Rick Bonus, *Locating Filipino Americans: Ethnicity and the Cultural Politics of Space* 37-38 (2000).

42 Chan, *supra* note 11, at 18.

43 *Id.*

44 Bonus, *supra* note 41, at 36-37.

constituting less than seven percent of the Filipinos admitted to California between 1920 and 1929.[45] This gender imbalance was by design.[46]

Filipinos in California during this period faced what earlier waves of Asian immigrants had experienced before—restrictions on their right to marry as part of a broader effort to deny them full citizenship and inclusion.[47] Such antagonism, "while economic in its roots, reached its most fevered pitch concerning Filipino relations with white women."[48]

It was initially unclear whether the anti-miscegenation laws applied to Filipinos. In particular it was unclear whether Filipino Americans were so-called "Mongolians" under the state's anti-miscegenation statute and thus prohibited from marrying whites.[49]

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45 *Peoples of Color in the American West* 338 (Sucheng Chan, Douglas Henry Daniels, Mario T. Garcia & Terry P. Wilson eds., 1994).

46 Bonus, *supra* note 41, at 37 ("Women and children were frequently barred by recruiters from traveling with the men; they were likely viewed as burdens that would interfere with the farm work.").

47 Though they were U.S. nationals, "Filipinos were ineligible for citizenship and were legally barred from voting, establishing a business, holding private and public office, and owning land and other property." Bonus, *supra* note 41, at 37-38 & n.31.

48 Leti Volpp, *American Mestizo: Filipinos and Antimiscegenation Laws in California*, 33 U.C. Davis L. Rev. 795, 796 (2000).

49 For years, interpretations of the law varied to some degree. For instance, in 1921, Los Angeles County commenced issuing marriage licenses to Filipino-Caucasian couples because counsel for the County advised that "Malayans" were "brown people" rather than the "yellow" people to which the word "Mongolians" ordinarily refers. *Peoples of Color, supra* note 45, at 339. The California Attorney General issued a conflicting opinion in 1926 that classified Filipinos as Mongolians. Volpp, *supra* note 48, at 816. County clerks, tasked with issuing or denying marriage certificates, appear not to have followed a consistent approach. *Id.* at 817 & n.88.

This uncertainty was resolved in *Roldan v. Los Angeles County*, 129 Cal. App. 267 (1933), a case involving a challenge by a Filipino male and white female couple who were denied a marriage license based on the anti-miscegenation statute. The court in that case found that Filipinos were members of the Malay, and not Mongolian, race and therefore not precluded from intermarriage with whites under the statue. *Id.* at 272-273. The California Legislature responded that same year by amending the anti-miscegenation statute to include Malays among the list of groups prohibited from marrying whites.[50]

Congress passed the Tydings-McDuffie Act[51] the next year, in 1934, which "effectively halted Filipino immigration."[52] Although the Act set the Philippines on the road to independence, in exchange it limited Filipino immigration to the United States to only 50 persons per year."[53] Thus, like Chinese and Japanese Americans, Filipino Americans were the object of governmental efforts to limit their ability to immigrate to the United States and to marry and form families, which in turn impeded their ability to integrate fully into society.

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50 Acts effective Aug. 21, 1933, chs. 104-105, 1933 Cal. Stat. 561 (codified at Cal. Civ. Code, §§ 60, 69) (repealed 1959, 1969) .

51 Ch. 84, 48 Stat. 456 (1934).

52 Volpp, *supra* note 48, at 823.

53 Tydings-McDuffie Act, ch. 84, § 8(a)(1), 48 Stat. 456, 462. The following year, Congress passed the Filipino Repatriation Act, ch. 376, 49 Stat. 478 (1935), which provided for free transportation of Filipinos back to the Philippines. The Act was intended to return an estimated 45,000 Filipinos, though only about two thousand took advantage of the program. *See* Bonus, *supra* note 41, at 41; Volpp, *supra* note 48, at 823 n.112.

4. The Experience of South Asian Americans.

The experience of South Asian communities illustrates how laws restricting marriage can transform a community and its ethnic identity. The immigration of South Asians to the western United States began early in the twentieth century.[54] Most early immigrants came from India's Punjab province, which had experienced disruptions to its land tenure system because of taxation by Great Britain.[55] Many of the immigrants were drawn to the United States because of stories about economic opportunities in the United States.[56]

The gender ratio in the South Asian immigrant community was extremely skewed: fewer than a dozen South Asian women immigrated to the United States before World War II,[57] while "6,800 or so Indians . . . came to the western United States between 1899 and 1914."[58]

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54 Like other Asian immigrant groups, South Asians were subject to exclusionary laws with regard to immigration, naturalization, marriage, and land ownership.

Immigration. Immigration Act of 1917, ch. 29, 39 Stat. 874 (repealed 1952).

Naturalization. United States v. Thind, 261 U.S. 204 (1923).

Marriage. See Karen Isaksen Leonard, *Making Ethnic Choices: California's Punjabi Mexican Americans* 62-63 (1992) (discussing the application of California's anti-miscegenation statute to Punjabi immigrant men).

Land Ownership. Immigrants from South Asia, as aliens ineligible for citizenship, were subject to state alien land laws. *Id.* at 135.

55 Leonard, *supra* note 54, at 24; Chan, *supra* note 11, at 18-20.

56 Leonard, *supra* note 54, at 31.

57 Chan, *supra* note 11, at 109.

58 Leonard, *supra* note 54, at 24 & n.24.

Under the specter of the anti-miscegenation statute, hundreds of South Asian men married Mexican American women and formed households and families of mixed ethnicity in California.[59] One study of the mixed South Asian and Mexican American communities found that the integration of the South Asian men and their children

> "into the larger culture is now bound up with the rate and degree of assimilation of Mexican Americans generally. Hence instead of direct gradual acculturation into American culture, they are involved in a circuitous process, whereby they are first diverted into a [Mexican-American] sub-culture and from then on their Americanization is bound up with that of the Mexican-Americans."[60]

The interethnic marriages resulted in separate male and female social networks.[61] Within this framework, the children in these families began their childhoods in the female networks, including the religion of their mothers.[62] Also, the early schooling of these children tended to be in segregated settings where Spanish-speaking children predominated.[63] This second generation—Punjabi Mexican American children—was proud of

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59 *See id.* at 62-78.

60 Yusuf Dadabhay, *Circuitous Assimilation Among Rural Hindustanis in California,* 33 Soc. Forces 138, 141 (1954). A more recent book questions whether South Asians had fully assimilated into the Mexican American culture, but supports the idea that the route to assimilation and integration was circuitous. *See* Leonard, *supra* note 54, at 99-100.

61 *Id.* at 79-100.

62 *Id.* at 123, 126.

63 *Id.* at 123.

their patrilineal Punjabi heritage, but most members of this generation married Hispanic or Anglo partners.[64]

With regard to self-perception, "Punjabi-Mexicans see themselves as exemplifying a positive trend toward participation in broader American culture."[65] In this sense, this is not a simple story of intermarriage where a minority community disappears into some other group. Rather, it is a complex and dynamic story that serves as an early example of the pluralistic, multicultural society that California is or aspires to be.

Marriage as an institution is a vital part of such a pluralistic, multi-cultural society. As illustrated by the experiences of Asian Americans in California, marriage is central to the formation of families and the development of kinship and other social networks, and often the achievement of economic success. Marriage plays a crucial role in integrating individuals into communities and democratic society. And, unfortunately, restrictions on the institution of marriage impede the social, political, and economic integration of individuals into communities and society.

Because marriage plays such an important role in fostering integration into society, marriage is a fundamental interest.

C. Exclusion from Marriage Impedes Integration into Society and Opens The Door to Other Forms of Discrimination.

Asian Americans in this country are intimately familiar with the harms that marriage discrimination inflicts upon individuals, families and communities. As discussed above, since the beginning of Asian

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64 *Id.* at 123, 153.

65 *Id.* at 209.

immigration to the United States and for much of the history of California, Asian American populations were denied the equal ability to marry. This denial was an integral part of broader legal and social policies that undermined the existence and participation of Asian Americans in this society. Laws restricting the ability of Asian Americans to marry were closely connected to other government efforts to keep Asian communities separate and excluded from American society generally.

At the core, this discrimination was motivated by stereotypes about each group and the putative threat each group posed to whites in California and the United States. For example, "[s]ome argued that American institutions and culture would be overwhelmed by the habits of people thought to be sexually promiscuous, perverse, lascivious, and immoral."[66] These stereotypes led to the enactment of anti-miscegenation laws and laws and rulings that effectively cut off immigration from Asia and rendered those present ineligible for naturalization. Not only did they impede the full integration of certain groups into society, they promoted segregated communities and institutions.

There is an additional danger: once the government signals that it is lawful and fair to treat a group differently, that notion can become woven into the fabric of society in such a way that private actors feel empowered to engage in extralegal policing of legally sanctioned discrimination.[67] In a

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66 Volpp, *supra* note 48, at 802 (citation omitted).

67 *See* Robert S. Chang, *Dreaming in Black and White: Racial-Sexual Policing in* The Birth of a Nation, The Cheat, *and* Who Killed Vincent Chin? 5 Asian L.J. 41 (1998) (discussing the way that Asian, black, and white sexuality were policed by the rule of law or the force of sanctioned vigilante violence).

stark example, legal enforcement of anti-miscegenation statutes was often accompanied by extralegal enforcement through lynchings.[68]

Although the historical contexts differ, there are important parallels between today's exclusion of lesbian and gay couples from marriage and the historical restriction of Asian Americans' ability to marry. Similar to the stereotypes, discrimination, and violence that Asians faced upon their arrival (many of which persist to this day), lesbians and gay men currently deal with stereotypical bias and stigma, social and economic discrimination and exclusion, and even violence. Moreover, both forms of marriage discrimination place a badge of inferiority on a minority group vis-à-vis the majority population, denying the ability to form an enduring and legally secure bond that can be the basis for building a family.

Thus, similar to Asian Americans historically, same-sex couples today are denied the opportunity to participate in marriage—an institution that has been recognized as the most effective means of solidifying commitment, achieving security as a family unit, and accordingly being integrated into society.

Respondent Stuart Gaffney described the epiphany he experienced when he and John Lewis, after seventeen years together, married at San Francisco City Hall. It was a recognition that he had just been lifted from a demeaned status to an equal one:

> "When John and I heard the words "by the authority vested in my by the State of California, I now pronounce you spouses for life," we . . . experienced for the first time our

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68 *See generally* Barbara Holden-Smith, *Lynching, Federalism, and the Intersection of Race and Gender in the Progressive Era*, 8 Yale J.L. & Feminism 31 (1996).

> government treating us as fully equal human beings and recognizing us as a loving couple worthy of the full respect of the law."

Respondents' App., No. A110451, at 148 (Gaffney Decl. ¶ 5).

Noted Chinese American author Helen Zia similarly explains in her declaration in support of Respondent City and County of San Francisco in the instant litigation that the familial bonds forged when she and her life partner were able briefly to marry remain intact, with great, continuing significance both for the couple and their family members:

> "Marriage means a lot to Lia, to me, and to our families. . . . In the eyes of the law and of much of society, our commitment and our union, to each other and to our families, is not legitimate and not real, including because the stigma associated with being lesbian or gay in the Asian American community is deeply rooted. This hurts us, our families and others who love us. I am grateful to find, however, that having been lucky enough to get married for even a brief period, Lia is now my mother's daughter at least in my mother's eyes, and I am now her father's daughter in his eyes as well. Our relationship with our families has changed inalterably, and indescribably, as a result of our very brief civil marriage."

Respondents' App., No. A110449, vol. II, at 303 (H. Zia Decl. ¶ 17).

Lesbian and gay Americans cannot claim their full, rightful citizenship as long as they are denied the right to marry the person of their choice. Historically, many Asian Americans were either forced to leave California or the United States to be able to create families. Without equal

marriage rights, California gay and lesbian couples today face the dilemma either of sacrificing their dignity and remaining home in California or relocating to Massachusetts—the only state that currently legally recognizes marriages of same-sex couples—or to Canada, Spain, Belgium, the Netherlands, or South Africa—the countries that legally recognize marriages of same-sex couples.[69]

III. STRICT SCRUTINY SHOULD BE APPLIED TO CLASSIFICATIONS AFFECTING MARRIAGE.

Because marriage is a fundamental interest, key to formation of families and their integration into society, strict scrutiny should be applied to classifications affecting marriage: "[T]he state bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its purpose." *Serrano I*, 5 Cal. 3d at 597.

As discussed in Respondents' briefs, there is no legitimate state interest, let alone any compelling state interest, justifying the challenged statutes. Excluding same-sex couples from marriage is in no way necessary to further any compelling state interest. The statutes violate the California Equal Protection Clause.

A. Tradition Alone Cannot Be a Compelling State Interest for Discriminatory Classifications Affecting Marriage.

This Court cannot rely on "tradition" to decide whether the California Constitution permits excluding lesbians and gays from their

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69 *World Briefing Americas: Canada: Gay Marriage Approved*, N.Y. Times, July 21, 2005, at A6, *available at* 2005 WLNR 11417768; Clare Nullis, *Same-Sex Marriage Law Takes Effect in S. Africa,* Wash. Post, Dec. 1, 2006, at A20.

fundamental interest in marriage. Discrimination and exclusion have been deeply rooted in California's marriage "tradition."

When *Perez v. Sharp,* 32 Cal. 2d 711 (1948), was decided, marriage prohibitions and other exclusionary laws had reduced California's Chinese American population to a fraction of its former size.[70] The decade before, the California Legislature was still *adding* racial groups to the state's anti-miscegenation statute.

It fell to this Court to protect the fundamental interests in marriage of California's vulnerable residents. When this Court did so by invalidating the anti-miscegenation statute, it did so despite the ban's long history and pervasive effect on California society, and despite its continued support by the Legislature and the electorate.

The *Perez* majority, led by Justice Traynor, rejected the dissent's reliance on the discriminatory "tradition" of excluding interracial couples from marriage. As described by Justice Shenk in dissent, "[t]he provisions of the law here attacked have remained unchallenged for nearly one hundred years and have been unchanged so far as the marriage of whites with Negroes is concerned." 32 Cal. 2d at 746-747 (Shenk, J., dissenting). Justice Shenk also noted that both state and federal courts had uniformly upheld the constitutionality of the bans on interracial marriages and thus the court should defer to the legislative branch. Yet, the majority correctly understood that this long and consistent history was not a sufficient or

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[70] The 1860 census shows that Asians and Pacific Islanders constituted 9.2% of the total California population. However, by 1900, that number had declined to 3.8%. By 1950, the Asian and Pacific Islander population had dwindled to a mere 1.7% of the California population, according to the census data. *See* U.S. Census data, *available at* http://www.census.gov/population/documentation/twps0056/tab19.pdf.

appropriate basis upon which to uphold a discriminatory restriction on access to a fundamental human right.[71]

As with the anti-miscegenation statutes, the Legislature deliberately imposed marriage discrimination against same-sex couples when it amended section 300 of the Family Code in 1977 to impose gender restrictions on the definition of marriage. *See, e.g., Lockyer v. City & County of San Francisco*, 33 Cal. 4th 1055, 1076 n.11 (2004) (observing that the legislative history makes it clear that the "purpose of the bill is to prohibit persons of the same sex from entering lawful marriage"). And despite the broad protections that California domestic partnership laws now provide same-sex couples, these laws do not permit same-sex couples to marry and do not give them the fully equal legal responsibilities, protections, recognition, and security of marriage.

Many California same-sex couples have waited years to marry. Respondents Phyllis Lyon and Del Martin have been waiting over fifty years. Respondents' App., No. A110451, at 68-69 (Lyon Decl. ¶¶ 2-4). Respondents Gaffney and Lewis have been waiting over a decade and a half. *Id.* at 148 (Gaffney Decl. ¶ 3). Respondents and other loving, committed same-sex couples seek through this litigation what the *Perez* decision accorded interracial couples, like Gaffney's parents: "the right to become a married couple with equal status in the eyes of the law." *Id.* at 156 (Gaffney Decl. ¶ 34). This Court should follow *Perez* and enforce the

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[71] *Perez* thus enormously benefited Respondent Stuart Gaffney's family. If Mr. Gaffney's parents, who were an interracial couple, had traveled to another state to marry, they still would not have been able to be legally married in California without *Perez*. California's anti-miscegenation statutes declared all such marriages "illegal and void."

California Constitution to invalidate the marriage restrictions on same-sex couples.

B. Because an Important Function of Marriage Is to Integrate Married Couples as New Family Units into Society, the Separate Institution of Registered Domestic Partnership Cannot Serve this Function and Cannot Justify Denial of Lesbian and Gay People's Fundamental Interest in Marriage.

The briefings of Respondents Rymer and Frazer, et al., and of the City and County of San Francisco persuasively explain that while California's registered domestic partnership laws provide lesbian and gay couples many legal protections, that status is different from marriage, and does not perform important functions of marriage.[72]

The registration of a domestic partnership does not fulfill marriage's essential function of facilitating formation of new families and integrating them into society. Indeed, registered domestic partnership has precisely the opposite effect of marking gay and lesbian couples as different. *See, e.g.,* Rymer Reply Br., p. 14 ("Being 'domestic partners' rather than spouses . . . limits social recognition and support, which in turn restricts the couple's ability to be seen and respected as a family in day to day interactions with others. . . . [B]y placing all lesbian and gay couples in a separate legal class with a separate name and status, the domestic partnership law highlights

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[72] *See, e.g.,* Respondents' Opening Br. on the Merits, pp. 18-26; Respondents' Consolidated Reply Br. on the Merits ("Rymer Reply Br."), pp. 13-15; Respondents' Supplemental Br. ("Rymer Supplemental Br."), pp. 2-17; Respondents' Consolidated Supplemental Reply Br., pp. 1-9; Petitioner City & County of San Francisco's Opening Br. on the Merits, pp. 48-56; City & County of San Francisco's Consolidated Reply Br., pp. 9-16; City & County of San Francisco's Supplemental Br., pp. 1-18.

their sexual orientation and places the sexuality of those couples in a constant, unwelcome spotlight. . . ."); Rymer Supplemental Br., p. 2 ("[p]ersons in domestic partnerships are forced to disclose their sexual orientation every time they are required to disclose their marital status").

Becoming married transitions a newly joined couple into a new status and social role; in contrast, the exclusion of gay couples from marriage "pushes them outside of the common framework and vocabulary of family and civic life; it forces them to be outsiders." *Id.* at 25. "Rather than including same-sex couples within the boundaries of a universal human experience, domestic partnership serves as a constant reminder of an assumed difference." *Id.* at 28 n.19.

Lesbian and gay couples have the same desire as heterosexual couples to solemnize a life-bond and matriculate socially, with a need to have their relatives and friends recognize and celebrate the extended family networks that support a married couple. Registered domestic partnership does not create the same family ties as marriage; the peculiar status of domestic partnership is neither understood nor respected like marriage. For example, in this litigation Helen Zia recalled that registering as domestic partners with her life partner, Lia Shigemura, was neither special nor meaningful to them, but rather "like getting a dog license." Respondents' App., No. A110449, vol. II, at 298 (H. Zia Decl. ¶ 5). Their registration was not meaningful to their families either. *Id.* As Zia explains, "To both of our families, my Chinese American family and Lia's Japanese American family, the bonds of family are critically important. . . . Marriage . . . is a bonding of two families, the family of each person in the couple. . . . My mother's inability to say that we are married prevents her from sharing with many of her friends and colleagues the pride and joy and sense of

connection that she would have if our union were recognized as a marriage by society." *Id.* at 300 (H. Zia Decl. ¶ 9).

Zia also described their relatives' very different reactions when she and Lia married in February 2004: "Love and affirmation poured forth from our families and friends. . . . The kind of things family members said were both striking and moving. . . . My 15-year old niece has only ever known us as being together. Yet, when we told her we had married, she said to Lia: 'Now you're *really* my auntie.' . . . [W]hile our families had known and accepted that we were together, marriage made it real." *Id.* at 301 (H. Zia Decl. ¶ 12).

Helen Zia's mother, Beilin Woo Zia, similarly stressed that the common rituals and language of marriage facilitate creation of and communication about family relationships, in ways that span the gulfs of history and culture:

> "Marriage and family are extremely important in Chinese culture, and are also important to me. Marriage helps bind the two people who marry together. It also creates a family relationship between the families of the two married people. . . . In China, the ideal is for the extended families to live together in one family compound. . . . The marriage relationships of the children are the building blocks to that ideal. . . . When your son or daughter is married, you know how to introduce their spouse to your friends: you call them your son or son-in-law or your daughter or daughter-in-law. Everyone knows what that means. It means they are related to you and are part of your family."

Id. at 305-306 (B.W. Zia Decl. ¶¶ 3-5). Mrs. Zia explained that Helen and Lia's marriage gave her helpful access to common concepts and language about family relationships, even though her daughter's marriage was later deemed legally invalid. In Mrs. Zia's words:

> "For many years, Helen and Lia lived together and loved each other but could not get married. I almost never talked with my friends about Helen and Lia's relationship because I did not know how to describe it. When I introduced Lia, I usually introduced her as 'Helen's girlfriend.' I don't know if people understood what that meant.
>
> "Now I tell people that all of my children are married. I introduce Lia to my friends as 'my daughter' or 'my daughter-in-law.' I feel that Lia and her family are now truly our relatives."

Id. at 306-307 (B.W. Zia Decl. ¶¶ 11-12).

Helen Zia also stresses the communication and social participation that marriage uniquely allows, speaking both as an Asian American history scholar and from her experience as an Asian American lesbian:

> "In Chinese culture and other Asian cultures that have their roots in Confucianism, the family is the core and the foundation of society. . . . In Chinese culture, then, marriage is . . . regarded as the social expression of family . . . Allowing gay men and lesbians to marry would . . . allow many gay men and lesbians to participate more fully in their families since their families would be able to understand and explain their relationship in the context of the legal and socially accepted institution of marriage."

Id. at 297-298 (H. Zia Decl. ¶ 3).

Other participants in these *Marriage Cases* have similarly attested that the distinct status of domestic partnership did not allow them to communicate effectively about their families and to participate socially as marriage would have done. Respondent Stuart Gaffney explained that, upon marrying:

> "we publicly held ourselves out as legally married spouses. We referred to each other as 'husband' to family, friends, co-workers, and the public in general. Marriage provided the highest public acknowledgement and validation of our relationship—something that a state domestic partnership cannot provide. Being able to tell other people we were married both in formal and informal settings permitted us to experience our dignity as equal human beings and allowed us to express the truth of our lives together."

Respondents' App., No. A110451, at 153 (Gaffney Decl. ¶24).

Taking a lesson from the Asian American history explored earlier in this brief, there is ample reason to believe that allowing lesbian and gay couples to enjoy their fundamental interest in marriage will permit normalization and incorporation of these couples within the fabric of California society and support stability of the family unit.[73]

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[73] In one of its briefs to this Court, the Campaign for California Families (the "Campaign") acknowledges that marriage is a gateway to "shared meanings and expectations essential to an orderly and effective society." Campaign's Supplemental Br. in Response to June 20, 2007 Order, p. 28. The Campaign also recognizes that marriage is "a universally recognized social construct" and "an enduring social institution upon which the future of society depends." *Id.* at 26-27.

Recognizing marriage as a fundamental interest will protect individuals, build families, and strengthen society as a whole. The State cannot abridge anyone's fundamental interest in marriage absent compelling, narrowly tailored public interests, which it has not even attempted to demonstrate in this litigation.

CONCLUSION

For the reasons stated above, the judgment of the Court of Appeal should be reversed.

Dated: September 26, 2007.

Respectfully submitted,

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Appendix

API Equality
API Equality is a coalition of organizations and individuals that is committed to working in the Asian and Pacific Islander (API) community in California and nationally for equal marriage rights and fair treatment of lesbian, gay, bisexual, and transgender families through education and advocacy. API people have faced a long history of discrimination that has harmed its communities and families, including exclusion acts, immigration restrictions, and laws banning interracial marriage. Given this history of exclusion and unequal treatment, API Equality recognizes the injustice of denying same-sex couples the right to marry and is dedicated to achieving mutual respect and security for all loving families, including those of devoted same-sex couples. API Equality therefore has an interest in this litigation and seeks to participate here as an amicus curiae.

API Equality - LA
API Equality - LA is a coalition of organizations and individuals who are committed to working in the Asian and Pacific Islander (API) community in the greater Los Angeles area for equal marriage rights and the recognition and fair treatment of lesbian, gay, bisexual, and transgender families through community education and advocacy. API Equality - LA recognizes that the long history of discrimination against the API community, especially California's history of anti-miscegenation laws and exclusionary efforts targeted at Asian immigrants, parallels the contemporary exclusion of lesbians and gay men from marriage in California. Because API Equality - LA is dedicated to achieving mutual respect and security for all loving families, including those of devoted same-sex couples, it has an interest in this litigation and seeks to participate as an amicus curiae.

API Equality - SF
API Equality - SF is a coalition of organizations and individuals that is committed to working in the Asian and Pacific Islander (API) community in the San Francisco Bay Area for equal marriage rights and fair treatment of lesbian, gay, bisexual, and transgender families through education and advocacy. API people have faced a long history of discrimination that has harmed its communities and families, including exclusion acts, immigration restrictions, and laws banning interracial marriage. Given this history of exclusion and unequal treatment, API Equality - SF recognizes the injustice of denying same-sex couples the right to marry and is dedicated to achieving mutual respect and security for all loving families, including

those of devoted same-sex couples. API Equality - SF therefore has an interest in this litigation and seeks to participate here as an amicus curiae.

Asian American Bar Association of the Greater Bay Area (AABA)
Asian American Bar Association of the Greater Bay Area (AABA) is one of the largest Asian American bar associations in the nation and one of the largest minority bar associations in the State of California. From its inception in 1976, AABA and its attorneys have been actively involved in civil rights issues and community service. AABA members filed an amicus brief in the Bakke affirmative action case, filed a successful petition overturning the conviction of Fred Korematsu in the landmark case of *Korematsu v. United States*, worked on the successful campaign to release Chol Soo Lee from prison, and more recently were involved in efforts to release Wen Ho Lee and to unseal documents in his case.

Asian American Institute (AAI)
The Asian American Institute (AAI) is the Midwest region's pan-Asian advocate whose mission is to empower the Asian American and Pacific Islander (AAPI) community through advocacy, research, education, and coalition-building. Given the history of exclusion of Asian Americans and Pacific Islanders from civil marriage, AAI is committed to ensuring equal marriage rights and responsibilities for all members of the AAPI community.

Asian American Justice Center (AAJC)
The Asian American Justice Center (AAJC), formerly the National Asian Pacific American Legal Consortium, is a national non-profit, non-partisan organization whose mission is to advance the legal and civil rights of Asian Americans. Collectively, AAJC and its Affiliates, the Asian American Institute, the Asian Law Caucus, and the Asian Pacific American Legal Center, have over 50 years of experience in providing legal public policy advocacy and community education on discrimination issues. AAJC was an amicus in support of plaintiffs in the marriage equality cases of *Goodridge v. Dep't of Public Health*, 798 N.E.2d 941 and (Mass. 2003) and *Kerrigan v. Connecticut*, 909 A.2d 89 (Conn. Sup. Ct. 2006). The question presented by this case is of great interest to AAJC because it implicates the availability of civil rights protections for Asian Americans in this country.

Asian American Legal Defense and Education Fund (AALDEF)
Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, is a non-profit organization based in New York City. AALDEF defends the civil rights of Asian Americans nationwide through the prosecution of lawsuits, legal advocacy and dissemination of public

information. AALDEF has throughout its long history supported equal rights for all people, including the rights of gay and lesbian couples.

Asian American Psychological Association (AAPA)
The Asian American Psychological Association (AAPA) is the oldest national organization dedicated to the advancement of Asian American psychology on behalf of Asian American communities and their psychological well-being. Its advocacy efforts include the promotion of culturally responsive mental health services for Asian and Asian American communities, the advancement and dissemination of psychological research on Asian Americans, the education and training of Asian American mental health service providers, the development of culturally-appropriate mental health policies and the establishment of professional collaborations and networks within the field of mental health. Founded in 1972, AAPA's advocacy efforts emerged in response to historical and contemporary experiences with racial discrimination and marginality. AAPA believes that the heterosexism and marriage discrimination that has been and continues to be experienced by lesbian, gay and bisexual community members are directly parallel to the racial discrimination experienced by all Asian Americans. Hence, given AAPA's mission to advocate for the psychological well-being of all Asian Americans, the Asian American Psychological Association joins this amicus curiae brief in support of marriage equality.

Asian American Queer Women Activists (AAQWA)
Asian American Queer Women Activists (AAQWA) is dedicated to promoting visibility and empowerment of Asian queer women and transgender individuals. AAQWA strives to build a supportive and progressive community through social, political, and educational activism. Given the history of exclusion and unequal treatment experienced by the API community in California, AAQWA has a unique ability to recognize the injustice of denying same-sex couples the right to marry and has a significant interest in this litigation.

Asian and Pacific Islander American Health Forum (Health Forum)
The Asian and Pacific Islander American Health Forum (Health Forum) is a national organization dedicated to promoting policy, program, and research efforts to improve the health and well-being of API communities. Founded in 1986, the Health Forum approaches activities with the philosophy of coalition-building and developing capacity within local API communities. It advocates on health issues of significance to API communities, conducts community-based technical assistance and training, provides health and U.S. Census data analysis and information

dissemination, and convenes regional and national conferences on API health. The Health Forum has an interest in this litigation because marriage equality for same-sex couples, especially those in the API community, contributes greatly to the health and well-being of API communities.

Asian and Pacific Islander Lesbian, Bisexual Women and Transgender Network (APLBTN)

Asian and Pacific Islander Lesbian, Bisexual Women and Transgender Network (APLBTN) is a national coalition of local community groups that serves as a network to empower and support Asian and Pacific Islander lesbians, bisexual women and transgender people. APLBTN aims to create visibility, build leadership, develop resources, and strengthen ties within its communities through outreach and education. APLBTN also works to create alliances with other organizations and communities that are struggling with similar forms of invisibility, marginalization, stereotyping, and disempowerment. Because securing equal legal respect for loving, committed family relationships is critically important for the protection and support of its members, APLBTN joins in this effort to achieve marriage equality for same-sex couples.

Asian and Pacific Islander Parents and Friends of Lesbians and Gays (API PFLAG)

The Asian and Pacific Islander Parents and Friends of Lesbians and Gays (API PFLAG) is a project of the Los Angeles Chapter of Parents and Friends of Lesbians and Gays. Its threefold mission is support, education and advocacy. API gays, lesbians, bisexuals, and transgender people deserve the same civil rights as API heterosexuals. API PFLAG fully supports the effort to achieve marriage equality for same-sex couples.

Asian Communities for Reproductive Justice (ACRJ)

Founded in 1989, Asian Communities for Reproductive Justice (ACRJ) has been at the forefront of building a Reproductive Justice Movement that places the reproductive health and rights of Asian women and girls within a social justice framework. ACRJ promotes and protects reproductive justice through organizing, building leadership capacity, developing alliances, and education to achieve community and systemic change. Reproductive justice exists when all people have the economic, social and political power and resources to make healthy decisions about their bodies, sexuality and reproduction for themselves, their families and their communities.

Asian Law Alliance

Since a group of law students from Santa Clara University founded the Asian Law Alliance to provide legal assistance to the Asian/Pacific Islander communities over two decades ago, the Asian Law Alliance, a non-profit

organization, has become the cornerstone legal services provider for the Asian/Pacific Islander community within Santa Clara County. The theme of Asian Law Alliance is "Justice, Dignity, and Equality." Asian Law Alliance chose this theme because Asian Law Alliance has always been active in promoting and defending laws that affect Asian and Pacific Islanders' rights and opportunities.

Asian Law Caucus
The Asian Law Caucus is the nation's oldest legal and civil rights organization serving Asian American and Pacific Islander communities. Recognizing that social, economic, political, and racial inequalities continue to exist in the United States, the Asian Law Caucus is committed to the pursuit of equality and justice for all sectors of the community with a specific focus directed toward addressing the needs of low-income Asians and Pacific Islanders.

Asian Pacific AIDS Intervention Team (APAIT)
The mission of Asian Pacific AIDS Intervention Team (APAIT) is to positively affect the quality of life for Asian and Pacific Islanders living with or at-risk for HIV/AIDS by providing a continuum of prevention, health and social services, community leadership and advocacy to the Southern California region. As one of the nation's largest providers of HIV/AIDS prevention and care services for the Asian and Pacific Islander communities, APAIT has been providing culturally and linguistically appropriate services to APIs since 1987. APAIT strongly believes that marriage equality for same-sex couples is critical to improving the quality of life for many in the API community.

Asian Pacific American Bar Association of Los Angeles County (APABA)
The Asian Pacific American Bar Association of Los Angeles County (APABA) is a member organization comprised of attorneys, judges, commissioners and law students throughout Los Angeles County and serves as a voice for issues of concern to the Asian and Pacific Islander (API) community. Established in 1998, APABA provides legal education and assistance to underserved API communities and also sponsors programs in professional development, community education, and law student mentorship. As an API organization, APABA well knows the history of discrimination against Asian Americans and Pacific Islanders, and its activities seek to ensure access and justice for those without a voice. As an organization that believes in civil rights, APABA believes that achieving marriage equality furthers the civil rights interests not only of members of the API community but of all Americans.

Asian Pacific American Labor Alliance - Alameda (APALA-Alameda)
Asian Pacific American Labor Alliance - Alameda (APALA-Alameda) is the Alameda-based chapter of the first and only national organization of Asian Pacific American union members that continues the long and proud tradition of Asian Pacific American workers fighting for justice. As part of its social justice mission, APALA-Alameda supports the rights of lesbian, gay, bisexual and transgender Asian Pacific American workers.

Asian Pacific American Labor Alliance - Los Angeles (APALA-LA)
Asian Pacific American Labor Alliance - Los Angeles (APALA-LA) is the Los Angeles-based chapter of the first and only national organization of Asian Pacific American union members that continues the long and proud tradition of Asian Pacific American workers fighting for justice. As part of its social justice mission, APALA-LA supports the rights of lesbian, gay, bisexual and transgender Asian Pacific American workers.

Asian Pacific American Legal Center (APALC)
The Asian Pacific American Legal Center (APALC) is the nation's largest public interest law firm devoted to the Asian and Pacific Islander (API) community. As a civil rights organization, APALC focuses on combating race and national origin discrimination in sectors as diverse as employment, education, consumer, health care and government programs. Since its founding in 1983, APALC has also embraced a broader vision of social justice premised on the notion that the civil rights of all communities are inextricably linked, and is recognized nationally for bringing together and addressing issues of diverse communities. APALC is committed to achieving marriage equality in California because API communities have been the past targets of laws and policies limiting marriage rights and because current marriage laws exclude lesbian and gay members of the API community.

Asian Pacific Americans for Progress - Los Angeles (APAP-LA)
APAP-LA is the Los Angeles Chapter of Asian Pacific Americans for Progress, a national network of progressive Asian Pacific Americans and allies. Its goals are to represent and organize for the electoral empowerment of those throughout its diverse communities who share its progressive values and dedication to political action. One of those values is the recognition of the full civil rights, including marriage equality, for all families regardless of sexual orientation or gender.

Asian Pacific Bar Association of Silicon Valley (APBA)
The Asian Pacific Bar Association of Silicon Valley's (APBA) mission is to foster professional development, advocacy, and community involvement for Silicon Valley's Asian Pacific American legal community and to

promote justice and equality for all. To that end, APBA strives to empower and advocate for the Asian Pacific American communities as well as those who are not treated equally before the law. The struggle for marriage equality is an important issue that directly affects the rights of the Asian Pacific American communities as well as APBA's membership. APBA is proud to stand with its lesbian and gay members as well as the larger LGBT community as they struggle for equality and dignity.

Asian/Pacific Bar of California (ABC)
The Asian/Pacific Bar of California (ABC) is the statewide umbrella coalition of all Asian/Pacific American bar associations in California. ABC was founded in 1982 by Asian American bar associations in San Francisco, Sacramento, and Los Angeles to create a collective statewide voice on behalf of the Asian Pacific American legal community. As ABC has grown, it has expanded to include San Diego, the Silicon Valley, and Ventura County. ABC's member organizations also include Filipino American, Korean American, Japanese American, Vietnamese American, Chinese American, South Asian American and Taiwanese American bar associations throughout California.

Asian Pacific Islander Family Pride (API Family Pride)
The mission of Asian Pacific Islander Family Pride (API Family Pride) is to end the isolation of API families with lesbian, gay, bisexual, and transgender members through support, education, and dialogue. Its vision is the recognition and acceptance among API families of the sexual and gender diversity within API cultures. API Family Pride is committed both individually and collectively to create an organization that values: the bonds between parent and child; the contribution of inter-generational and extended family traditions; diverse racial, linguistic, and ethnic communities; coalitions with API communities and organizations; and respect for all contributions and diverse perspectives.

Asian Pacific Islander Legal Outreach (API Legal Outreach)
Asian Pacific Islander Legal Outreach (API Legal Outreach) is a community-based, social justice organization serving the Asian and Pacific Islander communities of the Greater Bay Area. Founded in 1975, its mission is to promote culturally and linguistically appropriate services for the most marginalized segments of the API community. Its work is currently focused in the areas of domestic violence, violence against women, immigration and immigrant rights, senior law and elder abuse, human trafficking, public benefits, and social justice issues.

Asian Pacific Islander Pride Council (APIPC)
The Asian Pacific Islander Pride Council (APIPC) is a network of ten Asian and Pacific Islander Lesbian, Gay, Bisexual, Transgender, and Queer organizations and alliances in the greater Los Angeles area whose mission is to provide and cultivate support, resources and advocacy to and for the Asian Pacific Islander, Lesbian, Gay, Bisexual, Transgender, Queer, and mainstream communities of Southern California. Working as a coalition, APIPC's member organizations collaboratively organize numerous events and programs to address issues of common concern, including the issue of marriage equality. Within each APIPC organization, there are numerous members who have been in long-term relationships, some of whom are also raising children, who desire to obtain the benefits and undertake the responsibilities of civil marriage when marriage equality is achieved.

Asian Pacific Islander Wellness Center (API Wellness Center)
The mission of the Asian Pacific Islander Wellness Center (API Wellness Center) is to educate, support, empower, and advocate for Asian and Pacific Islander communities – particularly APIs living with, or at-risk for, HIV/AIDS. Founded in 1987 as a grassroots response to the HIV/AIDS crisis in communities of color, API Wellness Center is the oldest non-profit organization in North America focusing on API communities around sexual health and HIV/AIDS services.

Asian Pacific Policy & Planning Council (A3PCON)
The Asian Pacific Policy & Planning Council (A3PCON) is a coalition of Asian and Pacific Islander American (APIA) health, human service, educational, cultural and policy agencies, and individuals who advocate for the rights and services of the APIA community in Southern California, primarily in Los Angeles County. A3PCON is familiar with the devastating and destabilizing impact that anti-miscegenation laws, combined with other exclusionary laws, have had on API Californians and hopes that this litigation will end the discrimination that the state is now perpetrating against same-sex couples and families.

Asian Pacific Women's Center (APWC)
The Asian Pacific Women's Center (APWC) is dedicated to providing a safe haven and support services for women and children who are survivors of domestic violence. Its mission is to provide an environment that is sensitive to the cultural and language needs of Asian and Pacific Islander domestic violence survivors and their families, as they acquire the necessary skills and personal strength for self-sufficiency and violence-free lives. APWC is also committed to education and outreach, raising awareness about domestic violence, and fostering violence prevention.

Asian Women's Shelter (AWS)

Asian Women's Shelter (AWS) is dedicated to ending domestic violence by promoting the social, economic, and political self-determination of women. AWS provides comprehensive services in over twenty languages through its Direct Service component, composed of a shelter program, 24-hour hotline, Multilingual Access Model and Citywide Language Access program, Queer Asian Women's Services, and Volunteer/Intern program. AWS's Community Building component works to change values, practices, systems, and policies to promote peaceful, healthy families, that are free from violence, injustice and oppression. Community Building projects include Community Action Committees, community education, National Peer-to-Peer Technical Assistance Project, coalition work and collaborations.

AWS supports the right to marry based upon its history of services dedicated to lesbian, bisexual, transgender, and queer survivors of domestic violence. AWS promotes healthy families and relationships, regardless of sexual orientation. Through its work in reaching queer survivors of domestic violence, it has seen that abusive partners use the fact that same-sex relationships are not recognized and are discriminated against, as a tool for further abuse. For example, an abuser will threaten to take away children, withhold income, health etc., as a way to keep queer battered women in abusive relationships.

Center for the Pacific Asian Family (CPAF)

Established in 1978, the Center for the Pacific-Asian Family, Inc. (CPAF) is a non-profit organization recognized nationally for its pioneering work in domestic violence, sexual assault and child abuse services in the Los Angeles Asian Pacific Islander community. CPAF's mission is to build healthy and safe communities by addressing the root causes and consequences of family violence and violence against women. CPAF is committed to meeting the specific cultural and language needs of API women and their families. CPAF supports the right to marry based upon its mission to build safe communities through promoting healthy and safe families and relationships, regardless of sexual orientation. To not fully recognize and afford all the legal rights within an intimate relationship will enable abusers to further abuse their partners, and will also prevent victims from coming forward as they will not have the child custody, spousal support, and property rights afforded by marriage. CPAF fears that the failure to recognize marriage equality for same-sex couples will perpetuate domestic violence.

Chinese for Affirmative Action (CAA)
Chinese for Affirmative Action (CAA) is a 38-year old, membership-based non-profit organization whose mission is to defend and promote the civil rights of Asian Americans within the context of advancing a multiracial democracy. Throughout its history, CAA has engaged in policy advocacy, litigation, and public education initiatives to protect the rights of Asian Americans and other historically disenfranchised communities in the United States. Today, CAA is a progressive voice in and on behalf of the broader Asian and Pacific American community. CAA advocates for systemic change that remedies racial injustice, ensures equal opportunities for communities of color, reduces language barriers, and promotes immigrant rights.

Chinese Progressive Association (CPA)
The Chinese Progressive Association (CPA) is a 33-year old community-based organization that empowers the Chinese community in San Francisco and promotes justice and equality for all people. CPA's campaigns and programs improve the living and working conditions of low-income immigrants and give ordinary community members a stronger voice in the decision-making processes that affect them. CPA has 1,200 dues paying members, most of whom are working-class Chinese immigrants residing in San Francisco.

CPA is committed to marriage equality to ensure that its gay, lesbian, bisexual, or transgender members are able to enjoy equal marriage rights as other straight individuals. Secondly, CPA would like to end marriage discrimination against all same-sex couples to further social equality and justice.

Conference of Asian Pacific American Law Faculty (CAPALF)
Conference of Asian Pacific American Law Faculty (CAPALF) was formed in 1994 with the first national gathering of Asian Pacific American law teachers. The organization has since become a non-profit corporation with a mission to contribute to the well-being of Asian Pacific American communities, to create a professional network, and to host conferences. CAPALF encourages the participation not only of Asian Pacific Americans, but all those whose work relates to issues significant to APA communities. As a group that was subjected to anti-miscegenation laws and other discriminatory laws that created barriers to family formation, Asian Pacific Americans are in a unique position to offer historical experience as an object lesson in the marriage equality debate. This experience has taught that restrictions on marriage impede the ability of members of a group to integrate fully into society. Asian Pacific Americans fought hard to achieve

marriage equality that was denied on the basis of race. CAPALF is committed to ensuring that this history is not forgotten and that marriage equality is not denied to its LGBT members and more broadly to all LGBT communities.

Filipinos for Affirmative Action (FAA)
Filipinos for Affirmative Action (FAA) was founded in Oakland over 30 years ago by Filipino community leaders and students who responded to the growing influx of immigrants to the San Francisco Bay Area. In the spirit of Bayanihan, FAA's vision is a Filipino community with the power to advance social and economic justice, and to realize democratic and human rights for everyone. The mission of FAA is to build a strong and empowered Filipino community by organizing constituents, developing leaders, providing services, and advocating for policies that promote social and economic justice and equity.

Gay Asian Pacific Alliance (GAPA)
Founded in 1988, the San Francisco Gay Asian Pacific Alliance (GAPA) is an organization dedicated to promoting the interests of gay and bisexual Asian/Pacific Islanders by creating awareness, by developing a positive collective identity, and by establishing a supportive community. GAPA was formed from the need for an organization to address, through a democratic process, social, cultural, and political issues affecting the gay and bisexual Asian/Pacific Islander community.

Gay Asian Pacific Support Network (GAPSN)
Founded in 1984, the Gay Asian Pacific Support Network (GAPSN) is a volunteer community-based organization serving the greater Los Angeles area whose mission is to provide supportive environments for gay and bisexual Asian Pacific Islander men to meet, network, voice concerns, foster self-empowerment, and advocate on issues of significance to the gay Asian Pacific Islander community. GAPSN has been active in the fight for marriage equality for over a decade, beginning with early efforts to mobilize and educate the community around the issue following the Hawaii Supreme Court ruling in *Baehr v. Lewin*. Many individuals in the community that GAPSN represents, including GAPSN members and officers, are in long-term relationships or are raising children and would be directly impacted by the outcome of this case.

Institute for Leadership Development and Study of Pacific Asian North American Religion (PANA Institute)
The mission of the Institute for Leadership Development and Study of Pacific Asian North American Religion (PANA Institute) is to foster an intellectual community among scholars, graduate theological students, and

faith communities linked by various Pacific and Asian North American religious and cultural traditions and to offer leadership development programs for these constituencies. The Institute develops and provides a structured setting for sustained conversation and research on both ongoing and emerging issues of a religious and theological nature.

Japanese American Bar Association of Greater Los Angeles (JABA)
The Japanese American Bar Association of Greater Los Angeles (JABA) is one of the oldest Asian Pacific American bar associations in the country and consists of a diverse membership of nearly 300 attorneys, judicial officers, and law students of Japanese and Asian Pacific Islander ancestry in the greater Los Angeles area, including some who are gay or lesbian. With a deep appreciation of the unique history of Japanese Americans in the United States and the failure of constitutional protections that led to their internment during World War II, JABA has a proud history of actively advocating and devoting resources to issues of civil rights and social justice, especially for those members of society who continue to suffer from discrimination and unequal treatment.

Japanese American Citizens League (JACL)
The Japanese American Citizens League (JACL), founded in 1929, is the nation's largest and oldest Asian American non-profit, non-partisan organization committed to upholding the civil rights of Americans of Japanese ancestry and others. It vigilantly strives to uphold the human and civil rights of all persons. Since its inception, JALC has opposed the denial of equal protection of the laws to minority groups. In 1967, JACL filed an amicus brief in *Loving v. Virginia*, urging the Supreme Court to strike down Virginia's anti-miscegenation laws, and contending that marriage is a basic civil right of all persons. In 1994, JACL became the first API non-gay national civil rights organization, after the American Civil Liberties Union, to support same-sex marriage equality for same-sex couples, affirming marriage as a fundamental human right that should not be barred to same-sex couples. Knowing the harm caused by discrimination and the importance of seeking equality and protecting the rights of all people, regardless of race, national origin, sex, age, disability, religion or sexual orientation, JACL continues to work actively to safeguard the civil rights of all Americans.

Khmer Girls in Action (KGA)
Khmer Girls in Action (KGA) is a community organizing and empowerment organization working with Southeast Asian refugee/immigrant and second-generation women and girls living in Long Beach, California. Its mission is to contribute to the movement for social,

economic and political justice by building a strong, progressive, and sustainable community institution led by Southeast Asian women and girls. KGA's goal is to increase the community's power and ability to challenge systems and institutions that are not accountable to immigrant/refugee needs. KGA's work is predicated on social justice values and the struggle to end oppression and discrimination along lines of gender, class, race, and sexuality. As a result, KGA supports marriage equality in California, both because of past marriage discrimination faced by Asian communities as well as current discrimination faced by many lesbian and gay members of the API community.

Korean American Bar Association of Southern California (KABA-SC)
The Korean American Bar Association of Southern California's (KABA-SC) objectives are (i) to foster the exchange of ideas and information among and between KABA members and other members of the legal profession, the judiciary and the community; (ii) to encourage and promote the professional growth of the members of KABA and to provide an opportunity for fellowship among its members; (iii) to promote coordinated service to the general and local community; (iv) to develop and encourage inter-cooperation with other organizations of minority attorneys; and (v) to provide a vehicle and forum for the expression of opinions and positions of KABA upon current social, political, economic, legal or other matters or events of concern to the members of KABA. In fulfillment of its objectives, KABA expresses its support for equal marriage rights for gay, lesbian, bisexual and transgender colleagues as well as members of its community at large.

Korean Community Center of the East Bay (KCCEB)
Since 1977, the Korean Community Center of the East Bay (KCCEB) has worked with Korean American and other communities of the Bay Area to develop community-based resources through education, advocacy, and direct services. To realize its mission, KCCEB provides cultural and language appropriate direct services to immigrant communities, collaborates with other organizations and agencies to create effective education and advocacy programs that benefit the community, facilitates the process by which the community can advocate for itself, and in doing so, works to develop community leadership.

KCCEB also promotes the health and well-being of its community by actively supporting respect for one another and all communities and promotes innovative and constructive responses to community needs by maintaining an open and inclusive stance towards developments and events impacting its communities. Through KCCEB's domestic violence

program, "Shimtuh," KCCEB serves the lesbian and gay community, and fully supports the right of same-sex couples to legally marry.

Korean Resource Center (KRC)
The Korean Resource Center (KRC), a non-profit organization based in Los Angeles, was founded in 1983 to empower immigrants and people of color communities. KRC's mission is to provide needed social and health services to traditionally marginalized communities, educate the public on issues affecting low-income immigrants and people of color, advocate for the civil and immigrant rights of Korean Americans, and initiate dialogue and build coalitions with other communities of color. KRC believes that every human being, regardless of immigration status, ethnicity, race, gender, age, and sexual orientation, should hold and have access to equal rights. KRC supports efforts to achieve marriage equality in California and believes that same-sex couples should have the same legal rights of marriage as a matter of respecting the civil and fundamental human rights guaranteed by the Constitution.

Koreatown Immigrant Workers Alliance (KIWA)
The mission of the Koreatown Immigrant Workers Alliance (KIWA) is to empower low wage immigrant workers and to develop a progressive constituency and leadership among low wage immigrant workers in Los Angeles that can join the struggle in solidarity with other underrepresented communities for social change and justice.

My Sister's House
My Sister's House is the Central Valley's only shelter for battered Asian/Pacific Islander women and children. Its mission is to serve the needs of Asian and Pacific Islander women and children impacted by domestic violence by providing a culturally appropriate and responsive safe haven and community services.

National Asian Pacific American Bar Association (NAPABA)
The National Asian Pacific American Bar Association (NAPABA) is the national association of Asian Pacific American attorneys, judges, law professors, and law students, providing a network for its members and affiliates. NAPABA advocates for the legal needs and interests of the Asian Pacific American community and represents the interests of over 40,000 attorneys and 50 local Asian Pacific American bar associations, who work in solo practices, large firms, corporations, legal services organizations, non-profit organizations, law schools, and government agencies. Since its inception in 1988, NAPABA has been at the forefront of national and local activities in the areas of civil rights. Equal access to the fundamental right to marry is a right that Asian Pacific Americans were

long denied through anti-miscegenation laws. As a result, NAPABA joins amici to continue the Asian Pacific American community's defense of equal access to the fundamental right to marry.

National Asian Pacific American Law Student Association (NAPALSA)

The mission of National Asian Pacific American Law Student Association (NAPALSA) is to educate, represent and advocate on a national level for the interests of Asian Pacific American (APA) law students and APAs more generally. NAPALSA also promotes a deeper understanding of the political, financial, social and historical role, contributions, and status of Asian Pacific Americans, as well as encourages cooperation with other minority communities. NAPALSA also seeks to inspire the broader legal community to serve the interests and aspirations of Asian Pacific Americans and other under-represented communities. As a result, NAPALSA stands against marriage discrimination that impacts APA communities.

National Asian Pacific American Women's Forum (NAPAWF)

The National Asian Pacific American Women's Forum (NAPAWF) is the only national, multi-issue APA women's organization in the country. NAPAWF is committed to centering the voices of API women and girls in struggles that affect not only their own civil rights, but also the civil rights of all people. The right to marry and raise a family is a fundamental right that is being denied to the thousands of API Californians in same-sex relationships. NAPAWF strongly supports ending the continuing discrimination against same-sex couples and stands in solidarity with the gay and lesbian community in this important struggle for marriage equality.

National Korean American Service & Education Consortium (NAKASEC)

The National Korean American Service & Education Consortium (NAKASEC), a national non-profit organization based in Los Angeles, was founded in 1994 by local community centers: Korean Resource Center (KRC) in Los Angeles, Korean American Resource & Cultural Center (KRCC) in Chicago and Young Korean American Service & Education Center (YKASEC) in New York. NAKASEC is a multi-issue civil rights and human rights organization based in the Korean American community and its mission is to project a national progressive voice for Koreans Americans and promote their full participation in the United States. To this end, NAKASEC promotes equitable and just changes to the political and legislative systems through education, policy advocacy, grassroots organizing, and community mobilization. NAKASEC supports the full

realization of marriage equality in California and joins this amicus brief because current marriage laws exclude and negatively impact lesbian and gay members of its communities.

Orange County Asian and Pacific Islander Community Alliance (OCAPICA)

The Orange County Asian and Pacific Islander Community Alliance (OCAPICA) was established in 1997 with the mission to build a healthier and stronger community by enhancing the well-being of Asians and Pacific Islanders through inclusive partnerships in the areas of service, education, advocacy, organizing, and research. These community-driven activities seek to empower Asians and Pacific Islanders in defining and controlling their lives and the future of their community, including the opportunity for all members of those communities to derive the benefits and share the responsibilities of civil marriage regardless of sexual orientation.

Pan Asian Lawyers of San Diego (PALSD)

Pan Asian Lawyers of San Diego (PALSD) is a voluntary bar organization of attorneys, bench officers, educators, and law students dedicated to advocating the interests of the Asian Pacific American legal community, which include the creation of a more tolerant and open society. Initially begun in 1978 by a few San Diego APA attorneys who met for moral support, PALSD now offers mentorship opportunities, professional guidance, and continuing legal education to its law student and attorney members – some of whom are members of the lesbian, gay, bisexual, and transgender (LGBT) community – to assist in career advancement. PALSD therefore supports its LGBT members and colleagues in the fight for marriage equality.

Philippine American Bar Association (PABA)

The Philippine American Bar Association (PABA) was formed in response to expressed interests in addressing the legal issues confronting the Filipino American community as well as meeting the professional concerns of Filipino American lawyers in Southern California. PABA sponsors community legal clinics focusing on various areas of the law and provides pro bono legal services. In addition, PABA provides continuing legal education seminars and professional development opportunities for its members and assists Filipino American law students through its scholarship fund and mentorship program.

Satrang

Satrang is a social, political, cultural and support organization providing a safe space to empower South Asian Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning persons (LGBTIQs) in Southern California.

Through education, networking and outreach, it is committed to creating awareness and acceptance of queer/alternative sexualities and gender orientations. To this goal, Satrang is committed to providing a safe, non-judgmental and supportive environment for LGBTIQs of South Asian origin; promoting awareness, visibility and acceptance of queer and alternative sexuality; ending gender-based prejudice (sexism, homophobia, biphobia and transphobia), as well as other forms of discrimination; and building coalitions with the South Asian community, other people of color and progressive groups and the community at large in Southern California.

South Asian American Leaders of Tomorrow (SAALT)
South Asian American Leaders of Tomorrow (SAALT) is a national non-profit organization dedicated to fostering an environment in which all South Asians in the United States can participate fully in civic and political life, and have influence over policies that affect them. SAALT works to achieve this goal through advocacy, community, education, local capacity-building, and leadership development. SAALT cultivates partnerships with and among South Asian organizations and individuals; amplifies concerns of disempowered community members; and works in collaboration with broader civil and immigrant rights movements. South Asians in the United States have long suffered discrimination, particularly regarding the right to marry in its community's early immigrant history. As an organization dedicated to civil rights, SAALT firmly believes in equality in marriage and supports the LGBTIQ community's struggle to combat discrimination.

South Asian Bar Association of Northern California (SABA-NC)
The South Asian Bar Association of Northern California (SABA-NC) is proud to serve as an advocate for the South Asian community in Northern California and beyond. As part of that mission, SABA-NC recognizes that minority communities often face similar challenges at various points throughout their histories. The South Asian community has felt the burden of laws and policies that limit their marriage rights in its past. Today, SABA-NC stands with the gay and lesbian community – both inside and outside the South Asian community – as they face similar discrimination.

South Asian Bar Association of San Diego (SABA-San Diego)
The South Asian Bar Association of San Diego (SABA-SD) is a San Diego-based, non-profit organization open to all South Asian attorneys and law students, as well as others interested in South Asia and law. Its members include legal professionals of South Asian American descent as well as those interested in the issues affecting the South Asian American community. SABA-SD strives to promote the professional and academic

development of its members; increase the opportunities for South Asian American legal professionals to participate in and lead civic and public affairs; support efforts to increase diversity in the legal profession; raise the South Asian American community's awareness of relevant legal issues affecting their interests; support public interest associations providing pro bono legal services and other grassroots community organizations serving the South Asian American community; and serve as a resource and an advocate for both South Asian American legal professionals and the South Asian American community.

South Asian Bar Association of Southern California (SABA-SC)
The South Asian Bar Association of Southern California (SABA-SC) is honored to serve as an advocate for the South Asian community, particularly with regard to those issues arising in California. SABA-SC is aware of the history of discrimination against South Asians and other minority groups, and as such, SABA-SC wishes to serve as a voice that helps safeguard the civil rights of every member of its society. Given that marriage equality presents a constitutional matter of great importance, SABA-SC believes that achieving marriage equality would further such goal.

South Asian Network (SAN)
South Asian Network (SAN) is a grassroots, community based organization dedicated to advancing the health, empowerment and solidarity of persons of South Asian origin in Southern California. Founded in 1990, SAN's goal is to inform and empower South Asian communities by acting as an agent of change in eliminating biases, discrimination and injustices targeted against persons of South Asian origin and by providing linkages amongst communities through shared experiences. SAN launched a lesbian, gay, bisexual, transgender, intersex, queer, and questioning (LGBTIQ) Initiative in 2003 to address the needs of LGBTIQ South Asians, a severely isolated and underserved population, and to educate straight-identified South Asian communities about LGBTIQ issues. As part of its belief in equal rights for LGBTIQ people, SAN supports marriage equality.

Southeast Asian Community Alliance (SEACA)
Launched in 2002, the Southeast Asian Community Alliance (SEACA) works to build a just and humane world. SEACA creates spaces for new leadership to emerge, by supporting the development of members of the Southeast Asian community to create new and culturally relevant solutions to deep-rooted social, economic, and racial justice issues impacting the Southeast Asian community. As part of its mission to advocate for social justice, SEACA supports marriage equality because it believes in

challenging all injustices that face members of the Southeast Asian community.

Southeast Asia Resource Action Center (SEARAC)
The Southeast Asia Resource Action Center (SEARAC) is a national organization advancing the interests of Cambodian, Laotian, and Vietnamese Americans through leadership development, capacity building, and community empowerment. It was founded in 1979 as the Indochina Refugee Action Center (IRAC) to facilitate the relocation of Southeast Asian refugees into American society and to foster the development of non-profit organizations led by and for Southeast Asian Americans. It serves as a coalition-builder and leader, carry out action-oriented research projects, and strengthen the capacity of community-based organizations such as mutual assistance associations (MAAs) and faith-based organizations (FBOs). SEARAC also fosters civic engagement among Southeast Asian Americans, and represents its communities at the national level in Washington, D.C.

Southern California Chinese Lawyers Association (SCCLA)
Organized in 1975, the Southern California Chinese Lawyers Association (SCCLA) provides mutual support for Chinese and Asian American lawyers, jurists and law students in Los Angeles and Orange counties. The goals of SCCLA are to advance the professional growth and interests of Chinese and Asian American lawyers, jurists and law students; to improve the access of the Chinese and Asian American community to legal services; and to promote the interests of the Chinese American and broader Asian Pacific American communities. SCCLA also seeks to inspire the broader legal community to serve the interests and aspirations of Asian Pacific Americans and other under-represented communities. As a result, SCCLA stands against all discrimination that impacts APA communities.

Vietnamese American Bar Association of Northern California (VABANC)
The Vietnamese American Bar Association of Northern California (VABANC) was founded in 1998 to provide Vietnamese American attorneys with a vehicle for the unified expression of opinions and positions on matters of concern to all Vietnamese American attorneys, to encourage and promote the professional growth of its members, and to foster the exchange of ideas and information among its members and with the community at large.

VABANC has a strong sense of community responsibility. It strives not only to meet the professional needs of its members, but also to use its resources and expertise to serve the public interest. VABANC frequently

cooperates with other Asian American community groups on issues that affect its members and community.

PROOF OF SERVICE BY MAIL

I, Thomas E. Morgan, the undersigned, hereby declare as follows:

I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in the City of San Francisco, California.

My business address is 50 Fremont Street, San Francisco, CA 94105-2228. My mailing address is 50 Fremont Street, P. O. Box 7880, San Francisco, CA 94120-7880.

I am familiar with Pillsbury Winthrop Shaw Pittman LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence placed in interoffice mail is deposited with the United States Postal Service with first class postage thereon fully prepaid on the same day it is placed for collection and mailing.

On September 26,2007 at 50 Fremont Street, San Francisco, California, I served copies of the attached **APPLICATION FOR PERMISSION TO FILE AN AMICUS CURIAE BRIEF and BRIEF OF AMICI CURIAE ASIAN AMERICAN BAR ASSOCIATION OF THE GREATER BAY AREA AND 62 ASIAN PACIFIC AMERICAN ORGANIZATIONS IN SUPPORT OF RESPONDENTS CHALLENGING THE MARRIAGE EXCLUSION** to each of the addressees on the **Attached Service List** by inserting them in addressed, sealed envelopes clearly labeled to identify the persons being served, and placing them in interoffice mail, following ordinary business practices.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 26th day of September, 2007 at San Francisco, California.

Thomas E. Morgan

SERVICE LIST

City and County of San Francisco v. California, et al.
San Francisco Superior Court Case No. CGC-04-429539
Court of Appeal No. A110449

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Woo, et al. v. California, et al.
San Francisco Superior Court Case No. CPF-04-504038
Court of Appeal Case No. A110451

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Tyler, et al. v. California, et al.
Los Angeles Superior Court Case No. BS088506
Court of Appeal Case No. A110450

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Clinton, et al. v. California, et al.
San Francisco Superior Court Case No. 429548
Court of Appeal Case No. A110463

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Proposition 22 Legal Defense and Education Fund v. City and County of San Francisco
San Francisco Superior Court Case No., CPF-04-503943
Court of Appeal Case No. A110651

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Campaign for California Families v. Newsom, et al.
San Francisco Superior Court Case No. CGC 04-428794
Court of Appeal Case No. A110652

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Courtesy Copy to:

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