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*In the*  
**Supreme Court**  
*of the*  
**State of California**

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KAREN STRAUSS et al.,

*Petitioners,*

v.

MARK B. HORTON, as State Registrar of Vital Statistics, etc., et al.,

*Respondents.*

ROBIN TYLER et al.,

*Petitioners,*

v.

STATE OF CALIFORNIA et al.,

*Respondents.*

CITY AND COUNTY OF SAN FRANCISCO et al.,

*Petitioners,*

v.

MARK B. HORTON, as State Registrar of Vital Statistics, etc. et al.,

*Respondents.*

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ON PETITION FOR EXTRAORDINARY RELIEF INCLUDING MANDAMUS

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**APPLICATION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* AND  
*AMICUS CURIAE* BRIEF OF PACIFIC JUSTICE INSTITUTE IN SUPPORT  
OF INTERVENORS/PETITIONERS DENNIS HOLLINGSWORTH, et al.**

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## **Application for leave to file *Amicus Curiae* Brief**

Pursuant to California Rule of Court 8.520(f), the Pacific Justice Institute (PJI) applies for leave to file the attached *amicus curiae* brief. The brief discusses a material argument not raised by the parties but within the scope of the first question certified by the Court for review, i.e., Is Proposition 8 invalid because it constitutes a revision of, rather than an amendment to, the California Constitution? As such, the brief does not represent a comprehensive discussion. Rather, the brief discusses only one issue and does not repeat arguments already made by the parties.

### **INTEREST OF *AMICUS***

PJI is a nonprofit organization which has provided extensive legal counsel and representation to religious organizations and people of faith relative to amending the California Constitution so that marriage is defined with clear parameters. In addition, PJI attorneys represent hundreds of churches and their clergy in securing their expressive rights of religion, speech, and association under the U.S. and California Constitutions, as well as, protecting them from interference from the government, in violation of the Establishment Clause, in theological and ecclesiastical matters. Said rights are often

expressed through the votes of the members of various congregations as urged by the clergy. The churches that PJI represent generally teach that voting is an essential part of civic duty for the Christian. Moreover, the clergy seek to influence how congregants vote on proposed laws appearing on the ballot by articulating the teachings of their respective churches on moral issues. In that the language of Proposition 8 is consistent with the New Testament's teaching on marriage (e.g., heterosexual monogamy), clergy overwhelmingly urged congregants to support the proposed constitutional amendment. The churches that PJI represents want to ensure that their congregants continue to believe that voting is a relevant. As such, this brief is filed in support of upholding Proposition 8.


## CONCLUSION

For the foregoing reasons, *amicus* respectfully requests that the Court grant the Application for Leave to File *Amicus Curiae* Brief in Support of Intervenors/Respondents and accept the attached brief for filing in this case.

Respectfully submitted,

Dated: January 12, 2009

PACIFIC JUSTICE INSTITUTE

By:   
Kevin T. Snider

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## ISSUE ADDRESSED BY *AMICUS*<sup>1</sup>

**Issue Addressed:** Does Proposition 8 impose marriage restrictions exclusively on same-sex couples?

**Short Answer:** No. On its face, Proposition 8 defines marriage such that persons wishing to enter into plural (polygamous) marriages<sup>2</sup> are also subject to the restrictions articulated under the law.

## SUMMARY OF THE ARGUMENT

Confining marriage to heterosexual monogamy is not such a radical departure from the face of California's equal protection clause so as to work a revision of the Constitution. Yet Petitioners contend that Proposition 8 is a constitutional revision based upon the underlying premise that the law "imposes enormous and undeniable hardships exclusively on same-sex couples who wish to...marry...."

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<sup>1</sup> This brief will not address the novel issue raised for the first time by the Attorney General in pages 75-90 of his Answer Brief, in that such arguments are outside the three issues accepted for review by the Court. Indeed, the new "question for review" is not properly before this Court in that the Attorney General waived the issue by failing to raise it in the Preliminary Response to the Petition (filed Nov. 11, 2008). Attorney General Brown's assumption that he can unilaterally ignore the Court's directive is remarkable and will not be imitated by *amicus*.

<sup>2</sup> For purposes of this brief, *amicus* will use the terms "plural marriage" and "polygamy" interchangeably. These terms will encompass "polygyny" (one man with multiple wives), "polyandry" (one woman with multiple husbands) and "polyamory" which consists of multiple spouses, including bisexual and homosexual relationships.



Straus Pet. at pg. 47. (See also, San Francisco Pet. at pg. 15). It is therefore argued that Proposition 8 is qualitatively at odds with California's equal protection clause. Tyler Petition at pg. 4. *Amicus* will demonstrate that this core premise is false for two primary reasons.

First, the premise is facially at odds with the text of Proposition 8's definition of marriage, which unequivocally speaks in terms of heterosexual monogamy. In this regard, this Court has stated that a law can prohibit polygamy without violating the equal protection clause. *In re Marriage Cases* (2008) 43 Cal.4th 757, 183 P.3d 384, 434, footnote 52. Proposition 8 undoubtedly does so. Second, the Petitioners' argument is factually erroneous. In reality, the number of persons living in various forms of clandestine plural marriages far exceeds the gay and lesbian population which has taken advantage of long term legal unions, be they through civil unions or marriage. Polygamous families living in the shadows of society enter into these relationships for one or more of several reasons, including religious convictions, sexual orientation (e.g., bisexuals), and biological predisposition to have multiple sexual partners. All of these reasons meet the elements for a suspect class.

Homosexuals wishing to enter into monogamous same-sex marriages are not solely or uniquely burdened by Proposition 8. Thus, the assertion that the newly enacted law is in direct conflict with the equal protection clause is weakened under *Romer v. Evans* (1996) 517 U.S. 620. Gays and lesbians are only one of several groups that the law affects. Although they have a colorable claim under the equal protection clause, because the law impacts a variety of people, the change in the Constitution limiting marriage to heterosexual monogamy is not such a qualitative change so as to constitute a revision.

## ARGUMENT

### **A. On its face, the text of Proposition 8 impacts persons other than homosexuals.**

Petitioners assert that “Proposition 8 mandates government discrimination based on sexual orientation by purporting to add to the California Constitution a provision that specifically abrogates the fundamental right of marriage only for gay and lesbian persons.”

Straus Pet. at pg. 49.

The starting point for interpretation of Proposition 8 is a plain reading of the text itself. “It is a maxim of statutory construction that Courts should give meaning to every word of a statute if possible, and

should avoid a construction making any word surplusage.” *Reno v. Baird* (1998) 18 Cal.4th 640, 658, 76 Cal.Rptr.2d 499 (internal quotation marks omitted). In view of this fourteen-word text, the task is straightforward. The phrase “between a man and a woman” can only be reasonably read to limit marriage to both opposite sex *and* monogamous unions. Any other interpretation would render the article “a”, used twice, as surplusage.

This interpretation is legally significant in view of the U.S. Supreme Court’s holding in *Romer v. Evans*. The *Romer* Court found a Colorado constitutional amendment, prohibiting protected status based upon sexual orientation, violated the federal equal protection clause for two reasons: 1) it singled out homosexuals, and, 2) it was based upon animus toward homosexuals. In the Court’s own words, “The amendment withdraws from homosexuals, *but no others*, specific legal protection from the injuries caused by discrimination...” *Id.*, at 627 (emphasis added). “[T]he amendment imposes a special disability upon those persons *alone*. Homosexuals are forbidden the safeguards that others enjoy or may seek without constraint.” *Id.*, at 631 (emphasis added). Yet again, the Court notes that “the

amendment has the peculiar property of imposing a broad and undifferentiated disability on a single named group....” *Id.*, at 632.

The impermissible, singular aim of the Colorado amendment is precisely what Proposition 8 does not attempt or accomplish. While gays and lesbians have indisputably been the most vocal segment of society to claim injury from Proposition 8, they are by no means the only group impacted by it. Petitioners’ portrayal of such a sharp conflict with the equal protection clause as to constitute a revision of the constitution lacks the sure foundation which should be expected of such a far-reaching claim. “Respect for this principle [equal protection] explains why laws singling out a certain class of citizens for disfavored legal status or general hardships are rare.” *Id.*, at 633. Colorado’s Amendment 2 took all legal protections away from homosexuals whatsoever. As such, it was repugnant to the federal equal protection clause. *Id.*, at 633-634. By contrast, Proposition 8 addresses one issue – defining marriage – while leaving a host of other legal protections in place, such as domestic partnerships. The definition itself does not so much as reference gays or lesbians.

Similarly, the Petitioners cannot make a showing of invidious intent by the voters as was the case in *Romer*. “[T]he amendment

seems inexplicable by anything but animus towards the class [homosexuals] that it affects.” *Id.*, at 632. In contrast, this Court expressly disclaimed any animus by the electorate toward gays and lesbians respecting Family Code §308.5 (Proposition 22) stating, “We do not suggest that the current marriage provisions were enacted with an invidious intent or purpose.” *In re Marriage Cases, supra*, 452. As animosity did not prompt the passage of Proposition 22, by the same token, no invidious purpose can be attributed to the voters who adopted Proposition 8. In fact, the official argument submitted in support of the amendment declared, “Proposition 8 is about preserving marriage; *it’s not an attack on the gay lifestyle.*”<sup>3</sup>

In sum, a plain reading of the Proposition’s text reveals that it does not exclusively impact homosexuals. As will be shown next, the Proposition in fact affects larger—albeit less visible—segments of the population.

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<sup>3</sup> <http://www.voterguide.sos.ca.gov/argu-rebut/argu-rebutt8.htm> (Emphasis in original).

**B. The number of persons in plural marriages dwarfs the gay and lesbian population which seeks same-sex marriage.**

Approximately eighty-three percent of the world's societies permit polygamy.<sup>4</sup> The numbers of Americans living in families in some form of plural marriages dwarfs the gay and lesbian population wishing to enter into marriage. Although there are a number of groups which practice polygamy in the U.S., this brief will be limited to a discussion of two prominent religious groups with this practice as well as bisexuals.

**a. Religious polygamists outnumber same-sex couples seeking marriage.**

**i. Islam**

An estimated fifty to one hundred thousand Muslims in the U.S. live in polygamous families.<sup>5</sup> Muslim men are allowed to have up to four wives.<sup>6</sup> As the text from the Qur'an indicates, the reason for this

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<sup>4</sup> Jaime M. Gher, *Polygamy and Same-Sex Marriage – Allies or Adversaries within the Same-Sex Marriage Movement*, 14 Wm. & Mary J. Women & L 559, 561 (2008), citing David M. Buss, *The Evolution of Desire: Strategies of Human Mating* 178 (1994).

<sup>5</sup> Some Muslims in U.S. Quietly Engage in Polygamy, Barbara Bradley Hagerty (May 28, 2008). <http://www.npr.org/templates/story/story.php?storyId=90857818> last accessed December 10, 2008.

<sup>6</sup>“If you deem it best for the orphans, you may marry their mothers - you may marry two, three, or four. If you fear lest you become unfair,

practice was originally to provide for orphans and thus appears to be a form of religious social services. Most of those engaging in this lifestyle in the U.S. are from orthodox African-American Muslim families.<sup>7</sup> This practice is deemed by some to be “good for society – especially in the inner city, where intact families are rare and many kids grow up without their fathers.”<sup>8</sup>

Those following this practice typically have a state sanctioned marriage for the first wife and have religious wedding ceremonies for subsequent wives.<sup>9</sup> However, in the words of this Court, these persons are not accorded the dignity and respect of official recognition of their marriages (*In re Marriage Cases, supra*, 399). Thus, thousands of families—exceeding the numbers of those wishing to

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then you shall be content with only one, or with what you already have. Additionally, you are thus more likely to avoid financial hardship.” Qur’an: Book of Sura 4:3

وَإِنْ حِبْتُمْ إِلَّا نَفْسِطُوا فِى الْيَقِينِ قَادِكُمْ مَا طَابَتْ نَفْسُ  
بِزَنِ الْيَسَاءِ تَقْتَنُ وَتَلْبَسُ وَتَبْسُحُ قَبْلَ حِبْتُمْ إِلَّا تَقْدِرُوا قَوْسِدَةً أَوْ  
مَا تَلْكُكُمْ أَنْتُمْ ذَلِكُمْ أَدْنَىٰ إِلَّا تَقُولُوا ﴿٤﴾

<sup>7</sup> *Supra*, note 4.

<sup>8</sup> *Id.*, Part 2 of same article.

<http://www.npr.org/templates/story/story.php?storyId=90886407> last accessed December 10, 2008.

<sup>9</sup> *Id.*

enter into same-sex marriages in California, such as Petitioners—live in the shadows.<sup>10</sup> Proposition 8 directly affects these families.

## ii. Fundamentalist Mormons

Plural marriage practitioners also have significant numbers among the Fundamentalist Church of Jesus Christ of Latter Day Saints (herein “Fundamentalist Mormons”).<sup>11</sup> It is estimated that between thirty thousand and one hundred thousand Fundamentalist Mormons practice polygamy in Utah, Arizona, Canada and Mexico alone.<sup>12</sup> Although estimates for California are not available, Fundamentalist Mormons “flourish” in California as well.<sup>13</sup>

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<sup>10</sup> During the nearly five months when same-sex marriage was legal in this state, an estimated 18,000 took advantage of it, even though thousands of other couples knew that window of time might be their only opportunity to legally marry, and chose not to do so.

<sup>11</sup> Not to be confused with the Church of Jesus Christ of Latter Day Saints which formally announced an end to the practice of polygamy in 1890 and, since 1907, has excommunicated members who enter into plural marriages. Shayna M. Sigman, *Everything Lawyers Know About Polygamy is Wrong*, 16 Cornell J.L. & Pub.Pol’y 101, 135 (2006).

<sup>12</sup> Cassiah M. Ward, *I Now Pronounce You Husband and Wives: Lawrence v. Texas and the Practice of Polygamy in Modern America*, 11 Wm.&Mary J. Women & L 131, 132 (2004), citing Jon Krakauer, *Under Heaven: A Story of Violent Faith* 41 (2003) citing Richard & Joan Ostling, *Mormon American: The Power and the Promise* (1999).

<sup>13</sup> Emily J. Duncan, *The Positive Effects of Legalizing Polygamy: “Love is a Many Splendored Thing,”* 15 Duke J. Gender L. & Pol’y 315, 316 (2008).



*Amicus* will not burden the Court with a lengthy discussion of this type of family structure and its practices. It is sufficient to state that, like conservative Islam, it is based upon its own theology and religious practices. Without belaboring the point, tens of thousands of Fundamentalist Mormons live in polygamist families in the western portion of North America, including California. Because of these large numbers, Petitioners' claim that under the terms of Proposition 8 the burden is exclusively borne by homosexuals is factually wrong.

Like conservative African-American Muslims, Fundamentalist Mormons are an unpopular, even persecuted, minority group. As such, they could conceivably be designated a suspect class. Yet Petitioners pretend—as they must—that these significant segments of the population do not exist.

**b. Bisexuals burdened by Proposition 8 are equal to or greater than the number of same-sex couples seeking to be married.**

Even setting aside the number of families in plural marriages affected by Proposition 8, the number of bisexual persons approximates, or is greater than, the homosexual population.<sup>14</sup> While

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<sup>14</sup> Kenji Yoshino, *The Epistemic Contract of Bisexual Erasure*, 52 *Stan.L.Rev.* 353, 380 (2000), citing Alfred C. Kinsey, Wardell B. Pomeroy & Clyde E. Martin, *Sexual Behavior in the Human Male* 639

bisexual marriages tend to be clandestine and difficult to quantify, an example from a well publicized matter in the Netherlands is illustrative. There, a husband and wife and a third woman registered their “cohabitation contract.” The third woman met the couple and entered into the cohabitation contract after obtaining a divorce. The two women are bisexual and the man is heterosexual.<sup>15</sup> These types of plural marriages are frequently referred to as “polyamorous.”<sup>16</sup>

The American Psychological Association asserts that bisexuality is its own sexual orientation separate from heterosexuality or homosexuality.<sup>17</sup> Whether or not it is ultimately proven whether

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(1948); William H. Masters & Virginia E. Johnson, *Homosexuality in Perspective* (1979); Samuel S. Janus & Cynthia L. Janus, *The Janus Report on Sexual Behavior* (1993); Edward O. Laumann, John H. Gagnon, Robert T. Michael & Stuart Michaels, *The Social Organization of Sexuality: Sexual Practices in the United States* 290 (1994); Kaye Wellings, Julia Field, Anne Johnson & Jane Wadsworth, *Sexual Behavior in Britain: The National Survey of Sexual Attitudes and Lifestyles* (1994).

<sup>15</sup> Stanley Kurtz, *Here Come the Brides: Plural marriage is waiting in the wings*. The Weekly Standard, 12/26/2005, Volume 011, Issue 15. <http://www.weeklystandard.com/Content/Public/Articles/000/000/006/494pgobc.asp> Last accessed 2008.

<sup>16</sup> See, D. Marisa Black, *Beyond Child Bride Polygamy: Polyamory, Unique Familial Construction, and the Law*, 8 J.L.& Fam.Std. 497 (2006).

<sup>17</sup> Lisa M. Diamond, *Female Bisexuality From Adolescence to Adulthood: Results From a 10-year Longitudinal Study*, *Developmental Psychology*, © American Psychological Association, Vol. 44 No. 1, 5-14, (2008).

bisexuality is biologically determined, it is a sexual orientation nonetheless.<sup>18</sup> Indeed, this Court has noted that sexual orientation need not be biologically based to receive suspect classification status. *In re Marriage Cases, supra*, 443.

Due to their sexual orientation, bisexuals are naturally attracted to persons from both genders. Yet, on its face, Proposition 8 restricts bisexuals from marrying more than one individual. In essence, Proposition 8 imposes a unique burden on bisexuals due not only to sexual orientation but also the requirement that marriage be monogamous.

**C. If through the legislative process, plural marriages can be excluded, then monogamous same-sex unions can also be prohibited without constituting a revision of the Constitution.**

Although homosexuals wishing to enter into monogamous unions cannot currently marry, there are far greater numbers of persons who are impacted under Proposition 8. Moreover, the legal bases for persons drawn to plural marriages are arguably stronger than for homosexuals. The former find support not only in sexual orientation, but for some, in religion and biological predisposition as

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<sup>18</sup> California law includes “bisexuality” as a sexual orientation. See, Gov.C. § 12926(q).

well (to say nothing of world history, which is beyond the scope of this brief but is replete with societal acceptance of plural marriages, in contrast to homosexual unions).

**a. Restrictions on marriage are lawful even when based upon sexual orientation or immutable characteristics.**

This Court accepted as true the position that bisexuality is a sexual orientation just as is homosexuality. *In re Marriage Cases, Id.*, at 441. Significantly, the majority was careful to explain that it is not necessary that sexual orientation be a phenomenon strictly of biology. *Id.*, at 442. In other words, this Court has determined that it is not necessary that sexual orientation be an immutable characteristic to be deemed a suspect classification. *Id.* at 442-443. For example, religion is a suspect classification though it is not an immutable characteristic, being a consequence of free choice. *Id.*, at 442. Thus, bisexuals may well be deemed a suspect class due to their sexual orientation whether or not there is a biological basis for said orientation. Of course, having a biological basis for sexual orientation makes qualifying as a suspect class much stronger.

The nexus between suspect classification and plural marriage is important. Bisexuals by definition desire both homosexual and

heterosexual relations and thus may wish to enter into plural marriages. Besides bisexuals, a portion of the population has a biological predisposition to have multiple sexual partners.

Two recent studies lend support to the view that a certain part of the population has a genetic predisposition to have multiple sex partners.<sup>19</sup> It follows that those who have a genetic predisposition to have multiple sex partners meet and exceed the requirements for a suspect classification due to their unique sexual orientation. Because of this apparent biologically based sexual orientation, these persons would be desirous of the opportunity of entering into plural marriages.

Those possessing this immutable characteristic can make a stronger case for qualifying as a suspect class than those advancing the interests of monogamous same-sex relationships, i.e., Petitioners. As this specifically relates to bisexuals, it would appear that such individuals are inherently non-monogamous because they desire

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<sup>19</sup> Randolph Schmid, *Your Cheatin' Heart: It's Genetic*, AP News (Sept. 2, 2008), <http://dsc.discovery.com/news/2008/09/02/male-female-gene.html> (Last accessed December 15, 2008). Lynn f. Cherkas, Elizabeth C. Oelsner, Y.T. Mak, Anna Valdes, and Tim Spector. *Genetic Influences on Female Infidelity and Number of Sexual Partners in Humans: A Linkage and Association Study of the Role of the Vasopressin Receptor Gene*. *Twin Research*: Vol. 7, No. 6, pp. 649-658 (August 2004).

sexual relations with more than one gender. But, the voters, through Proposition 8, have defined marriage to prevent such unions, a limitation which this Court has stated is constitutional. *In re Marriage Cases, Id.*, at 434, footnote 52.

**b. Voters can limit marriage to heterosexual monogamy without revising the Constitution.**

Taking into consideration the equal protection clause, polygamous relations between consenting adults are easier to defend than same-sex unions because plural marriages present less of a departure from traditional marriage than gay matrimony. For example, like same-sex couples, the basis for polygamists seeking inclusion in the fundamental right to enter into marriage relationships incorporates sexual orientation and biological predisposition. Yet arguments for polygamy not only encompass those proffered by homosexuals (equality based upon sexual orientation), but also include many of the points made by marriage traditionalists.

For example, unlike same-sex unions, plural marriages have a procreative function.<sup>20</sup> Moreover, polygamy has a historical tradition

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<sup>20</sup> Douglas W. Kmiec, *The Procreative Argument for Proscribing Same-Sex Marriage*, 32 *Hastings Const. L.Q.* 653 (Fall-Winter 2004-2005).

going back to Genesis.<sup>21</sup> Added to that, for many polygamists, there is a religious conviction associated with plural marriage that not even all marriage traditionalists can claim. Hence, polygamy represents less of a shift in the meaning of marriage than same-sex unions in that it usually involves procreation, is rooted in human history, and is accepted in most cultures.<sup>22</sup>

Other than to admit that society, through the legislative process, can limit the scope of marriage, there is no reason in law or logic as to why society can exclude polygamy but cannot prohibit same-sex marriages. But, if society can constitutionally define marriage in such a way that it burdens some portions of the population based upon sexual orientation and/or religion, then Proposition 8 is not such a radical change to the state's Constitution so as to constitute a revision.

As this Court has stated, legislative restrictions on polygamy are constitutional. "We emphasize that our conclusion that the constitutional right to marry properly must be interpreted to apply to gay individuals and gay couples does not mean that this constitutional right similarly must be understood to extend to polygamous or

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<sup>21</sup> Genesis 4:19

<sup>22</sup> Elizabeth Larcana, *A Pink Herring: The Prospect of Polygamy Following the Legalization of Same Sex Marriage*, 38 Conn.L.Rev. 1065, 1076 (2006).

incestuous relationships.” *In re Marriage Cases, Id.*, at 434, footnote 52. It is *amicus*’ position that this remains true even though there is evidence that bisexuality and having multiple sexual partners are biologically driven. The immutability of these sexual orientations notwithstanding, the citizens can set parameters on marriage by limiting it to heterosexual monogamy. Further, the religious beliefs and practices that are a significant factor among many wishing to enter into polygamous relations does not override the peoples’ right to define marriage even though colorable claims based on both the state’s free exercise and equal protection clauses are present. Therefore, confining marriage to heterosexual monogamy is not such a radical departure from the face of the equal protection clause so as to work a revision of the Constitution.

## CONCLUSION

“Resolving, as we must, all doubts in favor of the initiative process,” *Legislature v. Eu*, (1991) 54 Cal. 3d 492, 512, this Court has exercised justifiable restraint in declaring voter-approved constitutional amendments to be *de facto* revisions. This Court has held that the state can limit the definition of marriage to exclude polygamy without doing violence to the equal protection clause. *In re*



*Marriage Cases, Id.* If the voters can limit marriage to monogamous unions without committing a grievous transgression of the equal protection clause, it follows that they can do so relative to homosexual orientation as well. Doing so does not directly conflict with the face of the equal protection clause to such a degree as to create a revision in the Constitution. Thus, because the burdens are not exclusively borne by homosexuals, there is no drastic and far reaching conflict between the equal protection clause and the marriage amendment such as to constitute a revision.

Dated: January 12, 2009

Brad W. Dacus  
Kevin T. Snider  
Karen M. Milam  
Matthew B. McReynolds  
PACIFIC JUSTICE INSTITUTE

By: Kevin Snider  
Kevin T. Snider

## CERTIFICATE OF WORD COUNT

I certify that this brief complies with all of the applicable provisions of California Rules of Court 8.520(c)(1). The brief has been prepared using proportionately double-spaced 14 point Times New Roman typeface. This brief has 4437 words according to the statistics feature of Microsoft Word.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this twelfth day of January, 2008, in the County of Sacramento.

Brad W. Dacus  
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I, Maurice Harrington, declare that I am not a party to the action, am over 18 years of age and my business address is: 354 South Spring St., Suite 610, Los Angeles, California 90013.

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Service List

For Supreme Court Case Nos. S168047, S168066 and S168078.

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