

CASE No. S147999

IN THE SUPREME COURT OF CALIFORNIA

IN RE MARRIAGE CASES

JUDICIAL COUNCIL COORDINATION PROCEEDING No. 4365

AFTER A DECISION OF THE COURT OF APPEAL,
FIRST APPELLATE DISTRICT, DIVISION THREE
CASE NOS. A110449, A110450, A110451, A110463, A110651, A110652
SAN FRANCISCO SUPERIOR COURT NOS. JCCP4365, 429539, 429548, 504038
LOS ANGELES SUPERIOR COURT No. BC088506
THE HONORABLE RICHARD A. KRAMER, JUDGE

**APPLICATION TO FILE BRIEF AND BRIEF OF *AMICI CURIAE* THE
UNITARIAN UNIVERSALIST ASSOCIATION OF CONGREGATIONS,
GENERAL SYNOD OF THE UNITED CHURCH OF CHRIST, THE
UNION FOR REFORM JUDAISM, SOKA GAKKAI INTERNATIONAL-
USA, THE UNIVERSAL FELLOWSHIP OF METROPOLITAN
COMMUNITY CHURCHES, THE CALIFORNIA COUNCIL OF
CHURCHES, AND CALIFORNIA FAITH FOR EQUALITY, *ET AL.*, IN
SUPPORT OF PARTIES ARGUING FOR MARRIAGE EQUALITY
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APPLICATION TO FILE BRIEF OF *AMICI CURIAE*

Pursuant to California Rule of Court 8.200(c), the General Synod Of The United Church Of Christ, the Union For Reform Judaism, Soka Gakkai International-USA, the Unitarian Universalist Association of Congregations, the California Council Of Churches and more that 400 other local, regional and national religious organizations and clergy (hereafter "*Amici*") request leave of this Court to file the attached brief of *Amici Curiae* in support of the parties arguing in favor of marriage equality.

Amici come from a wide variety of faith traditions including the Native American, Christian, Unitarian Universalist, Jewish, Hindu, Buddhist, and Muslim faiths. Some *Amici* are national associations or communities with strong ties to California. Others are statewide conferences and councils encompassing California. Still other *Amici* are local religious communities. Several of California's most esteemed religious leaders are also among *Amici*.

GENERAL INTERESTS OF *AMICI CURIAE*

Amici believe that same-sex couples should be afforded the same fundamental right as different-sex couples to participate in the State-sanctioned institution of marriage. Before the California Court of Appeal, a different group of religious organizations submitted a brief claiming the existence of "a powerful consensus among virtually all religions and churches" that same-sex couples should be excluded from civil marriage in California. See *Amici Curiae* Brief of

The Church of Jesus Christ of Latter-Day Saints, *et al.*, In re Marriage Cases, No. A110449 (Cal. Ct. App. Jan. 9, 2006) at 16. Further, according to these organizations, "[t]he vast majority of faith traditions within California understand marriage in essentially the same way." *Id.* at 17. *Amici* here submit the attached brief in part to demonstrate that no such consensus exists among California's faith traditions, nor is the conscience of California's faith traditions as one-sided as these religious organizations appear to believe. In fact, as discussed below, it is fundamental to a wide variety of faith traditions and religious leaders from every part of California that same-sex couples should be allowed to marry under the state's civil marriage regime.

Further, *Amici* present the attached brief to explain to the Court why, as a matter of the separation of Church and State under Article 1, Section 4 of the California Constitution as well as the First Amendment to the United States Constitution, the Court must interpret California's marriage laws neutrally without favoring one religious tradition over another.

Amici understand that this case likely will be decided on Constitutional grounds other than the "free exercise and enjoyment of religion without discrimination or preference" guaranteed by Article 1, Section 4. But in interpreting the equal protection, due process and privacy clauses of the State Constitution, the Court will surely benefit from an understanding of the implications its decision may have on other Constitutionally-protected rights.

SPECIFIC INTERESTS OF A SAMPLE OF *AMICI*

I. INTEREST STATEMENTS OF NATIONAL RELIGIOUS ORGANIZATIONS

The United Church of Christ ("UCC"): With more than 6,000 congregations (257 in California) and more than 1.3 million members, the United Church of Christ reflects the merger in 1957 of the Evangelical and Reformed Church with the Congregational Christian Churches. The denomination thus represents the convergence of a variety of Christian faith traditions with deep roots in American history. Through the Congregationalist branch of its history, for example, the UCC can trace its origins to congregations organized by Pilgrims and Puritans in the 1600s and 1700s.

Throughout our nation's history, the UCC's congregations and their members have often stood in solidarity with the marginalized and oppressed – calling for the abolition of slavery, for recognizing women's rights, for honoring mixed-race marriage, and for the full civil rights of all persons. Thus, a 1996 resolution of the Directorate of the United Church of Christ Office for Church in Society called for affirming "equal marriage rights for same sex couples who chose to marry and share fully and equally in the rights, responsibilities and commitment of legally recognized marriage." Similarly, the Board for Homeland Ministries adopted a resolution affirming "equal rights for same gender couples and declar[ing] that the Federal and state governments should not interfere with same gender couples who chose to marry and share fully and equally in the rights,

responsibilities and commitment of civil marriage." On July 4, 2005, the General Synod of the UCC adopted a resolution affirming "equal marriage rights for couples regardless of gender and declar[ing] that the government should not interfere with couples regardless of gender who choose to marry and share fully and equally in the rights, responsibilities and commitment of legally recognized marriage."

The Union for Reform Judaism ("Union"): Founded in 1873, the Union is the central body of the Reform Movement in North America including 900 congregations encompassing 1.5 million Reform Jews. The Reform Jewish Movement comes to this issue out of our obligation to ensure equality for all of God's children, regardless of sexual orientation. As Jews, we are taught in the very beginning of the Torah that God created humans *B'tselem Elohim*, in the Divine Image, and therefore the diversity of creation represents the vastness of the Eternal (Genesis 1:27). We oppose discrimination against all individuals, including gays and lesbians, for the stamp of the Divine is present in each and every human being. Thus, the Union unequivocally supports equal rights for all people, including the right to a civil marriage license. Furthermore, we wholeheartedly reject the notion that the State should discriminate against gays and lesbians with regard to civil marriage equality out of deference to religious tradition.

Soka Gakkai International-USA ("SGI-USA"): SGI-USA is a Buddhist community, associated with Soka Gakkai International ("SGI"), that promotes peace and individual happiness based on the teachings of the Nichiren school of Mahayana Buddhism. SGI-USA is one of the largest Buddhist organizations in America, with more than 90 centers throughout the United States and over 300,000 members, representing a broad range of ethnic and social backgrounds. As explained by Daisaku Ikeda, the president of the SGI, "The Buddha's teaching begins with the recognition of human diversity" In this spirit, the SGI-USA embraced conducting Buddhist wedding ceremonies for lesbian and gay couples in May 1995. In a memorandum announcing this move, SGI-USA stated: "The SGI-USA has expanded its wedding policy to allow for weddings to be performed at community centers for all couples regardless of sexual orientation. . . . [S]howing such consideration for individuals clearly reflects the Daishonin's [Revered Teacher's] spirit of non-discrimination and equality."

The Unitarian Universalist Association of Congregations ("UUA"): Comprising more than 1,000 congregations and fellowships, with 74 congregations in California, the UUA was formed in 1961 by the union of the American Unitarian Association and the Universalist Church of America – two denominations that trace their origins to the earliest days of American history. The importance of Unitarian churches in our nation's history may be evidenced by

the fact that Presidents John Adams (1797-1801), John Quincy Adams (1825-1829), Millard Fillmore (1850-1853), and William Howard Taft (1909-1913), and several Supreme Court Justices (Joseph Story and Oliver Wendell Holmes among them) were Unitarians.

Moved by a gospel of universal love, America's Universalists condemned slavery from the Republic's earliest days, ordained women ministers before any other American denomination, and stood fast for civil rights through the history of this Country. This commitment continues today, as Unitarian Universalists bear public witness against institutionalized discrimination on the basis of religious viewpoint and sexual orientation. Indeed, Unitarian Universalist ministers have for decades performed marriages and ceremonies of union for same-sex couples. "Because Unitarian Universalists affirm the inherent worth and dignity of every person," and "[b]ecause marriage is held in honor among the blessings of life," the denomination's General Assembly resolved overwhelmingly in 1996 to support "legal recognition for marriage between members of the same sex," urging its "member congregations to proclaim the worth of marriage between any two committed persons and to make this position known in their home communities."

The United Church of Religious Science ("UCRS"): The UCRS is headquartered in Burbank, California, with 87 congregations or study groups in California, 36 other states and 14 other countries. UCRS's spiritual principles call on its adherents to support equality of being, worth, opportunity and expression among all people. Because of this, many UCRS ministers have performed same-

gender holy unions over the past two decades, or more. To deny human rights to some people – in particular, the right to legal marriage – while those rights are guaranteed to others is inconsistent with UCRS teachings and practice which call for bringing love, harmony, peace and abundance to all people everywhere, without consideration of race, color, gender, sexual orientation, religion, national origin, age or physical condition.

The Metropolitan Community Churches ("MCC"): With 43,000 adherents and 250 local congregations located in 23 countries around the world, MCC is the largest Christian denomination ministering primarily to lesbians and gays, among others. For almost four decades, MCC has actively worked on behalf of marriage equality as an integral part of its spiritual commitment to social justice. In 1969, MCC clergy performed the first public marriage between persons of the same sex in the United States, and in 1970 MCC filed the first lawsuit seeking legal recognition for marriages between persons of the same sex. Each year, MCC clergy perform 6,000 wedding ceremonies for same-sex couples. MCC believes these marriages are recognized and blessed by God and a community of faith, and seeks State recognition of the ceremonies performed at MCC churches.

II. INTEREST STATEMENTS OF STATEWIDE RELIGIOUS ORGANIZATIONS

The California Council of Churches: The Council has a constituency of over 4,000 congregations in 51 Protestant and Orthodox judicatories and denominations throughout California. The churches that make up

the California Council of Churches believe that God's message is universal love of and for all people. Thus, the California Council of Churches has long supported marriage equality and gay rights in its legislative principles based on faith teachings. The Council states: "Our commitment to religious liberty for all and equal protection under the law leads us to assert that the State may not rely on the views of particular religious sects as a basis for denying civil marriage licenses to same-gender couples."

The Unitarian Universalist Legislative Ministry - California

("UULM-CA"): UULM California is a statewide justice ministry that serves to empower the moral voice of Unitarian Universalist values in the public arena. Guided by Unitarian Universalist principles, the Ministry educates and organizes to: uphold the worth and dignity of every person; further justice, equity and compassion in human relations; promote respect for the interdependent web of all existence; ensure use of the democratic process, and protect religious freedom.

For over three decades, Unitarian Universalist clergy have been officiating at the weddings of same-sex couples. The state's refusal to grant same-sex couples access to civil marriage places our clergy in a moral dilemma; requiring them to treat the gay and lesbian members of their congregation differently than those who seek to marry someone of the opposite sex. This is against the principles of our faith.

UULM-CA believes that the right to enter into the powerful institution of civil marriage should not be denied an entire class of people.

Recognizing the profound impact on children of same-sex couples whose parents are denied equal access to the legal protections, financial security, and clarity of commitment that comes with having legally married parents, as well as the impact on the separation of church and state when the practices and prohibitions of some faiths are used as a basis to make laws that restrict the family life and religious practice of differing faiths, the UULM-CA Board chose to make marriage equality an organizational priority. UULM-CA, has played a major role in organizing the effort to file the interfaith brief in the cases supporting the right to marry.

The Reconciling Ministries Clergy of the California Nevada

Conference of the United Methodist Church: The Reconciling Ministries Clergy consists of over 100 clergy in Northern California. The Reconciling Ministries Clergy is comprised of persons called to ordained ministry within the United Methodist Church who summon the church to a deeper level of spiritual and theological integrity in relationship to persons of all sexual orientations and gender identities and their full inclusion in all aspects of the church's life.

Reconciling Ministries Clergy stems from the Reconciling Ministries Network, which is a national grassroots organization that exists to enable full participation of people of all sexual orientations and gender identities in the life of

the United Methodist Church, both in policy and practice. The Reconciling Ministries Network comprises 50 reconciling communities within the State of California.

Clergy within the Reconciling Ministries Network have performed services for same-sex unions since at least the mid-1980s. In 1999, California-Nevada Reconciling Congregations were prominent among the 1,200 persons gathered for the union service of Jeanne Barnett and Ellie Charlton in Sacramento. Ninety-five clergy co-officiated in this blessing as a challenge to the national United Methodist Church's policy banning same-sex unions.

We believe, at this critical juncture in our common history as United Methodists, that God has called us to speak a clear word concerning human sexuality. We believe that human sexuality is a good gift from God. Responsible use of sexuality is not dependent on the gender of a partner; rather, it is based upon the faithful, mature, loving, and mutually respectful expression of that gift. When we so live out our sexuality, we are drawn into ever-deepening relationships with others and with God. Thus, the Reconciling Ministries Clergy of the United Methodist Church strongly support the legal recognition of marriages between adults of the same sex.

California Faith for Equality: California Faith for Equality is a coalition of clergy and lay leaders of faith communities throughout California who have come together to focus the voice of communities of faith who support

equality for lesbian, gay, bisexual and transgender people. Although civil marriage is a distinctly secular institution, the general public thinks of marriage as primarily a religious issue. The clergy and lay leaders of California Faith for Equality believe that people of faith have a duty to speak out against injustice and inequality and to affirm love between couples and in families. That is why California Faith for Equality urges this Court to support the right of gays and lesbians to marry the adult partner of their choosing on an equal basis with heterosexuals.

III. INTEREST STATEMENTS OF CLERGY

Pastor David Moss, Trinity United Methodist Church, Chico:

My oath clearly states that as important as it is to "proclaim the faith of the church," it is more important to "look after the concerns of Christ above all." As such it would be against my call as a pastor, and an affront to God and to my church, to limit my full pastoral role of service to only one part of God's created humanity, giving heterosexual people the service of marriage, for instance, and blessing their unions, but refusing the same to homosexual people. The ordination pledge I took and before that the witness of Christ's call for me in Scripture supersede the dictates of the United Methodist Church. Whenever there is a conflict in the gospel message with a law of the church, history and church tradition command that I first and foremost honor the Word of God as I understand it, regardless the consequences.

In the United Methodist Church as of now, if I were to admit in public that I perform GLBT weddings and homosexual unions I will most likely be called to trial in the church and sacrifice my orders as a United Methodist pastor. But this does not reflect the majority view of all United Methodist pastors or churches in California or in any state west of the Rockies. But we are a connectional church, bound by the decisions of the national church, whose power resides in the more conservative areas of the country, particularly the southeastern and southwestern states from Texas to the Atlantic.

My particular congregation, Trinity United Methodist Church, which is in a conservative area of Northern California, and resides in Rep. Wally Hergers (R) Congressional District, voted to join the Reconciling Ministries Network. Trinity has a Mission/Welcoming statement which we include in our Bulletin every Sunday that we are accepting of all persons including "those of different sexual orientation." We also celebrate the inclusion of our GLBT brothers and sisters in our church and community during services on what we call "Diversity Sunday" which coincides with the Chico Gay Pride Festival in October of each year. Not everyone in our church of 430 members agrees with our inclusive stance, but we all honor and respect those who disagree with us on this matter as well as many others, and no one has left us as a result of our vote November 4. Our church has in fact experienced an increase in energy and hope since the vote was taken, and I thank God. Accordingly, I support the rights of all, Methodists

and non-Methodists, to marry the adult partner of their choice, regardless of sexual orientation.

Pastor Dr. Robert Goldstein, St. Francis Lutheran Church, San

Francisco: St. Francis Lutheran Church was founded in 1898, survived the earthquake of 1906, and served as a temporary infirmary for those wounded in the quake. In the 1970s St. Francis founded a childcare center for children with family members in prison. Today this center provides high quality education and support for low income children and families. The St. Francis Senior Center, also founded in the 1970s, provides hot meals, social activities, legal referrals, education and support for elders. In the 1980s the congregation responded to the emerging AIDS crisis in San Francisco with a wide array of services and networking support with local hospice services. In the 1990s the congregation openly challenged the policies of the Evangelical Lutheran Church in America (ELCA) prohibiting openly gay and lesbian persons in committed, covenanted relationships from serving in pastoral ministry. Across the years the congregation has also supported the only ministry to gay and lesbian persons in Capetown, South Africa. In the 2000s the congregation provides outreach to the homeless, providing hospitality and a break every Sunday.

Now the congregation also works for marriage equality. Since it is the State that gives religious institutions the right to perform marriages recognized by the State, marriage equality does not require any church to marry gay and

lesbian couples, but it does allow gay and lesbian couples to get married and have the same rights and benefits of non-gay couples. St. Francis affirms the value to society of all committed relationships and affirms that same-sex couples and different-sex couples should stand equally under the law and have the same rights and responsibilities.

Reverend Michael Schuenemeyer, United Church of Christ: On July 4, 2005, the General Synod of the United Church of Christ (the representative body of the denomination) adopted a resolution supporting marriage equality for all couples without regard to gender. Many who know this denomination see this action as a natural evolution, consistent with the trajectory of more than 30 years of biblical study, theological reflection and social policy actions concerning the welcome and full inclusion of lesbian, gay, bisexual and transgender persons in church and society.

Marriage is about relationships, and the movement toward marriage equality has come in large measure because same-gender, loving relationships have been made increasingly real and visible. Countless UCC General Synod delegates have been transformed by their encounters with the real lives of the real people who are most profoundly affected by policies and legislation that discriminate. Many United Church of Christ members have come to know the integrity of the lives and the loves of lesbian, gay, bisexual and transgender persons who sit next to them in the pew, serve with them in the mission of the

church and as leaders on councils, boards and committees. So, when the time came for delegates to cast their votes on marriage equality, it was clear to an overwhelming number (more than 80%) that they could not sit next to and across from their brothers and sisters and vote for discrimination. They voted for equality because they believe it is right, right for the church and right for society. What moves us forward in this movement toward equality are those who are willing to make clear who is bearing the cost of discrimination in this nation. The stories of how marriage discrimination affects our families, friends, colleagues, neighbors and their children make a difference. Through these stories more and more people come to know that marriage discrimination is not only costly and unfair, it is unjust and inconsistent with the values of life, liberty and the pursuit of happiness that we hold dear as a nation and project to the world. These stories help all of us to realize that those of us who are struggling for equality are right to be impatient. Regardless of where you are on the political continuum—conservative, liberal, progressive—there are good, strong and compelling grounds for supporting marriage equality now.

In the final analysis neither the Church nor the State marries anyone. People marry each other. Any two consenting adults who have made their vows of marriage to one another are as married as any two people on the face of the planet. The State decides to which couples it will give the rights, benefits and responsibilities of civil, legal marriage, and religious bodies decide which

couples they will recognize, respect and bless with the ritual or sacrament of marriage. The legal standard for the State under the U.S. and California Constitutions is equal protection under the law for every citizen and respect for religious liberty. Each religious body gets to set its own standard and should not seek to impose one religious standard on the whole. In this nation, it is time for both church and society to recognize that civil marriage equality is right and discrimination is wrong.

Rabbi Arthur Waskow, The Shalom Center: Biblical Judaism professed three basic rules for proper sexual ethics. Two of these rules – that men were dominant and to be fruitful and multiply and "fill up the earth" – have been transcended by modernity. Thus, humanity is evolving past these two rules that underlay the opposition to gay and lesbian relationships and marriages. The third rule – that sex is delightful and sacred – still stands. So in Jewish thought, the notion that gay men and lesbians must abstain from sex is a stark contradiction of this third rule.

For millennia, Jews have prided ourselves on the worth of marriage as a carrier of holiness and community. Large parts of the Jewish community have begun honoring and hallowing same-sex marriages without regard to legal, civic, and political decisions. But as one clergyperson who has been an officiant for same-sex as well as different-sex marriages, I can testify that the refusal of the

state to set legal frameworks for same-sex marriage puts a great burden on the religious communities that celebrate them.

Why is this? Because state laws can set the frameworks (especially for divorce) that otherwise the religious communities must take into their own hands. Thus I have found it necessary to insist that same-sex couples work out with me the kind of elaborate interpersonal contracts for possible divorce, child custody, roles in case of sickness, etc., that public family law for different-sex marriage makes available to all. This takes days and weeks of my time and that of the couple that are not required when I am officiating for a different-sex marriage.

This puts on me and on these couples exactly the kind of special burden for the practice of our religion, as distinguished from other religions, that the Constitutions of both California and the United States forbid. May the time soon come when not only the tents of Jacob and the shrines of Israel but also the American body politic can rejoice, "Mah tovu! How good!"

Reverend Lindi Ramsden, Unitarian Universalist Legislative

Ministry - CA: As an ordained Unitarian Universalist minister, I know something about the power of commitments consciously chosen and made before one's faith community. For over 22 years, I have counseled couples, officiated at wedding ceremonies, and celebrated milestone anniversaries.

As part of my ministry, I have signed hundreds of marriage licenses for opposite-sex couples, sparing them a separate trip to the courthouse. On

Valentine's Day, 2004, my partner and I were among the same-sex couples that were legally married in San Francisco's City Hall. As we walked down the steps, marriage license in hand, I was struck by the fact that I was finally able to have my name on a different line of the marriage license – this time as a participant, and not as the clergy officiating. Unfortunately, that license was revoked six months later. How ironic that the government, which could recognize my faith's decision to ordain me as an openly lesbian minister, thereby granting me permission to marry other couples and sign their marriage licenses, will not allow me to marry my partner of 18 years.

Discrimination diminishes the status of marriage in the community. In an age when gay, lesbian, bisexual and transgender people are an increasingly open part of society, many thoughtful straight couples who are about to be married feel a pang of conscience, knowing that their GLBT friends and family cannot share equally in the legal protections that will automatically come their way. Increasing numbers of clergy are deciding that they can no longer sign marriage licenses in good conscience. They will conduct the religious ceremony with gladness, but refuse to serve as an arm of the State until they are able to sign marriage licenses for all couples they marry, regardless of gender.

As Unitarian Universalism and so many other faith traditions celebrate weddings for same sex couples, it is having a profound affect on society at large. As family and friends, from all political and religious persuasions attend

same-sex weddings out of their love for gay and lesbian relatives and friends, a profound cultural shift toward full acceptance of marriage for same-sex couples is taking place. Aunts and uncles want their nieces and nephews treated fairly. A grandmother sees the spark of love in her granddaughter's eye, and knows that the government is exceeding its prerogative to tell her that she cannot marry the woman she loves. Year after year, as tragic stories unfold – from gay couples who could not be at their partner's deathbed, to child custody dramas that were exacerbated by lack of civil marriage, the importance of a legally married and recognized family becomes ever more evident to people of faith in California.

While the securing of full human rights and dignity is rarely a smooth road, the love for one's family, and the commitment to personal integrity, create a powerful moral momentum. It is important at this historic moment, with public opinion at a tipping point, for California to step forward and become a living example of a state where the religious beliefs of some are not enforced to limit the family lives of others.

Rabbi Elliot Dorff, American Jewish University and

Conservative Rabbi: Conservative Judaism is the middle movement in American Judaism. The status of gays and lesbians in Jewish law has been most debated in the Conservative Judaism Movement. Even those adherents to Conservative Judaism who have difficulty reconciling the performance of a religious marriage ceremony for gays or lesbians with Leviticus 18:22 are strongly in favor of

legalizing civil marriage for same-sex couples as a matter of individual American rights. The rabbinic and synagogue organizations of the Movement have adopted resolutions to this effect.

Reverend Kathy Huff, First Unitarian Church, Oakland: As a member of the clergy I have the authority to sign marriage certificates and help make legal what is in practice an unjust law. For this reason and as an act of solidarity with same-sex couples who are prohibited from making their committed relationships legal, I no longer sign marriage licenses. As a minister serving congregations whose membership includes many same-sex couples in committed relationships I have witnessed the ways marriage laws prevent these couples from living out the many freedoms that legally married couples enjoy. As a person of faith, I cannot in good conscience support laws that selectively bestow rights and privileges on couples after they have declared their commitment to one another. Some argue this is a "moral" or "religious" issue, not just a legal one. I agree. It is immoral to discriminate against any of our citizens. When the state forces me to choose between officiating ceremonies between same-sex couples and different-sex couples, it is also prohibiting me from exercising my full freedom to practice my religion. As a Unitarian Universalist my faith calls on me to stand firmly on the side of love and to say no to discrimination and oppression in all its forms. To suggest through omission that same sex couples are any less committed or any less deserving of the rights of heterosexual couples is to ask me to violate some of the

core values that shape my religious tradition. These values are the same ones that I have always believed were intended to shape our public life – those of life, liberty and justice for all. That same-sex couples continue to be denied the basic human rights that others take for granted goes against these principles.

Pastor Jay K. Pierce, United Methodist Church of Merced: As a United Methodist Pastor and a Licensed Marriage and Family Therapist, I have witnessed the importance of treating people justly and ethically. Consenting adults should not be denied the opportunity to have their relationship legally sanctioned and recognized. We live unethically when we withhold a part of our citizens' equal rights in this way. Such discrimination is harmful to our spiritual welfare and detrimental to our human rights. I serve a more progressive congregation that stands with and speaks out for the lone voice in a predominately conservative community. I stand with those whose voice is seldom heard and often disregarded. This stand for equality may not be "popular," but marriage equality will help our society to be fully inclusive.

Pastor Scott Landis, Mission Hills United Church of Christ, San Diego: As a minister and a man in a committed relationship with another man, I perform same-sex wedding ceremonies. Yet, I can understand clergy and ecclesiastical reservations about following suit. But we are not talking about a religious function here. Marriage is a State function and should remain that way. If churches want to endorse (bless) the civil marriage between same- or

different-sex couples, that is the individual denomination's prerogative. Here is an excellent example of why matters of Church and State ought to remain separate.

Pastor Brenda Evans, Christ Chapel of North Park, San Diego:

Christ Chapel, an Independent Full Gospel Non Denominational Christian Church, is a very diverse congregation, made up of all walks of life, which further embraces equal rights for all people. We have always performed marriages/unions for same-sexed committed couples since our conception. We hope that equal rights for all people in America would be legally recognized in every state and especially within our own state, California. Christ Chapel has lived and witnessed many unfair acts because of our belief and despair that many same-sex relationships – although strong and faithful for many years – have been denied access to equal rights solely based on the fears of some and/or religious interpretations of others. Christ Chapel of North Park stands firm on its position as to same-sexed marriages as it does with every other discriminative act against equality. Thus, Christ Chapel strongly supports the right of same-sex couples to marry.

Diana Elrod, Women's Division Leader in the Castro District of

Soka Gakkai International-USA and Nancy Burns, Northern California Soka

Spirit Representative: We have been practitioners of Nichiren Buddhism for many years through Soka Gakkai International-USA ("SGI-USA"). SGI-USA does not have clergy, but rather is guided by a network of practitioner-leaders. As

explained in the statement of SGI-USA above, the national leaders of SGI-USA determined that denying same-sex couples the right to marry – a right heterosexual couples enjoy – is contrary to our religious teaching that all people are equal. When SGI-USA officially began marrying same-sex couples in 1995, we were among the first couples to be married.

Because the marriages SGI-USA performs for same-sex couples are not legal, officiants are in a difficult position of promoting unions that, in the end, do not really treat people equally. Ultimately, although the SGI-USA marriage officiants' intention is to treat people equally according to our religious beliefs, in the end they are de facto serving as agents of the State in denying those rights.

We have been married for all intents and purposes since November 18, 1995, when our wedding was performed in San Francisco at our SGI-USA center. The State's refusal to recognize our long-standing marriage to each other is clearly an infringement on our right to exercise our religion freely, since our religious organization wholeheartedly supports our marriage. In essence, the denial of our right to marry constitutes a State-sanctioned preference for the religious views of faith traditions that believe lesbians and gay men should NOT be allowed to marry the partner of their choice.

The personal pain this causes us – as well as other same-sex couples like us, who have been together for many years – is made doubly egregious by the fact that we are unfairly denied numerous rights afforded to different-sex married

couples. And, despite advances in certain civil benefits afforded to same-sex partners in recent years, we nonetheless live in fear that those benefits may one day be taken away from us.

Reverend Kevin Bucy, Midtown Church, United Church of Religious Science, San Diego: In my years of working with people, first as a therapist and now as a minister, I have come to realize it is most commonly love that motivates people to create family. This is no less true for gay and lesbian people. To allow same-sex individuals the right to marry gives them the structure and protection for their families that non-gay people enjoy. Denying same-sex couples the right to marry lessens their rights in society, which is discriminatory.

For a government to choose the beliefs of one religious organization over another and create laws that apply to all Americans based on those religious beliefs undermines the meaning of freedom our Country was founded upon. Throughout our Country, there are spiritual communities that believe all are created in the image of their Creator, regardless of orientation, nationality, or belief. In our land, there are faithful people who believe God is love and where there is love, God is expressing regardless of who is in love with whom.

Allowing same-sex marriage would eliminate the pain and injustice of discrimination; it would not allow certain people to choose what is right and what is wrong for others; it would support and protect non-traditional families.

Allowing same-sex marriage would uphold the freedom our Country was founded upon.

Reverend Diann Davisson, Religious Science Minister, Long

Beach Memorial Hospital: As an ordained Religious Science minister I have performed many heterosexual marriages. And yet, as a woman in a 29-year, committed, same-gender relationship, I am unable to be legally married. The irony of this point struck home with me recently when I stood in a beautifully decorated sanctuary before an expectant bride and groom and pronounced them husband and wife. My eyes were moist with tears. Later, after the ceremony, someone mentioned how "moved" I appeared to be. Yes, I had been moved by the sacredness and happiness of the event, but more than that, I was crying for the fact that, after 29 years of love and devotion with my partner, we are still not entitled to the same civil rights and recognition that this couple now enjoyed. I am ordained by my religious affiliation and by the State of California to perform heterosexual marriages, and yet I am personally denied the same right to be married to the person that I was born to love. I pray that the inequality of this situation is soon rectified, bringing us closer to "liberty and justice for all."

Dr. David Thompson, Senior Pastor, Westminster Presbyterian

Church: At Westminster Presbyterian Church we understand that it is a thoroughly Christian principle to treat people fairly and equally under the law. Marriage is both a sacred and secular institution of long standing. In a

country with a Constitution promising freedom of religion and a separation of church and state, no religious scruple should prevent those wishing to commit to secular marriage from doing so, regardless of their sexual orientation. Yet, I know of many same gender couples who are currently denied this right.

In America, all have equal rights before the law, at least in principle. We need to move from principle to reality by extending the concept of marriage to include all couples who wish this form of equal rights and protections before the law.

William McKinney, PhD, Pacific School of Religion, Berkeley:

In contrast to most European countries, clergy in the United States effectively function as agents of the State with reference to marriage. By solemnizing a civil contract in the context of a religious ceremony, clergy appear to be endorsing the particular legal construal of marriage determined by the State. Likewise, the State appears to be regulating the religious definition of marriage, which has little if anything to do with a civil contract. In short, the confusion between civil and religious marriage in the United States today puts the freedom of religious expression at risk. The exclusion of same-sex couples from the civil contract of marriage amounts to an endorsement by the State of just one religious view of marriage at the expense of other such religious views. It also obscures the vital issues of justice at stake in denying access to the benefits and responsibilities of a legal, civil marriage to same-sex couples. Regardless of the diverse religious

views of marriage, religious leaders and communities of faith should and many do support equal access to civil marriage for same-sex couples as a matter of civil rights and social justice. As an ordained minister in the United Church of Christ, whose General Synod has taken a position in support of marriage equality, my freedom to exercise my religious vows is compromised by current California law.

Mary A. Tolbert, PhD, Pacific School of Religion, Berkeley: In European and American history, the cultural institution of marriage has taken a variety of forms with reference to religion. In Christian traditions, marriage was not even understood as a "sacrament" until the twelfth century, and many Christian churches following the Protestant Reformation did not consider marriage sacramental at all. In early American history Puritan communities refused to perform religious marriage ceremonies and instead relegated marriage to the civil sphere only. Today, religious arguments against equal marriage rights for same-sex couples not only ignore these historical issues, they also misrepresent the supposed biblical support for their opposition. In the Old Testament, the typical marriage was not between one man and one woman but was instead polygamous – one man with as many wives as he could afford to keep. Likewise the Christian ideal in the New Testament is not marriage but chastity in the context of a non-biological family called "church." Access to the legal contract of civil marriage in the United States today cannot be governed by these widely diverse religious perspectives on marriage. It must instead be governed by the standards of justice

and civil rights. While communities of faith disagree on the religious meaning of marriage, they ought to agree, and for religious reasons, on redressing the injustice of excluding same-sex couples from the legal benefits and responsibilities of civil marriage.

IV. STATEMENTS OF INTEREST OF ORGANIZATIONS SUPPORTING GAYS AND LESBIANS AS A MINORITY VOICE IN THEIR FAITH

The Al-Fatiha Foundation: Al-Fatiha is an international grassroots network of organizations dedicated to Muslims who are lesbian, gay, and other sexual and gender minorities. Founded in 1997, Al-Fatiha seeks to promote the progressive Islamic notions of peace, equality, and justice. Al-Fatiha is based in Atlanta, Georgia and currently retains over seven hundred members with chapters in seven cities. Though the general consensus among mainstream scholars of Islam is that homosexuality is a deviation of man's true (i.e., heterosexual) nature, and thus considered sinful and perverted, there is a growing movement of progressive-minded Muslims, especially in the Western world, who see Islam as an evolving religion that must adapt to modern-day society. For the past four years, leaders within Al-Fatiha have performed same-sex marriage ceremonies. Consistent with these Islamic principles, Al-Fatiha supports the rights of same-sex couples in the State of California and the United States to enter into marital relationships. Al-Fatiha supports this cause in the hopes of enlightening the world that Islam is a religion of tolerance and not hate, and that Allah (God) loves His creation, no matter what their sexual orientation might be.

DignityUSA: For over 35 years, DignityUSA has been the nation's foremost organization of gay and lesbian Catholics, their families, friends, and supporters. DignityUSA works for respect and justice for all gay and lesbian persons in the Catholic Church and the world through education, advocacy and support. Currently, DignityUSA has approximately four thousand members, and forty-five chapters throughout the United States. Though the Catholic community as a whole has not endorsed marriage ceremonies between individuals of the same sex, it is engaging in rigorous debate on the subject. DignityUSA believes that gay and lesbian Catholics, like all people, retain an inherent dignity because God created us, Christ died for us, and the Holy Spirit sanctified us in Baptism, making us temples of the Spirit, and channels through which God's love becomes visible. Unequivocally then, DignityUSA supports the rights of same-sex couples to enter into marriages in a manner that is consonant with Christ's teachings and Christian values.

Affirmation: Gay and Lesbian Mormons ("Affirmation"):

Affirmation, founded in 1977, is composed of current and former members of the Church of Jesus Christ of Latter-day Saints ("Mormons"), their family and friends. Our mission is to work for the understanding and acceptance of gays and lesbians as full and equal members of this Church and society at large. Affirmation has many members in the State of California who will be directly affected by the outcome of this case. Affirmation supports and encourages committed

relationships however they occur, whether between man and woman or between two persons of the same gender. We believe immeasurable good comes to both participants and to their community through marriage. We believe our society needs more, not fewer, commitments made in love and dedication. Same-sex couples will strengthen society by strengthening the time-tested institution of marriage. As Mormons, we are told that marriage is "for time and all eternity." We have enormous respect for the practice of marriage and feel that the exclusion of same-sex couples from this institution harms society. Further, it is our belief that marriage in the United States is a civil contract. Therefore, denying any citizens the right to marry must be based on protecting society from serious harm, rather than upholding the traditions of particular religious groups. Marriage is in the best interest of the State and, thus, limiting it is not.

Muslims for Progressive Values: Muslims for Progressive Values believes that sexuality is a core component of human nature and sexual activity is an essential aspect of human lives. Yet the Qur'an states that God sanctions sexual activity only in the context of publicly acknowledged, committed relationships. Denying same-sex couples a means to satisfy the command of the Qur'an is tantamount to demanding they commit a major sin or remain celibate their entire lives, neither of which is acceptable.

Muslims for Progressive Values believes that each individual should be free to navigate his or her own life path, so long as his or her choices do not

harm other individuals. Thus, regardless of the views that other people might hold toward marriage or homosexuality, what is important is the view of the two individuals desiring to be married. It is morally wrong to prevent two committed adults from marrying each other just because they are of the same sex.


Aside from the moral ramifications of denying marriage to same-sex couples, denying marriage to same-sex couples puts one segment of our society at a financial and social disadvantage compared to other American citizens.

* * * * *

For all of the reasons stated above, *Amici* request leave to file the attached brief of *Amici Curiae*.

DATED: September 25, 2007

By: _____


RAOUL D. KENNEDY
Attorneys for Amici Curiae

BRIEF OF AMICI CURIAE

I. INTRODUCTION AND SUMMARY OF ARGUMENT

A. *AMICI* REPRESENT HUNDREDS OF RELIGIOUS DENOMINATIONS, CONGREGATIONS, AND CLERGY SHARING THE CONVICTION THAT MARRIAGE IS A FUNDAMENTAL CIVIL RIGHT THAT SHOULD BE RECOGNIZED BY THE STATE WITHOUT DISCRIMINATION ON THE BASIS OF SEX OR SEXUAL ORIENTATION

Among the hundreds of signatories to this brief are religious denominations, national and regional faith organizations, California congregations, and religious leaders (collectively referred to herein as "*Amici*"). *Amici* represent a wide spectrum of faith traditions, including Native American, Jewish, Muslim, Christian, Buddhist and Unitarian Universalist faiths. They hold a variety of viewpoints and participate in myriad practices when it comes to many matters, including marriage. Many perform religious marriage rites for same-sex couples; others do not. All *Amici* are united, however, in the conviction that civil marriage is a fundamental civil right and that all Californians – regardless of their sex or sexual orientation – are entitled to exercise the fundamental right to marry the person of their choice.

Amici join in urging this Court to faithfully uphold and apply the principles established by its landmark decision in Perez v. Sharp, 32 Cal. 2d 711 (1948), which struck down laws prohibiting interracial marriage – because the right to marry is itself a fundamental civil right. "Since the essence of the right to marry is freedom to join in marriage with the person of one's choice," any law

restricting that choice on account of the race, gender, or sexual orientation of the contracting parties is one that "necessarily impairs the right to marry." *Id.* at 717. *Perez* should control the outcome of this case.

Amici are united as well in believing that principles underlying the California Constitution's Religion clauses are centrally implicated here. Article 1 of the California Constitution provides that "[t]he Legislature shall make no law respecting an establishment of religion" and guarantees the "[f]ree exercise and enjoyment of religion without discrimination or preference." Cal. Const. art. I, § 4.

Protecting religious freedom and nurturing a broad pluralism, the Religion clauses flatly prohibit imposing by law, on all people of this state, what amounts to the religious orthodoxy of some sects concerning who may marry. This case must be primarily about *civil* marriage, which is a legal status conferred by the State, and *not* about endorsing or preferring any particular doctrine regarding religious marriage – such as the rule prevailing in some sects that marriage may be only between a man and a woman. Religious traditions may legitimately impose a variety of restrictions on the religious marriages that they choose to celebrate.¹ But to impose such views, drawn from religious doctrine, as state law would be both to endorse religion generally and to prefer some religions

¹ The Catholic Church, for example, forbids divorce and prohibits divorced men and women from remarrying, and many rabbis in the Jewish tradition refuse to solemnize interfaith marriages. *Amici* fully support the rights of Catholics and Jews to exercise their faiths freely, *i.e.*, without State interference. However, as with divorce, remarriage and interfaith marriage, the State should not adopt, or appear to adopt, the tenets of any particular faith as the law of the land.

over others – and, in so doing, to trample the religious freedom of believers and non-believers having different views of who may marry and to whom.

B. MANY *AMICI* COME FROM FAITH TRADITIONS WHOSE DEEPLY HELD BELIEFS COMPEL THEM TO CELEBRATE MARRIAGES OF SAME-SEX COUPLES ON AN EQUAL BASIS WITH SO-CALLED "TRADITIONAL" MARRIAGES

Many of the *Amici* filing this brief come from faith traditions that today call upon them to celebrate marriages between people of the same sex on the same terms as "traditional" different-sex marriages.²

Some who advocate "traditionalist" marriage cite "Judeo-Christian" traditions and values as a basis for their position. But such an assertion ignores the position of many Judeo-Christian traditions. For example, the largest movement in American Judaism, the Reform Movement, calls upon this Court to recognize the right of same-sex couples to marry. In 1996, the Central Conference of American Rabbis of the Reform Movement of Judaism, the largest Jewish movement in North America, with over 900 congregations, proclaimed that full equality was not satisfied until gay and lesbian couples could "share fully and equally in the rights of civil marriage." This proclamation was based on the Reform Movement's core tenet that all people are created in the divine image and therefore are fundamentally equal. The Union of American Hebrew

² The following is only a representative sampling of the views shared by *Amici* supporting marriage equality. For a more complete discussion, please see the preceding Application to File Brief of *Amici Curiae*.

Congregations, now better known as the Union for Reform Judaism, followed suit in that same year. Reform Rabbis who choose to do so are free to perform marriage ceremonies for same-sex couples.

Reconstructionist Judaism similarly calls for honoring the right of same-sex couples to marry. The Jewish Reconstructionist Federation passed a resolution on March 16, 2004, stating "that the Reconstructionist Rabbinical Association endorses and supports the right of same-sex couples to share fully and equally in the rights, responsibilities and commitments of civil marriage."

In December 2006, Conservative Judaism's Jewish Committee on Law and Standards voted to allow both the ordination of gay and lesbian rabbis and cantors, and the performing of same-sex marriages. Following this vote, Conservative Rabbis are free to perform marriage ceremonies for same-sex couples.

Many of America's Protestant Churches also celebrate the marriages of same-sex couples.

The independent spirit of the Pilgrims lives on in the First Parish Church of Plymouth and the Church of the Pilgrimage. The First Parish Church is a congregation that first gathered in 1606 and that arrived at Plymouth on the Mayflower in 1620. It is a Unitarian Universalist denomination and member of the Unitarian Universalist Association. The Church of the Pilgrimage, which split from the First Parish Church in 1801, is a member of the United Church of Christ.

Both of these congregations, which trace their history back to the Mayflower and the first Thanksgiving, today celebrate the weddings of their gay and lesbian members. So does the First Church in Boston, the Church of John Winthrop's shining "city on a hill" that assembled in 1630 when his Puritan band disembarked from the *Arabella*.

Two denominations to which these iconic churches belong also support the right of same-sex couples to marry. The General Assembly of the Unitarian Universalist Association of Congregations overwhelmingly resolved in 1996 to "adopt[] a Position in support of legal recognition for marriage between members of the same sex," and the General Synod of the United Church of Christ did the same on July 4, 2005. Member churches of the United Church of Christ, with 6,000 congregations, and the Unitarian Universalist Association, with over 1,000 churches and fellowships, have performed marriages for same-sex couples for decades.³

These denominations by no means stand alone. The Metropolitan Community Church ("MCC"), a Christian denomination of more than 250 congregations, filed the first lawsuit seeking legal recognition for the marriages between same-sex spouses in 1970. For more than thirty-five years, marriage

³ Indeed, the late Reverend Harry Scholefield, former minister of the Unitarian Universalist Society of San Francisco, performed a religious marriage for two individuals of the same sex in 1958, and Reverend Ernest Pipes, emeritus minister of the Unitarian Universalist Community Church of Santa Monica, began performing marriage ceremonies for same-sex couples in the late 1960s.

equality has been an integral part of MCC's spiritual commitment to social justice. Every year, MCC clergy perform more than 6,000 marriage ceremonies for same-sex couples.

In 2004, the Executive Committee of the American Friends Service Committee, a service-oriented organization founded by the Quakers in 1917, and the Sierra Pacific Synod of the Evangelical Lutheran Church, encompassing Northern California, added their voices to the growing chorus supporting the rights of same-sex couples to marry.

The Ministers Association of the Buddhist Churches of America, with twenty-one temples and fellowships in California, has been performing weddings for same-sex couples for at least thirty years. And Soka Gakkai International-USA (SGI-USA), one of the largest Buddhist organizations in America with over 300,000 members, has been marrying same-sex couples since at least 1995.

And in 2005, the Reconciling Ministries Clergy of the California-Nevada Conference of the United Methodist Church, Soka Gakkai International-USA, the California Council of Churches (with a constituency of more than fifty-nine denominations), the Pacific School of Religion (a non-denominational Christian seminary), St. Francis Lutheran Church of San Francisco, Bay Area American Indian Two-Spirits (an association of Native Americans who are gay, lesbian, bisexual or transgender), Al-Fatiha (an organization ministering to

Muslims who are gay and lesbian, and their friends and family), DignityUSA (an organization for gay and lesbian Catholics and their families, friends and supporters) and Affirmation (a fellowship of gays, lesbians, bisexuals, their family and friends who share the common bond of the Mormon experience) all stepped forward to ask the State to eliminate the bar to marriage for same-sex couples.

C. MARRIAGES BETWEEN PEOPLE OF THE SAME SEX HAVE A LONG AND NOBLE HISTORY, DESPITE THEIR LACK OF REPRESENTATION IN "TRADITIONAL" HISTORY BOOKS

The exclusionary definition of marriage is neither as static nor as "universal" as the opponents of marriage equality would have this Court believe. Extensive evidence exists of socially-accepted marriages between individuals of the same sex both throughout history and throughout the world, including here in California, and historians are just beginning to reconstitute this rich and noble tradition.

For example, the Mohave of the Colorado River area of Southeastern California celebrated the marriages of the *alyha* (men) to other men and the *hwame* (women) to other women. William N. Eskridge, Jr., A History of Same-Sex Marriage, 79 Va. L. Rev. 1419, 1455 (1993). The *alyha* and *hwame* were "two-spirits," individuals revered by their tribes as leaders and teachers because of their spiritual nature reflecting qualities of both men and women. Id.

The Mohave are not alone among indigenous peoples in accepting and recognizing unions between same-sex couples. We'wha, a Zuni two-spirit

who served as an emissary of the Zuni Nation to Washington D.C. in the late nineteenth century, was married to a man. Eskridge, 79 Va. L. Rev. at 1455 (quoting Francisco López de Gómara, History of the Indies (Linkgua 2006) (1552) [hereafter "López de Gómara"]). Indeed, when Spanish explorers first came to the Americas, they reported that "men marry other men[.]" Eskridge, 79 Va. L. Rev. at 1453 (quoting López de Gómara). Explorers also reported women "who 'give up all the duties of women. . . and follow men's pursuits. . . [with] a woman to serve her, to whom she says she is married[.]'" Id. (quoting Pedro de Magãlhaes, The Histories of Brazil 88-89 (Cortes Society 1922) (1576)). Thus, marriages of same-sex couples in California were recognized and accepted before the Spanish conquest.

In Europe, the Christian Church recognized same-sex marriage as far back as the Fifth Century. See generally Eskridge, 79 Va. L. Rev. at 1419 (citing John Boswell, "Homosexuality and Religious Life: A Historic Approach" in Homosexuality in the Priesthood and the Religious Life 3, 11 (J. Gramick ed. 1989)). Marriage ceremonies for same-sex couples and different-sex couples in the Church were virtually identical, with only minor variations emphasizing the companionate nature of same-sex marriages versus the procreative nature of different-sex marriages:

[I]n the case of the same-sex ceremony, standing together at the altar with their right hands joined (the traditional symbol of marriage), being blessed by the priest, sharing communion, and holding a banquet for family and friends afterwards – all parts of same-sex

union in the Middle Ages – mostly likely signified a marriage in the eyes of ordinary Christians.

William N. Eskridge, Jr., The Case for Same-Sex Marriage (1996) at 27 (citing John Boswell, Same Sex Unions In Premodern Europe 191 (1994)). Indeed, the Catholic Church continued to celebrate marriages between members of the same sex throughout the Nineteenth Century. Id.⁴

Today, the tradition of marriage between people of the same sex continues in such places as Massachusetts, the Netherlands, Belgium, Canada, South Africa, and Spain.⁵

Of course, marriages between people of the same sex have not been limited to North America and Europe. Marriages between two women have been well documented in more than 30 African tribes, including the Yoruba and Ibo of

⁴ Professor Eskridge provides several more examples of the widespread cultural acceptance of marriages between individuals of the same sex throughout history in A History Of Same-Sex Marriage 79 Va. L. Rev. 1419 and The Case For Same-Sex Marriage.

⁵ See, e.g., Goodridge v. Dep't of Pub. Health, 798 N.E.2d 941, 961 (Mass. 2003); Minister of Home Affairs v. Fourie Case CCT 60/04 (CC Dec. 1 2005) (legalizing marriage between same-sex couples in South Africa); In re Same Sex Marriages, 3 S.C.R. 698 (Can.) (2004) (affirming Canadian Parliament's recognition of marriage between same-sex couples); EGALE Canada Inc. v. Canada 225 D.L.R. (4th) 472 (B.C. Ct. App. 2004) (legalizing marriage between same-sex couples in British Columbia); Halprin v. Toronto, 225 D.L.R. (4th) 529 (Ontario Ct. App. 2003) (legalizing marriage between same-sex couples in Ontario); Wet wan, Stb. 2001, nr. 9 (21 December 2000) (Neth.) (legalizing marriage between same-sex couples in the Netherlands); Moriteur-Belge Ed. 3, pp. 9880-82 (Feb. 28, 2003) (Belg.) (legalizing marriage between same-sex couples in Belgium); see also Codigo Civil art. 44 (2005) (Spain) (legislatively authorizing marriage of same-sex couples in Spain).

West Africa, the Nuer of Sudan, the Lovedu, Zulu and Sotho of South Africa, and the Kikuyu and Nandi of East Africa. Joseph M. Carrier & Stephen O. Murray, "Woman-Woman Marriage in Africa" in Boy-Wives and Female Husbands: Studies of African Homosexualities 255 (S. Murray & W. Roscoe eds. 2001). The women marry in formal rites and raise children together. Id. at 256-57. Marriages between two women also existed in pre-modern China, as did marriages between two men. See Vivien Ng, "Homosexuality and the State in Late Imperial China" in Hidden from History: Reclaiming the Gay and Lesbian Past 76-89 (M. Duberman, M. Vicinus, and G. Chauncey eds. 1991); James McGrath, "Deviant Marriage Patterns in Chinese Society," in Same-Sex Marriage: Pro and Con 24-28 (A. Sullivan ed. 1997); Bret Hinsch, Passions of the Cut Sleeve: Male Homosexual Tradition in China 25, 50, 127-133, 177-178, 194 (1992). As these selected examples demonstrate, the so-called "traditional" definition of marriage excluding same-sex couples is neither fixed nor "universal."

Neither the people of this state nor their representatives are blind to this historical tradition or its reflections in contemporary marital customs. In 2005, the California Legislature passed legislation that would allow same-sex couples to marry. Although the Governor vetoed the 2005 legislation, the Legislature has not been dissuaded. The "Religious Freedom and Civil Marriage Protection Act" recently passed both houses. See Assem. B. No. 43, approved by Assem., June 5, 2007 and by Senate, Sept. 7, 2007 (2007-2008 Reg. Sess.).

D. AMICI DO NOT ASK THE COURT TO "RE-DEFINE" MARRIAGE BUT RATHER TO PROTECT THE FUNDAMENTAL RIGHT OF ALL CONSENTING ADULTS TO MARRY THE PERSON THEY CHOOSE WITHOUT INVIDIOUS DISCRIMINATION OR RELIGIOUS BIAS

As the preceding discussion conveys, there is a lengthy history, and a large and ever-growing constituency of religious Californians, defining marriage without respect to the gender of the spouses. *Amici* do not ask the State to "re-define" marriage. Instead, they ask the Court to fulfill its role in our Constitutional system, as it did in Perez v. Sharp, by protecting the fundamental right to marry without discrimination, and, in so doing, to safeguard the religious neutrality guaranteed by the Religion clauses of the California Constitution.⁶

The Religion clauses played an important part in Perez, where an interracial couple attacked California's statutes outlawing their marriage as "unconstitutional on the grounds that they prohibit the free exercise of their religion" within their own Roman Catholic Church which, as they pointed out,

⁶ Importantly, the State's imprimatur will not be placed on either side of the debate if civil marriages between people of the same sex are authorized. Both opposite-sex and same-sex couples will be allowed to marry legally, just as Catholics can legally divorce and remarry, or Jews can legally marry people of different faiths, despite Catholic and Jewish traditions opposing such practices. See discussion *supra* note 1. "The issue is whether the majority may use the power of the State to enforce" its views of marriage "*on the whole society*" through operation of the marriage laws. Lawrence v. Texas, 539 U.S. 558, 571 (2003) (emphasis added). Neutral application of the laws will *permit* couples of the same sex to marry without *compelling* any religion or clergyperson to perform such marriages. This is the very essence of the religious neutrality guaranteed by the California Constitution, as explained below.

"has no rule forbidding marriages between Negroes and Caucasians." Perez, 32 Cal. 2d at 713. Of course, many non-Catholics entertained the opposite view that the various races were ordained by God and that they should not mix – a position effectively codified in California's statutes at the time outlawing interracial marriage. Like the dissenting voice in Perez, and echoed by the State here,⁷ many American courts had adopted the view that the Legislature has plenary power "to regulate the marriage relation by prohibiting it between persons of different races as they had to prohibit it between persons within the Levitical degrees, or between idiots." Perez, 32 Cal. 2d at 750 (Shenk, J., dissenting) (citation omitted).⁸

The Roman Catholic Church, in contrast, had honored interracial unions, and the interracial couple in Perez insisted that the State could not stand in the way of matrimony blessed by their church. "If the miscegenation law under attack in the present proceeding is directed at a social evil and employs a reasonable means to prevent that evil," this Court observed, "it is valid regardless of its incidental effect upon the conduct of particular religious groups." Perez, 32 Cal. 2d at 713. "If, on the other hand, the law is discriminatory and irrational," the Court further explained, "*its unconstitutionality restricts not only religious liberty*

⁷ For the sake of clarity, this brief will refer to the State parties in this case as "the State" and will treat them separately (by referring to the Attorney General or the Governor, for example) only to the extent, if any, that their positions diverge.

⁸ The reference is to Leviticus 20:13, which, in the King James version, states: "If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death. Their blood shall be upon them."

but the liberty to marry as well." Id. at 713-14 (emphasis added). Finally, in words that should resound here, the Court held: "Legislation infringing such rights must be based on more than prejudice and must be free of oppressive discrimination to comply with the constitutional requirements of due process and equal protection of the laws." Perez, 32 Cal. 2d at 715.

Amici submit that the present statutes denying same-sex couples the fundamental right to marry the person of their choice are as inherently "discriminatory and irrational" as was the rule against interracial marriage and that they therefore "unconstitutionally restrict[] not only religious liberty but the liberty to marry as well." Perez, 32 Cal. 2d at 713. See also id. at 740 (Edmonds, J., concurring) (supplying the majority's critical fourth vote and emphasizing that the fundamental right to marry the person of one's choice recognized in Perez "is protected by the constitutional guarantee of religious freedom").

Amici contend that the State cannot enmesh itself in religious tradition by endorsing the "traditional" view of those sects that would limit the right to marry to different-sex couples. They wholeheartedly agree with the Massachusetts Supreme Court in its courageous decision to affirm marriage equality:

Many people hold deep-seated religious, moral, and ethical convictions that marriage should be limited to the union of one man and one woman, and that homosexual conduct is immoral. Many hold equally strong religious, moral, and ethical convictions that same-sex couples are entitled to be married, and that homosexual persons should be treated no differently than their heterosexual

neighbors. . . . "Our obligation is to define the liberty of all, not to mandate our own moral code."

Goodridge v. Dep't of Pub. Health, 798 N.E.2d 941, 948 (Mass. 2003) (quoting Lawrence, 539 U.S. at 571).

II. LEGAL ARGUMENT

A. THE CURRENT MARRIAGE REGIME RAISES GRAVE CONCERNS UNDER THE RELIGION CLAUSES OF THE CALIFORNIA CONSTITUTION

Based on a profound respect for the diverse religious practices and beliefs of our citizens, and the extraordinary sacrifices many have made to escape religious persecution, this Nation and this State have, throughout their history, vigorously guarded the Jeffersonian "wall of separation between church and state." Everson v. Board of Ed. of Ewing Township, 330 U.S. 1, 16 (1947) (citation omitted); Sands v. Morongo Unified Sch. Dist., 53 Cal. 3d 863, 909 (1991) (Mosk, J., concurring).

The Religion Clauses of our federal and state charters prohibit official acts, like the marriage laws here at issue, that place or appear to place the State in one religious camp over another. As Justice Clark wrote for the High Court almost 45 years ago, in striking down laws mandating prayer in public schools, the doctrine of religious neutrality "stems from a recognition of the teaching of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal Government would be

placed behind the tenets of one or of all orthodoxies." School Dist. of Abington Township v. Schemp, 374 U.S. 203, 222 (1963).

Justice Brennan further explained that the Jeffersonian wall of separation is even more vital today than at the time of the founding given the ever-expanding diversity of our Nation's people:

[O]ur religious composition makes us a vastly more diverse people than were our forefathers. They knew differences chiefly among Protestant sects. Today the Nation is far more heterogeneous religiously, including as it does substantial minorities not only of Catholics and Jews but as well of those who worship according to no version of the Bible and those who worship no God at all. . . . In the face of such profound changes, practices which may have been objectionable to no one in the time of Jefferson and Madison may today be highly offensive to many persons, the deeply devout and the nonbelievers alike.

Id. at 240-41 (Brennan, J., concurring) (citation omitted).

The California Supreme Court has also jealously guarded religious freedom in our State. As Justice Kennard, writing for the Court, has explained in holding that religious invocations and benedictions at public high school graduations are constitutionally impermissible, "freedom of religion flourishes only when government observes strict adherence to the principle of separation of religion and state authority." Sands, 53 Cal. 3d at 868. In fact, as she further noted, California's Constitution provides even *more* protections than the federal Constitution in that regard. See id. at 883 ("[O]ther provisions of the state Constitution, having no counterparts in the federal charter, provide additional guarantees that religion and government shall remain separate.").

Chief Justice Lucas, like Justice Brennan, emphasized the diversity of our people and their beliefs in agreeing with the Sands majority: "The church-state disengagement principle is an important reflection of the pluralism and diversity of American society and its religious traditions, a fact that has continued and increased in the two centuries since the Constitution was adopted." Id. at 888 (Lucas, C.J., concurring). Justice Arabian further noted that the vast diversity of our people and their spiritual viewpoints counsels in favor of viewing issues of church-state separation from the viewpoint of the minority. See id. at 915 (Arabian, J., concurring) ("In deciding whether a particular governmental practice threatens these basic values, *it is critical that we view the issue from the perspective of the minority*, be they discordant, harmonious or eloquently silent, for they compose a large segment of the symphony which is America.") (emphasis in original).

Finally, in words that resound in the present context, Justice Mosk took pains to emphasize the duties of the State judiciary under the California Constitution, regardless of what the federal charter provides: "[A]s the highest court of this state, we are independently responsible for safeguarding the rights of our citizens. State courts are, and should be, the first line of defense for individual liberties in the federal system." Id. at 906 (Mosk, J., concurring).

The State violates the spirit and the letter of these foundational precepts by permitting a tenet of *some* religions – i.e., the tenet that men can marry

only women and women can marry only men – to be inscribed into the law of the land. The State further compounds the violation by arguing, to this Court, that the judiciary should "defer" to the political branches and blindly adhere to majoritarian "tradition" in such fundamental matters as the right to marry. As Section B demonstrates below, the exclusion of same-sex couples from legal marriage ultimately stems, not from legitimate State interests, but rather from the views of some religions regarding appropriate gender roles. Section C further demonstrates that the Religion clauses of the California Constitution were intended precisely to prevent the State from endorsing or preferring, or appearing to endorse or prefer, such "traditional" religious views over the religious beliefs of *Amici* and many others.

B. THE STATE'S EXCLUSION OF SAME-SEX COUPLES FROM LEGAL MARRIAGE ULTIMATELY DERIVES FROM "TRADITIONAL" RELIGIOUS VIEWS REGARDING APPROPRIATE GENDER ROLES

1. The Express Purpose Underlying The Insertion Of The Words "Man" And "Woman" Into The Family Code Sections At Issue Was To Prevent People Of The Same Sex From Legally Marrying Or Having Their Marriages, Validly Performed Elsewhere, Recognized By The State

This Court has already concluded that the purpose behind the 1977 amendment of former Civil Code section 4100, now Family Code section 300, to define marriage as "relation between a man and a woman" was "to prohibit persons of the same sex from entering lawful marriage." Lockyer v. City & County of San Francisco, 33 Cal. 4th 1055, 1076 n.11 (2004) (quoting Sen. Com.

on Judiciary, Analysis of Assemb. Bill No. 607 (1977-1978 Reg. Sess.) as amended May 23, 1977, p.1). The Court below reached the same conclusion. See In re Marriage Cases, 143 Cal. App. 4th 873, 897 (2006) (review granted Dec. 20, 2006) ("The gender specifications were added to the Family Code's definition of marriage in 1977. . . for the express purpose of amending the statute 'to prohibit persons of the same sex from entering lawful marriage.'" (citations omitted).

Although there is some dispute as to the scope of Proposition 22, passed by voter initiative in 2000 and codified as Family Code section 308.5, there is no dispute that Proposition 22 was intended to prevent legal recognition of marriages between people of the same sex performed outside of California.⁹

The central question presented in this case, as the Court of Appeal below recognized, is whether the exclusion of same-sex couples from legal marriage passes constitutional muster. See In re Marriage Cases, 143 Cal. App. 4th at 899 ("Taken together, Family Code sections 300 and 308.5 clearly and consistently limit the institution of marriage in California to different-sex unions. We must decide only *whether the limitation is constitutional*." (emphasis added).

⁹ Compare Armijo v. Miles, 127 Cal. App. 4th 1405, 1422-1424 (2005) (concluding that Proposition 22 "was designed to prevent same-sex couples who could marry validly in other countries or who in the future could marry validly in other states from coming to California and claiming, in reliance on Family Code section 308, that their marriages must be recognized as valid marriages.") with Knight v. Superior Court, 128 Cal. App. 4th 14, 23-24 (2005) (holding that Proposition 22 was intended "to ensure that California will not legitimize or recognize same-sex marriages from other jurisdictions. . . and that California will not permit same-sex partners to validly marry within the state").

The answer here is clearly "no." As discussed below, every conceivable interest in the marriage exclusion advocated by the State and its *amici* here is either undeniably not a constitutionally legitimate interest or, just as important, is not advanced in any imaginable way by the exclusion. More fundamentally, the legislative history of the relevant code sections readily confirms that, at bottom, religious preconceptions, gender stereotyping and animus against gays and lesbians have been the actual drivers of the marriage exclusion.

2. Each Of The Asserted Interests Purportedly Served By The Marriage Exclusion Is Constitutionally Inadequate

(a) The State's Invocation Of "Tradition" As A Justification For The Exclusion Of Same-Sex Couples From Marriage Is Constitutionally Insufficient

The State's solicitude for "the traditional view of marriage" cannot justify its exclusion of same-sex couples from marriage. California courts have consistently recognized that "tradition," no matter how longstanding or deeply-engrained, does not justify discrimination. For example, before this Court's courageous stand for equal marriage rights in Perez v. Sharp, there was longstanding and widespread support in California and across the United States for the absolute prohibition of marriage between whites and people of other races. See Perez, 32 Cal. 2d at 746-753 (Shenk, J., dissenting). At the time Perez was decided, statutes prohibiting interracial marriage had "remained unchallenged for nearly one hundred years" and traced their origins "from the early colonial

period." Id. at 747. Notwithstanding this "unbroken line of judicial support, both state and federal," for the validity of legislation barring interracial marriage, id. at 752, this Court concluded that "tradition" was insufficient to justify discrimination. As Justice Traynor wrote, "the fact alone that the discrimination has been sanctioned by the state for many years does not supply [adequate] justification" for its continuation. Id. at 727.

The State's invocation of "tradition" here is ultimately circular in nature. The "tradition" of excluding same-sex couples from marriage – the very "tradition" challenged in this case – is asserted as its own justification. The State appears to argue that the marriage exclusion should be perpetuated simply because it has been around for a long time. However, "no length of uncritical history or mindless tradition may sanction a procedure when the unconstitutionality of the course pursued has . . . been made clear." In re Anderson, 69 Cal. 2d 613, 641 (1968) (Tobriner, J., concurring) (citation and internal quotation marks omitted).¹⁰

Just as important, the State vastly overstates the exclusionary "tradition" it purports to protect. See, e.g., State's Reply to Supp. Briefs at 1 (stating that the different-sex nature of marriage "has been understood from time

¹⁰ See also In re Opinions of the Justices to the Senate, 802 N.E.2d 565, 570 (Mass. 2004) (the State cannot "under the guise of protecting 'traditional' values, even if they be the traditional values of the majority, enshrine in law an invidious discrimination that our Constitution . . . forbids") (citing Goodridge, 798 N.E.2d 941, 948); Lawrence, 539 U.S. at 577 ("[T]hat the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice.").

immemorial" and "extends to the dawn of civilization").¹¹ Same-sex couples legally married in Spain, Canada, the Netherlands, Belgium, South Africa and Massachusetts will surely be surprised to learn that their marriages are not part of the history of marriage stretching back to the beginning of time. See discussion infra at Part I.C. More significant, perhaps, the State ignores the lengthy and virulent history of persecution of gays and lesbians – including but not limited to this State's criminalization of sexual relations between consenting adults of the same gender up until 1973 – that effectively prevented same-sex couples from bringing their relationships to light and seeking the recognition that "tradition" has long denied them.¹²

Finally, the State fails to explain why the exclusion of same-sex couples from marriage is necessary to perpetuate the tradition of different-sex marriage, even if such "tradition" were an adequate state interest. The State's unspoken assumption seems to be that different-sex couples will cease to marry, or

¹¹ CCF and the Fund make similar, demonstrably false, over-generalizations. See CCF Supp. Br. at 28 ("Marriage is an institution that over the course of several millennia has developed *universally shared meanings and expectations* essential to an orderly and effective society.") (emphasis added); Fund Supp. Br. at 13 ("'Marriage' is *universally recognized* as the legal union of a man and a woman.") (emphasis added).

¹² *Amici* are hopeful that the Supreme Court's decision in Lawrence v. Texas, striking down statutes criminalizing sexual relations between consenting adults in the privacy of their homes, will represent a further step towards the acceptance of same-sex relationships in those parts of the country where such discriminatory statutes remain on the books to this day.

will marry less often, if the institution of marriage includes same-sex couples.¹³

The State offers no support whatsoever for this proposition and for good reason – it implicitly assumes that the people of California harbor such distaste for gays and lesbians that they would eschew marriage just to avoid associating with them. California's established public policy supporting same-sex relationships decisively undermines any such supposition. See, e.g., Koebke v. Bernardo Heights Country Club, 36 Cal. 4th 824, 847 (2005).

**(b) "Deference To The Legislature" Is Not
An Interest Advanced By The Marriage
Exclusion**

The State has taken the remarkable position throughout this litigation that the Courts have no role whatsoever to play in reviewing legislation affecting the contours of marriage and, instead, urges that blank deference to the political branches is required. See, e.g., Ans. Br. of Gov. Arnold Schwarzenegger at 30-31 ("The definition of marriage is properly reserved to the legislative process") (citing, *inter alia*, Estate of DePasse, 97 Cal. App. 4th 92, 99 (2002)).

The cited section of Estate of DePasse cites, in turn, Beeler v. Beeler, 124 Cal App. 2d 679, 682 (1954), for the proposition that "[t]he regulation of marriage is solely within the province of the Legislature." However, what Beeler actually held is that "[t]he regulation of marriage and divorce is solely within the province of the Legislature *except as the same may be restricted by the*

¹³ Cf. the discussion *infra* at Part II.B.3 of a similar contention advanced by the State's religious *amici* in the court below.

Constitution." Beeler, 124 Cal. App. 2d at 682 (emphasis added). In other words, the authority cited by the State for the proposition that judicial deference is required in matters affecting the definition of marriage actually stands for the contrary proposition, *i.e.*, that Courts exercise judicial review of marital legislation for constitutionality.¹⁴ If the State were correct that deference to the legislative process were required in matters affecting the definition of marriage, then cases like Perez v. Sharp, striking down legislative encroachments upon the fundamental right to marry, would not be possible.

**(c) "Responsible Procreation," An Interest
Asserted by CCF And The Fund But Not By
The State Itself, Bears No Relation To The
Marriage Exclusion**

Amici for the State, but conspicuously not by the State itself, assert that the ban on marriage between people of the same sex is supported by a state interest in "responsible procreation." By this, CCF and the Fund appear to suggest that people who have children outside of the marital relationship are categorically "irresponsible" and might somehow inexplicably be discouraged from being so irresponsible by the State's ban on marriage between people of the same sex. The argument is as illogical as it is misdirected.

¹⁴ The Court of Appeal similarly erred in assuming that its role in our constitutional democracy was somehow limited in matters of marriage. See Opn. at 25 ("[C]ivil marriage in California is based entirely on statutory law") (citing Lockyer, 33 Cal. 4th at 1074). To the contrary, Lockyer reaffirmed Beeler's unexceptional recognition that the Legislature regulates matters of marriage and divorce "except as the same may be *restricted by the Constitution.*" Lockyer, 33 Cal. 4th at 1074 (quoting Beeler, 124 Cal. App. 2d at 682, emphasis added).

The State cannot choose a means to advance an interest in "responsible procreation" that bears no reasonable relationship to that asserted interest. See Parr v. Municipal Court, 3 Cal. 3d 861, 864-655 (1971) ("A statutory classification which does not bear a rational relationship to the purpose which the statute is intended to serve violates the equal protection clause."). The Court must also examine whether the interested asserted is a "permissible" one. Id.; see also Romer v. Evans, 517 U.S. 620, 634-45 (1996) (striking down Colorado constitutional amendment designed to disenfranchise homosexuals and noting that "laws of the kind now before us raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected. '[I]f the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.'" (quoting Department of Agriculture v. Moreno, 413 U.S. 528, 534 (1973))).

In Parr, this Court held that a local ordinance designed to keep "hippies" out of public parks was unconstitutional. The Court noted that the ordinance at issue was suspect because it focused on a particular category of individuals and not on the general problem the legislation was supposedly designed to address, i.e., "undue wear" to the grass. See id. at 867 ("The description of 'undesirable' and 'unsanitary' persons referred to as 'transients' may not be squared with the claimed neutral purpose of preventing all persons from

sitting or lying on the grass in order to protect it from undue wear."). In striking down the ordinance, the Court specifically examined its legislative history to discover its "hostile raison d'être." Id.

Here, the marriage exclusion similarly bears no "reasonable relationship" to the purpose of "responsible procreation." CCF and the Fund cite no evidence for the absurd proposition that banning couples who cannot procreate from marriage deters, in any way, those who can procreate from doing so "irresponsibly." Moreover, the marriage exclusion operates so as to ban only an identifiable portion of the "non-procreative" couples from marriage, i.e., couples of the same sex. According to CCF and the Fund, the impotent and the barren should be permitted to marry, but the thousands of gay and lesbian couples who want to raise a family "responsibly," as CCF and the Fund would have it (i.e., within a marriage), are forever barred from doing so simply because they cannot biologically procreate without the assistance of a third person.

Like the "hippies" singled out in Parr, same-sex couples are here obviously singled out by the marriage exclusion for reasons other than "responsible procreation." With respect to that asserted purpose, the marriage exclusion is both radically overinclusive (in that it bans same-sex couples who have no intent to procreate from marrying although they are similarly situated to many different-sex couples who have no intent to procreate and are permitted to marry) and underinclusive (in that it only bans same-sex couples from marrying

whereas many different-sex couples permitted to marry do not intend to procreate, cannot conceive, or cannot do so without the assistance of a third person).¹⁵ As in Parr, the "hostile raison d'être" – here, to reinforce impermissible gender stereotypes and exclude gays and lesbians from the right to marry – is evident from the very classification itself and is further borne out by the legislative history, as discussed below.

3. The Asserted Rationales For The Marriage Exclusion Are Actually A Pretext For Naked Religious Preference, Impermissible Gender Stereotyping, And Animus Against Gays And Lesbians

The Court need only examine the legislative history it has already reviewed in Lockyer to see what is plain: the sex classifications ("man" and "woman") underlying the marriage exclusion were introduced to reinforce impermissible gender stereotypes and prevent gay and lesbian couples from marrying, often upon the urging of those with orthodox religious views on the subject. The Court must not blind itself to this simple reality out of an undue sense of deference to the political process. See Parr, 3 Cal. 3d at 865 ("[W]e may

¹⁵ The marriage exclusion thus shares all of the attributes of the Colorado constitutional amendment struck down in Romer. See 517 U.S. at 32 ("First, the amendment has the peculiar property of imposing a broad and undifferentiated disability on a single named group; an exceptional and, as we shall explain, invalid form of legislation. Second, its sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class it affects; it lacks a rational relationship to legitimate state interests.")

not blind ourselves to official pronouncements of a hostile and discriminatory purpose solely because the ordinance employs facially neutral language.").

Assemblyman Bruce Nestande (R-Orange County) introduced AB 607 on February 23, 1977. Statutes of 1977, Chapter 338, § 1 Assembly Bill 607 – Nestande (hereinafter "AB 607"); Respondents' Appendix, Case No. A110449, vol. V, p. 1027 (hereinafter "RA"). He acted at the behest of the County Clerks' Association of California, which requested that the Legislature amend former Civil Code section 4100, now Family Code section 300, to limit the definition of marriage to different-sex couples, in part, to avoid the costs of litigation that might result from denying same-sex couples marriage licenses. AB 607 p. 20; RA p. 1047.

The ambiguity addressed by AB 607 was caused by the fact that the Legislature, in 1970, had previously acted to remove discriminatory sex-based age qualifications (with a different age of consent for women than men) from California's marriage laws. In removing the invidious age distinctions, the Legislature saw no further need to leave the gender classifications on the books. The marriage laws did not classify on the basis of sex for the seven ensuing years until Assemblyman Nestande saw fit to reinsert the terms "man" and "woman" expressly, as this Court has already observed, "to prohibit persons of the same sex from entering lawful marriage." Lockyer, 33 Cal. 4th at 1076 n.11 (citation omitted).

The sexist rationales underlying the previous age distinctions were revived in Nestande's bill. In discussing the reasons the State accords legal benefits to married couples, the Assembly's Judiciary Committee determined that "these special benefits were designed to meet situations where one spouse, typically the female, could not adequately provide for herself because she was engaged in raising children. In other words, the legal benefits granted married couples were actually designed to accommodate motherhood." AB 607 p. 24; RA p. 1040. Taking the logic further, the Committee determined that "in a real sense, the status of marriage and its benefits are not really designed to benefit the married couple." Id. Although the Committee concluded that, on this logic, "childless married couples benefit from a social and legal windfall," it nevertheless chose to single out "homosexual couples" for the marriage exclusion. Id.

The legislative record of AB 607's passage is rife with the sort of hateful and hortatory statements, often couched in religious terms, that one might sadly expect in favor of a discriminatory piece of legislation. In a relatively mild example, Mrs. Wayne D. Morris of Orange wrote to Assemblyman Nestande to express support for the marriage exclusion: "The concern of my heart is the moral and spiritual condition of our nation. [¶] I'm for legislation that encourages right and moral living. At least a minimum standard of the 'Ten Commandments.' [¶] We'll either be ruled by God as a nation and know peace, prosperity and His

blessing – or lose all." AB 607 p. 87; RA p. 1138. Nestande wrote back to Mrs.

Morris: "I share your feelings." AB 607 p. 88; RA p. 1137.

Similar letters, often filled with venom, litter the legislative file. See e.g., Letter from Shirley J. Johnson to Bruce Nestande (Mar. 18, 1977) ("I vote For [sic] you on the matter of marriage being for procreation between a man and a woman. I'm a Cristian [sic] and I think like one but marriages were made so that man [sic] propagate the species.") AB 607 p. 59; RA p. 1111; Letter from Mrs. B.D. (Billie) Jones to Bruce Nestande (Mar. 31, 1977) (supporting AB 607 and noting "I had seen on the television news a week or so prior of these two men (?) who had applied for a marriage license but fortunately refused. It was very disgusting to me that the television camera man chose to show them kissing on camera. If you submit an assembly bill opposing marriages of the same sex, I would like to know what I can do to support it. Congratulations on your opinion relating to this. If I knew how to contact her I would like to send my highest congratulations also to Anita Bryant.") AB 607 p. 64; RA p. 1115; Letter from Mrs. Tina Hendrix to Bruce Nestande (Apr. 17, 1977) ("From a Biblical point of view, I feel even more strongly in favor of the ban and your bill. . . . Biblical stands mean very little to homosexuals and their sympathizers. I feel our nation will go downhill fast – or faster – morally – if such unnaturalness, and the opposite of God's plan for men and women and the family is allowed. . . . Anita Bryant is doing a very courageous thing in her stand, I think, in Florida. . . . May God bless

you, and keep you strong, & give you wisdom and peace. (Eph.6:10-18, Phillipians 1:6, Isaiah 26:3)") AB 607 pp. 69-71; RA pp. 1119-1121; Letter from Benton Nesmith to Bruce Nestande (Apr. 18, 1977) ("I am becoming highly concerned about the fanfare and publicity – too often favorable – given to homosexuals. There is no logical reason for giving legal support for a way of life that is Biblically condemned and which lends itself to the destruction of a stable society.") AB 607 p. 74; RA p. 1122; Letter from Betty Harris to Bruce Nestande (Apr. 29, 1977) ("THANKYOU....for this bill. The Bible goes on and on about Homosexuals...I resent these people calling themselves Gay...God calls them abomination and I call them queers .. because their sex acts are queer and against [sic] nature.") AB 607 p. 84; RA p. 1131. One constituent wrote: "Taking a religious view – no church leader should marry any two homosexuals, with his beliefs or convictions according to the bible." Letter from Lisa Sellars to Bruce Nestande (Aug. 5, 1977) AB 607 p. 98; RA p. 1150. In response to Harris, Nestande wrote: "Thank you for your recent letter regarding homosexual activities. I am pleased to know we share the same views...". AB 607 p. 99.

As in Parr and Romer, the Court need not and should not blind itself to the real motivations underlying the marriage exclusion. Proponents of the exclusion may couch their rhetoric in terms of "protecting" or "defending" marriage, but the underlying purpose of the exclusion was clearly to reinforce

impermissible gender stereotypes and demonize gays and lesbians, often on the basis of less-than-rational interpretations of scripture or "God's design."

This brief exposition of the connection between the marriage exclusion and some people's religious views of marriage is further evidenced by an extraordinary brief filed by Kenneth Starr on behalf of several orthodox religious groups in the Court of Appeal. See Amici Curiae Brief Of The Church of Jesus Christ of Latter-Day Saints, California Catholic Conference, National Association of Evangelicals, and Union of Orthodox Jewish Congregations of America in Support of Appellant State of California (hereinafter the "Starr Brief").

The Starr Brief confirms, as *Amici* here contend, that "male-female marriage originates from cultural and *religious traditions* that long predate the state as we know it." Starr Brief at 18 (emphasis added). It also highlights the State's historical entanglement with religion in matters of marriage. See id. at 18 ("In effect, the State and religious institutions informally cooperate in maintaining and fostering a social institution vital to vouchsafing both secular and religious interests."). Finally, in a sure sign that the State has sided with some majoritarian religions, Starr less than subtly threatens retribution if the Court steps in to keep civil marriage neutral with respect to religion. See id. ("[R]eligious support for the *civil* institution of marriage is possible and given without reservation only because the current legal definition of marriage corresponds to the definition of most religions.").

Starr's assumption that the views of his clients are universally held by religious people and organizations merely demonstrates the blindness of such orthodoxies to competing religious viewpoints. See id. at 17 ("The vast majority of faith traditions within California understand marriage in essentially the same way."). *Amici* here comprise entire faiths, nationwide and statewide religious organizations, and religious leaders who hold a different view, whether or not they constitute a "majority."

Finally, the Starr brief's assumption that marriage between people of the same sex will "harm" different-sex marriage is based on the same, completely unsupported and discriminatory, assertion discussed above, i.e., that different-sex couples will cease to marry, or marry less often, simply because same-sex couples are also permitted to do so. See id. at 16 ("Replacing the male-female definition of marriage with a gender-neutral definition would predictably diminish the high social status of marriage, with the likely result that fewer marriages would occur and more children would be raised by single or unmarried parents.").

C. THE CALIFORNIA CONSTITUTION'S RELIGION CLAUSES GUARD AGAINST THE SORT OF UNDUE ENTANGLEMENT BETWEEN RELIGION AND STATE ACTION EMBODIED IN THE MARRIAGE EXCLUSION

- 1. Since Its Admission Into The Union, California Has Guaranteed Consenting Adults The Right To Enter Into A Contract Of Marriage Without Regard To The Requirements Of Any Religious Sect**

"No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect."

Cal. Const. art. XI, § 12. This signal command of California's original Constitution, which remained in the Constitution until 1970, when it was transferred to Family Code section 420(b), reflects two cardinal precepts central to this case. First, the right to marry is, in its most basic form, the right to enter into a "contract." Second, that "contract" should be valid and recognized by the State without regard to its "conformity to the requirements of any religious sect."

CCF and the Fund quite correctly argue that the original provisions of the California Constitution imbued the word "marriage" with constitutional significance, separate and apart from whatever the Legislature might define marriage to be at some point in time. See CCF Supp. Br. at 18-20; Fund Supp. Br. at 12. But CCF and the Fund draw the wrong conclusion regarding what that constitutional significance was (i.e., that marriage is only between a man and a woman) and is (as if constitutional meaning were frozen in ice in 1849). The State, on the other hand, shockingly denies that the word "marriage" bears any

constitutional significance whatsoever. See Attorney General's Supp. Br. at 6; Governor's Supp. Br. at 3. This is evidently because the State has realized, thanks to the trenchant supplemental questions posed by this Court, that domestic partnership (a creature of statute that can be changed at will by the political branches) can never be authentically adjudged equal to marriage (since marital rights are constitutionally guaranteed and thus cannot be withdrawn or abridged by simple caprice of the majority).

Instead of focusing on the original Constitution's guarantee of religious neutrality with respect to the contract of marriage, CCF and the Fund train their focus on the original Constitution's provision regarding marital property:

All property, both real and personal, of the wife, owned or claimed by marriage, and that acquired afterwards by gift, devise, or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property, as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

Cal. Const. art. XI, § 14. Far from demonstrating that marriage was or is "exclusively" a relation between a man and a woman, as CCF and the Fund would have it, this provision of the original California Constitution guaranteed women property rights that they did not previously enjoy, and well before the federal 14th Amendment was even passed. In other words, the provision shows that the "woman-as-dependent" logic reflected in the legislative history of Family Code section 300 is truly at odds with an originary California constitutional principle

that is now so foundational to our society as a whole, i.e., equal treatment of women under the law.

The debate surrounding the adoption of Article XI, section 14 underscores the egalitarian and anti-sectarian principles ultimately embodied in our state charter's marital provisions. See J. Ross Browne, Report of the Debates in the Convention of California, on the Formation of the State Constitution, in September and October, 1849 (J.T. Powers ed. 1850). Mr. Botts, a fierce opponent of the proposition that women could retain separate property, vehemently argued:

Sir, in the marriage contract, the woman, in the language of your protestant ceremony, takes her husband for better, for worse; that is the position in which she voluntarily places herself, and it is not for you to withdraw her from it. I beg you, I entreat you, not to lay the rude hand of legislation upon the beautiful and poetical position in which the common law places this contract. There is not only much of poetry and beauty in it, sir, but there is much of sound sense and reason in it. This proposition, I believe, is calculated to produce dissention and strife in families. The only despotism on earth that I would advocate, is the despotism of the husband. There must be a head and there must be a master in every household; and I believe this plan by which you propose to make the wife independent of the husband, is contrary to the laws and provisions of nature—contrary to all the wisdom which we have derived from experience. This doctrine of woman's rights, is the doctrine of those mental hermaphrodites, Abby Folsom, Fanny Wright, and the rest, of that tribe. I entreat, sir, that no such clause may be put in this Constitution.

Id. at 260. Mr. Jones, who fortunately prevailed in the debate, countered:

What, under the laws of this country and under the laws of all civilized nations, is the marriage contract? Does it merge in husband every right of woman? Has she no right whatever? Does she become

annihilated because she enters into this contract, or does she preserve certain rights? Are we to adopt laws which make man a despot of woman, and give woman no right because she has no representation? *Sir, I consider the marriage contract as a civil partnership—a civil contract. It is not that sacrament which the gentleman would make it; and as to all this talk about the poesy of the marriage contract, I did not come here to advocate poesy. Gentlemen preach poesy to me; let them convince me by any principle of reason that there should be this merging, this annihilation of the woman, let them convince me that the wife should have no rights, and that the law should give her no protection, it will have a much stronger influence upon my feelings than these rhapsodies about poesy. Sir – the marriage contract is a civil contract, not a sacrament. It is recognized and prescribed by law, and every single one of its conditions is a legal matter; it is not part of the conventional law; it is part of the municipal law of the country. The law must prescribe the rights of the contracting parties."*

Id. at 265 (emphasis added).

In short, the California Constitution and the decisions of this Court establish at least three bedrock principles concerning the right to marry. First, "the essence of the right to marry is freedom to join in marriage with the person of one's choice[.]" Perez, 32 Cal. 2d at 717. Second, the right to marry includes the right of wives to retain separate property and participate equally in the marital contract. And third, the right to marry is the right to enter into a civil contract that the State must recognize as valid without regard to its "conformity to the requirements of any religious sect." This last key principle is also guaranteed more generally by the Religions clauses of California's present Constitution, as discussed below.

**2. The Statutes Barring Individuals Of The Same Sex
From Marrying Violate The Establishment Clause
Of The California Constitution**

The California Constitution enshrines the bedrock principle that government "shall make no law respecting an establishment of religion." Cal. Const. art. I, § 4; accord U.S. Const., amend. 1. In Sands v. Morongo Unified Sch. Dist., Justice Kennard, speaking for the Court, eloquently stated the rationale and purpose underlying the Establishment Clause:

Ours is a religiously diverse nation. Within the vast array of Christian denominations and sects, there is a wide variety of belief and practice. Moreover, substantial segments of our population adhere to non-Christian religions or to no religion. Respect for the differing religious choices of the people of this country requires that government neither place its stamp of approval on any particular religious practice, nor appear to take a stand on any religious question.

Sands, 53 Cal. 3d at 883-84 (footnote omitted).

Here, the State has "placed its stamp of approval" on a particular religious practice (limiting marriage to couples consisting only of a man and a woman) and "appears to take a stand" on what is undeniably at root a religious question (whether two people of the same sex should be permitted to marry). The Constitution does not brook State preferences of this sort.

To survive constitutional scrutiny, a challenged State law must at a minimum: (1) have a secular legislative purpose; (2) have a principal or primary effect that neither advances nor inhibits religion; and (3) not foster "an excessive government entanglement with religion." Sands, 53 Cal. 3d at 872 (applying test

set forth in Lemon v. Kurtzman, 403 U.S. 602 (1971)); East Bay Asian Local Dev. Corp. v. State of Cal., 24 Cal. 4th 693, 705 (2000) (same).¹⁶ If a challenged State law fails to meet any of these three requirements, it is unconstitutional. Sands, 53 Cal. 3d at 872. Here, the State's prohibition of marriage between individuals of the same sex fails all three.

**(a) The State's Limitation Of Marriage To
Couples Consisting Of A Man And A
Woman Does Not Have A "Secular
Legislative Purpose"**

As discussed in Part II.B.2 supra, there is no legitimate secular legislative purpose for the current marriage statutes' categorical exclusion of same-sex couples from legal marriage. The undeniable truth, discussed above, is that the purported secular purposes underlying the marriage exclusion are in fact pretextual covers for the State's endorsement of a particular religious view. Both the concurring and dissenting opinions below recognized the commingling of religion and civil law embodied in the marriage exclusion. See In re Marriage Cases, 143 Cal. App. 4th at 941 ("[T]he opposition to same-sex partnerships comes from biblical language and religious doctrine. This reality is nothing to

¹⁶ Although California courts have invoked the Lemon test, the challenged action must still independently pass muster under the California Constitution's Establishment Clause. See Sands, 53 Cal. 3d at 883 ("Although federal cases may supply guidance for interpreting [Article I, Section 4], California courts must independently determine its scope.") (citing, inter alia, Cal. Const. art. I, § 24); Catholic Charities of Sacramento, Inc. v. Superior Court, 32 Cal. 4th 527, 562 (2004) (emphasizing that federal cases offer persuasive authority but the State charter must be independently construed).

avoid, and we must acknowledge it if we are to proceed honestly."); *id.* at 963 & n.7 (Kline, J., dissenting) ("This reasoning rests upon a religious doctrine that cannot influence the civil law and, in any case, is not universally shared.")

Even if "tradition" were a legitimate secular purpose, which it is not, the State and its *Amici* take a myopic view of this state's diverse array of marriage traditions. *Amici's* own statements, set forth in the Application for Leave preceding this brief, evidence many traditions recognizing the marriages of same-sex couples. For example, the Metropolitan Community Church and the Buddhist Churches of America have officiated at marriages of same-sex couples for more than thirty years. Soka Gakkai International-USA, the United Church of Christ, and the Unitarian Universalists (as a matter of national policy) have celebrated weddings between couples of the same sex for more than a decade. These traditions and understandings of marriage are simply ignored by the State and its *Amici*, as if they never existed.¹⁷

The State also fails to take into account the evolving understanding of marriage around the world, as evidenced in such places as Massachusetts, the

¹⁷ The apparent newness of some of these traditions does not deprive them of constitutional significance. As Justice O'Connor has noted: "It is true that the Framers lived at a time when our national religious diversity was neither as robust nor as well recognized as it is now. They may not have foreseen the variety of religions for which this Nation would eventually provide a home. They surely could not have predicted new religions, some of them born in this country. But they did know that line-drawing between religions is an enterprise that, once begun, has no logical stopping point." McCreary County v. American Civil Lib. Union of Ky., 545 U.S. 844, 884 (2005) (O'Connor, J., concurring).

Netherlands, Belgium, Spain, Canada, and South Africa.¹⁸ In a decision recognizing that the South African Constitution protects the rights of same-sex couples to marry, the Constitutional Court of that nation addressed a central concern shared by *Amici* here:

It is one thing for the Court to acknowledge the important role that religion plays in our public life. It is quite another to use religious doctrine as a source for interpreting the Constitution. It would be out of order to employ the religious sentiments of some as a guide to the constitutional rights of others.

Fourie, Case CCT 60/04 at 58, ¶ 92. Indeed, marriage is now available to same-sex couples even in Spain, a deeply-Catholic nation that nonetheless recently authorized the issuance of marriage licenses to same-sex couples. See Codigo Civil art. 44 (2005) (Spain).

The State suggests that an alternative to "traditional" marriage will suffice for same-sex couples. Rather than allowing them to join the "tradition," the State has created domestic partnerships for them. This supposed solution does not address *Amici's* dilemma. *Amici* attest to the spiritual significance of *marriage*, not domestic partnership, within their own religious traditions.

For example, Amicus American Friends Service Committee – a service organization founded by the Quakers – believe that marriage is fundamentally different from civil unions or domestic partnerships: "It is our belief that government sanction should be applied equally. All couples should be

¹⁸ See discussion infra at Parts I.B and I.C.

granted civil union licenses or all should be granted marriage licenses." By offering same-sex couples who wish to *marry* the different and lesser option of domestic partnership, the State relegates same-sex couples to second-class status and prohibits many *Amici* from fully practicing their own religions. Domestic partnership, whatever its merits, simply does not bear the same significance as marriage.

"Separate but equal" is no longer a defensible principle on which to base distinctions between domestic partnership and marriage, and, in any event, domestic partnership does not offer same-sex couples equality. *Amici* are concerned, as was Judge Kramer, that offering "marriage-like rights" instead of full marriage rights to same-sex couples "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." (Order at 9 (quoting Brown v. Board of Educ., 347 U.S. 483, 494 (1954)). See also Goodridge, 798 N.E.2d at 968 ("The marriage ban works a deep and scarring hardship on a very real segment of the community for no rational reason.")).

CCF and the Fund, but conspicuously not the State, also argue that a state interest in procreation and optimal child-rearing is served by the marriage ban. *Amici* agree with CCF and the Fund that marriage is a cherished institution in which procreation and child-rearing should be supported. But these goals are manifestly *not* advanced by *denying* same-sex couples the right to marry. See

Goodridge, 798 N.E. 2d at 964 ("In this case, we are confronted with an entire, sizeable class of parents raising children who have absolutely no access to civil marriage and its protections because they are forbidden from procuring a marriage license. It cannot be rational under our laws, and indeed it is not permitted, to penalize children by depriving them of State benefits because the State disapproves of their parents' sexual orientation.").

It is undisputed that many gay couples in California can and do procreate and raise children and that many heterosexual couples procreate outside of marriage. It is also undisputed that many heterosexual couples do not, and some cannot, procreate. If the State's limitation of marriage to heterosexual couples were truly tethered to an interest in procreation or child-rearing, then, as in Massachusetts, "our statutes would draw a tighter circle around the permissible bounds of nonmarital child bearing and the creation of families by noncoital means." Goodridge, 798 N.E.2d at 962. Instead, California's legislative policy embraces the family relationships formed by couples of the same gender, see Koebeke, 36 Cal. 4th at 847 (California's policy favoring domestic partnerships "seeks to promote and protect families as well as reduce discrimination based on gender and sexual orientation"), and this Court has recently affirmed that gay parents should bear the same rights and obligations as heterosexual parents. See Elisa B. v. Superior Court, 37 Cal. 4th 108, 119 (2005); K.M. v. E.G., 37 Cal. 4th 130, 143 (2005); Kristine H. v. Lisa R., 37 Cal. 4th 156, 166 (2005); Sharon S. v.

Superior Court, 31 Cal. 4th 417, 442 (2003). Thus, any putative state interest in procreation and child-rearing is entirely consistent with marriage by couples of the same sex, not with its prohibition.

The State's efforts to supply a state interest that the marriage exclusion meaningfully advances fail, and, for this reason alone, the marriage exclusion violate California's Establishment Clause.

(b) The State's Limitation Of Marriage To Couples Consisting Of A Man And A Woman Has The "Primary Effect" Of Advancing Some Religious Views And Inhibiting Others

In determining the "primary effect" of a given enactment, the Court must determine whether "irrespective of the government's actual objective, the practice in question conveys a message of endorsement or disapproval" of religion or a particular religious belief. Sands, 53 Cal. 3d at 872-73. As Justice Brennan explained, the "core notion" animating the Church-State precedents is

not only that government may not be overtly hostile to religion but also that it may not place its prestige, coercive authority, or resources behind a single religious faith or behind religious belief in general, compelling nonadherents to support the practices or proselytizing of favored religious organizations and conveying the message that those who do not contribute gladly are less than full members of the community.

Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 9 (1989).

Family Code section 300, which purports to limit marriage to couples consisting only of a man and a woman, lacks any identifiable secular

purpose and without a doubt lends the prestige, authority, and resources of the State to religions that reject marriage between people of the same sex. By placing its stamp of approval on faiths disapproving of marriage between individuals of the same sex, the State is effectively "send[ing] a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." Lynch v. Donnelly, 465 U.S. 668, 688 (1984); see also Sands, 53 Cal. 3d at 878-79.

The State's endorsement of some religious beliefs and disapproval of others is exactly what the Establishment Clause was designed to prevent. As stated by the California Council of Churches, "the State may not rely on the views of a particular religious sect as a basis for denying civil marriage licenses to same-gender couples." They are not alone: "We must never forget that the religious freedom of every person is threatened whenever government associates its powers with one particular religious tradition." Fox v. City of Los Angeles, 22 Cal. 3d 792, 805 (1978) (Bird, C.J., concurring).

Here, the government is associating its powers with those particular religious traditions that honor only marriages between a man and a woman and spurning the religious traditions, including those of *Amici*, that embrace marriage equality. For this reason also, the marriage exclusion violates California's Establishment Clause.

(c) **The Current Marriage Regime Fosters
An "Excessive Government Entanglement"
With Religion**

Finally, the marriage statutes excessively entangle the State with religion. "Excessive entanglement of the state with religion can result from administrative entanglement, or from political entanglement." Feminist Women's Health Ctr., Inc. v. Philibosian, 157 Cal. App. 3d 1076, 1091 (1984) (citations omitted). California's ban on marriage between people of the same sex results in *both* types of excessive entanglement.

With respect to political entanglement, it hardly bears mentioning that people in California, and throughout the country, have been engaged in a deep and passionate debate about the meaning of marriage. Religious figures with a vested interest in the sacrament of marriage appear on both sides of this debate. While public debate on one of the central issues of our era is not, in itself, excessive entanglement, one cannot help but recognize that the State has been pulled into the sectarian fray, both in this litigation and in the legislative and initiative battles surrounding marriage equality. Marriage between people of the same sex, like abortion, is "one of the most emotionally explosive issues in today's political firmament. The appearance of support by the state, of one side of this controversy over the other, is improper political entanglement." Feminist Women's Health Ctr., 157 Cal. App. 3d at 1091. By allowing only marriages between a man and a woman, the State is clearly endorsing the views of some orthodox religions and barring *Amici* from legally solemnizing marriages that they

are called upon by their religions to perform. This favoritism of some religions over others violates the Establishment Clause.

Administratively, the State is entangled with religion through its marriage licensing, registration and solemnization scheme. The scheme was explained in some detail by this Court in Lockyer, 33 Cal. 4th 1255, 1075-1079. Rather than going into the same detail here, suffice it to say that clergy are authorized to solemnize only those marriages that satisfy the State's requirements. The marriage statutes effectively deputize clergy into the role of fact-checkers for the county clerk, giving them the same powers of oath and examination that the clerk possesses in issuing marriage licenses. See Cal. Fam. Code §§ 354, 421. One of the facts the clergy must attest to is the different gender of the respective marrying partners.

Through the operation of California's interlocking statutory marriage and solemnization provisions, clergy, like the county clerk, are pressed into making sex-based distinctions before solemnizing marriages.¹⁹ Unlike in East Bay Asian Local Dev. Corp. v. State of California, 24 Cal. 4th 693, 716 (2000), clergy members are "delegate[ed] substantial governmental authority" in the solemnization scheme, and excessive entanglement is unavoidable if they are to

¹⁹ Clergy solemnizing a marriage are further required to complete a certificate of registry of marriage, secure the signature of a witness, and return the certificate to the clerk within 10 days after the ceremony. See Cal. Fam. Code § 359; Cal. Health & Safety Code § 103150. The certificate of registry must include "the personal data of parties married" including, *inter alia*, "the maiden name of the female." Cal. Health & Safety Code §§ 103175, 103180(c)(1) (emphasis added).

perform marriages. Forcing clergy to make an up-or-down decision on whether couples can marry on the basis of their sex creates a dilemma for *Amici*, the seriousness of which cannot be gainsaid: These clergy are forced to choose between obeying their faith and obeying the State.

For instance, the Minister of the First Unitarian Church of Oakland, Reverend Kathy Huff, attempts to handle this dilemma by not signing marriage licenses for *any* couples. She believes that she "cannot in good conscience support laws that selectively bestow rights and privileges on couples after they have declared their commitment to one another." Reverend Lindi Ramsden, an ordained Unitarian Universalist minister, concurs: "I, along with ever-increasing numbers of clergy, am deciding that we can no longer sign marriage licenses in good conscience. We will conduct the religious ceremony with gladness, but ask couples to have the legal paper work signed by a representative of the State – refusing to serve as an arm of the State until we are able to sign marriage licenses for all couples we marry, regardless of gender."

Clearly, the State's marriage statutes impose requirements on clergy that may, and often do, conflict with their religious tradition and conscience. By mandating that clergy adhere to these requirements in order to legally marry couples, the State engages in excessive administrative entanglement.

**3. The State's Refusal To Sanction Marriages
Between Individuals Of The Same Sex Raises
Equally Grave "Free Exercise" and "No
Preference" Concerns**

The California Constitution proclaims: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed." Cal. Const., art. I, § 4. Because it includes this anti-preference language, California's free exercise clause is "more protective of the principle of separation than the federal guarantee," Sands, 53 Cal. 3d at 883, and it is "without parallel in the federal Constitution." Id. at 910 (Mosk, J., concurring). In fact, the State Attorney General himself has stated, "[i]t would be difficult to imagine a more sweeping statement of the principle of governmental impartiality in the field of religion' than that found in [California's] 'no preference' clause." Sands, 53 Cal. 3d at 883 (quoting 25 Ops. Cal. Atty. Gen. 316, 319 (1955)).

The intent of the "No Preference" clause is "to ensure that free exercise of religion is guaranteed regardless of the nature of the religious belief professed[.]" East Bay Asian Local Dev. Corp., 24 Cal. 4th at 719. "The free exercise clause guarantees the protection of two concepts: freedom to believe and freedom to act." McNair v. Worldwide Church of God, 197 Cal. App. 3d 363 (1987) (citation omitted). While the courts have held that free exercise concerns must yield at times to efforts to uproot discrimination based on sex, see, e.g., Catholic Charities, 32 Cal. 4th at 563, the courts have *never* held that individuals' free exercise rights must yield to the government's interest in *propagating* such

discrimination. Indeed, as the trial court correctly concluded, the State does not have a legitimate interest, let alone a compelling interest, in discriminating on the basis of sex or sexual orientation in its marriage laws. See People v. Woody, 61 Cal. 2d 716, 718 (1964) ("the state may abridge religious practices only upon a demonstration that some compelling state interest outweighs the. . . interests in religious freedom"); see also Lockyer, 33 Cal. 4th at 1076 n.11 (noting that the legislative history of Family Code section 300 "makes its objective clear" and quoting the legislative history for the proposition that "[t]he purpose of the bill is to prohibit persons of the same sex from entering lawful marriage").

As detailed above, granting equal access to marriage for all couples is a crucial matter of conscience and faith for *Amici*. However, by sanctioning only marriages between a man and a woman, the State relegates the beliefs and practices of *Amici*'s religions, denominations, and clergy to second-class status. At a minimum, the State's marriage statutes express a "preference" for those faiths that refuse to marry individuals of the same sex, and under California's free exercise clause "[p]reference. . . is forbidden even when there is no discrimination." Fox, 22 Cal. 3d at 796; see also Mandel v. Hodges, 54 Cal. App. 3d 596, 617 (1976) (striking down Gubernatorial order proclaiming Good Friday a paid state holiday because "it amounts to 'discrimination' against all non-Christian religions and 'preference' of those which are Christian").

The Unitarian Universalist Churches, for example, make marriage fully available to all adult couples, regardless of sex. Doing so is a core tenet of the Unitarian Universalist faith, which affirms "the inherent worth and dignity of every person, and calls for justice, compassion, and equity in human relations." See <http://www.uua.aboutuua/principles.htm>. Reverend Ramsden of the Unitarian Universalist Church and Reverend Huff of the First Unitarian Church of Oakland are thus empowered to perform marriage ceremonies for any couples within the church. However, as discussed above, state law prevents Reverend Ramsden, Reverend Huff, and a growing number of religious leaders around the state from conferring the sacrament of marriage on their congregants on an equal basis. By enforcing a discriminatory law lacking any permissible secular purpose, the State substantially burdens Reverend Ramsden's and Reverend Huff's ability to fully exercise their religious beliefs, the core concern of the Free Exercise Clause.

The gravity of the marriage exclusion's impact on free exercise rights is also powerfully demonstrated by a statement supporting marriage equality submitted by the President of Muslims for Progressive Values, another of the *Amici* herein:

[T]he Qur'an states that God sanctions sexual activity only in the context of publicly acknowledged, committed relationships. Denying same-sex couples a means to satisfy the command of the Qur'an is tantamount to demanding they commit a major sin or remain celibate their entire lives, neither of which is acceptable.

See Application to File Brief of *Amici Curiae* at xxxvii.

Many Muslims take the command for a "publicly acknowledged, committed relationship" to require a relationship recognized by the State. It is unclear whether domestic partnership does, or even could, satisfy this command. In other words, for many same-sex couples who are not yet allowed to marry in a religious ceremony, civil marriage may be the only means available, short of complete celibacy, to comply with core tenets of their faith.

Not only does the marriage laws' exclusion of same-sex couples inhibit countless Californians from robustly practicing their chosen faiths, it also substantially burdens clergy who do solemnize marriages for same-sex couples. Rabbi Arthur Waskow of the Shalom Center states: "I have found it necessary to insist that same-sex couples work out with me the kind of elaborate interpersonal contracts for possible divorce, child custody, roles in case of sickness, etc., that public family law for different-sex marriage makes available to all. This takes days and weeks of my time and that of the couple that are not required when I am officiating for a different-sex marriage."

Courts applying California law have repeatedly employed the "No Preference" clause to remove crosses and other religious displays from publicly owned land.²⁰ While at first blush a challenge to the marriage statutes under the

²⁰ See, e.g. Fox v. City of Los Angeles, 22 Cal. 3d 792 (1978) (ordering removal of cross from Los Angeles City Hall despite 30 years of use for violating the No Preference clause); Carpenter v. City & County of San Francisco, 93 F.3d 627 (9th Cir. 1996) (city's ownership of large Latin cross in public park violates No Preference clause); Ellis v. City of La Mesa, 990 F.2d 1518 (9th Cir. 1993)

"No Preference" clause would seem quite different from the facts underlying the religious display cases, the ideas underpinning both are quite similar. Both existed unchallenged for decades; both are rooted in and convey an endorsement of religious belief; and both are being subjected to challenge as society changes and individuals realize that their rights are being burdened by the State's symbolic endorsement of religion. The State would do well to heed Chief Justice Bird's entreaty that "faith flourishes more freely in a sanctuary protected from the dictates of the majority." Fox, 22 Cal. 3d at 804 (Bird, C.J., concurring). As in the cross cases, it is time to remove the State statutes that express a preference for certain religions over others and burden *Amici's* ability to fully practice their own religions.

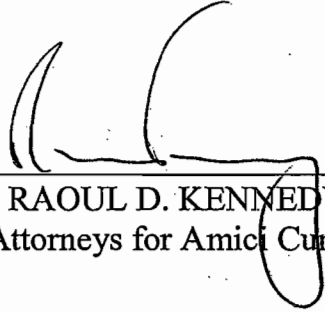
(permanent presence of cross on public property violates No Preference clause); Hewitt v. Joyner, 940 F.2d 1561 (9th Cir. 1991) (religious statuary in county-owned park violated No Preference clause).

III. CONCLUSION

The marriage exclusion violates established principles vitally guaranteeing the separation of Church and State. For that reason, and the reasons so eloquently advanced by the parties supporting marriage equality throughout this litigation, *Amici* urge the Court to perform its time-honored role and strike down this discriminatory legislation.

DATED: September 25, 2007

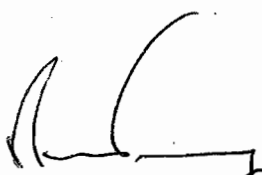
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Attorneys for Amici Curiae

RULE 8.204(c)(1) CERTIFICATE

The undersigned counsel hereby certifies, pursuant to Rule 8.204(c)(1) of the California Rules of Court, that this APPLICATION TO FILE BRIEF AND BRIEF OF *AMICI CURIAE* uses a proportionally spaced Times New Roman 13-point typeface, and that the text of the brief, including footnotes but excluding the Table of Contents, Table of Authorities, and this Certificate, totals 13,450 words, according to the word count provided by the word processing software used to prepare the brief.

DATED: September 26, 2007



RAOUL D. KENNEDY
Attorneys for *Amici Curiae*

LIST OF AMICI CURIAE

National and International Faith Organizations

Affirmation: Gay and Lesbian Mormons

Al-Fatiha Foundation

Alliance of Baptists

Association of Welcoming & Affirming Baptists

**Brethren Mennonite Council for
Lesbian, Gay, Bisexual and Transgender Interests**

Clergy United, Inc.

Dignity USA

Executive Committee of the American Friends Service Committee

Gay and Lesbian Vaishnava Association

General Synod of the United Church of Christ

Hebrew Union College - Institute for Judaism and Sexual Orientation

Integrity USA (Episcopal)

Jewish Reconstructionist Federation

Lutherans Concerned/North America

**More Light Presbyterians, the National Lesbian, Gay, Bisexual and
Transgender Equality Network, Presbyterian Church (USA)**

National and International Faith Organizations

Muslims For Progressive Values

National Coalition of American Nuns

Network of Spiritual Progressives

New Ways Ministry (Roman Catholic)

Religion-Outside-The-Box

Religious Institute on Sexual Morality, Justice, and Healing

Seventh-day Adventist Kinship, International Inc.

Soka Gakkai International-USA (Buddhist)

The Rabbinical Assembly

The Union for Reform Judaism

Unitarian Universalist Association of Congregations

Unitarian Universalist Ministers Association

United Centers of Spiritual Living

Universal Fellowship of Metropolitan Community Churches

State and Regional Faith Organizations

Association of Welcoming & Affirming Baptists (Bay Area)

California Church IMPACT

California Council of Churches

California Faith for Equality

Council of Churches of Santa Clara County

Friends Committee on Legislation of California

Jews for Marriage Equality
(Southern California)

Metropolitan Community Church (California/Region One)

More Light Presbyterians Chapter of Pacific Presbytery

Pacific Central District Chapter of the Unitarian Universalist Ministers Association

Pacific Central West Council of the Union for Reform Judaism

Pacific Southwest Council of the Union for Reform Judaism

Pacific Southwest District Chapter of the
Unitarian Universalist Ministers Association

Progressive Christians Uniting

Progressive Jewish Alliance - California

Reconciling Ministries Clergy of the
California-Nevada Conference of the United Methodist Church

State and Regional Faith Organizations

Unitarian Universalist Legislative Ministry - California

United Church of Christ - Southern California/Nevada Conference

Local Faith Organizations	Location
All Saints Episcopal Church	Pasadena, CA
All Saints Independent Catholic Parish	Carlsbad, CA
All Saints Metropolitan Community Church	San Buenaventura, CA
Bay Area American Indian Two-Spirits	San Francisco, CA
Berkeley Fellowship of Unitarian Universalists	Berkeley, CA
Buena Vista United Methodist Church	Alameda, CA
Chalice Unitarian Universalist Congregation	Escondido, CA
Christ the Shepherd Lutheran Church	Altadena, CA
Church of the Brethren of San Diego	San Diego, CA
College Avenue Congregational Church United Church of Christ	Modesto, CA
Community Church of Atascadero United Church of Christ	Atascadero, CA
Community Presbyterian Church	Pismo Beach, CA
Conejo Valley Unitarian Universalist Fellowship	Thousand Oaks, CA
Congregation Beth Chayim Chadashim	Los Angeles, CA
Congregation Kol Ami	West Hollywood, CA
Congregation Sha'ar Zahav	San Francisco, CA

Local Faith Organizations	Location
Congregation Shir Hadash	Los Gatos, CA
Diamond Bar United Church of Christ	Diamond Bar, CA
Dolores Street Baptist Church	San Francisco, CA
Emerson Unitarian Universalist Church	Canoga Park, CA
First Christian Church of San Jose, Disciples of Christ	San Jose, CA
First Congregational Church	Murphys, CA
First Congregational United Church of Christ	Long Beach, CA
First Mennonite Church of San Francisco	San Francisco, CA
First Presbyterian Church	San Jose, CA
First Unitarian Church of Oakland	Oakland, CA
First Unitarian Universalist Church of San Diego	San Diego, CA
First Unitarian Church of San Jose	San Jose, CA
First Unitarian Universalist Church of Stockton	Stockton, CA
First Unitarian Universalist Society of San Francisco	San Francisco, CA
Humboldt Unitarian Universalist Fellowship	Arcada, CA
Inner Light Ministries	Soquel, CA
Kol Hadash, Community for Humanistic Judaism	El Cerrito, CA

Local Faith Organizations	Location
Lutherans Concerned/Los Angeles	Los Angeles, CA
Metropolitan Community Church in the Valley	North Hollywood, CA
Metropolitan Community Church of San Jose	San Jose, CA
Metropolitan Community Church of Los Angeles	West Hollywood, CA
Monte Vista Unitarian Universalist Congregation - Board of Trustees	Montclair, CA
Mt. Diablo Unitarian Universalist Church	Walnut Creek, CA
Mt. Hollywood Congregational Church United Church of Christ	Los Angeles, CA
Neighborhood Unitarian Universalist Church - Board of Trustees	Pasadena, CA
Niles Congregational Church United Church of Christ	Fremont, CA
Pacific School of Religion	Berkeley, CA
Pacific Unitarian Church	Rancho Palos Verdes, CA
Parkside Community Church, United Church of Christ	Sacramento, CA
Peninsula Metropolitan Community Church	San Mateo, CA
Pilgrim United Church of Christ	Carlsbad, CA
Religion-Outside-the-Box	Los Angeles, CA
Religious Society of Friends/Quakers - Pacific Yearly Meeting	Torrance, CA
San Leandro Community Church (Baptist)	San Leandro, CA

Local Faith Organizations	Location
Sierra Foothills Unitarian Universalist Congregation	Auburn, CA
St. Bede's Episcopal Church	Los Angeles, CA
St. Francis Lutheran Church	San Francisco, CA
St. John Evangelist Episcopal Church	San Francisco, CA
St. John's Presbyterian Church	Berkeley, CA
St. Matthew's Lutheran Church	North Hollywood, CA
St. Paul's United Methodist Church	San Jose, CA
Starr King School for the Ministry	Berkeley, CA
Starr King Unitarian Universalist Church	Hayward, CA
Temple Beth Hillel	North Hollywood, CA
The Center for Spiritual Awareness	Sacramento, CA
The Church for the Fellowship of All Peoples	San Francisco, CA
The Ecumenical Catholic Church	Irvine, CA
The Session (Governing Body) of West Hollywood Presbyterian Church	Los Angeles, CA
Trinity Lutheran Church	Manhattan Beach, CA
Unitarian Society of Santa Barbara	Santa Barbara, CA
Unitarian Universalist Church of Anaheim - Board of Trustees	Anaheim, CA

Local Faith Organizations	Location
Unitarian Universalist Church of Berkeley - Board of Trustees	Kensington, CA
Unitarian Universalist Church of Davis	Davis, CA
Unitarian Universalist Church of the Desert	Rancho Mirage, CA
Unitarian Universalist Church of Fresno	Fresno, CA
Unitarian Universalist Church of Long Beach - Board of Trustees	Long Beach, CA
Unitarian Universalist Church of the Monterey Peninsula	Monterey, CA
Unitarian Universalist Church of Palo Alto	Palo Alto, CA
Universalist Unitarian Church of Riverside - Board of Trustees	Riverside, CA
Unitarian Universalist Church of Ventura - Board of Trustees	Ventura, CA
Unitarian Universalist Community of the Mountains	Grass Valley, CA
Unitarian Universalist Community Church of Sacramento	Sacramento, CA
Unitarian Universalist Community Church of Santa Monica	Santa Monica, CA
Unitarian Universalist Community Church of South County	Mission Viejo, CA
Unitarian Universalist Congregation of Marin	San Rafael, CA
Unitarian Universalist Congregation of Santa Rosa	Santa Rosa, CA
Unitarian Universalist Fellowship of Kern County	Bakersfield, CA
Unitarian Universalist Fellowship of Laguna Beach	Laguna Beach, CA

Local Faith Organizations	Location
Unitarian Universalist Fellowship of Redwood City	Redwood City, CA
Unitarian Universalist Fellowship of San Diequito - Welcoming Congregation Committee	Solana Beach, CA
Unitarian Universalist Fellowship of San Luis Obispo County - Board of Trustees	San Luis Obispo, CA
Unitarian Universalist Fellowship of Stanislaus County	Modesto, CA
Unitarian Universalist Fellowship of Visalia	Visalia, CA
Unitarian Universalists of San Mateo	San Mateo, CA
Unitarian Universalists of Santa Clarita	Santa Clarita, CA
Unitarian Universalist Society of Sacramento	Sacramento, CA
United Church of Christ in Simi Valley	Simi Valley, CA
Unity in the Gold Country	Grass Valley, CA
Universalist Unitarian Church of Santa Paula	Santa Paula, CA
University Lutheran Chapel	Berkeley, CA
Valley Ministries Metropolitan Community Church	Stockton, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Rabbi Mona Alfi	Congregation B'nai Israel	Sacramento, CA
Reverend Rachel Anderson	Unitarian Universalist	Berkeley, CA
Reverend Sky Anderson	Metropolitan Community Church	San Jose, CA
Rabbi Camille Angel	Congregation Sha'ar Zahav	San Francisco, CA
Rabbi Melanie Aron	Congregation Shir Hadash	Los Gatos, CA
Reverend Joy Atkinson	Unitarian Society of Santa Barbara	Santa Barbara, CA
Reverend Dr. Brian Baker, Dean	Trinity Episcopal Cathedral	Sacramento, CA
Reverend Elizabeth O'Shaughnessy Banks	Unitarian Universalist Church of Davis	Davis, CA
Reverend K. G. Banwart, Jr.	St. Matthew's Lutheran Church	Glendale, CA
Reverend Canon Michael Barlowe	Episcopal Diocese of California	San Francisco, CA
William H. Bartosh, Lay-Vicar	St. Matthew's Episcopal Church	San Ardo, CA
Rabbi Haim Dov Beliak	Jews On First	Los Angeles, CA
Reverend Chris Bell	Unitarian Universalist Congregation, Santa Rosa	Santa Rosa, CA
Reverend JD Benson	Faithful Fools Street Ministry	San Francisco, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Rabbi Linda Bertenthal	Union for Reform Judaism	Encino, CA
Pastor LeAnn Blackert	San Leandro Community Church	San Leandro, CA
Reverend Dr. Dorsey O. Blake	The Church for the Fellowship of All Peoples	San Francisco, CA
Reverend James E. Boline	St. Paul's Lutheran Church	Santa Monica, CA
Pastor Kenny A. Bowen	Resurrection Lutheran Church	Long Beach, CA
Reverend Susan Brecht	Community Church of Atascadero, United Church of Christ	Atascadero, CA
Rabbi Rick Brody	Temple Ami Shalom	West Covina, CA
Reverend Dr. Ken Brown	Pacific Southwest District- Unitarian Universalist Association	Studio City, CA
Reverend Kevin Bucy	Midtown Church, A Community for Spiritual Living, United Church of Religious Science	San Diego, CA
Reverend Jim Burklo	Sausalito Presbyterian Church	Sausalito, CA
Nancy Burns, Northern California Spirit Representative	Soka-Gakkai International-USA (Buddhist)	San Francisco, CA
Reverend Dr. R. A. Butziger	First Presbyterian Church	San Jose, CA
Reverend Becky Cameron	Dolores Street Baptist Church	San Francisco, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Reverend Canon Grant S. Carey	Trinity Episcopal Cathedral	Sacramento, CA
Reverend Matthew M. Conrad	St. Luke's Episcopal Church	Atascadero, CA
Reverend Helen Carroll	Unitarian Universalist Fellowship of San Luis Obispo County	San Luis Obispo, CA
Rabbi Ari Cartun	Congregation Etz Chayim	Palo Alto, CA
Reverend Lauren Chaffee	Bethany United Methodist Church	San Francisco, CA
Reverend Craig B. Chapman	All Saints Metropolitan Community Church	San Buenaventura, CA
Reverend Barbara M. Cheatham	Unitarian Universalist	Walnut Creek, CA
Reverend Jan Christian	Unitarian Universalist Church of Ventura	Ventura, CA
Reverend Bea Chun	Christ the Good Shepherd Lutheran Church	San Jose, CA
Reverend Anne G. Cohen	United Church of Christ	Pasadena, CA
Rabbi Helen T. Cohn	Congregation Emanu-El	San Francisco, CA
Reverend Carolyn Colbert	Unitarian Universalist Church in Livermore	Livermore, CA
Reverend Kenneth W. Collier	Unitarian Universalist	Santa Barbara, CA
Reverend Dr. Gary B. Collins	St. Mark Presbyterian Church	Newport Beach, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Reverend Mary P. Conant	Danville Congregational Church	Danville, CA
Rabbi Susan S. Conforti	Jewish	Irvine, CA
Reverend Meghan Conrad	Unitarian Universalist Community of the Mountains	Grass Valley, CA
Rabbi Laurie Coskey	Interfaith Committee for Worker Justice	San Diego, CA
Reverend Susan Craig	Presbyterian Church (USA)	Berkeley, CA
Reverend Robbie Cranch	Unitarian Universalist	Fresno, CA
Reverend Alexie Crane	Unitarian Society of Santa Barbara	Santa Barbara, CA
Reverend Matthew Crary	Universalist Unitarian Church of Riverside	Riverside, CA
Reverend Robert Crouch	Community Presbyterian Church	Pismo Beach, CA
Reverend Dr. Donald J. Dallmann	St. Paul's Episcopal Church	Cambria, CA
Reverend Cinnamon Daniel	Unitarian Universalist	Oakland, CA
Reverend Diann Davisson	Long Beach Memorial Hospital	Long Beach, CA
Pastor Jerry De Jong	United Church of Christ	Suisun, CA
Rabbi Lavey Derby	Conservative Jewish	Tiburon, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Reverend Susan Wolfe Devol	St. Matthew's Lutheran Church	North Hollywood, CA
Reverend Brian K. Dixon	Dolores Street Baptist Church	San Francisco, CA
Rabbi Elliot Dorff	American Jewish University	Los Angeles, CA
Reverend Terri Echelbarger	Peninsula Metropolitan Community Church	San Mateo, CA
Rabbi Lisa A. Edwards, Ph.D.	Congregation Beth Chayim Chadashim	Los Angeles, CA
Reverend Leroy Egenberger	Unitarian Universalist Fellowship of Stanislaus County	Modesto, CA
Rabbi Denise Eger	Congregation Kol Ami	West Hollywood, CA
Reverend Michael Ellard	Metropolitan Community Church of San Jose	San Jose, CA
Diana Elrod, Women's Division Leader, Castro District	Soka-Gakkai International-USA (Buddhist)	San Francisco, CA
Reverend Stefanie Etzbach-Dale	Unitarian Universalist Fellowship of Laguna Beach	Laguna Beach, CA
Pastor Brenda Evans	Christ Chapel of North Park	San Diego, CA
Reverend Renae Extrum-Fernandez	United Methodist	Walnut Creek, CA
Reverend John Fanestil	United Methodist Church	San Diego, CA
Reverend Jerry Farrell	Unity In The Gold Country	Grass Valley, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Reverend Michelle Favreult	First Unitarian Church	Oakland, CA
Reverend Jeanne Favreau-Sorvillo	Diamond Bar, United Church of Christ	Diamond Bar, CA
Rabbi Joel Fleekop	Congregation Shir Hadash	Los Gatos, CA
Reverend Dr. Yvette Flunder, Senior Pastor; Presiding Bishop	City of Refuge, United Church of Christ; The Fellowship	San Francisco, CA
Reverend Dr. John Forney	Progressive Christians Uniting	Chino, CA
Reverend Jerry Fox	St. Paul's United Methodist Church	San Jose, CA
Reverend Canon Winifred B. Gaines	Trinity Episcopal Cathedral	Sacramento, CA
Reverend Ronn Garton	Presbyterian	San Diego, CA
Rabbi Laura Geller	Temple Emanuel	Beverly Hills, CA
Reverend Diana Gibson	Council of Churches of Santa Clara County	San Jose, CA
Reverend Dr. Robert Goldstein, Lead Pastor	St. Francis Lutheran Church	San Francisco, CA
Reverend Dr. Robert Goss	Metropolitan Community Church in the Valley	North Hollywood, CA
Reverend Dr. June Goudey	United Church of Christ in Simi Valley	Simi Valley, CA
Reverend Robert C. Grabowski	United Church of Religious Science	San Diego, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Reverend Constance L. Grant	Unitarian Universalist Society of Sacramento	Sacramento, CA
Reverend James Grant	Unitarian Universalist	San Diego, CA
Rabbi Bruce Greenbaum	Congregation Beth Israel	Carmel, CA
Reverend William Greer	Unitarian Universalist Fellowship of Stanislaus County	Modesto, CA
Reverend Dr. Ron Griffen	Laguna Country United Methodist Church	Laguna Hills, CA
Thomas Grogan, Interim Minister	First Unitarian Universalist Church of San Diego	San Diego, CA
Reverend Clyde E. Grubbs	Throop Unitarian Universalist Church	Pasadena, CA
Reverend Sara Haldeman-Scarr	Church of the Brethren	San Diego, CA
Reverend Caroline Hall	St. Benedicts Episcopal Church	Los Osos, CA
Reverend Dr. Susan Hamilton	Parkside Community Church United Church of Christ	Sacramento, CA
Reverend Bill Hamilton-Holway	Unitarian Universalist Church of Berkeley	Kensington, CA
Reverend Barbara Hamilton-Holway	Unitarian Universalist Church of Berkeley	Kensington, CA
Reverend Bet Hannon	Wesley United Methodist Church	Fresno, CA
Reverend Dr. Andrew F. Headden	Federated Church, Presbyterian (U.S.A.) United Methodist	Placerville, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Reverend Dr. Kathy Hearn	United Church of Religious Science	La Jolla, CA
Reverend Jane Heckles	United Church of Christ Southern California Nevada Conference	Altadena, CA
Rabbi Alan Henkin	Union for Reform Judaism	Encino, CA
Reverend Erika Hewitt	Live Oak Unitarian Universalist Congregation	Goleta, CA
Rabbi Jay Heyman	Shalom Spiritual Resources	San Francisco, CA
Reverend Carol C. Hilton, Minister Emerita	Palomar Unitarian Universalist Fellowship	Vista, CA
Reverend Anne Felton Hines	Emerson Unitarian Universalist Church	Canoga Park, CA
Reverend Katie Hines-Shah	Shepherd of the Hills Lutheran Church	Berkeley, CA
Reverend Martha Hodges	Unitarian Universalist Community Church	Sacramento, CA
Reverend Marcia Hootman	Church of Religious Science	San Diego, CA
Reverend Laura Horton-Ludwig	First Unitarian Church of Stockton	Stockton, CA
Reverend Sherri Hostetler	First Mennonite Church of San Francisco	San Francisco, CA
Reverend Ricky Hoyt	Unitarian Universalists of Santa Clarita	Santa Clarita, CA
Reverend Kathy Huff	First Unitarian Church of Oakland	Oakland, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Minister Victoria Ingram	Unitarian Universalist Fellowship of Los Gatos	Los Gatos, CA
Reverend Keith Inouye	United Methodist	Clovis, CA
Reverend Steve Islander	Estero Bay United Methodist Church	Morro Bay, CA
Reverend Alyson E. Jacks	First Unitarian Universalist Society of San Francisco	San Francisco, CA
Rabbi Steven B. Jacobs	Temple Kol Tikvah	Woodland Hills, CA
Berget Jelane	Buddhist Chaplain	San Jose, CA
Reverend Bryan D. Jessup	Unitarian Universalist Church of Fresno	Fresno, CA
Reverend Jeff Johnson	University Lutheran Chapel	Berkeley, CA
Reverend Beth Johnson	Palomar Unitarian Universalist Fellowship	Vista, CA
Reverend Deborah L. Johnson	Inner Light Ministries	Soquel, CA
Reverend Nancy Palmer Jones	First Unitarian Church of San Jose	San Jose, CA
Reverend Alan H. Jones	Campbell United Methodist Church	Campbell, CA
Reverend Kathryn Kandarian	Starr King Unitarian Universalist Church	Hayward, CA
Rabbi Jim Kaufman	Temple Beth Hillel	North Hollywood, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Reverend John M. Kauffman	Christ the Shepherd Lutheran Church	Altadena, CA
Reverend Canon Kathleen Kelly	Trinity Episcopal Cathedral	Sacramento, CA
Rabbi Paul Kipnes	Congregation Or Ami	Calabasas, CA
Reverend John Kirkley	St. John Evangelist Episcopal Church	San Francisco, CA
Reverend Benjamin A. Kocs-Meyers	Unitarian Universalist	Albany, CA
Rabbi Douglas Kohn	Congregation Emanu-El	San Bernardino, CA
Reverend Vicky Kolakowski	Metropolitan Community Church of San Jose	San Jose, CA
Reverend Douglas C.B. Kraft	Unitarian Universalist Society of Sacramento	Sacramento, CA
Reverend Kurt Kuhwald	Berkeley Fellowship of Unitarian Universalists	Berkeley, CA
Joel L. Kushner, Director	Institute for Judaism and Sexual Orientation	Los Angeles, CA
Reverend Richard Kuykendall	United Church of Christ	Auburn, CA
Reverend Peter Laarman	Progressive Christians Uniting	Los Angeles, CA
Rabbi Susan Laemmle	University of Southern California	Los Angeles, CA
Rabbi Howard Laibson	Congregation Shir Chadash	Long Beach, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Pastor Scott Landis	Mission Hills United Church of Christ	San Diego, CA
Rabbi Moshe Levin	Congregation Ner Tamid	San Francisco, CA
Reverend Tom Lewis	Unitarian Universalist	Red Bluff, CA
Reverend Catherine Linesch	Sierra Foothills Unitarian Universalists	Auburn, CA
Rabbi Michael Lotker	Temple Ner Ami	Camarillo, CA
Reverend Marguerite Lovett	Unitarian Universalist Church of Long Beach	Long Beach, CA
Reverend Carol Lowe	Peninsula Metropolitan Community Church	San Mateo, CA
Rabbi Barry Lutz	Temple Ahavat Shalom	Northridge, CA
Reverend Max Lynn	St. John's Presbyterian Church	Berkeley, CA
Reverend Ken MacLean	Unitarian Universalist	Cathedral City, CA
Rabbi Tamar Malino	Reform Jewish	Poway, CA
Dr. Anthony Manousos	Quakers - Friends Bulletin	Torrance, CA
Reverend Luther J. Martell	Trinity Lutheran Church	Manhattan Beach, CA
Reverend Elder Debbie Martin	Universal Fellowship of Metropolitan Community Churches	West Hollywood, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Pastor Michael-Ray Mathews	Grace Baptist Church	San Jose, CA
Reverend Russell Matteson	Church of the Brethren	Modesto, CA
Rabbi Brian Zachary Mayer	Religion-Outside-the-Box	Los Angeles, CA
Reverend Gregory W. McGonigle	Cal Aggie Christian Association (CA House)	Davis, CA
Reverend Joseph McGowan	Altadena Community Church United Church of Christ	Altadena, CA
Reverend Janet Gollery McKeithen	United Methodist Church	Santa Monica, CA
Reverend Margo McKenna	Chalice Unitarian Universalist Congregation	Escondido, CA
Reverend William McKinney	Pacific School of Religion	Berkeley, CA
Reverend Susan Meeter	Mira Vista United Church of Christ	El Cerrito, CA
Rabbi Norman Mendel	Reform Jewish	San Luis Obispo, CA
Pastor Ross D. Merkel	St. Paul Lutheran Church	Oakland, CA
Charles Metz, Lay Pastor	New Hope Metropolitan Community Church	Santa Rosa, CA
Reverend Judith Meyer	Unitarian Universalist Community Church of Santa Monica	Santa Monica, CA
Reverend Barbara F. Meyers	Mission Peak Unitarian Universalist Congregation	Fremont, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Reverend Elisabeth Middleberg	Metropolitan Community Church of the Redwood Empire	Guerneville, CA
David Miller, Ministerial Intern	Chalice Unitarian Universalist Congregation	Escondido, CA
Reverend Diane Miller	Mt. Diablo Unitarian Universalist Church	Walnut Creek, CA
Reverend Terri Miller	Metropolitan Community Church	Stockton, CA
Reverend John Millspaugh	Tapestry, A Unitarian Universalist Congregation	Mission Viejo, CA
Reverend Dr. Curt Miner	San Luis Obispo United Church of Christ	San Luis Obispo, CA
Rabbi Michelle Missaghieh	Union for Reform Judaism	Los Angeles, CA
Reverend Sarah Moldenhauer-Salazar	Unitarian Universalist	Berkeley, CA
Reverend Douglas J. Monroe	First United Methodist Church of Napa	Napa, CA
Reverend John Morehouse	Pacific Unitarian Church	Rancho Palos Verdes, CA
Reverend Amy Zucker Morgenstern	Unitarian Universalist Church of Palo Alto	Palo Alto, CA
Reverend David Moss	Trinity United Methodist Church	Chico, CA
Reverend Silvio Nardoni	Unitarian Universalist Community Church of Santa Monica	Santa Monica, CA
Reverend James A. Nelson	Neighborhood Unitarian Universalist Church	Pasadena, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Reverend Drew Nettinga	United Church of Christ	San Leandro, CA
Reverend Canon James A. Newman	St. Bede's Episcopal Church	Los Angeles, CA
Reverend Julia Older	Unitarian Universalist Fellowship of Redwood City	Redwood City, CA
Reverend Dr. Claudene F. Oliva	Unitarian Universalist Fellowship of Santa Cruz	Aptos, CA
Reverend Elaine O'Rourke	Campbell United Church of Christ	Campbell, CA
Reverend Donna Owen	St. Serget Bachus Chapel, Eccelesia Gnostica	Los Angeles, CA
Reverend Tom Owen-Towle	Unitarian Universalist Fellowship of San Diquito	Solano Beach, CA
Reverend Dr. Carolyn S. Owen-Towle	Unitarian Universalist	Solano Beach, CA
Reverend Kathleen Owens	First Unitarian Universalist Church of San Diego	San Diego, CA
Reverend Dr. Rebecca Parker	Starr King School for the Ministry	Berkeley, CA
Reverend Ken Pennings, Executive Director	Association of Welcoming & Affirming Baptists	Madison, WI
Rev. John Perez	Epiphany Lutheran & Episcopal Church	Marina, CA
Reverend Hannah Petrie	Neighborhood Unitarian Universalist Church of Pasadena	Pasadena, CA
Reverend Jay K. Pierce	United Methodist Church	Merced, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Reverend Ernest Pipes, Minister Emeritus	Unitarian Universalist Community Church of Santa Monica	Santa Monica, CA
Reverend Mary Elizabeth Pratt- Horsley	St. Benedict's Episcopal Church	Los Osos, CA
Reverend Georgia Prescott	Sacramento Church of Religious Science/Center for Spiritual Awareness	Sacramento, CA
Reverend Dr. Lisa Presl�y	Unitarian Universalist Congregation of Marin	San Rafael, CA
Reverend Carolyn Price	Universalist Unitarian Church of Santa Paula	Santa Paula, CA
Reverend Sherry Prud'homme	Unitarian Universalist	Berkeley, CA
Reverend Jane Quandt	First Congregational United Church of Christ	Riverside, CA
Reverend Fred Rabidoux	First Unitarian Universalist Society of San Francisco	San Francisco, CA
Reverend Lindi Ramsden	Unitarian Universalist Legislative Ministry - CA	Sacramento, CA
Rabbi Lawrence Raphael	Congregation Sherith Israel	San Francisco, CA
Reverend George F. Regas, Rector Emeritus	All Saints Episcopal Church	Pasadena, CA
Reverend Dr. Mark Richardson	Trinity United Methodist Church	Los Osos, CA
Reverend Scott Richardson	St. Paul's Episcopal Cathedral	San Diego, CA
Reverend Bear Ride	Presbyterian Church (USA)	Berkeley, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Philip Boo Riley, Associate Professor of Religious Studies	Santa Clara University	Santa Clara, CA
Cantor Aviva Rosenbloom	Temple Israel of Hollywood	Los Angeles, CA
Reverend Carol Rudisill	Unitarian Universalist	Sierra Madre, CA
Reverend Susan Russell	All Saints Episcopal Church	Pasadena, CA
Reverend Gerald Sakamoto	San Jose Buddhist Church Betsuin	San Jose, CA
Reverend David Sammons	Starr King School for the Ministry, Visiting Professor	Berkeley, CA
Lee Marie Sanchez, Minister	Unitarian Universalist Church in Anaheim	Anaheim, CA
Reverend William C. Sanford	United Methodist Church	Atwater, CA
Reverend Charles Schepel	United Church of Christ	La Crescenta, CA
Reverend Michael Schiefelbein	College Avenue Congregational Church	Modesto, CA
Reverend Dr. Rick Schlosser	California Council of Churches	Sacramento, CA
Reverend Brian Scott	Campbell United Church of Christ	Campbell, CA
Reverend Craig Scott	Unitarian Universalist Fellowship of Tuolumne County	Sonora, CA
Reverend Wayna Scovell	Foothill Community Church of Religious Science	Auburn, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Reverend Michael Schuenemeyer	The General Synod of the United Church of Christ	Cleveland, OH
Reverend Dr. Steven Shepard	First Congregational Church	Murphys, CA
Dr. John M. Sherwood	Temple Emet	Oxnard, CA
Reverend Mark Shirilau	The Ecumenical Catholic Church	Irvine, CA
Reverend Robert Shively	First Christian Church of San Jose, Disciples of Christ	San Jose, CA
Reverend Madison Shockley II	Pilgrim United Church of Christ	Carlsbad, CA
Reverend Grace Simons	Unitarian Universalist Fellowship of Stanislaus County	Modesto, CA
Reverend Bruce J. Simpson	Benedictine Order of St. John the Beloved	Hanover, PA
Reverend Dan Smith	West Hollywood Presbyterian Church	Los Angeles, CA
Reverend Linda Snyder	Florin United Methodist Church	Sacramento, CA
Reverend Jeffrey Spencer	Niles Congregational Church	Fremont, CA
Reverend June Stanford-Clark	First Church of Religious Science of Hemet	Hemet, CA
Reverend Dr. Betty Stapleford	Conejo Valley Unitarian Universalist Fellowship	Thousand Oaks, CA
Reverend Stanley Stefancic	Unitarian Universalist	San Rafael, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Rabbi Ron Stern	Reform Jewish	Los Angeles, CA
Reverend Gregory L. Stewart	First Unitarian Universalist Society of San Francisco	San Francisco, CA
Reverend Bob Stiles	Do Justice Organizations	Downey, CA
Reverend Janine Stock	All Saints Independent Catholic Parish	Carlsbad, CA
Reverend Arvid Straube	First Unitarian Universalist Church of San Diego	San Diego, CA
Reverend Dr. Archer Summers	First United Methodist Church of Palo Alto	Palo Alto, CA
Reverend Steven Swope	United Church of Christ	Rancho Santa Margarita, CA
Reverend Paul Tellstrom	Irvine United Congregational Church	Irvine, CA
Reverend Margo Tenold	Council of Churches of Santa Clara County	San Jose, CA
Reverend Byrd Tetzlaff	Unitarian Universalist Fellowship of Kern County	Bakersfield, CA
Reverend Neil Thomas	Metropolitan Community Church Los Angeles	West Hollywood, CA
Reverend David Thompson	Westminster Presbyterian Church	Sacramento, CA
Reverend Mary Lynn Tobin	Davis Community Church (Presbyterian Church USA)	Davis, CA
Mary A. Tolbert	Pacific School of Religion	Berkeley, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Reverend Tarah Trueblood	Wesley Foundation	Berkeley, CA
Reverend Lynn Ungar	Unitarian Universalist Church of the Larger Fellowship	Boston, MA
Reverend Nada Velimirovic	Unitarian Universalist	Oakland, CA
Reverend Jane E. Voigts	San Luis Obispo United Methodist Church	San Luis Obispo, CA
Reverend Canon Lynell Walker	Trinity Episcopal Cathedral	Sacramento, CA
Reverend Greg Ward	Unitarian Universalist Church of the Monterey Peninsula	Monterey, CA
Reverend Roger Wharton	Episcopalian Church	San Jose, CA
Rabbi Arthur Waskow	The Shalom Center	Philadelphia, PA
Reverend Theodore A. Webb, Minister Emeritus	Unitarian Universalist Society of Sacramento	Sacramento, CA
Reverend Vail Weller	Unitarian Universalists of San Mateo	San Mateo, CA
Reverend Bets Wienecke	Unitarian Universalist	Carpinteria, CA
Reverend Lee Williamson	Methodist Federation for Social Action	Hayward, CA
Reverend Elder Nancy Wilson	Universal Fellowship of Metropolitan Community Churches	West Hollywood, CA
Rope Wolf	Bay Area American Indian Two-Spirits (BAAITS)	San Francisco, CA

Faith Leaders	Affiliation For Identification Purposes Only	Location
Reverend Michael Yoshi	United Methodist Church	Alameda, CA

PROOF OF SERVICE

I, Michael Troost, declare that I am over the age of eighteen years and I am not a party to this action. My business address is Four Embarcadero Center, 38th Floor, San Francisco, California. On September 26, 2007, I served the document listed below on the interested parties in this action in the manner indicated below:

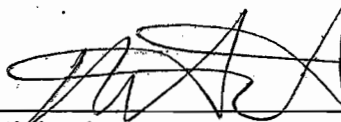
**APPLICATION TO FILE BRIEF AND BRIEF OF *AMICI CURIAE* THE
UNITARIAN UNIVERSALIST ASSOCIATION OF CONGREGATIONS,
GENERAL SYNOD OF THE UNITED CHURCH OF CHRIST, THE UNION FOR
REFORM JUDAISM, SOKA GAKKAI INTERNATIONAL-USA, THE
UNIVERSAL FELLOWSHIP OF METROPOLITAN COMMUNITY
CHURCHES, THE CALIFORNIA COUNCIL OF CHURCHES, AND
CALIFORNIA FAITH FOR EQUALITY, *ET AL.*, IN SUPPORT OF PARTIES
ARGUING FOR MARRIAGE EQUALITY**

[X] **BY MAIL**: I am readily familiar with the business practice for collection and processing correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelopes were sealed, and with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.

[X] **INTERESTED PARTIES:**

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; that this declaration is executed on September 26, 2007, at San Francisco, California.



Michael Troost

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

<p>Gloria Allred Michael Maroko John S. West ALLRED, MAROKO & GOLDBERG 6300 Wilshire Blvd. Suite 1500 Los Angeles, CA 90048 Tel.: (323) 653-6530 Fax: (323) 653-1660 <i>Counsel for Robin Tyler, et al.</i></p>	<p>Edmund G. Brown Jr. Stacy Boulware Eurie Christopher E. Krueger STATE OF CALIFORNIA, DEPT. OF JUSTICE OFFICE OF THE ATTORNEY GENERAL 1300 I Street, Suite 125 Post Office Box 944255 Sacramento, CA 94244 Tel: (916) 445-7385 Fax: (916) 324-8835 <i>Counsel for the State of California, et al.</i></p>
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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

<p>Robert H. Tyler ADVOCATES FOR FAITH AND FREEDOM 24910 Loas Brisas Road, Suite 110 Murietta, CA 92562 Tel.: (951) 304-7583 Fax: (951) 894-6430 <i>Counsel for Proposition 22 Legal Defense and Education Fund</i></p>	<p>Benjamin W. Bull Glen Lavy ALLIANCE DEFENSE FUND 15333 North Pima Road, Suite 165 Scottsdale, AZ 85260 Tel.: (480) 444-0020 Fax: (480) 444-0028 <i>Counsel for Proposition 22 Legal Defense and Education Fund</i></p>
<p>Timothy Donald Chandler ALLIANCE DEFENSE FUND 101 Parkshore Dr. #100 Folsom, CA 95630 Tel.: (916) 932-2850 Fax: (916) 932-2851 <i>Counsel for Proposition 22 Legal Defense and Education Fund</i></p>	<p>Andrew P. Pugno LAW OFFICES OF ANDREW P. PUGNO 101 Parkshore Drive, Suite 100 Folsom, CA 95630 Tel.: (916) 608-3065 Fax: (916) 608-3066 <i>Counsel for Proposition 22 Legal Defense and Education Fund</i></p>
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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

<p>Mathew D. Staver LIBERTY COUNSEL Second Floor 1055 Maitland Center Common Maitland, FL 32751 Tel.: (800) 671-1776 Fax: (407) 875-0770 <i>Counsel for Randy Thomasson and Campaign for California Families</i></p>	<p>Mary McAlister LIBERTY COUNSEL 100 Mountain View Road Suite 2775 Lynchburg, VA 24506 Tel.: (434) 592-7000 Fax: (434) 592-7700 <i>Counsel for Randy Thomasson and Campaign for California Families</i></p>
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Courtesy Copy to:

CLERK OF THE COURT Court of Appeal, First Appellate District 350 McAllister Street San Francisco, CA 94102	HON. RICHARD A. KRAMER San Francisco Superior Court Department 304 400 McAllister Street San Francisco, CA 94012
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