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**SUPREME COURT  
FILED**

April 18, 2011

The Honorable Tani Cantil-Sakauye,  
Chief Justice of California,  
and Associate Justices  
The Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102

APR 18 2011

Frederick K. Ohlrich Clerk

Deputy

Re: *Perry v. Brown (Hollingsworth)*, California Supreme Court [REDACTED]

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Plaintiff-intervener/Respondent City and County of San Francisco submits this letter advising the Court of an en banc opinion issued by the United States Court of Appeals for the Fifth Circuit on April 12, 2011, in *Adar v. Smith* (5th Cir. 2011) --- F.3d ----, 2011 WL 1367493.<sup>1</sup>

The en banc opinion vacates and replaces the three-judge panel decision in *Adar v. Smith* (5th Cir. 2010) 597 F.3d 697, which San Francisco cited in its answer brief at pages 33 and 47. San Francisco discussed the panel decision as an example of a case where the denial of a state-created right (in *Adar*, the right to a birth certificate) confers Article III standing only because of the concrete and particularized injury that flows from it (in *Adar*, the inability to obtain health insurance without a birth certificate). The en banc opinion agrees with the three-judge panel's determination regarding standing (see slip opinion at pp. 3-4) but ultimately reverses the panel decision on the merits, holding that a state official's refusal to issue a birth certificate to a child adopted by an unmarried same-sex couple did not violate the Federal Constitution's Full Faith and Credit Clause or Equal Protection Clause.

Very truly yours,

DENNIS J. HERRERA  
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<sup>1</sup> The slip opinion, which was revised on April 13, 2011, is also available at the Fifth Circuit's website, at <http://www.ca5.uscourts.gov/opinions/pub/09/09-30036-CV2.wpd.pdf> (last visited April 18, 2011).

## PROOF OF SERVICE

I, Catheryn M. Daly, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Seventh Floor, San Francisco, CA 94102. The electronic notification address from which I served the documents is: *catheryn.daly@sfgov.org*.

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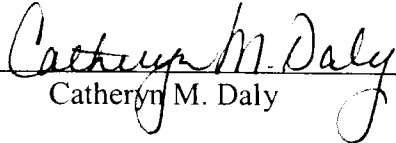
**BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

**BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed: *jpanuccio@cooperkirk.com, dthompson@cooperkirk.com, jcampbell@telladf.org, ccooper@cooperkirk.com, nmoss@cooperkirk.com, ppatterson@cooperkirk.com, andrew@pugnolaw.com, braum@telladf.org, tl\_thompson@earthlink.net, dboies@bsflp.com, tolgson@gibsondunn.com, rbaxter@bsflp.com, tboutrous@gibsondunn.com, EDettmer@gibsondunn.com, cdusseault@gibsondunn.com, jgoldman@bsflp.com, tkapur@gibsondunn.com, MMcGill@gibsondunn.com, emonagas@gibsondunn.com,*

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I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed April 18, 2011, at San Francisco, California.

  
\_\_\_\_\_  
Catherine M. Daly