

S168047 / S168066 / S168078

IN THE SUPREME COURT OF CALIFORNIA

KAREN L. STRAUSS, et al., *Petitioners*,

v.

MARK B. HORTON, as State Registrar of Vital Statistics, etc., et al.,
Respondents; DENNIS HOLLINGSWORTH, et al., *Intervenors*.

ROBIN TYLER, et al., *Petitioners*,

v.

STATE OF CALIFORNIA, et al., *Respondents*; DENNIS
HOLLINGSWORTH, et al., *Intervenors*.

CITY AND COUNTY OF SAN FRANCISCO, et al., *Petitioners*,

v.

MARK B. HORTON, as State Registrar of Vital Statistics, etc., et al.,
Respondents; DENNIS HOLLINGSWORTH, et al., *Intervenors*.

APPLICATION TO FILE AMICUS BRIEF AND PROPOSED BRIEF OF
AMICI CURIAE REVEREND DR. FRANK M. ALTON, IMMANUEL
PRESBYTERIAN CHURCH, NETIVOT SHALOM SYNAGOGUE,
REVEREND DR. JANE ADAMS SPAHR, REVEREND DR. JOHN T.
NORRIS, REVEREND DR. GLENDA HOPE, RABBI DAVID J. COOPER,
KEHILLA COMMUNITY SYNAGOGUE, REVEREND LAURA ROSE,
REVEREND JANET MCCUNE EDWARDS, PH.D., REVEREND
KATHRYN M. SCHREIBER, REVEREND SUSAN A. MEETER, MIRA
VISTA UNITED CHURCH OF CHRIST, NANCY MCKAY, RABBI
MENACHEM CREDITOR, REVEREND DR. PAUL TELLSTROM,
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NETWORK OF PRESBYTERIANS, AND MORE LIGHT
PRESBYTERIANS IN SUPPORT OF PETITIONERS

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SUPREME COURT

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APPLICATION TO FILE BRIEF OF *AMICI CURIAE*

Pursuant to California Rule of Court 8.520, *amici* the Reverend Dr. Frank M. Alton, Immanuel Presbyterian Church, Netivot Shalom Synagogue, the Reverend Dr. Jane Adams Spahr, the Reverend Dr. John T. Norris, the Reverend Dr. Glenda Hope, Rabbi David J. Cooper, Kehilla Community Synagogue, Reverend Laura Rose, Reverend Janet McCune Edwards, Ph.D., Reverend Kathryn M. Schreiber, Reverend Susan A. Meeter, Mira Vista United Church of Christ, Nancy McKay, Rabbi Menachem Creditor, Rev. Dr. Paul Tellstrom, Irvine United Congregational Church, Covenant Network of Presbyterians, and More Light Presbyterians (hereafter, "*amici*") request leave of this Court to file the attached brief of *Amici Curiae* in support of the Petitioners in the above-referenced cases.

Amici are esteemed clergy, congregations, or clergy representatives from various Christian and Jewish denominations, who believe in marriage equality as a matter of their religious faith. Prior to the passage of Proposition 8, *amici* clergy legally solemnized many same-gender marriages in California as part of their religious traditions. Some *amici* are national associations with a substantial presence in California; others are California clergy and religious communities. Many *amici* have been deeply involved in controversies within their denominations to establish equal marriage rights for same-gender couples.

GENERAL INTERESTS OF *AMICI CURIAE*

Amici solemnize marriages and counsel couples seeking to marry, in accordance with their traditions and practices. *Amici* firmly believe, from their faith traditions, that marriage should be available to same-gender couples on an equal basis and that discriminatory marriage laws pose profound dangers to religious liberties, as this Court observed in its landmark ruling in *Perez v. Sharp*, 32 Cal. 2d 711 (1948). *Amici* further recognize that Proposition 8 coerces them to discriminate among members of their faith communities and that Proposition 8 outright prefers other religions that do not recognize same-gender marriage. *Amici* here submit the attached brief in part to demonstrate that Proposition 8 discriminates and prefers certain religions over others in contravention of underlying constitutional liberties and structural guarantees against government interference in religion.

Given the Court's May 2008 decision allowing for same-gender marriages, *amici* personally have solemnized marriages for scores of same-gender couples since June 16, 2008. They have witnessed firsthand the benefits of extending marriage to same-gender couples, benefits extending to the couples' particular communities of faith as well. *Amici* fear the profound practical and psychological harm to these couples and these communities if these marriages were nullified.

SPECIFIC INTERESTS OF AMICI CURIAE

Identified below are the *amici* and their specific interests in these proceedings. For brevity, and for the convenience of the Court, Appendix A to this brief includes the detailed personal statements from *amici*, describing *amici*'s faith convictions concerning marriage equality, their personal experiences solemnizing marriages for same-gender couples, and their observations concerning the profound harm to these couples, and others, should these marriages be nullified.

**Reverend Dr. Frank M. Alton
Pastor, Immanuel Presbyterian Church
Los Angeles, CA**

Immanuel Presbyterian Church was founded in 1888. Over the past 120 years its ministry has been characterized by innovation, repeatedly pushing the boundaries to new understandings of the gospel. Today, the congregation is a dual-language, multicultural urban community committed to peace, justice and inclusivity in the city and world. Our members hail from over 20 countries, but our diversity goes beyond national origin. We are male and female, young and old, rich and poor, those with doctorates and those with no formal education, gays and straights, and churched and unchurched. Our ministry includes a center for healing, which incorporates healing modes from east and west, a food pantry that serves the homeless

and low-income community, and active involvement in immigration, education and employment issues.

Immanuel has welcomed gay and lesbian members into leadership for over twenty years. Last year the leadership body of the Church took a more active posture with three new commitments. We became a More Light Presbyterian Congregation, committed to working for the full inclusion of LGBT persons into the life and leadership of the Presbyterian Church (USA). In the same meeting we voted to allow same-gender weddings to take place in our church facilities. And two months later we voted to publicly oppose Proposition 8.

**Netivot Shalom Synagogue
Berkeley, CA**

Congregation Netivot Shalom of Berkeley, CA, is a synagogue with upward of 350 households. We are part of the Conservative Movement of Judaism, with a national membership of over 750,000 people. We have gay couples who are members of our synagogue, equal in every way and celebrated as families. Since the Court's historic decision in May 2008, we have affirmed legally several times that which we have always affirmed spiritually: that the bonds of marriage are the right that all of us -- straight, bisexual and transgender -- share. We believe that equal marriage is a question of civil rights.

**Reverend Dr. Jane Adams Spahr
Retired Presbyterian Church (USA) Minister**

I honorably retired in 2007 from a 33-year-long career as a Presbyterian minister. I was ordained in 1974 in Pittsburgh, Pennsylvania, and soon moved to California to serve as the Assistant Pastor for the First Presbyterian Church in San Rafael. In 1980, I became the Executive Director of the Oakland Council of Presbyterian Churches. I later became the Minister of Pastoral Care for the Metropolitan Community Church in San Francisco, and, in 1982, with several others, I founded the Ministry of Light, which became the Spectrum Center for lesbian, gay, bisexual and transgender concerns. There I served as Executive Director for over ten years. This ministry has become the LGBT center in Marin County, where it continues to flourish. Throughout the 1990's, I traveled around the country, educating and informing Presbyterians and others working on behalf of greater inclusiveness for gay, lesbian, bisexual and transgender people. In 1992, the California State legislature honored me as one of the "Women of the Year" from Marin County. In 1999, I was one of three to receive the Women of Faith Award, a national honor bestowed by the Presbyterian Church (USA). I have also been inducted into the Marin Women's Hall of Fame.

Reverend Dr. John T. Norris
Pastor, Loomis Basin Congregational United Church of Christ
Loomis, CA

The Loomis Basin Congregational United Church of Christ is located at 6440 King Rd in Loomis, CA. The church has been serving the Loomis community, in Placer County, since 1895.

As Pastor, I was empowered by the church Council, equivalent to a Board of Directors, to speak on behalf of the church at its official meeting on Sunday January 11, 2009. The vote was unanimous for the church to submit this statement. The church is an Open and Affirming Congregation of the United Church of Christ, and has been even before I became its pastor in January 2008. Before the November 2008 election, we proudly displayed our "No On 8" signs on church property.

Our church performed four same-sex marriages at our church in 2008 before Election Day, and all were duly registered with Placer County. We find it offensive, unjust and a violation of basic human rights that our church members, whose marriages we consider to be totally valid church-sanctioned marriages, will be denied the civil rights of a married couple.

Reverend Dr. Glenda Hope
Presbyterian Church (USA) Clergy
Executive Director
San Francisco Network Ministries

San Francisco Network Ministries has served the people of the Tenderloin District, a poverty ghetto, for over 36 years. We have had many

ministries in that time ranging from house churches to memorial services for people who die on the streets to construction of an apartment building for low income families. For 11 years, the staff of Network Ministries acted as the pastoral team for a Presbyterian church, and during that time, the congregation declared itself a Sanctuary Church (protecting refugees from El Salvador and Nicaragua), a senior citizen advocate building a strong Senior Center and a More Light church which welcomed all people and ordained people as elders and deacons regardless of gender, sexual orientation, or racial/ethnic group. It was and still is a genuinely inclusive church.

Rabbi David J. Cooper
Kehilla Community Synagogue
Piedmont, CA

Kehilla Community Synagogue celebrates its 25th anniversary in 2009. It was established in 1984 with the express mission of being an inclusive Jewish congregation. During the 1970's a few specifically gay/lesbian synagogues had been established to create a "safe" congregational place for LGBT people. Kehilla however, was established by a mixed group of heterosexuals and others with one of the synagogue's purposes to be a safe space for everyone regardless of their sexual preference. Today, the synagogue membership is a lively and healthy mixture of heterosexual and LGBT individuals and family heads. Our spiritual leadership is a mix of straight, gay/lesbian, and bi-sexual leaders.

Kehilla has received awards from the weekly Jewish magazine of Northern California for outstanding High Holyday services and our Social Action programming. We are an active participating congregation in the social action work of Oakland Community Organizations working in alliance with a multi-ethnic mix of churches and synagogues in the East Bay.

Since the time of our inception, Kehilla's spiritual leadership has officiated the weddings and commitment ceremonies of same-gender couples. We also have officiated a divorce ceremony between a lesbian couple married in our congregation. This reflects the sense that even though their marriage was not recognized by the State of California at the time, the couple and the congregation regarded their union as so religiously sacred that it required a sanctified act in order to dissolve it.

Reverend Laura Rose
Senior Pastor, First Congregational Church
Alameda, CA

I am the senior pastor of the First Congregational Church in Alameda, a United Church of Christ congregation with 125 members. We have many outreach ministries including work with our local food bank, our local domestic violence shelter, and we participate in regular letter writing to our legislators on issues such as debt relief and hunger. We have also actively worked against the passage of Proposition 8 by hanging a "No On 8" banner on our church building, working with our local news media and participating in a protest at Alameda City Hall. Our work on Marriage

Equality is in keeping with our history as a church community that advocated for the rights of African American people during the Civil Rights movement. In addition, our church has a history of welcoming groups that others would not welcome, including Chinese and Japanese people during periods of history when these groups were suffering extreme prejudice.

**Reverend Janet McCune Edwards, Ph.D.
Parish Associate, Community of Reconciliation Church
Pittsburgh, PA**

I have served in the Pittsburgh Presbytery of the Presbyterian Church (U.S.A.), since I was ordained in 1977. My ministry has included serving three churches as pastor and the past 20 years as a member and Parish Associate at the Community of Reconciliation in Pittsburgh. During this service I earned a Doctor of Philosophy degree from Duquesne University in the area of formative spirituality. The Community of Reconciliation was founded in 1968 in the crucible of social upheaval related to race and war as an intentionally interracial and ecumenical congregation. As women and gay, lesbian, bisexual and transgender (GLBT) people opened our eyes to prejudice against them, the Community of Reconciliation (COR) has spoken out for equal inclusion in church and society for these marginalized persons. COR belongs to the welcoming and affirming groups in the PCUSA, the American Baptist Association, the Christian Church (Disciples of Christ), the United Methodist Church and

the United Church of Christ. It is a congregation with full standing in all five of these denominations.

**Reverend Kathryn M. Schreiber
United Church of Christ
Hayward, CA**

I am an ordained United Church of Christ (UCC) minister who serves as a full-time solo pastor at the United Church of Hayward, a UCC congregation which will turn fifty later this year. I've served in this position a little more than eight years, previously served a UCC church in Oregon and have worked, as a consultant, with congregations in a number of Protestant denominations, as well as one Catholic community and one Buddhist community addressing internal conflicts, most related to sexual misconduct by clergy or lay-leaders. I currently serve on the Northern California-Nevada Conference of the UCC's Multi-Racial, Multi-Cultural Transformation Team, am a founding member of the conference's Human Rights for the Philippines task force and am locally involved in ecumenical and interfaith groups, most especially South Hayward Parish and protection of sites sacred to the Ohlone, Miwok and Yokuts peoples.

**Reverend Susan A. Meeter, Pastor
Mira Vista United Church of Christ
El Cerrito, CA**

On Easter Sunday, 1950, 70 charter members joined the newly formed Mira Vista Congregational Church (soon to become the United Church of Christ). Since inception, this congregation has been organized

around spiritual development and social justice, both in its own families and in relationship with its wider communities. In 1967 the church founded, with other faith communities, the Greater Richmond Interfaith Program (GRIP) to address racial and economic injustice in Contra Costa County. We are active in ministries of social justice through GRIP to this day, including a 365-day meal and family shelter and resource center. In 1974 Mira Vista founded the Rape Crisis Center, holding the first-response training for police officers in our church. More recently we have funded a variety of projects including a community garden of healing at The Latina Center, which supports women and their families who have been impacted by domestic violence. We have traveled twice to New Orleans to support families there in returning to their homes. We support LGBT youth and their families. Over the decades, the church has been active in supporting equality and justice all the way from our local schools to our State government in Sacramento.

**Nancy McKay
United Church of Christ
Berkeley, CA**

I am an ordained minister in the United Church of Christ since 1981. I have served as a parish pastor, a retreat leader, and a spiritual director. As a spiritual director I have listened to over 20 stories of lesbian women condemned by their churches, who still desired to worship and serve God. Carefully we have separated out the emotional and spiritual issues and

have sought God's healing and blessing. It has been my joy to witness their renewals of faith and to affirm these women as children of God just as they are.

**Rabbi Menachem Creditor
Congregation Netivot Shalom
Berkeley, CA**

I am the spiritual leader of Congregation Netivot Shalom in Berkeley, CA, a 350-family congregation in the tradition of Conservative Judaism, a national denomination which includes over 750,000 adherents. I am a Rabbi affiliated with the Conservative Movement of Judaism. This movement only two years ago affirmed the equality of Gay, Lesbian, Bisexual and Transgender Jews as religious leaders and as families. I am proud to have served as one of the founders of Keshet Rabbis: The Alliance of Gay-Friendly Conservative Rabbis, who lobbied successfully within the Conservative Movement to recognize the sanctity of every human being, regardless of sexual orientation.

**Reverend Dr. Paul Tellstrom
Irvine United Congregational Church
Irvine, CA**

The Irvine United Congregational Church in Irvine, California, is a member of the United Church of Christ, which inherits the title of being the oldest church in New England, and one of the longest standing churches in the United States through our predecessor denomination, the Congregational Churches. Historically, we were known as the abolitionist

church, taking an early stand against slavery. Ours is a tradition that rose out of the Age of Reason, and views the Bible as a sacred text to be taken seriously, but not literally. Else, we could not have stood against slavery, which is biblically sanctioned.

We were the first church to ordain a woman pastor, despite the words of the Apostle Paul, spoken in his historic own context, which are often used today to remove women's power. In 1972, our denomination ordained the first gay pastor, and on July 4, 2005, our denomination voted to stand for Marriage Equality.

**Covenant Network of Presbyterians
San Francisco, CA**

The Covenant Network of Presbyterians is a national group of clergy, theologians, and lay leaders, working to make both the church and society more welcoming to gay and lesbian members. With 400 member congregations and more than 4,000 donors we are a large and influential progressive advocacy group serving the Presbyterian Church (USA). Our boards of directors and advisors include pastors of large and small churches, seminary presidents, and more than half of all the living former Moderators of the Presbyterian Church (USA). Five of these former Moderators on our board are ministers living in California.

More Light Presbyterians
Michael J. Adee, M.Div., Ph.D.,
Executive Director & Field Organizer

More Light Presbyterians is a national non-profit 501(c)(3) religious educational organization chartered in the State of California. More Light Presbyterians is affiliated with the Presbyterian Church (USA). There are 50 Presbyterian churches affiliated with our network in the State of California. As the Executive Director of More Light Presbyterians, I respectfully submit this statement of interest regarding the impact and harm that Proposition 8 will have on thousands of Presbyterians and their families in the State of California. I am also an ordained Elder in the Presbyterian Church (USA) having served churches in Ohio and New Mexico. I work with hundreds of Presbyterian churches and San Francisco Theological Seminary, San Anselmo in California.

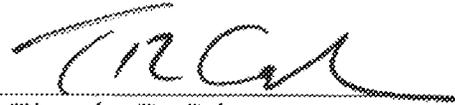
More Light Presbyterians has been working to end discrimination against lesbian, gay, bisexual and transgender people and their families in the Presbyterian Church (USA) and in civil society since 1974. During these 35 years, significant progress has been made toward the understanding that persons do not choose their sexual orientation, that discrimination in civil society is wrong, and that Presbyterian pastors should be permitted to offer blessings of same-sex couples.

For all of the reasons stated above, *amici* respectfully request that the Court accept the accompanying brief of *Amicus Curiae* for filing in this case.

Dated: January 15, 2009

Respectfully submitted,
TOWNSEND AND TOWNSEND AND
CREW LLP

By:

A handwritten signature in black ink, appearing to read 'TRC', written over a horizontal line.

Timothy R. Cahn
Counsel for *Amici Curiae*

BRIEF OF AMICI CURIAE
SUMMARY OF ARGUMENT

Amici agree with and fully join in the arguments advanced by Petitioners and others that Proposition 8 dramatically alters our Constitution's underlying principles, changes the nature of our basic governmental plan, and thus is an invalid revision to the Constitution under Article XVIII. *Amici* write separately to emphasize the far-reaching impact that Proposition 8 has on the religious liberties heretofore guaranteed by the Constitution and on the core constitutional principles that mandate government neutrality in religious matters.

Proposition 8 forces upon *amici* clergy a constitutionally impermissible dilemma: either discriminate against same-gender couples in *amici*'s solemnization of California marriages (and violate their consciences and faith) or cease altogether to solemnize marriages as part of *amici*'s religious services. There is no valid, nondiscriminatory governmental interest that can justify such a profound imposition on the religious practices of *amici* and their parishioners and, thus, under this Court's long-established jurisprudence it would not pass even the most minimal scrutiny under the Constitution's religion clauses. Proposition 8 also establishes a direct "preference" for religions that practice discrimination in marriage because only they may continue to solemnize

marriages according to the dictates of their faith without interference from the State.

In *Perez v. Sharp*, (1948) 32 Cal. 2d 711, the landmark ruling striking down laws against inter-racial marriage, this Court explicitly recognized the dangers to religious liberty posed by discriminatory marriage laws. Indeed, the petitioners in *Perez* had argued that the inter-racial marriage bans were unconstitutional because “they prohibit the free exercise of their religion and deny to them the right to participate fully in the sacraments of [the Catholic Church].” (*Id.* at p. 713.) While resting its holding on equal protection grounds, this Court also observed that, though laws serving a valid, nondiscriminatory purpose are not unconstitutional if they indirectly inhibit religious freedom, a “discriminatory” or “irrational” law that burdens religious practice, “unconstitutionally restricts . . . religious liberty.”¹ (*Id.* at pp. 713-14.) Like the inter-racial marriage bans, Proposition 8 unconstitutionally restricts fundamental religious freedoms for an invalid, discriminatory purpose.

If a majority of voters by initiative can compromise equal protection, fundamental rights, and the Constitution’s core guarantees of religious

¹ Indeed, one of the Court’s concurring justices would have struck down the miscegenation laws explicitly on free exercise grounds. See (*Perez*, 32 Cal. 2d at p. 740.) (Edmonds, J., concurring) (“The right to marry, therefore, is protected by the constitutional guarantee of religious freedom . . .”.)

neutrality and liberty, then the Constitution assures no freedom to practice religion or freedom from State religion. If Proposition 8 stands as a valid initiative, then all fundamental liberties including religious freedoms, as well as structural guarantees in the Constitution protecting against State interference with religion are at risk. Voters, for example, could abolish the judiciary's authority to protect religious freedom, vest executive State authority in a church official, ban marriages between persons of different races or faiths, set membership requirements for churches, or require Christian baptism as a condition of voting. Whether or not Proposition 8 is a valid initiative prompts fundamental questions about the structure and meaning of constitutional governance that, in fact, go beyond the issue of whether same-gender couples have a right to marry. *Amici* respectfully submit this brief to draw attention to the profound religious concerns prompted by the passage of Proposition 8.

A. PROPOSITION 8 COERCES CLERGY TO CARRY OUT STATE-SANCTIONED DISCRIMINATION AGAINST A VULNERABLE MINORITY'S ACCESS TO THE FUNDAMENTAL RIGHT TO MARRY.

Marriage is a civil status, conferring legal rights and responsibilities, and, for many Californians, a religious one as well. Though these two dimensions of marriage are distinct, as the civil code indeed recognizes,²

² See, e.g., (Fam. Code § 420c) ("No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.")

California's long practice of singling out religious leaders and deputizing them to solemnize marriages has, in the minds of many, contributed to the merging or blurring of marriage's civil and religious aspects. Studies suggest that the majority of marriages in California and nationally are performed in a religious setting even as the State and nation become ever more religiously diverse.³ For a great many Californians, getting married is closely identified with a church service officiated by a rabbi, priest, minister, or other cleric. Clergy, thus, by long practice and official legal sanction, stand in a unique position with respect to the State's marriage laws: when performing marriage services and attesting marriage licenses, they quite literally carry out the state function as its deputies and agents. Because California's marriage laws involve the church in state function and vice versa (perhaps uniquely so in the California code), courts must be

³ In 2004, only 40% of marriages nationally took place in non-religious, civil ceremonies. (Wolfson, *Why Marriage Matters: America, Equality, and Gay People's Right to Marry*, (2004) p. 111) Studies from 1970 to 1983 showed that nationally (with California reporting) more than two-thirds of weddings took place in religious settings. *See Remarriages and Subsequent Divorces, United States*, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Center for Health Statistics, January 1989, DDHS Publication No. (PHS) 89-1923, available at http://www.cdc.gov/nchs/data/series/sr_21/sr21_045.pdf. As of 1988, about 83% of first marriages performed in California were solemnized in religious settings. *Vital Statistics of the United States, 1988, Volume III, Marriage and Divorce*, U.S. Department of Health and Human Services, Public Health Service, National Center for Health Statistics, 1996, (PHS) 96-1103, available at http://www.cdc.gov/nchs/data/vsus/mgdv88_3.pdf

especially vigilant that the State, when imposing a discriminatory restriction that limits access to this fundamental right, not compromise religious liberty, nor the State's mandated neutrality in religious matters. Proposition 8 offends such liberty and neutrality.

Even from the inception of its earliest statutes, California had singled out religious leaders to solemnize marriages for the State. The current statute specifically authorizes any "priest, minister, rabbi, or authorized person of any religious denomination" to solemnize marriage. (Fam. Code § 400a.) Versions of this authorization appeared in the earliest California codes and have been periodically updated through the years.⁴ Although early American colonists originally objected to clergy solemnization of civil marriage, all fifty states eventually adopted the practice of deputizing clergy to perform this State function.⁵

⁴ In the 1880 version of the code, rabbis were not explicitly mentioned: "Marriage may be solemnized by [a] . . . priest, or minister of the gospel of any denomination." Cal. Civ. Code § 70.

⁵ In England, the solemnization of marriage was left largely to the Anglican clergy until the passage of Cromwell's Civil Marriage Act of 1653. (Howard, *A History of Matrimonial Institutions Chiefly in England and the United States: With An Introductory Analysis of the Literature and the Theories of Primitive Marriage and Family*, (1903) p. 408.) (hereafter, "*Matrimonial Institutions*"). The Act was seen as the result of the revolt of the Puritans and Protestant non-conformists who chafed at the quasi-sacramental character of marriage as conceived by the Anglican clergy. (*Id.* at p. 410.) The Puritans brought their antipathy towards religious marriage with them to the American colonies, and in the New England of the late 1600's, marriage was declared to be, not a sacrament, but a civil contract in which the intervention of a priest was unnecessary and out of

Solemnization is no mere empty ritual, but a necessary and integral part of how civil marriage is performed in California. See (Fam. Code § 300) (“Consent alone does not constitute marriage. Consent must be followed by the issuance of a license and solemnization as authorized by this division...”); see also (*Welch v. State of California*, (2000) 83 Cal. App. 4th 1374, 1378). The “priest, minister, rabbi, or authorized person of any religious denomination” who solemnizes a marriage must undertake to “be satisfied as to the correctness of the statement of facts” in the marriage license “before solemnizing the marriage,” and, indeed, is authorized to “administer oaths and examine the parties and the witnesses in the same manner as the county clerk does before issuing the license.” (Fam. Code § 421.) He or she must prepare a statement attesting to the solemnization of marriage, attach it to the marriage license, and return it to the county

place. (*Id.* at p. 127.) Early colonial laws required that all marriages were to be celebrated before a justice of the peace or some other magistrate, and sometimes declared null if performed in any other way. (*Id.* at p. 127-28.) As late as 1685, clergymen were prosecuted for performing marriages. However, the prejudice against ecclesiastical solemnization of marriage rights softened by the early 1700’s and by 1733, Rhode Island was the last of the New England colonies to enact a law permitting “settled and ordained ministers” of every denomination to perform marriages. (*Id.* at p. 138.) By 1889, “In every State and Territory in the United States a clergyman or minister . . . [was] authorized to solemnize marriage.” SNYDER, *THE GEOGRAPHY OF MARRIAGE: OR, LEGAL PERPLEXITIES OF WEDLOCK IN THE UNITED STATES* (1889).

recorder “within 10 days after the ceremony.” (Fam. Code §§ 422, 423); see also (§ 359d) (“[certificate of registry] shall be returned by the person solemnizing the marriage to the county recorder”). California law provides harsh penalties for solemnizing marriages without checking for a compliant license or for solemnizing marriages that are “forbidden by law.” (Pen. Code §§ 359, 360.)

Amici, as Christian and Jewish clergy who solemnize marriages pursuant to these California statutes, are uniquely impacted by Proposition 8’s discriminatory mandate. Though representing different strands of Christian and Jewish faith and many different congregations throughout California, *amici* clergy all are united in the firm conviction that the covenant of marriage must be available to same-gender couples equally. *Amici*, having married and/or blessed hundreds of same-gender couples in California, represent denominations that either allow religious marriages between same-gender persons or have substantial numbers of pastors urging such marriage rites for same-gender couples.⁶ *Amici*’s faith convictions around marriage equality run so deep that, indeed, some of them have struggled and suffered for marriage equality in their churches and denominations.⁷ Rev. Jane Spahr and Rev. Janet Edwards, for

⁶ See, *infra*, Appendix at pp. 33-36.

⁷ Indeed, the very controversies about marriage equality that have been coursing through California society as a whole, have been mirrored in

example, each were subject to ecclesiastical charges and trials in the Presbyterian Church (USA) for performing same-gender weddings and each, after a years'-long struggle, was cleared of charges. (Appendix, *infra*, at pp. 40, 47-48).

Even before this Court's historic recognition in *In Re Marriage Cases* that marriage is a fundamental right guaranteed to same-gender couples through the equal protection clause, many *amici* had performed religious blessings for same-gender couples who desired to marry under the law but could not, though these blessings were not the legal equivalent of marriages. *Amici*, thus, are very familiar with the stigma that attaches to couples who, though being able to receive a religious blessing akin to marriage, could not be married – indeed, the very stigma associated with a relationship of “lesser stature” in the eyes of society (and the Church) that this Court so eloquently diagnosed. *Amici's* considerable experience with same-gender religious blessings has shown that, in the church as well as in society, assigning a different status to same-sex couples and their families “impose[s] appreciable harm on same-sex couples and their children, because denying such couples access to the familiar and highly favored designation of marriage ... cast[s] doubt on whether the official family relationship of same-sex couples enjoys dignity equal to that of opposite-

the various Christian and Jewish denominations, among them the Episcopal Church of the USA, the United Methodist Church, the Presbyterian Church

sex couples.” (*In re Marriage Cases*, (2008) 43 Cal. 4th 757, 784.) As clergy who have been on the frontlines of the struggle for marriage equality in the churches, *amici* unanimously confirm this Court’s recognition of the profound practical and symbolic significance of equal marriage and that its significance goes beyond a matter of constitutional law but is rooted in, as this Court also observed, the “*basic civil or human right of all people.*” (43 Cal. 4th at p. 819, n.41) (emphasis in original). For *Amici*, it also is a matter of religious faith.

In the months following this Court’s decision and prior to the passage of Proposition 8, *amici* solemnized scores of marriages between same-gender couples. Rev. Dr. Jane Adams Spahr, for example, performed about thirty such marriages, many of them for couples for whom she previously performed religious blessings. *Amici*’s testimonies stand as a moving tribute to the meaning and power of joining these couples in the covenant of equal marriage, and as witnesses to what this Court properly described as the “considerable and undeniable *symbolic importance*” of the designation marriage. (*In re Marriage Cases*, at p. 845) (emphasis added). Conversely, *amici* know as well the clear and profound harm that would result to the couples if their marriages were negated.⁸

(U.S.A.), and many others.

⁸ From Rev. Schreiber: “As a pastor I’ve witnessed a lot of suffering created by Prop 8 –not just by couples who were married and now are uncertain about their legal fate as a couple. Rather, the greater wound ...

Proposition 8 re-institutes the former discrimination and carries it back into *amici*'s churches and congregations. *Amici*, and all other clergy and congregations in California, are compelled under Proposition 8 to discriminate against a vulnerable minority, gay and lesbian people, and block their access to a fundamental right, marriage—binding the consciences of countless clergy, congregations, and others. Under

has been the awareness that hatred was rewarded by our legal system.” Appendix, *infra*, at pp. 53-54. From Rev. Spahr: “In the days following the election, I called every single one of the couples I had “re”-married following the Court’s May decision. Their anguish was extreme, and they asked me to help them understand. Do we as a society take their relationships seriously or don’t we? This is an issue of life and death, not only emotionally, but literally, since the State- and church-sanctioned exclusion of LGBT people is commonly interpreted as giving license to hurt, defame or kill.” Appendix, *infra*, at pp. 40-41. From Rabbi David Cooper: “All I can say is that the sadness and dismay at the passage of Proposition 8 was equal in their depth to the height of our joys on that wedding day.” Appendix, *infra*, at p. 45. From Rev. Laura Rose: “[I]t is critically important for the children of LGBT couples to have the experience of the community affirming the union of their parents. The primary harm that will be induced if Proposition 8 is not nullified is that we will be perpetuating a separate and unequal system of rights and privileges that negatively effects the economic, not to mention the psychological wellbeing of same-gender couples and families.” Appendix, *infra*, at p. 47. From Rabbi Cooper: “Our synagogue held a giant celebration for seven gay/lesbian couples during the summer of 2008. The combined years that these couples had been together exceeded a century. Several hundred people—mostly fellow congregants, and largely straight folks—attended the celebration. The couples’ children and grandchildren were in attendance. These children were beaming and proud that their parents’ or grandparents committed union would finally be recognized as a legal marriage by their society ... To retroactively invalidate that day is a devastating moment in the life of the entire community.” Appendix, *infra*, at pp. 44-45. From Rev. Meeter: “Upholding this unjust law will only legitimize and embolden those who hate and discriminate against us.” Appendix, *infra*, at p. 58.

Proposition 8, churches are required in their religious ceremonies to mirror the very discrimination that this Court determined violates fundamental civil, human, and constitutional rights – or to cease solemnizing marriage altogether, a choice that no constitutional analysis can justify given the lack of any legitimate secular justification for the discrimination. There can be no denying that grafting on to the Constitution a negation of marriage equality not only causes serious harm by stigmatizing same-gender couples in their communities and congregations, it also harms *amici* by co-opting them in State-sanctioned discrimination.

B. PROPOSITION 8 ESTABLISHES A PREFERENCE FOR RELIGIONS THAT PRACTICE DISCRIMINATION IN MARRIAGE AND ABROGATES THE STATE’S MANDATED NEUTRALITY IN MATTERS OF RELIGION.

Same-gender couples and the clergy who would bless their marriages according to religious traditions are not the only victims of Proposition 8’s discriminatory mandate. Proposition 8 threatens the Constitution itself, by undermining its standing, not only as the guarantor of fundamental rights and equality, but also as the foundational State covenant ensuring religious liberty and protecting against pernicious State intrusion into religious matters. With disarmingly secular language, Proposition 8 introduces a stranger into the Constitution: a State-mandated preference for particular religious groups’ eligibility rules for marriage. This change to the Constitution would be a fundamental departure from this Court’s core

understanding of religious neutrality and would open the door to removing the constitutional structures that thwart government establishment of State religion. See (*Sands v. Morongo Unified Sch. Dist.*, (1991) 53 Cal. 3d 863); *Fox v. City of Los Angeles*, (1978) 22 Cal. 3d 792); see also (*Feminist Women's Health Center, Inc. v. Philibosian*, (1984) 157 Cal.App.3d 1076.) If a popular majority can impose onto the Constitution eligibility rules for marriage preferred by certain religious groups and thereby remove basic rights from a vulnerable minority, then all persons who practice a minority faith or those who practice no faith are ultimately unprotected from State religious compulsion of any kind.

Under the California Constitution as drafted and as heretofore interpreted, such a threat would have been unthinkable. The Constitution's three religion clauses starkly define the contours of the State's permissible involvement with religion. Viewed together, these provisions make clear that the framers of the Constitution believed the State should maintain a stance of strict religious neutrality. The first provision, in language virtually identical to the First Amendment's establishment clause, lays out the most fundamental principle of neutrality, that the "Legislature shall make no law respecting an establishment of religion." (Cal. Const., art. I, § 4.) The second provision, in emphatic language having no counterpart in the federal charter, further defines the framers' desire for religious neutrality by expressly limiting the State's involvement in the financing of

religious organizations.⁹ However, it is the third of these provisions, the guarantee of “[f]ree exercise and enjoyment of religion *without discrimination or preference*,” (Cal. Const., art. I, § 4) (emphasis added), that makes California’s stance of religious neutrality unique and stronger than the federal guarantee. Indeed, as is oft-quoted, “[i]t would be difficult to imagine a more sweeping statement of the principle of government impartiality in the field of religion’ than that found in the ‘no preference’ clause.” (*Sands*, 53 Cal. 3d at p. 883) quoting 25 Ops. Cal. Atty. Gen. 316, 319 (1955). Taken together, these religion clauses are even “more protective of the principle of separation than the federal guarantee.” *Id.*, citing (*Fax v. City of Los Angeles*, 22 Cal. 3d 792).

The “no preference” clause prohibits the State from enacting laws that create even the *appearance* of a preference, as was recognized by this Court in (*Sands v. Morongo Unified Sch. Dist.*, (1991) 53 Cal. 3d 863). In

⁹ “Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever.”

(Cal. Const., art. XVI, § 5.) This section “prohibits not only material aid to religion, but *any* official involvement that promotes religion.” (*Sands*, 53 Cal. 3d at p. 883.)

Sands, the Court addressed whether religious invocations and benedictions at public high school graduation ceremonies were constitutionally permissible. The Court held the practice to violate the “no preference” clause of the California Constitution because “when the government sponsors prayers at public school ceremonies it *appears* to take positions on religious questions.” (*Id.* at p. 883) (emphasis added). In so holding, this Court recognized the importance of religious neutrality:

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*. In a world frequently torn by religious factionalism and the violence tragically associated with political division along religious lines, our nation’s position of governmental neutrality on religious matters stands as an illuminating example of the true meaning of freedom and tolerance.

(*Id.* at pp. 883-84) (emphasis added). See also 22 Cal.3d 792 (1978)

(annual display of lighted cross by city creates appearance of preference);

(*Feminist Women’s Health Center*, (1984) 157 Cal.App.3d 1076)

(government-sponsored religious burial rites creates appearance of preference).

California, thus, may not appear to prefer a denomination or a sectarian belief, even when the beliefs at issue do not strike at the heart of fundamental rights and equal protection as they do here. In light of the core constitutional right to marry and guarantee of equal protection, it is all the more critical here that the State not take sides in a controversy that is

informed by religious belief and tradition and that directly impacts clergy's religious ministries. California "must commit" itself "to 'a position of neutrality' whenever 'the relationship between man and religion' is affected." (*Fox*, 22 Cal. 3d at p. 798,) quoting (*Abington School Dist. v. Schempp*, (1963) 374 U.S. 203, 226).

Proposition 8 establishes an impermissible religious preference in various ways. It directly and selectively benefits those religious groups and denominations whose rules for marriage exclude same-gender couples. Only such groups could solemnize marriages consistently with their religious traditions *without interference from the State*. The churches and denominations represented by *amici* -- those "not preferred" under Proposition 8 -- on the other hand, would be compelled either to give up the important ritual of solemnizing marriages as part of a religious service altogether, or change their religious practices to exclude same-gender couples from equal marriage services. Proposition 8's clear preference for denominations that discriminate in solemnizing marriage represents a fundamental departure from core underlying constitutional principles.

Moreover, not only does Proposition 8 prefer certain religious groups in practice, it affirmatively writes into the Constitution these preferred groups' discriminatory eligibility rules about marriage, furthering the religious views that many such groups advocated publicly when supporting passage of Proposition 8 without any valid, religiously neutral

secular justification.¹⁰ Proposition 8 appears to endorse a discriminatory restriction on access to civil marriage based in part on religious preferences about what is “traditional” or “natural.” Indeed, advocates for different-gender-only marriage have been at great pains to articulate any coherent, rational justification for their positions that did not rely substantially on discriminatory “tradition,” religious and otherwise. Moreover, as demonstrated by *amici*’s statements, many congregations and denominations for years have been caught up in vigorous religious debates and struggles over the proper rules of marriage. With the passage of Proposition 8, the State impermissibly has been forced to take sides in this controversy and to prefer a narrow, discriminatory definition of marriage

¹⁰ (Wildermuth, *Out-of State Money Floods to Prop 8*, San Francisco Chronicle (July 28, 2008) p. B-1); Kuruvila, *Conservative Christians Lead Push for Prop 8*, San Francisco Chronicle (October 15, 2008) p. A-1); (Catholic Bishops Endorse Calif. Gay Marriage Ban, San Francisco Chronicle (August 4, 2008). Religious groups, as well as all others, of course are free to be actively involved in the political process, and democracy flourishes when religious groups are vocal in advocating policy. Indeed, many *amici* are politically active out of religious convictions. That many groups were vocal in favoring Proposition 8 does not render it constitutionally invalid. Rather, it is *what Proposition 8 aims to do* (not the reasons some favored it) that so offends fundamental rights, equal protection, and religious neutrality guaranteed by the Constitution. *Amici* of course do not contend that Proposition 8 establishes a religious preference merely because it happens to coincide with or harmonize with the tenets of some religions. Here, however, there are no valid secular justifications for the law, and Proposition 8 directly regulates a sphere, the performance of marriages, where the State and religious agents are profoundly entwined.

over the equality compelled by the California Constitution, with no secular justification for doing so.

Ordained clergy, and other religious leaders, by performing marriage services and attesting marriage licenses under California law, quite literally carry out functions as the State's deputies and agents. Religious neutrality in this context requires that the State keep marriage free and consistent with the full expression of the Constitution's equal protection clause. A necessary application of core constitutional neutrality means allowing the equal protection clause — not a simple majority of voters — to draw the boundaries of marriage rights. Though religious groups of course may choose to solemnize only those marriages that meet their religious criteria, the State itself must not favor one group's rules over another's without a valid, secular justification. No such justification for Proposition 8 exists. As this Court aptly observed, allowing same-gender couples to marry does “not impinge upon the religious freedom of any religious organization, official, or any other person; no religion will be required to change its religious policies or practices with regard to same-sex couples, and no religious officiant will be required to solemnize a marriage in contravention of his or her religious beliefs.” (*In re Marriage Cases*, 43 Cal. 4th at pp. 854-55.)

C. PROPOSITION 8 BURDENS THE FREE EXERCISE OF RELIGION WITH AN INVALID AND DISCRIMINATORY PURPOSE.

Prior to the passage of Proposition 8, *amici* and other clergy solemnized marriages between same-gender couples as part of a religious service; after Proposition 8, they no longer can do so lawfully. Criminal laws proscribing the solemnizing of “unlawful marriages” stand ready to compel compliance and assure religious conformity.

Proposition 8, thus, is no “valid and neutral law of general applicability” with only an “incidental” or “indirect” impact on religion. To the contrary, an important purpose of Proposition 8 – and its intended, direct impact – is to force clergy and other State agents of marriage to cease solemnizing marriages between same-gender couples. Moreover, Proposition 8 does not satisfy even the most minimal, rational scrutiny under core constitutional analysis¹¹ because of its explicitly discriminatory purpose – to deny a vulnerable group defined by a suspect classification access to a fundamental right. This Court’s free-exercise jurisprudence clearly instructs that religious belief provides no exemption from valid, neutral laws of general applicability that were passed to *redress*

¹¹ This Court twice recently has deferred the question of what level of scrutiny should be applied under California’s free exercise clause to valid and neutral laws of general applicability. See (*North Coast Women’s Care Medical Group, Inc. v. Benitez*, (2008) 44 Cal. 4th 1145, 1158.; *Catholic Charities of Sacramento, Inc. v. Dep’t Managed Health Care*, (2004) 32 Cal. 4th 527, 562.)

discrimination. (*North Coast Women's Care Medical Group, Inc. v. Benitez*, (2008) 44 Cal. 4th 1145, 1158) (rejecting free exercise challenge in favor of applying anti-discrimination legislation to a lesbian patient's access to equal medical services); (*Smith v. Fair Employment and Housing Commission*, (1996) 12 Cal. 4th 1143, 1177-78) (rejecting free exercise challenge in favor of nondiscrimination in housing). Laws such as Proposition 8 that are designed to *require* discrimination and also burden religious practices, conversely, raise serious free exercise concerns.

The principle that religious liberties may not be impinged by laws that either do not serve a "valid" purpose or, worse yet, that advance a discriminatory one was recognized by this Court in (*Perez v. Sharp*, (1948) 32 Cal. 2d 711), the case that struck laws prohibiting inter-racial marriage, and that provided significant authority for this Court's *In re Marriage Cases* decision. In *Perez*, an interracial couple attacked California's statutes outlawing their marriage as "unconstitutional on the grounds that they prohibited the free exercise of their religion" within their own Roman Catholic Church which, as they pointed out, "has no rule forbidding marriages between Negroes and Caucasians." (*Perez*, 32 Cal. 2d at p. 713.) Holding the law to be unconstitutional, the Court reasoned that "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, it is valid regardless of its incidental effect upon the conduct of particular religious

groups." (*Perez*, 32 Cal. 2d at p. 713.) However, the Court noted that "If, on the other hand, *the law is discriminatory and irrational, it unconstitutionality restricts not only religious liberty but the liberty to marry as well.*" (*Id.* at pp. 713-14) (emphasis added). Finally, in words that should resound here, the Court held: "Legislation infringing such rights must be based upon more than prejudice and must be free from oppressive discrimination to comply with the constitutional requirements of due process and equal protection of the laws." *Perez*, 32 Cal. 2d at p. 715 (emphasis added). The State can no more force ministers to discriminate in solemnizing marriages than it can force religious institutions to discriminate in hiring their employees or in attending to their other quasi-secular functions.

Here, Proposition 8's violation of *amici's* religious liberties coincides precisely with the proposition's discriminatory intent and objective and, thus, the law not only violates equal protection, but unconstitutionally restricts religious liberty too.¹² Because Proposition 8 prohibits *amici's* practice of solemnizing same-gender marriages according to their faith, and does so in the service of stark discrimination, it offends the Constitution's core underlying principles guaranteeing religious liberty

¹² This principle is akin to the "hybrid rights" theory in free exercise jurisprudence, in which "neutral" laws receives greater scrutiny when, in addition to burdening free exercise of religion, they also implicate other

and cannot stand as a valid initiative. A majority of voters can no more render faith practices unlawful in the service of discrimination without working a dramatic change to our Constitution's underlying principles than it could abolish a particular religion altogether.

Dated: January 15, 2009

Respectfully submitted,

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CREW LLP

By:



Timothy R. Cahn
Counsel for *Amici Curiae*

constitutional rights. See (*Benitez*, 44 Cal. 4th at pp. 1156-57) (noting, but not deciding, the viability of the hybrid rights approach).

APPENDIX: PERSONAL STATEMENTS OF *AMICI CURIAE*

Reverend Dr. Frank M. Alton
Pastor, Immanuel Presbyterian Church
Los Angeles, CA

One couple in our church (one of them an ordained elder), whose blessing ceremony I had officiated a few years earlier, was married last June. Their wedding took place the day before their baby was born. They were attempting to provide some security for their child and some peace of mind for themselves as parents. The California law changed just in time for them and their baby. To have that marriage annulled because of an unconstitutional change in the law would remove those two legitimate benefits to that family.

With the passage of Proposition 8 our church is being legally forced to discriminate against same-gender couples in our congregation and community who wish to solemnize their relationships. The Supreme Court's decision last May did not force any religious body to perform wedding ceremonies for same-gender couples. Proposition 8, on the other hand, enlists clergy in State-sanctioned discrimination against certain members of our communities who merely seek to participate in one of the basic privileges of human societies. That position is not consistent with the American and Christian value of freedom. We speak in opposition to Proposition 8, and any retroactive effect it might have.

**Netivot Shalom Synagogue
Berkeley, CA**

As Rabbi Steve Greenberg, Senior Teaching Fellow at the National Jewish Center for Learning and Leadership, has written, "Marriage is not a natural institution. Marriage is an institution structured by societies. All marriages are according to the laws of some communal body that honors them. They are a feature of civilization, not nature. Marking homosexual marriage as contrary to some natural laws is reminiscent of the justifications put forward in the U.S. for laws prohibiting interracial marriage." The very concept of marriage has, in Jewish history alone, included multiple wives and concubines. Greenberg continues, "Families are always a subset of the society of which they are a part. Marriage, likewise, is conditioned by the values and sensibilities of the social context. As society has come to understand the essential unchosen nature of same-sex desire, the offering of new forms of matrimony that support such couples would seem consonant with a contemporary sense of justice and social responsibility." The commitments of many area rabbis and synagogues to Equal Marriage demonstrate our community's core values.

According to COLAGE, a national movement of children, youth and adults with one or more lesbian, gay, bisexual, transgender, and/or queer parent, "While research shows that there are no significant developmental differences or negative effects on children of LGBT parents, these youth do

report facing significantly more prejudice and discrimination because societal homophobia and transphobia." Congregation Netivot Shalom is committed, as a congregation, to our children's health. Being prohibited from marriage is a judgment against an LGBT person's worthiness. There is no equal counterpart within the law. A child whose parents are deemed unfit for marriage by the State is a victim of injustice.

Marriage is an assumption of mutual responsibilities. It is surely in the interest of society to support such unions that glue us all together by the force of loving and legal commitments. Congregation Netivot Shalom is a proud part of the State of California. We view this matter as a civil right and we advocate with both a social and a spiritual conviction for Equal Marriage within our State's law.

Reverend Dr. Jane Adams Spahr
Retired Presbyterian Church (USA) Minister

I believe that the yearning for God is a yearning for inclusion, to be recognized as good. The Bible instructs us to measure our virtue by how we treat the widow, the orphan and the stranger. (To this, I always add, "whoever is considered strange at the time".) Jesus is quoted as saying, "Whatsoever you do to the least of my brothers [and sisters], that you do unto me." I have devoted my life to promoting inclusion and salving the effects of its opposite. I have observed that exclusion, particularly when sanctioned by a church or government, promotes violence in the excluders

and self-hatred in the excluded. We lessen who God is and repudiate our vast human potential to love by advancing a view of others as strangers to God and to ourselves.

Animated by these convictions, I began in the late 1970's to bless the unions of same-sex couples in my congregations. Over the past thirty years, I have married hundreds and hundreds of gay and lesbian men and women. I have witnessed the power of these ceremonies to heal people. They invite family members to embrace the child or sibling their churches have taught them to reject; they invite congregations to view all their members as equals; and they invite the married couple to enter the circle of those who belong, affirming that, yes, God loves you, too.

In 2004, I was charged by my local Presbytery for performing same-gender weddings. Following a four-year legal battle, in April 2008, I was cleared of censure by the General Assembly Permanent Judicial Commission, the Presbyterian's highest court. One month after my exoneration, this Court decided the *In re Marriages* case. This Court was absolutely correct when it observed in that decision that "denying [same-sex] couples access to the familiar and highly favored designation of marriage is likely to cast doubt on whether the official family relationship of same-sex couples enjoys dignity equal to that of opposite-sex couples."

In the months after this Court published these words, I presided over the marriages of nearly thirty same-sex couples including some whose

unions I had already blessed, in one case, twenty-five years earlier. All of these couples reported to me that being “married” felt different to them from being in a civil domestic partnership, albeit blessed, and that their marriage was a cause of great pride and excitement for their children and families. For me, it felt like the culmination of a life’s labor to be able to pronounce these couples married, “by the power vested in me by the State of California...”

Conversely, the passage of Proposition 8 on November 4 has devastated these families. In the days following the election, I called every single one of the couples I had “re”-married following the Court’s May decision. Their anguish was extreme, and they asked me to help them understand. Do we as a society take their relationships seriously or don’t we? I do not wish to help them understand what it is in human nature that tempts us to exclude.

Instead, I am sponsoring this brief to help the Court understand what is at stake in this case. This is an issue of life and death, not only emotionally, but literally, since the State- and church-sanctioned exclusion of LGBT people is commonly interpreted as giving license to hurt, defame or kill. Churches and States do not merely reflect society’s attitudes. They shape those attitudes. This Court must move forward to secure the equality and dignity of same-sex couples and their families. As history has proven time and again, society will follow.

Proposition 8 would establish a preference for religions that exclude same-sex couples from marrying. Its impact on the Constitution's core religion clauses would be fundamental and profound. Proposition 8 would enlist me as a person deputized by law to solemnize marriages, to mete out State-sanctioned discrimination against same-sex couples who seek the blessings of this fundamental right and rite. This I cannot do. It is against God, it is against my conscience, and it is unjust.

**Reverend Dr. Glenda Hope
Presbyterian Church (USA) Clergy
Executive Director
San Francisco Network Ministries**

In August, 2008, I performed the wedding of a man who had been a leader in the congregation and his devoted partner of 22 years. People came from across the United States for the beautiful ceremony and reception. All members of the families of both men were present. Jamie's mother has been a leader in Parents and Friends of Lesbians and Gays for decades. Ray's family, Roman Catholics, were tearful in their delight that their "son was married in a church." Everyone present stood and cheered in unbridled joy when I declared "We are all witnesses that Jamie and Ray are truly and lawfully married." These two fine men are widely loved and respected and I was truly honored to perform this ceremony. Subsequently, I performed other same sex marriages, one uniting in wedlock my medical doctor and her partner of 23 years.

It is time that this country and my own denomination cease to block the marriages of people who love each other, have made a commitment to be married to each other, and who desire only what heterosexuals desire, to wit, the legal rights conferred by marriage and the unquestioning respect of church and society for their married state.

Rabbi David J. Cooper
Kehilla Community Synagogue
Piedmont, CA

Kehilla is a member of Aleph: The Alliance for Jewish Renewal, and its rabbis are members of Ohalah, Association of Rabbis for Jewish Renewal. Our rabbinical association affirms the resolution by Aleph that holds:

We welcome and recognize the sanctity of every individual regardless of sexual orientation or gender identity. We recognize respectful and mutual expressions of adult human sexuality as potentially sacred expressions of love and therefore we strive to welcome a variety of constellations of intimate relationships and family forms including gay, lesbian, and heterosexual relationships as well as people choosing to be single.

The majority of rabbis in Ohalah are willing to perform same-sex weddings. Some still follow more traditional halakhists in not performing these weddings. It is not a requirement of membership in Ohalah to be willing to be an officiant at a same-gender wedding.

However, it is important to note the following: if same-sex marriages are allowed, those rabbis who choose not to officiate will

continue to have freedom to do refrain from doing so, and I would be free to officiate weddings between couples I judge to be compatible (regardless of gender) and confer legal sanction upon their marriages. If however the State discriminates by precluding same-gender couples from the civil right to be married, the situation remains unchanged for rabbis who will not officiate, but I, on the other hand, will be precluded from officiating a State sanctioned relationship where my religious conscience tells me that I should be able to do so.

I have officiated the weddings of approximately 20 same-gender couples. In fact, I was an officiant at the wedding of two of the plaintiffs in the Massachusetts case that established that gays and lesbians also had the civil right to be married. In the days I officiated these weddings before they had State sanction, the sense we had was that we were doing something subversive, and we also felt that it was something that was only recognized and honored in a small circle of friends – and also in the eyes of God. But when I officiate a State-sanctioned ceremony, the feeling is more expansive. There is a sense that we are participating in one of society's treasured moments. That there are some who would not recognize the religious validity of the relationship does not diminish the sense of participating in something greater than ourselves. So in a sense, the deprivation of State sanction actually has the effect of diminishing the spiritual grandeur of the moment.

This point was driven home as I officiated a lesbian wedding on the Sunday before Election Day this year. As I said the words “By the power vested in me by the State of California...” I started to weep slightly and had problems finishing the sentence because I so much did not want this to be the last time that I would say these words at a same-gender wedding.

Our synagogue held a grand celebration for seven gay/lesbian couples during the summer of 2008. The combined years that these couples had been together exceeded a century. Several hundred people—mostly fellow congregants, and largely straight folks—attended the celebration. The couples’ children and grandchildren were in attendance. These children were beaming and proud that their parents’ or grandparents committed union would finally be recognized as a legal marriage by their society. All I can say is that the sadness and dismay at the passage of Proposition 8 was equal in their depth to the height of our joys on that wedding day. To retroactively invalidate that day is a devastating moment in the life of the entire community.

Reverend Laura Rose
Senior Pastor, First Congregational Church
Alameda, CA

I believe that the State should allow same-gender marriage because it is a fundamental human right for two consenting adults who desire to commit themselves to one another and to share in the responsibilities and

legal benefits of this commitment. I believe that if we call ourselves “Christians” this means that we must be committed to being as loving and just as Jesus himself was. Love in its extreme necessitates that we work for justice so that what we desire for ourselves, we also desire for our neighbor. The whole of Jesus’ ministry was an outreach to all who were pushed to the margins by the religious and political establishment of the day. Jesus was a devout Jew, whose purpose was to initiate a renewal movement that placed value on compassion and equality over a rigid legal code, defended by religious texts, with the sole purpose of keeping in place an unequal status system where certain groups of people were disparaged and treated unequally by the community. I am happy to say that the United Church of Christ voted as a denomination to affirm Marriage Equality at its General Synod in 2005.

In our congregation we have many types of families and individuals. We have LGBT singles and couples, some with children. We also have several families with adopted children, some multi-racial. We have many different-gender couples who have become members of our church because they want their children to grow up experiencing diversity as “just the way things are”. The beauty of this is that when we had same-gender ceremonies at our church this past summer, our children had the opportunity to celebrate these unions and witness the love of two people for one another. One young child in our congregation spent hours sculpting

two colorful hearts to give to one of our same-gender couples getting married and beamed with pride when her present was worn by each member of the couple on the day after their wedding when they baptized their child. At one of our ceremonies this summer, we had many members of our local community who are not churchgoing. The response of experiencing a same-gender marriage within a church did more to heal the wounds of exclusive religion as well as galvanize folks to talk to friends and neighbors about voting against Proposition 8. For the couples themselves, both already together for ten years, having the community witness and affirm their commitment was life transforming. In addition to officiating at ceremonies inside the church walls, I also officiated at a ceremony for a couple at a local cultural center. Many members of the community spoke to me afterward about how powerful it was to have this legal ceremony also be one in which the sacred could be honored. In addition, it is critically important for the children of LGBT couples to have the experience of the community affirming the union of their parents.

The primary harm that will be induced if Proposition 8 is not nullified is that we will be perpetuating a separate and unequal system of rights and privileges that negatively affects the economic, not to mention the psychological wellbeing of same-gender couples and families. In addition, the fact that Proposition 8 supporters have legitimated injustice by

using the bible and the Christian faith offends me deeply as a minister of the gospel, “the good news,” of Jesus Christ.

Reverend Janet McCune Edwards, Ph.D.
Parish Associate, Community of Reconciliation Church
Pittsburgh, PA

On June 25, 2005, I was honored to preside at the marriage of Nancy McConn and Brenda Cole and my name was included in the wedding announcement placed in the local paper. This publicity led to two disciplinary trials arising from charges in the PCUSA that officiating at this wedding was a violation of Scripture and the Constitution of the church. The first trial ended in dismissal based on late filing of the charges. The second trial ended in acquittal of all charges, which joined two other acquittals of defendants charged with violating PCUSA law by officiating at same-gender marriages. The PCUSA jurisdiction reaches beyond State lines and the decisions in one presbytery may influence those in another.

This active disciplinary history related to same-gender marriage highlights two important aspects of our experience of same-gender marriage in the PCUSA, both of which are impacted by Proposition 8 in California. First, there is clearly no agreement in the PCUSA on same-gender marriage in the church and the debate is hearty as attested to by these disciplinary cases. Proposition 8 and the retroactive nullification of the California marriages interjects into these church deliberations a particular conclusion, violating the neutrality regarding religion required by

the California Constitution. Second, the acquittals in the PCUSA trials indicate that ministers in the PCUSA can preside at the weddings of same-gender couples. Proposition 8 places the State of California in a position of favoring only one group in the PCUSA and of commenting negatively on the pastoral privilege of PCUSA ministers to respond to the request of GLBT couples to celebrate their weddings.

Presiding at the wedding of Nancy McConn and Brenda Cole stands among the handful of truly transcendent and transforming experiences in my life. Their love is palpable and blesses all who meet them. And, as Brenda says, "We know no other word except 'marriage' that fully describes what we share." (Pittsburgh Tribune-Review, Friday, October 3, 2008) Nullification of just these kinds of marriages in California by Proposition 8 would shame us all.

**Reverend Kathryn M. Schreiber
United Church of Christ
Hayward, CA**

In 1992, I attended my first same-gender blessed union ceremony at the UCC church where I was a member. Seeing two dear churchwomen pledge their love before God, and our congregation, and the few family members of theirs who would attend was great! I expected to attend many, many more such weddings in the years to come, though most of my same-gender loving couple friends and parishioners have chosen not to marry or

have a blessed union until recently. I wondered why, so I asked. One friend put it this way, "Why want something you can't have?"

It wasn't until the weddings in San Francisco that most of my lesbian and gay friends in the Bay Area opened the door to even letting themselves want to marry. But, once that door opened, much happened! Since those first "city weddings" many, many friends and parishioners and loved ones of theirs have gotten married. Most waited for the real thing -- the right to marry under the protection of the State, understanding marriage in our country to be a State right. Soon, I was asked to perform marriages for a range of couples.

This fall I had the pleasure of officiating at three legal, sacred weddings: one for two women, one for a male/female couple and the last one for two men. Each ceremony was as unique as its couple -- but the love that was encountered at each of the marriages was the same. It was "the Big Love" a force that is from God, of God and reveals and points to God. In this way, it made no difference the gender of the persons getting married. The Big Love was present, equally, at each of those weddings.

This year, for some, the legal right to marry a beloved of many years became an act of profound social acceptance that opened and liberated parts of them that were unconsciously closed off. For some, the opportunity to be themselves fully with their dearly beloved present, speaking of intimate truths in broad daylight before all manner of people and forces, was life-

changing. For some the chance to engage in ancient religious rites, pledging to foster and tend family, surrounded by the blood and heart kin, ensured a blessed future for all present. For some, like me, it was a chance to do the best sort of religious work: to preach the expansive love of God not with fancy words, but with the startling grace of simply blessing the true love between two people, in the community of compassionate good will, and to touch and to be touched by something bigger than ourselves.

Usually it is during the exchange of vows that we experience a collective moment of grace. A sacramental moment happens -- something larger than words really does happen. All couples tell me, after the wedding, they really did feel like something changed in that moment. Sometimes, in the days and weeks following the wedding, that awareness is giddy with wonder and joy, other times it is surprising and a little frightening as it expands a person's sense of self and possibilities. When these vows concurrently operate on social, legal and religious modes, many people change for the good. I agree with the supporters of Proposition 8 that marriage deeply impacts society! Each marriage that is rooted in the Big Love -- however one names or acknowledges that larger-than-self force -- is a deep blessing upon society. It strengthens all of us.

For a few months in 2008 my congregation and I were able to practice, fully, our beliefs about marriage as a religious community. As people of faith we believe in justice -- and were thrilled so many of our

loved ones were legally allowed to partake of marriage equality. And spiritually, we were delighted that our understanding of a God of love was honored. For a few months all religious groups in our State experienced equal rights regarding our practice of marriage as a sacred institution. We were all free to act upon our convictions about who could and who couldn't get married with our blessing. But then Proposition 8 passed, and some of us lost our rights to practice a very deeply held religious conviction -- not just about marriage, but about the very essence of human dignity and equality. We could no longer say that each person in our congregation was equal in God's eyes AND practice that believe by conferring upon them the exact same marriage package as we offer to straight couples.

As a pastor I've witnessed a lot of suffering created by Proposition 8 -- not just by couples who were married and now are uncertain about their legal fate as a couple. As a disciple of Jesus Christ and an ordained minister, my sacred vows compel me to stand up and speak out against any force which causes the people in my pastoral care to suffer. Proposition 8 has reinforced injustice against couples and religious organizations giving some rights which others don't have. Proposition 8 has created suffering. Fear and other shadow forces have motivated good people to do harmful things.

I am a Jesus-loving, Christian minister who keeps trying to surrender more fully to God's will for me, my congregation and my community. I am

a Californian and life-long citizen of the USA who deeply values our democratic project: trying to create a diverse society which shares enough common values that we are, indeed, kindly bonded to one another. And, I am a single, straight woman who would love to marry a great man one day. My prayer is that such a marriage would be spiritual and legal, socially witnessed and blessed, just like all couples deserve. Which is why I urge this Court to support marriage equality.

**Reverend Susan A. Meeter, Pastor
Mira Vista United Church of Christ
El Cerrito, CA**

Fifteen years ago, in 1994, our congregation published our Open and Affirming Statement: We at Mira Vista affirm that we are all God's creation and we are all recipients of God's love. We welcome persons of all races, ages, cultures, abilities, incomes, vocations, genders, and sexual orientations into the full life and ministry of our church. As a congregation, we encourage human relationships that are based on principles of love and justice. We thank God for our diversity! The congregation has officially supported marriage equality since 2003. We believe, along with our regional and national United Church of Christ bodies, that all couples should enjoy the full blessings and privileges associated with civil, legal marriage. Anything separate or less than marriage does not address the human-rights struggles of same-gender families.

Over the years, Mira Vista has called two pastors who are in same-gender relationships; both of these couples were joined in holy unions for years before California made marriage legal for all couples. These two clergy regularly officiated at heterosexual marriages, marriages that they themselves were denied. The lack of legal marriage for their own relationships caused emotional, spiritual, and economic suffering for these couples, their families, and for our congregation, as same-gender couples have been treated as illegitimate and even adulterous by many in our society because we lack the benefit of legal marriage.

Both of our clergy couples were legally married as soon as the State of California allowed; the ability to claim legal marriage has strengthened our families and has been the cause of tremendous healing in all of our relationships.

If there is one family value we propagate at Mira Vista UCC, it is that God loves all of creation equally. In all the same-gender marriages I have performed and attended since June 16, 2008, all of these couples and all of these families have found a new understanding of their worth, their equality, and their ability to form permanent, trusting relationships with their God, their families, and their communities. Affirming and extending the human right of marriage to all couples has strengthened all marriages, strengthened our families, and strengthened the foundations of our society.

I officiated at one marriage during our Sunday morning worship service. These two women, intimate partners for 26 years, had never before kissed or held hands in public. They had never before publically declared their love. Both clergy, they had covenanted with each other decades before; they had traveled to Vermont for a civil union there. To finally be publically and legally married before their friends and their church family was a giant leap forward for them and for all of us. Now retired and in their 70s, one said, "I have a bride! I am a bride!"

A young same-gender couple's parents attended and supported their legal marriage, although they would not attend their church union a few years earlier. Now the parents support this couple in their desire to start a family. The blessing and rights that the State confers on marriage is the difference between isolation and support for many of these families. Our ability to raise our children and care for our parents would be damaged by the removal of legal marriage from our core relationships. This backward step would do damage to the principles of love and justice on which all our relationships are based within and without our congregation. Some of our folks will retreat from their new boldness with the law; society will be denied the benefit of their strength and openness under the law.

During the campaign against Proposition 8, couples with public signs have had feces smeared on their home and eggs thrown at their cars. One of our church's worship services was picketed with protestors

proclaiming with posters that "God hates fags." LGBT people are accustomed to being targets whenever we are visible; accustomed to rudeness when registering at motels and at conferences; accustomed to being treated like friends or siblings (or pariahs) instead of couples at our workplaces, within our extended families, and even in our faith communities. Upholding this unjust law will only legitimize and embolden those who hate us and discriminate against us.

**Nancy McKay
United Church of Christ
Berkeley, CA**

As a free citizen I believe in freedom for everyone. No exceptions for sexual orientation are valid. As I would not want my freedom to be limited because I am heterosexual, I will not limit the freedom of anyone else. All the law and the prophets hang on the Great Commandment according to Jesus: love God and neighbor as self. That's pretty clear. "Judge not" is also very simple. "Wherever there is love, there is God" is all the justification of same-sex loving that I need.

Ten years ago I presided at a Holy Covenant between two women. This past summer I presided over their marriage in the company of friends, their son and daughter, and family. When I got to the declaration of marriage, I slowed down and emphasized each word. I had not intended to; it just happened by grace. After I declared "by the power of love, the power of vows lived into, and by the power vested in me by the State of

California, I do proclaim you are wife and wife", the backyard erupted in joy and laughter and so many happy tears. It felt so good, personally, to affirm this family as legitimate. Also one woman's parents had boycotted the first service 10 years ago. They were in attendance this time. Surely time and grandchildren made a difference. Clearly it was important to them that this was a legal and officially recognized event.

The threat to destroy the right to marry whom you choose has already brought suffering. I saw the pain and anger in one man's eyes as he told me he and his partner of 24 years had been declared illegal. Very firmly I said, "NO, you are not illegal. There is nothing wrong with you. The problem comes from other people sticking their nose where it does not belong." I assured them the UCC will carry on the cause of justice for BLGT people until all are free and equal before the law.

**Rabbi Menachem Creditor
Congregation Netivot Shalom
Berkeley, CA**

The first time I stood on the steps of the State House making good use of my right to free speech in support of Equal Marriage was in 2002 in Massachusetts. Though a rabbi I was there as a "civilian." As a fierce advocate for church-state separation I didn't feel it was appropriate to use my status as a religious leader to push a particular agenda in a civic debate. But as I encountered hateful ideas being shouted in God's name, the example of Rabbi Abraham Joshua Heschel marching arm in arm with

Martin Luther King Junior during the civil rights campaigns of the 1950s pushed me forward, title and all.

While I always knew that when civil rights were at stake I could not stand idly by, what I learned in Massachusetts is that the involvement of religious communities in civil debate is just as important. And here we are again with the decision of the California Supreme Court on May 15, 2008 affirming that same-sex couples have a constitutional right to marry, a momentous step forward for civil rights in our State, and in our country. I am proud to have served as part of this moment, addressing the GLBT Community Center press conference on that historic day as a Californian, as a Rabbi, as a Jew, as a human being. I stood in front of the loving, committed couples who were plaintiffs in this case, who put their lives on trial and into the public eye, and wept. The joy and pride shared by the thousands who attended that press conference and the countless others who labored successfully for Equal Marriage in California was simply overwhelming.

I have stood with same-sex couples under the Chuppah, the traditional Jewish wedding canopy, and seen the joy and rightness in the air between them, which must be recognized by the State. It is not a question of spirit, but rather of civil rights. The pain so many people have to deal with in the effort to be seen as healthy and worthy in the eyes of society is linked with many religious communities' bigotry, borne from a literalist

reading of sacred text. This should not sway the Court. Nor should my passionate advocacy as a Jew.

My voice as a proud American, and as a communal leader is the one I believe matters most, and I do pray from a spiritual standpoint for Equal Marriage. I speak in the name of Jewish tradition, which has itself responded with an attentive heart to the pain of our sisters and brothers when I call for justice, when I ask you to affirm Equal Marriage in the State of California.

**Reverend Dr. Paul Tellstrom
Irvine United Congregational Church
Irvine, CA**

Our church in Irvine is predominantly heterosexual, made up of all ages, and exemplifies the lack of homophobia that is so noteworthy in the younger generation. Recognizing our church's stand to honor the loving relationships of our gay and lesbian brothers and sisters, our church makes sacred space for same-sex marriages, which are performed by our pastor.

Our prayer shawl ministry makes warm, hand-knitted symbols of the congregations' love and caring, which are passed around the congregation to be blessed. At one recent Sunday worship service, four of our same-sex couples who were married this year were asked to be present to witness the love of the congregation for them in these shawls, and were asked to stand and be recognized.

I cannot imagine the devastation these families would experience if their marriages were to be nullified. There are beautiful children in one of these marriages, who played roles in their mothers' wedding. The damage done to these children would be an incalculable act of cruelty. These families are tightly interwoven with our families of heterosexual origin, and the grieving and pain in our congregation would be immense. These families acted in good faith upon being told that their marriages would be legal, and the state has the obligation to protect the rights of this much-beleaguered and defenseless minority.

**Covenant Network of Presbyterians
San Francisco, CA**

The Presbyterian Church (USA)'s national legislative gathering, the General Assembly, meeting in San Jose in June 2008, voted by 78% to "renew and strengthen the long-standing Presbyterian Church (USA) commitment to equal protection under the law for lesbian and gay persons and [its] affirmation of the right of same-gender persons to . . . all the benefits, privileges, and responsibilities of civil union." It also authorized church representatives to "urge state legislatures and the federal government to apply the principle of equal protection to same-gender couples and their children." Covenant Network members provided testimony and support for these measures.

Both before and after that gathering, we distributed theological papers arguing for the equal right of all persons to form committed, covenantal relationships mirroring God's covenant with humankind. Such relationships, we believe, are for many people a critical aid in faithful discipleship and strengthen their participants to serve God and community as well as one another. They also provide essential support for the care of children -- many of whom we have baptized. In the oldest story of our tradition, God creates the world and sees that it is good. Only one thing is declared not to be good: "It is not good that the man should be alone" (Gen. 2:18). With gracious providence, God helps humans overcome estrangement and egotism with the gift of partners and families.

Many of our members celebrated or officiated at same-sex marriages during the too-brief period when it was legal this fall. For many congregations, these weddings were occasions of great joy and community solidarity, and important opportunities for evangelism and witness. The passage of Proposition 8 tells these congregants and clergy that their strong religious convictions carry less weight than those of others. It has caused great personal and communal pain and laid heavy demands on pastoral care.

We recognize that the Presbyterian Church, like most denominations, is divided on the issue of same-sex marriage. Even as we work to change some minds, we fully support the right of every minister

and congregation -- which is already entirely protected by both civil and ecclesial law - to decide which marriages they will recognize or celebrate. But we do not believe that the beliefs of some religious groups should be favored by the State of California over those of our members and others who wish to include all of God's children in God's call to fidelity, mutuality, responsibility, and service.

**More Light Presbyterians
Michael J. Adee, M.Div., Ph.D.,
Executive Director & Field Organizer**

Since 1978, the Presbyterian Church (USA) has denounced discrimination against lesbian and gay persons in civil society. This official national non-discrimination in civil life policy has been reaffirmed in subsequent years and the Presbyterian Church (USA) has also affirmed the right and choice for its ministers to perform blessings of same-sex couples.

Full participation, pastoral care and service in communities through local Presbyterian congregations is not possible for lesbian, gay, bisexual and transgender Presbyterians and their families in the face of discriminatory church laws and/or discriminatory civil laws such as Proposition 8. Every church and seminary campus I visit in California has LGBT members, parents and families with LGBT members, and allies who believe that discrimination against LGBT persons is wrong. And, they sincerely and passionately want to live and serve in their

communities. Communities, especially now, need to have as many compassionate and caring persons serving in them.

More Light Presbyterians is wholeheartedly committed to the creation of spiritual, ordination and marriage equality in both our Church and in civil society. Proposition 8 denies that right and full experience to lesbian, gay, bisexual and transgender Californians to be part of the family of their choice by denying civil marriage. Proposition 8 also denies the right and choice of Presbyterian ministers to extend the pastoral care of blessing same-sex couples through marriage. Proposition 8 casts doubt on the potential and real moral fitness of same-gender loving people and renders LGBT persons in the State of California as second-class citizens. Proposition 8 puts children and families at risk which is a deep concern for those of us in the faith community.

**CERTIFICATE OF WORD COUNT
PURSUANT TO RULE 8.204(c)(1)**

Pursuant to California Rule of Court 8.204(c)(1), counsel for *Amici Curiae* hereby certifies that the number of words contained in this APPLICATION TO FILE AMICUS BRIEF AND PROPOSED BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONERS, including footnotes and Appendix but excluding the Table of Contents, Table of Authorities, Proof of Service, and this Certificate, is 13,130 words as calculated using the word count feature of the computer program used to prepare the brief.

By: 
Timothy R. Cahn

61760831 v1

PROOF OF SERVICE

I, Shelley Lott, declare:

1. I am over the age of eighteen and not a party to the within cause. I am employed by Townsend and Townsend and Crew LLP in the County of San Francisco, State of California. My business address is Two Embarcadero Center, Eighth Floor, San Francisco, California 94111.

2. On January 15, 2009, I served a true copy of the attached document entitled:

APPLICATION TO FILE AMICUS BRIEF AND PROPOSED BRIEF OF AMICI CURIAE REVEREND DR. FRANK M. ALTON, IMMANUEL PRESBYTERIAN CHURCH, NETIVOT SHALOM SYNAGOGUE, REVEREND DR. JANE ADAMS SPAHR, REVEREND DR. JOHN T. NORRIS, REVEREND DR. GLENDA HOPE, RABBI DAVID J. COOPER, KEHILLA COMMUNITY SYNAGOGUE, REVEREND LAURA ROSE, REVEREND JANET MCCUNE EDWARDS, PH.D., REVEREND KATHRYN M. SCHREIBER, REVEREND SUSAN A. MEETER, MIRA VISTA UNITED CHURCH OF CHRIST, NANCY MCKAY, RABBI MENACHEM CREDITOR, REVEREND DR. PAUL TELLSTROM, IRVINE UNITED CONGREGATIONAL CHURCH, COVENANT NETWORK OF PRESBYTERIANS, AND MORE LIGHT PRESBYTERIANS IN SUPPORT OF PETITIONERS

by placing it in addressed sealed envelopes clearly labeled to identify the persons being served at the addresses set forth on the attached service list and placed said envelopes in interoffice mail for collection and deposit with the United States Postal Service at Two Embarcadero Center, Eighth Floor, San Francisco, California, on that same date, following ordinary business practices.

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

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 15, 2009, at San Francisco, California.



Shelley Lott

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