Case No. S168047

# IN THE SUPREME COURT

# OF THE STATE OF CALIFORNIA

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

v.

**MARK D. HORTON, in his official capacity as State Registrar of Vital Statistics of the State of California, etc., *et al.*, *Respondent.***

**DENNIS HOLLINGSWORTH, *et al.*, *Interveners.***

## APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF THE CIVIL RIGHTS FORUM IN SUPPORT OF PETITIONERS



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# APPLICATION TO FILE AMICUS CURIAE BRIEF OF THE CIVIL RIGHTS FORUM IN SUPPORT OF PETITIONERS

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

The Civil Rights Forum respectfully requests permission to file the within Amicus Curiae Brief in support of petitioners.

*Strauss v. Horton* asks, inter alia, whether Proposition 8 is invalid because it constitutes a revision of, rather than an amendment to, the California Constitution, and if it is not invalid, what is its effect, if any, on the marriages of same-sex couples performed before the adoption of Proposition 8. Resolving these issues is important to all Californians who have an interest in protecting the rights of same-sex couples. In the context of civil rights cases, there is a compelling need to represent the interests of the victims of harassment and discrimination throughout California, including preventing employers from discriminating against married same-sex couples.

The Civil Rights Forum (CRF) is a voluntary membership organization of approximately 60 civil rights attorneys practicing throughout California. The organization was founded in 2002 and its members predominantly represent individuals who have been the victims of discrimination or harassment in the work place. CRF took an active role in

commenting on the Judicial Council's draft jury instructions and now endeavors to champion the rights of people who are victims of harassment and discrimination. This Court has accepted amicus briefs filed by CRF in several previous cases.

As an organization whose members represent victims of harassment and discrimination throughout California, amicus is vitally interested in the resolution of this issue and believes it can be of assistance in further illuminating the legal and policy issues before the Court. Indeed, many members of amicus represent private plaintiffs in litigation under Government Code § 12900, *et seq.,* federal employment discrimination laws, or under statutes containing express public policies, and believe that authorities, arguments and policy considerations exist which have not yet been thoroughly addressed by the parties.

Amicus urges the Court to find that Proposition 8 is so extensive in its reach as to change the very nature of the California Constitution and is therefore invalid. While those people who are married to a person of the opposite sex may enjoy the full benefits of California's Fair Employment and Housing Act (FEHA), Proposition 8 will subject people who are married to a person of the same sex to discrimination based upon the fact of their marriage. By singling out certain people and denying them the full employment protections intended for all people living in California, Proposition 8 completely undermines the Equal Protection Clause.

Proposition 8 jeopardizes the longstanding constitutional principles that support protection of the minority against the tyranny of the majority, and also infringes on the Court's inherent powers under the Separation of Powers Doctrine. Accordingly, we ask that this Court accept our brief and grant us permission to present our arguments to this Honorable Court.

WHEREFORE, the Civil Rights Forum respectfully requests permission to file a brief in this case as amici curiae.

DATED: January 14, 2009

Respectfully submitted,

THE CIVIL RIGHTS FORUM

By: _____
Law Offices of Lawrence A. Organ
Attorneys for Amicus Curiae

Case No. S168047

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# AMICUS CURIAE BRIEF OF THE CIVIL RIGHTS FORUM IN SUPPORT OF PETITIONERS

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## INTRODUCTION

The Civil Rights Forum is a group of civil rights lawyers who represent victims of harassment and discrimination typically brought under the Fair Employment and Housing Act (FEHA). Although Proposition 8 does not purport to amend FEHA, we seek leave to make additional arguments opposing Proposition 8, since the proposed changes to the definition of "married persons" in California will wreak havoc on marital status discrimination cases in California.

Proposition 8 will make fundamental changes to employment and housing discrimination cases. If this Court upholds the constitutional change sought by Proposition 8, married people in California will be subject to different rules depending upon who they married. Those people who are married to a person of the opposite sex would enjoy the full benefits of FEHA. Those people who are married to a person of the same sex would be subject to discrimination without remedy. Proposition 8 therefore completely undermines the Equal Protection Clause because it singles out people who are otherwise supposed to be protected, such that they are denied full employment and housing protections. Proposition 8 also jeopardizes the longstanding constitutional principles that support protection of minorities against the tyranny of the majority, and in this way infringes on the Court's inherent powers under the Separation of Powers Doctrine.

We therefore request this Court find that Proposition 8 is so extensive in its reach as to change the very nature of the California Constitution. As such it is an invalid revision of the Constitution and it must be struck down.

Pursuant to Rule 8.520(f) of the California Rules of Court, this brief is filed with an accompanying Application for Leave to File Amicus Curiae Brief in accordance with Rule 8.520(f).

## SUMMARY OF ARGUMENT

Amicus submits this brief to give the Court real world examples of how Proposition 8 fundamentally changes the way the Equal Protection Clause impacts work places and housing in California. Proposition 8 substantially undermines the governmental plan whereby the California Constitution and the California Judiciary ensure that all people are treated equally. In this way, Proposition 8 is a constitutional revision and not an amendment; it seeks to enshrine discrimination in California. This brief also demonstrates how Proposition 8 invades the separation of powers doctrine by trying to enact constitutional bigotry against gay and lesbian couples who want to marry or who are married. This alleged "definitional" change goes way beyond mere codification of traditional notions of marriage.

## STATEMENT OF INTEREST

The Civil Rights Forum (CRF) is a voluntary membership organization of approximately 60 civil rights attorneys practicing throughout California. The organization was founded in 2002 and its members predominantly represent individuals who have been the victims of work place or housing discrimination or harassment. CRF took an active role in commenting on the Judicial Council's draft jury instructions covering these areas and now endeavors to champion the rights of people who are victims of harassment and discrimination. This Court has accepted amicus briefs filed by CRF in several previous cases.

As an organization representing the interests of the victims of harassment and discrimination throughout California, amicus is vitally interested in resolving the issue of whether employers and landlords will be permitted to discriminate against married same-sex couples. Amicus can be of assistance in further illuminating the legal and policy issues before the Court. Indeed, many members of CRF represent private plaintiffs in litigation under Government Code § 12900, et seq., where a person's "marital status" is specifically protected. Authorities, arguments and policy considerations exist which have not yet been thoroughly addressed by the parties or other amici.

## QUESTIONS PRESENTED

When granting petitions in three different cases, this Court certified three questions. This brief primarily addresses the Court's first two questions, though there are implications for the last question as well. The three questions read as follows:

1. Is Proposition 8 invalid because it constitutes a revision of, rather than an amendment to, the California Constitution?

2. Does Proposition 8 violate the separation-of-powers doctrine under the California Constitution?

3. If Proposition 8 is not unconstitutional, what is its effect, if any, on the marriages of same-sex couples performed before the adoption of Proposition 8?

## ARGUMENT

### I. The California Constitution Must Protect the Interests of Minority Groups Against a Tyranny of the Majority.

Before discussing how Proposition 8 specifically impacts workplace and housing protections, amicus will briefly outline the legal standards at issue.

#### A. Constitutional Principles Support Protecting the Rights of Minorities.

The concept of protecting minority rights is fundamental to the functioning of a constitutional democracy and the doctrine of equal protection. Article I, section 1 of the California Constitution, provides: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring,

possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." (Cal. Const. Art.I, sec.1.) California's Equal Protection Clause is contained in Article I, section 7 which states in relevant part that "[a] person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws. (Cal. Const., art. I, § 7, subd. (a).)

Constitutional jurisprudence makes clear that when applying the laws equally, fundamental rights are not subject to electoral whims. For example, the U.S. Supreme Court noted that the purpose of the Bill of Rights, and by extension the Equal Protection Clause of the Fourteenth Amendment, was to:

> withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

(*West Virginia State Board of Education v. Barnette* (1943) 319 U.S. 624, 638.)

More recently, the U.S. Supreme Court struck down Colorado's voter-approved Constitutional Amendment discriminating against gay and lesbian people. The Court held that "classification of persons undertaken for its own sake [was] something the Equal Protection Clause does not permit. '[C]lass legislation ... [is] obnoxious to the prohibitions of the

Fourteenth Amendment....' [Citation.] We must conclude that Amendment 2 classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else." (*Romer v. Evans* (1996) 517 U.S. 620, 635.)

Proposition 8 proponents similarly seek to take away the rights of gay and lesbian couples to get married, even after this Court determined that these couples have a fundamental right to marry. (See *In re Marriage Cases* (2008) 43 Cal.4th 757, 856-57.) It is clear, then, that Proposition 8 seeks to accomplish the same goal as Colorado's Amendment 2: to classify gay and lesbian people as having less rights than others. That Amendment was struck down based on federal equal protection standards. There is no reason to believe that California's Equal Protection Clause does not operate to do the same.

This Court has recognized that "[u]nder our system of government, the court, not the legislative body or the electorate, must determine whether governmental action impermissibly invades rights protected by the constitution." (*Santa Monica Beach, Ltd. v. Superior Court* (1999) 19 Cal.4th 952, 1006 [legislative takings case].) This Court wrote that "constitutional rights can hardly be infringed simply because a majority of the people choose that it be. [citation]" (*Id.* at p.1006.) In a concurring opinion in a different case, Justice Brown noted: "Under our regime, a court must oppose arbitrary injustice even when acts of oppression have

been duly enacted, and may vouchsafe no answer though contending political forces - momentarily in equipoise - teeter on the edge of tyranny." (*Kasler v. Lockyer* (2000) 23 Cal.4th 472, 509 (Brown concurring opin.).) The Equal Protection Clause requires this Court to ensure that minorities are protected. If a law, or even a constitutional amendment, contravenes that right, this Court must act to overturn it.

**B. Proposition 8 Undermines Fundamental Rights.**

This Court has already determined that the right to marry someone regardless of your own sex is a fundamental right under the California Constitution. (*In re Marriage Cases,* 43 Cal.4th at p. 856-57). In addition, because anti-discrimination protections in employment and housing laws are deemed fundamental (see *infra*), and because marital status is a protected class, Proposition 8 undermines additional fundamental rights.

**C. This Court Has the Authority to Strike Down Proposition 8 Since it Challenges the Very Nature of Equal Protection Principles and Because it Invades the Separation of Powers Doctrine.**

Because Proposition 8 alters fundamental rights under the California Constitution, it is a revision and not an amendment. When the people of California enact legislation in violation of the state Constitution, such as Proposition 8, the separation of powers doctrine requires this Court to strike down such legislation.

### 1. The Widespread Impact of Proposition 8 on Fundamental Rights Requires a Finding that Proposition 8 Constitutes a Revision and Not an Amendment.

Article XVIII of the California Constitution allows for amendment of the Constitution by the Legislature, or by initiative and revision of the Constitution by a two-thirds vote of the Legislature, or by a constitutional convention. (Cal. Const. Art. XVIII.) This Court has stated that the "revision/amendment analysis has a dual aspect, requiring us to examine both the quantitative and qualitative effects of the measure on our constitutional scheme. Substantial changes in either respect could amount to a revision." (*Raven v. Deukmejian* (1990) 52 Cal.3d 336, 350 [victims' rights provision struck down because California Supreme Court required to interpret state law in conformity with federal constitutional law].) Moreover, in upholding Proposition 13, this Court wrote "even a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision also." (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 223.)

Constitutional revisions typically involve changes that reflect the underlying principles of the Constitution, whereas amendments are

designed to improve upon the document. This Court stated this difference quite eloquently in 1894:

> The very term 'constitution' implies an instrument of a permanent and abiding nature, and the provisions contained therein for its revision indicate the will of the people that the underlying principles upon which it rests, as well as the substantial entirety of the instrument, shall be of a like permanent and abiding nature. On the other hand, the significance of the term 'amendment' implies such an addition or change within the lines of the original instrument as will effect an improvement, or better carry out the purpose for which it was framed.

(*Livermore v. Waite* (1894) 102 Cal. 113, 118-119.)

In other words, amendments may not alter any fundamental provisions of the Constitution, including the Equal Protection Clause.

Interveners acknowledge the troubling nature of the *Livermore* opinion through an extended discussion of it. (Int. Opp. Br. pp.19-20.) By suggesting Proposition 8 "simply reinstates the traditional definition of marriage," Interveners ignore the fact that revisions tend to deal with traditional bedrock principles, principles of the kind Interveners purport to uphold. (Int. Opp. Br. p.21.) Moreover, it is clear that "reinstating" the "traditional" definition of marriage cannot be said to improve the Constitution, because doing so writes discrimination into the Constitution. Proposition 8 therefore cannot be likened to an amendment. Interveners' argument reminds one of the debate in *Fiddler on the Roof* where Reb Tevye argues for "tradition" despite the fact that the notion is not only antiquated but also unworkable, as attitudes about marriage had changed.

(Wikipedia, The Free Encyclopedia <http://en.wikipedia.org/wiki/Fiddler_on_the_Roof> [as of January 14, 2009].)

This Court has previously held that California's Equal Protection Clause may extend beyond the scope of the U.S. Constitution's Fourteenth Amendment. In *Raven*, the Court wrote that "Rights guaranteed by [California's] Constitution are not dependent on those guaranteed by the United States Constitution." (*Raven*, 276 Cal.3d at p. 350.) This is illustrated by the decision in *Serrano v. Priest* (1976) 18 Cal.3d 728, where this Court held education is a fundamental right in California, despite the fact it has not been determined a fundamental right under the U.S. Constitution. (*Id.* at p. 766.) Despite California's consistently broad interpretations, Proposition 8 shrinks the scope of California's Equal Protection Clause, thus undermining the very principle of equal protection.

Finally, this Court should see Proposition 8 for what it really is: an attempt to alter California's basic governmental plan by excluding a discrete group from the protections of the Equal Protection Clause, and to emasculate this Court from performing its central role as a check on the excesses of electoral whim. Such a change clearly falls into the constitutional revision category, and therefore Proposition 8 must be struck down.

### 2. Proposition 8's Sanctioning of Discrimination Against Gays and Lesbians Invades the Separation of Powers Doctrine.

The separation of powers doctrine requires this Court to strike down Proposition 8. This Court discussed the separation of powers doctrine at length in its decision in *Bixby v. Pierno* (1971) 4 Cal.3d 130:

> The separation of powers doctrine articulates a basic philosophy of our constitutional system of government; it establishes a system of checks and balances to protect any one branch against the overreaching of any other branch. (See Cal. Const., arts. IV, V and VI; *The Federalist*, Nos. 47, 78 (1788).) Of such protections, probably the most fundamental lies in the power of the courts to test legislative and executive acts by the light of constitutional mandate and in particular to preserve constitutional rights, whether of individual or *minority, from obliteration by the majority. (Marbury v. Madison* (1803) 5 U.S. (1 Cranch) 137, 175-178, 2 L.Ed. 60; *People ex rel. Attorney General v. Wells* (1850) 2 Cal. 198, 213-214; see *Myers v. United States* (1926) 272 U.S. 52, 293, 47 S.Ct. 21, 71 L.Ed. 160 (dissenting opn. of Brandeis, J.); Rostow, *The Democratic Character of Judicial Review* (1952) 66 Harv.L.Rev. 193, 199, 202-204.) Because of its independence and long tenure, the judiciary probably can exert a more enduring and equitable influence in safeguarding fundamental constitutional rights than the other two branches of government, which remain subject to the will of a contemporaneous and fluid majority. (See Cardozo, *The Nature of the Judicial Process* (1921) 92-94; Hand, *The Contribution of an Independent Judiciary to Civilization in The Spirit of Liberty* (1959) 118-126.)[fn]

(*Id.* at p. 141.)

In the *Kasler* decision, this Court noted that "the separation of powers doctrine not only guards against the concentration of power in a single branch of government; it also protects one branch against the overreaching of the others." (*Kasler,* 23 Cal.4th at p. 495.) In attempting

to override this Court's decision in the *In re Marriage* cases, Proposition 8 supporters attempt to "undermine the authority and independence of [the Judiciary] Branch." (*Kasler* at p. 493.)

In the instant case, Petitioner is not asking the Court to expand the scope of protections afforded under the law, nor is Petitioner inviting the Court to push the boundaries of what is legal. Petitioner implores the Court to fulfill its primary and longest standing responsibility: to insure that the already existing rights of the minority are afforded the protections provided by the Constitution. A bare majority has acted to pass a proposition which removes fundamental rights from a minority of the population. The Constitution states that these particular rights are the sort of rights that may not be taken away by the mere vote of the majority, but require the satisfaction of more extensive procedural requirements. Therefore, the Court must follow its principle and original responsibility and invalidate the offending legislation.

By invalidating Proposition 8, the Court will not "expand rights" or "push any legal boundaries." The Court will actually be protecting the existing rights of the minority from the "tyranny of the majority." This is exactly the role the framers intended for this Court. This is precisely how the separation of powers doctrine is supposed to work.

## II. Proposition 8 Creates Untenable Vicissitudes for Marital Status Discrimination under Government Code Section 12940.

Amicus now turns to real world examples of how Proposition 8 impacts employment and housing rights for Californians.

Civil rights cases are a primary means of redressing violations of civil liberties established under the constitutions of the United States and this state. Denials of these rights are not individual offenses, but are wrongs that disturb the very foundations upon which our society is based. If people are judged on immutable characteristics and not the content of their character, the freedoms we claim to enjoy are truly illusory. Through the Fair Employment Housing Act (FEHA) and Title VII, both the California Legislature and the U.S. Congress have provided for civil rights suits as a means of achieving our societal goals of equal treatment in the work place. In this way, civil rights cases necessarily protect fundamental freedoms guaranteed by our state and federal government.

This Court has written that "the policy that promotes the right to seek and hold employment free of prejudice is fundamental." (*Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211, 220.) Discrimination-free employment is "a civil right." (Gov. Code, § 12921, subd. (a).) The California Legislature, invoking the police powers of the state, has determined that employment discrimination "foments strife and unrest, deprives the state of the fullest utilization of its capacities for

development and advancement, and substantially and adversely affects the interest of employees, employers, and the public in general." (Gov. Code, § 12920, subd. (a).)

The level of reprehensibility in civil rights cases is typically very high, precisely because discriminatory conduct undermines the fabric of society and prevents the integration and advancement of all Californians on an equal basis without regard to their immutable characteristics. Society's interest in combating discrimination is strong. Our nation fought the bloodiest war in its history in part to advance the goal of racial equality, and our Legislature enacted several amendments to the U.S. Constitution to cement the battlefield victory and preserve these crucial rights. (See U.S. Const., Amends. XIII, XIV, XV.)

The irony should not be lost on this Court that the Civil War was almost a direct outcome of the only other time in history that a rabid majority enshrined discriminatory principles into our U.S. Constitution. Are we to be again divided into a destructive dichotomy, this time between pro-same-sex marriage states and anti-same-sex marriage states? Such divisions are at odds with sound constitutional principles and with state and federal law prohibiting discrimination in employment.

### A. Marital Status Is a Protected Category under Government Code Section 12940.

In 1974, the California Legislature amended Government Code section 12940 to include protection based on marital status. This statute reads as follows in pertinent part:

> It shall be an unlawful employment practice, . . .:
>
> For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, ***marital status***, sex, age, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(Gov. Code, § 12940, subd. (a) (*emphasis added*).)

Typically, marital status discrimination claims in the employment context involve: "refusal to hire unwed mothers because they were unwed, a refusal to hire single people because they were single, or the granting of maternity leave to married teachers only." (*Chen v. County of Orange* (2002) 96 Cal.App.4th 926, 940.)

The housing arena provides additional examples of marital status discrimination. In *Smith v. Fair Employment & Housing Com.* (1996) 12 Cal.4th 1143, a landlord who was a devout Presbyterian did not wish to rent any of her four units to unmarried couples, believing "it is a sin for her to rent her units to people who will engage in nonmarital sex on her property."

(*Id.* at p. 1151.) This Court held that refusing to rent to unmarried cohabitants based on their marital status violated FEHA. (*Id.* at p. 1160.)

Our members have encountered additional cases where benefits ordinarily provided to married couples have been denied to our clients because they had a same-sex spouse. For example, one of our members is currently working on a case where an airline refused to give the same-sex spouse of an employee travel rights given to opposite-sex spouses, even though the employee's marriage was performed legally before Proposition 8 was passed. If this Court permits Proposition 8 to stand, current anti-discrimination protections will continue to erode.

### B. Employers Will Be Free to Discriminate Against Gay and Lesbian People Who Are Married.

There is no doubt that gay and lesbian couples will continue to be subjected to discrimination, and if Proposition 8 is permitted to stand, they will have no legal recourse. As mentioned above, our members are already involved in cases where same-sex couples have been discriminated against because of their marital status. Proposition 8 specifically singles out gay and lesbian people as not having the right to marry, and will not recognize their status as married even if such status has already been legally conferred upon them. In this way, Proposition 8 radically alters the current protections against discrimination by effectively sanctioning discrimination against gay and lesbian couples that are legally married.

Proposition 8 will cause the mirror image of the situation where landlords refused to rent apartments to unmarried cohabitants on religious grounds, or where employers refused to hire unwed mothers because they have children but are not married. The core basis for discrimination against these individuals was their marital status. If Proposition 8 stands, it will specifically sanction discrimination against gay individuals. This discrimination will not be based on their being gay, but because they are gay and have a particular marital status. Examples of such discrimination include, but are not limited to: refusing to hire or terminating an individual because they are married to a member of the same sex, refusing to grant maternity or paternity leave to an individual in a same-sex marriage, or refusing to rent to a same-sex married couple.

The irony is while unmarried cohabitants and single mothers were discriminated against for being unwed, gay individuals will be discriminated against for being married. In both cases, the basis for discrimination, marital status, is the same. However, if Proposition 8 stands, the former will be protected from marital status discrimination, while the latter will not.

### C. Married Same-Sex Couples Who Move Here from Massachusetts or Connecticut, or Californians Who Were Married Prior to the Passage of Proposition 8 Will be Subjected to Discrimination Without Legal Recourse.

Proposition 8 states that "[o]nly marriage between a man and a woman is valid or recognized in California." Interveners make clear that they understand this language to mean that same-sex marriages, "whether performed in California or elsewhere . . . are not valid or recognized in California." (Int. Opp. Br. p. 37.) Interveners argue that if a same-sex employee was either married in Connecticut or Massachusetts and now resides in California, or was married prior to the passage of Proposition 8, such marriage should not be legally recognized. Therefore, discrimination against these people because of their marital status would not violate the law, because California would not recognize their marital status.

If this were the case, employers and landlords throughout the state could freely use same-sex marriage as a basis for discrimination, and such discrimination would not be subject to protection under FEHA. An employer could refuse to hire a gay man because he married another man in Massachusetts before residing in California. An employer could refuse to give a woman maternity leave because she married another woman before Proposition 8 was passed, while giving maternity leave to women who are married to men. A landlord could refuse to rent to same-sex spouses because they were married in Connecticut before moving to this state.

These examples of discrimination against persons based on their marital status is precisely the type of harm that the Equal Protection Clause was designed to protect against. However, Proposition 8 gives employers and landlords freedom to commit these harms without consequence. Such unchecked discrimination is just one of the ways in which Proposition 8 radically alters the bedrock of constitutional jurisprudence and distorts the system of checks and balances that is so fundamental to our democracy.

## CONCLUSION

On August 28, 1963, Martin Luther King, Jr. spoke these now immortal words: "I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character." ("*I Have a Dream*," Dr. Martin Luther King, Jr. August 28, 1963.) Today as we are about to see the first African-American person take the presidential oath of office, Dr. King's dream is drawing one step closer to reality. But on the same day that Mr. Obama was elected, the California electorate singled out same-sex couples for discriminatory treatment and attempted to enshrine this discriminatory principle into the California Constitution. The U.S. Constitution and the 14th Amendment's Equal Protection Clause struck down discriminatory laws in the South. How can discrimination now be enshrined in the California Constitution by a mere simple majority fiat? In effect, Equal

Protection will lose all its meaning, and the power of the Judiciary to protect minority interests will be eviscerated.

Nowhere is this clearer than in the context of marital status discrimination. This anathema to the California Constitution cannot be tolerated, as it undermines the very foundations of the Constitution. This Court must affirm the ultimate purpose of the Constitution: protection of minorities against the tyranny of the majority. Only by upholding the fundamental nature of the Constitution, can this Court help move our State and our Nation forward so that gay and lesbian people living in California can finally sing from the mountain tops of our great state, "Free at last! free at last! thank God Almighty, we are free at last!" (*Id.*)

DATED: January 15, 2009

Respectfully submitted,

By: Lawrence A. Organ
Attorneys for Amicus Curiae
THE CIVIL RIGHTS FORUM

## CERTIFICATE OF WORD COUNT

The text of this brief consists of 4,378 words as counted by the MicroSoft Word 2007 word processing program used to generate the brief.

DATED: January 15, 2009

Respectfully submitted,

By: Lawrence A. Organ
Attorneys for Amicus Curiae
THE CIVIL RIGHTS FORUM

# PROOF OF SERVICE

I, Collin R. Moore, declare: I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 404 San Anselmo Avenue, San Anselmo, CA 94960.

On January 15, 2009, I served the following document(s):

1. **AMICUS CURIAE BRIEF OF THE CIVIL RIGHTS FORUM IN SUPPORT OF PETITIONERS**
2. **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF THE CIVIL RIGHTS FORUM IN SUPPORT OF PETITIONERS**

on the interested parties in this action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

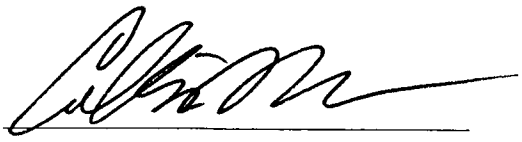
**PLEASE SEE ATTACHED SERVICE LIST**

and served the document(s) in the manner indicated below:

☒ BY U.S. MAIL SERVICE: by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill addressed as set forth in the Service List, and causing the envelope to be delivered to an overnight mail service for delivery.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

Executed on January 15, 2009, at San Anselmo, California.



COLLIN R. MOORE

**SERVICE LIST**
**CALIFORNIA SUPREME COURT CASES S168047, S168066, and S168078**

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**SERVICE LIST**
**CALIFORNIA SUPREME COURT CASES S168047, S168066, and S168078**

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**CALIFORNIA SUPREME COURT CASES S168047, S168066, and S168078**

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**CALIFORNIA SUPREME COURT CASES S168047, S168066, and S168078**

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