No. S168047

IN THE SUPREME COURT

OF THE

STATE OF CALIFORNIA

KAREN L. STRAUSS, et al.,

Petitioners,

vs.

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

Respondents,

DENNIS HOLLINGSWORTH et al.,

Interveners.

APPLICATION TO FILE BRIEF OF AMICUS CURIAE; BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITONERS CHALLENGING PROPOSITION 8

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APPLICATION TO FILE BRIEF OF AMICUS CURIAE

Pursuant to California Rules of Court, Rule 8.520, applicants J. Rae Lovko and Jason E. Hasley respectfully request permission to file the attached brief in support of petitioners.

INTEREST

The applicants have a significant and direct interest in the outcome of this case and will provide the Court with valuable insight to assist the Court's evaluation of the parties' arguments. Amicus curiae call this Court's attention to the profound personal and social effects that will impact California citizens if this Court upholds the validity of Proposition 8.

Rae Lovko is a citizen of California where she lives, works as an attorney, and helps raise a family. On August 1, 2009, after being in a committed relationship with Camille King for more than a decade, Ms. Lovko married Ms. King in Oakland, California, in the presence of their five-year old son. As part of a married same-gender couple, as well as a mother, Ms. Lovko has a direct and personal interest in the outcome of these proceedings.

Jason Hasley is a citizen of California where he lives, works as an attorney, and helps raise a family. Mr. Hasley's spouse is of the opposite gender; she is also of a different race. As part of a married interracial

couple, as well as a father, Mr. Hasley has a direct and personal interest in the outcome of these proceedings.

A decision by this Court to uphold Proposition 8 would have profound implications on the rights of amici to claim the protections guaranteed them by the Equal Protection Clause of the California Constitution. As a result, amici have a personal interest in this litigation. In addition, as parents and guardians of their minor children, amici bring this application on behalf of their interests, to ensure that their children will be able to marry the person of their choice regardless of sexual orientation.

For these reasons, amicus curiae respectfully request that the Court accept the attached brief for filing and consideration in this case.

Dated January 15, 2009

Respectfully submitted,

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BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONERS CHALLENGING PROPOSITION 8

INTRODUCTION

Amicus curiae agree with the arguments asserted by Petitioners and do not delve in detail into any of the issues raised in Petitioners' briefs. Rather, amicus curiae call this Court's attention to the profound personal and social effects that will impact California citizens if this Court upholds the validity of majoritarian discrimination as mandated by Proposition 8. Proposition 8 not only violates the inalienable rights of all citizens who expect to be protected by the California Constitution's guarantee of equal protection under the law; it also significantly harms the psychological and physical well-being of the state's citizenry by perpetuating discrimination that leads to widespread stress, fear, and violence.

The separation of powers doctrine creates a beneficial system of checks and balances among the branches of government, including the legislative branch, which represents the voice of the people. To give meaning to this doctrine, deference given to the initiative process must not rise to the level of judicial capitulation. A finding that the judiciary has no authority to review the people's exercise of their initiative power is to implement an elemental change in the fundamental structure of our government that is unnecessary, unjustified, and detrimental to fair, effective governance. The value of equal protection, as well as the value of

the judicial branch, lies in the ability of this Court to enforce laws that safeguard equality and ensure that all Californians are afforded due protection under the California Constitution.

ARGUMENT

> In the state of nature . . . all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the law. (Charles de Montesquieu, *The Spirit of Laws*, (1748) Book 8, Chapter 3.)

These words by Montesquieu, known for influencing our founders' thoughts about separation of powers, poignantly addresses the need for this Court to deny the validity of Proposition 8.

I. DEFERENCE TO THE INITIATIVE PROCESS DOES NOT EQUATE TO ABDICATION OF JUDICIAL REVIEW

The initiative process is nothing more than a legislative power reserved to the public. (*Independent Energy Producers Assn. v. McPherson*, (2006) 38 Cal. 4th 1020, 1033; Manheim, *A Structural Theory of the Initiative Power in California* (1998) 31 Loy. L.A. L. Rev.1165, pp. 1189 & 1222.) In this regard, any deference owed to this legislative power, as described by Interveners (Interveners Opposition Brief pp. 9-14), necessarily vanishes when constitutionally protected rights are threatened. (*Am. Acad. of Pediatrics v. Lungren* (1997) 16 Cal. 4th 307, 348-49; *Los Angeles Teachers Union et al. v. Los Angeles City Board of Education*

(1969), 71 Cal. 2d 551, 556-57 (1969); *Deyoe v. Superior Court of Mendocino County*, (1903) 140 Cal. 476, 490.)

As this Court recently noted:

> Although California decisions consistently and vigorously have safeguarded the right of voters to exercise the authority afforded by the initiative process (see, e.g., *Associated Home Builders etc., Inc. v. City of Livermore (1976) 18 Cal.3d 582, 591 [135 Cal. Rptr. 41, 557 P.2d 473])*, our past cases at the same time uniformly establish that initiative measures adopted by the electorate are subject to the same constitutional limitations that apply to statutes adopted by the Legislature, and our courts have not hesitated to invalidate measures enacted through the initiative process when they run afoul of constitutional guarantees provided by either the federal or California Constitution.

(In re Marriage Cases, (2008) 43 Cal. 4th 757, 852.)

Thus, although the initiative power may be used to change the state's constitution, this power is limited by procedural safeguards and preexisting restrictions in the instrument itself. This is especially important now, because while the initiative process was originally intended to curb the influence of special interest groups on the legislative branch, over time the initiative process has become "a favorite tool of . . . special interests." (Manheim, *A Structural Theory of the Initiative Power in California, supra,* 31 Loy. L.A. L. Rev. at pp. 1188-1191.) As a result, the role of the judiciary as safeguard against improper manipulation or abuse of the initiative process remains integral, especially when use of this process threatens to undermine existing constitutional values such as equal

protection. (Frickey, *The Communion of Strangers: Representative Government, Direct Democracy, and The Privatization of the Public Sphere,* (hereinafter "*The Communion of Strangers*") (1998) 34 Willamette L. Rev. 421, 437-438; *Committee to Defend Reproductive Rights v. Meyers* (1980) 29 Cal.3d 252, 261-262.)

As long as the state constitution has an equal protection clause, no initiative can be adopted in violation of its protection. To hold otherwise would be to abolish constitutional democracy in favor of majority tyranny. Such a restructuring and reforming of the very nature of our political structure clearly is more than an amendment. (*Raven v. Deukmejian* (1990) 53 Cal 3d 336, 354-355; Levinson, *Constitutional Faith,* (1988) pp.150-151.

Courts have inherent power to enforce constitutional rights against legislative and executive actions, and the separation of powers doctrine, embodied in Article III, Section 3, of the California Constitution, prohibits legislative appropriation of this judicial authority. As was previously determined by this Court in *In Re Marriage Cases*, a prohibition on same-gender marriage and the state's guarantee of equal protection cannot simultaneously co-exist. (*In re Marriage Cases, supra,* 43 Cal. 4th at pp. 845-847.)

///

II. PROPOSITION 8 CANNOT CO-EXIST WITH THE EQUAL PROTECTION CLAUSE IF THERE IS TO BE ANY GENUINE MEANING TO, OR ENFORCEMENT OF, EQUAL PROTECTION

In order to ensure that the guarantees of the California Constitution are provided to all Californians, Proposition 8 cannot be allowed to stand.

A. EQUAL PROTECTION WAS DESIGNED TO PROTECT INDIVIDUAL RIGHTS FROM OPPRESSION BY THE MAJORITY

The California Constitution guarantees that no citizen shall be denied equal protection of the laws. (Cal. Const. art. 1, § 7.) "The concept of the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment." (*In re Gary W.*, (1971) 5 Cal.3d 296, 303, citing *Purdy & Fitzpatrick v. State of California* (1969) 71 Cal.2d 566, 578.)

The rationale behind the Equal Protection Clause when it was adopted was to ensure that government leaders did not arbitrarily impinge upon the rights of the citizenry, but that purpose quickly expanded. Early in United States history, it became clear that to protect individual rights, citizens had to be protected not only from the actions of the executive and legislative branches but also from the capricious designs of popular majorities. (Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution*, (1996) pp. 289-290 & 313-314; Frickey, *The*

Communion of Strangers, supra, 34 Willamette L. Rev. at pp. 424-426.) Moreover, as James Madison observed, the threat of misrule by the popular majority may be even greater at the state level. (Rakove, *Original Meanings*, *supra*, pp. 313-316.)

The tension between the will of the majority and the rights of the minority continues despite the population's professed desire for equality under the law. A review of this nation's history reveals a disavowal of equality by the majority based on the particular popular ideology of the current age. Yet if equality under the law is to have any meaning, it must stand for the proposition that neither government nor majority may extinguish the rights of an individual to be treated the same as the majority based on social mores that change over time.

To protect against arbitrary governance, whether by the country's leaders or by temporary political majorities, the United States and California governments have adopted various equal protection safeguards which cannot be abrogated absent a compelling justification greater than the fundamental right to equality.

B. THE MAJORITY'S ATTEMPT TO ELIMINATE THE RIGHT OF SAME-GENDER COUPLES TO MARRY IS NO MORE EGREGIOUS OR IMPROPER THAN AN ATTEMPT TO REMOVE THE RIGHT FROM OTHER PROTECTED GROUPS

It is well established that the right to marry is a fundamental right. (*In re Marriage Cases, supra,* 43 Cal. 4th at p. 782.) In California, laws

cannot abrogate fundamental rights when they are based upon improper classifications such as race (*Perez v Sharp* (1948) 32 Cal.2d 711, 731-732), gender (*Sail'er Inn, Inc. v. Kirby* (1979) 5 Cal.3d 1, 20; See also, *Borden* v. *Dept. of Employment Development* (1976) 59 Cal.App.3d 250, 255-256.), religion (*Lucas Valley Homeowners Ass'n v. County of Marin* (1991) 233 Cal. App 3d 130,145) or sexual orientation (*In re Marriage Cases*, *supra*, 43 Cal. 4th at p.823.), unless there is an overriding compelling need to do so.

Under California's Equal Protection Clause, no distinction can be made between a law that limits the right to marry based on race or religion and one that limits the right to marry based on sexual orientation. To remove the right of same-gender couples to marry is no less insidious or improper under California law because race, religion, and sexual orientation are all afforded the same protection and are subject to the same judicial scrutiny. Arguments that prohibitions based on racial classifications would not survive challenges under the federal constitution are irrelevant because the California Constitution is as binding and authoritative on the law governing California citizens as the United States Constitution is on the law governing United States citizens. Thus, while numerous rights are protected under the Equal Protection Clause of the United States Constitution, the broader rights afforded by the California Constitution have no less power over citizens of this state. (*King v. McMahon* (1986)

186 Cal.App.3d 648, 656-57.) In fact, when constitutional challenges arise regarding civil liberties, the primary focus of the California courts is on ensuring application of California law and the full panoply of rights Californians guaranteed to Californians under state law and expected by California citizens as their due. (*Serrano v. Priest (Serrano II)* (1976) 18 Cal.3d 728, 764.) Therefore, it is essential that this Court send a message to all minority groups in California to let them know that their rights, as defined by the California Constitution, will remain intact.

In this regard, whether or not future attempts to preclude marriage between individuals based on their race or religion are likely, the fact remains that any attempt to remove the right from same-gender couples is no less insidious or improper under California law.

The *Perez* decision was a significant guiding light in the preceding *In Re Marriage Cases*, and it again provides a pertinent reference point for the issue presently facing this Court. Prior to 1948, interracial marriage was prohibited in California. This included not only relationships between Caucasians and African Americans but also between Caucasians and "Mongolians" and Caucasians and "members of the Malay race." (*Perez v. Sharp*, *supra*, 32 Cal. 2d at p. 712 (citing Former Civil Code sections 69 and 60).)

If *Perez* were overturned by an initiative like Proposition 8, the marriages of over 700,000 heterosexual couples in California would be

nullified. (Simmons et al., *Married-Couple and Unmarried-Partner Households: 2000*, U.S. Census Bureau, (2003) pp.4 & 12, at <http://www.census.gov/prod/2003pubs/censr-5.pdf> [last visited January 14, 2009].) In *Perez,* this Court found, based on reasoned and principled interpretation of the protections afforded by the California Constitution, that marriage was such a significant individual choice that it could not be denied based on racial identity. (*Perez, supra*, 32 Cal. 2d 711, 731-732.) This Court's decision 60 years later that marriage cannot be denied based on sexual orientation is equally as reasoned, principled, and immutable. (*In re Marriage Cases, supra*, 43 Cal. 4th at p.823.)

Since *Perez*, time and understanding have shown that prohibitions on interracial marriages were based upon prejudice and fear and not on any rational, legitimate basis. In his dissent in *Perez,* Justice Shenk cited some fifteen cases upholding anti-miscegenation laws and observed that "[t]he foregoing authorities form an unbroken line of judicial support, both state and federal, for the validity of our own legislation, and there is none to the contrary. Those authorities appear to have passed upon all attacks on such legislation on constitutional grounds...." (*Perez, supra*, 32 Cal.2d at 752 (Shenk, J., dissenting).) Indeed, even ten years after the decision in *Perez* , in 1958, the approval rating of interracial marriage in the United States was only at 4%. (Carroll, *Most Americans Approve of Interracial Marriages*, Gallop News Services, (2007) 1958 Gallup Poll, at <http://www.gallup

.com/poll/28417/Most-Americans-Approve-Interracial-Marriages.aspx> [last visited January 14, 2009].) If Californians could have supplanted the Court's authority to invalidate anti-miscegenation laws by a simply majority vote, they would have succeeded in destroying a right that has since become so accepted that neither judicial, legislative, nor executive branch would dare attempt to revoke.

This Court correctly identified marriage as a fundamental right of every individual, regardless of race, in 1948, and it correctly reaffirmed that right, regardless of sexual orientation, in 2008. It is difficult to explain to children how a slim majority of Californians could take away the right of their parents to marry when their parents' status as equal under the law already exists and in all likelihood will be accepted by the majority of the population by the time they reach adulthood.

III. PUBLIC POLICY CONSIDERATIONS MANDATE THE JUDICIARY'S ENFORCEMENT OF EQUAL PROTECTION IN THE FACE OF AN INHERENTLY DISCRIMINATORY LAW

Since marriage is a fundamental right protected by the California Constitution, so sacred that it has been declared "one of the basic civil rights of man" (*Skinner v. Oklahoma* (1942) 316 U.S. 535, 541), the judiciary must act to protect that right from improper challenges. As Chief Justice George explained:

> upon review of the numerous California decisions that have examined the underlying bases and significance of the constitutional right to marry (and that illuminate *why* this right has been recognized as one of the basic, inalienable civil rights guaranteed to an individual by the California Constitution), we conclude that, under this state's Constitution, the constitutionally based right to marry properly must be understood to encompass the core set of basic *substantive* legal rights and attributes traditionally associated with marriage that are so integral to an individual's liberty and personal autonomy that they may not be eliminated or abrogated by the Legislature or by the electorate through the statutory initiative process.

(*In re Marriage Cases, supra,* 43 Cal. 4th at p.781 (italics in original, underscoring added).)

But these substantive legal rights comprise only part of what is at stake when rights so integral to personal integrity and freedom are denied or taken away. Equally significant are the psychological and sociological affirmations that are coupled with that right. These affirmations exist when irrational classifications are prohibited and rejected. Conversely, when the government does not protect rights in the face of irrational classification, the negative effects of discrimination increase.

One of the clearest and most devastating examples is the increase in violence against the targeted group as reflected through hate crimes. Most hate crimes are committed by individuals who do not see their actions as wrong. (American Psychological Association ("APA"), *Hate Crimes Today: An Age-Old Foe In Modern Dress*, (1998) p.1.) The offenders' inability to discern the impropriety of their conduct is reinforced by their

perception that "they have societal permission to engage in violence against homosexuals." (*Id.*)

> There is the perception that homosexuals are a socially acceptable target. Repeatedly, when young people are asked, they will justify and defend targeting gay people . . . There's a belief nowadays that it's not so cool to assault racial minorities. It's not so cool to assault women, or Jews. But assaulting gays is actually something humorous to a lot of young people. It's probably the last socially acceptable group to assault. Part of it is related to the fact that discrimination against gays is still legalized and encoded. That sends a message to young people that, if gays don't have equal rights in employment, housing, child custody, the military, or marriage, then there's something wrong with them, and nobody's going to mind if we have some fun at their expense.

(Karen Franklin, Forensic Psychologist, PBS Frontline Interview for "Assault on Gay America" (2000) available at <http://www.pbs.org/wgbh/pages/frontline/shows/assault/interviews/franklin.htm> [last visited January 14, 2009].)

Hate crimes are "message crimes" designed to let members of a group know that they are "unwelcome." (APA, *Hate Crimes Today*, *supra,* at p. 2.) They are "political acts in that they express a political sentiment and send a repressive message to the entire community." (Van Dyke et al., *Research in Political Sociology, Volume 9: The Politics of Social Inequality*, (2001) pp. 35-58 at p. 38.)

Crimes born of intolerance take many forms, including murder, physical assault, vandalism, intimidation, and more. Hate crime victims involve not only those who are actually members of the despised group but

also those mistakenly thought to be so. (U.S. Department of Justice, *Hate Crime Data Collection Guidelines, Uniform Crime Reporting*, (1999) p. 6.) A study of nearly 500 young adults in Northern California revealed that one in ten have physical assaulted or threatened people they believed were homosexual. (Franklin, *Antigay Behaviors Among Young Adults: Prevalence, Patterns, and Motivators in a Noncriminal Population*, Journal of Interpersonal Violence, Vol 15, No.4, (April 2000) 339-362, at p. 345.) An additional twenty-three percent verbally insulted those perceived to be gay. (*Id.*)

In California, anti-homosexual hate crimes have increased over 77% in recent years. (California Department of Justice, *Hate Crime in California, 2007* (July 2008) p. 7.). Such hate crimes include the recent kidnapping and gang raping of a lesbian in Richmond, California. (*4 arrested in N. California gang rape of lesbian*, Associated Press, (January 1, 2009) at <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2009/01/01/state/n091840S52.DTL> [last visited January 14, 2009].)

Even in San Francisco, often thought of as a bastion for homosexual civil rights, hate crimes have increased 7%. (National Coalition of Anti-Violence Programs, *Anti-Lesbian, Gay, Bisexual and Transgender Violence in 2007: A Report of the National Coalition of Anti-Violence Programs*, (2008) p. 45.)

When an anti-homosexual initiative arises in a state, the number and severity of hate crime attacks increases.[1] While enforcement of equal protection for members of a particular group cannot be expected to completely eliminate societal violence against members of that group, there is reason to believe it can affect societal perceptions and actions. A preliminary examination of hate crimes in Massachusetts reveals that anti-homosexual hate crimes decreased since the state supreme court legalized same-gender marriage in 2004 by finding prohibition of same-gender marriage unconstitutional.[2] The severity of attacks also lessened, with an approximate 40% decrease seen in hate crimes involving weapons between 2004 and 2007. (Communication with Avy Skolnik, Coordinator of Statewide and National Programs for the New York City Anti-Violence

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[1] *Assaults Against Gays Appear To Be Increasing*, San Francisco Chronicle, December 14, 2008 p. A-33; *Colorado, Oregon Ballot Issues Blamed For 'Open Season'*, Colorado Springs, Gazette Telegraph (March 12, 1993) p. 1B; Jenness et al., *Hate Crimes: New Social Movements And The Politics of Violence*, (1997) p. 67.

[2] National Coalition of Anti-Violence Programs ("NCAVP"), Anti-Lesbian, Gay, Bisexual and Transgender Violence in 2003: A Report of the National Coalition of Anti-Violence Programs, (2004) p. 55; NCAVP, Anti-Lesbian, Gay, Bisexual and Transgender Violence in 2004: A Report of the National Coalition of Anti-Violence Programs, (2005) p. 75; NCAVP, Anti-Lesbian, Gay, Bisexual and Transgender Violence in 2005: A Report of the National Coalition of Anti-Violence Programs, (2006) p. 70; NCAVP, Anti-Lesbian, Gay, Bisexual and Transgender Violence in 2006: A Report of the National Coalition of Anti-Violence Programs, (2007) p. 55; NCAVP, Anti-Lesbian, Gay, Bisexual and Transgender Violence in 2007, supra, p. 48.

Project, National Coalition of Anti-Violence Programs, (January 13, 2009).)

In addition to violence committed against those perceived to be homosexual, societal discrimination adversely affects the psychological well-being of both homosexual and heterosexual citizens by causing increased anxiety, alienation, and fear. Within the homosexual population, the stress associated with being part of a stigmatized community also leads to the hiding or concealment of identity. (Rostosky et al., *Marriage Amendments and Psychological Distress in Lesbian, Gay and Bisexual (LGB) Adults*," Journal of Counseling Psychology, 2009, Vol. 56, No.1 (forthcoming publication 2009 at <http://www.apa.org/journals/releases/cou-jan09-Rostosky.pdf> [last visited January 14, 2009.]); Herek, *Legal Recognition of Same-Sex Relationships in the United States: A Social Science Perspective*, (hereinafter "*Legal Recognition*") American Psychologist, Vol. 61, No.6 (September 2006) pp.607-621, at p. 615.)

The psychological stress experienced by members of a stigmatized group derives from the reality that "[a] privileged citizen retains state and societal support and approval. [However, m]inority citizens are subjected to intense scrutiny and must prove their good citizenship and even their humanity." (Riggle et al., *The Marriage Debate and Minority Stress*, Political Science & Politics (April 2005) Vol. 38 No.2 pp. 222-224.) Notably, psychological stressors increase for homosexuals as political

safeguards are denied. (Rostosky, *Marriage Amendments, supra*; Levitt, H., *Balancing Dangers: GLBT Experience In A Time of Anti-GLBT Legislation*," by et al., Journal of Counseling Psychology, 2009, Vol. 56, No.1(forthcoming publication 2009 at <http://www.apa.org/journals/releases/cou-jan09-Levitt.pdf> [last visited January 14, 2009.]; Russell, *Voted Out: The Psychological Consequences of Anti-Gay Politics*, (2000) pp. 1-7.)

Outside the targeted minority population, family and community members also experience negative psychological implications. (Arm et al., *Negotiating Connection to GLBT Experience: Family Members' Experience of Anti-GLBT Movements and Policies*, Journal of Counseling Psychology, 2009, Vol. 56, No.1(forthcoming publication 2009 at <http://www.apa.org/journals/releases/cou-jan09-Arm.pdf> [last visited January 14, 2009.]); Russell, *Voted Out, supra,* p. 5. As a result of anti-homosexual initiatives, such persons may feel equally attacked. Arm, *Negotiating Connection to GLBT Experience, supra.*) Enforcing marriage equality thus increases the well-being of all California citizens by decreasing psychological stressors and physical violence. (Herek, *Legal Recognition, supra,* at pp. 614-615.)

Interveners argue that Proposition 8 is merely a return to a traditional understanding of marriage; that it does not single out or target a vulnerable

minority for denial of basic rights. (Interveners Opposition Brief p.16.) But, such an argument is disingenuous.

> At the most obvious level, anti-gay initiatives have been mechanisms for denying [homosexuals] protection against discrimination. At another level, the initiatives have been "clearly aimed at controlling the public image of homosexuality and sexual identity." Initiative proponents have acted "to construct gay men and lesbians as 'other' and thereby to distance them through discourse and law."

(Russell, *Voted Out, supra,* pp. 1-2 (internal citations omitted).)

Thus, the message behind such initiatives has as much impact on liberty and autonomy as the substantive legal effects of the initiatives. (Russell, *Voted Out, supra,* p. 4.) If this Court allows the popular majority to perpetuate stigmatizing legislation against individuals involved in same-gender relationships, not only will homosexuals face increased mental stress, but many members of the heterosexual community will as well by virtue of the violence and antagonism in their families and neighborhoods.

To rule that California's guarantee of Equal Protection is not afforded to same-gender relationships conveys the message that homosexuals are inferior, perpetuating the stigma historically associated with being a homosexual. In fact, by having a dual system whereby homosexuals are only allowed a quasi-marital status, the state and judiciary may "compound the stigma." (Herek, *Legal Recognition, supra,* p. 617.)

CONCLUSION

For the foregoing reasons, amicus curiae respectfully submit that Proposition 8 is an improper constitutional revision, violates equal protection, opens the door for further erosion of the civil rights of California citizens, and fosters negative societal conduct.

Dated January 15, 2009

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CERTIFICATE OF COMPLIANCE

I hereby certify that the attached brief has been prepared using proportionately 13 point Times New Roman typeface and contains 4,208 words according to the "Word Count" feature in Microsoft Word for Windows software used to prepare this document.

Dated January 15, 2009

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

I, the undersigned, state that I am employed in the County of Alameda, State of California; that I am over the age of 18 years and not a party to the within action. My business address is 1608 Fourth Street, Suite 300, Berkeley, CA 94710.

On January 15, 2009, I served the foregoing:

APPLICATION TO FILE BRIEF OF AMICUS CURIAE; BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITONERS CHALLENGING PROPOSITION 8

and a copy of this declaration to the interested parties herein as follows:

[ ] By personal delivery of a true copy thereof to:

[ ] By transmittal from a facsimile machine whose telephone number is (510) 559 9970:

[X] By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Berkeley, California, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Berkeley, California.

DATE: January 15, 2009

Irma N. Sampedro-Pérez

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