In the Supreme Court of the State of California

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., Interveners.	No. S168078

APPLICATION FOR PERMISSION TO FILE AN AMICUS CURIAE BRIEF

And

BRIEF OF AMICUS CURIAE LEAGUE OF WOMEN VOTERS OF CALIFORNIA IN SUPPORT OF PETITIONERS CHALLENGING PROPOSITION 8

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CERTIFICATE OF INTERESTED PARTIES

Amicus curiae League of Women Voters of California certifies, pursuant to Rules 8.208 and 8.488 of the California Rules of Court, that it does not know of any entity or person that must be listed under Rule 8.208(e).

Dated: January 15, 2009.

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APPLICATION FOR PERMISSION TO FILE AN AMICUS CURIAE BRIEF

To the Honorable Ronald M. George, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:

Pursuant to Rule of Court 8.520(f), the League of Women Voters of California (the "League") respectfully requests permission to file the attached amicus curiae brief in support of the petitioners challenging Proposition 8 ("Petitioners").

Counsel for the League are familiar with the questions involved and the scope of their presentation to this Court, and believe there is a necessity for additional argument on the new issue raised by the Attorney General — "whether rights secured under the state Constitution's safeguard of liberty as an '*inalienable*' right may intentionally be withdrawn from a class of

persons by an initiative amendment." Attorney General's Ans. Br., p. 77. Proposition 8 is an unconstitutional amendment. A constitution cannot be legitimately amended "so as to remove or materially restrict certain fundamental rights" — such an amendment is not a valid part of the constitution. *See* Murphy, *An Ordering of Constitutional Values*, 53 S. Cal. L. Rev. 703, 754-755 (1980).

In addition, counsel for the League believe that there is a necessity for additional argument as to whether Proposition 8 (if not unconstitutional) has any effect on the marriages of same-sex couples performed before the adoption of Proposition 8. Constitutional amendments do not apply retroactively absent a clear indication that voters intended the amendments to do so; here, voters did not clearly express an intent to apply Proposition 8 retroactively. Thus, Proposition 8 does not apply retroactively to pre-existing marriages.

Formed in 1920, the League is a nonpartisan political organization that encourages informed and active participation in the democratic process and influences public policy through education and advocacy. It does not support or oppose any political party or any candidate.

The League believes in representative government and in individual liberties, as well as in respect for individuals. The League believes that individual rights now protected should not be weakened or abridged. No person or group should suffer legal discrimination; the League is committed to securing equal rights and equal opportunity for all.

Accordingly, the League respectfully requests permission to file the attached amicus curiae brief. Pursuant to this Court's order dated November 20, 2008, the League also requests that the Court consider the attached amicus curiae brief in deciding the matters in S168047 and S168066.

Dated: January 15, 2009.

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In the Supreme Court of the State of California

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., Interveners.	No. S168078

BRIEF OF AMICUS CURIAE LEAGUE OF WOMEN VOTERS OF CALIFORNIA IN SUPPORT OF PETITIONERS CHALLENGING PROPOSITION 8

INTRODUCTION

Amicus curiae, the League of Women Voters of California (the "League"), fully supports issuance of a writ of mandate barring enforcement of Proposition 8. The League submits that there is a necessity for additional argument on the new issue raised by the Attorney General — "whether rights secured under the state Constitution's safeguard of liberty as an '*inalienable*' right may intentionally be withdrawn from a class of persons by an initiative amendment." Attorney General's Ans. Br., p. 77. As discussed in Section I below, Proposition 8 is an unconstitutional amendment. A constitution cannot be legitimately amended "so as to remove or materially restrict certain fundamental rights" — such an

amendment is not a valid part of the constitution. *See* Murphy, *An Ordering of Constitutional Values*, 53 S. Cal. L. Rev. 703, 754-755 (1980).

In addition, the League submits that there is a necessity for additional argument as to whether Proposition 8 (if not unconstitutional) has any effect on the marriages of same-sex couples performed before the adoption of Proposition 8. As discussed in Section II below, Proposition 8 does not apply retroactively to pre-existing marriages. Constitutional amendments do not apply retroactively absent a clear indication that voters intended the amendments to do so; here, voters did not clearly express an intent to apply Proposition 8 retroactively.

ARGUMENT

I. PROPOSITION 8 IS AN UNCONSTITUTIONAL AMENDMENT.

The Attorney General's answer brief raises a new issue — "whether rights secured under the state Constitution's safeguard of liberty as an '*inalienable*' right may intentionally be withdrawn from a class of persons by an initiative amendment." Attorney General's Ans. Br., p. 77. The answer is "no." Such an amendment would be unconstitutional.

Interveners suggest that the Attorney General's theory is "extra-constitutional" and "entirely new." Interveners' Response, p. 1. That suggestion is wrong.

More than a quarter-century ago, Professor Walter F. Murphy proposed "the possibility of unconstitutional constitutional amendments." Murphy, *An Ordering of Constitutional Values*, 53 S. Cal. L. Rev. 703, 754 (1980). Professor Murphy asked whether a constitutional document could be legitimately amended "so as to remove or materially restrict certain

fundamental rights and severely cripple or even destroy the polity's structure of values." *Id.* at 754. He posed a hypothetical:

> "Assume the following scenario in the United States. Because of social and economic upheavals, a political ideology of repressive racism sweeps the country. A two-thirds majority of each house of Congress quickly proposes and thirty-three states rapidly ratify, by means of popularly chosen conventions, a constitutional amendment whose opening sentence reads: 'Members of the various colored races are inferior to Caucasians in moral worth.' The amendment goes on to limit the franchise to whites, to require state and federal governments to segregate public institutions, and to authorize other legal disabilities that clearly offend, even deny, the human dignity of noncaucasians. The NAACP swiftly brings suit in the United States District Court for the Southern District of New York asking for a declaratory judgment that the amendment is invalid and an injunction forbidding the attorneys general of New York and the United States to take any action under its authority. The case soon reaches the United States Supreme Court.
>
> "**Is the amendment a valid part of the Constitution?** ..."

Id. at 754-755 (emphasis added).

Murphy's answer is that "[p]olitical prudence may prescribe all sorts of strategies of avoidance; but if the Court were to meet the issue head-on, I do not see how the Justices, as officials of a constitutional democracy, could avoid holding the amendment invalid." *Id.* at 755. He writes, "[T]he

Court could explain and justify protection of human dignity as the principal value in the American constitutional system and thus reason that because the amendment violates that basic value, it is invalid." *Id.* at 756.

> "'That a constitutional provision itself may be null and void, is not conceptually impossible just because it is a part of the constitution. There are constitutional principles that are so fundamental . . . that they also bind the framers of the constitution, and other constitutional provisions that do not rank so high may be null and void because they contravene these principles. . . .'"

Id. at 755-756 (quoting a ruling of the Federal Constitutional Court of the Federal Republic of Germany).

Or, alternatively, the Court could adopt a "simpler mode" (*id.* at 757):

> "There are principles above the literal terms of the constitutional document — as the document itself acknowledges — in the preamble's affirmation of justice as a goal of the polity, and the ninth amendment's apparent recognition of unlisted natural rights. One of these rights, implicit in the goal of obtaining justice and belonging to all people in the nation, is the right to respect and dignity. The new amendment would deny that right and thus contradict the basic purposes of the whole constitutional system."

Id. at 757.

Both of these lines of reasoning are pertinent to analyzing whether Proposition 8 is an unconstitutional amendment. As Petitioners note, Proposition 8 "must be deemed beyond the amendment power if it

selectively denies basic, fundamental rights in a way that our constitutional system does not and has never tolerated." Reply of City and County of San Francisco et al., p. 3. "Proposition 8 does not 'merely' seek to deny fundamental rights; it deprives a suspect class of fundamental rights. As such, it flouts the equality principle, which . . . is a central, if not *the* central foundational principle of our constitutional democracy." *Id.* at 39. Thus, Proposition 8 is an unconstitutional amendment.

II. IN ANY EVENT, PROPOSITION 8 DOES NOT APPLY RETROACTIVELY TO PRE-EXISTING MARRIAGES.

A. Applying Proposition 8 to marriages that occurred before November 5, 2008, would impermissibly give Proposition 8 retroactive effect.

Assuming *arguendo* that Proposition 8 is valid, it does not affect the marriages of same-sex couples who wed before it took effect. An amendment "approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise." Cal. Const. art. XVIII, § 4. Proposition 8 does not provide for another effective date. Hence, Proposition 8 became effective on November 5, 2008. Applying Proposition 8 to marriages existing before that date would be an impermissible retroactive application of the proposition.

It is undisputed that applying Proposition 8 to couples who married before November 5, 2008, would give it retroactive effect. "[A] retroactive or retrospective law '"is one which affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute."'" *Myers v. Philip Morris Cos.*, 28 Cal. 4th 828, 839 (2002) (citing *Aetna Cas. & Sur. Co. v. Indus. Accident Comm'n,* 30 Cal. 2d 388, 391 (1947), and *Evangelatos v. Superior Court,* 44 Cal. 3d

1188, 1206 (1988)). """[E]very statute, which takes away or impairs vested rights acquired under existing laws...or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective."'" *Id.* (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269 (1994)).

In *Myers,* this Court considered a statute rescinding the immunity previously granted to tobacco companies in certain product liability lawsuits. The Court held that applying the repeal statute to lawsuits targeting conduct during the immunity period would be a retroactive application of the statute because "it could subject [tobacco] companies to 'liability for past conduct'...that was lawful during the immunity period." *Id.* at 840 (citations omitted). "Such retroactive application is impermissible unless there is an express intent of the Legislature to do so." *Id.* In *McClung v. Employment Development Department,* 34 Cal. 4th 467 (2004), this Court held that applying an amendment to the Fair Employment and Housing Act ("FEHA"; Gov't Code § 12940) to impose personal liability on plaintiff's coworker, who was not subject to liability at the time of the actions at issue, would give the amendment retrospective effect because doing so would attach "'new legal consequences to events completed before its enactment.'" 34 Cal. 4th at 472 (quoting *Landgraf,* 511 U.S. at 270).

Here, it is undisputed that applying Proposition 8 to marriages that occurred before November 5, 2008, would affect "rights, obligations, acts, transactions, and conditions" which were performed or which existed prior to the enactment of Proposition 8. Invalidating these marriages would "take[] away...vested rights acquired under existing laws"—namely, all of those rights that different-sex couples take for granted when they marry.

See Reply of Karen L. Strauss et al., pp. 63-66 (discussing the rights that might be impaired if existing marriages were nullified, including rights concerning ownership of property, estate planning, parenting, spousal communications, and health and welfare benefits).

In contrast, in *Californians for Disability Rights v. Mervyn's, LLC,* 39 Cal. 4th 223 (2006) (*"Mervyn's"*), this Court held that Proposition 64 on the November 2004 ballot should apply to cases pending when it took effect "because the measure does not change the legal consequences of past conduct by imposing new or different liabilities based on such conduct." *Id.* at 232 (footnote and citation omitted). Proposition 64 amended, *inter alia,* standing requirements under the Unfair Competition Law ("UCL"; *see* Bus. & Prof. Code § 17204). But it left "entirely unchanged the substantive rules governing business and competitive conduct." *Mervyn's,* 39 Cal. 4th at 232. As the Court observed, "Nothing a business might lawfully do before Proposition 64 is unlawful now, and nothing earlier forbidden is now permitted." *Id.* The same cannot be said here. Before Proposition 8, loving, committed same-sex couples could lawfully marry and enjoy the respect and dignity of that institution. Applying Proposition 8 to couples who have already married would "change the legal consequences" of their past conduct by nullifying their marriages. There is no question that this would be a retroactive application of the proposition.

B. Constitutional amendments do not apply retroactively absent a clear indication that voters intended the amendments do so.

It is well settled that, "[g]enerally, statutes operate prospectively only." *McClung,* 34 Cal. 4th at 475 (citing *Myers,* 28 Cal. 4th at 840). Indeed, it is presumed that "statutes operate prospectively absent a clear indication the voters or the Legislature intended otherwise." *Mervyn's,*

39 Cal. 4th at 230 (citations omitted). "The presumption embodies '"'[t]he first rule of construction[, namely,] that legislation must be considered as addressed to the future, not to the past.'"'" *Id.* (citations omitted). "'The rule has been expressed in varying degrees of strength but always of one import, that a retrospective operation will not be given to a statute which interferes with antecedent rights...unless such be the "unequivocal and inflexible import of the terms, and the manifest intention of the legislature."'" *Myers,* 28 Cal. 4th at 840 (quoting *Evangelatos,* 44 Cal. 3d at 1207) (additional internal quotation marks and citation omitted).

"'[T]he presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly.... For that reason, the "principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal."'" *McClung,* 34 Cal. 4th at 475 (quoting *Landgraf,* 511 U.S. at 265 (footnotes and citation omitted)).

"'In a free, dynamic society, creativity in both commercial and artistic endeavors is fostered by a rule of law that gives people confidence about the legal consequences of their actions. It is therefore not surprising that the antiretroactivity principle finds expression in several provisions of our Constitution.'" *Myers,* 28 Cal. 4th at 841 (quoting *Landgraf,* 511 U.S. at 265-266 (citing, *inter alia,* the *Ex Post Facto* Clause's prohibition against retroactive application of penal legislation, the Fifth Amendment's limitations on depriving private persons of vested property rights, and the

prohibition against laws "impairing the obligation of contracts" in Article I, Section 10, Clause 1)).

Thus, "unless there is an 'express retroactivity provision, a statute will *not* be applied retroactively unless it is *very clear* from extrinsic sources that the Legislature...must have intended a retroactive application.'" *Myers,* 28 Cal. 4th at 841 (quoting *Evangelatos,* 44 Cal. 3d at 1209 (emphasis added by the Court)). "'[A] statute that is ambiguous with respect to retroactive application is construed...to be unambiguously prospective.'" *Id.* (citing *INS v. St. Cyr,* 533 U.S. 289, 320-321 n.45 (2001), and *Lindh v. Murphy,* 521 U.S. 320, 328 n.4 (1997) ("'"retroactive" effect adequately authorized by a statute' only when statutory language was 'so clear that it could sustain only one interpretation'")). "'[A] statute may be applied retroactively only if it contains express language of retroactivity *or* if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application.'" *McClung,* 34 Cal. 4th at 475 (quoting *Myers,* 28 Cal. 4th at 844). "'Requiring clear intent assures that [the legislative body] itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits.'" *Id.* at 476 (quoting *Landgraf,* 511 U.S. at 272-273).

These rules have been applied to constitutional amendments effected by ballot initiative (*see Rosasco v. Comm'n on Judicial Performance,* 82 Cal. App. 4th 315 (2000) (Proposition 190 on the November 1994 ballot, amending article VI, section 18, of the state Constitution)), as well as to statutory changes effected by legislation (*see McClung,* 34 Cal. 4th at 469 (amendments to the FEHA)) and those effected by ballot initiative (*see Mervyn's,* 39 Cal. 4th at 227 (amendments to the UCL)). In *Rosasco,*

the court squarely rejected the argument that different rules should apply when the amendment at issue is constitutional rather than statutory:

> "The fact *Evangelatos* concerned a different set of facts and a nonconstitutional ballot measure...is not controlling. As is clear from the broad sweep of the Supreme Court's opinion, *Evangelatos* is not limited to its facts or the particular kind of ballot measure before the court in that case. The principle it states—'"legislative enactments are generally presumed to operate prospectively and not retroactively unless the Legislature expresses a different intention"'—is equally applicable to *any* kind of change in the law."

82 Cal. App. 4th at 321-322 (citing *Evangelatos,* 44 Cal. 3d at 1208) (emphasis in original). The presumption against retroactivity should apply here as in *Rosasco, Evangelatos, Mervyn's, McClung,* and *Myers.*

C. Voters did not clearly express an intent to apply Proposition 8 retroactively.

Proposition 8 operates only prospectively because voters did not clearly express any intent to apply it retroactively. Neither "retroactive" nor "retrospective" appears anywhere in the text of Proposition 8 or in the portions of the ballot pamphlet addressing Proposition 8. Neither the text of Proposition 8 nor any portion of the ballot pamphlet even mentions marriages entered into before the November 5, 2008 effective date.

Interveners rely on language in the rebuttal to the argument against Proposition 8 in the ballot pamphlet, which states in part: "Your YES vote on Proposition 8 means that only marriage between a man and a woman will be valid or recognized in California, *regardless of when or where performed*" (emphasis added). But, as the ballot pamphlet states itself:

"Arguments printed on this page are *the opinions of the authors* and have not been checked for accuracy by any official agency" (emphasis added). The rebuttal to the argument against Proposition 8 is signed by Dr. Jane Anderson, M.D., a fellow of the American College of Pediatricians; Robert Bolingbroke, Council Commissioner of the San Diego-Imperial Council of the Boy Scouts of America; and Jeralee Smith, Director of Education/California Parents and Friends of Ex-Gays and Gays. The opinion of these three individuals is entitled to little weight.

Moreover, the language at issue is buried on page 57 of the ballot pamphlet, near the end of two pages of dense, single-spaced argument on Proposition 8. It is likely that many voters never even saw this language. *See Yoshioka v. Superior Court,* 58 Cal. App. 4th 972, 981 (1997) (weighing text at "forefront of voter pamphlet" in "brief synopsis" more heavily than text "hidden in small print many pages back" in finding that the electorate intended to adopt initiative retroactively). Voters are much more likely to have seen and read the official title of Proposition 8: "Eliminates Right of Same-Sex Couples to Marry. Initiative Constitutional Amendment." This title appears in bold type, all in capital letters, on page 9 of the ballot pamphlet (the Quick-Reference Guide). The title also appears in bold type, all in capital letters, on page 54 of the ballot pamphlet (the Official Title and Summary), on page 55 (the Analysis by the Legislative Analyst), and on page 56 (the arguments for and against). Likewise, the first line of the summary of Proposition 8 in the Quick-Reference Guide states: "Changes California Constitution to eliminate the right of same-sex couples to marry" (page 9 of the ballot pamphlet). And the first bullet point in the Official Title and Summary states: "Changes the California Constitution to eliminate the right of same-sex couples to marry

in California" (page 54 of the pamphlet). Along with the official title, these statements indicate that Proposition 8 will be applied prospectively to "eliminate the right of same-sex couples to marry" in the future, not to strip away the rights of same-sex couples who have already married.

Furthermore, the analysis of Proposition 8 in the ballot pamphlet states that "marriage would be limited to individuals of the opposite sex, and individuals of the same sex would not have *the right to marry* in California" (page 55 of the pamphlet) (emphasis added). The summary of Proposition 8 in the Quick-Reference Guide (page 9 of the pamphlet) discusses the fiscal impact of the proposition, focusing on potential revenue loss to state and local governments over the next few years from same-sex couples who would marry but for Proposition 8—i.e., marriages that would occur in the future. This fiscal impact analysis is repeated on page 54 of the ballot pamphlet (Official Title and Summary) and page 55 (Analysis by the Legislative Analyst). In summary, voters who read the ballot pamphlet would likely have concluded that Proposition 8 would be given only prospective effect. If they voted for Proposition 8, they did so with the understanding that they were voting to bar same-sex couples from marrying, not to invalidate marriages that had already taken place.

On its own, the language of the constitutional amendment effected by Proposition 8 does not "clear[ly]," "unequivocal[ly]," or "unambiguously" evince any intention to give Proposition 8 retroactive effect. The amendment states in full: "Only marriage between a man and a woman is valid or recognized in California." Although this language could be read to mean that only marriages between a man and a woman will be recognized no matter when the marriage occurs, it could just as easily mean that, henceforth, only a man and a woman may marry. The language of the

constitutional amendment falls far short of the "express language of retroactivity" that this Court requires before giving retroactive effect to a change in the law. *See McClung,* 34 Cal. 4th at 475; *Myers,* 28 Cal. 4th at 844.

If the authors of Proposition 8 had wanted to include "express language of retroactivity," they could have done so. For example, Civil Code section 1646.5, concerning agreements by the parties to a contract to be governed by California law, provides, in relevant part:

> "This section applies to contracts, agreements, and undertakings entered into before, on, or after its effective date; it shall be fully retroactive. Contracts, agreements, and undertakings selecting California law entered into before the effective date of this section shall be valid, enforceable, and effective as if this section had been in effect on the date they were entered into; and actions and proceedings commencing in a court of this state before the effective date of this section may be maintained as if this section were in effect on the date they were commenced."

See also Gov't Code § 9355.8 (addressing service credit for the Legislators' Retirement System and providing, "This section shall have retroactive application, as well as prospective application, but this section shall not deprive a member of credit for any service credited to him or her on the effective date of this section."); *see Myers,* 28 Cal. 4th at 842 (discussing both Civil Code section 1646.5 and Government Code section 9355.8). Proposition 8 does not contain any comparable retroactivity language.

This Court has stated, "[A]t least in modern times, we have been cautious not to infer the voters' or the Legislature's intent on the subject of

prospective versus retrospective operation from 'vague phrases'...and 'broad, general language'...in statutes, initiative measures and ballot pamphlets." *Mervyn's,* 39 Cal. 4th at 229-230 (quoting *Myers,* 28 Cal. 4th at 843, and *Evangelatos,* 44 Cal. 3d at 1209); *see also id.* at 230 (observing that the Court has also "disapproved statements to the contrary in certain older cases") (citation omitted). As in *Myers,* "the time-honored presumption against retroactive application of a statute, as reflected in section 3 of the California Civil Code as well as in decisions by this court and the United States Supreme Court, would be meaningless if the vague phrases relied on by [the Interveners] were considered sufficient to satisfy the test of a 'clear[] manifest[ation]' or an '"""unequivocal and inflexible"""' assertion...of retroactivity." 28 Cal. 4th at 843 (citations omitted). The Interveners have not satisfied this test, and Proposition 8 should not be applied retroactively.

Indeed, the presumption against retroactivity should apply with even greater force here, where thousands of marriages are at stake. Without clear evidence of any intent to nullify all the marriages that followed this Court's decision in *In re Marriage Cases,* 43 Cal. 4th 757 (2008), it must be presumed that the people of California did not intend to divest so many of their fellow Californians of their fundamental rights.

CONCLUSION

For the reasons stated above, the Court should issue a writ of mandate barring the enforcement of Proposition 8.

Dated: January 15, 2009.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

(California Rule of Court 8.520(c)(1))

The text of this brief consists of 3,686 words, not including tables of contents and authorities, or this certificate, as counted by Microsoft Word, the computer program used to prepare this brief.

Dated: January 15, 2009.

By _____
Alice K. M. Hayashi

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PROOF OF SERVICE BY MAIL

I, Thomas E. Morgan, the undersigned, hereby declare as follows:

I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in the City of San Francisco, California.

My business address is 50 Fremont Street, San Francisco, CA 94105-2228. My mailing address is 50 Fremont Street, P. O. Box 7880, San Francisco, CA 94120-7880.

I am familiar with Pillsbury Winthrop Shaw Pittman LLP's practice for collection and processing of 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.

On January 15, 2009 at 50 Fremont Street, San Francisco, California, I served copies of the attached **Application for Permission to File an Amicus Curiae Brief** and **Brief of Amicus Curiae League of Women Voters of California in Support of Petitioners Challenging Proposition 8** to each of the addressees on the **Attached Service List** by inserting them in addressed, sealed envelopes clearly labeled to identify the persons being served, and placing them in interoffice mail, following ordinary business practices.

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

Thomas E. Morgan

SERVICE LIST

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California Supreme Court Case No. S168078

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