IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

COORDINATION PROCEEDING SPECIAL TITLE (RULE 1550(b))
MARRIAGE CASES

JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4365
CASE NOS. A110449, A110450, A110451, A110463, A110651, A110652
THE HONORABLE RICHARD A. KRAMER, JUDGE

APPLICATION TO FILE BRIEF AND BRIEF OF *AMICI CURIAE* THE GENERAL SYNOD OF THE UNITED CHURCH OF CHRIST, THE UNION FOR REFORM JUDAISM, SOKA GAKKAI INTERNATIONAL-USA, THE UNITARIAN UNIVERSALIST ASSOCIATION OF CONGREGATIONS, THE CALIFORNIA COUNCIL OF CHURCHES, CALIFORNIA FAITH FOR EQUALITY, *ET AL.*, IN SUPPORT OF ALL RESPONDENTS

(Additional *Amici Curiae* Listed On Pages Following The Brief)

Raoul D. Kennedy (No. 40892)
Elizabeth Harlan (No. 193825)
Jo Ann Hoenninger (No. 205222)
Joren S. Bass (No. 208143)
Philip A. Leider (No. 229751)
Michael D. Meuti (No. 227939)
Stephen Lee (No. 239533)
Four Embarcadero Center, Ste. 3800
San Francisco, California 94111
Telephone: (415) 984-6400
Facsimile: (415) 984-2698

Eric Alan Isaacson (No. 120584)
655 West Broadway, Suite 1900
San Diego, California 92101
Telephone: (619) 231-1058

Rev. Silvio Nardoni (No. 48395)
535 N. Brand Blvd., Suite 501
Glendale, California 91203
Telephone: (818) 550-1800

Attorneys for *Amici Curiae*

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE(S)**

STATUTES

OTHER AUTHORITIES

APPLICATION TO FILE BRIEF OF *AMICI CURIAE*

Pursuant to California Rule of Court 13(c), the General Synod Of The United Church Of Christ, the Union For Reform Judaism, Soka Gakkai International-USA, the Unitarian Universalist Association of Congregations, the California Council Of Churches, California Faith for Equality, and more than two hundred other local, regional and national religious organizations and clergy listed on the pages following the attached brief, request leave of this Court to file the attached brief of *Amici Curiae* in support of all Respondents. This application is timely made in accordance with the Court's Consolidation Order dated December 1, 2005.

Amici curiae come from a wide variety of faith traditions including the Native American, Christian, Buddhist, Jewish, and Muslim faiths. Some Amici are national associations or communities with strong ties to California. Other Amici are statewide conferences and councils encompassing California. Still other Amici are local religious communities. Several of California's most esteemed religious leaders are also among Amici.

I. GENERAL INTERESTS OF *AMICI CURIAE*

Amici believe that same-sex couples should be afforded the same fundamental right as different-sex couples to participate in the State-sanctioned institution of marriage. Appellant Campaign for California Families states that a crucial question before this Court is whether the interest in marriage equality "finds support in our history, our traditions, and the conscience of our people."

(CCF Op.Br. at 8 (citing Dawn D. v. Superior Court of Riverside (1998) 17 Cal.4th 932, 940). Amici submit the attached brief in part to demonstrate that the "conscience of our people" is far more embracing and respectful of individual dignity than Appellants would have this Court believe, and "our history" and "our traditions" are not nearly as narrow or homogeneous as Appellants would have them.

Amici also present the attached brief to explain why, under Article 1, Section 4 of the California Constitution and the First Amendment to the United States Constitution, the Court must interpret California's marriage laws neutrally without favoring one religious tradition and without discriminating against others of equal dignity.

Amici understand that this case presents a number of Constitutional issues other than the guarantee of "free exercise and enjoyment of religion without discrimination or preference" and the proscription against laws "respecting an establishment of religion" embodied in Article 1, Section 4 of our State charter. But in interpreting the equal protection, due process and privacy clauses of the State Constitution, the Court will surely benefit from consideration of the impact its decision will have on other constitutionally-protected rights.

II. SPECIFIC INTERESTS OF A SAMPLE OF AMICI

A. INTEREST STATEMENTS OF NATIONAL FAITH ORGANIZATIONS

The United Church of Christ ("UCC"): With more than 5,700 congregations (more than 250 in California) and more than 1.3 million members, the United Church of Christ reflects the merger in 1957 of the Evangelical and Reformed Church with the Congregational Christian Churches. The denomination thus represents the convergence of a variety of Christian faith traditions, with deep roots in American history. Through the Congregationalist branch of its history, for example, the UCC can trace its origins to congregations organized by Pilgrims and Puritans in the 1600s and 1700s.

Throughout our nation's history, the UCC's congregations and their members have often stood in solidarity with the marginalized and oppressed – calling for the abolition of slavery, for recognizing women's rights, for honoring mixed-race marriage, and for the full civil rights of all persons. Thus, a 1996 resolution of the Directorate of the United Church of Christ Office for Church in Society called for affirming "equal marriage rights for same sex couples who choose to marry and share fully and equally in the rights, responsibilities and commitment of legally recognized marriage" and the Board for Homeland Ministries adopting a resolution affirming "equal rights for same gender couples and declar[ing] that the Federal and state governments should not interfere with same gender couples who choose to marry and share fully and equally in the rights,

responsibilities and commitment of civil marriage." On July 4, 2005, the General Synod of the UCC adopted a resolution affirming "equal marriage rights for couples regardless of gender and declar[ing] that the government should not interfere with couples regardless of gender who choose to marry and share fully and equally in the rights, responsibilities and commitment of legally recognized marriage."

The Union for Reform Judaism ("Union"): Founded in 1873, the Union is the central body of the Reform Movement in North America including 900 congregations encompassing 1.5 million Reform Jews. The Reform Jewish Movement comes to this issue out of our obligation to ensure equality for all of God's children, regardless of sexual orientation. As Jews, we are taught in the very beginning of the Torah that God created humans *B'tselem Elohim*, in the Divine Image, and therefore the diversity of creation represents the vastness of the Eternal (Genesis 1:27). We oppose discrimination against all individuals, including gays and lesbians, for the stamp of the Divine is present in each and every human being. Thus, the Union unequivocally supports equal rights for all people, including the right to a civil marriage license. Furthermore, we whole-heartedly reject the notion that the state should discriminate against gays and lesbians with regard to civil marriage equality out of deference to religious tradition, as our religion celebrates the unions of loving same-sex couples and considers such partnerships worthy of blessing through Jewish ritual.

Soka Gakkai International-USA ("SGI-USA"): SGI-USA is a Buddhist community, associated with Soka Gakkai International ("SGI"), that promotes peace and individual happiness based on the teachings of the Nichiren school of Mahayana Buddhism. SGI-USA is one of the largest Buddhist organizations in America, with more than 90 centers throughout the United States and over 300,000 members, representing a broad range of ethnic and social backgrounds. As explained by Daisaku Ikeda, the president of the SGI, "The Buddha's teaching begins with the recognition of human diversity . . . ." In this spirit, the SGI-USA embraced conducting Buddhist wedding ceremonies for lesbian and gay couples in May 1995. In a memorandum announcing this move, SGI-USA stated: "The SGI-USA has expanded its wedding policy to allow for weddings to be performed at community centers for all couples regardless of sexual orientation. . . . [S]howing such consideration for individuals clearly reflects the Daishonin's [Revered Teacher's] spirit of non-discrimination and equality."

The Unitarian Universalist Association of Congregations ("UUA"): Comprising more than 1,000 congregations and fellowships, with more than 70 in California, the UUA was formed in 1961 by the union of the American Unitarian Association and the Universalist Church of America – two denominations that trace their origins to the earliest days of American history. The importance of Unitarian churches in our nation's history may be evidenced by the fact that Presidents John Adams (1797-1801), John Quincy Adams (1825-

1829), Millard Fillmore (1850-1853), and William Howard Taft (1909-1913), and several Supreme Court Justices (Joseph Story and Oliver Wendell Holmes among them) were Unitarians.

Moved by a gospel of universal love, America's Universalists condemned slavery from the Republic's earliest days, ordained women ministers before any other American denomination, and stood fast for civil rights through this nation's history. This commitment continues today, as Unitarian Universalists bear public witness against institutionalized discrimination on the basis of religious viewpoint and sexual orientation. Indeed, Unitarian Universalist ministers have for decades performed marriages and ceremonies of union for same-sex couples. "Because Unitarian Universalists affirm the inherent worth and dignity of every person," and "[b]ecause marriage is held in honor among the blessings of life," the denomination's General Assembly resolved overwhelmingly in 1996 the "support of legal recognition for marriage between members of the same sex," urging its "member congregations to proclaim the worth of marriage between any two committed persons and to make this position known in their home communities."

The Metropolitan Community Churches ("MCC"): With 43,000 adherents and 250 congregations located in twenty-three countries around the world, MCC is the largest Christian denomination ministering primarily to lesbians and gays, among others. For almost four decades, MCC has actively worked on behalf of marriage equality as an integral part of its spiritual

commitment to social justice. In 1969, MCC clergy performed the first public marriage between persons of the same sex in the United States, and in 1970, MCC filed the first lawsuit seeking legal recognition for marriages between persons of the same sex. Each year, MCC clergy perform 6000 wedding ceremonies for same-sex couples. MCC believes these marriages are recognized and blessed by God and a community of faith and strongly supports equal access to the institution of civil marriage for all persons regardless of gender or sexual orientation.

B. INTEREST STATEMENTS OF STATEWIDE FAITH ORGANIZATIONS

The California Council of Churches: The Council has a constituency of over 4,000 congregations in fifty-one Protestant and Orthodox judicatories and denominations throughout California. The churches that make up the California Council of Churches believe that God's message is universal love of and for all people. Thus, the California Council of Churches has long supported marriage equality and gay rights in its legislative principles based on faith teachings. The Council states: "Our commitment to religious liberty for all and equal protection under the law leads us to assert that the State may not rely on the views of particular religious sects as a basis for denying civil marriage licenses to same-gender couples."

The Unitarian Universalist Legislative Ministry - California ("UULM-CA"): UULM-CA is a statewide justice ministry, with many

congregational affiliates, striving to empower the moral voice of Unitarian Universalist values in the public arena. Faith calls Unitarian Universalists to change policies and structures that inhibit human spiritual development, harm the environment, and destroy communities. The UULM-CA thus seeks to build a statewide education and advocacy network, anchored in Unitarian Universalist faith and values, to inspire and mobilize constructive action. Guided by Unitarian Universalist principles, the UULM-CA seeks through civic engagement to educate, organize, and advocate for public policies that uphold the worth and dignity of every person; further justice, equity, and compassion in human relations; ensure use of the democratic process; and protect religious freedom.

Unitarian Universalist clergy have for decades been officiating at the religious weddings of same-gender couples, and the UULM-CA Board of Trustees has chosen marriage equality as a top priority for immediate action. Believing that Unitarian Universalists have a vital role to play in educating and organizing to achieve full civil-marriage equality for same-sex couples, UULM-CA, through the efforts of its Executive Director, the Rev. Lindi Ramsden, and many others, has played a major role in organizing the effort to file a multi-denominational brief in these cases supporting the equal right to marry.

The Reconciling Ministries Clergy of the California Nevada Conference of the United Methodist Church: The Reconciling Ministries Clergy consists of over 100 clergy in Northern California. The Reconciling

Ministries Clergy is comprised of persons called to ordained ministry within the United Methodist Church who summon the church to a deeper level of spiritual and theological integrity in relationship to persons of all sexual orientations and gender identities and their full inclusion in all aspects of the church's life.

Reconciling Ministries Clergy stems from the Reconciling Ministries Network, which is a national grassroots organization that exists to enable full participation of people of all sexual orientations and gender identities in the life of the United Methodist Church, both in policy and practice. The Reconciling Ministries Network comprises fifty reconciling communities within the State of California.

Clergy within the Reconciling Ministries Network have performed services for same-sex unions since at least the mid-1980s. In 1999, California-Nevada Reconciling Congregations were prominent among the 1,200 persons gathered for the union service of Jeanne Barnett and Ellie Charlton in Sacramento. Ninety-five clergy co-officiated in this blessing as a challenge to the national United Methodist Church's policy banning same-sex unions.

The Reconciling Ministries Clergy's theological statement spells out the core tenets of faith guiding their support for same-sex marriage, stating, "We believe, at this critical juncture in our common history as United Methodists, that God has called us to speak a clear word concerning human sexuality. We believe that human sexuality is a good gift from God. Responsible use of sexuality is not

dependent on the gender of a partner; rather, it is based upon the faithful, mature, loving, and mutually respectful expression of that gift. When we so live out our sexuality, we are drawn into ever deepening relationships with others and with God." Thus, the Reconciling Ministries Clergy of the United Methodist Church strongly support the legal recognition of marriages between adults of the same sex.

California Faith for Equality: California Faith for Equality is a coalition of clergy and lay leaders of faith communities throughout California who have come together to focus the voice of communities of faith who support equality for lesbian, gay, bisexual and transgender people. Although civil marriage is a distinctly secular institution, the general public thinks of marriage as primarily a religious issue. The clergy and lay leaders of California Faith for Equality believe that people of faith have a duty to speak out against injustice and inequality and to affirm love between couples and in families. That is why California Faith for Equality urges this Court to support the right of gays and lesbians to marry the adult partner of their choosing on an equal basis with heterosexuals.

C. INTEREST STATEMENTS OF RELIGIOUS LEADERS

Pastor David Moss, Trinity United Methodist Church, Chico: My oath clearly states that as important as it is to "proclaim the faith of the church," it is more important to "look after the concerns of Christ above all." As such it would be against my call as a pastor and an affront to God and to my

church, to limit my full pastoral role of service to only one part of God's created humanity, giving heterosexual people the service of marriage and blessing their unions, for instance, but refusing the same to homosexual people. The ordination pledge I took, and before that the witness of Christ's call for me in Scripture, supersede the dictates of the United Methodist Church. Whenever there is a conflict in the gospel message with a law of the church, history and church tradition command that I first and foremost honor the Word of God as I understand it.

In the United Methodist Church as of now, if I were to admit in public that I perform GLBT weddings and homosexual unions I will most likely be called to trial in the church and sacrifice my orders as a United Methodist pastor. Although this does not reflect the majority view of all United Methodist pastors or churches in California or in any state west of the Rockies, we are a connectional church, bound by the decisions of the national church, whose power resides in the more conservative areas of the country, particularly the southeastern and southwestern states from Texas to the Atlantic.

My particular congregation, Trinity United Methodist Church, which is in a conservative area of Northern California, and resides in Rep. Wally Herger's (R) Congressional District, voted 125 to 114 to join the Reconciling Ministries Network. Trinity has a Mission/Welcoming statement which we include in our Bulletin every Sunday that we are accepting of all persons including

"those of different sexual orientation." We also celebrate the inclusion of our GLBT brothers and sisters in our church and community during services on what we call "Diversity Sunday" which coincides with the Chico Gay Pride Festival in October of each year. Not everyone in our church of 430 members agrees with our inclusive stance, but we all honor and respect those who disagree with us on this matter as well as many others, and no one has left us as a result of our vote on November 4, 2005. Our church has in fact experienced an increase in energy and hope since the vote was taken, and I thank God. Accordingly, I support the rights of all, Methodists and non-Methodists, to marry the adult partner of their choice, regardless of sex or sexual orientation.

Pastor Dr. Robert Goldstein, St. Francis Lutheran Church, San Francisco: St. Francis Lutheran Church was founded in 1898, survived the earthquake of 1906 and served as a temporary infirmary for those wounded in the quake. In the 1970s St. Francis founded a childcare center for children with family members in prison. Today this center provides high quality education and support for low income children and families. The St. Francis Senior Center, also founded in the 1970s, provides hot meals, social activities, legal referrals, education and support for elders. In the 1980s the congregation responded to the emerging AIDS crisis in San Francisco with a wide array of services and networking support with local hospice services. In the 1990s the congregation openly challenged the policies of the Evangelical Lutheran Church in America

(ELCA) prohibiting openly gay and lesbian persons in committed covenanted relationships from serving in pastoral ministry. Across the years the congregation has also supported the only ministry to gay and lesbian persons in Capetown, South Africa. In the 2000s the congregation provides outreach to the homeless, providing hospitality and a break every Sunday.

Now the congregation also works for marriage equality. Marriage equality does not require any church to marry gay and lesbian couples, but it does allow gay and lesbian couples to get married and have the same rights and benefits of non-gay couples. St. Francis affirms the value to society of all committed relationships, and affirms that same sex couples and opposite sex couples should stand equally under the law and have the same rights and responsibilities.

Reverend Michael Schuenemeyer, United Church of Christ, Cleveland, Ohio: On July 4, 2005, the General Synod of the United Church of Christ (the representative body of the denomination) adopted a resolution supporting marriage equality for all couples without regard to gender. Many who know this denomination see this action as a natural evolution, consistent with the trajectory of more than thirty years of biblical study, theological reflection and social policy actions concerning the welcome and full inclusion of lesbian, gay, bisexual and transgender persons in church and society.

Marriage is about relationships, and the movement toward marriage equality has come in large measure because same-gender, loving relationships have been made increasingly real and visible.

Countless UCC General Synod delegates have been transformed by their encounters with the real lives of the real people who are most profoundly affected by policies and legislation that discriminate. Many United Church of Christ members have come to know the integrity of the lives and the loves of lesbian, gay, bisexual and transgender persons who sit next to them in the pew, serve with them in the mission of the church and as leaders on councils, boards and committees. So, when the time came for delegates to cast their votes on marriage equality, it was clear to an overwhelming number (more than 80%) that they could not sit next to and across from their brothers and sisters and vote for discrimination. They voted for equality because they believe it is right, right for the church and right for society.

What moves us forward in this movement toward equality are those who are willing to make clear who is bearing the cost of discrimination in this nation. The stories of how marriage discrimination affects our families, friends, colleagues, neighbors and their children make a difference. Through these stories more and more people come to know that marriage discrimination is not only costly and unfair, it is unjust and inconsistent with the values of life, liberty and the pursuit of happiness that we hold dear as a nation and project to the

world. These stories help all of us to realize that those of us who are struggling for equality are right to be impatient. Regardless of where you are on the political continuum --conservative, liberal, progressive -- there are good, strong and compelling grounds for supporting marriage equality now.

In the final analysis neither the church nor the state marries anyone. People marry each other. Any two consenting adults who have made their vows of marriage to one another are as married as any two people on the face of the planet. The state decides to which couples it will give the rights, benefits and responsibilities of civil, legal marriage, and religious bodies decide which couples they will recognize, respect and bless with the ritual or sacrament of marriage. The legal standard for the state under the U.S. Constitution is equal protection under the law for every citizen and respect for religious liberty. Each religious body gets to set its own standard and should not seek to impose one religious standard on the whole. In this nation, it is time for both church and society to recognize that civil marriage equality is right and discrimination is wrong.

Rabbi Arthur Waskow, The Shalom Center, Philadelphia, PA:

Biblical Judaism professed three basic rules for proper sexual ethics. Two of these rules – that men were dominant, and to be fruitful and multiply and "fill up the earth" – have been transcended by modernity. Thus, humanity is evolving past these two rules that underlay the opposition to gay and lesbian relationships and marriages. The third rule – that sex is delightful and sacred – still stands. So in

Jewish thought, the notion that gay men and lesbians must abstain from sex is a stark contradiction of this third rule.

For millennia, Jews have prided ourselves on the worth of marriage as a carrier of holiness and community. Large parts of the Jewish community have begun honoring and hallowing same-sex marriages without regard to legal, civic, and political decisions. But as one clergyperson who has been an officiant for marriages between same-sex as well as different-sex couples, I can testify that the refusal of the state to include same-sex couples within the legal framework of marriage puts a great burden on the religious communities that celebrate them.

Why is this? Because state laws can set the frameworks (especially for divorce) that otherwise the religious communities must take into their own hands. Thus I have found it necessary to insist that same-sex couples work out with me the kind of elaborate interpersonal contracts for possible divorce, child custody, roles in case of sickness, etc., that public family law for different-sex marriage makes available to all. This takes days and weeks of my time and that of the couple that are not required when I am officiating for a different-sex marriage.

This puts on me and on these couples exactly the kind of special burden for the practice of our religion, as distinguished from other religions, that the Constitutions of both California and the United States forbid. May the time soon come when not only the tents of Jacob and the shrines of Israel but also the American body politic can rejoice, "Mah tovu! How good!"

Reverend Dr. Kathy Hearn, United Church of Religious Science ("UCRS"), Burbank: The Reverend Dr. Kathy Hearn is the Spiritual Community Leader of the UCRS, with eighty-seven congregations or study groups in California, thirty-six other states and fourteen other countries. UCRS's spiritual principles call on adherents to support equality of being, worth, opportunity and expression among all people. Because of this, I and many UCRS ministers have performed same-gender holy unions for more than two decades. To deny human rights to some people – in particular, the right to legal marriage – while those rights are guaranteed to others is inconsistent with UCRS teachings and practice which call for bringing love, harmony, peace and abundance to all people everywhere, without consideration of race, color, gender, sexual orientation, religion, national origin, age or physical condition.

Reverend Lindi Ramsden, Unitarian Universalist Legislative Ministry - CA: As an ordained Unitarian Universalist minister, I know something about the power of commitments consciously chosen and made before one's faith community. For over twenty-one years, I have counseled couples, officiated at wedding ceremonies, and celebrated milestone anniversaries in my congregation. As part of my ministry, I have signed hundreds of marriage licenses for different-gender couples, sparing them a separate trip to the courthouse.

On Valentine's Day, 2004, my partner and I were among the same-gender couples that were legally married in San Francisco's City Hall. As we

walked down the steps, marriage license in hand, I was struck by the fact that I was finally able to have my name on a different line of the marriage license - as a participant, and not as the clergy officiating. How ironic that the government could honor my faith's decision to ordain me as an openly lesbian minister, thereby granting me permission to marry couples and sign their marriage licenses, and yet this same government would not respect my faith community's decision to bless my own marriage.

Discrimination diminishes the status of marriage in the community. In an age when gay, lesbian, bisexual and transgender people are an increasingly open part of society, thoughtful straight couples who are about to be married feel the pang of conscience, knowing that their GLBT friends and family cannot share equally in the legal protections that will automatically come their way. And, increasing numbers of clergy are deciding that they can no longer sign marriage licenses in good conscience. They will conduct the religious ceremony with gladness, but ask couples to have the legal paperwork signed by a representative of the state - refusing to serve as an arm of the state until they are able to sign marriage licenses for all couples they marry, regardless of gender.

Reverend Jane Quandt, First Congregational United Church of Christ, Riverside: At First Congregational United Church of Christ we have come to theologically understand marriage as a mirror of God's unconditional love, and God's fidelity to God's people. In response to this understanding, and

believing that there is no such thing as "separate but equal" we have abolished "Holy Unions" (a.k.a. "Blessing Ceremonies"). Just as with heterosexual couples, we do also require proof of civil commitment, and this may include registration as domestic partners, a marriage license from another state or country, etc. On November 5, 2005, I performed the first marriage for a same sex couple in the sanctuary of our church and the walls did not come down.

As we have moved forward in terms of our internal policies and practices, we are also clear that the rights and *responsibilities* of domestic partnership are *not* yet equal to civil marriage. While many focus on the rights, we also want to emphasize the responsibilities that come with marriage. This is particularly important as it relates to the many families we have who have same gender couples. Right now when a couple moves out of California to many other states, the responsibilities of one parents are completely unrecognized. For the sake of the children, this needs to be rectified.

Reverend Kathy Huff, First Unitarian Church, Oakland: As a member of the clergy I have the authority to sign marriage certificates and help make legal what is in practice an unjust law. For this reason and as an act of solidarity with same-sex couples who are prohibited from making their committed relationships legal, I no longer sign marriage licenses. As a minister serving congregations whose membership includes many same-sex couples in committed relationships I have witnessed the ways marriage laws prevent these couples from

living out the many freedoms that legally married couples enjoy. As a person of faith, I cannot in good conscience support laws that selectively bestow rights and privileges on couples after they have declared their commitment to one another. Some argue this is a "moral" or "religious" issue, not just a legal one. I agree. It is immoral to discriminate against any of our citizens. When the state forces me to choose between officiating at ceremonies between same-sex couples and different-sex couples it is also prohibiting me from exercising my full freedom to practice my religion. As a Unitarian Universalist my faith calls on me to stand firmly on the side of love and to say no to discrimination and oppression in all its forms. To suggest through omission that same-sex couples are any less committed or any less deserving of the rights of heterosexual couples is to ask me to violate some of the core values that shape my religious tradition. These values are the same ones that I have always believed were intended to shape our public life – those of life, liberty and justice for all. That same-sex couples continue to be denied the basic human rights that others take for granted goes against these principles.

Pastor Scott Landis, Mission Hills United Church of Christ, San Diego: As a minister and a man in a committed relationship with another man, I perform wedding ceremonies for same-sex couples. Yet, I can understand clergy and ecclesiastical reservations about following suit. But we are not talking about a religious function here. The legal institution of civil marriage is a state function and should remain that way. If churches want to endorse (bless) the civil marriage

between same or different sex couples, that is the individual denomination's prerogative. Here is an excellent example of why matters of church and state ought to remain separate.

Pastor Brenda Evans, Christ Chapel of North Park, San Diego: Christ Chapel, an Independent Full Gospel Non Denominational Christian Church, is a very diverse congregation, made up of all walks of life, which further embraces equal rights for all people. We have always performed marriages/unions for same-sex committed couples since our conception. We hope that equal rights for all people in America will be legally recognized in every state and especially within our own state, California. Christ Chapel has lived and witnessed many unfair acts because of our belief, and despair that many same-sex relationships – although strong and faithful for many years – have been denied access to equal rights solely based on the fears of some and/or religious interpretations of others. Christ Chapel of North Park stands firm on its position as to marriage discrimination against same-sex couples as it does with every other discriminatory act against equality. Thus, Christ Chapel strongly supports the right of same-sex couples to marry.

Reverend Kevin Bucy, Midtown Church, United Church of Religious Science, San Diego: In my years of working with people, first as a therapist and now as a minister, I have come to realize it is most commonly love that motivates people to create family. This is no less true for gay and lesbian

people. To allow same-sex couples the right to marry gives them the structure and protection for their families that non-gay people enjoy. Denying same-sex couples the right to marry lessens their rights in society, which is discriminatory.

For a government to choose the beliefs of one religious organization over another and create laws that apply to all Americans based on those religious beliefs undermines the meaning of freedom our country was founded upon. Throughout our country, there are spiritual communities that believe all are created in the image of their Creator, regardless of orientation, nationality, or belief. In our land, there are faithful people who believe God is love and where there is love, God is expressing regardless of who is in love with whom.

Allowing marriage between people of the same sex would eliminate the pain and injustice of discrimination, it would not allow certain people to choose what is right and what is wrong for others, it would support and protect non-traditional families. Allowing same-sex couples equal access to civil marriage would uphold the freedom our country was founded upon.

Reverend Diann Davisson, Religious Science Minister, Long Beach Memorial Hospital: As an ordained Religious Science minister I have performed many heterosexual marriages. And yet, as a woman in a 29-year committed same-gender relationship, I am unable to be legally married. The irony of this point struck home with me recently when I stood in a beautifully decorated sanctuary before an expectant bride and groom and pronounced them husband and

wife. My eyes were moist with tears. Later, after the ceremony, someone mentioned how "moved" I appeared to be. Yes, I had been moved by the sacredness and happiness of the event, but more than that, I was crying for the fact that after 29 years of love and devotion with my partner, we are still not entitled to the same civil rights and recognition that this couple now enjoyed. I am ordained by my religious affiliation and by the State of California to perform heterosexual marriages, and yet I am personally denied the same right to be married to the person that I was born to love. I pray that the inequality of this situation is soon rectified, bringing us closer to "liberty and justice for all."

The Reverend Dr. Arvid Straube and the Reverend Julie Kain, First Unitarian Universalist Church, San Diego: The First Unitarian Universalist Church of San Diego has for decades celebrated and blessed the loving unions of its many same-sex couples. Honoring this longstanding commitment, the Reverend Dr. Arvid Straube and the Reverend Julie Kain, and their Church's Board of Trustees and Social Justice Ministry, called for the filing of an amicus brief supporting marriage equality.

William McKinney, Ph.D, Pacific School of Religion, Berkeley: In contrast to most European countries, clergy in the United States effectively function as agents of the state with reference to marriage. By solemnizing a civil contract in the context of a religious ceremony, clergy appear to be endorsing the particular legal construal of marriage determined by the state. Likewise, the state

appears to be regulating the religious definition of marriage, which has little if anything to do with a civil contract. In short, the confusion between civil and religious marriage in the United States today puts the freedom of religious expression at risk. The exclusion of same-sex couples from the civil contract of marriage amounts to an endorsement by the state of just one religious view of marriage at the expense of other such religious views. It also obscures the vital issues of justice at stake in denying access to the benefits and responsibilities of a legal, civil marriage to same-sex couples. Regardless of the diverse religious views of marriage, religious leaders and communities of faith should and many do support equal access to civil marriage for same-sex couples as a matter of civil rights and social justice. As an ordained minister in the United Church of Christ, whose General Synod has taken a position in support of marriage equality, my freedom to exercise my religious vows is compromised by current California law.

Mary A. Tolbert, Ph.D, Pacific School of Religion, Berkeley: In European and American history, the cultural institution of marriage has taken a variety of forms with reference to religion. In Christian traditions, marriage was not even understood as a "sacrament" until the twelfth century, and many Christian churches following the Protestant Reformation did not consider marriage sacramental at all. In early American history Puritan communities refused to perform religious marriage ceremonies and instead relegated marriage to the civil sphere only. Today, religious arguments against equal marriage rights for same-

sex couples not only ignore these historical issues, they also misrepresent the supposed biblical support for their opposition. In the Old Testament, the typical marriage was not between one man and one woman but was instead polygamous – one man with as many wives as he could afford to keep. Likewise the Christian ideal in the New Testament is not marriage but chastity in the context of a non-biological family called "church." Access to the legal contract of civil marriage in the United States today cannot be governed by these widely diverse religious perspectives on marriage. It must instead be governed by the standards of justice and civil rights. While communities of faith disagree on the religious meaning of marriage, they ought to agree, and for religious reasons, on redressing the injustice of excluding same-sex couples from the legal benefits and responsibilities of civil marriage.

D. STATEMENTS OF INTEREST OF ORGANIZATIONS SUPPORTING GAYS AND LESBIANS AS A MINORITY VOICE IN THEIR FAITH

The Al-Fatiha Foundation: Al-Fatiha is an international grassroots network of organizations dedicated to Muslims who are lesbian, gay, and other sexual and gender minorities. Founded in 1997, Al-Fatiha seeks to promote the progressive Islamic notions of peace, equality, and justice. Al-Fatiha is based in Atlanta, Georgia and currently retains over seven hundred members with chapters in seven cities. Though the general consensus among mainstream scholars of Islam is that homosexuality is a deviation from man's true (i.e., heterosexual) nature, and thus considered sinful and perverted, there is a growing movement of

progressive-minded Muslims, especially in the Western world, who see Islam as an evolving religion that must adapt to modern-day society. For the past four years, leaders within Al-Fatiha have performed marriage ceremonies for same-sex couples. Consistent with these Islamic principles, Al-Fatiha supports the rights of same-sex couples in the State of California and the United States to enter into marital relationships. Al-Fatiha supports this cause in the hopes of enlightening the world that Islam is a religion of tolerance and not hate, and that Allah loves His creation, no matter what their sexual orientation might be.

DignityUSA: For over thirty-five years, DignityUSA has been the nation's foremost organization of gay and lesbian Catholics, their families, friends, and supporters. DignityUSA works for respect and justice for all gay and lesbian persons in the Catholic Church and the world through education, advocacy and support. Currently, DignityUSA has approximately 4,000 members and forty-five chapters throughout the United States. Though the Catholic community as a whole has not endorsed marriage ceremonies between individuals of the same sex, it is engaging in rigorous debate on the subject. DignityUSA believes that gay and lesbian Catholics, like all people, retain an inherent dignity because God created us, Christ died for us, and the Holy Spirit sanctified us in Baptism, making us temples of the Spirit, and channels through which God's love becomes visible. Unequivocally then, DignityUSA supports the rights of same-sex couples to enter

into marriages in a manner that is consonant with Christ's teachings and Christian values.

Affirmation: Gay and Lesbian Mormons ("Affirmation"):

Affirmation, founded in 1977, is composed of current and former members of the Church of Jesus Christ of Latter-Day Saints ("Mormons"), their family and friends. Our mission is to work for the understanding and acceptance of gays and lesbians as full and equal members of this Church and society at large. Affirmation has many members in the State of California who will be directly affected by the outcome of this case. Affirmation supports and encourages committed relationships whether they occur between a man and a woman or between two persons of the same gender. We believe immeasurable good comes to both participants and to their community through marriage. We believe our society needs more, not fewer, commitments made in love and dedication. Same-sex couples will strengthen society by strengthening the time-tested institution of marriage.

As Mormons, we are told that marriage is "for time and all eternity." We have enormous respect for the practice of marriage, and feel that the exclusion of same-sex couples from this institution harms society. Further, it is our belief that marriage in the United States is a civil contract. Therefore, denying any citizens the right to marry must be based on protecting society from serious harm

rather than upholding the traditions of particular religious groups. Marriage is in the best interest of the state, and thus limiting it is not.

* * * * *

For all of the reasons stated above, and those developed more fully in the attached brief, Amici request leave to file the attached brief of *Amici Curiae*.

BRIEF OF *AMICI CURIAE*

I. INTRODUCTION

A. AMICI URGE THE STATE TO ASSUME A POSITION OF STUDIED NEUTRALITY IN THE MARRIAGE DEBATE

Amici curiae represent a wide variety of faith traditions including Native American, Christian, Buddhist, Jewish, and Muslim faiths. Most Amici perform religious marriage rites for same-sex couples, although some Amici do not. All Amici on this brief agree, however, that the right to marry is a fundamental right that includes the right to marry the person of one's choice, without regard to gender. See Perez v. Sharp (1948) 32 Cal. 2d 711, 717 ("the essence of the right to marry is freedom to join in marriage with the person of one's choice"); see also Loving v. Virginia (1967) 388 U.S. 1, 12 ("The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.").

Amici thus agree wholeheartedly with the Massachusetts Supreme Court in its courageous decision to affirm marriage equality:

> Many people hold deep-seated religious, moral, and ethical convictions that marriage should be limited to the union of one man and one woman, and that homosexual conduct is immoral. Many hold equally strong religious, moral, and ethical convictions that same-sex couples are entitled to be married, and that homosexual persons should be treated no differently than their heterosexual neighbors . . . . "Our obligation is to define the liberty of all, not to mandate our own moral code."

Goodridge v. Dep't of Pub. Health (Mass. 2003) 798 N.E.2d 941, 948 (quoting Lawrence v. Texas (2003) 539 U.S. 558, 571).

Amici recognize that this case is primarily about *civil* marriage, which is a legal status conferred by the State, and not about religious marriage per se. However, Appellants' "traditionalist" opposition to same-sex marriage is a thinly-disguised pretext for theologically-based restrictions on who should have the right to participate in *religious marriage*. Amici understand, and respect, the right of any religious group to impose conditions upon the marriages to which they will give *religious* recognition. Amici vigorously disagree with any faith seeking to impose its religious conditions upon *civil* marriages. Amici therefore submit this brief to make three primary points:

First, Amici believe that California's prohibition of marriages between people of the same sex impermissibly favors some religious viewpoints regarding the meaning and scope of marriage over other religious viewpoints. California's endorsement of one religious view of marriage - i.e., that marriage should be limited to couples comprised solely of a man and a woman - devalues Amici's deeply held beliefs that marriages between people of the same sex are entitled to equal dignity.

Second, Amici believe that California's refusal to allow people of the same sex to marry legally interferes with Amici's ability to practice their respective faiths as they are called upon to do. State laws that prevent Amici from marrying same-sex couples on an equal basis with different-sex couples materially impair the ability of many Amici to practice core tenets of their faiths.

Third, Amici wish to emphasize that ending California's ban on marriages between people of the same sex will not interfere with the beliefs or practices of any faith or religious organization that opposes the rights of same-sex couples to marry but, to the contrary, will foster the religious *neutrality* that is the hallmark of our constitutional democracy. Each faith must reach its own decision on whether to offer religious marriages to same-sex couples. However, the State must *be*, and must *appear to be*, neutral on the issue.

B. THE DEEPLY HELD BELIEFS OF A GROWING NUMBER OF FAITHS AND RELIGIOUS ORGANIZATIONS COMPEL THEM TO CELEBRATE THE MARRIAGE OF SAME-SEX COUPLES

Freedom of religion is one of the most cherished principles upon which this country was founded. Indeed, the Pilgrims fled England and came to America to escape the religious repression of a one-church country and practice their religion without State interference. In founding our nation, their spiritual heirs established the guarantee that the views of one religion, and religious views generally, would not be imposed or endorsed by the State. Accordingly, Article 1 of the California Constitution guarantees the "[f]ree exercise and enjoyment of religion without discrimination or preference" and provides that "[t]he Legislature shall make no law respecting an establishment of religion." Cal. Const. Art. I, § 4. See also U.S. Const. amend. 1.

The independent spirit of the Pilgrims lives on in the **Unitarian Universalist Association of Congregations**, whose General Assembly, in 1996,

overwhelmingly resolved to "adopt[] a Position in support of legal recognition for marriage between members of the same sex" and in the **United Church of Christ**, whose General Synod did the same on July 4, 2005.[1] The United Church of Christ, with 6,000 congregations, and the Unitarian Universalist Association of Congregations, with over 1,000 churches and fellowships, trace their roots back to the congregations of the Pilgrims and the Puritans. The First Parish Church of Plymouth (the congregation founded by the Mayflower Pilgrims in 1620) and the First Church in Salem (founded in 1629) are Unitarian Universalist.

The march towards full marriage equality in the United States began in 1970, when the **Metropolitan Community Church** ("MCC"), a Christian denomination with over 250 congregations, filed the first lawsuit seeking legal recognition for the marriages between same-sex spouses. For more than thirty-five years, marriage equality has been an integral part of MCC's spiritual commitment to social justice. Every year, MCC clergy perform more than 6,000 marriage ceremonies for same-sex couples.

Following in MCC's pioneering footsteps, numerous other faiths and religious organizations have performed religious marriage rites for same-sex couples for decades. Like MCC, the Ministers Association of the **Buddhist Churches of America**, with twenty-one temples and fellowships in California, has

---

[1] The following discussion is only a representative sampling of the views shared by Amici supporting the rights of same-sex couples to marry. For a more fulsome discussion, please see the preceding Application to File Brief of *Amici Curiae*.

been performing weddings for same-sex couples for at least thirty years. Likewise, both the churches of both the United Church of Christ and the Unitarian Universalists have performed marriages for same-sex couples for decades. And, **Soka Gakkai International-USA (SGI-USA)** (one of the largest Buddhist organizations in America with over 300,000 members) has been marrying same-sex couples since at least 1995.

In 1996, the Central Conference of American Rabbis of the **Reform Movement of Judaism**, the largest Jewish movement in North America, with over 900 congregations, proclaimed that full equality was not satisfied until gay and lesbian couples could "share fully and equally in the rights of civil marriage." This proclamation was based on the Reform Movement's core tenet that all people are created in the divine image and therefore are fundamentally equal. The **Union of American Hebrew Congregations** followed suit in that same year.

In 2004, the Executive Committee of the **American Friends Service Committee** ("AFSC") (a service-oriented organization founded by the Quakers in 1917), and the Sierra Pacific Synod of the **Evangelical Lutheran Church**, encompassing Northern California, added their voices to the growing chorus supporting the rights of same-sex couples to marry in civil ceremonies.

And in 2005, the Reconciling Ministries Clergy of the **California-Nevada Conference of the United Methodist Church, Soka Gakkai International-USA**, the **California Council of Churches** (with a constituency of

more than fifty-nine denominations), the **Pacific School of Religion** (a non-denominational Christian seminary), **St. Francis Lutheran Church** of San Francisco, **Bay Area American Indian Two-Spirits** (an association of Native Americans who are gay, lesbian, bisexual or transgender), **Al-Fatiha** (an organization ministering to Muslims who are gay and lesbian, and their friends and family), **DignityUSA** (an organization for gay and lesbian Catholics and their families, friends and supporters) and **Affirmation** (a fellowship of gays, lesbians, bisexuals, their family and friends who share the common bond of the Mormon experience) all stepped forward to ask the State to eliminate the bar to marriage for same-sex couples.

Amici do not suggest that all, or even most, religious organizations and leaders have embraced equal marriage rights for same-sex couples. However, the trend is unmistakable and, in any event, the beliefs of a growing number of religions cannot and should not be devalued by majoritarian pressures and State-sanctioned preferences. See West Virginia Bd. Of Ed. v. Barnette (1943) 319 U.S. 624, 638 ("The very purpose of a Bill of Rights 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."). Moreover, the rights of non-religious individuals to a secular marital institution lacking any religious overlay must also be respected. See McCreary County, Kentucky v. ACLU (2005) ___ U.S. ___, 125 S. Ct. 2722,

2747 (O'Connor, J., concurring) ("The Religion Clauses . . . protect adherents of all religions, as well as those who believe in no religion at all."). In short, the State must assume a position of assiduous neutrality as this debate proceeds. See id. ("In the marketplace of ideas, the government has vast resources and special status. Government religious expression therefore risks crowding out private observance and distorting the natural interplay between competing beliefs.").

C. THE PROHIBITION ON MARRIAGE BETWEEN PEOPLE OF THE SAME SEX IS GROUNDED IN RELIGIOUS OPINIONS NOT SHARED BY AMICI AND THAT ARE AN IMPERMISSIBLE BASIS FOR STATE LAW

Appellants would deny same-sex couples the right to marry ostensibly to preserve a "traditional" or "common understanding" of marriage (i.e., their own). However, in proffering this argument, Appellants improperly rely upon *certain* interpretations of Judeo-Christian faith traditions to draw a legal distinction between relationships that they deem worthy of full recognition (marriages between a man and a woman) and relationships they deem to be of lesser value (same-sex relationships). Reliance on such religious underpinnings for discriminatory legal classifications – even if unintentional – is improper. Rather than valorizing any one tradition's views regarding the sorts of relationships that merit State recognition, the Court should interpret California's marriage laws neutrally in favor of a secular institution available to all couples, regardless of their gender, who meet the laws' otherwise legitimate requirements.

II. LEGAL ARGUMENT

A. THE CURRENT MARRIAGE REGIME RAISES GRAVE CONSTITUTIONAL CONCERNS UNDER THE RELIGION CLAUSES OF THE CALIFORNIA CONSTITUTION

Out of profound respect for the diverse religious practices and beliefs of our citizens, this nation and this State have rigorously protected the "wall of separation between church and state." Sands v. Morongo Unified Sch. Dist. (1991) 53 Cal. 3d 863, 909 (Mosk, J., concurring). The Religion Clauses of our federal and state charters proscribe laws, like the current marriage laws, that place the State in one religious camp over another. California violates the spirit and the letter of this foundational precept by permitting a tenet of *some* religions – i.e., the tenet that men can marry only women and women can marry only men – to be inscribed into the law of the land.

1. The Statutes Barring Individuals Of The Same Sex From Marrying Violate The Establishment Clause Of The California Constitution

The California Constitution enshrines the bedrock principle that government "shall make no law respecting an establishment of religion." Cal. Const., art. I, § 4; accord U.S. Const., amend. 1. The California Supreme Court has eloquently stated the rationale and purpose underlying the Establishment Clause:

> Ours is a religiously diverse nation. Within the vast array of Christian denominations and sects, there is a wide variety of belief and practice. Moreover, substantial segments of our population adhere to non-Christian religions or to no religion. Respect for the differing religious choices of the people of this country requires that government neither place its stamp of approval on any particular

> religious practice, nor appear to take a stand on any religious question.

Sands 53 Cal. 3d at 883-84 (footnote omitted). Here, the State has "placed its stamp of approval" on a particular religious practice (limiting marriage to couples consisting only of a man and a woman) and "appears to take a stand" on a religious question (whether two people of the same sex should be permitted to marry). The Constitution does not brook State preferences of this sort.

To survive constitutional scrutiny, a challenged State law must at a minimum: (1) have a secular legislative purpose; (2) have a principal or primary effect that neither advances nor inhibits religion; and (3) not foster "'an excessive government entanglement with religion.'" Sands 53 Cal. 3d at 872 (applying test set forth in Lemon v. Kurtzman (1971) 403 U.S. 602); East Bay Asian Local Dev. Corp. v. State of Cal. (2000) 24 Cal. 4th 693, 705 (same). If a challenged State law fails to meet any of these three requirements, it is unconstitutional. Sands 53 Cal. 3d at 872.[2]

Here, the State's prohibition of marriage between individuals of the same sex fails all three requirements.

---

[2] Although California courts have invoked the Lemon test, the challenged action must still independently pass muster under the California Constitution's Establishment Clause. See Sands 53 Cal. 3d at 883 ("Although federal cases may supply guidance for interpreting [Article I, Section 4], California courts must independently determine its scope.") (citing, inter alia, Cal. Const. art. I, § 24); Catholic Charities of Sacramento, Inc. v. Superior Court (2004) 32 Cal. 4th 527, 562 (emphasizing that federal cases offer persuasive authority but the State charter must be independently construed).

(a) The State's Limitation Of Marriage To Couples Consisting Only Of A Man And A Woman Does Not Have A "Secular Legislative Purpose"

The State identifies two putative interests for the prohibition of marriage between individuals of the same sex: (1) preserving the "traditional" or "common understanding" of marriage while according same-sex couples "substantially all" of the benefits of marriage through domestic partnerships; and (2) reserving the definition of marriage for the "legislative process."[3] Appellants Campaign for California Families and Proposition 22 Legal Defense and Education Fund assert an additional interest, in heterosexual procreation and child-rearing, that the State studiously and properly rejects. All of these alleged purposes for the law's categorical exclusion of same-sex couples from marriage are merely pretextual covers for religious endorsement and are therefore inadequate to justify the exclusion. See California Educational Facilities Authority v. Priest (1974) 12 Cal. 3d 593, 600 (requiring laws to have "a clearly secular legislative purpose" to survive constitutional scrutiny).

(i) The State's Invocation Of "Tradition" And The "Common Understanding" Of Marriage Is A Pretext For Naked Religious Preference

The State argues that it has a compelling interest in preserving the "traditional" or "common understanding" of marriage and rationalizes its blatant

---

[3] Amici do not discuss the State's purported interest in deference to the legislative process since the Legislature has since decided *in favor* of marriage equality and, in any event, Respondents have effectively dismantled legislative deference as a relevant State interest in this context. See, e.g., Respondent's Brief of City & County of San Francisco ("CCSF Resp. Br.") at 8-10, 37-38; Corrected Answering Brief of the Woo Respondents ("Woo Resp. Br.) at 63-66.

exclusion of gays and lesbians from the constitutionally guaranteed right to marry by suggesting that it has provided same-sex couples with "substantially" all of the benefits of marriage through domestic partnership. (State's Opening Brief ("State Op. Br.") at 32-37.) The State's invocation of "tradition" is at once an unavailing and flawed basis for discriminating against same-sex couples.

For over half a century now, California courts have recognized that historical practice does not excuse discrimination. Until 1948, there was longstanding and widespread support in California and across the United States for the absolute prohibition of marriage between whites and people of other races. See Perez v. Sharp (1948) 32 Cal. 2d 711, 746-753 (Shenk, J., dissenting). Indeed, at the time the Supreme Court decided Perez, statutes prohibiting interracial marriage had "remained unchallenged for nearly one hundred years" and traced their origins "from the early colonial period." Id. at 747. Notwithstanding this "unbroken line of judicial support, both state and federal," for the validity of legislation barring interracial marriage, id. at 752, the California Supreme Court concluded that tradition and history were insufficient bases on which to perpetuate discrimination. As Justice Traynor stated for the majority in Perez, "the fact alone that the discrimination has been sanctioned by the state for many years does not" justify its continuation. Id. at 727. See also In re Anderson (1968) 69 Cal. 2d 613, 641 (Tobriner, J., concurring) ("[N]o length of uncritical history or mindless tradition may sanction a procedure when the

unconstitutionality of the course pursued has . . . been made clear.") (citation and internal quotation marks omitted).[4]

Even if "tradition" were a constitutionally sufficient reason for discrimination, which it clearly is not, Appellants' myopic view of this State's rich and evolving weave of traditions is irremediably flawed. Appellants' purported interest in preserving a "traditional" or "common understanding" of marriage simply ignores Amici's diverse and numerous traditions recognizing marriages of same-sex couples. As discussed in the Application for Leave *supra*, the Metropolitan Community Church and the Buddhist Churches of America have officiated at marriages of same-sex couples for more than thirty years. Soka Gakkai International-USA, the United Church of Christ, and the Unitarian Universalists (as a matter of national policy) have celebrated weddings between couples of the same sex for more than a decade.[5] These traditions and

---

[4] Cases addressing discrimination against gays and lesbians echo these criticisms. See In re Opinions of the Justices to the Senate (Mass. 2004) 802 N.E.2d 565, 570 (the State cannot "under the guise of protecting 'traditional' values, even if they be the traditional values of the majority, enshrine in law an invidious discrimination that our Constitution . . . forbids") (citing Goodridge 798 N.E.2d at 941); Lawrence 539 U.S. at 577 ("[T]hat the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice.").

[5] The now-deceased Reverend Harry Scholefield, former minister of the Unitarian Universalist Society of San Francisco performed a religious marriage for two individuals of the same sex in 1958 and Reverend Ernest Pipes, emeritus minister of the Unitarian Universalist Community Church of Santa Monica, began performing marriage ceremonies for same-sex couples in the late 1960s.

understandings of marriage are simply ignored by Appellants, as though they never existed.[6]

Appellants also fail to take into account the evolving understanding of marriage around the world, as evidenced in such places as Massachusetts, the Netherlands, Belgium, Spain, Canada, and South Africa.[7] In a decision recognizing that the South African Constitution protects the rights of same-sex couples to marry, the Constitutional Court of that nation addressed a central concern shared by Amici here:

> It is one thing for the Court to acknowledge the important role that religion plays in our public life. It is quite another to use religious doctrine as a source for interpreting the Constitution. It would be out of order to employ the religious sentiments of some as a guide to the constitutional rights of others.

---

[6] The relative newness of these traditions does not deprive them of constitutional significance. As Justice O'Connor has noted: "It is true that the Framers lived at a time when our national religious diversity was neither as robust nor as well recognized as it is now. They may not have foreseen the variety of religions for which this Nation would eventually provide a home. They surely could not have predicted new religions, some of them born in this country. But they did know that line-drawing between religions is an enterprise that, once begun, has no logical stopping point." McCreary County 125 S. Ct. at 2748 (O'Connor, J., concurring).

[7] See, e.g., Goodridge, 798 N.E.2d at 961; Minister of Home Affairs v. Fourie (CC Dec. 1 2005) Case CCT 60/04 (legalizing marriage between same-sex couples in South Africa); In re Same Sex Marriages (2004) 3 S.C.R. 698 (Can.) (affirming Canadian Parliament's recognition of marriage between same-sex couples); EGALE Canada Inc. v. Canada (B.C. Ct. App. 2004) 225 D.L.R. (4th) 472 (legalizing marriage between same-sex couples in British Columbia); Halprin v. Toronto (Ontario Ct. App. 2003) 225 D.L.R. (4th) 529 (legalizing marriage between same-sex couples in Ontario); Wet wan (21 December 2000) Stb. 2001, nr. 9 (Neth.) (legalizing marriage between same-sex couples in the Netherlands); Moniteur-Belge (Feb. 28, 2003) Ed. 3, pp. 9880-82 (Belg.) (legalizing marriage between same-sex couples in Belgium).

Fourie, Case CCT 60/04 at 58, ¶ 92. Indeed, civil marriage is now available to same-sex couples even in Spain, a deeply-Catholic nation that nonetheless recently authorized the issuance of marriage licenses to same-sex couples. See C.C., art. 44 (2005) (Spain).

These seemingly recent developments in the law of marriage in actuality have a lengthy historical pedigree. Research by historians and legal scholars demonstrates that the opponents of marriage equality overstate the extent to which marriages between people of the same sex are inconsistent with "traditions" of marriage. It appears, instead, that the relatively recent and virulent history of discrimination against gays and lesbians has managed to obscure a rich history of marriages between people of the same sex that is just now beginning to see the light of day thanks to modern historical scholarship.

William Eskridge - the Yale Law School professor whose scholarship played a central role in debunking the historical fallacy underlying Bowers v. Hardwick (1986) 478 U.S. 186, 196, that condemnation of homosexual conduct "is firmly-rooted in Judeao-Christian moral and ethical standards," see Lawrence v. Texas (2003) 539 U.S. 558, 571 - has collected extensive evidence of socially-accepted marriages between same-sex couples throughout history and around the globe. For example, when the Spanish explorers first came to the Americas, they reported that "'men marry other men[.]'" William N. Eskridge, Jr., A History Of Same-Sex Marriage (1993) 79 Va. L. Rev. 1419, 1453-54 (quoting

Francisco López de Gómara, History of the Indies (1552)). Explorers also reported women "who 'give up all the duties of women . . . and follow men's pursuits . . . [with] a woman to serve her, to whom she says she is married[.]'" Id. (quoting Pedro de Magãlhaes, The Histories of Brazil (1576) 88-89). These "two-spirits" married individuals of the same sex, and their marriages were recognized by the laws and traditions of their various tribes. Id. at 1455; see also William N. Eskridge, The Case For Same-Sex Marriage (1996) 27.

Other examples of the two-spirits tradition include the Mohave *alyha* (two-spirit men) and *hwame* (two-spirit women) from the Colorado River area of Southeastern California, whose marriages were institutionalized by the tribe and socially accepted. Eskridge, 79 Va. L. Rev. at 1455.[8] Thus, recognition of the marriage of same-sex couples in California predates the Spanish conquest.

Indeed, other contributors to California's diverse culture recognized and celebrated same-sex unions. In the Fifth Century, the Christian Church began legitimizing same-sex unions by developing liturgies for the marriages of same-sex couples. See generally id. (citing John Boswell, "Homosexuality and Religious Life: A Historical Approach" in Homosexuality in the Priesthood and the Religious Life 3, 11 (J. Gramick ed. 1989)). The ceremonies for marriages between same-sex and different-sex couples were virtually identical, with only

---

[8] We'wha, who was revered by the Zuni for his two-spirit connection to the supernatural, served as an emissary from the Zuni Nation to Washington D.C. in the late nineteenth century, and he was married to a man. Id. at 1419.

minor variations having to do with an emphasis on companionship versus procreation. Id. As described by medieval historian John Boswell:

> [I]n the case of the same-sex ceremony, standing together at the altar with their right hands joined (the traditional symbol of marriage), being blessed by the priest, sharing Communion, and holding a banquet for family and friends afterward – all parts of same-sex union in the Middle Ages – most likely signified a marriage in the eyes of ordinary Christians.

William N. Eskridge, The Case For Same-Sex Marriage, at 27 (quoting John Boswell, Same Sex Unions In Premodern Europe, 191 (1994)). Even the Catholic Church continued to celebrate marriages between members of the same sex through the Nineteenth Century. Id.[9]

Even if Appellants had established an unassailable link to tradition and such a link were sufficient to the State's justify continuing discrimination against same-sex couples, the State's decision to accord "*substantially* all rights and benefits" of marriage to registered domestic partners, if anything, merely highlights the inequity rather than justifying the ban on marriage between couples of the same sex. (See State Op. Br. at 3 (emphasis added)). The State concedes that it does not offer same-sex couples "all" of the rights and benefits accorded to married couples. It even suggests that administrative convenience in cross-checking federal and state tax returns suffices to justify the differential treatment

---

[9] For more specific examples of the widespread cultural acceptance of marriages between individuals of the same sex throughout history, see Professor Eskridge's extended analysis in A History Of Same-Sex Marriage (1993) 79 Va. L. Rev. 1419, 1453-54 and The Case For Same-Sex Marriage 15-50.

of gay and lesbian couples. (See State Op. Br. at 3 n.2 & 34 n.21 (citing City of San Jose v. Donohue (1975) 51 Cal. App. 3d 40, 45).[10] But the State cites no California authority – because there *is* none – holding that the State's bureaucratic convenience justifies discrimination based on sexual orientation or domestic partner status.

Even if all the *tangible* rights and benefits of marriage were conferred on registered domestic partners, moreover, the constitutional infirmity would remain. The Woo Respondents, like countless other same-sex couples in the congregations of Amici, *want to get married*, not to become mere domestic partners. Amici attest above to the spiritual significance of marriage within their own religious traditions. Amici agree with the Massachusetts Supreme Court: "Because it fulfils yearnings for security, safe haven, and connection that express our common humanity, civil marriage is an esteemed institution, and the decision whether and whom to marry is among life's momentous acts of self-definition." Goodridge 798 N.E.2d at 955

---

[10] In a recent opinion, the Third District of this Court listed some of the many differences between marriage and domestic partnership under California law: "[D]omestic partners do not receive a number of marital rights and benefits. For example, they may not file joint tax returns and their earned income is not treated as community property for state income tax purposes, and they are not entitled to numerous benefits provided to married couples by the federal government, such as marital benefits relating to social security, Medicare, federal housing, food stamps, veterans' benefits, military benefits, and federal employment benefit laws." Knight v. Superior Court (2005) 128 Cal. App. 4th 14, 30. The State's bare assertion that it confers "substantially all" of the rights and benefits of marriage on domestic partners is thus entirely groundless.

"Separate but equal" is no longer a defensible principle on which to base distinctions between domestic partnership and civil marriage, and, in any event, domestic partnership does not offer same-sex couples equality. Amici are concerned, as was Judge Kramer, that offering "marriage-like rights" instead of full marriage rights to same-sex couples "'generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.'" (Order at 9 (quoting Brown v. Board of Educ. (1952) 347 U.S. 483, 494). See also Goodridge 798 N.E.2d at 968 ("The marriage ban works a deep and scarring hardship on a very real segment of the community for no rational reason."). Amicus American Friends Service Committee – a service organization founded by the Quakers – believe that marriage is different from civil unions or domestic partnerships: "It is our belief that government sanction should be applied equally. All couples should be granted civil union licenses or all should be granted marriage licenses." By offering same-sex couples who wish to *marry* the different and lesser option of domestic partnership, the State relegates same-sex couples to second-class status. Domestic partnership, whatever its merits, simply does not bear the same significance as marriage.

(ii) Discrimination Against Same-Sex Couples Will Not Advance The State's Putative Interest In Procreation And Child Rearing

Assuming *arguendo* that a State interest can be asserted by a party other than the State - which seems a dubious proposition, at best, when, as here,

the State is a itself a party and *rejects* the asserted interest (see State Op. Br. at 34-35 n.22) - the Campaign for California Families asserts that a State interest in procreation and optimal child-rearing is served by the marriage ban. Amici agree with the Campaign that marriage is a cherished institution in which procreation and child-rearing should be supported. But these goals are manifestly *not* advanced by *denying* same-sex couples the right to marry. See Goodridge 798 N.E. 2d at 964 ("In this case, we are confronted with an entire, sizeable class of parents raising children who have absolutely no access to civil marriage and its protections because they are forbidden from procuring a marriage license. It cannot be rational under our laws, and indeed it is not permitted, to penalize children by depriving them of State benefits because the State disapproves of their parents' sexual orientation.").

It is undisputed that many gay couples in California can and do procreate and raise children and that many heterosexual couples procreate outside of marriage. It is also undisputed that many heterosexual couples do not, and some cannot, procreate. If the State's limitation of marriage to heterosexual couples were truly tethered to an interest in procreation or child-rearing, then, as in Massachusetts, "our statutes would draw a tighter circle around the permissible bounds of nonmarital child bearing and the creation of families by noncoital means." Goodridge 798 N.E.2d at 962. Instead, California's legislative policy embraces the family relationships formed by gay men and lesbians, see Koebke v.

Bernardo Heights Country Club (2005) 36 Cal. 4th 824, 847 (California's policy favoring domestic partnerships "seeks to promote and protect families as well as reduce discrimination based on gender and sexual orientation"), and the California Supreme Court has recently affirmed that gay parents should bear the same rights and obligations as heterosexual parents. See Elisa B. v. Superior Court (2005) 37 Cal. 4th 108, 119; K.M. v. E.G. (2005) 37 Cal. 4th 130, 143; Kristine H. v. Lisa R. (2005) 37 Cal. 4th 156, 166; Sharon S. v. Superior Court (2003) 31 Cal. 4th 417, 442. Thus, any putative State interest in procreation and child-rearing is entirely consistent with marriage by couples of the same sex, not with its prohibition.

As in Massachusetts, California "affirmatively facilitates bringing children into a family regardless of whether the intended parent is married or unmarried, whether the child is adopted or born into a family, whether assistive technology was used to conceive the child, and whether the parent or her partner is heterosexual, homosexual, or bisexual." Goodridge 798 N.E.2d at 962.

Thus, it is apparent that the interest asserted by the Campaign is just a fig leaf for the sectarian views of the Campaign regarding homosexuality. And the State's nod to "tradition" and "common understanding" reveal that such sectarian views actually underlie the exclusions at issue here. See. e.g., Lewis v. Harris (N.J. Super. App. Div. 2005) 378 A.2d 168, 185 (justifying ban on marriage between individuals of the same sex based on "the religious and social foundations of marriage that limit the institution to members of the opposite sex"). The Court

can and should see through this. See Santa Fe Indep. Sch. Dist. v. Doe (2000) 530 U.S. 290, 308 ("When a governmental entity professes a secular purpose for an arguably religious policy, the government's characterization is, of course, entitled to some deference. But it is nonetheless the duty of the courts to distinguish a sham secular purpose from a sincere one.") (internal quotation marks and punctuation omitted).

(b) The State's Limitation Of Marriage To Couples Consisting Of A Man And A Woman Has The "Primary Effect" Of Advancing Some Religious Views And Inhibiting Others

In determining the "primary effect" of a given enactment, the Court must determine whether "irrespective of the government's actual objective, the practice in question conveys a message of endorsement or disapproval" of religion or a particular religious belief. Sands 53 Cal. 3d at 872-73. As Justice Brennan explained, the "core notion" animating the church-state precedents is

> not only that government may not be overtly hostile to religion but also that it may not place its prestige, coercive authority, or resources behind a single religious faith or behind religious belief in general, compelling nonadherents to support the practices or proselytizing of favored religious organizations and conveying the message that those who do not contribute gladly are less than full members of the community.

Texas Monthly, Inc. v. Bullock (1989) 489 U.S. 1, 9.

Applying that principle here, Family Code section 300, which purports to limit marriage to couples consisting only of a man and a woman, lacks any identifiable secular purpose and without a doubt lends the prestige, authority,

and resources of the State to creeds that reject marriage between people of the same sex. By placing its stamp of approval on faiths disapproving of gay marriage, the State is effectively "send[ing] a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." Lynch v. Donnelly (1984) 465 U.S. 668, 688; see also Sands 53 Cal. 3d at 878-79. No such message would be sent if the marriage laws were neutrally applied without regard to sex or sexual orientation.

The dual governmental message of endorsement of some religious beliefs and disapproval of others is exactly what the Establishment Clause was designed to prevent. As stated by the California Council of Churches, "the State may not rely on the views of a particular religious sect as a basis for denying civil marriage licenses to same-sender couples." They are not alone: "We must never forget that the religious freedom of every person is threatened whenever government associates its powers with one particular religious tradition." Fox v. City of Los Angeles (1978) 22 Cal. 3d 792, 805 (Bird, C.J., concurring).

(c) The Current Marriage Regime Fosters An "Excessive Government Entanglement" With Religion

Finally, the marriage statutes excessively entangle the State with religion. "Excessive entanglement of the state with religion can result from administrative entanglement, or from political entanglement." Feminist Women's Health Ctr., Inc. v. Philibosian (1984) 157 Cal. App. 3d 1076, 1091 (citations

omitted). California's ban on marriage between people of the same sex results in *both* excessive political and administrative entanglement.

Taking political entanglement first, it hardly bears mentioning that people in this State, and in the country as a whole, have recently been engaged in a deep and passionate debate about the meaning of marriage. As might be expected, leading voices on both sides of the debate include religious figures, who have a vested interest in the sacrament of marriage. Public debate on the central issues of our era is not, in itself, excessive entanglement by the State with religion. However, one cannot help but recognize that the State, both in this litigation and in the legislative and initiative battles surrounding marriage, has been pulled into the sectarian fray. "The potential divisiveness of political division along religious lines was one of the principal evils against which the First Amendment was intended to protect." Feminist Women's Health Ctr. 157 Cal. App. 3d at 1091 (citations omitted). Marriage of same-sex couples, like abortion, is "one of the most emotionally explosive issues in today's political firmament. The appearance of support by the state, of one side of this controversy over the other, is improper political entanglement." Id. It is, of course, the role of the Courts to assure the State's religious neutrality, as our Constitution provides, even if the issue is a controversial or emotional one among the citizenry.

Administratively, the State is entangled with religion through its marriage licensing, registration and solemnization scheme. The scheme is

explained in some detail in Lockyer v. San Francisco (2004) 33 Cal. 4th 1255, 1075-1079, but for present purposes it is only necessary to note the following. Among the persons authorized to solemnize a marriage are a "priest, minister, or rabbi of any religious denomination" and "officials of a nonprofit religious institutions" licensed by the county. Cal. Fam. Code §§ 400(a), 402. No particular form of marriage ceremony is required, but "the parties *shall declare*, in the presence of the person solemnizing the marriage and necessary witnesses, that they take each other *as husband and wife.*" Id. § 420 (emphasis added).[11]

Crucially here, the person solemnizing the marriage is required to confirm facts stated on the marriage license "*[b]efore solemnizing* a marriage." Cal. Fam. Code § 421 (emphasis added). Thus, the marriage statutes effectively deputize clergy authorized to solemnize marriages into the role of fact-checkers for the county clerk, wielding the same powers of oath and examination that the clerk possesses in issuing marriage licenses. See id. §§ 354, 421. One of these facts is the gender of the respective marrying partners.

A marriage license is to be denied by the clerk "if either of the applicants lacks the capacity to enter into a valid marriage" (id. § 352) and, centrally here, "[o]nly marriage *between a man and a woman* is valid or recognized in California" id. § 308.5 (emphasis added). Marriage is defined as "a

---

[11] The marriage license form includes an affidavit requiring the marrying parties to sign as "*Bride*" and "*Groom*" certifying they have received an informational brochure from the Department of Health Services. See Cal. Fam. Code §§ 355, 358.

personal relation arising out of a civil contract *between a man and a woman*, to which the consent of the parties capable of making that contract is necessary" and such consent "must be followed by the issuance of a license and solemnization." Id. § 300 (emphasis added). An unmarried *male* and unmarried *female* of the age of 18 years or older are capable of consenting to and consummating marriage. Id. § 301.[12] In short, through the operation of these interlocking statutory provisions, clergy, like the county clerk, are pressed into making sex-based distinctions *before* solemnizing marriages.[13] Unlike East Bay Asian Local Development Corp. v. State of California (2000) 24 Cal. 4th 693, 716, this case is replete with "delegation of substantial governmental authority to the religious entities," which is sufficient to represent a classic case of entanglement.

Entanglement alone does not create an Establishment Clause problem, for only *excessive* entanglement is unconstitutional. See Agostini v. Felton (1997) 521 U.S. 203, 233. Indeed, many aspects of the clergy's fact-

---

[12] Amici recognize that section 301, by its terms, applies only to the capacity of the individuals and remains silent as to whom each individual can marry, and that section 308.5, in its legislative history and positioning in the statutory scheme, potentially applies only to out-of-state marriages seeking recognition in California. See Lockyer 33 Cal. 4th at 1075-76 & n. 10. However, asking clergy to parse these legal niceties before they can solemnize marriage represents precisely the "excessive entanglement" opposed herein.

[13] Clergy solemnizing a marriage are further required to complete a certificate of registry of marriage, secure the signature of a witness, and return the certificate to the clerk within 10 days after the ceremony. *See* Cal. Fam. Code § 359; Cal. Health & Safety Code § 103150. The certificate of registry must include "the personal data of parties married" including, *inter alia*, "the maiden name of *the female*." Health & Safety Code §§ 103175, 103180(c)(1) (emphasis added).

checking function constitute only minimal entanglement (e.g., checking the age and current marital status of the individuals who seek to marry). Forcing clergy to make an up-or-down decision on whether couples can marry on the basis of their sex, however, crosses into the realm of excessive entanglement by creating a dilemma for clergy such as Amici. The seriousness of that dilemma cannot be gainsaid: These clergy are forced to choose between obeying their faith and obeying the State. The Establishment Clauses of the federal and State constitutions, and more particularly the "excessive entanglement" prong of the Lemon test, were designed to prevent any such dilemma of conscience.

For instance, the Minister of the First Unitarian Church of Oakland, Reverend Kathy Huff, attempts to handle this dilemma by not signing marriage licenses for heterosexual couples. She believes that she "cannot in good conscience support laws that selectively bestow rights and privileges on couples after they have declared their commitment to one another." Reverend Lindi Ramsden, an ordained Unitarian Universalist minister, concurs: "I, along with ever-increasing numbers of clergy, am deciding that we can no longer sign marriage licenses in good conscience. We will conduct the religious ceremony with gladness, but ask couples to have the legal paper work signed by a representative of the state – refusing to serve as an arm of the state until we are able to sign marriage licenses for all couples we marry, regardless of gender."

In sum, the marriage scheme imposes requirements on clergy solemnizing marriages that may, and often do, conflict with the religious tradition and conscience of the clergyperson. Many of Amici's religious traditions call upon them to solemnize marriages between people of the same sex on an equal basis with marriages between a man and a woman. But the State conditions the power to solemnize marriage on the confirmation and certification of various facts, including the gender of the marrying parties and their capacity to enter into what the State regards as marriage. This unholy coupling – between the State's administrative view of marriage and the varying practices and traditions of the State's faith communities – constitutes excessive administrative entanglement. See McCreary County 125 S. Ct. at 2747 (O'Connor, J., concurring) ("Allowing government to be a potential mouthpiece for competing religious ideas risks the sort of division that might easily spill over into suppression of rival beliefs. *Tying secular and religious authority together poses risks to both.*") (emphasis added).

The State's imprimatur will not be placed on either side of the debate if civil marriages by same-sex couples are authorized. "The issue is whether the majority may use the power of the State to enforce" its views of marriage "*on the whole society*" through operation of the marriage laws. Lawrence 539 U.S. at 571 (emphasis added). Neutral application of the laws will *permit* couples of the same sex to marry without *compelling* any religion or clergyperson to perform such

marriages. This is the very essence of the religious neutrality guaranteed by the California Constitution.

2. The State's Refusal To Sanction Marriages Between Individuals Of The Same Sex Raises Equally Grave Free Exercise Concerns

The California Constitution proclaims: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed." Cal. Const., art. I, § 4. Because it includes this anti-preference language, California's free exercise clause is "more protective of the principle of separation than the federal guarantee," Sands 53 Cal. 3d at 883, and it is "without parallel in the federal Constitution." Id. at 910 (Mosk, J., concurring). In fact, the *Attorney General* is on record for the proposition that "'[i]t would be difficult to imagine a more sweeping statement of the principle of governmental impartiality in the field of religion' than that found in [California's] 'no preference' clause." Sands 53 Cal. 3d at 883 (quoting 25 Ops. Cal. Atty. Gen. (1955) 316, 319).

The intent of the "No Preference" clause is "to ensure that free exercise of religion is guaranteed regardless of the nature of the religious belief professed[.]" East Bay Asian Local Dev. Corp. v. State of Cal. (2000) 24 Cal. 4th 693, 719. The Court "'must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim.'" Catholic Charities of Sacramento, Inc. v. Superior Court) (2004) 32 Cal. 4th 527, 563 (quoting Employment Div., Ore. Dept. Of Human Res. v. Smith (1990) 494 U.S. 872, 887).

"The free exercise clause guarantees the protection of two concepts: freedom to believe and freedom to act." McNair v. Worldwide Church of God (1987) 197 Cal. App. 3d 363, 374 (citation omitted). While the courts have held that free exercise concerns must yield at times to efforts to uproot discrimination based on sex, see, e.g., Catholic Charities 32 Cal. 4th at 563, the courts have *never* held that individuals' free exercise rights must yield to the government's interest in *propagating* such discrimination. Indeed, as the trial court correctly concluded, the State does not have a legitimate interest, let alone a compelling interest, in discriminating on the basis of sex or sexual orientation in its marriage laws. See People v. Woody (1964) 61 Cal. 2d 716, 718 ("the state may abridge religious practices only upon a demonstration that some compelling state interest outweighs the . . . interests in religious freedom"); see also Lockyer 33 Cal. 4th at 1076 n.11 (noting that the legislative history of Cal. Fam. Code § 300 "makes its objective clear" and quoting the legislative history for the proposition that "[t]he purpose of the bill is to prohibit persons of the same sex from entering lawful marriage").

As detailed above, granting equal access to marriage for all couples is a crucial matter of conscience and faith for various religions, religious denominations, and clergy represented by Amici. However, because the State will sanction only marriages between a man and a woman, the State relegates the beliefs and practices of these religions, denominations, and clergy to second-class status. At a minimum, the State's marriage statutes express a "preference" for

those faiths that refuse to marry individuals of the same sex, and under California's free exercise clause "[p]reference . . . is forbidden even when there is no discrimination." Fox 22 Cal. 3d at 796; see also Mandel v. Hodges (1976) 54 Cal. App. 3d 596, 617 (striking down Gubernatorial order proclaiming Good Friday a paid state holiday because "it amounts to 'discrimination' against all non-Christian religions and 'preference' of those which are Christian").

For instance, the Unitarian Universalist Churches make marriage fully available to all couples, regardless of sex. Doing so is a core tenet of the Unitarian Universalist faith, which affirms "the inherent worth and dignity of every person, and calls for justice, compassion, and equity in human relations." See http://www.uua.aboutuua/principles.htm. Reverend Ramsden of the Unitarian Universalist Church and Reverend Huff of the First Unitarian Church of Oakland are thus empowered to perform marriage ceremonies for any couples within the church. However, as discussed above, State law prevents Reverend Ramsden, Reverend Huff, and a growing number of religious leaders around the State from conferring the sacrament of marriage on their congregants on an equal basis. By enforcing a discriminatory law lacking any legitimate secular purpose, the State substantially burdens Reverend Ramsden's and Reverend Huff's ability to fully exercise their religious beliefs, the core concerns of the Free Exercise Clause.

The marriage laws' exclusion of same-sex couples inhibits countless Californians from robustly practicing their chosen faiths. The exclusion also

substantially burdens clergy who do solemnize marriages for same-sex couples. Rabbi Arthur Waskow of the Shalom Center states: "I have found it necessary to insist that same-sex couples work out with me the kind of elaborate interpersonal contracts for possible divorce, child custody, roles in case of sickness, etc., that public family law for different-sex marriage makes available to all. This takes days and weeks of my time and that of the couple that are not required when I am officiating for a different-sex marriage."

Courts applying California law have repeatedly employed the "No Preference" clause to remove crosses and other religious displays from publicly owned land. See, e.g. Fox v. City of Los Angeles (1978) 22 Cal. 3d 792 (ordering removal of cross from Los Angeles City Hall despite 30 years of use for violating the No Preference clause); Carpenter v. City & County of San Francisco (9th Cir. 1996) 93 F.3d 627 (city's ownership of large Latin cross in public park violates No Preference clause); Ellis v. City of La Mesa (9th Cir. 1993) 990 F.2d 1518 (permanent presence of cross on public property violates No Preference clause); Hewitt v. Joyner (9th Cir. 1991) 940 F.2d 1561 (religious statuary in county-owned park violated No Preference clause).

While at first blush a challenge to the marriage statutes under the "No Preference" clause would seem quite different from the facts underlying the religious display cases, the ideas underpinning both are, at bottom, quite similar. The California Family Code sections mandating that the State recognizes only

marriages between a man and a woman parallel the religious display cases in the following respects: (1) both the religious displays and the marriage statutes existed unchallenged for a long time; (2) both are rooted in and convey an endorsement of religious belief; and (3) both are being subjected to challenge as society changes and individuals realize that their rights are being burdened by the State's symbolic endorsement of religion. The State would do well to heed Chief Justice Bird's entreaty that "faith flourishes more freely in a sanctuary protected from the dictates of the majority." Fox 22 Cal. 3d at 804 (Bird, C.J., concurring).

The Constitution's Religion Clauses serve the critical function of maintaining barriers between civil and religious society, even when an issue raises profound questions touching on both. Amici here represent a wide variety of religions and religious traditions holding the view that questions related to the marriage of same-sex couples must be resolved without reference to religious traditions. As the Massachusetts Supreme Court observed in precisely these circumstances, the State should not take side in this debate, even tacitly. Cf. Goodrich 798 N.E.2d at 948.

B. GENUINE RELIGIOUS NEUTRALITY WILL MERELY PERMIT MARRIAGES, NOT COMPEL THEM

California's laws regarding civil marriage cannot compel religious bodies to alter either the tenets of their faith or their practices of religious marriage, and, indeed, some religious bodies sanction only marriages between a man and a woman. By permitting gays and lesbians to marry legally, the State will not

burden the religious practices of those who oppose such marriages. To the contrary, the State will appropriately leave such matters of belief and observance to each church, temple and ashram.

Instances where the religious tenets of particular religions are more restrictive than state law abound. For example, Roman Catholicism considers divorce "a grave offense against natural law" and remarriage after divorce "public and permanent adultery," all without calling into doubt California's laws allowing divorce and remarriage after divorce. See Catechism of the Catholic Church ¶ 2834 (2d ed. 1997). No one would make the absurd claim that the State laws allowing Jews or Buddhists or Atheists to divorce adversely impacts the religious rights of Catholics. Similarly, Catholic churches could refuse to marry individuals of the same sex, and in fact discourage the practice, without burdening those of other faiths who would do otherwise.

Another example illustrates the point. Conservative Judaism does not condone rabbis' presiding over interfaith marriages, despite California's full recognition of interfaith marriages. See Alfred J. Kolatch, The Second Jewish Book of Why 120 (Jonathan David 2000) ("The prohibition of marriages between Jew and non-Jew is biblical in origin. Deuteronomy 7:3 sets for the law clearly: 'You shall not intermarry with them; do not give your daughters to their sons or take their daughters for you sons.'"). No one could seriously contend that State laws permitting Muslims to marry Lutherans infringe upon the religious rights of

conservative Jews. Such differences between religious and civil marriage strictures have always existed and demonstrate that if California were to recognize civil marriage between individuals of the same sex, as it does interfaith marriages and remarriage after divorce, those unions would confer a civil status that does no violence to any religious conception of marriage (other than religious conceptions that insist on their application to nonadherents, which are precisely the types of notions the Religion Clauses were intended to constrain).

Permitting people to marry regardless of their sex will not impose the religious views of any religious sect upon any other. Each religion will be left with the full power to decide, within its own tradition and framework, whether to marry people of the same sex. As recognized by the California-Nevada Conference of the United Methodist Church: "Clergy have always been free to refuse to perform weddings for licensed couples whom they feel do not have a commitment to the sanctity of marriage. But the state must not show any such preference and must treat all the same."

Thus, the real question before this Court is not whether two different marital institutions – civil and religious – can co-exist within California (they can and already do), but whether this State can constitutionally perpetuate a regime of two different classes of citizens. Amici respectfully suggest that the time has come to reject such State-sanctioned bigotry decisively.

III. CONCLUSION

The ongoing debate over marriage will decide whether certain individuals will enjoy one of the most cherished rights guaranteed to all California citizens. When considering the question whether all Californians enjoy the right to marry, this Court should not mistake the State's longstanding practice of denying same-sex couples the right to marry for a constitutionally sufficient justification to continue the ban. In fact, this longstanding ban merely incorporates *particular* religious traditions to which Amici and other religious leaders do not subscribe. The State's seeming "preference" for such religious orthodoxies must not be tolerated in today's diverse and pluralistic society. Individuals should enjoy the same fundamental right to marry the partner of their choosing, without regard to gender and without regard to the contrary religious views of a limited segment of California's citizens.

Amici urge the Court to affirm the decision below.

DATED: January 9, 2006.

By: _____
RAOUL D. KENNEDY
Attorneys for Amici Curiae

LIST OF *AMICI CURIAE*

National Faith Organizations
Affirmation: Gay and Lesbian Mormons
Al-Fatiha Foundation
Dignity USA
Executive Committee of the American Friends Service Committee
General Synod of the United Church of Christ
Soka-Gakkai International-USA
Union for Reform Judaism
Unitarian Universalist Association of Congregations
Universal Fellowship of Metropolitan Community Churches

State and Regional Faith Organizations
California Church IMPACT
California Council of Churches
California Faith for Equality
Council of Churches of Santa Clara County
Friends Committee on Legislation of California

State and Regional Faith Organizations
Jews for Marriage Equality (Southern California)
Pacific Central District Chapter of the Unitarian Universalist Ministers Association
Pacific Southwest Council of the Union for Reform Judaism
Pacific Southwest District Chapter of the Unitarian Universalist Ministers Association
Progressive Christians Uniting
Reconciling Ministries Clergy of the California-Nevada Conference of the United Methodists
Unitarian Universalist Legislative Ministry-CA

Local Faith Organizations	Location
All Saints Episcopal Church	Pasadena, CA
All Saints Metropolitan Community Church	San Buenaventura, CA
Bay Area American Indian Two-Spirits	San Francisco, CA
Berkeley Fellowship of Unitarian Universalists	Berkeley, CA
Board of Trustees, Emerson Unitarian Universalist Church	Canoga Park, CA
Board of Trustees, First Unitarian Universalist Church of San Diego	San Diego, CA
Board of Trustees, Neighborhood Unitarian Universalist Church	Pasadena, CA
Board of Trustees, Unitarian Universalist Church of Ventura	Ventura, CA

Local Faith Organizations	Location
Community Church of Atascadero, UCC	Atascadero, CA
Congregation Beth Chayim Chadashim	Los Angeles, CA
Congregation Kol Ami	West Hollywood, CA
Congregation Sha'ar Zahav	San Francisco, CA
Congregation Shir Hadash	Los Gatos, CA
Faith in Action Committee, Conejo Valley Unitarian Universalist Fellowship	Thousand Oaks, CA
First Unitarian Universalist Church of Stockton	Stockton, CA
First Unitarian Universalist Society of San Francisco	San Francisco, CA
Humboldt Unitarian Universalist Fellowship	Arcada, CA
Kol Hadash, Community for Humanistic Judaism	El Cerrito, CA
Metropolitan Community Church in the Valley	North Hollywood, CA
Metropolitan Community Church of San Jose	San Jose, CA
Metropolitan Community Church, Los Angeles	West Hollywood, CA
Mt. Diablo Unitarian Universalist Church	Walnut Creek, CA
Mt. Hollywood Congregational Church United Church of Christ	Los Angeles, CA
Pacific School of Religion	Berkeley, CA
Parkside Community Church, United Church of Christ	Sacramento, CA

Local Faith Organizations	Location
Pilgrim United Church of Christ	Carlsbad, CA
San Leandro Community Church	San Leandro, CA
Social Justice Committee, Berkeley Unitarian Universalist Fellowship	Berkeley, CA
Social Justice Ministry at First Church	San Diego,CA
St. John Evangelist Episcopal Church	San Francisco, CA
Starr King Unitarian Universalist Church	Hayward, CA
The Ecumenical Catholic Church	Irvine, CA
Unitarian Universalist Church of Palo Alto	Palo Alto. CA
Unitarian Universalist Church of the Monterey Peninsula	Monterey, CA
Unitarian Universalist Community Church of Sacramento	Sacramento, CA
Unitarian Universalist Community Church of Santa Monica	Santa Monica, CA
Unitarian Universalist Community Church of South County	Mission Viejo, CA
Unitarian Universalist Congregation of Marin	San Rafael, CA
Unitarian Universalist Fellowship of Laguna Beach	Laguna Beach, CA
Unitarian Universalist Fellowship of Redwood City	Redwood City, CA
Unitarian Universalist Fellowship of Stanislaus County	Modesto, CA
Unitarian Universalists of San Mateo	San Mateo, CA

Local Faith Organizations	Location
Unitarian Universalists of Santa Clarita	Santa Clarita, CA
United Church of Christ in Simi Valley	Simi Valley, CA
Universalist Unitarian Church of Santa Paula	Santa Paula, CA
University Lutheran Chapel	Berkeley, CA

Faith Leaders	Affiliation (For identification purposes only)	Location
Reverend Doctor Pam Allen-Thompson	Unitarian Universalist Congregation of Marin	San Rafael, CA
Reverend Rachel Anderson	Unitarian Universalist	Berkeley, CA
Rabbi Camille Angel	Congregation Sha'ar Zahav	San Francisco, CA
Rabbi Melanie Aron	Congregation Shir Hadash	Los Gatos, CA
Reverend Joy Atkinson	Unitarian Universalist Community of the Mountains	Grass Valley, CA
Reverend JD Benson	Faithful Fools Street Ministry	San Francisco, CA
Rabbi Linda Bertenthal	Union for Reform Judaism	Encino, CA
Pastor LeAnn Blackert	San Leandro Community Church	San Leandro, CA
Reverend Susan Brecht	Community Church of Atascadero, UCC	Atascadero, CA

Faith Leaders	Affiliation (For identification purposes only)	Location
Pastor Paul Brenner	St. Francis Lutheran Church	San Francisco, CA
Reverend Doctor Ken Brown	Pacific Southwest District-Unitarian Universalist Association	Studio City, CA
Reverend Kevin Bucy	Midtown Church, A Community for Spiritual Living, United Church of Religious Science	San Diego, CA
Reverend Helen Carroll	Unitarian Universalist Fellowship of San Luis Obispo County	San Luis Obispo, CA
Rabbi Ari Cartun	Congregation Etz Chayim	Palo Alto, CA
Reverend Craig B. Chapman	All Saints Metropolitan Community Church	San Buenaventura, CA
Reverend Barbara M. Cheatham	Unitarian Universalist	Walnut Creek, CA
Reverend Jan Christian	Unitarian Universalist Church of Ventura	Ventura, CA
The Reverend Beate Chun	Christ the Good Shepard Lutheran Church	San Jose, CA
Reverend June M. Clark	United Church of Religious Science	Burbank, CA
The Reverend Anne G. Cohen	United Church of Christ	Pasadena, CA
Rabbi Helen T. Cohn	Congregation Emanu-El	San Francisco, CA
Rabbi Susan S. Comforti		Irvine, CA
Rabbi Laurie Coskey	Interfaith Committee for Worker Justice	San Diego, CA

Faith Leaders	Affiliation (For identification purposes only)	Location
Reverend Lyn Cox	Unitarian Universalist Society of Sacramento	Sacramento, CA
Reverend Sofia Craethnenn	Unitarian Universalist	Oakland, CA
Reverend Robbie Cranch	Unitarian Universalist	Fresno, CA
Reverend Matthew Crary	Universalist Unitarian Church of Riverside	Riverside, CA
Reverend Cinnamon Daniel	First Unitarian Church of Oakland	Oakland, CA
Reverend Diann Davisson	Long Beach Memorial Hospital	Long Beach, CA
Pastor Jerry De Jong	United Church of Christ	Suisun, CA
Reverend Frances A. Dew	Unitarian Universalist Congregation, Santa Rosa	Santa Rosa, CA
Rabbi Lisa A. Edwards Ph.D.	Congregation Beth Chayim Chadashim	Los Angeles, CA
Rabbi Denise Eger	Congregation Kol Ami	West Hollywood, CA
Reverend Michael Ellard	Metropolitan Community Church of San Jose	San Jose, CA
Reverend Stefanie Etzbach-Dale	Unitarian Universalist	Santa Monica, CA
Pastor Brenda Evans	Christ Chapel of North Park	San Diego, CA
Interim Minister Mark Evens	Unitarian Universalist Community Church	Sacramento, CA

Faith Leaders	Affiliation (For identification purposes only)	Location
Reverend Lydia Ferrante-Roseberry	President, Pacific Central District Chapter, Unitarian Universalist Ministers Association	Oakland, CA
Reverend Michelle Favreult	Unitarian Universalist Church of Sunnyvale	Sunnyvale, CA
Reverend Renae Extrum-Fernandez		Walnut Creek, CA
Rabbi Joel Fleekop	Congregation Shir Hadash	Los Gatos, CA
Reverend Diana Gibson	Council of Churches of Santa Clara County	San Jose, CA
Reverend Doctor Robert Goss	Metropolitan Community Church in the Valley	North Hollywood, CA
Reverend Doctor June Goudey	United Church of Christ in Simi Valley	Simi Valley, CA
Reverend Robert C. Grabowski	United Church of Religious Science	San Diego, CA
Reverend James Grant	Unitarian Universalist	San Diego, CA
Rabbi Bruce DePriester Greenbaum	Congregation Beth Israel	Carmel, CA
Reverend Doctor Susan Hamilton	Parkside Community Church-United Church of Christ	Sacramento, CA
Reverend Bill Hamilton- Holway	Unitarian Universalist Church of Berkeley	Kensingston, CA
Reverend Barbara Hamilton-Holway	Unitarian Universalist Church of Berkeley	Kensingston, CA
Reverend Doctor Kathy Hearn	United Church of Religious Science	La Jolla, CA

Faith Leaders	Affiliation (For identification purposes only)	Location
Reverend Jane Heckles	Southern CA –Nevada Conference United Church of Christ	Altadena, CA
Rabbi Alan Henkin	Union for Reform Judaism	Encino, CA
Rabbi Jay Heyman	Shalom Spiritual Resources	San Francisco, CA
Reverend Anne Felton Hines	Emerson Unitarian Universalist Church	Canoga Park, CA
Reverend Jackie Holland	Spiritual Living Center	Camarillo, CA
Reverend Marcia Hootman	New Thought Center	San Diego, CA
Reverend Ricky Hoyt	Unitarian Universalists of Santa Clarita	Santa Clarita, CA
Reverend Kathy Huff	First Unitarian Church of Oakland	Oakland, CA
Reverend Keith Inouye		Clovis, CA
Reverend Bryan Jessup	Unitarian Universalist Church of Fresno	Fresno, CA
Reverend Jeff Johnson	University Lutheran Chapel	Berkeley, CA
Reverend Beth Johnson	Palomar Unitarian Universalist Fellowship	Vista, CA
Reverend Roger Jones	Unitarian Universalist Fellowship of Sunnyvale	Sunnyvale, CA
Reverend Julie Kain	First Unitarian Universalist Church of San Diego	San Diego, CA

Faith Leaders	Affiliation (For identification purposes only)	Location
Reverend Kathryn Kandarian	Starr King Unitarian Universalist Church	Hayward, CA
Reverend John Kirkley	St. John Evangelist Episcopal Church	San Francisco, CA
Reverend Benjamin A. Kocs-Meyers	Unitarian Universalist	Albany, CA
Reverend Kurt Kuhwald	Berkeley Fellowship of Unitarian Universalists	Berkeley, CA
Reverend Richard Kuykendall	United Church of Christ	Auburn, CA
Reverend Peter Laarman	Progressive Christians Uniting	Los Angeles, CA
Rabbi Howard Laibson	Temple Israel	Long Beach, CA
Reverend Darcey Laine	Unitarian Universalist Church of Palo Alto	Palo Alto, CA
Pastor Scott Landis	Mission Hills United Church of Christ	San Diego, CA
Rabbi Moshe Levin	Congregation Ner Tamid	San Francisco, CA
Reverend Tom Lewis	Sierra Foothills Unitarian Universalists	Auburn, CA
Reverend Ken MacLean	Unitarian Universalist Church of the Desert	Rancho Mirage, CA
Rabbi Tamar Malino		Poway, CA
Reverend Elder Debbie Martin	Universal Fellowship of Metropolitan Community Churches	West Hollywood, CA

Faith Leaders	Affiliation (For identification purposes only)	Location
Pastor Michael-Ray Matthews	Grace Baptist Church	San Jose, CA
Reverend Gregory W. McGonigle	Cal Aggie Christian Association (CA House)	Davis, CA
Reverend Joseph McGowan	Altadena Community Church - United Church of Christ	Altadena, CA
Rev. William McKinney	Pacific School of Religion	Berkeley, CA
Reverend Susan Meeter	Mira Vista United Church of Christ	El Cerrito, CA
Reverend Eric H. Meter	Unitarian Universalist Church in Livermore	Livermore, CA
Reverend Judith Meyer	Unitarian Universalist Community Church of Santa Monica	Santa Monica, CA
Reverend Barbara F. Meyers	Mission Peak Unitarian Universalist Congregation	Fremont, CA
Reverend Beth Miller	Unitarian Universalist Church of the Monterey Peninsula	Monterey, CA
Reverend John Millspaugh	Unitarian Universalist Church of South County	Mission Viejo, CA
Reverend Sarah Moldenhauer-Salazar	Unitarian Universalist Fellowship of Laguna Beach	Laguna Beach, CA
Reverend Amy Zucker Morgenstern	Unitarian Universalist Church of Palo Alto	Palo Alto, CA
Reverend David Moss	Trinity United Methodist Church	Chico, CA
Reverend Silvio Nardoni	Unitarian Universalist Community Church of Santa Monica	Santa Monica, CA

Faith Leaders	Affiliation (For identification purposes only)	Location
Reverend James A. Nelson	Neighborhood Unitarian Universalist Church	Pasadena, CA
Reverend Drew Nettinga		San Leandro, CA
Reverend Julia Older	Unitarian Universalist Fellowship of Redwood City	Redwood City, CA
Reverend Nancy Palmer Jones	First Unitarian Church of San Jose	San Jose, CA
Rev. Doctor Rebecca Parker	Starr King School for the Ministry	Berkeley, CA
Reverend Ernest Pipes	Unitarian Universalist Community Church of Santa Monica, Minister Emeritus	Santa Monica, CA
Reverend Georgia Prescott	Sacramento Church of Religious Science	Sacramento, CA
Reverend Carolyn Price	Universalist Unitarian Church of Santa Paula	Santa Paula, CA
Reverend Sherry Prud'homme	Unitarian Universalist	Berkeley, CA
Reverend Jane Quandt	First Congregational United Church of Christ	Riverside, CA
Reverend Lindi Ramsden	Unitarian Universalist Legislative Ministry-CA	Sacramento, CA
Rabbi Lawrence Raphael	Congregation Sherith Israel	San Francisco, CA
Reverend John Robinson	First Unitarian Universalist Society of San Francisco	San Francisco, CA
Reverend Carol Rudisill	First Unitarian Church of Stockton	Stockton, CA

Faith Leaders	Affiliation (For identification purposes only)	Location
Reverend Susan Russell	All Saints Episcopal Church	Pasadena, CA
Reverend David Sammons	Mt. Diablo Unitarian Universalist Church	Walnut Creek, CA
Reverend Thomas Schmidt	Unitarian Universalist Church of the Verdugo Hills	La Crescenta, CA
Reverend Craig Scott	Unitarian Universalist Fellowship of Tuolumne County	Sonora, CA
Reverend Wayna Scovell	Foothill Community Church of Religious Science	Auburn, CA
Reverend Michael Schuenemeyer	The General Synod of the United Church of Christ	Cleveland, OH
Doctor John M. Sherwood	Temple Emet	Oxnard, CA
Most Reverend Mark Shirilau	The Ecumenical Catholic Church	Irvine, CA
The Reverend Madison Shockley II	Pilgrim United Church of Christ	Carlsbad, CA
Reverend Grace Simons	Unitarian Universalist Fellowship of Stanislaus County	Modesto, CA
Most Reverend Bruce J. Simpson	Benedictine Order of St. John the Beloved	Hanover, PA
Reverend Dan Smith	West Hollywood Presbyterian Church	Los Angeles, CA
Reverend Jeffrey Spencer	Niles Congregational Church	Fremont, CA
Reverend June Stanford-Clark	First Church of Religious Science of Hemet	Hemet, CA

Faith Leaders	Affiliation (For identification purposes only)	Location
Reverend Doctor Betty Stapleford	Conejo Valley Unitarian Universalist Fellowship	Thousand Oaks, CA
Reverend Stanley Stefancic	Unitarian Universalist	San Rafael, CA
Reverend Arvid Straube	First Unitarian Universalist Church of San Diego	San Diego, CA
Reverend Doctor Archer Summers	First United Methodist Church of Palo Alto	Palo Alto, CA
Reverend Steven Swope	Irvine United Congregational Church	Irvine, CA
Reverend Paul Tellstrom	Mt. Hollywood Congregational Church, United Church of Christ	Los Angeles, CA
Reverend Margo Tenold	Council of Churches of Santa Clara County	San Jose, CA
Reverend Neil Thomas	Metropolitan Community Church Los Angeles	West Hollywood, CA
Reverend Lynn Ungar	Unitarian Universalist-Church of the Larger Fellowship	Boston, MA
Reverend Nada Velimirovic	Unitarian Universalist	Oakland, CA
Rabbi Arthur Waskow	The Shalom Center	Philadelphia, PA
Reverend Theodore A. Webb	Unitarian Universalist Society of Sacramento, Minister Emeritus	Sacramento, CA
Reverend Doctor Petra Weldes		Dallas, TX
Reverend Vail Weller		San Mateo, CA

Faith Leaders	Affiliation (For identification purposes only)	Location
Reverend Bets Wienecke	Unitarian Universalist	Carpinteria, CA
Reverend Elder Nancy Wilson	Metropolitan Community Church	West Hollywood, CA
Rope Wolf	Bay Area American Indian Two-Spirits (BAAITS)	San Francisco, CA
Reverend Ned Wright	Unitarian Universalist	La Mesa, CA
Rabbi Bridget Wynne	Congregation Emanu-El	San Francisco, CA

RULE 14 CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that Respondents' Brief uses a proportionately spaced Times New Roman 13-point typeface, and that the text of this brief comprises 7970 words according to the word count provided by Microsoft Word 2003 word-processing software.

DATED: January 9, 2006.

By: _____
RAOUL D. KENNEDY
Attorneys for Amici Curiae

PROOF OF SERVICE

I, Nikkole Gadsden declare that I am over the age of eighteen years and I am not a party to this action. My business address is Skadden, Arps, Slate, Meagher & Flom LLP, 4 Embarcadero Center, Suite 3800, SF, CA 94111.

On January 9, 2006 I served the document listed below on the interested parties in this action in the manner indicated below:

BRIEF OF *AMICI CURIAE* THE GENERAL SYNOD OF THE UNITED CHURCH OF CHRIST, THE UNION FOR REFORM JUDAISM, SOKA GAKKAI INTERNATIONAL-USA, THE UNITARIAN UNIVERSALIST ASSOCIATION OF CONGREGATIONS, THE CALIFORNIA COUNCIL OF CHURCHES, *ET AL.* IN SUPPORT OF RESPONDENTS

[ ] **BY OVERNIGHT DELIVERY:** I caused such envelopes to be delivered on the following business day by FEDERAL EXPRESS service.

[ ] **BY PERSONAL SERVICE:** I caused the document(s) to be delivered by hand.

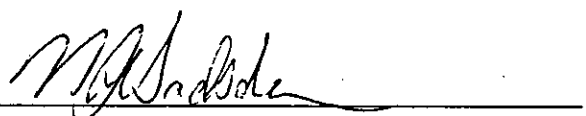
[X] **BY MAIL:** I am readily familiar with the business practice for collection and processing correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelopes were sealed, and with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.

[ ] **BY FACSIMILE:** I transmitted such documents by facsimile

INTERESTED PARTIES:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct; that this declaration is executed on January 9, 2006 at San Francisco, CA.



Nikkole Gadsden

SERVICE LIST

City and County of San Francisco v. California, et al.
San Francisco Superior Court Case No. CGC-04-429539
Court of Appeal No. A110449

Dennis J. Herrera Therese M. Stewart Sherri Sokeland Kaiser CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE CITY ATTORNEY City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Tel.: (415) 554-4700 Fax: (415) 554-4747 *Counsel for the City and County of San Francisco, et al.*	Bobbie J. Wilson Amy E. Margolin HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN Three Embarcadero Center, 7th Floor San Francisco, CA 94111 Tel.: (415) 434-1600 Fax: (415) 217-5910 *Counsel for the City and County of San Francisco, et al.*
Bill Lockyer Louis R. Mauro Robert D. Wilson Christopher E. Krueger STATE OF CALIFORNIA, DEPT. OF JUSTICE OFFICE OF THE ATTORNEY GENERAL 1300 I Street Post Office Box 944255 Sacramento, CA 94244 Tel: (916) 445-7385 Fax: (916) 324-5567 *Counsel for the State of California, et al.*	

Woo, et al. v. California, et al.
San Francisco Superior Court Case No. CPF-04-504038
Court of Appeal Case No. A110451

Stephen V. Bomse Richard Denatale Christopher F. Stoll Ryan R. Tacorda Heller Ehrman LLP 333 Bush Street, San Francisco, California 94104-2878 Tel: (415) 772-6000 Fax: (415) 772-6268 *Counsel for the Woo Petitioners*	Shannon Minter Courtney Joslin National Center for Lesbian Rights 870 Market Street, #370 San Francisco, CA 94102 Tel: (415) 392-6257 Fax: (415) 392-8442 *Counsel for the Woo Petitioners*
Jon W. Davidson Jennifer C. Pizer Lambda Legal Defense and Education Fund 3325 Wilshire Boulevard, Suite 1300, Los Angeles, CA 90010 Tel: (213) 382-7600 Fax: (213) 351-6050 *Counsel for the Woo Petitioners*	Christine P. Sun Peter J. Eliasberg ACLU Foundation of Southern California 1616 Beverly Boulevard Los Angeles, CA 90026 Tel: (213) 977-9500 Fax: (213) 250-3919 *Counsel for the Woo Petitioners*
Alan L. Schlosser Tamara Lange ACLU FOUNDATION OF NORTHERN CALIFORNIA 1663 Mission Street, Suite 460, San Francisco, CA 94103 Tel: (415) 621-2493 Fax: (415) 255-1478 *Counsel for the Woo Petitioners*	Clyde J. WADSWORTH STEEFEL, LEVITT & WEISS, a Professional Corporation One Embarcadero Center, 30th Floor, San Francisco, CA 94111 Tel: (415) 788-0900 Fax: (415) 788-2019 *Counsel for the Woo Petitioners*

David C. Codell LAW OFFICE OF DAVID C. CODELL 9200 Sunset Boulevard, Penthouse Two Los Angeles, CA 90069 Tel: (310) 273-0306 Fax: (310) 273-0307 *Counsel for the Woo Petitioners*	Bill Lockyer Louis R. Mauro Robert D. Wilson Christopher E. Krueger STATE OF CALIFORNIA, DEPT. OF JUSTICE OFFICE OF THE ATTORNEY GENERAL 1300 I Street Post Office Box 944255 Sacramento, CA 94244 Tel: (916) 445-7385 Fax: (916) 324-5567 *Counsel for the State of California, et al.*

Tyler, et al. v. California, et al.
Los Angeles Superior Court Case No. BS088506
Court of Appeal Case No. A110450

Michael Maroko John S. West ALLRED, MAROKO & GOLDBERG 6300 Wilshire Blvd. Suite 1500 Los Angeles, CA 90048 Tel.: (323) 653-6530 Fax: (323) 653-1660 *Counsel for Robin Tyler, et al.*	Bill Lockyer Louis R. Mauro Robert D. Wilson Christopher E. Krueger STATE OF CALIFORNIA, DEPT. OF JUSTICE OFFICE OF THE ATTORNEY GENERAL 1300 I Street Post Office Box 944255 Sacramento, CA 94244 Tel: (916) 445-7385 Fax: (916) 324-5567 *Counsel for the State of California, et al.*
Stephen V. Bomse Richard Denatale Christopher F. Stoll Ryan R. Tacorda Heller Ehrman LLP 333 Bush Street, San Francisco, California 94104-2878 Tel: (415) 772-6000 Fax: (415) 772-6268 *Counsel for Intervenor Equality California*	Shannon Minter Courtney Joslin National Center for Lesbian Rights 870 Market Street, #370 San Francisco, CA 94102 Tel: (415) 392-6257 Fax: (415) 392-8442 *Counsel for Intervenor Equality California*

Jon W. Davidson Jennifer C. Pizer Lambda Legal Defense and Education Fund 3325 Wilshire Boulevard, Suite 1300, Los Angeles, CA 90010 Tel: (213) 382-7600 Fax: (213) 351-6050 *Counsel for Intervenor Equality California*	Christine P. Sun Peter J. Eliasberg ACLU Foundation of Southern California 1616 Beverly Boulevard Los Angeles, CA 90026 Tel: (213) 977-9500 Fax: (213) 250-3919 *Counsel for Intervenor Equality California*
Alan L. Schlosser Tamara Lange ACLU FOUNDATION OF NORTHERN CALIFORNIA 1663 Mission Street, Suite 460, San Francisco, CA 94103 Tel: (415) 621-2493 Fax: (415) 255-1478 *Counsel for Intervenor Equality California*	Clyde J. WADSWORTH STEEFEL, LEVITT & WEISS, a Professional Corporation One Embarcadero Center, 30th Floor, San Francisco, CA 94111 Tel: (415) 788-0900 Fax: (415) 788-2019 *Counsel for Intervenor Equality California*
David C. Codell LAW OFFICE OF DAVID C. CODELL 9200 Sunset Boulevard, Penthouse Two Los Angeles, CA 90069 Tel: (310) 273-0306 Fax: (310) 273-0307 *Counsel for Intervenor Equality California*	

Clinton, et al. v. California, et al.
San Francisco Superior Court Case No. 429548
Court of Appeal Case No. A110463

Waukeen Q. McCoy LAW OFFICES OF WAUKEEN Q. MCCOY 703 Market Street, Suite 1407 San Francisco, CA 94103 Tel: (415) 675-7705 Fax: (415) 675-2530 *Counsel for Clinton Petitioners*	Bill Lockyer Louis R. Mauro Robert D. Wilson Christopher E. Krueger STATE OF CALIFORNIA, DEPT. OF JUSTICE OFFICE OF THE ATTORNEY GENERAL 1300 I Street Post Office Box 944255 Sacramento, CA 94244 Tel: (916) 445-7385 Fax: (916) 324-5567 *Counsel for the State of California, et al.*

Proposition 22 Legal Defense and Education Fund v. City and County of San Francisco
San Francisco Superior Court Case No., CPF-04-503943
Court of Appeal Case No. A110651

Robert H. Tyler Advocates for Faith and Freedom 32823 Highway 79 South Temecula, CA 92592 Tel.: (909) 461-7860 Fax: (909) 461-9056 *Counsel for Proposition 22 Legal Defense and Education Fund*	Benjamin W. Bull Glen Lavy Christopher R. Stovall Dale Schowengerdt Alliance Defense Fund 15333 North Pima Road, Suite 165 Scottsdale, AZ 85260 *Counsel for Proposition 22 Legal Defense and Education Fund*
Andrew P. Pugno Law Offices of Andrew P. Pugno 101 Parkshore Drive, Suite 100 Folsom, CA 95630 *Counsel for Proposition 22 Legal Defense and Education Fund*	Terry L. Thompson LAW OFFICES OF TERRY L. THOMPSON 199 East Linda Mesa, Suite 10 Danville, CA 94526 Tel.: (925) 855-1507 Fax: (925) 820-6034 *Counsel for Proposition 22 Legal Defense and Education Fund*
Dennis J. Herrera Therese M. Stewart Sherri Sokeland Kaiser CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE CITY ATTORNEY City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Tel.: (415) 554-4700 Fax: (415) 554-4747 *Counsel for the City and County of San Francisco, et al.*	Bobbie J. Wilson Amy E. Margolin HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN Three Embarcadero Center, 7th Floor San Francisco, CA 94111 Tel.: (415) 434-1600 Fax: (415) 217-5910 *Counsel for the City and County of San Francisco, et al.*

Stephen V. Bomse Richard Denatale Christopher F. Stoll Ryan R. Tacorda Heller Ehrman LLP, 333 Bush Street, San Francisco, CA 94104-2878 Tel: (415) 772-6000 Fax: (415) 772-6268 *Counsel for Martin Intervenors*	Shannon Minter Courtney Joslin National Center for Lesbian Rights 870 Market Street, #370 San Francisco, CA 94102 Tel: (415) 392-6257 Fax: (415) 392-8442 *Counsel for Martin Intervenors*
Jon W. Davidson Jennifer C. Pizer Lambda Legal Defense and Education Fund 3325 Wilshire Boulevard, Suite 1300, Los Angeles, CA 90010 Tel: (213) 382-7600 Fax: (213) 351-6050 *Counsel for Martin Intervenors*	Christine P. Sun Peter J. Eliasberg ACLU Foundation of Southern California 1616 Beverly Boulevard Los Angeles, CA 90026 Tel: (213) 977-9500 Fax: (213) 250-3919 *Counsel for Martin Intervenors*
Alan L. Schlosser Tamara Lange ACLU FOUNDATION OF NORTHERN CALIFORNIA 1663 Mission Street, Suite 460, San Francisco, CA 94103 Tel: (415) 621-2493 Fax: (415) 255-1478 *Counsel for Martin Intervenors*	Clyde J. WADSWORTH STEEFEL, LEVITT & WEISS, a Professional Corporation One Embarcadero Center, 30th Floor, San Francisco, CA 94111 Tel: (415) 788-0900 Fax: (415) 788-2019 *Counsel for Martin Intervenors*
David C. Codell LAW OFFICE OF DAVID C. CODELL 9200 Sunset Boulevard, Penthouse Two Los Angeles, CA 90069 Tel: (310) 273-0306 Fax: (310) 273-0307 *Counsel for Martin Intervenors*	

Campaign for California Families v. Newsom, et al.
San Francisco Superior Court Case No. CGC 04-428794
Court of Appeal Case No. A110652

Mathew D. Staver Rena Lindevaldsen Mary McAlister LIBERTY COUNSEL 210 East Palmetto Avenue Longwood, FL 32750 Tel.: (407) 875-2100 Fax: (407) 875-0770 *Counsel for Randy Thomasson and Campaign for California Families*	Ross S. Heckmann *ATTORNEY AT LAW* 1214 Valencia Way Arcadia, CA 91006 Tel.: (626) 256-4664 Fax: (626) 256-4774 *Counsel for Campaign for California Families*
Dennis J. Herrera Therese M. Stewart Sherri Sokeland Kaiser CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE CITY ATTORNEY City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Tel.: (415) 554-4700 Fax: (415) 554-4747 *Counsel for the City and County of San Francisco, et al.*	Bobbie J. Wilson Amy E. Margolin HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN Three Embarcadero Center, 7th Floor San Francisco, CA 94111 Tel.: (415) 434-1600 Fax: (415) 217-5910 *Counsel for the City and County of San Francisco, et al.*
Stephen V. Bomse Richard Denatale Christopher F. Stoll Ryan R. Tacorda Heller Ehrman LLP 333 Bush Street, San Francisco, California 94104-2878 Tel: (415) 772-6000 Fax: (415) 772-6268 *Counsel for Martin Intervenors*	Shannon Minter Courtney Joslin National Center for Lesbian Rights 870 Market Street, #370 San Francisco, CA 94102 Tel: (415) 392-6257 Fax: (415) 392-8442 *Counsel for Martin Intervenors*

Jon W. Davidson Jennifer C. Pizer Lambda Legal Defense and Education Fund 3325 Wilshire Boulevard, Suite 1300, Los Angeles, CA 90010 Tel: (213) 382-7600 Fax: (213) 351-6050 *Counsel for Martin Intervenors*	Christine P. Sun Peter J. Eliasberg ACLU Foundation of Southern California 1616 Beverly Boulevard Los Angeles, CA 90026 Tel: (213) 977-9500 Fax: (213) 250-3919 *Counsel for Martin Intervenors*
Alan L. Schlosser Tamara Lange ACLU FOUNDATION OF NORTHERN CALIFORNIA 1663 Mission Street, Suite 460, San Francisco, CA 94103 Tel: (415) 621-2493 Fax: (415) 255-1478 *Counsel for Martin Intervenors*	Clyde J. WADSWORTH STEEFEL, LEVITT & WEISS, a Professional Corporation One Embarcadero Center, 30th Floor, San Francisco, CA 94111 Tel: (415) 788-0900 Fax: (415) 788-2019 *Counsel for Martin Intervenors*
David C. Codell LAW OFFICE OF DAVID C. CODELL 9200 Sunset Boulevard, Penthouse Two Los Angeles, CA 90069 Tel: (310) 273-0306 Fax: (310) 273-0307 *Counsel for Martin Intervenors*	

State of California Court of Appeal First Appellate District, Division 3 350 McAllister St. San Francisco, CA 94102 (original + 4 copies)	Clerk of Court California Supreme Court 350 McAllister St. San Francisco, CA 94102 (5 copies)
Honorable Richard A. Kramer c/o Superior Court Clerk 400 McAllister St. San Francisco, CA 94102	