

A110449, A110450, A110451, A110463, A110651, A110652

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

**Coordination Proceeding Special Title (Rule 1550(b))
MARRIAGE CASES,**

LANCY WOO and CRISTY CHUNG, et al.,

Respondents,

v.

**BILL LOCKYER, in his official capacity as
Attorney General of the State of California, et al.,**

Appellants.

Judicial Council
Coordination
Proceeding
No. 4365

First Appellate
District,
Division 3,
Case No:
A110451

Appeal from San Francisco County Superior Court No. 504-038
(Consolidated on appeal with A110449, A110450, A110463, A110651,
A110652)

The Honorable Richard A. Kramer, Judge

**[PROPOSED] BRIEF OF *AMICI CURIAE* ASIAN PACIFIC
ISLANDER LEGAL OUTREACH AND 28 ASIAN PACIFIC
AMERICAN ORGANIZATIONS IN SUPPORT OF ALL
RESPONDENTS IN THE SIX CONSOLIDATED MARRIAGE
CASES (A110449, A110450, A110451, A110463, A110651, A110652)**

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¹ The legal groups identified with an asterisk are joining this brief because, as groups representing Asian Pacific Islanders, they have extensive knowledge of and interests in the arguments made in this brief concerning the history of discrimination against API people, especially restrictions on marriage, and the lessons that history has for this case. As organizations with a focus on civil rights issues, they also have extensive knowledge about and interests in the arguments made in the brief filed by AGUILAS, et al. Accordingly, they are taking the unusual step of joining both amicus briefs.

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INTRODUCTION

Asian and Pacific Islander (“API”) people in this country are intimately familiar with the enormous harm that marriage discrimination causes families, individuals, and communities. Since the very beginning of our immigration to the United States and for much our history in California, Asians and Pacific Islanders have been denied equal access to the fundamental right to marry. This denial was part of broader legal and social policy to undermine the very existence of API people in America and to restrict our civil rights and participation in American society.

Family is of utmost importance in Asian and Pacific Islander cultures, and families headed by same-sex couples, such as Respondents Lancy Woo and Cristy Chung, and Respondents Stuart Gaffney and John Lewis, are very much a part of API communities. Although the circumstances surrounding today’s marriage discrimination against same-sex couples differs from historical discrimination against API different-sex couples, both discriminations result in loving, committed human beings being treated as “less than” under the law and in depriving them of an essential aspect of full citizenship – the fundamental right to marry the person of one’s choice.

Amici – over 25 API organizations – join this litigation to inform the Court of the devastating and destabilizing impact that denial of the fundamental right to marry, combined with other exclusionary laws, has had on API Californians and to urge this Court to end the serious denial of rights and of full citizenship that the State is now perpetrating against same-sex couples and their families.

The tragic history of legalized discrimination against API people, often carried out deliberately by the California Legislature, powerfully refutes the argument of the State and other appellants that “tradition” or

“deference” to the legislative process may justify exclusion of a class of people from the fundamental right to marry and the right to form families.

No legitimate, much less compelling, state interest is served by maintaining traditions of invidious discrimination and exclusion. Notwithstanding the generations of legalized discrimination against API people throughout much of California’s history, since the middle of the 20th century, California courts have been national leaders in protecting the rights of all of its citizens. This Court should follow California’s proud modern tradition of enhancing equality. As the California Supreme Court in *Perez v. Sharp* (1948) 32 Cal.2d 711, faithfully served equality by overturning the State’s anti-miscegenation laws in 1948, this Court should serve equality now by ending California’s exclusion of same-sex couples from marriage.

STATEMENT OF INTEREST OF AMICI CURIAE

The API communities of California have a significant interest in the issue of marriage equality. Not only have these diverse communities historically been defined and limited through the denial of the right to marry, but tens of thousands of contemporary API couples and families will continue to be harmed if the discriminatory restriction is allowed to stand.

According to a recent report by the UCLA School of Law, nearly one out of ten California same-sex couples includes at least one API individual.² As many as half of all API same-sex couples of parenting age

² “Asian and Pacific Islanders in Same-Sex Couples in California: Data from Census 2000,” a report from the Williams Project on Sexual Orientation Law and Public Policy, UCLA School of Law, at p. 1, available at www.law.ucla.edu/williamsproj/publications/API_Report.pdf. Although the Census data most likely undercount significantly the actual population of same-sex couples for a number of reasons identified in the UCLA report,

currently are raising children who are harmed by the discrimination against their parents. (*Id.* at p. 2.) More than 4,000 API children are currently being raised by California same-sex couples. (*Ibid.*)

It is perhaps thus no surprise that Asian Pacific Americans are active participants in the movement for marriage equality and plaintiffs in much of the litigation nationwide, including Respondents Lancy Woo and Cristy Chung, and Respondents Stuart Gaffney and John Lewis, in this particular case.³

Asian Pacific Islander Legal Outreach is the largest social justice nonprofit law firm serving the Asian American and Pacific Islander (API) communities of the Greater Bay Area. Founded more than thirty years ago, its mission has always been to serve the most marginalized segments of the API communities including underserved ethnic populations, seniors, those with limited English proficiency, immigrants and the lesbian, gay, bisexual and transgender (LGBT) members of our community.

Its practice is currently focused in the areas of family law, immigration, senior law, combating human trafficking, and social justice causes. Its staff has authored or signed on to a number of *amicus* briefs representing the interests of the API community including a brief on racial profiling in the case of *U.S. v. Wen Ho Lee*, No. CR 99-1417, and the affirmative action case of *Grutter v. Bollinger* (2003) 539 U.S. 306.

there are more than 13,000 APIs who reported maintaining a household with a same-sex partner in the state, which is more than one third of the total APIs in such relationships in the United States and the highest number of any state. (*Ibid.*)

³ They are joined by Mala Nagarajan and Vega Subramiam, who are parties in *Andersen v. King County* (Wash. Super. Ct. 2004) 2004 WL 1738447, Gita Deane and Lisa Polyak, who are parties in the *Deane v. Conaway* case currently pending in Maryland Superior Court, and Mary Li and Rebecca Kennedy, who were parties in *Li v. State* (Or. 2005) 388 Or. 376.

Joining API Legal Outreach as *amici curiae* are: the Asian American Bar Association of the Greater Bay Area (“AABA”), Asian American Justice Center (“AAJC”), Asian American Legal Defense and Education Fund (“AAALDEF”), Asian Equality, Asian Law Alliance (“ALA”), Asian Law Caucus, Asian Pacific American Bar Association of Los Angeles County (“APABA”), Asian Pacific American Legal Center of Southern California (“APALC”), Asian and Pacific Islander Equality (“API Equality”), Asian Pacific Islander Family Pride, Asian Pacific Islander Health Forum, Asian and Pacific Islander Parents & Friends of Lesbians and Gays (“API PFLAG”), Asian Pacific Islander Wellness Center, Asian Women’s Shelter (“AWS”), Asian Youth Promoting Advocacy and Leadership (“AYPAL”), Chinese for Affirmative Action (“CAA”), Chinese Progressive Association (“CPA”), Filipinos for Affirmative Action (“FAA”), Gay Asian Pacific Alliance (“GAPA”), Gay Asian Pacific Support Network (“GAPSN”), Institute for Leadership Development and Study of Pacific Asian North American Religion (“PANA Institute”), Japanese American Bar Association (“JABA”), Japanese American Citizens League (“JACL”), Korean Community Center of the East Bay (“KCCEB”), My Sister’s House, Organization of Chinese Americans, San Francisco Chapter (“OCA”), Southeast Asian Community Center (“SEACC”), and Vietnamese American Bar Association of Northern California (“VABANC”). The statements of interest for these 28 additional API organizations are included in the Appendix attached to this brief. Representing the diversity and breadth of the API communities of California, these *amici* include the largest and most established organizations in the nation and in the state representing the diversity of ethnic API communities. The organizations span the spectrum of interests ranging from membership and social organizations to advocacy groups and

service providers who practice in the areas of civil rights, social justice, advocacy, labor, religion, and health.

Collectively, the *amici* represent the voice of the API communities of California and are organizations that have each spoken out against the historical and continuing discrimination against the API and LGBT communities, and against related forms of invidious discrimination, such as the marriage discrimination at issue in this case.

ARGUMENT

I. DENIAL OF THE FUNDAMENTAL RIGHT TO MARRY CAUSES ENORMOUS HARM TO INDIVIDUALS, FAMILIES, AND COMMUNITIES.

As the California Supreme Court eloquently stated in *Perez v. Sharp*, (1948) 32 Cal.2d 711, “the essence” of the “fundamental right” to marry is the “freedom to join in marriage with the person of one’s choice.” (*Id.* at p. 717.) As set forth in more detail in the *Woo* Respondents’ Brief, *Woo v. California*, A110451, the denial of this right harms the respect, dignity, and legal rights of tens of thousands of same-sex couples in California. This brief seeks to supplement the arguments provided in the Respondents’ briefs by providing an overview of the history of marriage discrimination against API Californians. This history illuminates even more starkly the human deprivation that people suffer when they are denied the fundamental right to marry the person of their choice based on other people’s notions of tradition and propriety.

California has a lengthy history of discrimination with regard to the right to marry, having restricted the right to marry of insular minorities as part and parcel of its efforts to restrict their civic rights and participation.⁴

⁴ Although the API community in the U.S. is very diverse, with dozens of distinct cultures and languages, it shares a common legacy of

As set forth below, these laws attempted to isolate and eliminate Chinese, Korean, South Asian, and Filipino populations in the United States and contributed significantly to anti-API hostility.⁵ This hostility eventually led the federal government to vilify and then intern more than 120,000 Japanese American citizens during World War II.

These examples from API American history make plain the human cost when individuals are classified based on others' disdainful misperceptions, and then denied rights that should be fundamental for us all. Though perhaps shocking for many today, our government's past dehumanizing denial of the rights to love and to create legally sanctioned

discrimination because it has often been viewed and treated as a single racial group. Again and again, the arrival of new groups of API immigrants to this country inspired fear and prejudice in the majority population. Anti-immigrant sentiment welled up in California and other western states, where many API people had come to meet the labor need for backbreaking work that white workers were unwilling to do. As each wave of API immigrants arrived – first the Chinese, then the Japanese and Koreans, South Asians, Filipinos and others – each faced discrimination and exclusion from the privileges of citizenship. The fear and perceived threat in California resulted in de jure and de facto discrimination against API people in the form of laws and policies banning them from marrying, becoming citizens, voting, testifying in court, owning land, attending schools, and enjoying many other basic rights granted to other Americans. (Ronald Takaki, *Strangers From a Strange Land* (1989) [hereinafter “Strangers”]; Helen Zia, *Asian American Dreams* (2000) at pp. 26-29.)

⁵ As noted above, the API community consists of many separate and distinct sub-groups, however, this brief focuses primarily on the history of marriage discrimination and of legal exclusion of Chinese, Japanese, and Filipino Americans. The brief does so because the histories of these groups illustrate so dramatically the discriminatory history that is poignantly relevant to this litigation. The brief's focus on these particular API ethnic sub-groups is neither intended to disregard other API groups, nor to demean the extensive marriage and other discrimination against other non-API racial and ethnic groups in California by focusing on the mistreatment of the groups discussed in this brief.

families has shaped the process of becoming Asian Pacific Islander Americans for many API immigrant groups. That history echoes loudly in today's abridgement of those same fundamental rights for lesbians and gay men. And the lesson of this ignoble history gives the verdict for the marriage limitation challenged in this case. It cannot stand.

A. Restrictions on Chinese Americans' Freedom to Marry and Other Discriminatory Laws Greatly Interfered with Their Ability to Remain in California and Have Full Citizenship.

Five months before it was admitted to the Union in the Compromise of 1850, California adopted its first anti-miscegenation statute. The statute declared all marriages between "white persons" and "negroes or mulattoes" to be "illegal and void." (Stats. 1850, ch. 140, p. 424.) Related to this exclusionary marriage statute, section 394 of the Civil Practices Act barred "Indian[s]" and "Negro[es]" from testifying in "any action in which a White person is a party," and Section 14 of the California Criminal Act provided that "No Black, or Mulatto person, or Indian shall be allowed to give evidence in favor of, or against a White man." (See *People v. Hall* (1854) 4 Cal. 399 [citing statutes].)

In 1854, the California Supreme Court held that the statutes prohibiting "Black," "Mulatto," or "Indian" persons from testifying against "white persons," applied to "exclude everyone who is not of white blood," from testifying against a "white person." (*People v. Hall* (1854) 4 Cal. 399, 403.) *Hall* involved an appeal from a conviction of a Caucasian defendant who had been charged with murdering a Chinese American in front of Chinese American witnesses. (*Id.*) The California Supreme Court reversed his conviction on the ground that the testimony of Chinese witnesses had been improperly admitted into evidence. (*Id.* at p. 405.) In reaching this conclusion, the California Supreme Court reasoned that the tradition of

denying Chinese Americans equal rights clearly evidenced legislative intent to prohibit them from bearing witness in court. (See, e.g., *id.* at p. 404.)

In so holding, the Court described Chinese Americans as:

[an] anomalous spectacle of a distinct people, living in our community, recognizing no laws of this State except through necessity, bringing with them their prejudices and national feuds, in which they indulge in open violation of law; whose mendacity is proverbial; a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point, as their history has shown; differing in language, opinions, color, and physical conformation; between whom and ourselves nature has placed an impassable difference . . .

(*Id.* at pp. 404-405.)

In its decision, the Court emphasized that the case implicated not just the right of Chinese Americans or other “mulattoes” to testify in court, but their basic civil rights as Americans. If the Court allowed the Chinese Americans to testify, “[t]he same rule which would admit them to testify, would admit them to *all the equal rights of citizenship*, and we might soon see them at the polls, in the jury box, upon the bench, and in our legislative halls.” (*Id.* at p. 404 [emphasis added].) Indeed one of these “rights of citizenship” undoubtedly included Chinese Americans’ right to marry white persons, as Chapter 140, the anti-miscegenation statute, used the same word, “Mulattoes,” as was used in the statute at issue in *Hall*.

Marked by their exclusion from the protections of the legal system, Chinese Americans became victims of widespread racial riots and massacres in the ensuing years, with few perpetrators ever convicted for their crimes.⁶ This horrific abuse finally came to official attention in 1862,

⁶ As documented by noted journalist Helen Zia in *Asian American Dreams*, the anti-Chinese “Yellow Peril” movement began in the West during in the late 1870’s, and resulted in hundreds of Chinese being killed and their

when “a committee of the California State Legislature reported that it had received a list of 88 Chinese known to have been murdered by Caucasians eleven of them by collectors of the Foreign Miner’s Tax.”⁷ The committee concluded in its report: “It is a well known fact that there has been a wholesale system of wrong and outrage practiced upon the Chinese population of this state, which would disgrace the most barbarous nation upon earth.” (*Id.*)⁸

Between 1867 and 1870, the population of Chinese in California grew exponentially, largely due to recruiting efforts by the Central Pacific Railroad Company.⁹ However, as the transcontinental railroads were completed, the need for Chinese labor dissipated and ethnic antagonism flared as Chinese laborers found themselves placed in competition with higher paid Caucasian workers.¹⁰

homes and businesses burned. (Helen Zia, *Asian American Dreams* (2000) at pp. 26-29.)

⁷ Charles J. McClain, *The Chinese Struggle for Civil Rights in Nineteenth Century America: The First Phase, 1850-1870* (1984) 72 Cal. L.R. 529, 554 fn. 148.

⁸ See also Suchen Chan, *Asian Americans: An Interpretative History* (1991) at p. 48 [hereinafter “Asian Americans”] [citing California State Legislature, “Report of the Joint Select Committee Relative to the Chinese Population of the State of California,” *Journals of the Senate and Assembly, Appendix*, vol. 3 (Sacramento: State Printing Office, 1862), 7].

⁹ Chan, *Asian Americans, supra*, at p. 28. According to the U.S. Census data, in 1860, there were 34,933 Chinese in California, in 1870, there were 49,277, and by 1880, there were 75,132. (Census Office, Dep’t of the Interior, *Statistics of the Population of the United States at the Tenth Census* (June 1, 1880), at 378-79 tbl.IV (1883).)

¹⁰ Tomas Almaguer, *Racial Fault Lines: The Historical Origins of White Supremacy in California* (1994) p. 173 [hereinafter “Racial Fault Lines”]. The economic tensions created by surplus of Chinese labor were no secret. A 1878 report by the California State Senate Committee on Chinese Immigration stated explicitly that white labor could not compete with

Soon President Rutherford B. Hayes responded, declaring in 1879 that the United States had a “Chinese Problem” and proclaiming that the “present Chinese invasion [is] pernicious and should be discouraged. . . . I would consider with favor any suitable measures to discourage the Chinese from coming to our shores.”¹¹ Consistent with this sentiment, in 1875, Congress passed the first federal restrictive immigration statute, the Page Law.¹² The Page Law, which was named for California Congressman Horace F. Page, “effectively barred all prospective Chinese female immigrants from entering the country.”¹³ Shortly thereafter, in 1882, Congress followed up by passing the Chinese Exclusion Act,¹⁴ aiming to

Chinese labor because, among other things, the white laborer bore the costs of having a family:

Our laborers have families, a condition considered of vast importance to our civilization while the Chinese have not . . . The cost of sustenance to the whites is four-fold greater than that of the Chinese, and the wages of the whites must of necessity be greater than the wages required by the Chinese . . . [The Chinese] can be hired in masses; they can be managed and controlled like unthinking slaves. But our laborer has an individual life, and this individuality has been required by the genius of our institutions, and upon these elements of character the State depends for defense and growth.

(*Id.* at pp. 173-174).

¹¹ Keith Aoki, *No Right To Own?: The Early Twentieth-Century "Alien Land Laws" As A Prelude To Internment* (1998) 40 B.C. L. Rev. 37, 42 fn. 18 [citing Jacobus tenBroek et al., *Prejudice, War and the Constitution* (1968) 19, 103].

¹² Act of Mar. 3, 1875 (Page Law), ch. 141, 18 Stat. 477 (repealed 1974).

¹³ Leah M. Chan, Book Annotations, *If They Don't Bring Their Women Here: Chinese Female Immigration Before Exclusion* by George Anthony Peffer (Ill. Press 1999) (2000) 32 N.Y.U. J. Int'l L. & Pol. 854, 855.

¹⁴ Chinese Exclusion Act of 1882, Ch. 126, 22 Stat. 58 (1883) (repealed 1943). In 1892, the Chinese Exclusion Act was renewed for another ten years. (Henry S. Cohn & Harvey Gee, *"No, No, No, No!": Three Sons of Connecticut Who Opposed the Chinese Exclusion Acts* (2003) Conn. Pub. Int. L.J. 1, 92 fn. 259.)

end Chinese immigration.¹⁵ The Chinese Exclusion Act “suspended immigration of Chinese laborers for ten years, with the exception of hosts arriving before Nov. 17, 1880.”¹⁶

In an attempt to prevent white women from marrying non-white men, Congress passed a law in 1907 that “operated to terminate an American woman’s citizenship upon marriage to an alien.”¹⁷ Although this statute was “partially repealed in 1922 to alleviate the perceived harshness of expatriating women who married German nationals denied naturalization as ‘alien enemies’ during World War I, [citation], that law ‘continued to require the expatriation of any woman who married a foreigner racially barred from citizenship,’”¹⁸ which included API people.¹⁹

The California Legislature undertook similar efforts. In California’s second state Constitutional Convention, held in 1879 and led by the nativist Workingman’s Party, the California Legislature adopted Article XIX of the

¹⁵ *Ibid.*

¹⁶ The Chinese Exclusion Act and subsequent exclusionary immigration laws were applied against most API groups and were not repealed until 1943 for Chinese, 1946 for Filipinos and South Asians (Indians), and 1952 for Japanese and Koreans. (Pat K. Chew, *Asian Americans: The “Reticent” Minority And Their Paradoxes* (1994) 36 *Wm. & Mary L. Rev.* 1, 17 fn. 59.) It was not until 1965 that APIs were allowed to immigrate into the United States in substantial numbers. (*Id.* at p. 18 fn. 61.)

¹⁷ Kevin R. Johnson, Book Review, *Racial Restrictions on Naturalization: The Recurring Intersection of Race and Gender in Immigration and Citizenship Law* (1996) 11 *Berkeley Women’s L.J.* 142, 148 & fn. 36 [citing Act of March 2, 1907, ch. 2534, s 3, 34 Stat. 1228, which provided that “any American woman who marries a foreigner shall take the nationality of her husband”].

¹⁸ *Ibid.* [citing Ian F. Haney Lopez, *White by Law: The Legal Construction of Race* (1996) at p. 47; Act of Sept. 22, 1922, ch. 411, s 3, 42 Stat. 1021, 1022].

¹⁹ Leti Volpp, “*Obnoxious To Their Very Nature*”: *Asian Americans and Constitutional Citizenship* (2001) 8 *Asian L.J.* 71, 74.

California Constitution.²⁰ Article XIX of the California Constitution barred so-called “Mongolians” and Chinese Americans from all employment by corporations or any public entity and officially discouraged them from immigrating to the state.²¹ In addition, all California cities and towns were authorized to remove Chinese Americans from city limits or to limit their residence to certain areas.²² The stated intent of the article was to protect the state from the dangers, “burdens and evils” associated with a population ineligible to become citizens of the United States.²³

At the Constitutional Convention, John F. Miller, who later became a United States Senator, spoke directly to the “problem” of Chinese Americans marrying white persons and having children:

Were the Chinese to amalgamate at all with our people, it would be the lowest, most vile and degraded of our race, and the result of the amalgamation would be a hybrid of the most despicable, a mongrel of the most detestable that has ever afflicted the earth.²⁴

To guard against such fears, in 1901, the California Legislature specifically amended the State’s anti-miscegenation statutes to add “Mongolians” (a term commonly understood at the time to include people of Chinese, Japanese and Korean descent) to the list of groups barred from

²⁰ Robert C. Berring, Review Essay, *In Search of Equality: The Chinese Struggle Against Discrimination in Nineteenth-Century America*. By Charles J. McClain (1995) 2 Asian L.J. 87, 94 [hereinafter “In Search of Equality”]. “In 1876, nativist clubs and labor organizations merged to form the Workingman’s Party, one of whose slogans was ‘[T]he Chinese Must Go.’” (Richard Delgado & Jean Stefancic, *California’s Racial History and Constitutional Rationales for Race-Conscious Decision Making in Higher Education* (2000) 47 UCLA L. Rev. 1521, 1562.)

²¹ Berring, *In Search for Equality*, *supra*, 2 Asian L.J. at p. 94.

²² *Ibid.*

²³ Cal. Const. of 1879, art. XIX, § 1.

²⁴ Takaki, *Strangers*, *supra*, p. 205.

marrying whites and declared all such marriages “illegal and void.” (Stats. 1901, pp. 335-336; see also Stats. 1905, p. 554.) These prohibitions were codified in Civil Code, sections 60 and 69.

These laws remained in effect until 1948, when the California Supreme Court in *Perez v. Sharp* (1948) 32 Cal.2d 711, struck down California’s anti-miscegenation laws as unconstitutional. The California Legislature affirmatively rejected an attempt to repeal the law the next year, and, although unenforceable, the law remained on the books for 11 more years, until the Legislature finally repealed it in 1959.²⁵

Respondents Stuart Gaffney and Cristy Chung, both mixed race Chinese Americans, are examples of the people John Miller at the 1879 Constitutional Convention described as “despicable . . . mongrel[s] of the most detestable that has ever afflicted the earth.”²⁶ Moreover, were it not for the *Perez* decision, Stuart’s parents might never have been married. Stuart’s mother is Chinese-American, and his father is white. They married in California in 1952, less than four years after the *Perez* decision, and while California’s anti-miscegenation statutes still remained on the books. As Stuart describes, “[h]ad it not been for the California Supreme Court, [my] parents would not have been able to marry,” and he “might have been born.” (*Woo* Respondents’ Appendix, *Woo v. California*, A110451, at p. 148 ¶ 6 [Gaffney Decl].)

Thanks to the California Supreme Court, Stuart’s family was protected; however, the discriminatory laws and policies before *Perez* decimated the number of Chinese American families across the state. By 1950, there were very few Chinese Americans left in California. Federal officials took steps to discourage immigration of Chinese women because

²⁵ Pauli Murray, *States’ Laws on Race and Color* (1950), p. 18; see also Act of Apr. 20, 1959, ch. 146 § 1, 1959 Cal. Stat. 2043.

²⁶ Takaki, *Strangers, supra*, at p. 205.

they did not want laborers to put down roots, form families, and produce children who would be Americans by birth.²⁷ After the implementation of the Page Act of 1875, it was virtually impossible for Asian women to immigrate to the United States. Thus, the government attempted to prevent Chinese Americans from forming families; Chinese Americans were barred from marrying whites through the anti-miscegenation statutes, and the government tried to prohibit them from marrying other Chinese Americans by ending female Chinese immigration.

These laws had a dramatic effect on demographics in the United States. Whereas in 1870, Chinese woman constituted one out of every 12 Chinese in America, the ratio dropped to one out of every 27 by 1890.²⁸ After the Immigration Act of 1924 was passed, all female Asian immigration stopped.²⁹ “The necessity [for this provision],” a Congressman stated, “arises from the fact that we do not want to establish additional Oriental families here.”³⁰

This policy proved itself to be devastatingly effective. Between 1880 and 1950, the Chinese American community virtually disappeared as an aging male population gradually died or was forced to return to China in order to marry, never to return. The 1860 Census shows that API people

²⁷ Rachel F. Moran, *Interracial Intimacy: The Regulation of Race & Romance* (2001), at pp. 32-34.

²⁸ George Anthony Peffer, *If They Don't Bring Their Women Here: Chinese Female Immigration Before Exclusion*. The Chinese female population in the United States, by census year, dramatically declined after and passage of the Page Act. In the 1870 census, there were approximately 78 women per 1,000 Chinese men in the United States, whereas in the next census, after the 1875 legislation, there were only approximately 47 females per 1,000 males and in the 1890 census, there were approximately 37 females to every 1,000 males.

²⁹ Iris Chang, *The Chinese in America* (2003) at p. 174.

³⁰ Takaki, *Strangers, supra*, p. 235.

constituted 9.2% of the total California population.³¹ However, by 1900, that number had declined to 3.8%.³² By 1950, the API population had dwindled to a mere 1.7% of the California population, according to the census data.³³

Thus, through a series of discriminatory statutes and practices, including restrictions on immigration, citizenship, and the right to marry, the federal and California legislatures achieved their goal of largely eradicating the Chinese American population.

B. Laws Restricting the Marriage Rights of Filipino Americans Similarly Restricted These Asian Americans' Right to Full Citizenship and Personal Dignity.

After America's annexation of the Philippines in 1898 as part of the end of the Spanish-American War, Filipinos began to arrive in numbers to the mainland in the early twentieth century lured by the promises of democracy and wealth taught in American schools established in the Philippines.³⁴ However, soon after their arrival, they faced what earlier waves of Asian immigrants had experienced before -- restrictions on their right to marry as part of a broader effort to deny them full citizenship and inclusion.³⁵

Similar to the earlier populations of Chinese and Japanese immigrants, the early wave of laborers were largely male, with females

³¹ Available at <http://www.census.gov/pepopulation/documentation/twps0056/tab05.pdf> (last visited January 5, 2006).

³² *Id.*

³³ *Id.*

³⁴ Takaki, *Strangers, supra*, pp. 57-58.

³⁵ To this day, Filipino nationals who fought for the United States in World War II remain one of the only groups of foreign national military veterans who have been denied citizenship.

constituting less than seven percent of the population between 1920 and 1929.³⁶ However, this wave of Filipino males differed from their Chinese and Japanese counterparts because they arrived as U.S. nationals, were permitted to travel freely in the county, and possessed greater fluency in the English language.

Xenophobic concerns immediately arose regarding Filipino Americans willingness to work for low wages and their interactions with white and Mexican women in professional dance halls. Characterized as the “Third Asian Invasion,” racial violence erupted against Filipinos patronizing dance halls in Exeter, Watsonville, Salinas and Lake County throughout the 1930s.³⁷ In San Francisco and El Centro, authorities issued orders to police to arrest any Filipino male seen in the company of a Caucasian female.³⁸

Unlike Chinese and Japanese Americans, however, significant confusion arose as to whether or not Filipino Americans were so-called “Mongolians” under the state’s anti-miscegenation statute, and thus were prohibited from marrying whites.

For years, interpretations of the law varied to some degree. For instance, in 1921, Los Angeles County commenced issuing marriage licenses to Filipino-Caucasian couples because County Counsel advised that “Malays” were “brown people” not governed by the statute which

³⁶ Suchen Chan, Douglas Henry Daniels, Mario T. Garcia, Terry P. Wilson, eds., *Peoples of Color in the American West* (1994), p. 338 [hereinafter “Peoples of Color”].

³⁷ Leti Volpp, *American Mestizo: Filipinos And Antimiscegenation Laws In California* (2000) 33 U.C. Davis L. Rev. 795, 807 [hereinafter “American Mestizo”].

³⁸ Mae N. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (2004), at p. 114 [hereinafter “Impossible Subjects”].

referenced only “the yellow.”³⁹ However, most lower courts apparently refused to recognize marriages between Filipino Americans and whites. For instance, in determining whether or not to allow a Filipino defendant to assert the marital privilege against his Caucasian wife’s testimony in a criminal case involving the murder of the wife’s lover, the Los Angeles County Superior Court held such marriage to be void on the basis that Malays were Mongolians. (*State of California v. Timothy S. Yatko* (L.A. Super. Ct. 1925) No.24795, Superior Court of Los Angeles County.)⁴⁰

Similarly, in 1930, a Salinas Superior Court judge ruled that immigrant white women who married Filipino American men were not entitled to citizenship.⁴¹ The Federal District Director of Naturalization extended this ruling by declaring that female American citizens who married Filipino American men would lose their citizenship.⁴²

However, the California Court of Appeal came to the opposite conclusion in 1933. In *Roldan v. Los Angeles County* (1933) 129 Cal.App. 267, the California Court of Appeal held that the marriage limitation statute did not apply to marriages between Filipino Americans and whites. In that case, Salvador Roldan, “an Ilocano in whose blood was co-mingled a strain of Spanish,” sought to marry Marjorie Rogers, a Caucasian from England. In concluding that this marriage was not prohibited, the court explained that: “Much more could be shown, but we think we have set down sufficient to indicate that in 1880, . . . there was no thought of applying the

³⁹ Chan, *Peoples of Color in the American West*, p. 339.

⁴⁰ See *Old Law Invoked on Yatko*, L.A. Times, May 6, 1925 at p. 5. Five years later, in the case of *Stella F. Robinson v. L.E. Lampton*, County Clerk of L.A., a mother successfully enjoined the marriage of her daughter Ruby to Tony V. Moreno, a Filipino. (Volpp, *American Mestizo*, *supra*, 33 UC Davis L. Rev. at pp. 818-819.)

⁴¹ Volpp, *American Mestizo*, *supra*, 33 UC Davis L. Rev. at p. 829 fn 131.

⁴² Chan, *Peoples of Color in the American West*, *supra*, p. 343.

name Mongolian to a Malay; that the word was used to designate the class of residents whose presence caused the problem at which all the legislation was directed, viz., the Chinese . . .” (*Id.* at p. 272.)

The victory was short-lived, however, as even before the *Roldan* case was concluded, bills had already been introduced in the California State Legislature to prohibit such unions and retroactively to void any existing marriages. On April 20, 1933, less than three months after *Roldan* was decided, Civil Code sections 60 and 69 were amended to add “Malays” to the groups of minorities prohibited from marrying whites. (Stats. 1933, p. 561.)⁴³ The Legislature’s swift and decisive reaction to *Roldan* reveals an active and continuing intent to prevent API Americans from marrying whites. As noted above, it took the Legislature 11 years after *Perez* to remove the anti-miscegenation statute from California statutes. (Stats. 1959, c. 146, p. 2043.)

Spurred in large part by the negative reaction to Filipino and Caucasian relationships, Congress passed the Tydings-McDuffie Act the next year, in 1934, which “effectively halted Filipino immigration.”⁴⁴ Although the Act set the Philippines on the road to independence, in exchange it limited Filipino immigration to the United States to only 50 persons per year.⁴⁵

Thus, like Chinese Americans, Filipino Americans were the object of systematic governmental efforts to limit their ability to marry, to form families, to have full citizenship, and to remain in this country.

⁴³ Volpp, *American Mestizo*, *supra*, 33 UC Davis L.R. at pp. 822-823 & fn 109. (See also *Bill Forbids White, Filipino Marriages*, S.F. Chron., Apr. 1, 1933, at 1.)

⁴⁴ Volpp, *American Mestizo*, *supra*, 33 UC Davis L.Rev. at p. 823.

⁴⁵ Ngai, *Impossible Subjects*, *supra*, p. 121.

C. The History of Japanese and Korean Americans in California Reveals Restrictions on the Right to Marriage and Efforts to Deny Japanese and Korean Americans the Full Rights of Citizenship.

Like Chinese and Filipino Americans, Japanese and Korean Americans were similarly barred from marrying whites under former Civil Code sections 60 and 69.⁴⁶

In the late nineteenth and early twentieth centuries, animus against California's Japanese American population grew. Groups such as the Asiatic Exclusion League formed for the stated purpose of preserving "the Caucasian race upon American soil ... [by] adoption of all possible measures to prevent or minimize the immigration of Asiatics to America."⁴⁷

Documented examples of this hostility abound:

Anti-Japanese spokesmen warned that Japanese students know "no morals but vice, who sit beside our sons and daughters in our public schools that they may help to debauch, demoralize and teach them the vices which are the customs of the country whence they came." . . . One Republican testified before the California State Assembly that he was appalled at the sight of white girls "sitting side by side in the schoolroom with matured Japs, with base minds, their lascivious thoughts . . ."⁴⁸

Under the "Gentlemen's Agreement" of 1907 worked out by Japan and the United States, the emigration of Japanese and Korean laborers to the United States was restricted, although there was a temporary loophole that allowed wives and family members, until the Immigration Act of 1924

⁴⁶ Volpp, *American Mestizo*, *supra*, 33 UC Davis L. Rev. at p. 799 & fn 18.

⁴⁷ Takaki, *Strangers*, *supra*, p. 201.

⁴⁸ Volpp, *American Mestizo*, *supra*, 33 UC Davis L. Rev. at p. 802 fn. 30 [citing Megumi Dick Osumi, *Asians and California's Anti-Miscegenation Laws*, in *Asian and Pacific American Experience: Women's Perspectives* (Nobuya Tsuchida, ed. 1982) 1].

prohibited the entry of all aliens ineligible for citizenship.⁴⁹ Between 1911 and 1920, women represented 39 percent of all Japanese immigrants, with many marrying Japanese American laborers having met them only through a photograph sent by mail.⁵⁰

Due to a requirement imposed by the Japanese consulate that these laborers had to prove they had the means to support the ones they married,⁵¹ popular anti-Japanese sentiment turned next to deny Japanese Americans the ability to own land or enter into long-term leases.⁵² The goal of impeding immigration and family formation often was overt. "As soon as a Jap can produce a lease, he is entitled to a wife," wrote the Sacramento Bee. "He sends a copy of his lease back home and gets a picture bride and they increase like rats. Florin is producing 85 American-born Japs a year."⁵³

California's Alien Land Law of 1913 barred those "aliens ineligible to citizenship" from owning or entering into long-term leases of land in California.⁵⁴ When Japanese American farmers sought to place their land in the names of their children,⁵⁵ engage in sharecropping,⁵⁶ or form

⁴⁹ Wendy Ho, *Growing Peaches In the Desert: David Mas Masumoto On Small Family Farms And Constructing A Politics Of Identity And Community* (2003) 9 UC Davis J. Int'l L. & Pol'y 143, 156; see also Takaki, *Strangers*, *supra*, at p. 46.

⁵⁰ Chan, *Asian Americans*, *supra*, at p. 107.

⁵¹ *Ibid.*

⁵² Takaki, *Strangers*, *supra*, at p. 204.

⁵³ *Ibid.* [citing Sacramento Bee, May 1, 1913].

⁵⁴ Chapter 113, California Statutes 1913.

⁵⁵ A legal challenge allowing parents of a Japanese American child to serve as guardians over her land was successful in 1922 (see *In re Tetsubumi Yano's Estate* (1922) 206 P. 995), but the California legislature amended Section 175(a) of the Code of Civil Procedures in the following year to bar such arrangements. (Chan, *Asian Americans*, *supra*, at p. 96.)

corporations for the purposes of holding land,⁵⁷ these efforts were thwarted as well.

Sensitive to the threat of rising racial antagonism, Japan entered into the “Ladies’ Agreement” in 1920 to end the system of “picture brides” and to end voluntarily the immigration of Japanese and Korean women.⁵⁸ But due to the 13 years of female immigration between the Gentlemen’s and Ladies’ agreements, a small Japanese American community took hold in the early twentieth century with almost 30,000 American-born children of Japanese ancestry in the 1920s.⁵⁹

Accordingly, government efforts continued to further isolate and limit this population. In 1922, the United States Supreme Court held that Japanese Americans were racially ineligible for citizenship despite maintaining an American lifestyle and professing loyalty to this nation. (*Takao Ozawa v. U.S.* (1922) 260 U.S. 178.) Invoking the Naturalization Act of 1906, the Court ruled that only Caucasians were white and thus Japanese were not ineligible to naturalize.⁶⁰ The Cable Act, enacted in

⁵⁶ *Webb v. O’Brien* (1923) 263 U.S. 313 [upholding California Alien Land Law].

⁵⁷ *Frick v. Webb* (1923) 263 U.S. 326 [holding California Alien Land Law that forbade non-citizens from owning shares of stock in a farm company].

⁵⁸ Takaki, *Strangers*, *supra*, at p.47.

⁵⁹ Chan, *Asian Americans*, *supra*, at p. 109.

⁶⁰ *Id.* A year later, the U.S. Supreme Court would hold in *U.S. v. Thind* (1923) 206 U.S. 204, that Punjabis (as well as Pacific Islanders such as Maoris, Tahitians, Samoans and Hawaiians) while admittedly Caucasian by scientific classification, were not white and thus also not eligible for citizenship. Many previously naturalized South Asians were stripped of their naturalization and the *Thind* decision retroactively voided all marriages between South Asians and white persons. (Takaki, *Strangers*, *supra*, at pp. 299-300.)

1922, continued to strip the citizenship of any female citizen who married someone “ineligible for citizenship.”⁶¹

The National Origins Act of 1924 attempted to close the door once and for all, barring the immigration of “all aliens ineligible for citizenship,” a proxy phrase for API Americans. In testimony in support of the 1924 act, Sacramento Bee owner Valentine S. McClatchy declared:

Of all the races ineligible to citizenship, the Japanese are the least assimilable and the most dangerous to this country. With great pride of race, they have no idea of assimilating in the sense of amalgamation. They do not come to this country with any desire or any intent to lose their racial or national identity. They come here specifically and professedly for the purpose of colonizing and establishing here permanently the Yamamoto race. They never cease to be Japanese.⁶²

With the bar on new immigration firmly in place, a majority of the Japanese American population were American-born by 1930.⁶³ Yet, denied the right to freely marry and facing widespread discrimination in housing and employment, these Americans were forced to remain in ethnic enclaves, with restricted interaction with mainstream society.⁶⁴

By 1942, nearly two-thirds of Japanese Americans were American-born. Then, although there was not one incident of sabotage or disloyalty, nearly 120,000 Japanese Americans were subjected to curfew, then exclusion from coastal areas, and finally internment in concentration camps

⁶¹ Kevin R. Johnson, Book Review, *Racial Restrictions on Naturalization: The Recurring Intersection of Race and Gender in Immigration and Citizenship Law* (1996) 11 Berkeley Women’s L.J. 142, 148 & fn. 36

⁶² Yamato Ichihashi, *Japanese in the United States* (rpt. New York, 1969, originally published in 1932), p. 303.

⁶³ Takaki, *Strangers, supra*, at p. 214.

⁶⁴ *Id.* at pp. 217-221.

pursuant to Executive Order 9066 (7 Fed.Reg. 1407 (Feb. 19, 1942), issued by President Roosevelt after Pearl Harbor was attacked.⁶⁵

In considering a constitutional challenge to the racially-based exclusion and internment, the Supreme Court justified the wholesale abrogation of the civil liberties of this group, referencing the history and tradition of "isolation," "little social intercourse," and "large numbers of resident alien Japanese," without taking into account that those were largely the inevitable product of the government's own pervasive discrimination.⁶⁶

The basic civil rights of these American citizens were not fully vindicated for decades. In 1982, the Commission on Wartime Relocation and Internment of Civilians, established by Congress to review the implementation of Executive Order 9066, unanimously concluded that the internment had been based upon "race prejudice, war hysteria and a failure of political leadership," rather than any true military necessity.⁶⁷

Two years later, a federal district court overturned the 40-year-old criminal conviction of Fred Korematsu.⁶⁸ Mr. Korematsu was an Oakland-born Japanese American, who was one of the few to defy exclusion and internment because he recognized it was wrong for the Japanese Americans

⁶⁵ *Id.* at pp. 379-405.

⁶⁶ *Hirabayashi v. United States* (1943) 320 U.S. 81, 88-89.

⁶⁷ Commission on Wartime Relocation and Internment of Civilians, *Personal Justice Denied* (1982) at p. 8. Congress eventually apologized for the internment, declaring it a "grave injustice" and offering reparations to all Japanese Americans who had been interned. (Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903 (1988).)

⁶⁸ *Korematsu v. United States* (N.D. Cal. 1984) 584 F.Supp. 1406. The federal court also reversed the conviction of Gordon Hirabayashi who challenged the curfew order. (*Hirabayashi v. United States* (9th Cir. 1987) 828 F. 2d 591.)

to be sent to camps for no justifiable cause.⁶⁹ Mr. Korematsu also risked imprisonment for another reason (later to be shared by the Lovings in Virginia, among many other couples): he did not want to be separated from his Italian American girlfriend, a woman he loved who was of a different race.⁷⁰

Because of Japanese Americans' internment experience and resulting, acute understanding of the imperative of enforcing the Constitution's guarantee that all citizens be protected equally under the law, *amicus* Japanese American Citizens League in 1994 became the first non-gay national civil rights organization after the American Civil Liberties Union to support marriage equality for same-sex couples. United States Transportation Secretary and then Congressman Norman Mineta stated his support for the resolution: "a threat to anybody's civil rights is a threat to the civil rights of all Americans."⁷¹

D. California's Current Exclusion of Same-Sex Couples from Marriage Denies Same-Sex Couples Their Full Rights of Citizenship and Their Human Dignity.

The above API history starkly illuminates the harm that can occur when government denies distinct and insular minorities the fundamental

⁶⁹ Eric L. Muller, *12/7 and 9/11: War, Liberties, and the Lessons of History* (2002) 104 W. Va. L. Rev. 571, 584.

⁷⁰ *Ibid.*; see also Matt Bai, *The Man Who Said No to Internment*, N.Y. Times, Dec. 25, 2005, Section 6, p.38. In 1998, Fred Korematsu was awarded the Presidential Medal of Freedom for his courage and persistence in opposing injustice. (Josh Dubow, *Japanese American Who Fought Internment Dies*, AP/Sacramento Union, March 31, 2005, available at: <http://sacunion.com/pages/california/articles/3653>.)

⁷¹ Steven A. Chin, *Vote for Gay Marriage Followed Uphill Fight Issue Divides Japanese American Citizens League*, S.F. Examiner, Aug. 10, 1994, at A4, available at 1994 WLNR 9381; see also Chizu Iiyama, *JACL, Marriage, and Civil Rights*, *Nikkei Heritage*, Vol, XIV, No. 3 (2002), pp. 4-5.

right to marry, and enacts and enforces other exclusionary and discriminatory laws against the group. As set forth fully in Respondents' Briefs, denial of this right currently harms the respect, dignity, and legal rights of tens of thousands of same-sex couples in California in myriad ways.

Although the circumstances surrounding today's marriage discrimination against same-sex couples differs from historical discrimination against API different-sex couples (and the various API experiences differ from each other), such discrimination, no matter how it is carried out, results in loving, committed human beings being treated as "less than" equal under the law. Although the particular context, nature, and extent of harms may differ, this critical injury – denial of equal status as a human being – no matter how it is carried out, offends the core of the due process and equal protection guarantees of the California Constitution.

Respondent Stuart Gaffney described the insightful experience he had the moment he and John Lewis, after 17 years together, married at San Francisco City Hall, as a recognition that he had just been lifted from an inferior status to an equal one:

When John and I heard the words "by the authority vested in me by the State of California, I now pronounce you spouses for life," we felt something transform within us. We experienced for the first time our government treating us as fully equal human beings and recognizing us as a loving couple worthy of the full respect of the law.

(*Woo* Respondents' Appendix, *Woo v. California*, A110451, at p. 147 ¶ 5 [Gaffney Decl.].) Six months later, Stuart and John learned that their marriage had been declared "void from [its] inception and a legal nullity," by the California Supreme Court's ruling that San Francisco had lacked the authority to issue marriage licenses to same-sex couples without prior court action. Stuart explains that he relived his insight in inglorious reverse:

Words cannot adequately describe the immense pain and sadness that filled us when we read those words and experienced the badge of inferiority placed upon us once again. We ... [were] ... filled with deep shame from the fact that ...[we had been] returned ... to second – class citizenship....

(*Id.* at p. 154 ¶ 30.)

Indeed, same-sex couples today, like API Californians historically, are denied a basic right of citizenship -- the fundamental right to marry the person of one's choice. Members of both groups have been denied the opportunity to share in the institution that is the most universally understood means to communicate to friends, family, and society a couple's level of love and commitment to one another. They have experienced the denial of the right to partake in the measure of security and responsibility that the marriage laws provide.

Lesbian and gay Americans cannot claim their full, rightful citizenship as long as they are denied the right to marry the person of their choice. As the API history above demonstrates, many API persons were either forced to leave California or America to be able to create families. Without equal marriage rights, California same-sex couples today face the dilemma either of sacrificing their dignity and remaining home in California or relocating to Massachusetts, the only state that currently legally recognizes marriages between same-sex couples, or to another country that recognizes marriages of same-sex couples, such as Canada, Spain, or Belgium.⁷² This dilemma is especially serious for Americans in bi-national same-sex relationships who even if legally married in Massachusetts, have no federal marriage rights, and thus no ability to adjust their spouse's immigration through their marriage. Like API couples before them, these couples are often forced to become exiles from America

⁷² AP, *World Briefing Americas: Canada Gay Marriage Approved*, N.Y. Times, July 21, 2005, available at 2005 WLNR 11417768.

to keep their families intact, if and when the non-citizen partner's immigration status in the United States expires.⁷³

The deprivations multiply for same-sex couples who are raising children. Just as discriminatory marriage and exclusion laws were enacted to prevent API Americans from having families, the denial of same-sex couples' right to marry imposes discriminatory and harmful burdens on their families. According to a recent report by the UCLA School of Law, not only does California have the highest number of API same-sex couples of any state, but as many as half of all API same-sex couples of parenting age currently may be raising children who are harmed by the discrimination against their parents.⁷⁴

Respondents Lancy Woo and Cristy Chung are one of those many couples. Together now for 17 years, Lancy and Cristy are raising their now seven-year-old daughter Olivia, whom they describe as "the most delightful little human being imaginable [who] has enriched our lives beyond measure." (*Woo* Respondents' Appendix, *Woo v. California*, A110451, at pp. 77, 81, ¶¶ 3, 15 [Woo Decl].) They describe how Cristy's Chinese American grandmother (Olivia's great-grandmother) "utterly adores Olivia," and how "Olivia adores her right back, and takes for granted the abundant love and closeness" of extended family relationships. (*Id.* at p. 81, ¶ 14.)

Lancy and Cristy are grateful that Olivia, as an Asian Pacific Islander, will not face the legal obstacles to her participation in American

⁷³ See, e.g., Jose Antonio Vargas, *Gay Lives in Limbo: U.S. Immigration Laws Leave Binational Couples in the Lurch*, Jan. 11, 2004, S.F. Chron, at A21, available at 2004 WLNR 7641615.

⁷⁴ "Asian and Pacific Islanders in Same-Sex Couples in California: Data from Census 2000," a report from the Williams Project on Sexual Orientation Law and Public Policy, UCLA School of Law (p.1), available online at www.law.ucla.edu/williamsproj/publications/API_Report.pdf.

society that have confronted thousands of APIs who have gone before. However, they are deeply concerned about the harms that the State's denial of access to marriage is causing their daughter and their entire family. These concerns pertain both to essential practical matters, such as health care, finances, taxes, and legal recognition as parents and also to Olivia's sense of emotional "safe[ty] and happ[iness] and their dignity as a family. (*Id.* at p. 82, ¶ 18; *see also id.* at pp. 79-84, ¶¶ 6-24.) They involve very personal aspects of their family life. For example, Lancy and Cristy's not being able to marry has made it more difficult for Lancy's mother to accept Lancy's relationship with Cristy. (*Id.* at p. 78, ¶ 5.)

Cristy, who is bi-racial, endured harassment growing up because her parents were of different races at a time when laws banning interracial marriage had only recently been abolished nationally. She and Lancy want to protect Olivia from the type of harassment Cristy experienced because others viewed her family as "different." (*Id.* at p. 84, ¶ 23.) Lancy and Cristy want their family to have the same legal protection and recognition that other families have, and they want Olivia to know that her parents -- and their family -- are not "less than" simply because Lancy and Cristy are both women. (*Id.* at pp. 82-84, ¶ 17, *see also* pp. 82 & 84, ¶¶ 18 & 23.)

This denial of same-sex couples' fundamental rights alone is sufficient to trigger strict scrutiny and require the state to bear the burden of establishing a "compelling state interest which justifies the law [and show] that the distinctions drawn by the law are necessary to further its purpose." (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 17 [citations omitted].)⁷⁵ As Respondents' Briefs and Section II below make abundantly

⁷⁵ Amici here do not discuss further the heightened scrutiny test here, but endorse the thorough discussion of the test in the *Woo* Respondents' Brief, *Woo v. California*, A110451, and in the brief submitted by the AGUILAS, et al.

clear, the State has failed to meet this burden, just as it failed to do so with respect to API people and other people of color over 50 years ago in *Perez*.

II. NEITHER “TRADITION” NOR DEFERENCE TO THE LEGISLATIVE PROCESS IS A LEGITIMATE OR SUFFICIENT BASIS FOR DENYING SAME-SEX COUPLES THE RIGHT TO MARRY.

The State asserts two bases to defend marriage discrimination: (1) an interest in maintaining a “common understanding of marriage” that is “deeply rooted in our culture and understanding” and (2) an interest in deferring to the legislative process. (State’s Opening Brief, *Woo v. California*, A110451, at pp. 32-37.) The history of discrimination against API couples and the California Legislature’s active participation in this discrimination demonstrate that this Court should neither rely on “tradition” nor simply defer to majoritarian processes in deciding whether the California Constitution permits same-sex couples to be denied one of the most cherished rights of citizenship – the fundamental right to marry.

The history set forth above demonstrates not only that California has no single, fixed history of who has access to marriage, but that to the extent a “tradition” exists in this state, it is replete with pernicious discrimination that has restricted the rights, citizenship and dignity of insular minorities, such as API Californians. Discrimination and exclusion thus have been deeply rooted elements of California’s marriage “tradition.”

Contrary to Appellants’ assertion that marriage has been as simple as a “union between a man and a woman” for the greater part of our State’s history, the right to marry certainly has *not* been available to *any* man and *any* woman. As set forth above, the California Legislature deliberately limited the ability of people of color to marry whites – first with respect to African Americans and so-called “mulattoes,” then Chinese, Japanese, and Koreans (so-called “Mongolians”), and then Filipinos (so-called “Malays”).

Thus, California's anti-miscegenation statutes limited the definitions of eligible men and women to mean certain "white men" and certain "white women."

And as discussed above, API people and other Californians faced banishment from their community, deportation from this country, and loss of birthright citizenship as the penalty for attempting to exercise this fundamental right. Of course, this discrimination did not hurt only people of color. It hurt white persons who could not marry the person of their choice regardless of race, and it diminished American society and culture generally.

In the face of this tradition of concerted marriage discrimination in California, the California judiciary since the middle of the twentieth Century has become a nationwide leader in protecting fundamental rights and equal protection under the law. As discussed above, the California Supreme Court in 1948 became one of the first appellate courts in the country to strike down a state anti-miscegenation law in *Perez v. Sharp* (1948) 32 Cal.2d 711.

At the time of *Perez*, marriage prohibitions and other exclusionary laws had reduced California's Chinese American population to a tiny remnant of its former size, had resulted in Japanese Americans being interned in camps just three years before, and had abridged severely the citizenship rights of Filipino Americans. The decade before, the California Legislature was still *adding* racial groups to the state's anti-miscegenation statute, and the state's electorate showed no interest in repealing the ban through the initiative process.

It fell to the courts to protect California citizens' fundamental right to marry the person of their choice, and the California Supreme Court invalidated the state's anti-miscegenation statutes in the face of the ban's

long history and pervasive effect on California society, and despite their continued popular support.

The *Perez* majority, led by Justice Traynor, rejected the dissent's reliance on the discriminatory "tradition" of excluding interracial couples from marriage. As described by Justice Shenk in dissent, "[t]he provisions of the law here attacked have remained unchallenged for nearly one hundred years and have been unchanged so far as the marriage of whites with Negroes is concerned." (*Perez, supra*, 32 Cal.2d at p. 752 [Shenk, J., dissenting].) Justice Shenk also noted that both state and federal courts had uniformly upheld the constitutionality of the bans on interracial marriages and thus the court should defer to the legislative branch. (*Id.* at pp. 748-752 [Shenk, J., dissenting].) The majority correctly understood that this long and consistent history was not a sufficient or appropriate basis upon which to uphold a discriminatory restriction on access to a fundamental human right.

The *Perez* decision also clearly evidences the importance of the court's refusal to defer to the legislative process when critical constitutional rights are at stake. As discussed above, the year after the California Supreme Court decided *Perez*, the State Legislature affirmatively rejected an attempt to repeal the law, and the law remained on the books for 11 years – until 1959.⁷⁶ Had Respondent Stuart Gaffney's parents had to rely on the Legislature to act, they would have had to wait seven years to be able to marry. (*Woo* Respondents' Appendix, *Woo v. California*, A110451 at p. 148 ¶ 6 [Gaffney Decl].)

Perez thus brought enormous benefit to Stuart and John's family. If Stuart's parents had taken the inherently degrading step of traveling to another state to marry, they still would not have been able to be legally

⁷⁶ Pauli Murray, *States' Laws on Race and Color* (1950), p. 18; Stats. 1959, c. 146, p. 2043.

married in California without *Perez*. California's anti-miscegenation statutes declared all such marriages "illegal and void." (Former Civil Code, section 60.) Indeed, when Stuart's parents moved to Missouri several years after they married in California, they learned that their marriage was legally void there. Missouri's anti-miscegenation law, not yet overturned by the courts, declared "[a]ll marriages ... between white persons and Mongolians ... absolutely void." (*Woo Respondents' Appendix, Woo v. California*, A110451 at pp. 154-155 ¶ 32 [Gaffney Decl].)

Nationwide, *Perez* stood as an aberration and was not cited favorably by other state and federal court for nearly two decades. Even as the United States Supreme Court was establishing landmark principles of racial equality in cases such as *Brown v. Board of Education* (1954) 347 U.S. 483, the same Court let stand the criminal conviction of Linnie Jackson for wanting to marry someone of another race. (*Jackson v. State of Alabama* (1954) 348 U.S. 888.) Ms. Jackson, an African American woman who sought to marry a Caucasian man, spent years in the Alabama state penitentiary for her crime of love, even as the Supreme Court spoke out against "separate but equal" in other contexts.⁷⁷

A year later, a Chinese American sailor married to a white woman in North Carolina, appealed to the United States Supreme Court to overturn a Virginia state court's voiding his marriage, based upon the 1924 Act to Preserve Racial Integrity. (*Naim v. Naim* (Va. 1955) 197 Va. 80.) Mr. Naim had filed a petition for an immigrant visa based upon his marriage to a U.S. citizen and faced deportation if his marriage remained voided. The Supreme Court, seeking to avoid fanning the flames of racial tensions arising from its decision in *Brown v. Board of Education*, denied *certiorari*,

⁷⁷ Peter Wallenstein, *Race, Marriage, and the Law of Freedom: Alabama and Virginia, 1860s - 1960s* (1994) 70 Chi.-Kent L. Rev. 371, 415-416.

effectively banishing Mr. Naim from this nation. (*Naim v. Naim* (1955) 350 U.S. 985.)⁷⁸

Only when the United States Supreme Court overturned all state anti-miscegenation laws in the 1967 landmark *Loving v. Virginia* (1967) 388 U.S. 1, could interracial couples, like Stuart's parents and Respondent Cristy Chung's parents live anywhere in the country with their family having full legal recognition and protection.⁷⁹

The "tradition" of marriage discrimination against same-sex couples has come into full view today. As with the anti-miscegenation statutes, the Legislature deliberately imposed marriage discrimination against same-sex couples when it amended Family Code section 300 in 1977 to impose gender restrictions on the definition of marriage. (See, e.g., *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1076 n. 11 [noting that the purpose of the 1977 amendment was to eliminate any ambiguity as to whether the law excluded same-sex couples].) And despite the broad protections that California Domestic Partnership laws now provide same-sex couples, these laws do not permit same-sex couples to marry and do not give them fully equal legal responsibilities, protections, and recognition of

⁷⁸ In 1962, the Virginia Supreme Court also refused to recognize the validity of a marriage performed out of state between a Caucasian woman and a Filipino man. (*Calma v. Calma* (Va. 1962) 203 Va. 880.) That same court would continue to follow the principle it enunciated in *Naim* in 1966 in denying the appeal of Richard and Mildred Loving for their convictions for interracial marriage. (*Loving v. Commonwealth* (Va. 1966) 206 Va. 924.)

⁷⁹ When the U.S. Supreme Court decided *Loving* in 1967, 16 states still had anti-miscegenation laws on their books and there had been a long history of deference to state legislatures on the issue dating back to the colonial period. (*Loving v. Virginia, supra*, 388 U.S. at 6.) Alabama became the last state to repeal such a ban in 2000, although 40% of Alabama voters voted against repeal. (Tim Padgett & Frank Sikora, *Once considered taboo, interracial marriages are now on the rise--even in some unexpected places*, Time Mag., May 12, 2003, at A8.)

marriage. Moreover, the domestic partnership statutes are not constitutional protections and could be amended at any time.

Like interracial couples before them, many California same-sex couples have waited years to marry. Respondents Phyllis Lyon and Del Martin have been waiting over 50 years. (*Woo* Respondents' Appendix, *Woo v. California*, A110451, at pp. 68-69 ¶ 2-4 [Lyon Decl.].) Respondents Gaffney and Lewis and Respondents Woo and Chung have been waiting over a decade and a half. (*Woo* Respondents' Appendix, *Woo v. California*, A110451, at p. 147 ¶ 3 [Gaffney Decl.]; *id.* at p. 77, ¶ 3 [Woo Decl.].)


Respondents and other loving, committed same-sex couples seek through this litigation what the *Perez* decision accorded interracial couples, like Stuart's parents: "the right to become a married couple with equal status in the eyes of the law." (*Id.* at p. 155 ¶ 34 [Gaffney Decl.].) This Court should follow *Perez* and enforce the California Constitution to invalidate the marriage exclusions and restrictions on same-sex couples.

CONCLUSION

For the reasons set forth above, *Amici* join in respectfully requesting that this Court affirm the trial court's decisions striking down prohibitions barring same-sex couples from entering into civil marriage.

DATED: January 9, 2005

Asian Pacific Islander Legal Outreach

BY: 
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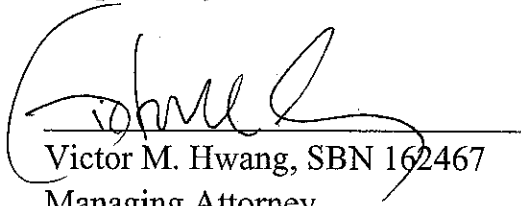
American Justice Center (“AAJC”),* Asian American Legal Defense and Education Fund (“AAALDEF”), Asian Equality, Asian Law Alliance (“ALA”), Asian Law Caucus, Asian Pacific American Bar Association of Los Angeles County (“APABA”),* Asian Pacific American Legal Center of Southern California (“APALC”),* Asian and Pacific Islander Equality (“API Equality”), Asian Pacific Islander Family Pride, Asian Pacific Islander Health Forum, Asian and Pacific Islander Parents & Friends of Lesbians and Gays (“API PFLAG”), Asian Pacific Islander Wellness Center, Asian Women’s Shelter (“AWS”), Asian Youth Promoting Advocacy and Leadership (“AYPAL”), Chinese for Affirmative Action (“CAA”), Chinese Progressive Association (“CPA”), Filipinos for Affirmative Action (“FAA”), Gay Asian Pacific Alliance (“GAPA”), Gay Asian Pacific Support Network (“GAPSN”), Institute for Leadership Development and Study of Pacific Asian North American Religion (“PANA Institute”), Japanese American Bar Association (“JABA”),* Japanese American Citizens League (“JACL”), Korean Community Center of the East Bay (“KCCEB”), My Sister’s House, Organization of Chinese Americans, San Francisco Chapter (“OCA”), Southeast Asian Community Center (“SEACC”), and Vietnamese American Bar Association of Northern California (“VABANC”)

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The text of Amicus Curiae's Brief uses a 13-point Times New Roman font and consists of 10,264 words (including footnotes) as counted by the word-processing program used to draft this brief.

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APPENDIX

APPENDIX

List of Amici Curiae

Asian American Bar Association of the Greater Bay Area (“AABA”) is one of the largest Asian American bar associations in the nation and one of the largest minority bar associations in the State of California. From its inception in 1976, AABA and its attorneys have been actively involved in civil rights issues and community service. AABA members filed an *amicus* brief in the *Bakke* affirmative action case, filed a successful petition overturning the conviction of Fred Korematsu in the landmark case of *Korematsu v. United States*, worked on the successful campaign to release Chol Soo Lee from prison, and more recently were involved in efforts to release Wen Ho Lee and to unseal documents in his case.

The **Asian American Justice Center (“AAJC”)**,* formerly the National Asian Pacific American Legal Consortium, is a national non-profit, non-partisan organization whose mission is to advance the legal and civil rights of Asian Americans. Collectively, AAJC and its Affiliates, the Asian American Institute, the Asian Law Caucus, and the Asian Pacific American Legal Center, have over 50 years of experience in providing legal public policy advocacy and community education on discrimination issues. AAJC was an *amicus* in support of plaintiffs in *Goodridge v. Dep't of Public Health* (Mass. 2003) 798 N.E.2d 941; *Kerrigan v. Dept. of Public Health* (2005) ___ A.2d ___, and likewise the question presented by this case is of great interest to AAJC because it implicates the availability of civil rights protections for Asian Americans in this country.

Asian American Legal Defense and Education Fund (“AALDEF”), founded in 1974, is a non-profit organization based in New York City. AALDEF defends the civil rights of Asian Americans nationwide through the prosecution of lawsuits, legal advocacy and dissemination of public

* The legal groups identified with an asterisk are joining this brief because, as groups representing Asian Pacific Islanders, they have extensive knowledge of and interests in the arguments made in this brief concerning the history of discrimination against API people, especially restrictions on marriage, and the lessons that history has for this case. As organizations with a focus on civil rights issues, they also have extensive knowledge about and interests in the arguments made in the brief filed by AGUILAS, et al. Accordingly, they are taking the unusual step of joining both *amicus* briefs.

information. AALDEF has throughout its long history supported equal rights for all people including the rights of gay and lesbian couples.

Asian Equality (formerly APACE) recognizes the historical legacy of marriage discrimination in the United States and its profound impact on Asian Pacific Islander (API) families. Through community education and coalition building, we seek to empower our API communities to challenge this legacy and to confront present-day marriage discrimination against same-sex couples. In doing so, we want to affirm the lesbian, gay, bisexual, and transgender (LGBT) members of our communities and acknowledge the enriching presence of their love and lives.

Asian Law Alliance (“ALA”), founded in 1977, is a non-profit, public interest legal organization with the mission of providing equal access to the justice system for the Asian Pacific Islander and low income communities in Santa Clara County.

The **Asian Law Caucus** is the nation’s oldest legal and civil rights organization serving Asian American and Pacific Islander communities. Recognizing that social, economic, political and racial inequalities continue to exist in the United States, the Asian Law Caucus is committed to the pursuit of equality and justice for all sectors of our society with a specific focus directed toward addressing the needs of low-income Asians and Pacific Islanders.

The **Asian Pacific American Bar Association of Los Angeles County (APABA)*** is a member organization comprised of attorneys, judges, commissioners and law students throughout Los Angeles County and serves as a voice for issues of concern to the Asian and Pacific Islander (API) community. Established in 1998, APABA provides legal education and assistance to underserved API communities and also sponsors programs in professional development, community education, and law student mentorship. As an API organization, APABA well knows the history of discrimination against Asian Americans, Pacific Islanders, and other immigrants and people of color, and our activities seek to ensure access and justice for those without a voice. As an organization that believes in civil rights, we believe that achieving marriage equality furthers the civil rights interests not only of members of our own community but of all Americans.

The **Asian Pacific American Legal Center of Southern California (APALC)*** is a civil rights and legal services organization dedicated to serving the Asian and Pacific Islander (API) community. Through direct

legal services, impact litigation, policy advocacy, and leadership development, APALC seeks social justice on a range of issues, from family law and immigration, to language rights and workers rights, to hate crimes and race relations. Since our founding in 1983, APALC's bridge-building work, premised on the notion that the civil rights of all communities are inextricably linked, has been recognized nationally for bringing together and addressing issues of diverse communities. APALC has lead or participated in numerous lawsuits challenging racially or linguistically discriminatory employment practices, admissions policies, business sales practices, and access to government programs. APALC supports marriage equality because many Asian communities have been the past targets of laws and policies prohibiting and limiting marriage rights, and current marriage discrimination negatively affects many lesbian and gay members of our own community. These denials of this basic human and civil right to vulnerable minority groups similarly offend core constitutional values. Such rules demean the personhood of those excluded, while undermining the civil rights of all. For these reasons, APALC supports the respondents in this action and urges affirmance of the order of the Superior Court.

Asian and Pacific Islander Equality (API Equality) is a coalition of organizations and individuals in California committed to working in the API communities for equal marriage rights and fair treatment of lesbian, gay, bisexual, and transgender people and their families through community education and advocacy. API Californians have faced a long history of discrimination, including immigration restrictions, laws restricting marriage based on race and national origin, and wartime internment despite U.S. citizenship. Given this history of exclusion and unequal treatment here in the Golden State, members of API Equality have a unique ability to recognize the injustice of denying same-sex couples the right to marry. Because API Equality is dedicated to achieving mutual respect and security for all loving families -- including those of devoted same-sex couples -- it has an interest in this litigation and seeks to participate here as an amicus curiae.

The mission of **Asian Pacific Islander Family Pride** is to end the isolation of API families with lesbian, gay, bi-sexual and transgender members through support, education and dialog. Our vision is the recognition and acceptance among API families of the sexual and gender diversity within our cultures. We are committed both individually and collectively to create an organization that values: the bonds between parent and child, the contribution of inter-generational and extended family traditions, diverse racial, linguistic, and ethnic communities, coalitions with API communities

and organizations, and respect for all contributions and diverse perspectives.

The Asian Pacific Islander Health Forum is a national advocacy organization dedicated to promoting policy, program, and research efforts to improve the health and well-being of API communities. Founded in 1986, the Health Forum approaches activities with the philosophy of coalition-building and developing capacity within local API communities. We advocate on health issues of significance to API communities, conduct community-based technical assistance and training, provide health and U.S. Census data analysis and information dissemination, and convene regional and national conferences on API health.

The Asian and Pacific Islander Parents & Friends of Lesbians and Gays (API PFLAG) is a project of the Los Angeles Chapter Chapter of Parents and Friends of Lesbians and Gays. Our threefold mission is support, education and advocacy. Our API gays, lesbians, bisexuals, and transgender people deserve the same civil rights as do our heterosexual brothers and sisters. We fully support this effort for marriage equality for same-sex couples.

The mission of the **Asian Pacific Islander Wellness Center** is to educate, support, empower and advocate for Asian and Pacific Islander communities — particularly A&PIs living with, or at-risk for, HIV/AIDS. Founded in 1987 as a grassroots response to the HIV/AIDS crisis in communities of color, A&PI Wellness Center is the oldest nonprofit organization in North America focusing on A&PI communities around sexual health and HIV/AIDS services.

Asian Women's Shelter (AWS) is dedicated to ending domestic violence by promoting the social, economic and political self-determination of women. AWS provides comprehensive services in over twenty languages through its Direct Service component, comprised of a shelter program, 24-hour hotline, Multilingual Access Model and Citywide Language Access program, Queer Asian Women's Services, and Volunteer/ Intern program. AWS's Community Building component works to change values, practices, systems and policies to promote peaceful, healthy families, free from violence, injustice and oppression. Community Building projects include Community Action Committees, community education, National Peer-to-Peer Technical Assistance Project, coalition work and collaborations.

AWS supports the right to marry based upon our history of services dedicated to LGBTQ survivors of domestic violence. We want to promote

healthy families and relationships, regardless of sexual orientation. Through our work in reaching queer survivors of domestic violence, we have seen that abusive partners use the fact that same sex relationships are not recognized and discriminated against, as a tool for further abuse. For example, an abuser will threaten to take away children, withhold income, health care, etc. as a way to keep queer battered women in abusive relationships.

Asian Youth Promoting Advocacy and Leadership (“AYPAL”) is a coalition of six youth programs that aims to change the relationship of power between youth and policy makers through youth-identified/run direct action organizing and arts activist campaigns for school and community improvement.

Chinese for Affirmative Action (“CAA”) is a 37-year old, membership-based nonprofit organization whose mission is to defend and promote the civil rights of Asian Americans within the context of advancing a multiracial democracy. Throughout its history, CAA has engaged in policy advocacy, litigation and public education initiatives to protect the rights of Asian Americans and other historically disenfranchised communities in the United States. Wartime internment, immigration restrictions, and laws banning interracial marriage mark the long history of institutionalized discrimination Asian Pacific Americans (APA) have faced in the United States. CAA knows this legacy of exclusion and unequal citizenship remains painfully real today for same-sex couples in our communities.

Thus, CAA is currently involved in public education campaigns within the Asian Pacific American community to raise awareness about the importance of marriage equality for APA individuals.

The **Chinese Progressive Association (“CPA”)** is a 32-year old community-based organization that empowers the Chinese community in San Francisco and promotes justice and equality for all people. CPA's campaigns and programs improve the living and working conditions of low-income immigrants and give ordinary community members a stronger voice in the decision-making processes that affect them. CPA has 1,200 dues paying members, most of whom are working-class Chinese immigrants residing in San Francisco.

CPA is committed to marriage equality to ensure that our members who are gay, lesbian, bisexual or transgendered are able to enjoy equal marriage rights as other straight individuals. Secondly, we would like to end marriage discrimination against all same sex couples to further social equality and justice.

Filipinos for Affirmative Action (“FAA”) was founded in Oakland 30 years ago by Filipino community leaders and students who responded to the growing influx of immigrants to the San Francisco Bay Area. The initial intention of the founders in 1973 was to address the growing incidents of discrimination against Filipinos. As the Filipino population in the Bay Area increased, FAA evolved into a multi-service and civil rights advocacy organization. Today, Filipinos continue to be among the top three groups immigrating to the U.S. Since 1990 Filipinos have been the largest Asian population in California numbering almost 1 million. Approximately 300,000 reside in the greater Bay Area with approximately 85,000 living in Alameda and Contra Costa counties combined. To meet the challenges of the expanding Filipino population of the Easy Bay, FAA maintains additional offices in Union City and Richmond while maintaining our headquarters in Oakland.

The mission of FAA is to build Community by addressing the needs of the most vulnerable through direct service and volunteerism, and by strengthening our community's capacity to participate as equals in the larger society.

Founded in 1988, the San Francisco **Gay Asian Pacific Alliance (“GAPA”)** is an organization dedicated to promoting the interests of gay & bisexual Asian/Pacific Islanders by creating awareness, by developing a positive collective identity and by establishing a supportive community. GAPA was formed from the need for an organization to address, through a democratic process, social, cultural and political issues affecting the gay & bisexual Asian/Pacific Islander community.

Founded in 1984, the **Gay Asian Pacific Support Network (“GAPSN”)** is a volunteer community-based organization based in Los Angeles whose mission it is to provide supportive environments for gay and bisexual Asian Pacific Islander men to meet, network, voice concerns, foster self-empowerment, and to advocate on issues of significance to the gay Asian Pacific Islander community. With a membership that has ranged between 100 and 300 gay and bisexual Asian Pacific Islander men and their allies over its 21-year existence and with a proud history of service to thousands more, GAPSN has been active in the fight for marriage equality for nearly a decade, dating back to early efforts to mobilize and educate the community around the issue of same- gender marriage following the Hawaii Supreme Court’s ruling in *Baehr v. Lewin*. Many members of the community that GAPSN represents, including several of GAPSN members and past and present Board members, are in long-term relationships and are raising

children in their households and would be directly impacted by outcome of this case

The mission of the **Institute for Leadership Development and Study of Pacific Asian North American Religion (“PANA Institute”)** is to foster an intellectual community among scholars, graduate theological students, and faith communities linked by various Pacific and Asian North American religious and cultural traditions and to offer leadership development programs for these constituencies. The Institute develops and provides a structured setting for sustained conversation and research on both ongoing and emerging issues of a religious and theological nature.

Celebrating its 30th anniversary in 2006, the **Japanese American Bar Association (“JABA”)*** is one of the oldest Asian Pacific American bar associations in the country and consists of a diverse membership of nearly 300 attorneys, judicial officers, and law students of Japanese American and other Asian Pacific American ancestry in the greater Los Angeles area, including some who are gay or lesbian. JABA is dedicated to offering programs and services that not only promote the professional interests of its membership, but that also provide education, services, access, and representation for and on behalf of underserved segments of the Japanese American and broader Asian Pacific American community. With a deep appreciation of the unique history of Japanese Americans and the failure of constitutional protections that led to their internment during World War II, JABA has a proud history of actively advocating and devoting resources to and on issues of civil rights and social justice, especially for those members of society who continue to suffer from discrimination and unequal treatment.

The **Japanese American Citizens League (“JACL”)**, founded in 1929, is the nation’s largest and oldest Asian American non-profit, non-partisan organization committed to upholding the civil rights of Americans of Japanese Ancestry and others. It vigilantly strives to uphold the human and civil rights of all persons.

Since its inception, JACL has opposed the denial of equal protection of the laws to minority groups. In 1967, JACL filed an amicus brief in *Loving v. Virginia*, urging the Supreme Court to strike down Virginia’s miscegenation laws, and contending that marriage is a basic civil right of all persons. In 1994, JACL became the first non-gay national civil rights organization, after the ACLU, to support same-sex marriages, affirming marriage as a fundamental human right that should not be barred to same-sex couples. Knowing the harm caused by discrimination and the

importance of seeking equality and protecting the rights of all people, regardless of race, national origin, sex, age, disability, religion or sexual orientation, JACL continues to work actively to safeguard the civil rights of all Americans.

Since 1977, the **Korean Community Center of the East Bay ("KCCEB")** has worked with Korean American and other communities of the Bay Area to develop community-based resources through education, advocacy, and direct services. To realize its mission, KCCEB provides cultural and language appropriate direct services to immigrant communities, collaborates with other organizations and agencies to create effective education and advocacy programs that benefit the community, facilitates the process by which the community can advocate for itself, and in doing so, works to develop community leadership.

KCCEB also promotes the health and well-being of our community by actively supporting respect for one another and all communities and promotes innovative and constructive responses to community needs by maintaining an open and inclusive stance towards developments and events impacting our communities. Through KCCEB's domestic violence program, "Shimtuh", KCCEB serves the lesbian and gay community, and fully supports the right of same sex couples to legally marry.

My Sister's House is the Central Valley's only shelter for battered Asian/Pacific Islander women and children. Our mission is to serve the needs of Asian and Pacific Islander women and children impacted by domestic violence by providing a culturally appropriate and responsive safe haven and community services.

Founded in 1973, the **Organization of Chinese Americans, San Francisco Chapter ("OCA")** is a national organization dedicated to advancing the social, political, and economic well-being of Asian Pacific Americans in the United States. OCA aims to embrace the hopes and aspirations of nearly 12 million Asian Pacific Americans in the United States.

Established in 1975, the **Southeast Asian Community Center ("SEACC")** currently has offices in San Francisco, Santa Clara, Alameda counties. SEACC provides needed business, social, and health related services to refugees, immigrants, and low-income people of the Bay Area. The center also assists with family reunification and immigration matters, including applications for citizenship. In addition, SEACC is a strong

advocate for the rights of refugees and immigrants, and believe in quality integration into American society.

The Vietnamese American Bar Association of Northern California (“VABANC”) was founded in 1998 to provide Vietnamese American attorneys with a vehicle for the unified expression of opinions and positions on matters of concern to all Vietnamese American attorneys, to encourage and promote the professional growth of its members, and to foster the exchange of ideas and information among its members and with the community at large.

VABANC has a strong sense of community responsibility. We strive not only to meet the professional needs of our members, but also to use our resources and expertise to serve the public interest. We frequently cooperate with other Asian American community groups on issues that affect our members and our community.

PROOF OF SERVICE

I, Victor Hwang, declare that I am over the age of eighteen years and I am not a party to this action. My business address is 1188 Franklin Street, Suite 202, San Francisco, California 94109.

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

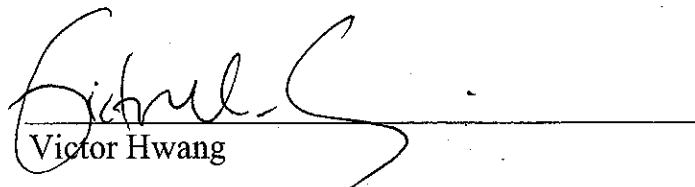
[PROPOSED] BRIEF OF *AMICI CURIAE* ASIAN PACIFIC ISLANDER LEGAL OUTREACH ET AL. IN SUPPORT OF ALL RESPONDENTS IN THE SIX CONSOLIDATED MARRIAGE CASES (A110449, A110450, A110451, A110463, A110651, A110652)

- 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.
- 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.


Victor Hwang

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

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

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

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

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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

<p>Robert H. Tyler Advocates for Faith and Freedom 32823 Highway 79 South Temecula, CA 92592 Tel.: (909) 461-7860 Fax: (909) 461-9056</p> <p><i>Counsel for Proposition 22 Legal Defense and Education Fund</i></p>	<p>Benjamin W. Bull Glen Lavy Christopher R. Stovall Dale Schowengerdt Alliance Defense Fund 15333 North Pima Road, Suite 165 Scottsdale, AZ 85260</p> <p><i>Counsel for Proposition 22 Legal Defense and Education Fund</i></p>
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Campaign for California Families v. Newsom, et al.
San Francisco Superior Court Case No. CGC 04-428794
Court of Appeal Case No. A110652

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<p>Honorable Richard A. Kramer c/o Superior Court Clerk 400 McAllister St. San Francisco, CA 94102</p>	<p>Clerk of Court California Supreme Court 350 McAllister St. San Francisco, CA 94102 (5 copies)</p>
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