No. 10-16696

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT NORTHERN DISTRICT OF CALIFORNIA

KRISTIN PERRY, et al.,

Plaintiff-Appellees,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants,

and

DENNIS HOLLINGSWORTH, et al.,

Defendant-Intervenors-Appellants.

Civil Case No.
09-CV-2292 VRW

Appeal From the United States District Court for the
Northern District of California
Honorable Judge Vaughn R. Walker

AMICI CURIAE BRIEF IN SUPPORT OF PLAINTIFF-APPELLEES BY ASIAN AMERICAN JUSTICE CENTER, ASIAN LAW CAUCUS, ASIAN AMERICAN INSTITUTE, ASIAN PACIFIC AMERICAN LEGAL CENTER, ASIAN PACIFIC AMERICAN WOMEN LAWYERS ALLIANCE, ASIAN PACIFIC ISLANDER LEGAL OUTREACH, API EQUALITY, CALIFORNIA CONFERENCE OF THE NAACP, CHINESE FOR AFFIRMATIVE ACTION, COALITION FOR HUMANE IMMIGRANT RIGHTS OF LOS ANGELES, KOREMATSU CENTER AT SEATTLE UNIVERSITY, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, AND THE ZUNA INSTITUTE

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CORPORATE DISCLOSURE STATEMENT

None of *Amici Curiae* has a parent corporation. No publicly held company owns more than 10% of stock in any of *Amici Curiae.*

STATEMENT OF INTEREST OF AMICI[1]

Asian American Justice Center, Asian Law Caucus, Asian American Institute, Asian Pacific American Legal Center, Asian Pacific American Women Lawyers Alliance, Asian Pacific Islander Legal Outreach, API Equality, California Conference of the NAACP, Chinese for Affirmative Action, Coalition for Humane Immigrant Rights of Los Angeles, Korematsu Center at Seattle University, Mexican American Legal Defense and Education Fund, and the Zuna Institute (collectively "*Amici*") respectfully submit this "Friend of the Court Brief" in the above captioned case to assist the Court in determining the extent to which the wide-spread prejudice against gay men and lesbians obstructs political processes traditionally available to protect minorities from discrimination so as to warrant increased judicial scrutiny of Proposition 8 as a violation of the federal Equal Protection Clause.

Amici are a broad and diverse array of civil rights organizations dedicated to eliminating discrimination against minorities, including practices and laws that seek to discriminate based on race, ethnicity, national origin, gender and sexual orientation. In so doing, *Amici* strive to ensure equal rights for all Americans by advocating on behalf of the interests of the diverse groups who contribute to the

[1] More detailed statements of interest for each amicus curiae are attached hereto at Addendum A.

pluralistic character of our great nation.

I. INTRODUCTION AND SUMMARY OF ARGUMENTS

In this brief, *Amici* examine the narrow but important issue of whether the long-held animus and discrimination directed against gay men and lesbians prevent this group from seeking recourse in traditional political processes so as to warrant heightened judicial scrutiny of Proposition 8 or other discriminatory governmental action, because gay men and lesbians, like other protected minority groups, are "politically powerless." That examination suggests that the answer is "yes."

Political powerlessness has never been held to be an essential element that must be satisfied in order for heightened scrutiny to apply. *See Frontiero v. Richardson*, 411 U.S. 677, 686 n.17 (1973). Political powerlessness is one of many "traditional indicia of suspectness" used to determine the level of scrutiny applied by courts in evaluating the constitutionality of disparate government treatment of minorities. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). Political powerlessness rests on the fundamental notion that deep-seated and longstanding prejudices towards certain groups impede their ability to rely on political processes. *See United States v. Carolene Prod. Co.*, 304 U.S. 144, 152 n.4 (1938). As such, the relevant inquiry is to examine the nature, history and circumstances of the disparate treatment and prejudice against minorities through a broad and empirical data-driven analysis of the extent to

which political processes fail to protect minorities from disparate treatment.

Proponents advance a narrow "test" for political powerlessness: that the existence of any law, anywhere, that protects members of the minority group is all that is needed to demonstrate that the minority group has the ability to "attract the attention of the lawmakers," regardless of the circumstances of the law's enactment. This test urged by Proponents and at the trial by their testifying witness, Professor Kenneth Miller, *see* Trial Tr. 2486:23-2487:2, is a distorted, simplistic, and incorrect standard based on language in *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432 (1985), stripped of any context. Taken at its face value, Proponents' position is meaningless because it is designed to fail any group to which it might be applied, including protected classes that have demonstrated a historical and present ability to get the "attention of lawmakers" under Proponents' definition. A finding that the mere existence of any piece of legislation protective of the group's rights is, by itself, sufficient to prevent protected minorities from receiving heightened judicial scrutiny would eliminate suspect classifications for all persons under the Equal Protection Clause. In this respect, gay men and lesbians are no different than any other group who, in the face of societal discrimination, should be entitled to demonstrate through empirical evidence that homophobic prejudice, like racism or sexism, has curtailed their ability to rely on political processes to protect themselves from state actions

motivated by prejudice. *See Carolene Prod.*, 304 U.S. at 152 n.4.

In this action, an examination of the nature and history of the discrimination faced by gay men and lesbians reveals that their participation in the political process has been systemically impeded in at least four ways: ***First***, gay men and lesbians are underrepresented "in the decisionmaking councils" throughout all levels of government. Despite the recent increase in the number of openly gay men and lesbians who have run for office, the number of LGBT individuals who hold elected office remains disproportionately small. ***Second***, the passage of some protective legislation in response to widespread sexual-orientation discrimination does not transform gay men and lesbians into a politically powerful group. Indeed, the limited legislative gains made by gay men and lesbians have consistently triggered a backlash from anti-gay groups that often leads to the mobilization of powerful, well-funded groups dedicated to preventing gay men and lesbians from securing greater civil rights protections. As Proposition 8 exemplifies, anti-gay groups have manipulated longstanding prejudice not only to forestall the passage of legislation favorable to gay men and lesbians, but to pass legislation that ***takes away*** constitutional and other rights from gay men and lesbians. ***Third***, the well-documented social opprobrium against gay men and lesbians presents an "organizational problem" because members of this group, unlike members of racial, ethnic, and gender-based minorities, can disguise their

distinguishing characteristic by hiding their personal relationships and activities. Unfortunately, political mobilization presents a Catch-22 for gay men and lesbians. To mobilize politically, gay men and lesbians must "out" themselves to the public. The public disclosure of their sexual orientation will then subject them to discriminatory treatment. ***Fourth***, gay men and lesbians experience discrimination with appalling frequency across a variety of sectors.

II. THE DETERMINATION OF POLITICAL POWERLESSNESS REQUIRES AN EXAMINATION OF A COMPENDIUM OF MANY FACTORS, NO ONE OF WHICH IS DISPOSITIVE

As a preliminary matter, the holding in *High Tech Gays v. Defense Indus. Sec. Clearance Office*, 895 F.2d 563 (9th Cir. 1990), in which this Court held that sexual orientation is not a characteristic for which heightened scrutiny is afforded, does not prevent this Court from finding that gays and lesbians are entitled to heightened scrutiny for several reasons: in *High Tech Gays*, this Court (1) explicitly relied on *Bowers v. Hardwick*, 478 U.S. 186 (1986), including in the discussion of political power, 895 F.2d at 574; (2) relied on the distinction between status and conduct that the United States Supreme Court has since rejected, *see Christian Legal Society Chapter of the Univ. of Cal. v. Martinez*, 130 S.Ct. 2971, 2990 (2010); and (3) analyzed state and local statutes, and was not focused on the initiative context, where gays and lesbians are even more vulnerable politically, a fact supported in the writings of the Proponents' own expert, *see, e.g.*, Kenneth

Miller, *Constraining Populism: The Real Challenge of Initiative Reform*, 41 Santa Clara L. Rev. 1037, 1053 & 1056-57 (2001), SER 3; Donald P. Haider-Markel, Alana Querze & Kara Lindaman, *Lose, Win, or Draw? A Reexamination of Direct Democracy and Minority Rights*, 60 POL. RES. Q. 2 304 (2007); Bruce E. Cain & Kenneth P. Miller, *The Populist Legacy: Initiatives and the Undermining of Representative Government, in* DANGEROUS DEMOCRACY? THE BATTLE OVER BALLOT INITIATIVES IN AMERICA 52 (Larry J. Sabato et al., eds., 2001), Ex. PX2857, SER 6-7 ("I]nitiatives that differentially affect minorities can easily tap into a strain of antiminority sentiment in the electorate."). Furthermore, many developments since *High Tech Gays* was decided in 1990 tip the scale in favor of finding that gay men and lesbians cannot be characterized to have effective political power. Among these developments are the repeal of anti-discrimination measures, the increased mobilization of organizations opposed to gay rights, and amendments to state constitutions making political actions by gay men and lesbians more difficult.[2]

The Supreme Court's Equal Protection jurisprudence demonstrates that there is no "one-size-fits-all" approach to determining the extent to which discrimination faced by a minority group impedes their reliance on political processes.

A. <u>The Political Powerlessness Inquiry Should Draw an a</u>

[2] See discussion in Section III(b) of this brief.

Compendium of Factors

The Supreme Court first articulated the concept of political powerlessness in *Carolene Products* as unchecked prejudice against "discrete and insular minorities" that would "curtail the operation of those political processes ordinarily to be relied upon to protect minorities." 304 U.S. at 152 n.4 (1938). In so doing, the Court focused on how the political weakness of minorities prevents them from relying on traditional political processes, and as a result, gives the majority an unfettered right to legislate or take other disparate state action against them. *See* Bruce A. Ackerman, *Beyond* "Carolene Products," 98 Harv. L. Rev. 713, 715, 717 (1985).

Applying the fundamental notion from *Carolene Products* that defects in traditional political processes can render minorities unable to rely on the political system, the Supreme Court has analyzed political powerlessness in several different ways. In *Frontiero,* a gender discrimination action, the Court recognized that although women "when viewed in the abstract . . . do not constitute a small and powerless minority," women are nonetheless "vastly underrepresented" in "decisionmaking councils . . . throughout all levels of our State and Federal Government." 411 U.S. at 686 n.17 (Brennan, J. plurality opinion). Thus, even in cases where a group does not constitute a numerical minority, a group can still face pervasive discrimination "in the political arena" to a degree that requires

heightened judicial review of government action. *Id.* at 686; *see also United States v. Virginia*, 518 U.S. 515, 532-33, 575 (1996) (upholding gender as a suspect classification despite Justice Scalia's dissent that women cannot be considered a discrete and insular minority "unable to employ" the ordinary political processes); *cf. Casteneda v. Partida*, 430 U.S. 482, 499 (1977) (holding that the fact that Mexican Americans held a "governing majority" did not dispel the presumption of intentional discrimination established by a prima facie case of underrepresentation). In *United States v. Virginia*, the Court found that the history of opportunities denied women, including disenfranchisement, required the Court to apply a heightened scrutiny standard to the basis for gender discrimination. 518 U.S. at 531; *accord Frontiero*, 411 U.S. at 688.

In *Cleburne*, 473 U.S. at 445, which struck down a municipal zoning ordinance as applied to a group home for mentally disabled persons, the Court focused on the solicitude exhibited toward mentally disabled individuals by legislatures in passing measures designed to protect them. Justice White, writing for the majority, concluded that the mentally retarded were not "politically powerless in the sense that they have no ability to attract the attention of the lawmakers, " *id.* at 433, because political powerlessness cannot be based solely on the inability of a minority to "assert direct control over the legislature." *Id.* at 445. Neither in *Cleburne* nor anywhere else, however, did the Court suggest that the

mere existence of any kind of protective legislation would demonstrate a degree of political power that precludes heightened scrutiny. To the contrary, as it did in *Carolene Products*, the Court has continued to recognize that political powerlessness exists where the nature, history and circumstances of prejudice against a particular group impede their ability to rely on political processes. *See, e.g,. United States v. Virginia*, 518 U.S. at 555; *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 235 (1995) (holding racial classifications suspect, although racial groups exercise substantial political power).

Indeed, African Americans had made significant legislative gains at the time the Court applied heightened scrutiny to the anti-miscegenation statute at issue in *Loving v. Virginia*. 388 U.S. 1 (1967). By the time that *Loving* was decided in 1967, Congress had passed an unprecedented series of civil rights laws, starting with the Civil Rights Act of 1957 and culminating with the Civil Rights Act of 1964 and the Voting Rights Act of 1965. The ability to gather political support for protective legislation, however, in no way precluded the Court from deeming race a suspect classification.

Similarly, with respect to women, the Court applied heightened scrutiny to sex-based classifications at the very moment Congress was turning its closest attention to discrimination against women. Indeed, Congress had just passed the Equal Rights Amendment, then pending before states for ratification. *See* Ruth

Bader Ginsburg, *Ratification of the Equal Rights Amendment*, 57 Tex. L. Rev. 919, 921 (1979). As Justice Brennan stated in *Frontiero*: "over the past decade, Congress has itself manifested an increasing sensitivity to sex-based classifications . . . thus, Congress itself has concluded that classifications based on sex are inherently invidious." 411 U.S. at 687. And years after *Cleburne*, the Supreme Court continued to afford heightened scrutiny to sex-based classifications even as women continued to make gains in the legislature, including gaining additional protections from discrimination. *See, e.g.*, *J.E.B. v. Alabama*, 511 U.S. 127 (1994) (prohibiting discrimination against women in jury selection, abrogating reasoning in *United States v. Broussard*, 987 F.2d 215 (5th Cir. 1993), that women were no longer politically powerless).

As these and other cases suggest, confining the political powerlessness inquiry to whether *any* protective legislation exists for a group is also unworkable in our system of government because it grants the majority the unchecked ability to usurp the traditional power of the judiciary to protect minorities under a state's constitution. The reality is that the enactment of a discriminatory constitutional amendment by a bare majority vote infects the entire tripartite checks and balances system inherent in traditional political processes. Even the Proponents' testifying witness has written that the role of the courts in response to ballot initiatives is to "act as a filter to protect constitutional principles and minority rights," because "it

is easier for violations of minority rights or other constitutional norms to emerge from an otherwise unfiltered majoritarian process than one in which there are multiple checks and balances." *See* Miller, *Dangerous Democracy*, at 55, SER 7. Although Proposition 8 was limited on its face to a vote on whether gay men and lesbians have the right to marry, its effect was not limited to this single issue. Rather, because the proponents of Proposition 8 used the referendum to deprive a ***protected class*** of a right to marry, the majority encroached on the power of California's Supreme Court to decide who is a protected class under that state's Equal Protection Clause.

B. Existence of Protective Legislation for Gay Men and Lesbians Does Not Signify Political Power for Equal Protection Analysis

Proponents distort the standard articulated in *Cleburne* by implying that the existence of any law that protects members of the minority group – regardless of the circumstances of the law's enactment – is all that is needed to demonstrate that the minority group has the ability to "attract the attention of the lawmakers," and is therefore not politically powerless.[3] This oversimplifies the complex process of law-

[3] The Brief *Amicus Curiae* of Concerned Women of America, in support of Defendant-Intervenors-Appellants Urging Reversal (filed Sept. 24, 2010) goes a step further, and argues that gays and lesbians are not politically powerless under *Cleburne*, because, among other things, gays and lesbians have powerful political allies, including "influential labor unions," "corporate America," the media, and religious groups. (Docket No. 67). The notion that the existence of allies translates to political power is undermined by the historic unreliability of these

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making, and that the passage of a protective legislation may not in fact be dispositive of a group's ability to garner the attention and support of the lawmakers, and runs contrary to the Court's Equal Protection jurisprudence. When the Supreme Court wrote that the mentally disabled did not lack the "ability to attract the attention of the lawmakers," they were describing a political situation that was very different from the one in which gays and lesbians find themselves for several reasons: (1) major legislative enactments to protect gays and lesbians passed in California only after court decisions holding such discrimination unlawful under the state constitutions; and (2) even when legislation was passed as a result of a court decision, statutes were passed with significant opposition to the enactments; (3) the longevity of any protective legislation is in doubt since one of the two major political parties' platform is that it is opposed to any legislation that protects gay and lesbian individuals' rights; (4) likewise, elected officials and candidates for elected office continue to make public statements about gays and lesbians that would be unthinkable if made against any other minority group; and (5) protections afforded by

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allies, their failure to secure outcomes, and the disconnect between their rhetoric and action. *See* SER 6, 8 (Segura). Furthermore, because of the two-party structure of the American party system, and the Republican Party's openly hostile position to gay and lesbian rights, the path to policy change lies exclusively through one party. However, the Democratic Party has repeatedly shrunk from extending the rights of gays and lesbians at the federal level, and discriminatory measures, like Don't Ask/Don't Tell, were passed in a Democratically-controlled Congress. *Id.*

the legislation are still limited to particular geographical regions.

In *Cleburne*, the court cites to four legislative acts as examples of distinctive legislative response to protect the mentally retarded. *See* 473 U.S. at 443. In all four instances, the laws were passed with a wide margin of support and very little opposition. *See* Rehabilitation Act of 1973 § 403, 29 U.S.C. 794 (House: 384 yeas, 13 noes); Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6010(1), (2) (House: 398 yeas, 5 noes); Education of the Handicapped Act, 20 U.S.C. 1412(5)(B) (Senate: 83 yeas, 10 noes; House: 375 yeas, 33 noes); Texas Mentally Retarded Persons Act of 1977, TEX. REV. CIV. STAT. ANN. ART. 5547-300 § 7 (House: 101 yeas, 41 noes). Notwithstanding the prejudice underlying the municipal zoning ordinance struck down in *Cleburne*, one can scarcely imagine a prominent politician, then or now, proudly announcing his or her opposition to any law designed to protect mentally disabled people from discrimination and harm, campaigning against it, assembling a coalition to defeat it – indeed, working to pass a constitutional amendment to prohibit any such laws whatsoever.

In contrast, legislation protecting gay men and lesbians' rights was brought on by court decisions, and not as a culmination of a successful legislative effort, and when they passed, they did so by a narrow margin, and with significant opposition. *See* SER 233:10 – 234:2 (Segura); *see, e.g*, Matthew Shepard and James Byrd, Jr.

Hate Crimes Prevention Act, Pub. L. 111-84 (2009)[4] (House vote on the hate crimes bill (H.R. 1913) - 249 yeas, 175 noes; Senate adds hate crime bill (S.B. 909) as an amendment to Department of Defense authorization bill - 63 yeas, 28 noes); 1999 Amendments to Cal. Govt. Code §§ 12920-21, 12940 (codifying California Supreme and Appellate Court decisions prohibiting discrimination based on sexual orientation; Assembly - 42 yeas, 36 noes; Senate - 21 yeas, 15 noes); A.B. 26 (1999) (limited domestic partnership law for partners 62 years or older; Assembly - 41 yeas, 38 noes; Senate - 22 yeas, 14 noes); A.B. 25 (2001) (new rights for domestic partners; Assembly - 42 yeas, 31 noes; Senate - 23 yeas, 11 noes); A.B. 205, Cal. Fam. Code § 297.5 (domestic partnership law; Senate - 23 yeas, 14 noes; Assembly - 41 yeas, 33 noes); Civil Rights Act of 2005, A.B. 1400 (2005) (Assembly - 44 yeas, 29 noes; Senate - 22 yeas, 16 noes); S.B. 777 (2007) (expanded school antidiscrimination law; Senate - 23 yeas, 13 noes; Assembly - 43 yeas, 32 noes).

To date, gay and lesbian individuals have been unable to secure federal legislation to protect themselves from discrimination in housing, employment, or public accommodations, and they lack similar protections in 29 States, including seven of the ten largest. SER 230-31 (Segura); Trial Tr. 2598:12- 2599:14 (Miller) ("[U]ntold millions across this country, who happen to lesbian or gay, are not

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[4] This bill was later added by amendment to a large spending bill, the Department of Defense authorization bill. Accordingly, the votes address both the original bill

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covered by federal law for employment discrimination. That's currently the case."). And, as Professor Gary Segura testified, "there is no group in American society who has been targeted by ballot initiatives more than gays and lesbians." SER 236 (Segura). Nationwide, voters have used initiatives or referenda to repeal or prohibit marriage rights for gay and lesbian individuals 33 times; in contrast, such measures have been defeated just once, and even that victory was undone by voters in the next election cycle. SER 238 (Segura).

III. THE NATURE, HISTORY AND CIRCUMSTANCES OF THE PREJUDICE AGAINST GAY MEN AND LESBIANS ESTABLISHES THAT THE COURT SHOULD EVALUATE PROPOSITION 8 UNDER HEIGHTENED SCRUTINY

At least four important categories of data should be considered in examining how prejudice against gay men and lesbians impedes their ability to rely on political processes to protect themselves from discrimination: (1) the systemic underrepresentation of gay men and lesbians in political bodies; (2) the backlash by anti-gay groups in countering gains and protections obtained by gay men and lesbians; (3) the perceived "social opprobrium" against gay men and lesbians that impedes their political mobilization; and (4) the frequency, pervasiveness, and severity of the prejudice directed against gay men and lesbians.

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and the hate crimes amendment.

A. Gay Men and Lesbians Are Underrepresented in Government

Underrepresentation in political bodies is an acknowledged measure of relative political power in our representative government. *See Frontiero*, 411 U.S. at 686 n. 17, 688 (holding classification based on gender "inherently suspect" because women were "vastly underrepresented"); *see also Watkins v. U.S. Army*, 875 F.2d 699, 727 (9th Cir. 1989) (Norris, J., concurring) ("The very fact that homosexuals have historically been underrepresented in and victimized by political bodies is itself strong evidence that they lack the political power necessary to ensure fair treatment at the hands of government.").

Gay men and lesbians are barely represented in political bodies today, and the number of openly gay elected officials in this country remains miniscule. As of October 2010, there are only three openly gay or lesbian members of the United States House of Representatives, and fewer than 50 openly gay or lesbian state legislators out of over 7300 state legislators in the United States. SER 240 (Segura); *see also* Find a Leader - Gay and Lesbian Leadership Institute, http://www.glli.org/out_ officials/view_all; *compare* National Conference of State Legislatures, http://www. ncsl.org/default.aspx?tabid= 17273. These numbers represent Congressional representation of 0.7% of the House, 0.56% of the entire Congress, and an overall representation rate of 1% in state legislatures, which constitutes a severe degree of underrepresentation even under the most conservative

estimates of gay and lesbian population. SER 239–40 (Segura). As of January 23, 2010, there was only one openly gay or lesbian federal district court judge. *See* Steve Schmadeke, *Gay, Lesbian Judges in Cook County Note Their Progress*, CHICAGO TRIBUNE (Dec. 6, 2009). There has never been an openly gay or lesbian Senator, Supreme Court Justice, or cabinet-level appointee. SER 240–41 (Segura). By contrast, in the 111th Congress alone, there were 71 women in the House and 17 women Senators, 41 African American Representatives and one Senator, 28 Latino members of Congress, including one Senator, and thirteen Asian American members of Congress, including two Senators. *See* Jennifer Manning, Congressional Research Service, MEMBERSHIP OF THE 111TH CONGRESS: A PROFILE (2010), http://www.senate.gov/CRSReports/crs-publish.cfm?pid=%260BL%29PL%3B%3D%0A. Tellingly, the Congressional Research Service does not even report on the number of sexual orientation minorities in Congress. *Id*. Furthermore, racial minorities, religious minorities and women are well represented in the executive, including the President and eleven members of the Cabinet, and the judiciary, including the current Supreme Court.

Beyond the simple lack of mathematical voting power in legislatures, the absence of openly gay and lesbian legislators undermines an important mechanism of representative democracy to protect minority interests, because "the mere presence of minorities in a legislature may deter the worst forms of legislative prejudice." Bruce

E. Cain & Kenneth P. Miller, *The Populist Legacy: Initiatives and the Undermining of Representative Government*, in DANGEROUS DEMOCRACY? THE BATTLE OVER BALLOT INITIATIVES IN AMERICA, 50 (Larry J. Sabato et al., eds., 2001). Since the presence of gay and lesbian legislators significantly increases the prospect for positive policy outcomes, the lack of representation clearly limits the scope for influencing policy outcomes, a necessary aspect of effective political defense of interests. *See* Donald P. Haider-Markel, Mark R. Joslyn & Chad J. Kniss, *Minority Group Interests and Political Representation: Gay Elected Officials in the Policy Process*, 62 J. POLIT. 568, 575 (2000), SER 4; Trial Tr. at 1558: 4–23; SER 9.

B. Gay Men and Lesbians Are the Targets of an Unparalleled Political and Institutional Backlash

Gay men and lesbians' ability to meaningfully participate in the political process is further hampered by well-organized and funded institutions that systematically and openly oppose and undermine gay and lesbian interests in areas of familial relations, employment, housing, personal safety, and directly in political representation. Despite, or indeed as a result of, some political successes, the LGBT rights movement has faced countless setbacks attributable to the group's unpopularity and lack of political clout in local, state and federal politics. *See* Michael J. Klarman, *Brown and Lawrence (and Goodridge)*, 104 MICH. L. REV. 431, 459-73 (2005).

More than perhaps any other group in the recent history of America, the

advance of gay and lesbian rights has led to the immediate mobilization of powerful groups fighting to reverse the legislative and judicial acts granting those rights through drastic measures, such as constitutional amendment. When the Hawaii Supreme Court in *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993), struck down a state law limiting marriage to a man and a woman, within a few years, more than 30 states and Congress responded by passing "defense of marriage" acts. *See* Klarman, 104 MICH. L. REV. at 460 n. 212. At an individual level, voters who support same-sex marriage are less likely to make their vote contingent on a candidate's position on the issue than voters who oppose same-sex marriage, and politicians who are supportive of LGBT rights have suffered political harm. *See* Esther Kaplan, *Onward Christian Soldiers: The Religious Right's Sense of Siege is Fueling a Resurgence*, The Nation, 33 (July 5, 2004). *See also* Klarman, 104 MICH. L. REV. at 479. This anti-gay sentiment is supported and focused by a range of religious and political institutions dedicated to enacting anti-gay policies. SER 11. Although not entirely monolithic in their opposition, the largest denominations are predominantly actively opposed to gay marriage rights. SER 10; *see also* Ex. PX0827, at 2; Trial Tr. at 1565:2–1566:6.

Furthermore, one of the two major American parties has made it a party platform to *take away* the rights of LGBT individuals, unlike its position with respect to any other group. In 2004, after *Goodrich v. Dept. of Public Health*, 798

N.E. 2d 941 (Mass. 2003), President George W. Bush and the Republican Party aligned themselves squarely with efforts to eliminate or limit the rights of gay and lesbian Americans by endorsing a marriage amendment to the Constitution denying marriage rights to same-sex couples, or state initiatives to the same effect. Klarman, 104 MICH. L. REV. at 460-65. *See also* 2008 Republican Party Platform, at 53, *available at http://www.gop.com/2008Platform/2008platform.pdf*; 2004 Republican Party Platform: A Safer World and a More Hopeful America, at 83, *available at* http://www.presidency.ucsb.edu/papers_pdf/25850.pdf ("We strongly support President Bush's call for a Constitutional amendment that fully protects marriage."). As a measure of the level of opposition to LGBT rights, Congressional Republicans voted heavily in the Senate against the FY 2010 Defense Authorization Act, which included the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, by a 10 to 28 margin, and voted unanimously to block debate on the 2011 Defense Authorization Act, which contained provisions to authorize the repeal of the "Don't Ask, Don't Tell" policy against military service by LGBT Americans. David M. Herszenhorn, *Move to End 'Don't Ask, Don't Tell' Stalls in Senate*, N.Y. TIMES, at A1 (Sept. 21, 2010). In marked contrast, Republican members of Congress voted for the FY2008 and FY2009 Defense Authorizations unanimously in the Senate and by heavy margins in the House (195-2 in 2008 and 227-1 in 2007). *Compare* 2010 Defense Authorization

Act, *available at* http://www.govtrack.us /congress/bill.xpd?bill=h111-2647, *with* FY 2009 Defense Authorization Act, *available at* http://thomas.loc.gov/cgi-bin/bdquery/z?d110:h.r.05658:, *and* 2008 Defense Authorization Act, *available at* http://thomas.loc.gov/cgi-bin/bdquery/z?d110:H.R.4986:.

At the same time, the potential allies in the Democratic Party are sufficiently fractured that gays and lesbians cannot rely on comprehensive support in advancing their interests. *See, e.g.*, Kenneth P. Miller, *The Democratic Coalition's Religious Divide: Why California Voters Supported Obama But Not Same-Sex Marriage*," 119 REVUE FRANÇAISE D'ETUDES AMÉRICAINES 46 (2009).

This institutional and direct democratic bias has taken its toll, both in legislatures and in direct voter initiatives. The mobilization of anti-gay institutions has notably been successful in creating an anti-gay bias in policy at the state level relative to public opinion as a whole, such that even states where pro-gay policies have substantial majority support have disproportionately adopted anti-gay laws. SER 3, 14. *See also* Jeffrey R. Lax & Justin H. Phillips, *Gay Rights in the States: Public Opinion and Policy Responsiveness*, 103 AMER. POLIT. SCI. REV. 367 (2009); Haider-Markel, 60 POLIT. RES. Q. at 304. This pattern is also is reflected in the history of direct voter initiatives nationwide, which highlights the particular vulnerability of gays and lesbians, because "there is no group in American society who has been targeted by ballot initiatives more than gays and lesbians." SER 236

(Segura). Nationwide surveys of direct voter initiatives show that overall "most measures were antigay (79 percent) and most antigay measures (70 percent) passed." Haider-Markel, 60 POLIT. RES. Q. at 304. In matters of marriage and adoption, gays and lesbians have lost 100% of the votes. SER 235:10-12 (Segura).

C. Discrimination Acts as a Significant Barrier to Political Organization and Activism for Many Gay Men and Lesbians

Before gays and lesbians can even begin to organize or be politically active, they must undertake to run a gauntlet of social opprobrium, discrimination, condemnation and potential violence. As a minority whose members can stay invisible, gays and lesbians face significant barriers to political mobilization and recognition that visible minorities do not have to contend with in the same way. *See* Scott S. Gartner & Gary M. Segura, *Appearances can be Deceiving: Self Selection, Social Group Identification, and Political Mobilization*, 9 RATIONALITY AND SOC. 1043 (1997), SER 9; Trial Tr. at 1575:13-1576:17. Gay men and lesbians constitute only a very small percentage of the population, and their political power is diminished by the fact that many keep their sexual orientation a secret in light of social opprobrium and animus. In a survey conducted in 2000, 37% of gay men and lesbians reported they were not open about sexual orientation to their employers; 24% were not open to co-workers; and 15% were not open to family members. SER 149; Kaiser Family Foundation Study, *Inside OUT: A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public's*

View on Issues and Policies Related to Sexual Orientation (2001), http://www.kff.org/kaiserpolls/upload/National-Surveys-on-Experiences-of-Lesbians-Gays-and-Bisexuals-and-the-Public-s-Views-Related-to-Sexual-Orientation.pdf.

This secrecy is both a shelter from discrimination and an obstacle to overcoming it. Many gay men and lesbians are deterred from political activism out of fear of exposing themselves to the very discrimination they seek to eliminate. *See* Ackerman, 98 HARV. L. REV. at 731. Just as "passing" has been a method of coping with discrimination based on race and gender, efforts of gay and lesbian individuals to hide their sexual orientation are both an "effect of discrimination as well as an evasion of it." *See* Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 772, 811-36, 925-33 (2002). In a society where gays and lesbians are among the most frequent targets for hate crimes, living openly can represent a difficult choice. *See* Sam Dolnick, *In the Bronx, an Openly Gay Life can be a Dangerous One*, N.Y. TIMES (Oct. 15, 2010), *available at http://www.nytimes.com/2010/10/16/nyregion/16gays.html?_r=1&hp*.

Barriers to LGBT visibility are imposed not only by an individual's fear of discrimination and harm, but also strong pressures from society, including the government. The chilling effects of censorship and discrimination make it difficult for gay men, lesbians and their allies to organize politically. In 2003, the

Department of Justice "barred a group of employees from holding their annual gay pride event at the department's headquarters" on grounds that "the White House had not formally recognized Gay Pride Month with a presidential proclamation." *See* Eric Lichtblau, *Justice Dept. Bans Event By Gay Staff*, N.Y. TIMES, at A18 (June 6, 2003). In 2003, the day after *Lawrence v. Texas* was decided, a Kansas librarian who was the mother of a gay son was reprimanded and informed that she could never speak about Lawrence again, because she was creating a "hostile work environment." *See* Press Release, American Civil Liberties Union, *ACLU Urges Kansas Public Library Not to Censor Employee for Discussing Historic Sodomy Ruling* (July 16, 2003), *available at* http://www.aclu.org/free-speech/aclu-urges-kansas-public-library-not-censor-employee-discussing-historic-sodomy-ruling.

The ability of gay men and lesbians to "pass" creates barriers to political organization on at least three levels. First, since self-identification is a prerequisite to mobilization, the existence of a hidden portion of the community results in a lower level of political efficacy relative to the true invisible population size of the LGBT community. Gartner & Segura, 9 RATIONALITY AND SOC. at 143, SER 9. Second, since gays and lesbians do not form a majority in any municipality or legislative district, the gay and lesbian community is highly dispersed. SER 247 (Segura). Not only does this pose greater difficulties in electing representatives from any district, but the potential isolation of any given individual may tend to

reinforce the social pressures to remain closeted, eliminating the possibility of political mobilization on the part of individuals who are unaware of the presence of other gays and lesbians in their communities. Third, the relative invisibility of hidden gays and lesbians impedes developing the sustained support of potential political allies that effective political assertion of minority interests requires. This is true both because the apparent number of openly identifiable gays and lesbians is smaller than the actual number, and because LGBT allies who mobilize risk being mistaken for gay or lesbian, and therefore becoming subject to the same animus which discourages mobilization by members of the LGBT minority. Gartner & Segura, 9 RATIONALITY AND SOC. at 153, SER 9. Furthermore, the cost of keeping one's sexual orientation "hidden" takes a toll on the individual who expends great energy and suffers psychological alienation while trying to "pass." *See* Kenji Yoshino, *Assimilationist Bias in Equal Protection: The Visibility Presumption and the Case of "Don't Ask, Don't Tell,"* 108 YALE L.J. 485, 527-29 (1998); *see also* S.W. Cole et al., *Elevated Physical Health Risk Among Gay Men Who Conceal Their Homosexual Identity*, 15 HEALTH PSYCHOL. 243 (1996).

D. Recent Legislation Protecting Rights of Gay Men and Lesbians Is Dwarfed by the Inequalities They Face Daily

The need for heightened constitutional protection and the inability of the LGBT community to meaningfully engage in the political process are made manifest by the continued legal discrimination against gays and lesbians in a wide

variety of fundamentally important areas, such as employment, family relations, marriage, well-being and personal safety. According to a 2005 survey, 39% of LGBT employees experienced sexual orientation-based discrimination, with 11% reporting frequent harassment and between 12% and 30% of heterosexual employees reported having witnessed sexual orientation discrimination against coworkers. Lambda Legal and Deloitte Financial Advisory Services LLP, *2005 Workplace Fairness Survey*, at 4-5 (2006); *see also* M. V. Lee Badgett et al., The Williams Institute, *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination*, Executive Summary, at 1 (2007). In ten states prohibiting sexual orientation discrimination, employees report gender-based discrimination and sexual orientation-based discrimination at approximately the same rate. *See* Badgett et al., at 1-2. As noted above, the lack of employment protections nationwide means that it is not uncommon "to receive a pink slip after years of positive performance evaluations solely because of one's sexual orientation." The Williams Institute, *Documenting Discrimination on the Basis of Sexual Orientation and Gender Identity in State Employment* (2009), SER 355. No federal Employment Nondiscrimination Act (ENDA) has been passed in either chamber of Congress, despite having been introduced in every Congress but one since 1994. *See id.*

Same-sex couples continue to face barriers to family-building experienced

by no other minority group in the United States. More than half of gay men and 41% of lesbians surveyed wish to have a child. *See* Gary J. Gates & M.V. Lee Badgett, The Williams Institute & The Urban Institute, *Adoption and Foster Care by Gay and Lesbian Parents in the United States*, at 5 (2007), http://www.urban.org/UploadedPDF/411437_Adoption_Foster_Care.pdf. Nevertheless, Florida and Mississippi law forbid "same gender" couples from adopting. *See* FLA. STAT. § 63.042(3); MISS. CODE ANN. § 93-17-3(5); Gates et al., at 3. Utah both bans same-sex marriage and forbids unmarried couples from adopting. UTAH CODE ANN. § 78B-6-117. *See also* Human Rights Campaign, *Parenting Laws: Joint Adoption and Second-Parent Adoption*, at 1 (2009), http://www.hrc.org/documents/parenting_laws_maps.pdf (hereinafter "HRC Parenting Laws"). Arkansas takes this one step further, by also forbidding foster parenting by individuals "cohabiting with a sexual partner outside of a marriage that is valid under . . . the laws of this state." *See* ARK. CODE ANN. § 9-8-304. *See also* HRC Parenting Laws at 1. Although gay men and lesbians also engage in biological parenting, at least six states deny second-parent adoptions to same-sex partners, either directly or on the basis that the couples are unmarried. *See* HRC Parenting Laws at 2; Human Rights Campaign, *Michigan Adoption Law*, http://www.hrc.org/your_community/1076.htm (last updated Dec. 9, 2009).

Even where same-sex marriage is available under state law, same-sex

couples are denied more than 1000 federal rights due to the lack of federal recognition of their marriages. *See* U.S. Gen. Acct'g Office, GAO-04-353R, *Defense of Marriage Act: Update to Prior Report*, at 1 (2004). Healthcare and other employment benefits extended to the same-sex partner of an employee are treated as taxable income for that employee, resulting in, on average, $1,070 per year more in taxes than married employees with the same coverage. *See* Naomi G. Goldberg & M.V. Lee Badgett, The Williams Institute, *Tax Implications for Same-Sex Couples*, at 1 (2009), http://www.law.ucla.edu/williamsinstitute/pdf/Website_TaxPiece.pdf. When the estate tax returns with an exclusion limit of $1 million in 2011, same-sex couples subject to the tax will pay on average $1.1 million more than their married counterparts. *See id.* Because the federal government does not recognize same-sex partners, social security survivor benefits and similar federal benefits are denied to surviving same-sex partners. *See id.* at 2.

Ongoing discrimination and an inability to successfully craft legal protections also threaten the physical safety of LGBT individuals, both because of the frequency of hate crimes against gays and lesbians, and also because the prevalence of harassment and discrimination contributes to a substantially higher rate of suicide among gays and lesbians, particularly teenagers. In a vicious cycle, the costs of openly identifying as gay (a prerequisite for political mobilization) include significant risks to mental health and physical safety. Hate crimes are

intended to reach beyond the person of the actual victim to express a dangerous animus toward the entire group. *See Uniform Crime Report: 2008 Hate Crime Statistics* (2008), http://www.fbi.gov/ about-us/cjis/ucr/hate-crime/2008, SER 375. Such crimes can be breathtaking in their brutality. Recently, two teenager boys and a 30 year old victim were beaten, whipped, burned with cigarettes on their genitalia, and sodomized with baseball bats and plungers over the course of many hours. Michael Wilson & Al Baker, *Lured into a Trap, Then Tortured for Being Gay*, N.Y. TIMES (Oct. 8, 2010). As noted above, the effects of such attacks extend to the entire community to communicate a threat and induce fear. Sam Dolnick, *In the Bronx, an Openly Gay Life can be a Dangerous One*, N.Y. TIMES (Oct. 15, 2010). Based on data from the FBI from 2007, only African Americans were the victims of a higher number of hate crimes on an absolute basis. *Uniform Crime Report: 2008 Hate Crime Statistics* (2008), http://www.fbi.gov/ about-us/cjis/ucr/hate-crime/2008, SER 375. On a per capita basis, LGBT individuals are the Americans most likely to be subject to a hate crime. *Id*. This pattern has persisted from 2003 until 2008, the latest year for which data are available. *Id*.

Furthermore, sexual orientation is also a significant risk factor for adolescent gay or bisexual males. Stephen T. Russell & Kara Joyner, *Adolescent Sexual Orientation and Suicide Risk: Evidence from a National Study*, 91 AMER. J. OF PUB. HEALTH 1276 (2001). Not surprisingly, rejection and social opprobrium

within immediate social networks play a significant role in this danger to the health and lives of LGBT individuals, with familial rejection associated with an 8.4 times greater risk for suicide and 5.6 times greater risk for depression. Caitlin Ryan, et al., *Family Rejection as a Predictor of Negative Health Outcomes in While and Latino Lesbian, Gay and Bisexual Young Adults*, 123 PEDIATRICS 346 (2009).

IV. CONCLUSION

Amici respectfully thank the Court for the opportunity to brief the discrete, but important issue of the political powerlessness of gay men and lesbians. In submitting this brief, *Amici* hope that the legal arguments and empirical data provided will be of assistance to the Court in determining the level of scrutiny to apply in evaluating whether Proposition 8 violates the Equal Protection Clause of the United States Constitution and that the Court will conclude that heightened scrutiny is appropriate in this case.

DATED: October 25, 2010

Bingham McCutchen LLP

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,960 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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DATED: October 25, 2010

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9th Circuit Case Number(s) 10-16696

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ADDENDUM A

The **Asian American Justice Center (AAJC)** is a national non-profit, non-partisan organization in Washington, D.C., whose mission is to advance the civil and human rights of Asian Americans and build and promote a fair and equitable society for all. AAJC is a member of Asian American Center for Advancing Justice. Founded in 1991, AAJC engages in litigation, public policy advocacy, and community education and outreach on a range of issues, including discrimination. AAJC is committed to challenging barriers to equality for all sectors of our society and has supported same-sex marriage rights as an *amicus* in other cases on this issue.

The mission of the **Asian Law Caucus** is to promote, advance, and represent the legal and civil rights of Asian 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, immigrant and underserved APIs. As the oldest Asian American legal rights organization devoted to protecting the civil rights of all racial and ethnic minorities, we have a strong interest in protecting the integrity of the core constitutional principle of equal protection under the law for all Americans.

Asian American Institute ("AAI") is a pan-Asian, non-partisan, not-for-profit organization located in Chicago, Illinois, whose mission is to empower and advocate for the Asian American community through advocacy, coalition-building, education, and research. AAI is a member of the Asian American Center for Advancing Justice, whose other members include Asian American Justice Center, Asian Law Caucus, and Asian Pacific American Legal Center. AAI's programs include community organizing, leadership development, and legal advocacy. AAI is deeply concerned about the discrimination and lack of fair representation faced by minorities and marginalized communities. Accordingly, AAI has a strong interest in this case.

Asian Pacific Islander Legal Outreach (API Legal Outreach) – Asian Pacific Islander Legal Outreach (API Legal Outreach) is a community-based, social justice organization serving the Asian and Pacific Islander communities of the Greater Bay Area. Founded in 1975, our mission is to promote culturally and linguistically appropriate services for the most marginalized segments of the API community. Our work is currently focused in the areas domestic violence, violence against women, immigration and immigrant rights, senior law and elder abuse, human trafficking, public benefits, and social justice issues. API Legal Outreach has been fighting against all forms of discrimination, especially against the LGBTQ community, for many years. API Legal Outreach is a member of API

Equality, and also was the lead author of an amicus brief for the 2006 *Woo v. Lockyer* case advocating for the rights of same-sex marriage. The brief represented 28 Asian American organizations and was joined by over 60 Asian American organizations.

API Equality – Northern California is a coalition of Asian Pacific Islander (API) and Lesbian, Gay, Bisexual, Trans, Intersex, and Queer/Questioning (LGBTIQ) of organizations and individuals that is committed to reducing and eliminating prejudice and oppression based on gender, gender identity, and/or sexual orientation in the diverse ethnic communities of the API populace and to reducing and eliminating racially-motivated or xenophobic prejudice and oppression in the LGBTQI community. API Equality – Northern California is dedicated to empowering community members, advancing civil rights protections, and promoting respect and understanding for cultural and community diversity.

The **Asian Pacific American Legal Center of Southern California** (APALC) is the largest public interest law firm in the nation devoted to the Asian and Pacific Islander (API) community. As a civil rights organization, APALC has long focused on combating race and national origin discrimination, in sectors as diverse as employment, education, consumer, health care and government programs. Since our founding in 1983, APALC has also embraced a broader vision of social justice, premised on the notion that the civil rights of all

communities are inextricably linked, and is recognized nationally for bringing together and addressing issues of diverse communities. As a result, APALC is committed to ensuring marriage equality in California, both because Asian communities have been the past targets of laws and policies limiting marriage rights, and because current marriage laws exclude many lesbian and gay members of the API community.

Asian Pacific American Women Lawyers Alliance (APAWLA) is a membership organization based in Los Angeles comprised of attorneys, judges, and law students throughout California. Since its inception in 1993, APAWLA has been devoted to the inclusion, advancement, and empowerment of Asian Pacific American women by advocating, mentoring, and developing leadership within the legal profession and larger community. APAWLA believes that the legal definition of marriage is a constitutional matter of fundamental importance that will have a profound impact on the rights and interests of all Americans. APAWLA also believes that the legal community should serve as the forefront in protecting and promoting the rights and interests of minorities that are traditionally underrepresented and marginalized. Therefore, APAWLA supports equal marriage rights of all regardless of their sexual orientation.

The **California State Conference of the NAACP** (the "NAACP") is part of a national network of NAACP affiliates. Founded in 1909 by a group of black and

white citizens committed to social justice, the NAACP is the nation's largest and strongest civil rights organization. The NAACP's principal objective is to ensure the political, educational, social, and economic equality of minority citizens of the United States and to eliminate race prejudice.

Chinese for Affirmative Action (CAA) is a community-based nonprofit organization founded to defend civil rights and advance multiracial democracy. Though our constituency includes the broader Asian American and Pacific Islander community, we prioritize the needs of the most marginalized. Our community building, research and analysis, and policy advocacy activities promote equality in a number of areas including immigrant rights, language diversity, racial justice, and marriage equality.

The **Coalition for Humane Immigrant Rights of Los Angeles** ("CHIRLA") is a nonprofit organization founded in 1986 to advance the human and civil rights of immigrants and refugees in Los Angeles. As a multiethnic coalition of community organizations and individuals, CHIRLA aims to foster greater understanding of the issues that affect immigrant communities, provide a neutral forum for discussion, and unite immigrant groups to advocate more effectively for positive change. Toward those goals, CHIRLA provides legal representation, extensive referral services, and a support network for immigrants and refugees; educates and organizes community members; and works to improve

race and ethnic human relations throughout Southern California. With reference to this case, CHIRLA underscores the significant challenges facing immigrants in California; accordingly, the organization advocates for nondiscriminatory, respectful laws that offer equal treatment and dignity to all families.

The **Fred T. Korematsu Center for Law and Equality** ("Korematsu Center") is a nonprofit organization based at Seattle University School of Law and works to advance justice through research, advocacy, and education. The Korematsu Center is dedicated to advancing the legacy of Fred Korematsu, who defied the military orders during World War II that ultimately led to the internment of 110,000 Japanese Americans. He took his challenge of the military orders to the United States Supreme Court, which upheld his conviction in 1944 on the ground that the removal of Japanese Americans was justified by "military necessity." Fred Korematsu went on to successfully challenge his conviction and to champion the cause of civil liberties and civil rights for all people. The Korematsu Center, inspired by his example, works to advance his legacy by promoting social justice for all, and believes that protecting marriage equality furthers the civil rights of everyone. Further, it has a strong interest in protecting the integrity of the core constitutional principles of equal protection and fundamental rights, and ensuring the courts' role as final arbiter of these constitutional guarantees. We note that the Korematsu Center does not, in this brief or otherwise, represent the official views

of Seattle University.

Established in 1968, the **Mexican American Legal Defense and Educational Fund** ("MALDEF") is the leading national civil rights organization representing the 40 million Latinos living in the United States though litigation, advocacy, and educational outreach. With its headquarters in Los Angeles and offices in Chicago, Sacramento, San Antonio and Washington, D.C., MALDEF's mission is to foster sound public policies, laws and programs to safeguard the civil rights of Latinos living in the United States and to empower the Latino community to participate fully in our society. MALDEF has litigated many cases under state and federal law to ensure equal treatment under the law of Latinos, and is a respected public policy voice in Sacramento and Washington, D.C. on issues affecting Latinos. MALDEF sets as a primary goal defending the right of all Latino families to equal treatment under law, including those headed by lesbian or gay Latinos who wish the equal right to marry and in which Latino children are disadvantaged because their same-sex parents are denied civil marriage.

Zuna Institute is a national non-profit organization that advocates for the needs of black lesbians in the areas of health, public policy, economic development, and education. Zuna seeks to eliminate the barriers faced by black

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lesbians on a daily basis, including the inability of same-sex couples to marry, which causes great harm to black lesbians and their families, and which demeans the dignity and freedom of all people.