

No. 12-144

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**In the Supreme Court of the United States**

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DENNIS HOLLINGSWORTH, et al.,

*Petitioners,*

v.

KRISTIN M. PERRY, et al.,

*Respondents.*

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On Writ of Certiorari  
to the United States Court of Appeals  
for the Ninth Circuit

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**BRIEF OF BAY AREA LAWYERS FOR  
INDIVIDUAL FREEDOM, ET AL., AS *AMICI*  
*CURIAE* IN SUPPORT OF RESPONDENT**

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## STATEMENT OF INTEREST

Bay Area Lawyers for Individual Freedom (“BALIF”) is a bar association of more than 700 lesbian, gay, bisexual, and transgender (“LGBT”) members of the San Francisco Bay Area legal community. As the nation’s oldest and largest LGBT bar association, BALIF promotes the professional interests of its members and the legal interests of the LGBT community at large. To accomplish this mission, BALIF actively participates in public policy debates concerning the rights of LGBT individuals and families. BALIF frequently appears as *amicus curiae* in cases, like this one, where it believes it can provide valuable perspective and argument that will inform court decisions on matters of broad public importance.

Additional *amici* include a broad array of organizations, including national, metropolitan, local, and minority bar associations and national and local non-profit organizations. Each organization supporting this *amicus* brief is dedicated to ensuring that its constituents and all others in this country, including gay men and lesbians, receive equal treatment under the law. *See* Appendix. All parties have consented to *Amici*’s submission of this brief.<sup>1</sup>

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<sup>1</sup> Pursuant to Rule 37.6, *Amici Curiae* affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici Curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

## SUMMARY OF ARGUMENT

Foundational to the Equal Protection Clause of the Fourteenth Amendment is the principle that “the Constitution ‘neither knows nor tolerates classes among citizens.’” *Romer v. Evans*, 517 U.S. 620, 623 (1996) (quoting *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting)). In line with this principle, it has long been bedrock law that “separate but equal” treatment does not satisfy the federal Constitution. The very notion is a contradiction in terms: as this Court has emphasized since *Brown v. Board of Education*, the Constitution’s promise of true equality is necessarily breached by government-sponsored separation of a disfavored class. Proposition 8 betrays these longstanding values. It excludes a class of people—gay men and lesbians—from the venerated institution of marriage, relegating them instead to the inherently unequal and legalistic apparatus of domestic partnership.

This brief explains the harm inflicted on gay men and lesbians as a result of Proposition 8’s pernicious classification. Because Proposition 8 excludes them from marriage, gay men and lesbians and their families are stigmatized, deprived of benefits enjoyed by their heterosexual counterparts, and exposed to increased discrimination. These effects are repugnant to the Constitution’s equality guarantee and are in no way mitigated by access to the separate and inherently inferior mechanism of domestic partnership. *Amici* urge this Court to affirm the Ninth Circuit’s conclusion that Proposition 8 disadvantages gays and lesbians without any legitimate justification. Pet. App. 1a.

## ARGUMENT

### I. CLASSIFICATIONS THAT SERVE ONLY TO DISADVANTAGE THE BURDENED GROUP FAIL RATIONAL BASIS REVIEW

The Equal Protection Clause of the Fourteenth Amendment is “a commitment to the law’s neutrality where the rights of persons are at stake.” *Romer*, 517 U.S. at 623. The Clause “requires the consideration of whether the classifications drawn by any statute constitute an arbitrary and invidious discrimination.” *Loving v. Virginia*, 388 U.S. 1, 10 (1967). Even under the most deferential review—the rational basis test—a state law must be “rationally related to a legitimate state interest.” *E.g.*, *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).<sup>2</sup> “The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.” *Id.* at 446.

A law that classifies persons for no reason other than to confer disfavored legal status fails even rational basis review because it serves no legitimate governmental purpose. *See Romer*, 517 U.S. at 633–35. As this Court repeatedly has explained, “if the constitutional conception of ‘equal protection of the laws’ means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a *legitimate* governmental

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<sup>2</sup> Respondents amply demonstrate, and *amici* agree, that Proposition 8 should be subject to heightened scrutiny. However, as this brief explains, Proposition 8’s failure to advance a legitimate governmental purpose causes it to fail under even the most deferential standard of review.

interest.” *Id.* at 634 (quoting *Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)). Accordingly, in *Romer*, this Court struck down a Colorado constitutional amendment that prohibited governmental protection of gay and lesbian individuals. *Id.* at 636. The amendment, the Court found, was a “status-based enactment” that “impose[d] a special disability upon [gays and lesbians] alone.” *Id.* at 631, 635. It “inflict[ed] on [gays and lesbians] immediate, continuing, and real injuries that outrun and belie any legitimate justifications that may be claimed for it.” *Id.* at 635; *see also Eisenstadt v. Baird*, 405 U.S. 438, 454–455 (1972) (law prohibiting distribution of contraceptives to unmarried individuals lacked a rational basis and violated the Equal Protection Clause).

So too here. The injuries that Proposition 8 visits upon gay men and lesbians, as *amici* explain below, “outrun and belie” any legitimate governmental purpose that might be claimed for it.

## **II. PROPOSITION 8 ESTABLISHES AN UNEQUAL, TWO-TIERED REGIME AND HARMS GAY AND LESBIAN INDIVIDUALS AND THEIR CHILDREN**

Proposition 8’s overt discrimination against same-sex couples establishes a two-tiered regime in which same-sex couples hold second-class status: “Proposition 8 does nothing more than enshrine in the California Constitution the notion that opposite-sex couples are superior to same-sex couples.” Pet. App. 316a. As explained below, the availability of domestic partnerships—a separate, plainly inferior option—does not cure Proposition 8’s constitutional deficiency. “Proposition 8 works a meaningful harm

to gays and lesbians, by denying their committed lifelong relationships the societal status conveyed by the designation ‘marriage,’ and this harm must be justified by some legitimate state interest.” Pet. App. 59a.

**A. The Legalistic Designation of Domestic Partnership Is Patently Inferior to the Revered Institution of Marriage**

Time-honored precedent establishes that state-created, separate institutions for disfavored groups are inherently unequal. As this Court has repeatedly recognized since *Brown v. Board of Education*, 347 U.S. 483, 495 (1954), such separate institutions offend the guarantees of the Equal Protection Clause. See, e.g., *Mayor & City Council of Balt. v. Dawson*, 350 U.S. 877 (1955) (public beaches and bathhouses); *Holmes v. City of Atlanta*, 350 U.S. 879 (1955) (public golf courses); *Gayle v. Browder*, 352 U.S. 903 (1956) (public transportation); *New Orleans City Park Improvement Ass’n v. Detiege*, 358 U.S. 54 (1958) (public parks); *Peterson v. City of Greenville*, 373 U.S. 244 (1963) (restaurants); *Brown v. Louisiana*, 383 U.S. 131 (1966) (public libraries).

Even where separate institutions have the trappings of their more well-regarded counterparts, inequalities remain by definition. Though the distinctions may be intangible, their social significance is real, and they remain constitutionally impermissible. See *Sweatt v. Painter*, 339 U.S. 629, 634 (1950) (noting, in striking down Texas’s segregated law schools, that “the [all-white] Law School possesses to a far greater degree those qualities which are incapable of objective

measurement but which make for greatness in a law school”); *United States v. Virginia*, 518 U.S. 515, 557 (1996) (holding that Virginia could not restrict women to a military program that lacked, among other features, the “prestige” of Virginia Military Institute).

The unequal separation wrought by Proposition 8 is blatant and pernicious. The resulting regime welcomes opposite-sex couples into the revered institution of marriage while it shunts same-sex couples into the newly-minted, legalistic apparatus of “domestic partnership.” See Cal. Fam. Code § 297 (2005). As the record in this case makes clear, domestic partnership is inferior to and less desirable than marriage. The availability of domestic partnership thus does not remedy the harm caused by exclusion from marriage, but rather pours salt in the wound. As in *Sweatt*, “[i]t is difficult to believe that one who had a free choice” between domestic partnership and marriage “would consider the question close.” *Sweatt*, 339 U.S. at 634.

### **1. Marriage Is a Uniquely Revered Institution in American Society**

Marriage holds a hallowed status in our society. As courts repeatedly recognize, marriage is an essential aspect of the human experience. Far more than a mere bundle of legal rights and responsibilities, marriage is “an institution of transcendent historical, cultural and social significance,” *Kerrigan v. Comm’r of Pub. Health*, 957 A.2d 407, 418 (Conn. 2008), “an institution more basic in our civilization than any other.” *Williams v. North Carolina*, 317 U.S. 287, 303 (1942). Its significance to the couple involved is unparalleled; it is “intimate to the degree of being

sacred.” *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965). Furthermore, marriage is a time-honored demonstration to family, friends, and the community of a loving commitment between two people—and implies a return promise by society to respect that commitment. *See Turner v. Safley*, 482 U.S. 78, 95 (1987) (recognizing that marriage is an “expression[] of emotional support and public commitment”). The institution is “a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family.” *Goodridge v. Dep’t of Pub. Health*, 798 N.E.2d 941, 954 (Mass. 2003). The right to marry, accordingly, “has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men [and women]” and “fundamental to our very existence and survival.” *Loving*, 388 U.S. at 12; *see also Perez v. Lippold*, 198 P.2d 17, 18–19 (Cal. 1948) (“Marriage is . . . something more than a civil contract subject to regulation by the state; it is a fundamental right of free men.”). The enormous personal and social significance of marriage is, indeed, a core premise of appellants’ position. *See, e.g.*, Petitioners’ Opening Brief at 48 (describing marriage as a “bedrock social institution”).

As a result of the special significance of marriage in society, the institution has a critical “signaling” role, apart from the specific legal obligations it entails. Elizabeth S. Scott, *Social Norms and the Legal Regulation of Marriage*, 86 Va. L. Rev. 1901, 1917 (2000). The designation of marriage affects both how the two individuals in a married couple behave toward one another and how society behaves toward them.

First, married people understand how they are supposed to behave toward one another: they are to be emotionally and financially supportive, honest, and faithful. *See* Trial Tr. 201:9–14 (testimony of historian Nancy Cott). Although married couples may modify their expectations and behavior over time, they benefit by beginning with a common understanding of the marital relationship, gleaned from a lifetime of participating in society, hearing about marriage, and observing married couples. *See* Jeffrey M. Adams & Warren H. Jones, *The Conceptualization of Marital Commitment: An Integrative Analysis*, 72 *J. of Personality and Social Psychology* 1177 (1997). This shared understanding assists married individuals in meeting their own and their spouse’s expectations and motivates them to work through temporary difficulties. *See* Trial Tr. 612:6–18 (testimony of psychologist Letitia Peplau) (marriage “enhances the likelihood that . . . commitments will, in fact, be acted upon and be enforceable,” and that marriage is associated with “a degree of seriousness and sort of gravitas that leads [married couples] to take those obligations seriously”).

The institution of marriage likewise provides common ground for others in society to understand a couple’s relationship. Because marriage is universally recognized, married couples are readily treated in a manner that reflects their legal and social status. *See* American Psychoanalytic Association Position Statement, PX0752 at 2 (noting that the “milestone of marriage moves a couple and its children into full citizenship in American society”). Spouses are immediately seen as family members. *See* J.A. 657 (testimony of Helen Zia) (getting married helped Zia’s family understand her relationship with

her wife, Lia Shigemura; Zia’s mother now refers to Lia Shigemura as a “daughter-in-law,” and “people understand that”); *id.* at 659 (“[I]n those most important moments in our lives, marriage made it very clear that I was family, that we are family, and where we stand.”). When a married couple opens a joint bank account, or checks into a hotel, or applies for a credit card, or attends a parent-teacher conference, or accompanies a child on a plane flight, or jointly rents a car, there is no need for explanation or documentary proof of the relationship. *See* Trial Tr. 844:5–845:20 (testimony of Dr. Ilan Meyer, social psychologist); *see generally* *Varnum v. Brien*, 763 N.W.2d 862, 883–84 (Iowa 2009) (“Iowa’s marriage laws” are “designed to bring a sense of order to the legal relationships of committed couples and their families in myriad ways.”).

For these reasons and others, many people regard getting married as the most important day in their lives—“the principal happy ending in all of our romantic tales,” and “a destination to be gained by any couple who love one another.” J.A. 404 (Cott testimony); *id.* at 340 (testimony of plaintiff Paul Katami) (“[W]hen you find someone who is not only your best friend but your best advocate and supporter in life, it’s a natural next step for me to want to be married to that person.”); *id.* at 363 (testimony of plaintiff Kristin Perry) (getting married was “as amazed and happy as I could ever imagine feeling”). As the Court of Appeals noted, “[w]e do not celebrate when two people merge their bank accounts; we celebrate when a couple gets married.” Pet. App. 53a.

## **2. Domestic Partnership Is a Legalistic Mechanism That Lacks the Significance, Stability, and Meaning of Marriage**

Domestic partnership plainly lacks the status, cultural significance, and social meaning of marriage. Unlike marriage, domestic partnership is not an effective marker of family relationships. And same-sex couples who have access only to domestic partnerships clearly are deprived of many of the tangible and intangible benefits that married couples enjoy. “Proposition 8 left the incidents [of marriage] but took away the status and the dignity.” Pet. App. 54a.

First, the legal category of domestic partnership is novel and unstable. The category was invented recently,<sup>3</sup> and its meaning is ever-shifting. In California alone, its contours have recently and repeatedly changed.<sup>4</sup> Domestic partnership began in

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<sup>3</sup> The City of West Hollywood enacted the first domestic partnership ordinance in the mid-1980s and San Francisco has operated its domestic partnership registry since 1990.

<sup>4</sup> Both West Hollywood’s and San Francisco’s ordinances essentially permitted public acknowledgement of the intent of two individuals, regardless of their gender, to commit to caring for one another and to be responsible for one another’s basic living expenses, with very little legal effect. In 1999, California established a statewide domestic partnership registry, which granted some benefits for certain state employees and permitted domestic partners to visit each other in the hospital. In 2001, the state expanded the list of benefits available to domestic partners, including the right to sue for wrongful death, the right to use sick leave to care for one’s partner, and the right to use stepparent adoption procedures. In 2002, the Legislature

California as a term used in local ordinances that conferred few legal benefits. It is now the label for registered same-sex couples (and unmarried opposite-sex couples in which one individual is over the age of 62) who, according to the California Supreme Court, must receive the same substantive state-conferred legal entitlements as married couples. *See Strauss v. Horton*, 207 P.3d 48, 61–62 (Cal. 2009). *But see In re Marriage Cases*, 183 P.3d 384, 416 n.24 (Cal. 2008) (listing legal differences between domestic partnership and marriage). On this point, Petitioners concur. They assert that Proposition 8 restores a regime in which the “unique and highly favorable imprimatur” of marriage is reserved “to opposite-sex unions.” J.A. 209.

Not surprisingly in light of its novel and uncertain stature, domestic partnership is not valued by society

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passed a series of six bills aimed at expanding the rights of domestic partners. Finally, in 2003, the Legislature enacted Assembly Bill 205, which provided domestic partners with most of the rights and duties enjoyed by married couples. *See* National Center for Lesbian Rights, *The Evolution of California’s Domestic Partnership Law* (Sept. 5, 2007), [http://www.nclrights.org/site/DocServer/timeline-ab205\\_042307.pdf?docID=1265](http://www.nclrights.org/site/DocServer/timeline-ab205_042307.pdf?docID=1265). In 2009, the California Supreme Court noted that after Proposition 8, domestic partners in California retain “all of the constitutionally based incidents of marriage” except its label. *Strauss v. Horton*, 207 P.3d 48, 61 (Cal. 2009) (quoting *In re Marriage Cases*, 183 P.3d 384, 433–34 (Cal. 2008)). In contrast to the institution of marriage, whose very label instantly conveys the nature of the relationship, domestic partnership in California requires a legal expert in order to determine the nature of the relationship it codifies at any given moment.

in a way that compares to marriage. As one expert witness put it: “young children do not aspire to be domestic partners.” J.A. 534 (Meyer testimony). People do not associate the relationship with the stability and permanence that characterize marriage. This is evident in the way government treats domestic partnership. In 2004, for example, the State of California mailed a letter to registered domestic partners explaining how they could dissolve their partnerships if they chose in light of new legal responsibilities imposed on domestic partners. *See* Letter from California Secretary of State Kevin Shelley, PX2265. It is unimaginable that the state would have advised married couples to consider divorce in similar circumstances. *See* Trial Tr. 2047:13–2048:13 (testimony of Dr. Gregory Herek).

In turn, the registration of a domestic partnership is less meaningful to same-sex couples than getting married would be. For plaintiff Sandy Stier, a domestic partnership registration was “just a legal document” that “doesn’t have anything to do . . . with . . . the type of enduring relationship we want.” J.A. 386. The record demonstrates that the complex emotions people experience when they get married—as well as the joy and human closeness they feel when they attend a wedding—simply do not attach to the ministerial step of registering a domestic partnership. *See id.* at 645–47 (Zia and her wife did not notify friends or send invitations to the “anticlimactic” event of their registration as domestic partners); *id.* at 681 (Mayor Sanders’ daughter notified him of her domestic partnership via text message stating she had “got the DP taken care of”). Even when domestic partners celebrate their legal registration with a ceremony, the terrain is unfamiliar: Is the event a wedding? A commitment

ceremony? Something else? The lack of a common vocabulary underscores the institution's lack of societal stature, and serves as a reminder to same-sex couples of the choice that remains unavailable to them but available to other couples.

These reminders continue throughout the relationship. Even the simple act of referring to one's "partner" can be wrought with embarrassment and misunderstanding: same-sex couples can be left searching for a manner to explain, no matter how uncomfortable the setting, whether they are referring to their *domestic* partner or their professional, athletic, or law partners. See J.A. 654–55 (Zia testimony) (when Zia and her wife were just domestic partners, they would tell people they were partners and would be asked, "Partner in what business?"); *id.* at 372 (Perry testimony) ("I don't have access to the words that describe my relationship right now. I'm a 45-year-old woman. I have been in love with a woman for 10 years and I don't have a word to tell anybody about that. I don't have a word."). Subsequently, same-sex couples must often explain the intricacies of state family law to friends and potentially hostile strangers alike.

Such ambiguities, and the resulting risk of differential treatment, would be less likely if same-sex couples could accurately refer to themselves as "married" and as husband or wife, a vocabulary that is universally understood. See *The Legal, Medical, Economic and Social Consequences of New Jersey's Civil Union Law*, Final Report of New Jersey Civil Union Review Commission, at 2, 16 (Dec. 10, 2008) ("New Jersey Commission Report"); J.A. 341 (Katami testimony) ("Being able to call him my husband is so definitive, it changes our relationship . . . . It is

absolute, and it comes with a modicum of respect and understanding that your relationship is not temporal, it's not new, it's not something that could fade easily.”).

In sum, marriage has a unique status in American society. No party to this case disputes that marriage means far more than inheritance rights, powers of attorney, or community property. It is, instead, “the definitive expression of love and commitment in the United States.” Pet. App. 240a. Domestic partnership is a patently inferior alternative. As trial witness Helen Zia explained, the difference between being in a domestic partnership and being married has been the difference of “night and day.” J.A. 661–62. Put simply: “[T]here is nothing that is like marriage except marriage.” *Id.* at 404 (Cott testimony).

**B. Excluding Same-Sex Couples From the Institution of Marriage Causes Tangible Legal and Economic Harm**

Many states and municipalities afford domestic partners fewer rights than are offered to married couples. For example, Maine, which adopted a same-sex marriage provision by popular vote in November 2012, advises citizens to “remember that a registered domestic partnership is NOT the same as a marriage and does not entitle partners to rights other than those for which the registry was intended,” namely “rights of inheritance as well as the rights to make decisions regarding disposal of their deceased partners remains.”<sup>5</sup> In New York City, domestic

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<sup>5</sup> See Maine Department of Health and Human Services, Instructions and Information for the Domestic Partnership

partners may enjoy, *inter alia*, visitation rights and city health benefits, but “cannot be considered spouses,” and therefore “do not benefit from state income tax advantages, the spousal privilege and confidential marital communications, the ability to take out insurance policies on the other spouse, and other benefits of marriage.”<sup>6</sup> In some jurisdictions, domestic partnership is exclusively for same-sex couples; in others, it is available to cohabitating couples more broadly.<sup>7</sup>

Even in California, where domestic partners receive the same state-conferred legal entitlements as do married couples, exclusion from the institution of marriage causes actual economic harm to same-sex couples. *See generally* J.A. 698 (testimony of economist Lee Badgett) (Proposition 8 has “inflicted substantial economic harm on same-sex couples and their children who live here in California.”). Because they are not married, same-sex couples may be denied employment-related benefits. *See* Trial Tr.

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Registry, *available at* <http://www.maine.gov/dhhs/mecdc/public-health-systems/data-research/vital-records/documents/pdf-files/dompartinst.pdf>.

<sup>6</sup> *See* Office of the City Clerk, City of New York, Domestic Partnership Registration, [http://www.cityclerk.nyc.gov/html/marriage/domestic\\_partnership\\_reg.shtml#disclaimer](http://www.cityclerk.nyc.gov/html/marriage/domestic_partnership_reg.shtml#disclaimer).

<sup>7</sup> *Compare, e.g.,* Wisconsin Legislative Fiscal Bureau, Establishment of Domestic Partnership and Related Rights and Benefits, *available at* <http://www.legis.wisconsin.gov/lfb/2009-11Budget/Budget%20Papers/391.pdf> (domestic partners in Wisconsin must be of the same sex) *with, e.g.,* Nevada Domestic Partnership Act, SB 283 (effective Oct. 1, 2009) (domestic partnership is available to same-sex and opposite-sex couples).

692:4–25 (testimony of economist Edmund Egan) (individuals in same-sex partnerships may not be covered by their partners’ healthcare plan); Cal. Employer Health Benefits Survey, PX1261 at 7 (only 56% of California firms offered health insurance to unmarried same-sex couples in 2008); Report by the Council on Science and Public Health, PX0188 at 9 (“Survey data confirm that same-sex households have less access to health insurance.”); *see also* American Medical Association Resolution, PX0189 at 2 (“[E]xclusion from civil marriage contributes to health care disparities affecting same-sex households.”).

A decision of the National Elevator Industry (“NEI”) is illustrative. The NEI decided that, under its health plan, married spouses—whether same-sex or opposite-sex—are eligible for benefits. Domestic partners, however, are not. *See* Letter from Director, Pension and Eligibility Operations, NEI (Dec. 30, 2009), PX2260. The result is that same-sex couples who legally married in California prior to Proposition 8’s enactment are eligible for employer-provided healthcare benefits, while couples in domestic partnerships must muster the funds for separate coverage. *See also* Report by the Council on Science and Public Health, PX0188 at 9 (finding that same-sex households who do have health insurance “pay more than married heterosexual workers, and also lack other financial protections”).

More generally, marriage confers numerous economic benefits that stem from the unique commitment it represents. *See* J.A. 698 (Badgett testimony). Domestic partnership does not confer comparable economic benefits. *See id.* at 712–13. For example, marriage fosters greater specialization of

labor, which can increase a couple's income and the time available for family. Trial Tr. 1331:15–21, 1333:2–13. Marriage also tends to reduce a couple's transaction costs: as a married couple's economic fortunes change, the commitment and stability inherent in marriage permit them to avoid “renegotiat[ing] whatever deal they might have had as unmarried partners.” *Id.* at 1333:17–1334:2. Furthermore, married individuals may enjoy greater employment-related economic gains, whereas same-sex couples who cannot marry face discrimination that may adversely affect their work performance and related economic rewards. *See id.* at 1335:25–1336:15. Though difficult to quantify, these economic benefits of marriage are well-known and acknowledged in the field of economics. *See id.* at 1336:20–22.

**C. Excluding Same-Sex Couples from Marriage Causes Harm and Perpetuates Discrimination Against Gay Men and Lesbians**

Proposition 8 causes real harm to same-sex couples and their families. Even to the extent that domestic partnership may confer legal benefits of marriage, the two-tiered regime disadvantages same-sex couples in numerous ways. First, barring same-sex couples from the valued institution of marriage demeans and stigmatizes them. This stigma, in turn, affects their physical and emotional health and well-being and encourages further discrimination against gay and lesbian individuals. Moreover, the exclusion of same-sex couples from marriage harms their children.

**1. Restricting Same-Sex Couples to Domestic Partnerships Stigmatizes Same-Sex Relationships**

It demeans and stigmatizes same-sex couples to bar them from the valued institution of marriage. The two-tiered regime effected by Proposition 8 sends an unmistakable, government-backed message that same-sex relationships are less worthy than opposite-sex relationships. This official disapproval, and the concomitant stigma, are damaging: gay and lesbian individuals suffer “minority stress” that harms their physical and emotional well-being, and face increased discrimination.

**a. Excluding Same-Sex Couples from Marriage Expresses Government Disapproval of Same-Sex Relationships**

The two-tiered regime that Proposition 8 establishes conveys official disapproval of same-sex relationships. As the California Supreme Court explained, “the statutory provisions that continue to limit access to [marriage] exclusively to opposite-sex couples—while providing only a novel, alternative institution for same-sex couples—likely will be viewed as an official statement that the family relationship of same-sex couples is not of comparable stature or equal dignity to the family relationship of opposite-sex couples.” *In re Marriage Cases*, 183 P.3d at 452; *Kerrigan*, 957 A.2d at 474 (same). Indeed, “there is a very significant risk that retaining a distinction in nomenclature with regard to this most fundamental of relationships whereby the term ‘marriage’ is denied only to same-sex couples

inevitably will cause the new parallel institution that has been made available to those couples to be viewed as of a lesser stature than marriage and, in effect, as a mark of second-class citizenship.” *In re Marriage Cases*, 183 P.3d at 445; *see also Goodridge*, 798 N.E.2d at 962 (statutory bar on same-sex marriage “confers an official stamp of approval on the destructive stereotype that same-sex relationships are inherently unstable and inferior to opposite-sex relationships and are not worthy of respect”).

Evidence adduced at trial reinforces the role of Proposition 8 as an expression of government disapproval of same-sex relationships. *See* Pet. App. 260a (describing evidence that “Proposition 8 singles out gays and lesbians and legitimates their unequal treatment”); Trial Tr. 2054:7–11 (Herek testimony) (Proposition 8 is an instance of structural stigma in “a definitional sense,” because it is “part of the legal system” and “differentiates people in same-sex relationships” from “those in heterosexual relationships”); J.A. 546 (Meyer testimony) (Proposition 8 “sends a strong message about the values of the state” and “sends a message that gay relationships are not to be respected”).

The government disapproval expressed through Proposition 8 is exacerbated by the clear animus behind the measure. As the district court found, the evidence at trial demonstrated that “the campaign to pass Proposition 8” was motivated substantially by “a desire to advance the belief that opposite-sex couples are morally superior to same-sex couples.” Pet. App. 284a. Indeed, Proposition 8’s express purpose was to divest gay and lesbian individuals of a constitutional right, thereby imposing on them a unique disability. *See* California Voter Information Guide, PX0001 at 4

(Proposition 8 “[c]hanges California Constitution to eliminate the right of same-sex couples to marry.”); *see also id.* at 7 (Proposition 8 “protects our children from being taught in public schools that ‘same-sex marriage’ is the same as traditional marriage”).

Furthermore, the Proposition 8 campaign and the Official Voter Guide stoked fear and anti-gay prejudice. *See* J.A. 505–06 (testimony of historian George Chauncey); Video: “Stand up for Righteousness: Vote Yes on Proposition 8,” PX0401 (“The devil wants to blur the lines between right and wrong when it comes to family structure”; “If Prop. 8 fails, it opens up the door for all the other laws that the homosexual agenda wants to enforce on other people”; “We will see a further demise of the family”). Hak-Shing William Tam, an official proponent of Proposition 8 who testified about messages he disseminated during the Proposition 8 campaign, stated that he gets “very very upset” about the idea of children thinking about marrying people of the same sex, but he is reassured by knowing that gay couples are not allowed to get married, and that parents can explain to their children that the domestic partnership gay couples can enter “is not ‘marriage.’” J.A. 804–05. He testified that “just changing the name of domestic partnerships to marriage will have this enormous moral decay,” and that “permitting gays and lesbians to marry” would mean “one by one other states would fall into Satan’s hand,” *id.* at 801–02, 788–89.

Proposition 8’s disapproval of same-sex couples is stigmatizing. In both judicial decisions and social science, it is well-established that government action singling out a group for disfavored treatment stigmatizes that group. *See Lawrence v. Texas*, 539

U.S. 558, 575 (2003) (stating that the “stigma” imposed by the Texas statute criminalizing “homosexual conduct” was “not trivial”); *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954) (describing the “feeling of inferiority” that inevitably accompanies differential treatment); *Strauder v. West Virginia*, 100 U.S. 303, 308 (1879) (noting that exclusion of non-white citizens from juries was “practically a brand upon them, affixed by the law, an assertion of their inferiority”); J.A. 531–35 (Meyer testimony discussing stigmatizing effects of discriminatory laws). In the same mold, the “dual system” effected by Proposition 8 imposes “structural stigma” on gay and lesbian individuals: it sends the message that “if you are gay or lesbian, you cannot achieve” the “desirable and respected” goal of marriage. *Id.* at 533–34, 539 (Meyer testimony).

**b. The Stigma Created by  
Proposition 8 Causes  
Emotional and Physical Harm**

The stigma resulting from Proposition 8’s two-tiered regime has harmful consequences. By virtue of the stigma attached to them, gay men and lesbians can suffer “minority stress,” which manifests itself through “prejudice events”: expectations of rejection and discrimination; concealment of identity; and internalized homophobia. See Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay and Bisexual Populations: Conceptual Issues and Research Evidence*, PX1003; Trial Tr. 832:20–833:16.

Trial testimony revealed the prevalence of each form of minority stress. Individuals experience “prejudice events” daily. Even filling out a form in a

doctor's office can become a source of stress and shame. As plaintiff Stier testified, forms that ask whether an individual is single, married, or divorced require domestic partners to cross out the existing text and write in their status. *See* Trial Tr. 175:5–17. This evokes a feeling of rejection: “I’m gay and I’m not accepted here”; “I’m not equal to . . . most people who fill [out] this form.” *Id.* at 841:17–844:11, 845:7–10, 850:10–851:14 (Meyer testimony). Similarly, expectations of rejection are a constant issue for gay and lesbian individuals. *See* J.A. 539 (Perry testimony) (“[T]he decision every day to come out or not come out at work, at home, at PTA, at music, at soccer, is exhausting.”). The resulting exhaustion often leads gay and lesbian individuals to conceal their identity. *See* J.A. 725–29 (witness Kendall kept his homosexuality a secret because he knew his family and community did not approve). Plaintiffs’ testimony revealed that such repeated experiences often cause gay and lesbian individuals to internalize homophobia. *See Id.* at 364–65 (Perry testimony) (“[W]hen you’re gay, you think you don’t really deserve things,” so her reaction to the court’s invalidation of her 2004 marriage was that “I really didn’t deserve to be married.”).

Such stresses negatively affect the mental health and well-being of gay and lesbian individuals. Trial Tr. 832:23–835:24 (Meyer testimony); Gilbert Herdt & Robert Kertzner, *I Do, But I Can’t: The Impact of Marriage Denial on the Mental Health and Sexual Citizenship of Lesbians and Gay Men in the United States*, PX1471 at 9–10. Effects may include “anxiety disorders, mood disorders, such as depression, substance use disorders, . . . [and] excess in suicide attempts,” as well as more subtle diminishment of well-being. J.A. 563 (Meyer testimony); *see also* Trial

Tr. 898:11–899:8. Internalized homophobia, for example, can lead to lowered self-esteem, anxiety, substance abuse, and depression. Gregory M. Herek et al., *Correlates of Internalized Homophobia in a Community Sample of Lesbians and Gay Men*, 2 J. of the Gay and Lesbian Medical Association 17 (1997). And “[y]ears of psychological research and experience” indicate that concealment takes an “extensive mental toll” on gay and lesbian individuals. American Psychoanalytic Ass’n Position Statement, PX0752 at 3.

**c. The Stigma Created by  
Proposition 8 Perpetuates  
Discrimination Against Gay  
Men and Lesbians**

By making sexual orientation a legally salient characteristic, Proposition 8 also encourages and provides cover for those who seek to treat gay men and lesbians differently based on their sexual orientation. Indeed, Proposition 8 sends the message “that [it] is very highly valued by our Constitution to reject gay people, to designate them a different class of people.” J.A. 555 (Meyer testimony). Because the state provides for separate and lesser treatment of gay men and lesbians, individuals may logically conclude that it is permissible to treat them as inferior. J.A. 677 (testimony of Mayor Sanders regarding recent anti-gay hate crimes in San Diego) (“I think that when a city, when leadership talks in disparaging terms about people, or denies the rights that everybody else have, the fundamental rights, then I think some people in the community feel empowered to take action in hate crimes and in other ways.”); *cf. Lawrence*, 539 U.S. at 575 (criminalizing sexual conduct between same-sex couples was “an

invitation to subject homosexual persons to discrimination both in the public and in the private spheres”); *Strauder*, 100 U.S. at 308 (exclusion of non-white citizens from juries was “a stimulant to . . . race prejudice”).

Moreover, designating same-sex couples as different can trigger unintentional discrimination. Due to confusion regarding legal requirements, hospitals may refuse to allow a same-sex partner to be by a loved one’s side during a medical emergency, and doctors may not permit domestic partners to make medical decisions on behalf of an incapacitated partner. In an analogous context, the New Jersey Civil Union Review Commission received testimony that gay and lesbian individuals who were legally entitled to hospital visitation rights were delayed in gaining access to their hospitalized partners. For example, a woman whose partner was admitted to the emergency room with a potentially fatal cardiac arrhythmia was temporarily prevented from getting information about her partner’s condition because the doctor was unfamiliar with civil unions. *See New Jersey Commission Report*, at 1; *see also id.* at 14–15 (providing additional examples). Furthermore, employers may be less understanding of an employee’s need to take leave to care for a domestic partner. *Id.* at 21 (testimony explaining that Massachusetts’ marriage equality law has had the effect that, “without the term ‘civil union’ or ‘domestic partner’ to hide behind, if [employers] don’t give equal benefits to employees in same-sex marriages, these employers would have to come forth with the real excuse for discrimination”). Even family members may not understand either the level of commitment expected of a domestic partner towards

the couple's child, or the degree of attachment of the child to a domestic partner.

Moreover, by segregating gay men and lesbians, the state causes society to focus on sexual orientation to the exclusion of other characteristics. As with segregation on the basis of race, separating gay men and lesbians based on their sexual orientation causes that aspect of their identity to eclipse other attributes. See Robin A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 79 N.Y.U. L. Rev. 803, 818–19 (2004). Thus, when gay men or lesbians disclose that they are in a domestic partnership, others often see them *only* as gay—and treat them accordingly—rather than viewing them as full persons entitled to the same respect and dignity given to other members of society. See generally Marc R. Poirier, *Name Calling: Identifying Stigma in the “Civil Union”/ “Marriage” Distinction*, 41 Conn. L. Rev. 1425, 1429–30, 1479–89 (2009) (describing the way in which the nomenclature distinction perpetuates bias and facilitates discrimination).

## **2. Excluding Same-Sex Couples from Marriage Harms Children**

It is widely recognized that “the ban on same sex marriage is likely to have an especially deleterious effect on the children of same sex couples.” *Kerrigan*, 957 A.2d at 474. “A primary reason why many same sex couples wish to marry is so that their children can feel secure in knowing that their parents’ relationships are as valid and as valued as the marital relationships of their friends’ parents.” *Id.* Indeed, entities and individuals from all corners of the Proposition 8 debate recognize that children suffer when their parents cannot marry. See, e.g.,

American Psychological Association, Professional Association Policies, PX0767 at 2–4, 6 (noting that children of same-sex couples are deprived of the benefits of marriage); J.A. 775 (testimony of William Hak-Shing Tam) (agreeing that it is important to children of same-sex couples that their parents be able to marry).

Barring same-sex couples from marrying harms their children. “Excluding same-sex couples from civil marriage” prevents their children “from enjoying the immeasurable advantages that flow from the assurance of a stable family structure in which the children will be reared, educated, and socialized.” *Goodridge*, 798 N.E.2d at 964. Whereas “[c]hildren who are raised by civilly married parents benefit from the legal status granted to their parents,” children of same-sex couples whose parents are not permitted to marry may suffer psychological harm. James G. Pawelski et al., *The Effects of Marriage, Civil Union, and Domestic Partnership Laws on the Health and Well-being of Children*, 118 *Pediatrics* 349, 358, 361 (2006). As the President of the New Jersey Psychological Association attested, children of same-sex relationships whose parents are not permitted to marry must cope with stigma, lack of social support and acceptance, and teasing in school or from peers. New Jersey Commission Report, at 16 (testimony of Judith Glassgold, Psy.D.); *id.* at 18–19 (summarizing views of youths that “[i]f the law says that someone is equal, people are going to recognize it,” but “if the law is not willing to say that, why should the common person out on the street, in the schools, the teacher, students, recognize that family as being the same?”).

A corollary to these negative consequences is that children of same-sex couples would benefit if their parents were able to marry. *See* Pet. App. 247a (finding that “[t]he children of same-sex couples benefit when their parents can marry”); Trial Tr. 1042:12–1043:16 (testimony of psychologist Michael Lamb) (the ability of same-sex couples to get married can improve the likelihood that their child will achieve a good adjustment outcome). As the record in this case reflects, a study of married same-sex couples in Massachusetts found that almost all of the parents who were raising children agreed that, for a variety of reasons—from having a family that looks like other families to the ease of dealing with healthcare providers and teachers—their children were better off after marriage. *See* PX1267 at 1 (report by Christopher Ramos, et al.). And appellants’ expert firmly agreed that permitting same-sex couples to marry would benefit the children of same-sex couples. *See* J.A. 903 (testimony of David Blankenhorn) (“I believe that adopting same-sex marriage would be likely to improve the well-being of gay and lesbian households and their children.”); *id.* at 2839:22–24 (“I do believe it is almost certainly true that gay and lesbian couples and their children would benefit by having gay marriage.”); *id.* 911–12 (agreeing that marriage “would improve the happiness and well-being of many gay and lesbian individuals, couples, and family members”).

## CONCLUSION

At odds with time-honored constitutional commands, Proposition 8 creates a separate and unequal regime for a disfavored class of individuals. By excluding same-sex couples from the hallowed institution of marriage, Proposition 8 inflicts

profound injury upon gay and lesbian individuals and their children. Because of Proposition 8, gay men and lesbians and their families are deprived of meaningful benefits; suffer from state-sanctioned stigma; and are exposed to further discrimination on the basis of their sexual orientation. There is no doubt that Proposition 8 imposes “immediate, continuing, and real injur[y]” on gay and lesbian individuals. *Romer v. Evans*, 517 U.S. 620, 635 (1996). The patently separate-but-unequal regime effected by Proposition 8 fails any level of judicial scrutiny.

Marital regulations have long been a way of “draw[ing] lines among the citizenry” and “defin[ing] what kinds of sexual relations and which families will be legitimate.” Nancy Cott, *Public Vows: A History of Marriage and the Nation* 4 (2000). Numerous racial and religious minorities have, at various times in history, faced restrictions on their privilege to marry. *See id.* But “[a] prime part of the history of our Constitution . . . is the story of the extension of constitutional rights and protections to people once ignored or excluded.” *United States v. Virginia*, 518 U.S. 515, 557 (1996). Continuing to exclude, demean, and stigmatize gay and lesbian individuals is inconsistent with that constitutional tradition. *Amici* urge this court to affirm that Proposition 8 is unconstitutional.

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*Respectfully submitted,*

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**APPENDIX: STATEMENTS OF AMICI**

Amici respectfully submit the following statements regarding their interests in this matter:

**AIDS Legal Referral Panel (“ALRP”)**

The AIDS Legal Referral Panel (“ALRP”) is a non-profit organization that helps people living with HIV/AIDS maintain or improve their health by resolving their legal issues. ALRP was founded in 1983 and has handled more than 50,000 legal matters for its clients over the last 29 years. ALRP’s goals are to provide counsel and representation on legal issues for a community of individuals who might otherwise not be able to afford or obtain legal assistance, and to leverage the resources of the private bar for the public good. ALRP is dedicated to addressing discrimination against people with HIV/AIDS and members of the LGBT community, including working to ensure their marriage rights.

**The Asian Pacific American Bar Association of Los Angeles County (“APABA-LA”)**

The Asian Pacific American Bar Association of Los Angeles County (“APABA-LA”) is a membership organization comprised of over 700 attorneys, judges and law students. Since its formation in 1998, APABA-LA has advocated on issues that impact the APA community and has demonstrated a commitment to civil rights, racial justice, and equal opportunity. APABA-LA has, and continues to, oppose initiatives designed to deprive immigrants, people of color, and other minorities of their civil rights, including initiatives that discriminate based upon sexual orientation. APABA-LA strives to

address all issues relevant to the equal treatment of those in the APA community.

**The Asian Pacific American Legal Center  
("APALC")**

The Asian Pacific American Legal Center ("APALC"), a member of Asian American Center for Advancing Justice, is the nation's largest civil rights organization representing and advancing the interests of Asian Americans, Native Hawaiians and Pacific Islanders. Founded in 1983, APALC provides direct legal services and engages in policy advocacy, impact litigation and leadership development to protect and expand the rights of Asian Americans, including LGBT Asian Americans. APALC has been a leading voice in the struggle for marriage equality through public speaking, in-language media, community education, and litigation

**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 of 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. In 2013, API Legal Outreach initiated its hosting of a fellowship focusing on domestic violence in the API LGBTQ community.

#### **API Equality–Los Angeles (“APIE-LA”)**

API Equality–Los Angeles (“APIE-LA”) is a coalition of organizations and individuals who are committed to working in the Asian/Pacific Islander (“API”) community in the greater Los Angeles area for equal marriage rights and the recognition and fair treatment of LGBT families through community education and advocacy. APIELA recognizes that the long history of discrimination against the API community, especially California’s history of anti-miscegenation laws and exclusionary efforts targeted at Asian immigrants, parallels the contemporary exclusion of gays and lesbians from marriage in California.

#### **Atlanta Bar Association**

The Atlanta Bar Association has approximately 6,000 members and is interested in supporting this effort as a matter of justice.

#### **Austin LGBT Bar Association (“Austin LGBT Bar”)**

The Austin LGBT Bar Association (“Austin LGBT Bar”) is a membership organization comprised of over 100 attorneys, judges, and law students located in Austin, Texas. It has a voting member on the Board

of Directors of the Austin Travis County Bar Association. The Austin LGBT Bar conducts bi-monthly certified continuing legal education programs on the laws and statutes that impact the lives of LGBT persons and implements mentoring programs for law students. In addition to promoting education on issues relating to LGBT law, one of the stated purposes of the Austin LGBT Bar is to help raise the profile and acceptance of LGBT individuals within the legal community and to serve as examples for professionalism. The Austin LGBT Bar works hard to educate Texas attorneys on how to best represent their gay and lesbian clients in the extremely difficult climate that exists due to a disparate and unequal treatment of LGBT persons under the law – particularly with regard to gay and lesbian families.

#### **Bar Association of San Francisco (“BASF”)**

The Bar Association of San Francisco (“BASF”) is a nonprofit voluntary membership organization of attorneys, law students, and legal professionals in the San Francisco Bay Area. Founded in 1872, BASF enjoys the support of more than 7,500 individuals, law firms, corporate legal departments, and law schools. Through its board of directors, committees, volunteer legal services programs, and other community efforts, BASF has worked to promote and achieve equal justice for all and oppose discrimination in all its forms, including, but not limited to, discrimination based on race, sex, disability, and sexual orientation.

**California Employment Lawyers Association  
("CELA")**

The California Employment Lawyers Association ("CELA") is an organization of approximately 1003 attorneys who represent primarily plaintiffs in civil rights and other civil cases arising in the workplace. CELA helps its members protect and expand the legal rights of working women and men through litigation, education, and advocacy.

**California Women Lawyers ("CWL")**

California Women Lawyers ("CWL") has represented the interests of more than 30,000 women in all facets of the legal profession since 1974. CWL's mission includes advancing women's interests, extending universal equal rights and eliminating bias. In pursuing its values of social justice and gender equality, CWL often joins amici briefs challenging discrimination by private and governmental entities, weighs in on proposed California and federal legislation, and implements programs fostering the appointment of women and other qualified candidates to the bench.

**Central Florida Gay and Lesbian Law  
Association (CFGALLA)**

The Central Florida Gay and Lesbian Law Association (CFGALLA) was founded in 2004 as a regional Voluntary Bar Association of The Florida Bar. CFGALLA is a qualified 501(c)(6) non-profit organization under the Internal Revenue Code. It is the objective of CFGALLA to establish and maintain an integrated group to support, assist, and encourage gay and lesbian attorneys, legal professionals, and

law students, and provide support and resources to the community at large on gay, lesbian, bisexual and transgendered issues.

**Colorado Gay Lesbian Bisexual Transgender (GLBT)**

The Colorado Gay Lesbian Bisexual Transgender (GLBT) Bar Association is a voluntary professional association of gay, lesbian, bisexual and transgender attorneys, judges, paralegals and law students and allies who provide a GLBT presence within Colorado's legal community. The mission of the GLBT Bar Association includes promoting the recognition of civil and human rights; promoting sensitivity to legal issues faced by the GLBT community; assuring the fair and just treatment of members of the GLBT community and enhancing the practice and professional expertise of lawyers who serve or who are members of the GLBT community.

**County of Santa Clara (Santa Clara)**

The County of Santa Clara (Santa Clara) is a county in the State of California with over 1.7 million residents. As a California county, Santa Clara is charged with processing applications for marriage licenses and granting or denying those applications as the law dictates. Because of Proposition 8, Santa Clara must deny marriage licenses to same-sex couples, even though there is no impediment to their marriage other than their gay or lesbian status. As a result, Proposition 8 compels Santa Clara to violate its gay and lesbian citizens' federal constitutional right to the equal protection of laws and its longstanding commitment to equal treatment of its gay and lesbian citizens.

**Equal Justice Society (“EJS”)**

Equal Justice Society (“EJS”) is a national legal organization that promotes equality and an end to all manifestations of invidious discrimination and second-class citizenship. Using a three-pronged strategy of law and public policy advocacy, building effective progressive alliances, and strategic public communications, EJS’s principal objective is to combat discrimination and inequality in America.

**Filipino Bar Association of Northern California (“FBANC”)**

The Filipino Bar Association of Northern California (“FBANC”) is an association of Filipino and Filipino-American attorneys, students, and legal professionals in Northern California. It is our mission to support, educate, encourage and empower the members of our association to excel and succeed in their educational and professional endeavors. It is further our mission to guard against injustices affecting our community.

**Freedom to Marry**

Freedom to Marry is the campaign to win marriage nationwide. Freedom to Marry works with partner organizations and individuals to win marriage in more states, solidify and diversify the majority for marriage, and challenge and end federal marriage discrimination. Freedom to Marry is based in New York, and has participated as amicus curiae in several marriage cases in the United States and abroad.

**Gay and Lesbian Lawyers of Philadelphia  
("GALLOP")**

Gay and Lesbian Lawyers of Philadelphia ("GALLOP") is a non-profit organization of more than 300 lesbian, gay, bisexual, and transgender ("LGBT") member lawyers of the Philadelphia Area legal community. As the Philadelphia oldest organization of gay lawyers, GALLOP promotes the professional interests of its members and the legal interests of the LGBT community at large. To accomplish this mission, GALLOP actively participates in public policy debates concerning the rights of LGBT individuals and families. GALLOP has appeared as amicus curiae in cases previously, where it believes it can provide valuable perspective and argument that will inform court decisions on matters of broad public importance.

**Georgia Benefits Counsel, Inc.**

Georgia Benefits Counsel, Inc. protects the sanctity of lesbian, gay, bisexual, and transgender relationships by educating the community about simple estate planning documents and connecting LGBT couples with lawyers who provide wills, financial powers of attorney, and advance directives for health care, all for the cost of a marriage license in the couple's county of residence.

**Impact Fund**

The Impact Fund is a nonprofit foundation that provides funding, training, and co-counsel to public interest litigators nationwide. The Impact Fund is also a California State Bar Legal Services Trust Fund Support Center that offers assistance to legal services

projects throughout the State. The Impact Fund has served as counsel in a number of major civil rights class actions, including cases challenging employment discrimination, lack of access for those with disabilities, and violations of other important civil rights laws.

### **Japanese American Bar Association (“JABA”)**

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 over 300 attorneys, judicial officers, and law students of Japanese and Asian Pacific Islander ancestry in the greater Los Angeles area and beyond, including gay and lesbian individuals. With a deep appreciation of the unique history of Japanese Americans in the United States 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 issues of civil rights and social justice, especially for those members of society who continue to suffer from discrimination and unequal treatment.

### **Kansas City Lesbian, Gay, and Allied Lawyers (“KC LEGAL”)**

Kansas City Lesbian, Gay, and Allied Lawyers (“KC LEGAL”) is a nonprofit 501(c)(6) membership association of the lesbian, gay, bisexual, and transgendered (“LGBT”) and allied legal community in the Kansas City metropolitan area. Among other things, KC LEGAL’s mission includes educating the general public, legal profession, and courts about legal issues facing LGBT individuals and working with LGBT organizations, community groups, and

other progressive allied groups and individuals to gain equal rights for all people.

**Korean American Bar Association of Northern California (“KABA-NC”)**

The Korean American Bar Association of Northern California (“KABA-NC”) has served Korean American lawyers and the local Korean American community since the mid-1980s and was founded to encourage and promote the professional growth of Korean-American lawyers and law students in Northern California; to foster networking, support, and the exchange of ideas and information among its members and with the local Korean-American community; and to work with other Asian, minority, and community organizations on matters of common concern. KABA-NC joins this amicus brief to further the protection of minority rights, including those of gays and lesbians.

**Lesbian and Gay Bar Association of Chicago (“LAGBAC”)**

The Lesbian and Gay Bar Association of Chicago (“LAGBAC”), founded in 1987, is one of the country’s oldest bar associations dedicated to serving the lesbian, gay, bisexual and transgender (LGBT) community and the only bar association in the Chicagoland area dedicated to serving the LGBT community. LAGBAC provides judges, attorneys and law students with educational experiences and career opportunities that support them throughout their career. LAGBAC hosts countless CLE seminars, networking programs and social events throughout the year for its members and nonmembers, alike. With over 200 members, including practitioners,

agency heads, professors, and law students, and dozens of judicial affiliates, LAGBAC has long been a leader in shaping public policy in Illinois and across the country. We, the board of directors, fully support the submission of this amicusbrief to further achieve the organization's mission and to provide the Court with important insight on matters affecting public policy.

**Latina and Latino Critical Legal Theory, Inc.  
("LatCrit")**

Latina and Latino Critical Legal Theory, Inc. ("LatCrit") is a non-profit organization dedicated to (1) the production of critical and interdisciplinary "outsider jurisprudence"; (2) the promotion of substantive social transformation; (3) the expansion and interconnection of antisubordination struggles; and (4) the cultivation of community and coalition among outsider scholar activists, social justice lawyers, law students, and others. LatCrit's membership includes primarily academics and advocates based in the United States, and LatCrit's theory seeks to elucidate intra-and inter-group diversities across multiple identity axes, including those based on perspective and discipline, to ensure that African American, Asian American, Latina/o, Native American, Feminist, Queer and other OutCrit subjectivities are considered under the law. Hence, LatCrit's interest in constitutional jurisprudence on marriage equality is central to its mission.

**Law Foundation of Silicon Valley**

Founded in 1974, the Law Foundation of Silicon Valley is a private nonprofit corporation in San Jose that sponsors five free legal services and advocacy

programs with a shared vision of achieving social justice in Silicon Valley and beyond through vigorous legal advocacy. Its mission is to advance the rights of under-represented individuals and families in our diverse community through legal services, strategic advocacy, and educational outreach. The Law Foundation has a strong interest in ensuring that the equal protection rights of our clients are respected, and that our clients are protected from discrimination, particularly as to their fundamental rights, including marriage.

**Lawyers' Committee for Civil Rights of the San Francisco Bay Area ("LCCR")**

The Lawyers' Committee for Civil Rights of the San Francisco Bay Area ("LCCR") is affiliated with the national Lawyers' Committee for Civil Rights Under Law, established in 1963 at the urging of President John F. Kennedy. LCCR was formed to support the rights of minority and low-income persons by offering free legal assistance in civil matters and by litigating cases on behalf of the traditionally underrepresented. In addition, LCCR monitors judicial proceedings and legislation that affect the traditionally disadvantaged and frequently files amicus briefs in cases challenging discriminatory policies and practices. Because advancing the rights of LGBT individuals is integral to any civil rights agenda, LCCR's amicus work has encompassed these issues as well.

**Legal Aid Society–Employment Law Center ("LAS-ELC")**

The Legal Aid Society–Employment Law Center ("LAS-ELC") is a non-profit public interest law firm whose mission is to protect, preserve, and advance

workplace rights of individuals from traditionally underrepresented communities. Since 1970, LAS-ELC has represented plaintiffs in employment cases, particularly those of special import to communities of color, women, recent immigrants, individuals with disabilities, and LGBT individuals.

**Lesbian, Gay, Bisexual and Transgender  
(LGBT) Bar Association of Maryland**

The Lesbian, Gay, Bisexual and Transgender (LGBT) Bar Association of Maryland is a state association of lawyers, judges and other legal professionals, law students, activists, and affiliate lesbians, gay, bisexual, and transgender legal organizations.

**LGBT Rights Committee of the Allegheny  
County Bar Association**

The mission of the LGBT Rights Committee of the Allegheny County Bar Association is to bring together lawyers, judges, law professors, law students, and other legal professionals interested in addressing discrimination based on sexual orientation or gender identity and expression, and advancing equality for sexual minority persons and their families. The Committee seeks to create educational, networking, and mentoring opportunities for LGBT individuals and their allies. The Committee monitors, makes recommendations, and conducts educational programming on issues and developments in the law having an impact on LGBT people in the public and in the legal profession. In furtherance of this mission, the LGBT Rights Committee has been authorized by the Allegheny

County Bar Association to participate as amicus curiae in support of the Respondents in this matter.

**Lesbian and Gay Lawyers Association of Los Angeles (“LGLA”)**

The Lesbian and Gay Lawyers Association of Los Angeles (“LGLA”) was founded in 1979 and has grown into a relevant, multi-cultural, open and active bar association of gay, lesbian, bisexual and transgender lawyers, judges, law students and other legal professionals. LGLA is dedicated to furthering justice and equality and the advancement of gay, lesbian, bisexual and transgender issues throughout California and around the nation by making judicial endorsements, appearing amicus curiae in cases such as this one, holding representation on the Conference of Delegates for the State Bar of California, and providing educational and networking opportunities for its members. LGLA has fought for equal justice for all persons without regard for their sexual orientation for more than thirty years.

**Love Honor Cherish (“LHC”)**

Love Honor Cherish (“LHC”) is the largest grassroots marriage equality organization in Southern California. Founded in May 2008 to defend the California Supreme Court’s decision *In re Marriage Cases*, 43 Cal. 4th 757 (2008), LHC has strategically moved marriage equality forward since its inception. In 2010 and 2012, LHC launched efforts to gather signatures to put repeal of Proposition 8 on the ballot in California due to its unwavering dedication to restore marriage equality in California as soon as possible. While those efforts were unsuccessful due to the prohibitive cost of

funding a signature gathering campaign, LHC's volunteers had more than one million conversations about the importance of marriage equality with California voters. LHC continues to advance marriage equality through public education, community empowerment and outreach in collaboration its coalition partners.

### **Marin County Bar Association ("MCBA")**

The Marin County Bar Association ("MCBA") is a voluntary organization of almost 750 attorney members practicing in Marin and surrounding counties. A primary mission of the MCBA is to promote the sound administration of justice, which includes supporting an independent judiciary and educating the public on the importance of the judicial system. The importance of the civil rights issues raised by Proposition 8 prompted MCBA to adopt a formal position in opposition to the proposition, a position approved both by board action and a full membership vote.

### **Minnesota Lavender Bar Association (MLBA)**

The Minnesota Lavender Bar Association (MLBA) is a voluntary professional association of LGBT attorneys and allies, promoting fairness and equality for the LGBT community within the legal industry and for the Minnesota community. The MLBA envisions a Minnesota where LGBT attorneys, clients, and community members are treated equally and without discrimination. The MLBA's mission is to promote equality and justice in the legal profession and the LGBT community in Minnesota.

**National Asian Pacific American Bar Association (“NAPABA”)**

The National Asian Pacific American Bar Association (“NAPABA”) is the national association of Asian Pacific American attorneys, judges, law professors, and law students. NAPABA represents the interests of over 40,000 attorneys and 62 local Asian Pacific American bar associations, who work variously in solo practices, large firms, corporations, legal services organizations, non-profit organizations, law schools, and government agencies. Since its inception in 1988, NAPABA has been at the forefront of national and local activities in the areas of civil rights. Equal access to the fundamental right to marry is one such right which Asian Pacific Americans were long denied through anti-miscegenation laws, and NAPABA joins amici to continue the defense of equal access to the fundamental right to marry.

**National Lawyers Guild San Francisco Bay Area Chapter**

The National Lawyers Guild San Francisco Bay Area Chapter is a progressive bar association that works for human rights generally. It has an active Queer Committee that seeks equality and justice for the LGBT community and supports law student interns who commit their work to furthering LGBT rights.

**New Mexico Lesbian and Gay Lawyers Association (“NMLGLA”)**

The New Mexico Lesbian and Gay Lawyers Association (“NMLGLA”), formed in 1995, is a non-

profit, voluntary bar organization committed to promoting and protecting the interests of the lesbian, gay, bisexual and transgender lawyers and to achieving their full participation in all rights, privileges and benefits of the legal profession. The NMLGLA also strives to promote the efficient administration of justice and the constant improvement of the law, especially as it relates to lesbians, gay men, bisexual and transgender individuals.

### **North Carolina Gay and Lesbian Attorneys ("NCGALA")**

North Carolina Gay and Lesbian Attorneys ("NCGALA") is a North Carolina bar association whose mission is to establish and maintain a network of LGBT attorneys and law students/professors; to promote the professional advancement of its practitioners; to discuss and exchange information on, and promote sensitivity to, legal issues that affect the LGBT community; to advocate for legislative and administrative reforms for the purposes of eliminating discrimination on the basis of sexual orientation and gender identity; and to provide an LGBT-friendly referral service to the community.

### **OGALLA: The LGBT Bar Association of Oregon**

OGALLA: The LGBT Bar Association of Oregon is a voluntary organization of legal practitioners – including attorneys, judges, paraprofessionals, and educators – dedicated to the promotion of the fair and just treatment of all people under the law regardless of sexual orientation, gender identity or gender expression, to providing visibility for LGBT persons in the law, to educating the public, the legal

profession and the courts about legal issues of particular concern to the LGBT community, to identifying and eliminating the causes and conditions of prejudice in society, and to promoting a spirit of unity, while valuing the diversity of our community.

### **Pride Law Fund**

Pride Law Fund promotes the legal rights of the lesbian, gay, bisexual, and transgendered community, and people living with HIV and AIDS, by funding legal services and projects and by sponsoring education and outreach on topics of interest to the community. Pride Law Fund has assisted innovative academic programs, supported the development and distribution of legal and educational materials, and financed independent and documentary film projects to educate the public. Pride Law Fund and the communities we support have a strong interest in securing the right of same-sex couples in California to marry.

### **Public Counsel**

Public Counsel is the nation's largest pro bono law firm. Founded in 1970, Public Counsel is the public interest law office of the Los Angeles County and Beverly Hills Bar Associations and the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Public Counsel is dedicated to advancing equal justice under law by delivering free legal services to indigent and underrepresented children, adults and families throughout Los Angeles County, ensuring that other community-based organizations serving this population have legal support, and mobilizing the pro bono resources of attorneys, law students and other professionals.

With the help of over 5,000 volunteers, Public Counsel assists over 32,000 children, youth, families, and community organizations every year. In 2011, Public Counsel provided over \$88 million in free legal services. Public Counsel's clients include gay, lesbian, bisexual and transgender youth and adults who are homeless or at risk of homelessness or who seek asylum in the U.S. because of persecution in their country of origin. As a civil rights organization, Public Counsel has steadfastly supported marriage equality.

### **QLaw, the GLBT Bar Association of Washington**

QLaw, the GLBT Bar Association of Washington, is an association of gay, lesbian, bisexual, and transgender (GLBT) legal professionals and their friends. QLaw serves as a voice for gay, lesbian, bisexual, and transgender lawyers and other legal professionals in the state of Washington on issues relating to diversity and equality in the legal profession, in the courts, and under the law. The organization has five purposes: to provide opportunities for members of the GLBT legal community to meet in a supportive, professional atmosphere to exchange ideas and information; to further the professional development of GLBT legal professionals and law students; to educate the public, the legal profession, and the courts about legal issues of particular concern to the GLBT community; to empower members of the GLBT community by improving access to the legal and judicial system and sponsoring education programs; and to promote and encourage the advancement of lesbian, gay, bisexual, and transgender attorneys in the legal profession.

### **Queen's Bench Bar Association**

Queen's Bench Bar Association is a non-profit voluntary membership organization made up of judges, lawyers, and law students in the San Francisco Bay Area. Established in 1921, Queen's Bench is one of the oldest women's bar associations in the country. Queen's Bench seeks to advance the interests of women in law and society, and to serve the professional needs of women lawyers, judges, and law students. Queen's Bench has a strong and demonstrated interest in the preservation of the Constitutional right to equal protection of the laws.

### **Sacramento Lawyers for the Equality of Gays and Lesbians**

Sacramento Lawyers for the Equality of Gays and Lesbians is a professional association of attorneys, legal professionals, and legislative advocates which seeks to promote equality for members of the lesbian, gay, bisexual, transgender, queer, questioning, intersex, and ally community through strong leadership, legislative advocacy, education, and participation in civic and social activities within the legal community and the community at large.

### **San Francisco Chamber of Commerce ("Chamber")**

Founded in 1850, the San Francisco Chamber of Commerce ("Chamber") is the oldest business organization in California, representing 1,500 San Francisco businesses of all sizes from every industry. These businesses employ over 200,000 persons in San Francisco, representing half of the city's workforce. Chamber has a long history of supporting workplace

diversity and equal rights. Chamber believes ending marriage discrimination against same-sex couples would improve the ability of California businesses to recruit and retain talented employees, a key to increased business development and economic growth.

**San Francisco La Raza Lawyers Association  
("SFLRLA")**

San Francisco La Raza Lawyers Association ("SFLRLA") is a professional membership organization of San Francisco Bay Area Latino/a attorneys. SFLRLA's core mission is to serve the public interest by cultivating the science of jurisprudence, promoting reform in the law, facilitating the administration of justice, and cooperating with other professional and community organizations in the furtherance of its mission. Central to its mission is SFLRLA's interest in protecting fundamental constitutional rights and minority interests, and ensuring that all individuals, including gay men and lesbians, receive equal treatment under the law.

**San José**

San José is home to nearly one million residents, making it the third largest city in California and the tenth largest city in the United States. San José is one of the most culturally and ethnically diverse cities in the country, and has successfully assimilated a broad range of cultures. More than half of San José residents speak more than one language at home and approximately 39% of all residents are foreign-born. San José is one of the most affluent cities in the

country, with the highest median household income of any major metropolitan area in the U.S.

**Santa Clara County Bar Association (“SCCBA”)**

Founded in 1917, the Santa Clara County Bar Association (“SCCBA”) is a nonprofit membership association of approximately 3,400 legal professionals. The SCCBA is committed to promoting full and equal access to the legal system by all individuals, and is a leader in opposing discrimination against gay men and lesbians. The SCCBA, through its formal resolutions and commitment to amicus briefs in prior relevant litigation, opposes Proposition 8 as an unconstitutional infringement of the inalienable, fundamental right of all citizens to marry the person of their choosing, regardless of gender.

**Santa Clara County Black Lawyers Association**

Santa Clara County Black Lawyers Association is an advocate for equal opportunity and justice for all citizens of the United States of America. The right to marry and choose one’s spouse is a fundamental right that all citizens must be guaranteed without regard to race, gender, or sexual orientation.

**Stonewall Bar Association of Georgia, Inc.**

Stonewall Bar Association of Georgia, Inc. was established in 1995 as a coalition of attorneys, judges, law students, paralegals, and other legal professionals to utilize their expertise to support the rights of lesbian, gay, bisexual, and transgender people and oppose discrimination based on sexual orientation and gender identity. A voluntary bar association, consisting of almost 300 dues-paying

members, SBA publishes an on-line directory of attorneys who are eager to serve gay, lesbian, bisexual and transgender clients. The organization also publishes a monthly newsletter that is emailed to approximately 800 legal professionals, provides scholarships to law students, conducts continuing education for attorneys, and provides opportunities for networking with judges and other legal professionals. SBA has worked with other organizations to file amicus briefs in cases that impact our community in Georgia. Such briefs have been submitted in cases that overturned Georgia's sodomy law and secured the rights of local governments and private corporations to offer domestic partnership benefits to company employees and their life partners.

### **Stonewall Bar Association of Michigan**

The Stonewall Bar Association of Michigan is a voluntary state-wide professional association of lesbian, gay, bisexual and transgender lawyers and our allies providing a visible LGBT presence within the Michigan legal system. SBA members seek to protect and advance the rights of all Michiganders by providing legal representation, advocacy, education and outreach on the issues facing members of the LGBT community. Our membership forms a network for referrals and support, and provides a forum for discussing the needs of LGBT attorneys and clients throughout Michigan. SBA supports marriage equality for all Americans, and opposes discrimination based upon sexual orientation or gender identity or expression.

**Stonewall Bar Association of Tennessee  
(Tennessee Stonewall Bar Association)**

The Stonewall Bar Association of Tennessee (Tennessee Stonewall Bar Association) is a not-for-profit organization founded for the purpose of promoting and encouraging GLBT diversity and equality in the legal profession, providing pro bono assistance in legal disputes involving GLBT individuals and issues, and participating in public dialogue involving issues of importance to the GLBT community. The group's members include GLBT lawyers, judges, and paralegals, as well as other members of the legal profession who support the group's mission.

**Stonewall Law Association of Greater Houston**

Stonewall Law Association of Greater Houston is a voluntary professional association of gay, lesbian, bisexual and transgender attorneys, judges, paralegals, law students and allies who provide a LGBT presence within the greater Houston legal community. SLAGH encourages the recognition of civil and human rights, promotes sensitivity to legal issues faced by LGBT community and those living with HIV, assures the fair and just treatment of members of the LGBT community, provides opportunities for LGBT attorneys, judges, law students and their allies to interact in a professional setting, builds alliances with other minority bar associations and legal organizations, and enhances the practice and professional expertise of lawyers who serve or are members of the LGBT community.

**Tom Homann LGBT Law Association (“THLA”)**

The Tom Homann LGBT Law Association (“THLA”) is a non-profit voluntary membership bar association of attorneys, law students, judges, and other legal professionals dedicated to the advancement of gay, lesbian, bisexual and transgender issues throughout California and the nation. We are the place for San Diego's LGBT lawyers to network, build friendships, and develop their careers. THLA members are also committed to establishing and maintaining personal connections with local law student community. Through our successful mentor program, we provide encouragement, guidance, insight and friendship to the next generation of LGBT lawyers entering the San Diego legal community.

**Transgender Law Center (“TLC”)**

The Transgender Law Center (“TLC”) is a civil rights organization advocating for transgender communities. We connect transgender people and their families to technically sound and culturally competent legal services, increase acceptance and enforcement of laws and policies that support transgender communities, and work to change laws and systems that fail to incorporate the needs and experiences of transgender people. TLC has an interest in protecting minorities from being denied their civil rights, including the right to marriage.

**Women Lawyers Association of Los Angeles (“WLALA”)**

Women Lawyers Association of Los Angeles (“WLALA”) is a nonprofit organization comprised primarily of attorneys and judges in Los Angeles

County. Founded in 1919, WLALA is dedicated to promoting the full participation of women lawyers and judges in the legal profession, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women in our society. WLALA believes that lawyer groups have a special obligation to protect the core guarantees of our Constitution from unlawful abrogation when a majority of voters has attempted to deprive a minority of its constitutionally protected rights.