

**Case No. 10-16696**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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KRISTIN M. PERRY, et al.,  
*Plaintiffs-Appellees,*

v.

ARNOLD SCHWARZENEGGER, et al.,  
*Defendants, and*

PROPOSITION 8 OFFICIAL PROPONENTS DENNIS  
HOLLINGSWORTH, et al.,  
*Defendants-Intervenors-Appellants.*

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**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF  
IN SUPPORT OF PLAINTIFFS-APPELLEES  
BY THE SOUTHERN POVERTY LAW CENTER**

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Appeal From United States District Court, Northern District of Calif.  
Case No. CV-09-02292 VRW (Hon. Vaughn R. Walker, Presiding)

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**TO THE HONORABLE CHIEF JUDGE  
AND THE HONORABLE ASSOCIATE JUDGES  
OF THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT:**

THE SOUTHERN POVERTY LAW CENTER (“SPLC”)

hereby moves for leave to file a brief as *amicus curiae* in support of the plaintiffs-appellees in this matter. FRAP 29(b) allows a party to seek leave to file a brief as *Amicus Curiae* where the party has an interest in the issues on appeal and when the party asserts matters that are relevant to the disposition of the case. This Court has broad discretion to permit a third party to participate in an actions as *Amicus Curiae*. See, e.g., *Gerritson v. de la Madrid Hurtado*, 819 F.2d 1511, 1514, n. 3 (9th Cir. 1987). This Motion is being filed concurrently with the proposed *Amicus Curiae* Brief.

**INTEREST OF AMICUS CURIAE**

The SPLC is internationally known for its unrelenting stance on equality by fighting all forms of discrimination to make this nation’s Constitutional ideals a reality. As a long-standing leader in the civil rights movement, the SPLC submits that legislation ***repealing*** one of the most personal fundamental right’s we possess as

human beings – the right to marry the person of one’s choice – constitutes a denial of due process and equal protection where, as here, no rational basis existed to do so. The SPLC is uniquely qualified to act as a “Friend of the Court” in this manner, given its long-standing commitment to equal protection and tolerance education.

**STATEMENT OF REASONS WHY THIS AMICUS CURIAE BRIEF  
IS DESIRABLE AND RELEVANT TO THE DISPOSITION OF THIS CASE**

Since the earliest written records, those in power throughout the world have passed law which suppress minority members of society. Over the last 200 years, the United States has been no exception and has made its own contribution to this shameful legacy in the form of animus-based laws -- affirmed by the highest court in land -- upholding a slave owner’s “property interest” in a human being, the charade of “separate but equal,” or the right of government to intern an entire race of people.

This same Country, however, has also seen many other discriminatory laws invalidated: voiding “restrictive covenants,” abolishing segregation, striking down anti-miscegenation statutes,

enjoining the enforcement on unconstitutional amendments which repeal bans on discrimination, and invalidating laws de-criminalizing private, consensual sexual conduct.

Today, the denial of some of these fundamental rights by way of validly enacted legislation codifying discrimination seems like a strange remnant of a shameful past when majorities enacted legislation with a goal of maintaining group superiority. We look back and cannot fathom how individuals could have opposed commonplace notions of equality.

Once again the federal judiciary stands at the front line of the age-old debate for freedom by those being denied equal protection virtue of a majority vote -- this time *repealing* one of the most personal fundamental rights, the right to marry the person of one's choice.

As along-standing leader in the civil rights movement dedicating to fighting all forms of discrimination to make this nation's Constitutional ideals a reality, the SPLC submits that legislation *repealing* the fundamental right to marry the person of one's choice constitutes a denial of due process and equal protection where, as here, no rational basis existed to do so.

**CONCLUSION**

The SPLC respectfully requests leave to file its brief as *Amicus Curiae* in support of plaintiffs-appellees. The proposed brief has been filed concurrently with this motion.

Dated: October 25, 2010

**MANNING & MARDER,  
KASS, ELLROD, RAMIREZ LLP**

By: /s/ Scott Wm. Davenport

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**CERTIFICATE OF SERVICE**

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 25, 2010.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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