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No. 10-16696

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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

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

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MOTION FOR LEAVE TO FILE 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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## **MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF**

Pursuant to Federal Rules of Appellate Procedure 29(b), 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 move this Court for leave to file an amici curiae brief in support of Plaintiff-Appellees in the above captioned case.

In submitting this brief, Amici hope that the legal arguments and empirical data provided will be of assistance to the Court in determining the extent to which the pervasive prejudice against gay men and lesbians impedes their ability to rely on traditional political processes used to protect a minority from discriminatory state action so as to warrant heightened judicial scrutiny of Proposition 8 under the Equal Protection Clause of the United States Constitution.

A central objective of all Amici is to protect constituencies who, as a result of their minority status, are at risk of being deprived of fundamental rights through the will of the majority, including the right to marry. Indeed, many of the Amici represent communities that have faced marriage discrimination in the past in the

form of anti-miscegenation laws. Furthermore, the nearly 1.2 million individuals living in same-sex couples in the U.S. come from diverse racial, ethnic, religious and social backgrounds and are also members of the civil rights organizations, community groups and bar associations that have joined as Amici in this brief. *See* Rubenstein, Sears and Sockloskie, The Williams Project, UCLA School of Law, *Some Demographic Characteristics of the Gay Community in the United States*, at 3 (2003).

Amici are concerned that enactment of Proposition 8's ban on same-sex marriage allows a bare political majority to enshrine discrimination into the California Constitution against a class of persons otherwise accorded heightened judicial scrutiny under California law. Amici believe the use of the referendum process to deprive gay men and lesbians of a fundamental right without the protection of heightened scrutiny raises the likelihood that other classes protected under California law—including classes defined by race, ethnicity, national origin or gender—may be similarly deprived of long established civil rights. Amici share

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a common interest in ensuring that the fundamental right of protected classes to be free from discrimination is not at the mercy of an electoral majority's whims.

DATED: October 25, 2010

Bingham McCutchen LLP

By: /s/ Peter Obstler

Peter Obstler  
Attorneys for Amici Curiae