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8 *Amicus Curiae Pro Se*

FILED

JUL 24 2009

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11 KRISTIN M. PERRY, SANDRA B. STIER,
 12 PAUL T. KATAMI, and JEFFREY J.
 13 ZARRILLO,

14 Plaintiffs,

15 v.

16 ARNOLD SCHWARZENEGGER, in his official
 17 capacity as governor of California; EDMUND
 18 G. BROWN JR., in his official capacity as
 19 attorney general of California; MARK B.
 20 HORTON, in his official capacity as director of
 21 the California Department of Public Health and
 22 state registrar of vital statistics; LINETTE
 23 SCOTT, in her official capacity as deputy
 24 director of health information and strategic
 25 planning for the California Department of Public
 Health; PATRICK O'CONNELL, in his official
 capacity as clerk-recorder for the County of
 Alameda; and DEAN C. LOGAN, in his official
 capacity as registrar-recorder/county clerk for
 the County of Los Angeles,

Defendants

DENNIS HOLLINGSWORTH, GAIL J. KNIGHT,
 MARTIN F. GUTIERREZ, HAKSHING
 WILLIAM TAM, and MARK A. JANNSON, as
 official proponents of Proposition 8,
 Defendant-Intervenors

CASE NO. 09-CV-2292 VRW

**NOTICE OF MOTION AND
 MOTION FOR LEAVE TO FILE
 BRIEF OF *AMICUS CURIAE*
 ARCHBISHOP MARK SHIRILAU
 IN SUPPORT OF PLAINTIFFS**

AND [PROPOSED] ORDER ON MOTION

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that the Most Reverend Mark Steven Shirilau, archbishop and
3 primate of the Ecumenical Catholic Church, respectfully requests the court's leave to participate
4 as *amicus curiae* in the above-captioned case in support of plaintiffs.

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6 **I. STANDARD FOR MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE***

7 The court has broad discretion to permit third parties to participate in an action as *amici*
8 *curiae*. *Gerritsen v. de la Madrid Hurtado*, 819 F.2d 1511, 1514n.3 (9th Cir. 1987).

9 Participation of *amici curiae* may be particularly appropriate where the legal issues in a case
10 have potential ramifications beyond the parties directly involved or where the *amici* can offer a
11 unique perspective that may assist the court. *Sonoma Falls Devs., LLC v. Nev. Gold & Casinos,*
12 *Inc.*, 272 F.Supp.2d 919, 925 (N.D.Cal. 2003).

13
14 **II. STATEMENT OF IDENTITY AND INTEREST OF *AMICUS CURIAE***

15 Archbishop Shirilau is the primate of the Ecumenical Catholic Church. He is a resident
16 of California, a registered voter who voted against Proposition 8, and the chief ecclesiastical
17 officer of The Ecumenical Catholic Church, a Christian denomination with local ministries in
18 California as well as other locations in the United States and world. While all of the statements
19 made within the *amicus* brief have the support of the clergy and laity of the denomination, in
20 accordance with Ecumenical Catholic canon law the archbishop is the sole person with authority
21 to speak fully and completely for the denomination. As such, *amicus* addresses the court both on
22 his personal behalf and on behalf of the Ecumenical Catholic Church.

23 *Amicus* believes that same-sex marriage is theologically, sacramentally, liturgically,
24 emotionally, and practically identical to different-sex marriage. In accordance with this belief,
25 *amicus* believes that same-sex couples should be afforded the exact same fundamental right of

1 access to civil marriage as are male-female couples.

2 *Amicus* believes that prohibiting the state to grant equal civil marriage opportunity to
3 same-sex and different-sex couples violates his personal freedom of religion as a priest and the
4 freedom for his Christian denomination to have its canons and ceremonies granted the same civil
5 stature as are the canons and ceremonies of some other denominations and religions.

6 *Amicus* is also personally aware of the emotional harm done to many same-sex couples
7 by the state's inability to recognize same-sex marriages. As chief pastor of his denomination,
8 *amicus* has a personal ministerial responsibility to assure the well-being of his flock. This
9 includes their emotional health. For those members who are in valid sacramental same-sex
10 marriages, this emotional health is bolstered by the legal recognition of their marriages and
11 seriously damaged when the state is prohibited from granting such recognition.

12 13 **III. WHY THE EXPERTISE OF *AMICUS* WILL BE BENEFICIAL TO THE COURT**

14 The court in its order filed June 30, 2009, (Doc. #76) postulated many questions about
15 same-sex marriage and marriage in general. The Ecumenical Catholic Church (ECC) has been
16 celebrating same-sex marriages for over 20 years. Since 1987 the church's canon law defined
17 same-sex marriage and different-sex marriage as exactly identical, and its clergy are required to
18 use identical liturgies for marriages between two men, between two women, or between a man
19 and a woman. ECC clergy have performed many same-sex marriages in the course of these
20 years. They have provided pre- and post-marital counseling to many same-sex couples. Some
21 ECC clergy themselves have entered into same-sex marriages. ECC clergy have performed
22 same-sex marriages during the years when they had no legal standing, during the years when the
23 canonically married same-sex couples had to go through additional hurdles such as domestic
24 partnerships when their fellow opposite-sex couples did not, and ECC clergy have performed
25 same-sex marriages during the brief period when same-sex marriages were legally recognized in

1 California. Some ECC clergy have refused to perform different-sex marriages during periods of
2 time when same-sex marriages were not legally recognized.

3 Unlike some other religious and secular organizations, the Ecumenical Catholic Church
4 has always used the term “marriage” for the rites uniting either same-sex or different-sex
5 couples. It recognizes the importance of the term and has never sanctioned quasimarital terms
6 such as “holy union” or “civil union.” Furthermore, although within church settings, both
7 canonical (legal) and ceremonial (liturgical), the term “marriage” is used, the church’s members
8 are perhaps particularly aware that the civil system, up until recently, did not use the term and
9 thereby did not treat them as equals to the different-sex couples who had been blessed through
10 identical ecclesiastical rites. This discrepancy – being fully “married” in the eyes of the Church
11 but only “domestic partnered” in the eyes of the state (and thereby most of society) – gives our
12 married parishioners key insight into the value of the term “marriage” and the importance of not
13 merely creating a legal-benefit-based second-class system.

14 *Amicus* in his brief will provide knowledge and wisdom gained through this history that
15 will assist the court in its exploration of the various marriage-related questions and hypotheses
16 postulated in its June 30 order. This knowledge will be particularly useful to the court because it
17 represents a clearly religious support for the plaintiffs in an arena where the defendant-
18 intervenors have historically relied upon religious and semi-religious support for their positions,
19 sometimes neglecting the fact that Christianity, like most religions, is far from unanimous on the
20 subject of same-sex marriage. It is important for the court to understand that deeply religious
21 people exist on both sides of this argument. The ability of the plaintiffs to provide this religious
22 insight is unclear. The defendants, being officials of the civil government, presumably will not
23 deeply explore the religious aspects of the subject. Without support from religious organizations
24 supporting the plaintiffs, the religious arguments of the Proposition 8 proponent-intervenors, or
25 perhaps even more importantly, their generically-worded arguments that disguise religious

1 undertones, could go unchallenged. As a religious leader amicus is concerned that without
2 sufficient challenge the intervenors' arguments could be construed or assumed to portray
3 religious people in general.

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5 **IV. CONCLUSION**

6 Archbishop Mark Shirilau therefore requests this court's leave to submit an *amicus*
7 *curiae* brief in support of the plaintiffs.

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9 Dated: July 22, 2009

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12 Most Rev. Mark S. Shirilau, Ph.D.
13 Archbishop and Primate
14 The Ecumenical Catholic Church
15 *Amicus Curiae in Propria Persona*
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36 WILLIAM TAM, and MARK A. JANNSON, as
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CASE NO. 09-CV-2292 VRW

**[PROPOSED] ORDER ON MOTION
FOR LEAVE TO FILE BRIEF OF
AMICUS CURIAE
ARCHBISHOP MARK SHIRILAU
IN SUPPORT OF PLAINTIFFS**

1 Good cause appearing, the Motion of Amicus Curiae Archbishop Mark Shirilau for leave
2 to file a brief in support of plaintiffs is hereby GRANTED.

3 IT IS SO ORDERED.

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6 Dated: July _____, 2009

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8 Hon. Vaughn R. Walker
9 United States Chief District Judge
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