

1 Sonya D. Winner, (SBN 200348)
 2 Bruce R. Deming (SBN 161097)
 3 David M. Jolley (SBN 191164)
 4 John D. Freed (SBN 261518)
 5 COVINGTON & BURLING LLP
 6 One Front Street, Suite 3500
 7 San Francisco, CA 94111
 8 Telephone: (415) 591-6000
 9 Facsimile: (415) 591-6091
 10 E-mail: djolley@cov.com

11 Attorneys for *Amici Curiae* THE AMERICAN
 12 ANTHROPOLOGICAL ASSOCIATION,
 13 THE AMERICAN PSYCHOANALYTIC
 14 ASSOCIATION, THE NATIONAL
 15 ASSOCIATION OF SOCIAL WORKERS,
 16 THE NATIONAL ASSOCIATION OF SOCIAL
 17 WORKERS, CALIFORNIA CHAPTER, AND
 18 THE AMERICAN ACADEMY OF PEDIATRICS,
 19 CALIFORNIA.

20
 21
 22
 23
 24
 25
 26
 27
 28

**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 KRISTIN M. PERRY, *et al.*,

16 Plaintiffs,

17 and

18 CITY AND COUNTY OF SAN
 19 FRANCISCO,

20 Plaintiff-Intervenor,

21 v.

22 ARNOLD SCHWARZENEGGER, *et. al.*,

23 Defendants,

24 and

25 PROPOSITION 8 OFFICIAL
 26 PROPONENTS DENNIS
 27 HOLLINGSWORTH, *et. al.*,

28 Defendant-Intervenors.

Civil Case No.: 09-2292-VRW

**NOTICE OF MOTION AND
 MOTION OF THE AMERICAN
 ANTHROPOLOGICAL
 ASSOCIATION, THE AMERICAN
 PSYCHOANALYTIC
 ASSOCIATION, THE NATIONAL
 ASSOCIATION OF SOCIAL
 WORKERS, THE NATIONAL
 ASSOCIATION OF SOCIAL
 WORKERS, CALIFORNIA
 CHAPTER, AND THE AMERICAN
 ACADEMY OF PEDIATRICS,
 CALIFORNIA, TO FILE AN
 AMICUS CURIAE BRIEF IN
 SUPPORT OF PLAINTIFFS**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT the American Anthropological Association, the
3 American Psychoanalytic Association, the National Association of Social Workers, the National
4 Association of Social Workers, California Chapter, and the American Academy of Pediatrics,
5 California, hereby move the Court for leave to file a brief *amici curiae* in the above-captioned
6 case in support of Plaintiffs. A copy of the proposed *amicus* brief is appended as an exhibit to
7 this motion.

8 **I. STANDARD FOR MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE***

9 District courts have discretion to permit third parties to participate in an action as
10 *amici curiae*. *Woodfin Suite Hotels, LLC v. City of Emeryville*, No. C 06-1254 SBA, 2007 U.S.
11 Dist. LEXIS 4467, at *7 (N.D. Cal. Jan. 9, 2007). Such discretion is generally exercised
12 liberally, as there are no strict prerequisites that must be established to qualify for *amicus* status.
13 *Id.* at *8. The sole criterion is that the applicant must demonstrate that its “participation is
14 useful or otherwise desirable to the court.” *Id.* (quoting *In re Roxford Foods Litig.*, 790 F. Supp.
15 987, 997 (E.D. Cal. 1991)). District courts frequently accept *amicus* briefs from non-parties
16 where the legal issues in a case “have potential ramifications beyond the parties directly
17 involved.” *Sonoma Falls Devs., LLC v. Nev. Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925
18 (N.D. Cal. 2003) (quoting *Cobell v Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003)).

19 In this case, the Court has specifically indicated a willingness to consider *amicus*
20 briefs from non-parties who can offer a specialized perspective on the issues now before it.
21 Trial Tr. at 2946-47.

22 **II. STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE***

23 These *amici*, all of whom are independent of the parties to this action, have
24 extensive experience with the subjects addressed in their *amicus curiae* brief – namely, the
25 psychological and social ramifications of discrimination.

26 The American Anthropological Association is the world’s largest professional
27 organization of anthropologists and others interested in anthropology. Its membership includes
28 all specialties within anthropology, including (among others) cultural anthropology, linguistics,

1 and applied anthropology. In 2004, the American Anthropological Association adopted a
2 Statement on Marriage and the Family, which provides: “The results of more than a century of
3 anthropological research on households, kinship relationships, and families, across cultures and
4 through time, provide no support whatsoever for the view that either civilization or viable social
5 orders depend upon marriage as an exclusively heterosexual institution. Rather, anthropological
6 research supports the conclusion that a vast array of family types, including families built upon
7 same-sex partnerships, can contribute to stable and humane societies.”

8 The American Psychoanalytic Association is a national membership organization
9 that has been the leading organization of psychoanalysts for the past 90 years. The membership
10 of the association includes the leading psychoanalysts in the United States, many of whom are
11 also leaders in their fields of psychiatry, psychology, and social work. There is a large volume
12 of psychoanalytic literature concerning the psychological dimensions of same-sex sexual
13 orientation and the challenges faced by gay and lesbian individuals in our society. In 1997, the
14 American Psychoanalytic Association’s Board of Directors, after careful study that addressed
15 not only the well-being of members of gay and lesbian couples, but also the well-being of their
16 children, families, and the larger society, adopted a resolution stating that, “[b]ecause marriage
17 is a basic human right and an individual personal choice, . . . the State should not interfere with
18 same-gender couples who choose to marry and share fully and equally in the rights,
19 responsibilities, and commitment of civil marriage.” This statement was backed by extensive
20 systematic research and clinical information that demonstrated the salutary effects for gay men
21 and women, their children, and the community of the availability of marriage to same-sex
22 couples.¹

23
24
25
26 ¹ An expanded version of the research upon which this resolution was based was
27 published by Bertram Cohler and Robert Galatzer-Levy in *The Course of Gay and Lesbian*
28 *Lives: Social and Psychoanalytic Perspectives* (2000).

1 Established in 1955, the National Association of Social Workers (“NASW”) is
2 the largest association of professional social workers in the world, with 145,000 members and
3 chapters throughout the United States, Puerto Rico, Guam, and the Virgin Islands; the
4 Association also has an International Chapter in Europe. The NASW, California Chapter has
5 more than 11,000 members. With the purpose of developing and disseminating standards of
6 social work practice, while strengthening and unifying the social work profession as a whole,
7 NASW provides continuing education, enforces the *NASW Code of Ethics*, conducts research,
8 publishes books and studies, promulgates professional standards and criteria, and develops
9 policy statements on issues of importance to the social work profession.

10 NASW adopted a policy statement on gay issues in 1977, which was
11 subsequently revised and expanded; that policy and the *NASW Code of Ethics* prohibits social
12 workers from discriminating on the basis of sexual orientation. In 2004, NASW reaffirmed its
13 policy supporting same-sex marriage. NASW’s family policy recognizes that gay and lesbian
14 people are a part of existing families and provide important caregiving to children, as well as
15 other family members. The policy further identifies discrimination against lesbian and gay
16 parents as undermining the survival of their families. NASW and its California chapter affirm
17 their commitment to work toward full social and legal acceptance and recognition of lesbian,
18 gay, and bisexual people as stated in NASW’s policy statement, *Lesbian, Gay, and Bisexual*
19 *Issues*:

20 It is the position of the NASW that same-gender sexual
21 orientation should be afforded the same respect and rights as
22 other-gender orientation. Discrimination and prejudice directed
23 against any group is damaging to the social, emotional, and
24 economic well-being of the affected group and of society as a
25 whole. NASW is committed to advancing policies and practices
26 that will improve the status and well-being of all lesbian, gay, and
27 bisexual people. . . . NASW supports the adoption of local, state,
28 federal, and international policies/legislation that ban all forms of
discrimination based on sexual orientation. LGB people must be
granted all rights, privileges, and responsibilities that are granted
to heterosexual people, including but not limited to inheritance

1 rights, insurance, marriage, child custody, employment, credit,
2 and immigration.²

3 The California District of the American Academy of Pediatrics (“AAP-CA”),
4 representing the over 5,000 board-certified pediatrician members of the four California AAP
5 regional Chapters, has as its mission to attain optimal physical, mental, and social health and
6 well being for all infants, children, adolescents and young adults living in California. The AAP-
7 CA believes that the physical growth, development, social and mental well-being of all children
8 are supported by allowing parents a full range of parental legal rights, such as Social Security
9 survivor benefits, health benefits for dependent children, and legally recognized consent for
10 education and medical decisions. In order to protect and promote the best interests of the child,
11 the AAP-CA supports equal access for all California children to the legal, financial and
12 emotional protections of civil marriage for their parents, without discrimination based on family
13 structure. In light of its focus on children’s health issues, the AAP-CA lends its explicit support
14 only to Section III of the attached brief, entitled “Depriving Same-Sex Couples of the Ability to
15 Marry Has Adverse Effects on Their Children.”

16 **III. AMICI CURIAE’S EXPERTISE WILL BENEFIT THIS COURT**

17 In this case, the Court has stated that it will accept the filings of briefs *amicus*
18 *curiae*. Trial Tr. at 2946-47.

19 On the basis of their scientific expertise in the fields of anthropology,
20 psychoanalysis, social work, and pediatrics, *amici* meet the broad discretionary standard for
21 filing an *amicus curiae* brief. At trial, evidence was presented concerning stigmatization and
22 the psychological and social repercussions borne by gay men and women as a consequence of
23 discrimination. Given their considerable expertise with these issues, *amici* have “unique
24 information [and] perspective that can help the [C]ourt,” by adding scientific context to this
25 record evidence. *Sonoma Falls*, 272 F. Supp. 2d at 925. Moreover, “the potential ramifications
26 [of this case] beyond the parties directly involved” are broad, as the outcome will determine the

27 ² *Social Work Speaks* 218, 220 (8th ed. 2009).

1 rights of an entire population of gay men and women. *Id.* It is therefore especially important
2 that the Court consider the views of third party organizations that are dedicated to the scientific
3 understanding of the social and psychological issues now before it.

4 Accordingly, the American Anthropological Association, the American
5 Psychoanalytic Association, the National Association of Social Workers, the National
6 Association of Social Workers, California Chapter, and the American Academy of Pediatrics,
7 California, respectfully offer their analysis of these issues to assist the Court in its deliberations.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the above-listed *amici* respectfully request this Court's
10 leave to submit the attached brief *amici curiae*.

11 DATED: February 3, 2010

COVINGTON & BURLING LLP

12
13
14 By: _____
15 Sonya D. Winner

16 Attorneys for *Amici Curiae* AMERICAN
17 ANTHROPOLOGICAL ASSOCIATION,
18 THE AMERICAN PSYCHOANALYTIC
19 ASSOCIATION, THE NATIONAL
20 ASSOCIATION OF SOCIAL WORKERS,
21 THE NATIONAL ASSOCIATION OF
22 SOCIAL WORKERS, CALIFORNIA
23 CHAPTER, AND THE AMERICAN
24 ACADEMY OF PEDIATRICS,
25 CALIFORNIA
26
27
28