

1 BINGHAM MCCUTCHEN LLP
 Peter Obstler (SBN 171623) - peter.obstler@bingham.com
 2 Jee Young You (SBN 241658) - jeeyoung.you@bingham.com
 John Polito (SBN 253195) - john.polito@bingham.com
 3 Lucy Wang (SBN 257771) - lucy.wang@bingham.com
 Suneeta Fernandes (SBN 257772) - sunneta.fernandes@bingham.com
 4 Perry Grossman (SBN 260570) - perry.grossman@bingham.com
 Three Embarcadero Center
 5 San Francisco, CA 94111-4067
 Telephone: 415.393.2000
 6 Facsimile: 415.393.2286

7 Attorneys for *Amici Curiae*

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

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

13 Plaintiffs,

14 CITY AND COUNTY OF SAN FRAN-
 CISCO,

15 Plaintiff-Intervenor,

16 v.

17 ARNOLD SCHWARZENEGGER, in his
 18 official capacity as Governor of
 California; EDMUND G. BROWN, JR., in his
 19 official capacity as Attorney General of
 California; MARK B. HORTON, in his official
 20 capacity as Director of the California Depart-
 ment of Public Health and State Registrar of
 21 Vital Statistics; LINETTE SCOTT, in her
 official capacity as Deputy Director of Health
 22 Information & Strategic Planning for the
 California Department of Public Health;
 23 PATRICK O'CONNELL, in his official
 capacity as Clerk-Recorder for the County of
 24 Alameda; and DEAN C. LOGAN, in his
 official capacity as Registrar-Recorder/County
 25 Clerk for the County of Los Angeles,

26 Defendants,

27 and

28 PROPOSITION 8 OFFICIAL PROPONENTS

No. 09-CV-2292 VRW

**AMENDED MOTION FOR LEAVE TO
 FILE AN AMICI CURIAE BRIEF BY THE
 ASIAN LAW CAUCUS, ASIAN
 AMERICAN JUSTICE CENTER, ASIAN
 PACIFIC AMERICAN BAR ASSOCIA-
 TION OF LOS ANGELES COUNTY,
 ASIAN PACIFIC AMERICAN LEGAL
 CENTER, ASIAN PACIFIC BAR
 ASSOCIATION OF SILICON VALLEY,
 ASIAN PACIFIC ISLANDER LEGAL
 OUTREACH, BIENESTAR HUMAN
 SERVICES, CALIFORNIA STATE
 CONFERENCE OF THE NAACP,
 COALITION FOR HUMANE
 IMMIGRANT RIGHTS, JAPANESE
 AMERICAN BAR ASSOCIATION, LA
 RAZA CENTRO LEGAL, MEXICAN
 AMERICAN LEGAL DEFENSE AND
 EDUCATION FUND, NATIONAL BLACK
 JUSTICE COALITION, SOUTH ASIAN
 BAR ASSOCIATION OF NORTHERN
 CALIFORNIA AND ZUNA INSTITUTE;
 AND [PROPOSED] ORDER**

Judge: Chief Judge Vaughn R. Walker
 Dept.: Courtroom 6, 17th Floor

1 DENNIS HOLLINGSWORTH, GAIL J.
2 KNIGHT, MARTIN F. GUTIERREZ, HAK-
3 SHING WILLIAM TAM, and MARK A.
4 JANSSON; and
5 PROTECTMARRIAGE.COM - YES ON 8, A
6 PROJECT OF CALIFORNIA RENEWAL,

7 Defendant-Intervenors.

8 The Asian Law Caucus, Asian American Justice Center, Asian Pacific American Bar As-
9 sociation of Los Angeles County, Asian Pacific American Legal Center, Asian Pacific Bar
10 Association of Silicon Valley, Asian Pacific Islander Legal Outreach, Bienestar Human Services,
11 California State Conference of the NAACP, Coalition for Humane Immigrant Rights, Japanese
12 American Bar Association, La Raza Centro Legal, Mexican American Legal Defense and
13 Education Fund, National Black Justice Coalition, South Asian Bar Association of Northern
14 California and Zuna Institute (collectively “*Amici*”) respectfully move this Court for leave to file
15 an *amici curiae* brief in support of Plaintiffs in the above captioned case (the “Action”).

16 This Court has broad discretion to appoint *amici curiae*. *Hoptowit v. Ray*, 682 F.2d
17 1237, 1260 (9th Cir. 1982). In submitting this brief, *Amici* hope that the legal arguments and
18 empirical data provided will be of assistance to the Court in determining the extent to which the
19 pervasive prejudice against gay men and lesbians impedes their ability to rely on traditional
20 political processes used to protect a minority from discriminatory state action so as to warrant
21 heightened judicial scrutiny of Proposition 8 under the Equal Protection Clause of the United
22 States Constitution.

23 A central objective of all *Amici* is to protect constituencies who, as a result of their mi-
24 nority status, are at risk of being deprived of fundamental rights through the will of the majority,
25 including the right to marry. Indeed, many of the *Amici* represent communities that have faced
26 marriage discrimination in the past in the form of anti-miscegenation laws. Furthermore, the
27 nearly 1.2 million individuals living in same-sex couples in the U.S. come from diverse racial,
28 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,

1 Sears and Sockloskie, *The Williams Project, UCLA School of Law, Some Demographic*
2 *Characteristics of the Gay Community in the United States*, at 3 (2003).

3 *Amici* are concerned that enactment of Proposition 8’s ban on same-sex marriage allows a
4 bare political majority to enshrine discrimination into the California Constitution against a class
5 of persons otherwise accorded heightened judicial scrutiny under California law. *Amici* believe the
6 use of the referendum process to deprive gay men and lesbians of a fundamental right without
7 the protection of heightened scrutiny raises the likelihood that other classes protected under
8 California law—including classes defined by race, ethnicity, national origin or gender—may be
9 similarly deprived of long established civil rights. *Amici* share a common interest in ensuring that
10 the fundamental right of protected classes to be free from discrimination is not at the mercy of
11 an electoral majority’s whims.

12
13 DATED: February 3, 2010

14
15 Respectfully submitted,

16
17 By: _____ /S/ Peter Obstler
18 Bingham McCutchen LLP
19 Peter Obstler
20 Attorneys for *Amici Curiae*

21 **[PROPOSED] ORDER**

22
23 Good cause appearing, *Amici*’s request for leave to file an *amici curiae* brief is
24 GRANTED.

25
26 _____
27 Hon. Vaughn R. Walker
28 United States District Court Judge