

No. S168047

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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KAREN L. STRAUSS, *et al.*,

*Petitioners,*

v.

MARK B. HORTON, as State Registrar of Vital Statistics, etc., *et al.*,

*Respondents;*

DENNIS HOLLINGSWORTH, *et al.*,

*Intervenors.*

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**BRIEF OF AMICI CURIAE ALAMEDA COUNTY BAR  
ASSOCIATION, BAR ASSOCIATION OF SAN FRANCISCO,  
LOS ANGELES COUNTY BAR ASSOCIATION, MARIN  
COUNTY BAR ASSOCIATION, SANTA CLARA COUNTY  
BAR ASSOCIATION, ET. AL. SUPPORTING PETITIONERS**

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The Alameda County Bar Association, Bar Association of San Francisco, Los Angeles County Bar Association, Marin County Bar Association, Santa Clara County Bar Association, AIDS Legal Referral Panel, Asian American Bar Association of the Greater Bay Area, Asian American Justice Center, Asian Pacific American Bar Association of Los Angeles County, Bay Area Lawyers for Individual Freedom, California Employment Lawyers Association, California Rural Legal Assistance, Inc., Central California Legal Services, Inc., Charles Houston Bar Association,

Consumer Attorneys of San Diego, East Bay La Raza Lawyers Association, Fred T. Korematsu Center for Law and Equality, Gay & Lesbian Advocates & Defenders, Impact Fund, Japanese American Bar Association of Greater Los Angeles, Korean American Bar Association of Northern California, Korean American Bar Association of Southern California, Latina Lawyers Bar Association, Law Foundation of Silicon Valley, Lawyer's Club of San Francisco, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Legal Aid Society – Employment Law Center, Lesbian and Gay Lawyers Association of Los Angeles, Mexican American Bar Association, Minority Bar Coalition, National LGBT Bar Association, National Asian Pacific American Bar Association, National Lawyers Guild San Francisco Bay Area Chapter, Public Justice, Queen's Bench Bar Association of the San Francisco Bay Area, San Francisco Trial Lawyers Association, South Asian Bar Association of Northern California, South Asian Bar Association of San Diego, Tom Homann Law Association, and the Transgender Law Center (collectively "amici") respectfully submit this *amici curiae* brief in support of Petitioners Karen L. Strauss., *et al.*

**STATEMENTS OF INTEREST OF THE AMICI CURIAE  
AND SOURCE OF AUTHORITY TO FILE**

Amici are familiar with the issues in this case and unreservedly support the position and the arguments of the Petitioners. Amici are primarily organizations of lawyers, who regularly rely on the courts to

enforce the Constitution's guarantee of equal protection and fundamental rights for their clients and have a particular interest in ensuring the vitality of the courts' continued role in enforcing the constitutional guarantee of equal protection.

Alameda County Bar Association ("ACBA"), established in 1877, is a nonprofit voluntary membership organization of 2,200 attorneys, judges, paralegals, law students, and other professionals in Alameda County. ACBA has a strong interest in having courts ensure equal protection under the law for all people. One of the core tenets of the ACBA mission is to promote civil rights and the fair and equitable administration of justice. In response to Proposition 8 and its threat to the basic constitutional guarantee of equal protection to all the people of California, the ACBA board of directors, on September 4, 2008, passed a resolution affirming its support of the California Supreme Court decision regarding same-sex marriage and urging its constituent groups to join the ACBA in efforts to defeat Proposition 8. Through the work of its board of directors, committees, sections and its court appointed and pro bono programs, the ACBA has worked to promote access to justice for all people, oppose discrimination in all forms, and advocate for the protection of the fundamental rights of all people.

The Bar Association of San Francisco ("BASF") is a nonprofit voluntary membership organization of attorneys, law students, and legal

professionals in the San Francisco Bay Area. Founded in 1872, BASF enjoys the support of more than 7,500 individuals, as well as 400 sponsor firms, corporations, and law schools. BASF's interest in having courts ensure equal protection under the law is central to its mission. Through its board of directors, its committees, and its volunteer legal services programs and other community efforts, BASF has worked actively to promote and achieve equal justice for all and to oppose discrimination in all its forms, including, but not limited to, discrimination based on race, sex, disability, and sexual orientation. BASF provides a collective voice for public advocacy and pioneers constructive change in society. It filed *amicus curiae* briefs with this Court in *In re Marriage Cases*, Case No. S147999, and *Bennett v. Bowen*, Case No. S164520.

With more than 26,000 members, the Los Angeles County Bar Association ("LACBA") is the largest voluntary local bar association in the United States. For more than 130 years, LACBA has represented the interests of its members, encouraged legal reform, promoted the administration of justice and supported the independence of the judiciary in California. LACBA opposes discrimination and supports the protection of fundamental rights. It joined in an *amicus curiae* brief filed with this Court in *In re Marriage Cases* (Case No. S147999) supporting marriage equality for same-sex couples, and opposed the passage of Proposition 8. LACBA joins in this *amicus curiae* brief to protect California's core constitutional

principles of equal protection and inalienable rights, and to support this Court's role as final arbiter of those constitutional guarantees.

The Marin County Bar Association (the "MCBA") is a voluntary organization of almost 700 attorney members practicing in Marin and surrounding counties. A primary mission of the MCBA is to promote the sound administration of justice, which includes supporting an independent judiciary and educating the public on the importance of the judicial system. Since its establishment in 1957, the MCBA has declined to take any position or action that might be considered political in nature or that involves an issue before the electorate. Proposition 8 changed that. The importance of the civil rights issues raised by Proposition 8 prompted our organization to adopt a formal position in opposition to the proposition, a position approved both by board action and a full membership vote. Proposition 8 raises the fundamental question of whether a majority of voters can eliminate a fundamental right guaranteed by our state constitution. The MCBA believes that the answer to this question is a resolute and resounding *no*. At least absent a compelling interest, not present here, a majority of voters should not be entitled to strip any group of California citizens of a fundamental civil right.

Founded in 1917, the Santa Clara County Bar Association ("SCCBA") is a nonprofit membership association of approximately 3400 legal professionals. The SCCBA is committed to promoting full and equal

access to the legal system by all individuals, and is a leader in opposing discrimination against gay men and lesbians. In 2005, the SCCBA adopted a resolution in opposition to proposed constitutional amendments seeking to preclude gay and lesbian individuals from marrying. In 2007, the SCCBA supported a resolution sponsored by the American Bar Association's Section of Individual Rights and Responsibilities to include persons of differing sexual orientations and gender identities in order to promote full and equal participation in the legal profession. The SCCBA filed an *amicus curiae* brief with this Court in *In re Marriage Cases*, Case No. S147999, supporting marriage equality. Subsequently, it adopted a resolution opposing Proposition 8 as an unconstitutional infringement of the inalienable, fundamental right of all citizens to marry the person of their choosing, regardless of gender. The SCCBA, in support of the legal positions advanced by this amicus brief, advocates the positions that (1) Proposition 8 undermines so fundamentally the protection of inalienable rights guaranteed by Article I, Sec. 1, of the California Constitution that Proposition 8 must be invalidated as an unconstitutional revision of the California Constitution and (2) that it should have no retroactive effect.

The AIDS Legal Referral Panel ("ALRP") is a non-profit legal services agency that advances the legal and civil rights of low-income, immigrant, African American, Latino, Asian/Pacific American, female, lesbian/gay/bisexual/transgender, and persons living with HIV/AIDS

through litigation, direct legal services, and education. ALRP has a strong interest in protecting the integrity of the core constitutional principles of equal protection and fundamental rights, and ensuring the courts' role as final arbiter of these constitutional guarantees.

The Asian American Bar Association of the Greater Bay Area ("AABA"), founded in 1976, is a non-profit professional membership organization of Asian American lawyers. AABA is the largest, and one of the oldest, local Asian American bar associations in the nation, and is one of the largest minority bar associations in California. AABA provides a vehicle for the unified expression of opinions and positions on matters of concern to all Asian American attorneys, encourages and promotes the professional growth of its members, serves the Asian American and minority community, and fosters the exchange of ideas and information among its members and the legal community at large. AABA was born from its founders' commitments to civil rights and community service, and over the years, AABA has played an important role in various civil rights cases and social issues affecting Asian Americans, including the *Korematsu v. United States* case, the Japanese-American redress and reparations movement, and the Wen Ho Lee case. AABA's interest in having courts ensure equal protection under the law is central to its mission. Through its board of directors, committees, and community efforts, AABA has worked

to promote the core constitutional principles of equal protection and fundamental rights, and to oppose discrimination in all forms.

The Asian American Justice Center (“AAJC”) is a national nonprofit, nonpartisan organization whose mission is to advance the legal and civil rights of Asian Americans. Collectively, AAJC and its affiliates, the Asian American Institute, Asian Law Caucus, and the Asian Pacific American Legal Center, have over 50 years of experience in providing legal, public policy, advocacy, and community education on discrimination issues. AAJC and its affiliates have a long-standing interest in discrimination issues that have an impact on the Asian American community, and this interest has resulted in AAJC’s participation in a number of amicus briefs before the courts.

The Asian Pacific American Bar Association of Los Angeles County (“APABA”) is a member organization comprised of attorneys, judges, commissioners and law students throughout Los Angeles County and serves as a voice for issues of concern to the Asian and Pacific Islander (API) community. APABA provides legal education and assistance to underserved API communities and also sponsors programs in professional development, community education, and law student mentorship. As an API organization, APABA well knows the history of discrimination against Asians and Pacific Islanders and its activities seek to ensure access and justice for those without a voice. As an organization that believes in civil

rights, APABA believes that protecting marriage equality furthers the civil rights interests of not only members of the API community but all Americans. APABA's interest in having courts ensure equal protection under the law is central to its mission.

Bay Area Lawyers for Individual Freedom ("BALIF") is the nation's oldest and largest association of lesbian, gay men, bisexual and transgendered (LGBT) persons in the field of law. BALIF serves to take action on questions of law and justice that affect the LGBT community; to strengthen professional and social ties among LGBT members of the legal profession; to build coalitions with other legal organizations to combat all forms of discrimination; to promote the appointment of LGBT attorneys to the judiciary, public agencies and commissions in the Bay Area; and to provide a forum for the exchange of ideas and information of concern to members of the LGBT legal community. BALIF has a strong interest in protecting the integrity of the core constitutional principles of equal protection and fundamental rights, and ensuring the courts' role as final arbiter of these constitutional guarantees.

The California Employment Lawyers Association ("CELA") is a non-profit employee rights organization whose mission is to advance the rights of working people and the lawyers who represent them. CELA advances the legal and civil rights of all workers, including low-income, immigrant, African American, Latino, Asian/Pacific American, male and

female, lesbian/gay/bisexual/transgender, and other traditionally underrepresented clients through litigation and education. CELA has a strong interest in protecting the integrity of the core constitutional principles of equal protection and fundamental rights, and ensuring the courts' role as final arbiter of these constitutional guarantees.

California Rural Legal Assistance, Inc. ("CRLA") seeks to ensure that all low-income rural, farm worker communities in California have access to justice and the provision of basic human rights. Each year, CRLA provides more than 40,000 low-income rural Californians with free legal assistance and a variety of community education and outreach programs. CRLA serves a significant number of people of color and women, as well as an increasingly visible lesbian and gay population. An estimated 136,000 self identified lesbian, gay, and bisexual persons live in the rural counties served by CRLA, and roughly one-third of this population lives in poverty. CRLA established Proyecto Poderoso to improve legal services for low-income lesbian and gay people on issues ranging from family law to employment discrimination, and to change hostile anti-gay attitudes in our rural communities. Our clients represent a cross section of individuals and disfavored groups that have benefited from robust constitutional jurisprudence guaranteeing equal protection and fundamental rights. We share a deep interest in protecting the integrity of core constitutional principles of equality and fundamental rights, and preserving the courts'

role as the final arbiter of these constitutional guarantees.

Central California Legal Services, Inc. (“CCLS”) is a non-profit law firm which provides free civil legal assistance to low-income residents in six counties in central California. The mission of CCLS is to advance justice and empower people. Since 1966, CCLS has worked to protect the constitutional rights of low-income individuals and communities through education, litigation and advocacy. We represent African Americans, Latinos, immigrants, refugees, lesbian/gay/bisexual/transgender, elderly and youth clients in our efforts to realize the constitutional promise of equal justice for all and to overcome discrimination.

The Charles Houston Bar Association (“CHBA”) is a non-profit professional membership organization founded in 1955 which represents the interests of African American attorneys, judges, and law students throughout Northern California. The organization is committed to working within the African American community to facilitate access to the legal system and promote equal opportunities under the law. CHBA’s mission dictates that it ensures equal protection under the law for all people. CHBA has also been involved in litigation aimed at protecting the legal rights of the African American community. CHBA has a strong interest in protecting the integrity of the constitutional principles of equal protection and fundamental rights, and ensuring the courts’ role as final arbiter of these constitutional guarantees. Consequently, the Board of Directors of

the Charles Houston Bar Association has voted to support the efforts to defeat Proposition 8.

The Consumer Attorneys of San Diego (“CASD”) is a non-profit organization of more than 700 attorneys who represent working people, families, and consumers as plaintiffs in various types of legal matters involving consumer rights. CASD promotes access to justice and equal rights for all under the law through support services for our members, continuing legal education, and community outreach. CASD has a strong interest in protecting the integrity of the core constitutional principles of equal protection and fundamental rights, and ensuring the courts’ role as final arbiter of those constitutional guarantees.

Founded in 1978, East Bay La Raza Lawyers Association (“EBLRLA”) is the county bar association of Latina/o lawyers in Alameda and Contra Costa counties. Dedicated to expanding legal access to the Latina/o community, the EBLRLA provides annual scholarships to Latina/o law students, supports Latina/o attorneys with a local professional network, and advocates for increased Latina/o representation in the judiciary. As a professional association of Latina and Latino lawyers, judges, law students and other legal workers, EBLRLA’s interest in having courts ensure equal protection under the law is central to its mission. Through its board of directors, committees, and membership, the EBLRLA promotes the core

