No. 12-144

IN THE
Supreme Court of the United States

DENNIS HOLLINGSWORTH, ET AL.,
Petitioners,

v.

KRISTEN M. PERRY, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* JUDICIAL WATCH, INC. AND ALLIED EDUCATIONAL FOUNDATION IN SUPPORT OF PETITIONERS

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Judicial Watch, Inc. is a non-partisan educational foundation that seeks to promote transparency, integrity, and accountability in government and fidelity to the rule of law. Judicial Watch regularly files *amicus curiae* briefs as a means to advance its public interest mission and has appeared as an *amicus curiae* in this Court on a number of occasions.

The Allied Educational Foundation ("AEF") is a nonprofit charitable and educational foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study. AEF regularly files *amicus curiae* briefs as a means to advance its purpose and has appeared as an *amicus curiae* in this Court on a number of occasions.

Amici believe that the decision by the U.S. Court of Appeals for the Ninth Circuit (hereinafter, "Ninth Circuit" or "lower court") raises important issues of constitutional law which should be heard by this Court. In particular, *amici* are concerned that the Ninth Circuit has unlawfully limited the right of the people and states to self-governance, and are

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[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than *amici curiae* and their counsel, made a monetary contribution intended to fund the preparation and submission of this brief. All parties have consented to the filing of this brief; letters reflecting this blanket consent have been filed with the Clerk.

concerned about the effect of that decision on American democracy. Among the harms caused by the Ninth Circuit's decision are: a dangerous erosion of the principles of federalism; an anti-democratic limitation on the people's right to popular initiative and referendum; and a drastic revision of the concept of "rational basis" in Equal Protection analysis. For these and other reasons, *amici* urge the Court to grant the Petition for a Writ of Certiorari.

SUMMARY OF ARGUMENT

In order to find that no rational policy reason could support Proposition 8, the Ninth Circuit redefines marriage in such a way that would eliminate any rational purpose for limiting marriage to opposite sex marriage. The Ninth Circuit's sleight-of-hands decision therefore constitutes a dangerous erosion of the principle of rational basis review, namely that any legitimate interest put forth in support of legislation is sufficient to uphold the law. Furthermore, the Ninth Circuit decision grossly expands the reaches of the Equal Protection clause, which would swallow the states' traditional authority and police powers if allowed to stand. The Ninth Circuit holds that Proposition 8 is unconstitutional, without addressing the issue of whether the Federal Constitution provides a right for same-sex couples to marry. The Ninth Circuit avoids reaching that question because there is binding Supreme Court precedent on the issue that holds the Constitution does not provide such a right. The ruling, therefore, proclaims that the

Constitution prevents states from "withdrawing" rights from groups without legitimate reasons, and that Californians could not have had legitimate reasons to pass Proposition 8. This is an unjustified conclusion that imputes the worst possible motives to voters, despite the lower court's protestations to the contrary.

REASONS FOR GRANTING THE PETITION

I. THE NINTH CIRCUIT'S RULING UNDERMINES THE PRINCIPLE OF RATIONAL BASIS REVIEW.

A. The Ninth Circuit Unjustly Overruled Seven Million California Voters.

Fifty-two percent of Californians – over seven million people – voted for Proposition 8. The Ninth Circuit has now held that all seven million of these voters could have had no rational reason to vote this way other than disapproval of homosexual couples, or their own ignorance. The lower court claims that it is following *Romer v. Evans*, 517 U.S. 620 (1996) ("*Romer v. Evans*" or "*Romer*") by striking down Proposition 8, holding that the law was inexplicable for any reason other than animus towards the affected group. *Perry v. Brown*, 671 F.3d 1052, 1092-1095 (9th Cir. 2012) ("*Perry*"). The decision therefore rests on the false rejection of the legitimate policy goal of "California's interest in childrearing or responsible procreation" in order to arrive at its conclusion that Proposition 8 was based on nothing more than malice or disapproval towards homosexual couples. *Perry* at 1086.

The Ninth Circuit's reasoning is based on the distasteful assumption that Proposition 8 is so irrational that no one could vote for it except out of malice or disapproval of homosexuals. The lower court says that it is an "inevitable inference" that Proposition 8 was "born of animosity" towards homosexual couples. *Perry* at 1093. The Ninth Circuit tries to soften this by saying it does "not mean to suggest that Proposition 8 is the result of ill will on the part of the voters of California," *Perry* at 1093, instead characterizing seven million Californians as voicing nothing more than their "disapproval of gays and lesbians," as if this were much different. *Perry* at 1093. The lower court attempts to further qualify its condemnation and judgment of the motives of this majority of voters by attributing their "irrational" behavior to voters simply not knowing any better. *Perry* at 1093. The Ninth Circuit's concession that the voters of California may just as well have been driven by irrational ignorance as by irrational hostility does not render the decision less dangerous.

The Ninth Circuit claims that, because Proposition 8 continues to allow civil unions as an option for same-sex couples, "Proposition 8 therefore could not have been enacted to advance California's interest in childrearing or responsible procreation." *Id*. at 1063. While the Ninth Circuit may not believe that a special designation for opposite-sex couples could possibly advance the cause of responsible procreation, the court has overstepped its authority by refusing to credit supporters of Proposition 8 with such a reasonable belief. The Ninth Circuit has

therefore traced a dangerous path, as this judicial practice of divining popular legislative motives in rational basis review has no obvious limiting principle.

B. Judicially Striking Laws Based on Assumed Motives Is Dangerously Undemocratic.

Many have questioned the practice of judicial intervention in the middle of nationwide social debates of far reaching consequence.[2] When the judicial action comes in the form of dismissal of a group of citizens as either bigoted or incapable of rational thought, the effects are compounded. The judicial branch's authority and insulation from the democratic process carries with it the responsibility to use restraint on matters of broad social concern.[3] Although a*mici* do not believe that *Romer v. Evans* must be overturned in order to reverse *Perry*, it is nonetheless striking that the dissent's words in that case, "the Court has mistaken a Kulturkampf for a fit of spite," could as well have been applied to the Ninth Circuit's actions. *Romer* at 636.

The Ninth Circuit admits that the debate over the wisdom of same sex marriage is "an important and highly controversial question" and "currently a matter of great debate in our nation, and an issue

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[2] *See* Debra Cassens Weiss, *Justice Ginsburg: Roe v. Wade Decision Came Too Soon*, ABAJournal (Feb 13, 2012), available at www.abajournal.com/news/article/justice_ginsburg_roe_v._wade_decision_came_too_soon/

[3] *Id.*

over which people of good will may disagree." *Perry* at 1064. However, it remains unexplained how the Ninth Circuit's contribution to that debate amounts to anything other than either limiting the impact of democratic decision-making or merely inflaming passions. In the sixteen years since *Romer v. Evans*, the tone of the debate over same-sex marriage has become increasingly heated. Though the institution of "same sex marriage" existed in no state of the union until 2003, a mere nine years later many groups are comfortable denouncing any traditional view of marriage as sheer bigotry. The most recent and notorious example was the reaction to Dan Cathy, the President of the restaurant franchise Chick-fil-A, when he affirmed in an interview that he supports the traditional definition of marriage.[4] The resulting uproar was hostile, with many groups and politicians calling him a bigot and accusing his restaurants of serving "hate chicken," in the words of the mayor of Washington D.C.[5]

C. Proposition 8 Supporters Put Forth a Valid Basis for the Law.

The traditional public policy goal of civil marriage is to encourage the optimal raising of

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[4] "What Dan Cathy said," Atlanta Journal Constitution, July 26, 2012, http://www.ajc.com/business/what-dan-cathy-said-1484986.html

[5] Tim Craig, *Gray opposes Chick-fil-A expansion; calls it 'hate chicken*,' Washington Post (July 28, 2012), available at http://www.washingtonpost.com/blogs/dc-wire/post/gray-opposes-chick-fil-a-expansion-calls-it-hate-chicken/2012/07/27/gJQA8SlREX_blog.html

children *throughout all of society*, and not just among the adult partners who are already the most responsible and committed. Preserving this particular traditional aspect of the marital union is a rational way to facilitate that goal. Based on this rational policy preference, it is wholly irrelevant whether same sex couples are as equally skilled as opposite sex couples in the tasks of raising children. Rather, this policy goal views marriage's public purpose not as one of bestowing laurels on committed couples, but rather of conferring obligation on uncommitted ones. Specifically, in a view of marriage not shared by the Ninth Circuit, marriage is a social institution which exists to put a sense of duty on adults to raise the next generation of citizens with two partnered caregivers – *even if* (and especially when) one of the adult parties to a pregnancy prefers to abandon both the child and the mate. The Ninth Circuit reaches its opinion that there is no legitimate reason that the definition of marriage cannot be stretched to include the union of same sex couples by *redefining* the *purpose* of the institution of marriage in California according to its own policy preferences – namely, marriage as a *benefit* to marrying couples, rather than as an *obligation* to couples conceiving children for the benefit of the child.

The Ninth Circuit's decision redefines marriage as "the recognition that the State affords to those who are in stable and committed lifelong relationships" and "the principal manner in which the State attaches respect and dignity to the highest form of a committed relationship and to the

individuals who have entered into it." *Perry* at 1079. However, this description is only one possible view of marriage, and it departs widely from the traditional definition. Indeed, it is unclear why the Ninth Circuit's definition of "marriage" would not also apply to unmarried adult siblings who live together with the intention of always doing so, or to lifelong committed platonic roommates.

The Ninth Circuit's analysis focuses on a view of marriage based on its impact on the happiness and social status of the adults who wish to enter into a union together, citing authorities such as Groucho Marx, Frank Sinatra, and Marilyn Monroe. *Perry* at 1078. The Ninth Circuit omits from its analysis the impact of marriage on children unintentionally conceived by opposite sex couples. By defining marriage without reference to the potential of children, the Ninth Circuit can easily reimagine the institution of marriage as one from which it would be irrational to exclude same-sex couples.

By ignoring the reality of unintentionally conceived children, the Ninth Circuit lets itself focus on the similarities between same-sex and opposite-sex relationships while ignoring the categorical differences. The Ninth Circuit states that, in deciding to enter a committed relationship, "the underlying drama for same-sex couples is no different" from opposite-sex couples. *Perry* at 1078. Indeed, the underlying drama of some same-sex couples may often be very similar to the drama of some opposite-sex couples. But the degree of similarity between both kinds of relationships is not

uniform throughout society. For example, the "underlying drama" of what is known figuratively as a "shotgun marriage" is something no same-sex couple has ever experienced.

The Ninth Circuit finds that, because both opposite sex and same sex couples have the capacity to enter into "harmonious, loyal, enduring, and intimate relationships," there is no meaningful distinction between same-sex couples and opposite-sex couples. *Perry* at 1078. But only one of these unions can result in unplanned children. If the relationship between adults who unintentionally conceive a child does not remain "harmonious, loyal, and enduring," such children may be raised by only one parent. At the heart of opposite-sex unions is a biological asymmetry: women are more vulnerable to being left to raise children alone. The legal and social obligatory aspects of the traditional institution of marriage bind a father to his children and their mother.[6] In the view of marriage aligned with the purpose of Proposition 8, then, marriage is not an institution that functions as an award of state recognition for adults who achieve stable and committed relationships. Rather, in this second view of marriage, the institution is designed to *restrict* the freedoms of males who prefer not to partner with

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[6] William Blackstone, Commentaries on the Laws of England (1765-1769), available at: http://www.lonang.com/exlibris/blackstone/bla-116.htm ("the establishment of marriage in all civilized states is built on this natural obligation of the father to provide for his children; for that ascertains and makes known the person who is bound to fulfill this obligation; whereas, in promiscuous and illicit conjunctions, the father is unknown")

females in child-raising efforts after conceiving children. When reserved for opposite sex couples, marriage is therefore intended to increase the chances that couples unintentionally conceiving will enter into "stable and committed" relationships when they might prefer to do otherwise.

The lower court blithely asserts that "[t]here is no rational reason to think that taking away the designation of 'marriage' from same-sex couples would advance the goal of encouraging California's opposite-sex couples to procreate more responsibly," and adds that it is impossible to believe that the people of California could have "conceived such an argument to be true." *Perry* at 1088, 1089. However, the Ninth Circuit's new revisions to the historical *purpose* of marriage are the *only* thing that makes this untrue. Even the most basic logic therefore shows the plausibility of what the Ninth Circuit could not imagine to be possible.

The plausibility is established by the mere fact that there is a difference between an obligation and a reward. If the state-imposed purpose and definition of "marriage" is that of an arrangement designed to ensure biological parents commit to collaborating to raise their offspring, this imposes a social obligation on heterosexual couples to enter into matrimony. If, on the other hand, the state-imposed purpose of "marriage" is the one that the Ninth Circuit prefers – that the legal title of "marriage" is a reward for entering into a committed lifelong relationship – it is reasonable to project that more opposite-sex couples will forgo it. The social-

disapproval costs borne by avoiding doing something one is *supposed* to do even when not obligated (such as recycling plastics, or marrying after conceiving), are *different in kind* from those borne by failing to achieve some social distinction of merit. The former denotes an obligation imposed on *everyone* in a certain situation, for which failure to comply constitutes *violating a social norm*. The latter denotes a special achievement of social maturity, for which failure to achieve can be attributed to a variety of causes: bad luck, divergent opinions about the merit of such arrangements, or a mere lack of interest in laurels. As reasonable minds may disagree over which marriage model will have the best impact on the broader society, the choice is therefore one that must be left to the people of California. *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993).

Same-sex marriage advocates might point out that most opposite-sex couples marry without an unplanned pregnancy, or without any intention of raising children in the first place. However, the fact that opposite-sex couples *sometimes* marry because of inadvertent conceptions and other times do not does not undermine the basis for rational distinction between the two categories. "A classification does not fail rational-basis review because it is not made with mathematical nicety or because in practice it results in some inequality." *Heller v. Doe*, 509 U.S. 312, 321 (1993) (internal citation omitted). The inclusion of opposite-sex relationships in the definition of marriage promotes the governmental purpose of encouraging the two natural parents of

children whose conception was unplanned to enter into a stable relationship that would be best for those children's upbringing. The inclusion of same-sex relationships would not promote such a purpose, and as explained above, may undermine this purpose. "When, as in this case, the inclusion of one group promotes a legitimate governmental purpose, and the addition of other groups would not, we cannot say that the statute's classification of beneficiaries and nonbeneficiaries is invidiously discriminatory." *Johnson v. Robison*, 415 U.S. 361, 383 (1974).

The Ninth Circuit does not find it persuasive that the voters could have had the encouragement of responsible procreation in mind as a goal, because the Ninth Circuit does not see marriage in the same way that the supporters of Proposition 8 do. Nonetheless, the encouragement of responsible procreation is a legitimate policy goal and is rationally related to defining marriage as the union of a man and a woman.

D. Laws Are Not Unconstitutional Merely Because There Are Other Ways to Achieve a Goal.

The Ninth Circuit purports to apply rational basis review in its ruling; however, if its decision were allowed to stand, it would severely undermine the purpose of this lessened-scrutiny standard of judicial review. "[E]qual protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *FCC v. Beach Communications,*

Inc., 508 U.S. 307, 313 (1993) ("*FCC*"). "The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is unwarranted no matter how unwisely we may think a political branch has acted." *Id.* at 314.

The Ninth Circuit claims that Proposition 8 is unconstitutional because "it is at once too narrow and too broad for it changes the law far too little to have any of the effects it purportedly was intended to yield…" *Perry* at 1095. However, laws reviewed under rational basis most assuredly do not have to meet such a standard. "[T]he legislature must be allowed leeway to approach a perceived problem incrementally." *FCC* at 316; *see also Heller v. Doe*, 509 U.S. 312, 321 (1993).

Detractors of California's Proposition 8 might argue that the purpose of responsible procreation could be better achieved by increasing child support obligations for fathers who conceive without marrying, or by restricting the availability of divorce. While both propositions may be true, they are also irrelevant to Proposition 8's Constitutionality. The people of California have the right to decide for themselves the ways in which they want to either restrict or liberalize their marriage laws – or not. Moreover, it is virtually incontestable that almost *any* significant liberalization of the marriage laws will have at least *some* effect on the

broader social structure.[7] Accordingly, it would be the rare marriage law change that would *not* be rationally related to some legitimate purpose. As this Court has stated:

> [N]o legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth… than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony.

Murphy v. Ramsey, 114 U.S. 15, 45 (1885).

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[7] *See e.g.* Lynn D. Wardle, *The "Withering Away" of Marriage: Some Lessons from the Bolshevik Family Law Reforms in Russia, 1917-1926*, 2 Geo. J. L. & Pub. Policy 469, at 470,479, and 489 (Summer 2004) (The Bolsheviks believed, along ideological Marxist lines, that marriage as it existed in Western society would eventually "wither away," but that the new state should help that process along since "bourgeois, monogamous" traditional marriage perpetuated an oppressive, unjust socio-economic order. The dissolution of marriage would legally facilitate the advent of a true communist state. Bolshevik family law sought to transfer the responsibility of child rearing from parents to the state, since the family, together with all property relations, was considered to be the root of all social ills.). The consequences of early Bolshevik family engineering were documented as: an epidemic of divorces; economic hardship on women and children, particularly among the peasantry; an increase in "shelterless" (*bezprizorni*) children; and an ultimately diminished social status for women despite the feminist Bolshevik rhetoric. *See* "The Russian Effort to Abolish Marriage," The Atlantic, July 1926, available at http://www.theatlantic.com/magazine/archive/1926/07/the-russian-effort-to-abolish-marriage/306295/

Accordingly, the people of California may make a distinction between couples who can procreate unintentionally and couples who cannot to increase the chances of responsible procreation *even if* that goal could be achieved in other ways. "The problems of government are practical ones and may justify, if they do not require, rough accommodations – illogical, it may be, and unscientific." *Heller v. Doe*, 509 U.S. 312, 321 (1993) (internal citation omitted). The Ninth Circuit's arguments attacking the logic of Proposition 8's supporters could be made against virtually any law or set of laws that gives benefits to some but not others (such as provisions of the tax code, for instance). As this Court has explained:

> But the Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all. It is enough that the State's action be rationally based and free from invidious discrimination… …Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure….

Dandridge v. Williams, 397 U.S. 471, 486-487 (1970) (internal citation omitted).

II. THE NINTH CIRCUIT RULING IMPROPERLY EXPANDS EQUAL PROTECTION LIMITS ON STATE ACTION.

A. The Ninth Circuit Misinterprets *Romer v. Evans* and *Crawford*.

The Ninth Circuit can find no support for its ruling other than twisting select principles from *Romer v. Evans*. In *Romer*, the Court struck down Colorado Amendment 2 as "inexplicable by anything but animus toward the class it affects," with proffered justifications that were "impossible to credit." *Romer* at 632, 635. Since *Romer* was the rare case where the Court took the extraordinary step of striking down a law for having no legitimate purpose, the Court took care to emphasize the breadth and far-reaching nature of the law it was striking down.

The law struck down in *Romer* – Colorado Amendment 2 – was understood by both the Colorado Supreme Court and the U.S. Supreme Court to be so broad as to actually exclude homosexuals from participation in the political process. "*Amendment 2*, in explicit terms… prohibits all legislative, executive or judicial action at any level of state or local government designed to protect the named class, a class we shall refer to as homosexual persons or gays and lesbians." *Romer* at 624. "Homosexuals are forbidden the safeguards that others enjoy or may seek without constraint." *Id.* at 634. Amendment 2 removed "protections against exclusion from an almost limitless number of

transactions and endeavors that constitute ordinary civic life in a free society." *Id.* at 631. "A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense." *Id.* at 633. In other words, Colorado Amendment 2 revoked broad rights of tremendous financial and political importance to anyone (Proposition 8, on the other hand, is about a word).

It was this far-reaching aspect of Colorado Amendment 2 – the "peculiar property of imposing a broad and undifferentiated disability on a single named group" and the law's "exceptional" nature – which caused the Supreme Court to strike it down upon rational basis review. *Id.* at 632. To extend *Romer's* reasoning to strike down a very unexceptional definition of marriage as between a man and a woman would open the door to the nullification of many legal classifications with which the courts disagree.

Furthermore, not only was the law in *Romer v. Evans* much broader than Proposition 8, but the *primary rationale* offered in support of Colorado Amendment 2 was objection to homosexuality. *Romer* at 635 ("The primary rationale the State offers for Amendment 2 is respect for other citizens' freedom of association, and in particular the liberties of landlords or employers who have personal or religious objections to homosexuality."). The very reason behind Colorado Amendment 2 was therefore preserving people's freedom to disapprove of

homosexuality. This is quite different from the rationales offered by supporters of Proposition 8.

The logic of *Romer* in striking the Colorado law was therefore partly found in this rationale offered in support of the law. And the *Romer* Court recognized that the explanation of the purpose of the law is constitutionally significant: "Even laws enacted for broad and ambitious purposes often can be explained by reference to legitimate public policies which justify the incidental disadvantages they impose on certain persons." *Id*.

Finally, the Ninth Circuit decision states that only the act of "taking away" same-sex marriage once granted is unconstitutional. However, this rationale conflicts with past Supreme Court precedent in *Crawford v. Board of Education*, 458 U.S. 527 (1982) ("*Crawford*"). The lower court implies that even if reasons other than animus could explain a decision *not to extend* the option of martial union to same sex couples, *only animus* can explain taking away that option once it has been extended. *Perry* at 1093. However, in *Crawford*, the Supreme Court rejected the notion that "once a state chooses to do 'more' than the Fourteenth Amendment requires, it may never recede." *Crawford* at 535. The Ninth Circuit's decision and interpretation of *Romer v. Evans* cannot be reconciled with *Crawford*, and its attempts to do so are unpersuasive. *Perry* at 1084-1085.

B. Proposition 8 Did Not "Take Away" Rights, But Merely *Re-affirmed* a Prior Democratic Decision.

The Ninth Circuit relies heavily on the argument that Proposition 8 is unlawful because it functioned to "*take away*" a previously granted right. *Perry* at 1085, 1088, 1092, 1095. However, a review of the history of marriage laws in California shows that Proposition 8 did not "take away" any established right. Rather, the purpose of Proposition 8 was merely to overrule the Supreme Court of California, which had temporarily changed the definition of marriage to one that the people of California never intended. The Ninth Circuit's description of the California Constitution as having "previously guaranteed" the designation of marriage to same-sex couples is a strained reading of the history of same-sex marriage in California. Based on this reading, one would imagine the state constitution had either been written or amended to explicitly guarantee such a "right." But in fact, the State Supreme Court had merely *re-interpreted* the California Constitution in this way. *See In re Marriage Cases*, 43 Cal. 4th 757 (2008). Proposition 8 was therefore a democratic act of correcting an overreaching state judiciary rather than the withdrawal of legal protections previously given.

Traditionally, the marriage laws of California allowed only opposite-sex couples to marry. The California Family Code, after 1977, defined marriage as a "personal relation arising out of a civil contract between a man and a woman, to which the consent

of the parties capable of making that contract is necessary."[8] The people of California were satisfied with a definition of marriage which included only opposite-sex couples, and so they passed Proposition 22 in the year 2000, which merely reiterated this definition.[9] It was only the California Supreme Court's sudden decision finding a right to same-sex marriage that changed this. Proposition 8 was therefore intended to *reverse* this act of judicial overreach. Indeed, rather than being too broadly or narrowly drawn as the lower court suggests, *Perry* at 1095, Proposition 8 was quite tailored to present the people with an option to change *only* what the California Supreme Court had changed. Specifically, California offered civil unions previously and Proposition 8 did not remove them. Rather, Proposition 8 merely *re-affirmed* the language of an initiative passed 8 years before. Accordingly, the only party to this political and legal back and forth which "took away" something already granted was the California Supreme Court.

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[8] In 1977, the provision amended was Cal. Civ. Code Section 4100. In 1993, the provision was moved to Section 300(a) of the Family Code, reading: "Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary."

[9] Wikipedia, *California Proposition 22 (2000),* http://en.wikipedia.org/wiki/California_Proposition_22_(2000)

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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