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July 11, 2008

VIA HAND DELIVERY

California Supreme Court
350 McAllister Street
San Francisco, CA 94102

RE: *Brian Bennett, Xavier Barrerra, Audrey Koh and Equality California v. Debra Bowen, in her official capacity as Secretary of State*
California Supreme Court Case No. No. S164520
**Amici Curiae Letter in Support of Petition for Extraordinary Relief,
Including Writ of Mandate and Request for Stay**

To The Honorable Chief Justice and Associate Justices:

We write on behalf of the Bar Association of San Francisco (“BASF”), Legal Aid Society – Employment Law Center (“LAS-ELC”), Lawyers’ Committee for Civil Rights of the San Francisco Bay Area (“LCCR”), the Equal Justice Society (“EJS”), and The Impact Fund (collectively “amici”).

Amici respectfully submit this letter to urge the Court to grant the Petition for Extraordinary Relief. This Court is charged with being the ultimate arbiter of the integrity of the ballot initiative process. The Court should not permit Proposition 8 to be placed on the ballot because the initiative measure has not satisfied the requirements of the California Elections Code.

The Legislature has taken pains to ensure that the initiative process is not marred by misinformation or confusion, and that the public receives full and objective analyses of proposed ballot initiatives. For this reason, state agencies are required by law to prepare summaries and fiscal impact statements that provide voters with information regarding the substance and effect of proposed initiatives. The Legislature has several times expanded the requirements for fiscal impact statements, indicating their importance to an informed electorate. The summaries and

fiscal impact statements of proposed initiatives historically have informed potential signers when the effect or fiscal impact of a proposed measure depends upon pending litigation or future court interpretations. Amici's Request for Judicial Notice contains numerous samples of such fiscal impact statements, which specifically informed voters of the possible effects of pending litigation or future court interpretations.

The summary of Proposition 8 that was circulated to the public was misleading and inaccurate. It stated that "[t]he measure would have no fiscal effect on state or local governments. This is because there would be no change to the manner in which marriages are currently recognized by the state." At the time the summary was drafted, however, the Court had granted review in *In re Marriage Cases*, Case No. S147999. It was clear that the effect of the initiative, and its fiscal impact, would be dependent on the Court's decision in that case. By failing even to mention the case pending before this Court, the initiative summary withheld critical information from the public. Fair procedures demand that voters receive full and accurate information, not partial truths. That did not occur here. Permitting Proposition 8 to be placed on the ballot would undermine the integrity of the initiative process.

The arguments made by Real Parties in Interest and the Attorney General that the Court should forgive the inaccuracy of the petition summary because there was no bad faith in drafting the summary, and that the summary can be corrected on the ballot, are unavailing. The doctrine of substantial compliance cannot save a petition that contains "confusing or misleading information." *Ruiz v. Sylva* (2002) 102 Cal.App.4th 199, 213. Since persons who signed the petitions to put Proposition 8 on the ballot were provided inaccurate information, the defect is not curable. A large number of those persons might not have signed the petition had they been informed that the issue was pending before this Court, that by the time the initiative reached the ballot it might constitute a change in the way marriage was recognized in California, and that voting in favor of the initiative might cost state and local governments hundreds of millions of dollars in lost revenues. Similar language about pending litigation and future court interpretation is commonly included in initiative summaries, but was not here. To place the initiative on the ballot under these circumstances would circumvent the purposes of the procedures set forth in the Elections Code.

Additionally, Proposition 8 should be withheld from the ballot because where an initiative would change the Constitution so as to deprive a suspect class of individuals of rights set forth in Article I's Declaration of Rights, it necessarily affects the underlying principles of the Constitution in a way that constitutes a revision, and not a mere amendment. This Court is the guardian of Article I rights, and should require that a revocation of these fundamental rights as to a suspect class such as that proposed by Proposition 8, be treated as a revision of the Constitution.

Interest of the Amici Curiae

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. 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 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 an *amicus curiae* brief with this Court in *In re Marriage Cases*, Case No. S147999.

LAS-ELC is a non-profit public interest law firm that advocates to improve the working lives of disadvantaged people. Since 1970, LAS-ELC has represented plaintiffs in cases involving the rights of employees in the workplace, particularly those cases of special import to communities of color, women, recent immigrants, individuals with disabilities, lesbian, gay, bisexual and transgendered people, and the working poor. In representing the interests of these groups, LAS-ELC frequently relies upon the fundamental rights afforded individuals and minorities found in Article I of the State Constitution. Accordingly, LAS-ELC has a long-standing interest in preserving these core protections, which should be upheld in the face of majoritarian power. LAS-ELC has appeared before this Court, and the United States Supreme Court, on numerous occasions, both as counsel for plaintiffs as well as in an *amicus curiae* capacity.

LCCR is a civil rights and legal services organization dedicated to advancing the rights of people of color, low-income people, immigrants and refugees, and other under-represented groups and individuals. Founded in 1968 by leading members of the San Francisco bar, the Committee is the local affiliate of the national Lawyers' Committee for Civil Rights under Law, which was founded in 1963 at the behest of President Kennedy. The Lawyers' Committee has, since its inception, been actively involved in combating discrimination and promoting the principles of equal protection. It has litigated numerous discrimination cases, often as co-counsel with members of the private bar. In addition, the Lawyers' Committee has advocated at the local, state, and national levels for legislation and policy that promote equal opportunity for all.

EJS is a national organization of scholars, advocates and citizens that seeks to promote equality and enduring social change through law and public policy, public education, and research. The primary mission of EJS is to combat the continuing scourge of racial discrimination and inequality in America. Specifically, EJS works to ensure that anti-discrimination law and jurisprudence continue to address racial and societal inequities in a responsible fashion. Consistent with that mission, EJS works to confront all manifestations of

invidious discrimination and second-class citizenship. Such threats to our collective dignity spring from a common source and endanger us all, no matter the context in which they arise.

The Impact Fund is a non-profit foundation that provides funding, training, and co-counsel to public interest litigators across the country, assisting in civil rights cases. It offers training programs, advice and counseling, and amicus and direct representation. It has appeared in numerous cases before this Court, including *Frye v. Tenderloin Housing Clinic* (2006) 38 Cal.4th 23, and *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319. It is a California State Bar Legal Services Trust Fund Support Center, providing services to legal services projects across the state.

Amici are familiar with the issues in this case and unreservedly support the position and the arguments of the Petitioners. The outcome of this case will implicate fundamental principles of integrity and fairness essential to our initiative process, principles that amici have an interest in protecting. In this letter brief, amici focus on the importance of presenting voters with summaries and fiscal impact statements that are truthful, accurate, transparent, and not misleading. This is essential to avoid confusion by voters and to safeguard the integrity of the ballot initiative process. A clear understanding by signers of a petition is particularly crucial when they are taking the momentous step of placing on the ballot an initiative that would change the California Constitution by denying fundamental rights to a class of people as to whom this Court has ruled strict scrutiny should apply.

Why the Petition Should Be Granted

I. The Petition Circulated to the Public Is Fatally Defective Because It Failed to Provide Accurate Information About the Effect of the Proposed Initiative Measure.

- A. A petition that fails to provide voters with information necessary for them intelligently to exercise their rights does not comply with the requirements of the Elections Code.

A petition is fatally defective and should not be placed on the ballot where, as here, the petition does not conform to the procedural requirements of the Elections Code in such a way that undermines the very objectives of those requirements.

Although a petition's "technical defects of form" may be excused where there is substantial compliance with requirements of the Elections Code, "actual compliance is required in respect to the substance essential to the objective of the statute . . ." *Ibarra v. City of Carson* (1989) 214 Cal.App.3d 90, 99 (citation omitted). Where the purpose of the statutory requirement is thwarted, a claim of substantial compliance will not save the petition. *Assembly v. Deukmejian*

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(1982) 30 Cal.3d 638, 649. Thus, “[w]here the purpose of the statutory requirement is to give information to the public to assist the voters in deciding whether to sign or oppose the petition, the substantial compliance argument is often rejected and strict compliance held essential.” *Ibarra*, 214 Cal.App.3d at 99.

Consequently, “[n]o court has applied the doctrine of substantial compliance to save a petition that provides confusing or misleading information.” *Ruiz*, 102 Cal.App.4th at 213. “The doctrine of substantial compliance . . . cannot save a petition that misinforms the voters or *fails to inform the voters of information necessary to exercise intelligently their rights.*” *Id.* at 211 (internal quotation marks omitted) (emphasis added).

Amicus Curiae Attorney General Brown argues that the Court should uphold the petition, even if the petition did not comply fully with the Elections Code, because there was no bad faith in preparing the petition’s summary and fiscal impact statement. Prelim. *Amicus Curiae* Br. of Attorney General at p. 14. But that is not the appropriate standard. Rather, the question for the Court is whether the petition circulated to voters fulfilled the statutory purposes of the Elections Code and provided voters the information necessary intelligently to decide whether to sign the petition.

- B. The purpose of Elections Code Section 9005 is to inform voters of the estimated fiscal impact of proposed initiative measures.

Section 9004 of the Elections Code requires that any initiative petition circulated to voters include a title and summary of the proposed initiative measure. Elec. Code §9004. Section 9005 further requires that the summary of the petition include an “estimate of the amount of any increase or decrease in revenues or costs to the state or local government,” or, if a “reasonable estimate” cannot timely be prepared, “an opinion as to whether or not a substantial net change in state or local finances would result if the proposed initiative is adopted.” Elec. Code §9005.

This Court has explained that the purposes served by the ballot title and summary requirements of the Elections Code include “reduc[ing] the risk that voters were misled when signing the petition,” and “allow[ing] verification that the signers had a neutral explanation of the proposed ordinance available to them when they signed.” *Costa v. Superior Court* (2006) 37 Cal.4th 986, 1020-21 (internal quotation marks omitted).

Sections 9004 and 9005 of the Elections Code are designed to ensure that voters asked to sign a petition have accurate and objective information regarding the nature of the proposed initiative. See *Boyd v. Jordan* (1934) 1 Cal.2d 468, 473-74. In enacting Section 9005, the Legislature specifically required that initiative summaries provided to the public include a

description of the initiative's estimated fiscal impact. The evolution of Section 9005 demonstrates that the Legislature has expanded the reach of the statement in order to ensure that the public receive complete information about fiscal impacts. Thus, whereas earlier versions of Section 9005 narrowly required that a petition summary identify any increase in state costs that would not be financed by the proposed measure,¹ the Legislature expanded that requirement to mandate an overall assessment of whether the initiative would result in an "increase or decrease in revenues or costs" to the government, or whether it would result in a "substantial net change in state or local finances." Elec. Code §9005. This expansion reflects the Legislature's continuing interest in ensuring that voters are fully informed about the fiscal impacts of a proposed ballot initiative.

The importance of the fiscal impact statement for voter education has been broadly recognized. For example, the National Conference of State Legislatures concluded that fiscal impact statements "are an important component of voter education on initiative proposals." National Conference of State Legislatures, *Initiative and Referendum in the 21st Century*, p. 27 (July 2002) (recommending that states with voter initiative processes requires fiscal impact statements); see also *Stadter v. Newbry* (Or. 1952) 248 P.2d 840, 843 (purpose of fiscal impact statement is "to give information to the voters of the state concerning the cost to the state of any initiative or referendum measure (if enacted into law) to which it applies and thus to aid the voter to exercise his franchise the more intelligently"), overruled on other grounds in *Yancy v. Shatzer* (Or. 2004) 97 P.3d 1161.

By requiring compliance with Section 9005, the Legislature has made the judgment that the fiscal impact of proposed initiatives is both significant and necessary information for voters to have – not only when being asked to vote on a proposed initiative, but also when they are asked to sign an initiative petition.²

¹ See Stats. 1968, c. 1444, p. 2855, §1 (former §3501.3, requiring fiscal impact statements for measures which, if adopted "would require a substantial increase in state costs and which [do] not contain a method of financing the increased cost"); Stats. 1975, c. 414, §1, and Stats. 1975, c. 955, §1 (amending former §3501.3, and expanding application to all initiative measures, the substance of which "would affect revenues or expenditures of the state or local government").

² The Legislature's emphasis on ensuring that voters receive accurate information about the fiscal impact of ballot initiatives is further evidenced in the procedures required for describing initiative measures in the ballot pamphlet. Section 9087 of the Elections Code requires the legislative analyst to prepare "an impartial analysis of the measure describing the measure and includ[e] a fiscal analysis of the measure showing the amount of any increase or decrease in revenue or cost to state or local government." Elec. Code §9087. Moreover, the Legislature has tried to insure that this fiscal impact statement is not overlooked or

- C. The petition's summary and fiscal impact statement failed to provide voters with an accurate estimate of the ballot measure's effect.

The summary and fiscal impact statement circulated to the public were inaccurate and misleading. The petition summary stated:

The measure would have no fiscal effect on state or local governments. This is because there would be no change to the manner in which marriages are currently recognized by the state.

Petitioners' Request for Judicial Notice, Exh. 3.

The petition's summary fails to provide a reasonable and accurate description of the ballot measure's effect. This Court granted review in the *In re Marriage Cases* on December 20, 2006; and the Legislative Analyst's report was prepared on November 14, 2007. Thus, at the time the summary was prepared, it was clear that this Court would be ruling on the constitutionality of the statute prohibiting same-sex couples from marrying. Indeed, if this Court had not been reviewing the constitutionality of the way in which marriages were then-recognized in California, there would presumably have been no reason for the initiative at all.

The fact of this anticipated ruling is information that any reasonable fiscal estimate or opinion should have taken into account, and a fact that should have been provided to voters who were asked to sign the initiative petition. Further, voters should have been informed that, depending on the outcome of the case pending in this Court, the initiative could have significant fiscal impacts. Were the initiative to be adopted, the loss in revenues to the State would likely exceed \$680 million over three years, with corresponding losses to state and local governments of \$63 million. Sears and Badgett, *The Impact of Extending Marriages to Same-Sex Couples on the California Budget* (Williams Institute June 2008), available at <<http://www.law.ucla.edu/williamsinstitute/publications/EconImpactCAMarriage.pdf>>.

This Court has made clear that partial truths are not sufficient to effectuate the Legislature's intent that voters have full information about the fiscal impact of proposed initiatives: "A title which tells the prospective signer that certain taxes are abolished, without telling him that a portion of the abolished taxes are imposed on real property, is definitely misleading." *Clark v. Jordan* (1936) 7 Cal.2d 248, 252; see also *Ruiz*, 102 Cal.App. at 211

misunderstood by the voters: "Any estimate of increased cost to local governments shall be set out in boldface print in the ballot pamphlet. The analysis shall be written in clear and concise terms which will easily be understood by the average voter, and shall avoid the use of technical terms wherever possible." *Id.*

(petition that “fails to inform voters of information necessary to exercise intelligently their rights” is fatally flawed) (internal quotation marks omitted). Proposition 8 failed to provide relevant and material information that voters needed in order to make informed decisions as to whether to sign the petition.

- D. Fiscal impact summaries routinely identify pending litigation and future court interpretations that may affect the fiscal impact of proposed initiatives.

The argument that the Legislative Analyst could not account for the uncertainty created by this Court’s grant of review in *In re Marriage Cases* is unpersuasive. The Legislative Analyst’s fiscal impact statements routinely inform voters that the fiscal impact of a particular ballot initiative will depend on the outcome of pending litigation. In 1983, the fiscal impact summary for a proposed ballot initiative concerning property assessments set forth two possibilities: “[i]f pending litigation does not change current assessment practices,” and “[i]f pending litigation overturns current assessment practices.” Letter from John K. van de Kamp, Attorney General of California and Robert Burton, Deputy Attorney General of California to March Fong Eu, Secretary of State of California re: A.G. File No. SA83RF0010 (August 4, 1983). Similarly, numerous other initiative summaries have noted that fiscal impacts would depend on the outcome of pending litigation. *See, e.g.*, Letter from Daniel Lungren, Attorney General of California and Mary Whitcomb, Initiative Coordinator to March Fong Eu, Secretary of State of California re: A.G. File No. SA91RF0035 (January 28, 1992) (noting that “savings of tens of millions of dollars *may result depending on outcome of pending legal challenge*”) (emphasis added); Initiative: June Primary and Campaign Finance Reform Initiative Statute, A.G. File No. SA2000RF0008 (2000) (stating that “net fiscal effect of this new initiative is unknown at this time because it *depends upon . . . whether the courts uphold Proposition 208*”) (emphasis added); Initiative: Political Contribution Limits Initiative Statute, Attorney General File No. SA2000RF0004 (2000) (same); Initiative: September Primary and Campaign Finance Reform Initiative Statute, A.G. File No. SA2000RF0007 (2000) (same).³

Even where there is not specific, pending litigation that will materially affect the assessment of the proposed initiative’s fiscal impact, the Legislative Analyst regularly identifies where future court interpretations may be relevant to that impact. For example, in just the past three years, there have been at least 24 instances where the Legislative Analyst prepared analyses of proposed ballot initiatives that would have affected the rights of same-sex couples, and concluded that the fiscal impact of these initiatives would “depend in large part on future court

³ Copies of these initiatives are available at <<http://library.uchastings.edu/cgi-bin/starfinder/0?path=calinit.txt&id=webber&pass=webber&OK=OK>>; copies are also provided as Exhibits 1-5 in the accompanying Request for Judicial Notice.

interpretations.”⁴

Also unpersuasive is the suggestion that identifying the uncertainty of the initiative’s fiscal impact would have been improperly “hypothetical” or “speculative.” See Prelim. Opp’n of Real Parties in Interest, at pp. 34-35; Prelim. *Amicus Curiae* Br. of Attorney General, at p. 4. In *California Family Bioethics Council, LLC v. California Institute for Regenerative Medicine* (2007) 147 Cal.App.4th 1319, 1349-50, the court rejected an argument that a fiscal impact statement was misleading because it was speculative. There, the fiscal summary of an initiative dealing with stem cell research referred to “[u]nknown potential state and local revenue gains and cost savings to the extent that . . . projects funded by this measure result in additional economic activity and reduced public health care costs.” *Id.* at 1350 (quoting summary). The court reasoned that “[s]uch speculation, phrased in conditional language as this was, is not misleading, let alone misleading to the degree that would ‘prevent the voters from making informed choices.’” *Id.* at 1350 (quoting *Horwath v. City of East Palo Alto* (1989) 212 Cal.App.3d 766, 777).

The omission from the fiscal impact statement of the information that the initiative could significantly affect the revenues of state and local governments undermines the purpose of the fiscal impact statement requirement. By omitting this information, the petition “withhold[s] vital information” from voters and does not comply with the statutory requirements. *Costa*, 37 Cal.4th

⁴ See, e.g., Mem. from Elizabeth Hill, Legislative Analyst of the State of California and Tom Campbell, Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2005RF0082 (July 11, 2005) (describing “[u]nknown, but probably not significant, fiscal effect on state and local governments. *The impact would depend in large part on future court interpretations.*”) (emphasis added); Mem. from Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Acting Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2005RF0106 (November 16, 2005) (“Unknown, but potentially some savings for state and local governments. *The impact would depend in large part on future court interpretations.*”) (emphasis added); Mem. from Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: Initiative No. 06-0029 (July 19, 2006) (“Unknown, but potential increased costs for state and local governments. *The impact would depend in large part on future court interpretations.*”) (emphasis added). All 24 fiscal impact statements are available at <http://www.lao.ca.gov/laoapp/ballot_source/Initiatives.aspx>; copies are also provided as Exhibits 6-29 of the accompanying Request for Judicial Notice.

at 1016; *see also Boyd*, 1 Cal.2d at 472-73.⁵ The failure to inform the electorate of pending litigation, and the potential impact of that pending litigation, is misleading. Because the summary was defective when signatures were gathered, the defect cannot be cured.

Proposition 8 fails to satisfy the threshold procedural requirements set forth in the Elections Code. The petition suffers from a statutory defect that affected the quality of information provided to voters asked to sign the petition. *San Francisco Forty-Niners v. Nishioka* (1999) 75 Cal.App.4th 637, 644; *see also Costa*, 37 Cal.4th at 1006. “The failure to provide information or the communication of misinformation – threaten the proper operation and the integrity of the election process.” *Ruiz*, 102 Cal.App.4th at 213 (citing *San Francisco Forty-Niners*, 75 Cal.App.4th at 642). Proposition 8 should be removed from the ballot.

II. This Court Should Treat Proposition 8 as a Constitutional Revision Because it Seeks to Deny a Suspect Class a Fundamental Right Arising Under Article I of the California Constitution.

A proposition revises the Constitution where it “accomplish[es] . . . far reaching changes in the nature of our basic governmental plan.” *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 223. In *McFadden v. Jordan* (1948) 32 Cal.2d 330, 333, this Court explained that the Constitution’s provisions for implementing revisions “indicate the will of the people that the underlying principles upon which [the Constitution] rests . . . be of a . . . permanent and abiding nature.”

Petitioners present a vitally important issue of constitutional interpretation: does a constitutional modification that seeks to deny equal protection of the laws and fundamental rights arising under Article I of the California Constitution to a suspect class constitute a revision of the Constitution, as opposed to a mere amendment. Amici do not repeat the many meritorious arguments made by Petitioners and other amici regarding why Proposition 8 would revise, not

⁵ This case is qualitatively different from cases involving technical requirements of form that were found to have no affect on voters’ perception of the petition. *See, e.g., Cal. Teachers Ass’n v. Collins* (1934) 1 Cal.2d 202 (use of 12-point rather than 18-point font substantially complied with statute); *Assembly v. Deukmejian*, 30 Cal.3d at 652-53 (interleaved pages and small type size did not frustrate signers’ ability understand what they were being asked to sign); *see also Costa*, 37 Cal.4th at 1022 (slight difference in version of initiative submitted to Secretary of State would not have changed the title or summary or affected anyone’s decision whether to sign petition). This case does not involve just a “typographical” or “clerical” error. Rather, it involves a substantive misstatement of the legal and fiscal effect of the initiative that is at odds with past practices. There can be no reasonable argument that such misstatements fulfill the Elections Code’s purpose of providing accurate information to the voters.

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amend, the California Constitution. We join in those arguments, and here only make two brief points regarding the profound effect that Proposition 8, if enacted, would have on the nature of our Constitution and system of government.

First, Proposition 8 would alter the Constitution's basic principle of equal protection of law by denying gays and lesbians a fundamental constitutional right. See *In re Marriage Cases* (2008) 43 Cal.4th 757, 781 (identifying marriage as "one of the fundamental constitutional rights embodied in the California Constitution").

Article I of the Constitution guarantees a number of fundamental rights to *all* individuals. Currently, none of the protections set forth in the Declaration of Rights are limited to a particular class of people; nor do any of the existing rights exclude particular individuals from their protection. As this Court recently explained, the very nature of a fundamental right is that it cannot be "withheld from a class of persons" (*id.* at 824); instead, it must be guaranteed to "*all.*" *Id.* at 820 (emphasis in original).

Proposition 8 would eviscerate this core principle by making a fundamental right available only to a circumscribed group of people. The immediate impact of Proposition 8 would be to deny gays and lesbians the fundamental right to marry the person of one's choice. But permitting such an amendment without the more deliberative process required for revisions of the Constitution would alter the very nature of the Declaration of Rights: any person or group could be stripped of equal protection and fundamental rights by a simple majority vote. See *In re Marriage Cases*, 43 Cal.4th at 852 (describing the Bill of Rights as "plac[ing] [certain subjects] beyond the reach of majorities") (internal quotation marks omitted); see also Peter J. Galie and Christopher Bopst, *Changing State Constitutions: Dual Constitutionalism and the Amending Process* (1996) 1 Hofstra L. & Pol'y Symp. 27, 46 (warning that the initiative process risks becoming a "mechanism allowing a tyrannous majority, inflamed by prejudice or temporary hysteria, to deprive minorities of basic rights"). Proposition 8 would thus strike at the core "underlying principles" of the Constitution. *McFadden*, 32 Cal.2d at 333.

Second, Proposition 8 would alter the system of government established in the California Constitution. Our government is a majoritarian one, but one that relies on a system of "checks and balances to protect any one branch against the overreaching of any other branch." *Bixby v. Pierno* (1971) 4 Cal.3d 130, 141. One of the most "fundamental" protections is the courts' authority to "preserve constitutional rights, whether of individual or minority, from obliteration by the majority." *Id.*; see also *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 353 (finding constitutional revision where Court would no longer have had the right to interpret fundamental constitutional rights under the State Constitution). The guarantees of individual rights and equal protection are at the heart of our governmental structure and the Constitution. See *Sands v.*

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Morongo Unified School Dist. (1991) 53 Cal.3d 863, 902-03 (Lucas, C. J., concurring) (role of Constitution is to “safeguard[] individual rights and liberties”).⁶

The fundamental rights set forth in Article I should not be infringed upon except in accordance with the more deliberative procedures required for revisions of the Constitution.

Conclusion

For the foregoing reasons, amici respectfully urge this Court to grant the relief sought in the Petition for Extraordinary Relief.

Dated: July 11, 2008

Respectfully submitted,

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⁶ Thus, in *People v. Frierson* (1979) 25 Cal.3d 142, 187, on which Real Parties in Interest rely, the Court noted that an initiative reinstating the death penalty was not a constitutional revision in part because it did not undermine the judiciary’s authority “to safeguard against disproportionate treatment.”

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Lawyers’ Committee for Civil Rights of the San
Francisco Bay Area, Equal Justice Society, and The
Impact Fund

Appendix

List of Initiative Fiscal Impact Statements Referring to
Existence of Pending Litigation or Effect of Future Court Interpretations⁷

1. Letter from John K. van de Kamp, Attorney General of California and Robert Burton, Deputy Attorney General of California to March Fong Eu, Secretary of State of California re: A.G. File No. SA83RF0010 (August 4, 1983).

2. Letter from Daniel Lungren, Attorney General of California and Mary Whitcomb, Initiative Coordinator to March Fong Eu, Secretary of State of California re: A.G. File No. SA 91 RF 0035 (January 28, 1992).

3. Initiative: June Primary and Campaign Finance Reform Initiative Statute, A.G. File No. SA2000RF0008 (2000).

4. Initiative: Political Contribution Limits Initiative Statute, Attorney General File No. SA2000RF0004 (2000).

5. Initiative: September Primary and Campaign Finance Reform Initiative Statute, A.G. File No. SA2000RF0007 (2000).

6. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Tom Campbell, Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2005RF0082 (July 11, 2005).

7. Second Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Tom Campbell, Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2005RG0083 (July 11, 2005).

8. Third Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Tom Campbell, Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2005RF0077 Amdt. #2-NS (July 11, 2005).

9. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Tom Campbell, Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File # SA2005RF0093 (September 9, 2005).

⁷ For the Court's convenience, amici are providing copies of the listed fiscal impact statements in an accompanying Request for Judicial Notice in Support of Letter Brief of Amici Curiae. They are also available at <<http://library.uchastings.edu/cgi-bin/starfinder/0?path=calinits.txt&id=webber&pass=webber&OK=OK>> and <http://www.lao.ca.gov/laoapp/ballot_source/Initiatives.aspx>.

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10. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Acting Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2005RF0100 (October 27, 2005).

11. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Acting Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2005RF0102 (October 28, 2005).

12. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Acting Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2005RF0104 (November 4, 2005).

13. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Acting Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2005RF0106 (November 16, 2005).

14. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Acting Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2005RF0108 (November 18, 2005).

15. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Acting Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2005RF0109 (November 22, 2005).

16. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Acting Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2005RF0115 (November 29, 2005).

17. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Acting Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2005RF0116 (November 30, 2005).

18. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Acting Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2005RF0117 (December 6, 2005).

19. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Acting Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2005RF0118 (December 8, 2005).

20. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: A.G. File No. SA2006RF0018 (March 10, 2006).

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21. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: Initiative No. 06-0027 (May 24, 2006).

22. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: Initiative No. 06-0028 (June 14, 2006).

23. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Director of Finance of the State of California to Bill Lockyer, Attorney General of the State of California re: Initiative No. 06-0029 (July 19, 2006).

24. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Director of Finance of the State of California to Edmund Brown, Attorney General of the State of California re: A.G. File No. 07-0014 (May 30, 2007).

25. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Director of Finance of the State of California to Edmund Brown, Attorney General of the State of California re: A.G. File No. 07-0020 (June 29, 2007).

26. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Director of Finance of the State of California to Edmund Brown, Attorney General of the State of California re: A.G. File No. 07-0026 (August 14, 2007).

27. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Director of Finance of the State of California to Edmund Brown, Attorney General of the State of California re: A.G. File No. 07-0061 (November 6, 2007).

28. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Director of Finance of the State of California to Edmund Brown, Attorney General of the State of California re: A.G. File No. 07-0079 (December 12, 2007).

29. Memorandum From Elizabeth Hill, Legislative Analyst of the State of California and Michael Genest, Director of Finance of the State of California to Edmund Brown, Attorney General of the State of California re: A.G. File No. 07-0098 (January 28, 2008).