

1 Patrick J. Gorman
2 Wild, Carter & Tipton
3 246 W. Shaw Avenue
4 Fresno, California 93704
5 (559) 224-2131 (tel)
6 (559) 229-7295 (fax)
7 pgorman@wctlaw.com

Christopher M. Gacek
Senior Fellow for Regulatory Affairs
Family Research Council
801 G. Street, N.W.
Washington, D.C. 20001
(202) 393-2100 (tel)
(202) 393-2134 (fax)
cmg@FRC.ORG
Pro Hac Vice Application Pending

8 Paul Benjamin Linton
9 Special Counsel
10 Thomas More Society
11 921 Keystone Avenue
12 Northbrook, Illinois 60062
13 (847) 291-3848 (tel)
14 (847) 412-1594 (fax)
15 PBLCONLAW@AOL.COM
16 Pro Hac Vice Application Pending

Thomas Brejcha
President & Chief Counsel
Thomas More Society
29 S. La Salle Street Suite 440
Chicago, Illinois 60603
(312) 782-1680 (tel)
(312) 782-1887 (fax)
BREJCHA@AOL.COM
Pro Hac Vice Application Pending

Attorneys for *Amicus Curiae*
The Family Research Council

17 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

18 KRISTIN M. PERRY, SANDRA B. STIER,)
19 PAUL T. KATAMI, AND JEFFREY J. ZARILLO,)

Case No. 09-CV-2292 VRW

20 Plaintiffs,)

**MOTION FOR LEAVE TO FILE
PRE-TRIAL BRIEF OF THE
FAMILY RESEARCH COUNCIL,
AS AMICUS CURIAE, WITH
SUPPORTING DECLARATION;
[PROPOSED] ORDER**

21 vs.)

22 ARNOLD SCHWARZENEGGER, in his official)
23 capacity as Governor of California; EDMUND)
24 G. BROWN, JR., in his official capacity as)
25 Attorney General of California; MARK B.)
26 HORTON, in his official capacity as Director of)
27 the California Department of Public Health and)
28 State Registrar of Vital Statistics; LINETTE)
SCOTT, in her official capacity as Deputy Director)

Date and Time of Hearing:
To Be Determined by the Court
Judge: Chief Judge Walker
Location: Courtroom 6, 17th Floor

Perry et al v. Schwarzenegger et al

Doc. 370

1 of Health Information & Strategic Planning for the)
2 California Department of Public Health; PATRICK)
3 O’CONNELL, in his official capacity as Clerk-)
4 Recorder for the County of Alameda; and DEAN)
5 C. LOGAN, in his official capacity as Registrar-)
6 Recorder/County Clerk for the County of Los)
7 Angeles,)

8 Defendants.)

9 and)

10 PROPOSITION 8 OFFICIAL PROPONENTS)
11 DENNIS HOLLINGSWORTH, GAIL J. KNIGHT,)
12 MARTIN F. GUTIERREZ, HAK-SHING)
13 WILLIAM TAM, and MARK A JANSSON; and)
14 PROTECT MARRIAGE.COM-YES ON 8, A)
15 PROJECT OF CALIFORNIA RENEWAL,)

16 Defendants-Intervenors.)

17 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

18 PLEASE TAKE NOTICE THAT the Family Research Council respectfully requests the
19 Court’s leave to participate as *amicus curiae* in the above-captioned case in support of
20 Defendants-Intervenors through the filing of a pre-trial brief.

21 **Standard for Motion for Leave to File Brief of *Amicus Curiae***

22 The Court has broad discretion to permit third parties to participate in an action as *amici*
23 *curiae*. *Gerritsen v. de la Madrid Hurtado*, 819 F.2d 1511, 1514, n.3 (9th Cir. 1987).
24 Participation of *amici curiae* may be particularly appropriate where the legal issues have potential
25 ramifications beyond the parties directly involved or where *amici* can offer a unique perspective
26 that may assist the Court in addressing those issues. *Sonoma Falls Developers., LLC v. Nevada*
27 *Gold & Casinos, Ltd.*, 272 F. Supp.2d 919, 925 (N.D. Cal. 2003).
28

Statement of Identity and Interest of the *Amicus*

1
2 The Family Research Council (FRC) was founded in 1983 as an organization dedicated to
3 the promotion of marriage and family and the sanctity of human life in national policy. Through
4 books, pamphlets, media appearances, public events, debates and testimony, FRC's team of
5 experienced policy experts review data and analyze proposals that affect family law in policy in
6 Congress and in the executive branch. FRC also strives to assure that the unique attributes of the
7 family are recognized and respected through the decisions of the courts and regulatory bodies.

8 FRC champions marriage and family as the foundation of civilization, the seedbed of
9 virtue and the wellspring of society. FRC helps to shape public debate and formulate public
10 policies that value human life and uphold the institutions of marriage and the family. Believing
11 that God is the author of life, liberty and the family, FRC promotes the Judeo-Christian worldview
12 as the basis for a just, free and stable society. Consistent with its mission statement, FRC is
13 committed to strengthening traditional families in America and advocates continuously on behalf
14 of policies designed to accomplish that goal.

15 FRC has actively supported efforts to amend state constitutions to protect the traditional
16 understanding of marriage as a relationship that can exist only between a man and a woman. FRC
17 publicly supported the successful effort to adopt Proposition 8, the constitutionality of which is
18 the subject of the present lawsuit, as well as similar amendments in other States. FRC, therefore,
19 has a particular interest in the outcome of this case. FRC also played an instrumental role in
20 securing passage of the federal Defense of Marriage Act, the constitutionality of which would be
21 called into question by a decision of this Court declaring Proposition 8 unconstitutional on federal
22 constitutional grounds.

23 In FRC's judgment, recognition of same-sex marriages—either by state legislators or by the
24 courts—would be detrimental to the institution of marriage, to children and to society as a whole.
25 Moreover, for the reasons set forth in the accompanying brief, FRC submits that such recognition
26 is not compelled by a proper understanding and principled interpretation of the Constitution.

Reasons why *Amicus Curiae's* Expertise would be Beneficial to this Court

1
2 Apart from its policy expertise, FRC has submitted *amicus curiae* briefs defending the
3 traditional understanding of marriage in multiple cases over the past few years including *Kerrigan*
4 *v. Comm'r of Public Health* (Connecticut), *Conaway v. Deane* (Maryland), *Lewis v. Harris* (New
5 Jersey), *Hernandez v. Robles* and the companion cases consolidated for argument in the New
6 York Court of Appeals, *Shields v. Madigan* (New York Supreme Court–Appellate Division) and
7 *Anderson v. King County* (Washington). In that capacity, FRC has developed an expertise in
8 many of the issues that are stake in the present litigation.

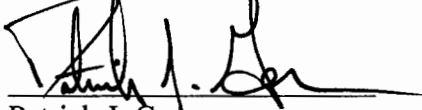
9
10 In addition to the expertise of the *amicus*, the principal author of the proposed brief, Paul
11 Benjamin Linton, has a special expertise in litigation defending the traditional understanding of
12 marriage. Mr. Linton has submitted *amicus curiae* briefs in most of the state and federal cases
13 that have been brought to date challenging—on state or federal constitutional grounds—state
14 constitutional amendments, state statutes and state policies reserving the institution of marriage,
15 its name and/or its incidents and benefits to opposite-sex couples. Those cases include *In re*
16 *Marriage Cases* (California Supreme Court); *Kerrigan v. Comm'r of Public Health* (Connecticut
17 Supreme Court), *Morrison v. Sadler* (Indiana Court of Appeals), *Varnum v. Brien* (Iowa Supreme
18 Court), *Conaway v. Deane* (Maryland Court of Appeals), *Goodridge v. Dep't of Public Health*
19 (Massachusetts Supreme Judicial Court), *Snetsinger v. Montana University System* (Montana
20 Supreme Court), *Citizens for Equal Protection v. Bruning* (Fifth Circuit); *Lewis v. Harris* (New
21 Jersey Superior Court–Appellate Division and New Jersey Supreme Court), *Hernandez v. Robles*
22 (New York Supreme Court–Appellate Division and New York Court of Appeals), *Samuels v. New*
23 *York State Dep't of Health* (New York Supreme Court–Appellate Division, consolidated with
24 *Hernandez v. Robles* in the New York Court of Appeals); *Shields v. Madigan* (New York
25 Supreme Court/Appellate Division, consolidated with *Hernandez v. Robles* in the New York
26 Court of Appeals); *Li v. Oregon* (Oregon Supreme Court), and *Andersen v. King County*
27 (Washington Supreme Court).
28

1 The foregoing cases presented a broad array of issues including the three issues to which
2 the proposed *amicus* brief is directed—whether the fundamental due process right to marry extends
3 to same-sex couples, whether the reservation of marriage to opposite-sex couples discriminates on
4 the basis of sex and whether the reservation of marriage to opposite-sex couples discriminates on
5 the basis of sexual orientation, in violation of the Equal Protection Clause. The proposed *amicus*
6 brief submitted with this motion presents original research and analysis of these issues, including
7 perspectives and insights that, to the knowledge of the *amicus*, have not been brought to the
8 attention of this Court in the pleadings that have been filed to date. FRC respectfully suggests that
9 its analysis of the issues could assist the Court in its deliberations.
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Conclusion

For the foregoing reasons, the Family Research Council requests that this Court grant leave to submit an *amicus curiae* brief in support of defendants-intervenors.

Dated: January 8, 2010



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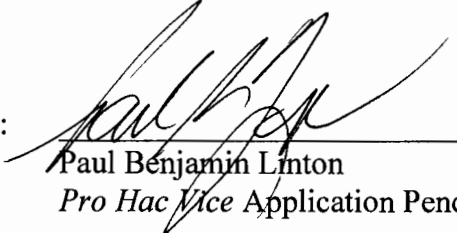
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ATTESTATION PURSUANT TO GENERAL ORDER NO. 45

Pursuant to General Order No. 45 of the Northern District of California, I attest that concurrence in the filing of the document has been obtained from each of the other signatories to this document.

By:


Paul Benjamin Linton
Pro Hac Vice Application Pending

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