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Case Number _____

In the Supreme Court of the State of California

Aouie Goodnis, and Dhun May, Plaintiffs

v.

Kamala D. Harris in the official capacity of Attorney General of California, and Edmund G. Brown Jr. in the official capacity of Governor of California, Defendants

To remedy unconstitutional harm to our political power, we seek relief from an earlier ruling against California Family Code Section 308.5, a related alternative writ of mandate, select alternate representative(s) of the state to defend marriage laws, ...

I - Table Of Contents

II - Certificate of interested entities or persons

Petitioners hereby certify that they are not aware of any entity or person that rules 8.208 and 8.488 of the California Rules of Court require to be listed in this Certificate.

III - Table of authorities.

IV - Table of Exhibits

A) Exhibit A is a true and correct copy of a page belonging to Kamala Harris on a social networking site published on 2010-08-04.

URL: [https://www.facebook.com/notes/kamala-d-harris/district-attorney-kamala-harris-calls-prop-8-decision-monumental-step-forward-in/455521685662]

B) Exhibit B is a true and correct copy of a response from Edmund Brown's office in the case *Beckley v. Schwarzenegger.*

A copy of the video files containing the excerpts from which the below two transcripts were obtained, will be mailed along with the copy of this petition to the defendants. The videos should also be accessible through the Web site [http://ProtectInitiatives.com/]. Plaintiffs would like to submit the video files as evidence.

C) Exhibit C is a transcript of an excerpt from the show 'The War Room with Jennifer Granholm' with Kamala Harris. - Feb 27, 2012 9PM to 10PM.

D) Exhibit D is a transcript of an excerpt from an interview on a show called 'The Rachel Maddow Show' with Kamala Harris in March 2013.

Below three exhibits are only relevant if there are any concerns about the number of months that have elapsed since Hollingsworth v. Perry, 133 S.Ct. 2652 U.S.,2013.

E) Exhibit E is a letter accompanying the returned unfiled earlier version of this petition in early Dec 2013.

F) Exhibit F is a cover letter written to the California Supreme Court with a resubmission of an earlier version of this petition in Dec 2013.

G) Exhibit G is a letter accompanying the returned unfiled petition in mid Dec 2013.

V - Introduction

In 2011, in case number S189476, *Perry v. Brown, 52 Cal.4th 1116, 265 P.3d 1002, Cal.,2011*, the California Supreme Court, in response to a request by the United States Court of Appeals for the Ninth circuit, opined that the proponents of a voter initiative could defend state laws related to the initiative.

But in 2013, the United States Supreme Court held that the rules for federal appellate courts do not give the proponents of the voter initiative the legal right to appeal the unfavorable federal district court ruling against the initiative.

As a result we have a situation where no one is mounting a defense of this state's marriage laws in the higher federal courts on behalf of the state. Voter initiatives, and the people's political power contained in the same, are seen by many as being subject to the sanction of the attorney general and governor of California.

In this petition we elaborate on how and why with respect to referendums and initiatives “the duty of the courts to jealously guard this right of the people” (as stated by the California Supreme Court in *Perry v. Brown, 52 Cal.4th 1116, 265 P.3d 1002, Cal.,2011*), also applies to any state official when in their official capacity they can facilitate the effectuation of the people's initiative powers. We make the case that our political power and some state and federal rights are being unconstitutionally harmed, and

seek various related remedies including writs of mandate, and a more official selection of alternate representatives for the state (a follow up to *Perry v. Brown, 52 Cal.4th 1116, 265 P.3d 1002, Cal.,2011*).

In the coming months or years, the United States Supreme Court may uphold the constitutionality of the marriage laws of other states that are virtually identical to Article 1, Section 7.5 of the California Constitution. In such a scenario, would it not be a great wrong for California's marriage laws to unjustly remain largely enjoined by the contradictory district court ruling in *Perry v. Schwarzenegger (N.D.Cal. 2010) 704 F.Supp.2d 921*? We hope that the California Supreme Court will ensure that such a travesty of our political system does not come to pass.

This lawsuit provides an opportunity for the California Supreme Court to carry out the court's duty of “jealously guarding” and vindicating the political power of the people, including the initiative powers.

Plaintiffs allege that by continuing to fail to provide for the legal defense of Article 1, Section 7.5 of the California Constitution in good faith, the attorney general of California and the governor of California have

- unconstitutionally harmed their political power,
- violated due process protections,
- violated free speech protections,
- violated equal protection principles,
- caused the loss of trust in our government,
- caused voter suppression,
- and violated the principle of separation of the judicial, legislative

and executive powers.

Plaintiffs seek various extraordinary remedies including

- on the grounds that facts have since changed, free the state from an earlier ruling of the California Supreme Court that deemed California Family Code Section 308.5 unconstitutional, and issue a related alternative writ of mandate,
- officially select one or more individuals to represent the state in both state and federal courts to defend specific challenged laws, when there is reason to doubt that the attorney general or governor will provide for the legal defense of the laws in good faith, such as is the case with Article 1, Section 7.5 of the California Constitution,
- towards restoring the faith of the people of California in our government and to provide hope to people across the country, issue a statement within the California Supreme Court's ruling that the constitutional protection of the political power of the people shall include providing for the legal defense of the laws of the land in good faith,
- issue several related censures of the attorney general of California,
- and issue several related censures of the governor of California.

We discuss how in the face of strategic civil litigation, the absence of appealing rulings like that in *Perry v. Schwarzenegger (N.D.Cal. 2010) 704 F.Supp.2d 921*, impairs the function of the judicial branch.

While this petition could lawfully have been brought in the Superior Court of California in the first instance, the petitioners believe the

California Supreme Court should exercise its original jurisdiction.

The plaintiffs request that the California Supreme Court grant by summary judgment the two most important remedies of freeing California Family Code Section 308.5, and selecting alternate representative(s) of the state to defend the state's marriage laws. We hope the other issues will also be addressed in an expedient manner. The rest of the country could use the guidance of the California Supreme Court on how to handle similar violations with respect to marriage laws or other voter initiatives.

VI - Parties

Plaintiff Aouie Goodnis is a California Citizen and resides in Los Angeles county. Aouie has encountered resistance to sponsoring and otherwise supporting a voter initiative to outlaw the genital cutting of all children in the absence of a critical medical need for it, on the grounds that the state officials will not defend that law in the courts. The violations alleged in this lawsuit are hindering Aouie's ability to utilize the initiative powers of the people to the fullest extent.

Plaintiff Dhun May is a California Citizen and resides in Los Angeles county. Dhun May has personally contributed to the Proposition 8 campaign in 2008 and has been a vocal advocate of the related traditional values for a long time. Dhun May has been violated in many of the ways alleged in this lawsuit.

Defendant Kamala Harris is the attorney general of California. The office of the attorney general is responsible for representing the state in the courts of the land in good faith. The defendant continues to ignore the duty of seeking relief in the higher federal courts from a questionable district court ruling in *Perry v. Schwarzenegger,* that largely restricts Article 1, Section 7.5 of the California Constitution.

Defendant Edmund Brown is the governor of California. The governor should ensure that state officials responsible for important tasks, such as representing the state in the courts of the land in good faith, are faithfully carrying out those tasks.

VII - Claims Asserted

With respect to failing to provide for the legal defense of Article 1, Section 7.5 of the California Constitution, plaintiffs complain of defendants and allege:

1) Unconstitutional harm and damage to our political power.

Political power is the power to shape and guide societies. According to Article 2, Section 1 of the California Constitution, all of the political power is inherent in the people. The law brought about by a voter initiative has been restricted without adequate review by the judicial branch. Many people are now less motivated to lobby for, sponsor or promote initiatives or laws, that the governor and attorney general may be against. The confidence that laws will be well-defended by our government has eroded. Our government system is considered broken by many, and rightfully so. The constitution of California and the principle of separation of powers requires the governor of California and the attorney general of California to represent the state (and not themselves) in good faith in the courts of the land. The political power of the people to shape and guide California has been, and continues to be adversely affected by the unconstitutional actions of the governor and the attorney general of California.

2) Violation of the doctrine of separation of powers.

A violation of the separation of powers doctrine occurs if an act by one branch 'materially impairs' the core powers or functions of another branch. The important and critical function of the appellate courts to keep

in check the rulings of the trial courts and provide clarity and guidance for related future rulings by the lower courts is carried out when lawyers act in good faith on behalf of the parties they represent. The governor and the attorney general of California have unconstitutionally misused their executive power for judicial purposes by thwarting part of the judicial review that challenged California laws usually receive, substituting it with their own determination as to the constitutionality of the law. This materially impairs the function of the judicial branch with respect to the state law. It is also worth considering that the governor and the attorney general of California may have unconstitutionally misused their executive power for legislative purposes by attempting to bring about the removal of certain California laws or the effectiveness of the laws in the state.

3) Violation of Due Process.

In Snyder v. Massachusetts, 291 U.S. 97, 105 (1934), the United States Supreme Court held that due process is violated "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." While it may be true that there have been multiple instances of attorney generals and governors refusing to defend some laws, people have generally come to expect that the executive branch will not undermine the laws of the state by refusing to defend it. To not provide for the legal defense of a state law is a violation of the due process that should be afforded to the political power of the people, and hence the people of the state, whether or not the law was brought about by a voter initiative or by lobbying key personnel in our legislative branch.

4) Violation of Free Speech.

"But the individual person's right to speak includes the right to speak in association with other individual persons." - Citizens United v. Federal Election Com'n, 558 U.S. 310, 130 S.Ct. 876, U.S., 2010. This is also true for speech made in association with other citizens of the state.

As we will discuss a little more in-depth, a primary function of the challenged marriage laws is to communicate the message that raising children in committed cross-sex relationships is best for society at large. Societies, and hence states, have a compelling interest in advancing messages that are for the betterment of society as society at large deems it. Governments have often had messages against other perceived problems for society like smoking or unsafe sexual habits. The statement to all in society that a marriage between a woman and a man is the preferred union is very much in the same vein as far as many of its proponents are concerned. To subvert the expression of that view point through our state functions while allowing some other views to be expressed through our state functions, is a violation of the free speech of those who favor the challenged marriage laws.

5) Violation of Equal Protection.

'Traditionalists', those who place a relatively greater emphasis and value on traditional values, should be a suspect class meriting strict scrutiny in areas where popular support for social norms has changed by a large amount in the last two decades from a 'traditional' or 'conservative' view to a 'progressive' view. Many of the people who favored the related California State Propositions 22 of 2000 and 8 of 2008 are 'traditionalists'. This class

of people are often at odds with people who are strong proponents of recognizing and promoting same-sex relationships as being virtually identical to cross-sex relationships. The class of people who value California State Propositions 22 of 2000 and 8 of 2008 have the tough task of convincing the people of the merits of their views, and that class of people deserve the equal protection of their political power and free speech by state officials. Providing for the legal defense of laws brought about by the efforts of certain classes of people while unconstitutionally undermining the laws brought about by the efforts of a different class of people is a violation of the equal protection clause. The political power and free speech of all people of California deserve equal protection.

6) Breach of trust.

The people place trust in the attorney general of California and the governor of California to use the executive powers of the office in good faith, and not misuse them for the various violations listed in this complaint. The erosion of trust in state officials and our system of government due to the violations alleged in this complaint has been severe and causes irreparable harm to not only the plaintiffs, but the public at large. To reduce the extent of the loss of trust, a speedy grant of various remedies sought in this lawsuit is strongly called for.

7) Abuse of discretion.

The choice to not defend Article 1, Section 7.5 of the California Constitution in the courts was and is an abuse of discretion. Defendants have made public statements as can be seen in exhibits A, B, C and D about

personal views and biases influencing their decision to not defend the state laws in question. The decision to not defend a state law based on how one looks if they change their stance, having a bias towards being 'progressive', or letting one's ancestry impose restrictions on ones obligations to the state are unconstitutional abuses of discretionary powers.

8) Voter Suppression.

Initiative based propositions are one of the biggest draws for voters in elections. To weaken the initiative powers is to unjustly disincentivize participation in elections. The violations alleged in this complaint have resulted in too many people thinking that when the attorney general and governor are against an initiative, the people's votes in favor of an initiative may not count for much more than an opinion poll. The attorney general and governor of California have unconscionably undermined our initiative powers by failing to represent the state in good faith in the courts of the land, and have thus caused voter suppression.

9) Emotional and physiological harm.

The violations alleged in this complaint have caused one or more plaintiffs and many in the public to have significant emotional distress caused by amongst other things a profound sense of loss of political power, and feelings of being violated in the various ways alleged in this complaint. Physiological harm is often associated with longer term emotional distress, and is not limited to the loss of sleep experienced by one or more of the plaintiffs as they go to sleep and wake up with their mind racing about the

grievances addressed by this case. To reduce the extent of the emotional and physiological harm, a speedy grant of various remedies sought in this lawsuit is strongly called for.

VIII - Remedies

Plaintiffs seek the following extraordinary remedies.

1) Free California Family Code Section 308.5 and a related alternative writ of mandate.

As the facts that the decision in In re Marriage Cases, 43 Cal.4th 757 (2008), were based on have changed, and the California Supreme Court has held Article 1, Section 7.5 of the California Constitution to be valid, we ask the court to free the state from all restrictions placed on the identically worded California Family Code Section 308.5. A preemptive alternative writ of mandate requiring state officials to implement California Family Code Section 308.5 as soon as practicable is also requested, as the plaintiffs are concerned about many state officials causing further unconstitutional harm.

2) Select alternate representatives of the state to defend some state laws.

Decide on one or more alternate official representatives for the state to defend all legal challenges related to Article 1, Section 7.5. The selected representative(s) should be trustable to provide a commendable level of legal defense for the challenged laws on behalf of the state in good faith. The selected representative(s) can be in addition to the default representatives of the state, or in lieu of them. It will be understood by the people that when there is reason to doubt that the officials who usually defend any law brought about by voter initiatives, will do so in good faith, then the courts can be counted on to find one or more alternates who will do

so as official representatives of the state.

3) Compel AG to defend state laws in good faith.

This becomes less necessary if the preferred remedy 2 is granted. A writ of mandate compelling the attorney general of California to mount a legal defense for Article 1, Section 7.5 of the California Constitution (Proposition 8 of 2008) in good faith. The defense shall include the below points where applicable, but the defense shall not necessarily be limited to the below.

i) Seek relief from *Perry v. Schwarzenegger* (N.D.Cal. 2010) 704 F.Supp.2d 921, with the United States Court of Appeals for the Ninth circuit.

ii) If that court rejects the sought relief on any grounds, then appeal those determinations to the United States Supreme Court.

4) Compel governor to ensure state laws are defended in good faith.

This becomes less necessary if the preferred remedy 2 is granted. A writ of mandate compelling the governor to use the executive power of the office to ensure that a legal defense for Article 1, Section 7.5 of the California Constitution is provided for in good faith.

5) Courts are to ensure state laws are defended in good faith.

As part of the ruling, clarify that the state judiciary recognizes that

the constitutional protection of the political power of the people must include providing for the legal defense of the laws of the land in good faith, and that the state judiciary is committed to ascertaining that such legal defense is provided.

The below censures are sought with reference to the violations related to the legal challenges of Article 1, Section 7.5 of the California Constitution, which was brought about by Proposition 8 of 2008.

6) Censure AG for harming political power.

Censure the attorney general of California for the unconstitutional undermining of and harm to the political power of the people expressed through voter initiatives, by failing to provide for the legal defense of the state law in good faith.

7) Censure AG for dereliction of duty.

Censure the attorney general of California for the dereliction of duty to defend state laws and guard the initiative powers of the voters, by failing to provide for the legal defense of the state law in good faith.

8) Censure AG for breach of trust.

Censure the attorney general of California for the breach of trust placed in the office of the attorney general by the people of the state, by failing to provide for the legal defense of the state law in good faith.

9) Censure AG for abuse of power.

Censure the attorney general of California for the abuse of the power of the office by inappropriately allowing personal views and legal opinions to interfere with providing for the legal defense of the state law in good faith.

10) Censure the governor for harming political power.

Censure the governor of California for the unconstitutional undermining of and harm to the political power of the people expressed through voter initiatives, by failing to provide for the legal defense of the state law in good faith.

11) Censure the governor for dereliction of duty.

Censure the governor of California for the dereliction of duty to defend state laws and guard the initiative powers of the voters, by failing to provide for the legal defense of the state law in good faith.

12) Censure the governor for breach of trust.

Censure the governor of California for the breach of trust placed in the office of the governor by the people of the state, by failing to provide for the legal defense of the state law in good faith.

13) Censure the governor for abuse of power.

Censure the governor for the abuse of the power of the office by

inappropriately allowing personal views and legal opinions to interfere with providing for the legal defense of the state law in good faith.

14) Disbar AG if unconstitutional activities continue.

If after the ruling in this case, any attorney general of California does not enforce and defend the laws of the state in good faith, then disbar that attorney general of California.

Plaintiffs also seek to recover the court fees. If applicable, then plaintiffs would also like to recover their attorneys' fees, expert witness costs, and any other costs and expenses incurred in this action.

IX - Standing

Petitioners are citizens of California who have standing as they have been violated in many of the ways alleged in this lawsuit. While the harm to the plaintiffs is generalized in a sense, the remedies sought will benefit not only the plaintiffs, but the public at large. As of now, we are not aware of any lawsuit that addresses all of the major violations and grievances that are addressed in this lawsuit with respect to the handling of the legal defense of Article 1, Section 7.5 of the California Constitution.

If it is found that the petitioners are not personally benefited from the remedies sought, then the petitioners have standing under the public interest exception. *Green v. Obledo (1981) 29 Cal.3d 126, 145*.

X - Statement of Facts.

The current California Constitution was ratified on May 7, 1879. In 1911, at the height of the US Progressive era, newly elected California Governor Hiram Johnson proposed twenty-three amendments to the California Constitution, including provisions allowing for direct democracy. In the subsequent special election, 76% of Californians voted to implement the initiative into the California Constitution.

In 2000, Proposition 22, passed in California and added California Family Code Section 308.5. In In re Marriage Cases (2008) 43 Cal.4th 757, the California Supreme Court deemed the section unconstitutional and hence restricted the state from applying or enforcing that code. Later in 2008, Proposition 8, passed and added Article 1, Section 7.5 to the California Constitution, which had identical wording to that of California Family Code Section 308.5. The attorney general of California and the governor of California did not defend Proposition 8 in any of the state or federal courts. In Strauss v. Horton (2009) 46 Cal.4th 364, the California Supreme Court held that Proposition 8 was valid.

Two same-sex couples filed their challenge to Proposition 8 in a federal district court in California. The California government officials who would normally have defended the law in court, declined to do so. The proponents of Proposition 8 stepped in to defend the law. The federal district court in *Perry v. Schwarzenegger* (N.D.Cal. 2010) 704 F.Supp.2d 921, 928, held that Article 1, Section 7.5 of the California Constitution violated the United States Constitution. In 2010, in *Beckley v. Schwarzenegger*, the plaintiffs expressed concern that in the absence of a writ of mandamus requiring certain state officials to appeal the ruling, the

appeal to defend the state law may be denied because of a lack of standing. The California Supreme Court declined to issue the writ of mandamus. The proponents of Proposition 8 appealed the federal district court's ruling. The California Supreme Court, in response to a request by the United States Court of Appeals for the Ninth circuit, opined that the proponents of a voter initiative could defend state laws related to the initiative (*Perry v. Brown, 52 Cal.4th 1116, 265 P.3d 1002, Cal.,2011*). But in 2013, in *Hollingsworth v. Perry, 133 S.Ct. 2652 U.S.,2013*, the United States Supreme Court held that the rules for federal appellate courts do not give the proponents of the voter initiative the legal right to appeal the unfavorable federal district court ruling. As a result, it held, the decision by the U.S. Court of Appeals for the Ninth Circuit, the intermediate appellate court, has no legal force, and it sent the case back to that court with instructions for it to dismiss the case.

In 2013, in *Hollingsworth v. O'Connell*, the plaintiffs question, amongst other things, whether or not the ruling of the federal district court applies to all of the country clerks of California. The case addressed related but different issues than the ones in this case. The California Supreme Court ruled against the plaintiffs.

At least one of the plaintiffs of this case did try to find some groups that are known to handle such public interest cases, including the ACLU, Alliance Defending Freedom and Pacific Justice Institute, to file a case to protect the political power of the people of California. But, due to the overwhelming demands of the groups, none of them agreed to assist with this case. The plaintiffs decided to file it by themselves, and hope that the courts will have enough information to grant the remedies sought in this lawsuit.

In 2010, Kamala Harris as a candidate for the position of the

Attorney General of California implied that if elected, Kamala Harris would not seek relief from *Perry v. Schwarzenegger (N.D.Cal. 2010) 704 F.Supp.2d 921, 928*. In numerous public interviews and writings Kamala Harris has indicated a refusal to defend the state law on the grounds that it was in violation of the United States Constitution. In widely viewed shows in Feb 2012 and Mar 2013, Kamala Harris also indicated a bias against the states marriage laws on account of California being a “progressive” state and based on Kamala Harris' ancestry. Kamala Harris also conveyed a lack of value for any political process that would conflict with what Kamala Harris thinks of as important constitutionally protected entitlements.

XI - Discussions.

1) California Supreme Court should exercise its original jurisdiction.

The issues addressed by this case are of great importance and it is better that such issues be resolved promptly. This court recently considered attempts to defend one of the challenged laws in question in *Hollingsworth v. O'Connell, case number S211990*. This case more directly deals with the alleged unconstitutional violations perpetrated on the voters of California. Many of the remedies we seek will strengthen the political power of the people of California.

One of the extraordinary remedies sought is a relief from an earlier ruling of the California Supreme Court in *In re Marriage Cases (2008) 43 Cal.4th 757*. It would be appropriate for the same court to grant the relief.

This lawsuit addresses issues overlapping with *Beckley v. Schwarzenegger* which the California Supreme Court did review.

The opinion to the United States Court of Appeals for the Ninth circuit with reference to who is entitled to defend the laws of this state in *Perry v. Brown, 52 Cal.4th 1116, 265 P.3d 1002, Cal.,2011*, is better improved upon by the California Supreme Court. A preferred remedy of officially selecting one or more individuals to defend a state law is best done by the highest court in the state.

The California Supreme Court exercised its original jurisdiction in *Strauss v. Horton (2009) 46 Cal.4th 364*, a case in which the petitioners challenged the validity of Proposition 8 of 2008. The California Supreme Court also exercised its original jurisdiction in *Hollingsworth v. O'Connell*,

a case in which the petitioners challenged the respondents' authority not to enforce Proposition 8 of 2008. The California Supreme Court should likewise exercise its original jurisdiction in this case, where the petitioners allege ongoing unconstitutional violations with respect to the handling of the defense of Proposition 8 of 2008, and seek related remedies.

We hope the California Supreme Court will choose to issue judgments granting some or all of the sought remedies in a speedy manner towards reducing the harm to the people of California and our system of government.

The below six paragraphs in this discussion are directly copied from *Hollingsworth v. O'Connell*.

The California Constitution affords this Court original jurisdiction over petitions for a writ of mandate. (Cal. Const., art. VI, § 10; Cal. *Redevelopment Assn. v. Matosantos (2011) 53 Cal.4th 231, 252 [135 Cal.Rptr.3d 683, 701, 267 P.3d 580, 595]*.) This Court "will invoke [this] original jurisdiction where the matters to be decided are of sufficiently great importance and require immediate resolution." (*Cal. Redevelopment Assn. v. Matosantos, supra, 53 Cal.4th at p. 253*; see also *Raven v. Deukmejian (1990) 52 Cal.3d 336, 340 [276 Cal.Rptr. 326, 328, 801 P.2d 1077, 1079]*; *Amador Valley J. Union High School Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 219 [149 Cal.Rptr. 239, 241, 583 P.2d 1281, 1283*] (hereafter Amador Valley).)

This Petition presents questions of great importance concerning the rule of law and limitations on public officials' authority. In *Lockyer, supra, 33 Cal.4th at pp. 1066-1067*, this Court exercised its original jurisdiction and issued a writ of mandate ordering San Francisco officials not to issue

marriage licenses in violation of state law. *Lockyer* identified as "important" the question whether an "executive official who is charged 22 with the ministerial duty of enforcing a state statute exceeds his or her authority" when that official declines to enforce state law. (Ibid.) That question "implicates the interest of all individuals in ensuring that public officials execute their official duties in a manner that respects the limits of the authority granted to them as officeholders." (*Id. at p. 1068*.) It presents "a fundamental question that lies at the heart of our political system: the role of the rule of law in a society that justly prides itself on being 'a government of laws, and not of men' (or women)." (Ibid.) Here, too, Respondents' non-enforcement of state law that defines marriage as a union between a man and a woman raises similar important questions and fundamental concerns at the heart of our tripartite system of government.

The importance of these questions is heightened by the history of some government officials' unrelenting efforts to thwart the People's attempts to preserve traditional marriage laws. For many years, the People have witnessed their government officials' persistent attempts to attack, redefine, or undermine traditional marriage, despite the People's repeated attempts to maintain it. In 2008, for example, the People approved Proposition 8 to restore traditional marriage, yet public officials in both Strauss v. Horton and *Perry v. Schwarzenegger* declined to defend it, and then Attorney General Brown actively challenged it. (*Strauss v. Horton, supra, 46 Cal.4th at pp. 465-466*; *Perry v. Schwarzenegger (N.D.Cal. 2010) 704 F.Supp.2d 921, 928*.)

It is imperative that this Court affirm the legitimate limits on executive officials' power, lest the People lose confidence in their system of government, believing that elected officials may thwart the People's express

will by ignoring duly enacted laws.

Moreover, the important issues raised in this Petition require prompt resolution. The same need for legal clarity and predictability that demanded an immediate ruling in Lockyer calls for this Court's urgent attention here. (See *People v. Garcia (2006) 39 Cal.4th 1070, 1080 [48 Cal.Rptr.3d 75, 81, 141 P.3d 197, 203]* ["[C]ertainty, predictability and stability in the law are the major objectives of the legal system."].)

An immediate ruling is also necessary to preserve the public's trust in the rule of law. As explained above, executive officials have attacked, failed to enforce, and undermined state laws affirming traditional marriage.

2) Justification for a summary judgment on the two most important remedies.

That California Family Code Section 308.5 is no longer in violation of the California Constitution is a non-issue since the California Supreme Court already held that the identically worded Article 1, Section 7.5 of the California Constitution is valid, and there has been no decision to the contrary by the United States Supreme Court. The remedy of removing all restrictions on California Family Code Section 308.5 does not harm the respondents in any particularized manner. The respondents have already expressed to the California Supreme Court their views on the challenged state laws.

As for the other remedy of selecting one or more alternate representatives of the state to defend some state laws, the governor and attorney general of California may consider it a particularized harm, as the

remedy would make them unable to undermine state laws, or thwart some of the judicial review of state laws as they have done with Article 1, Section 7.5 of the California Constitution. But, the California Supreme Court has already chosen to keep them from undermining state laws and thwarting the judicial review of state laws successfully in California state courts, and unsuccessfully in federal courts. We are merely asking for some changes in how the California Supreme Court selects alternate defendants of state laws when there is concern that the state officials who would usually defend state laws may not do so in good faith. This remedy will hopefully be sufficient to protect the initiative powers of the people to the extent that the California Supreme Court had intended.

As both of these remedies would remedy the great wrongs and harms addressed by this lawsuit, and the sought remedies affect the respondents in ways in which the California Supreme Court had already intended in prior rulings, we believe the first two remedies can be granted as a partial summary judgment. “Jealously guarding” certain powers should include expedient remedying of great harms to the powers.

Also, the sooner our state can have official representatives of the state seek relief from the ruling in *Perry v. Schwarzenegger (N.D.Cal. 2010) 704 F.Supp.2d 921*, the more likely it will be heard on a parallel track with a related case, *Sevcik v. Sandoval*.

3) California Family Code Section 308.5 is no longer in violation of the California Constitution.

In *In re Marriage Cases, 183 P.3d 384 (Cal. 2008)*, the California Supreme Court's task was “only to determine whether the difference in the

official names of the relationships violates the California Constitution." The court determined that limiting the designation of marriage to a union "between a man and a woman" was in violation of the state's constitution. Since then the facts have changed and the California Supreme Court has held an identically worded Article 1, Section 7.5 of the California Constitution to be valid, and there has been no decision to the contrary by the United States Supreme Court. Hence, the California Supreme Court should find that California Family Code Section 308.5 is no longer in violation of the California Constitution.

To remedy the harm to the political power of the people brought about by the unconstitutional sabotaging of the effectiveness of Article 1, Section 7.5 of the California Constitution, now is the time to free the state from the restrictions placed on the identically worded California Family Code Section 308.5.

4) *Perry v. Schwarzenegger* does not apply to California Family Code Section 308.5.

The plaintiffs in *Perry v. Schwarzenegger* (N.D.Cal. 2010) 704 F.Supp.2d 921, asked the district court "to enjoin, preliminarily and permanently, all enforcement of Prop. 8 and any other California statutes that seek to exclude gays and lesbians from access to civil marriage." They had also explicitly sought to preempt one of the primary remedies we seek from the courts. "In an abundance of caution, and to the extent that they have any continuing legal force after the California Supreme Court's decision in *In re Marriage Cases, 183 P.3d 384 (Cal. 2008)*, Plaintiffs also seek (1) a declaration that California Family Code §§ 300 and 308.5, which purport to restrict civil marriage in California to opposite-sex couples, and

California Family Code § 301, which also could be read to impose such a restriction, are unconstitutional under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, and (2) a preliminary and permanent injunction preventing Defendants from enforcing those provisions against Plaintiffs."

But, the district court judge in that case, whether through oversight or other reason, only restricted Article 1, Section 7.5 of the California Constitution, and not any other California statutes. This allows the California courts a way to protect the political power of the people by removing all restrictions on the currently constitutionally valid California Family Code Section 308.5. This would limit the validity and recognition of marriages in California to those between a woman and a man, as the voters intended in both the related voter initiatives. The restrictions on marriage may last forever, or until either the United States Supreme Court determines it violates the United States Constitution or those with opposing views are able to democratically remove Article 1, Section 7.5 from the California Constitution.

5) Stare decisis does not require state courts to deem Article 1, Section 7.5 of the California Constitution as unconstitutional.

State courts applying federal law are bound by decisions of the United States Supreme Court. *Elliott v. Albright, 209 Cal. App. 3d 1028, 1034 (1989)*. But they are not bound by district or circuit court decisions, although such rulings are entitled to "substantial deference." *Yee v. City of Escondido, 224 Cal. App. 3D 1349, 1351 (1990)*.

6) Constitutionality of marriage laws are to be decided.

The issue at hand is clearly one that the United States Supreme Court has yet to decisively rule on. This is implied in *Hollingsworth v. Perry, 133 S.Ct. 2652 U.S.,2013*, with the following quotation where the court states that in light of the "overriding and time-honored concern about keeping the Judiciary's power within its proper constitutional sphere, we must put aside the natural urge to proceed directly to the merits of [an] important dispute and to 'settle' it for the sake of convenience and efficiency. *Raines v. Byrd, 521 U. S. 811, 820 (1997).*"

In the case of *Jackson v. Abercrombie, 884 F.Supp.2d 1065 D.Hawaii, 2012,* federal District Court judge Alan Kay on August 8, 2012, rejected the claim by two lesbians that Hawaii's failure to provide for same-sex marriage violated the U.S. Constitution's guarantees of due process and equal protection under the Fourteenth Amendment. The decision was appealed to the Ninth Circuit Court of Appeals and was to be heard on a parallel track with a similar Nevada same-sex marriage case before the Ninth Circuit Court of Appeals, *Sevcik v. Sandoval*. As the Hawaii legislature passed a law legalizing same-sex marriages, only *Sevcik v. Sandoval* is expected to make its way to the United States Supreme Court, and may result in a definitive ruling as to whether or not same-sex couples are legally entitled to civil marriages throughout this country.

7) The California Supreme Court indicated that Article 1, Section 7.5 was not known to be in violation of the United States Constitution.

In *Strauss v. Horton (2009) 46 Cal.4th 364*, the California Supreme Court observed that “if there is to be a change to the state constitutional rule embodied in that measure, it must find its expression at the 'ballot box'.” Clearly at that time, the California Supreme Court was also aware that there was no clear decision by the United States Supreme Court that same-sex marriages are protected by the United States Constitution.

8) Undermining of a federal district court's ruling is necessary to remedy great wrongs.

In the normal course of events it would be outrageous for a state to choose to not appeal a questionable ruling of a federal district court that found a state law to be unconstitutional, and instead have a state court undermine the ruling by reactivating a law that was identical to the affected law. However, the decision to not appeal was not truly the state's decision, but an unconscionable unconstitutional subversion of the political powers of the people. The appellate courts could not carry out their important functions with reference to Article 1, Section 7.5 of the California Constitution due to the great wrongs perpetrated on our system of government and the people of California by the unconstitutional violations alleged in this lawsuit. Hence, the California state courts would not only be justified in removing any restrictions placed on California Family Code Section 308.5, but are obligated to do so as guardians of our initiative powers and the California Constitution.

9) Judicial branch is impaired by the combination of strategic civil litigation and failures to defend state laws in good faith.

Many well funded organizations who try to advance their causes through lawsuits, engage experts in the art and science of estimating the chances of success of a lawsuit in different courts. The lawsuits are then brought in one of the courts estimated to have a higher chance of success. A good trial court ruling increases the chances that the favorable ruling will not be reversed on appeal. On issues where the trial court makes determinations on issues that have not been clearly established in prior higher court rulings, the appellate courts are free to make their own determinations. On issues that are as divisive and hotly debated as this one, ultimately the United States Supreme Court will make the determination as to whether or not they find the challenged laws to be valid.

Competent lawyers for parties who receive unfavorable rulings at trial courts, where such rulings were not clearly based only on prior rulings of the higher courts, will typically consider appealing the ruling in good faith on behalf of the parties. The important and critical function of the appellate courts to keep in check the rulings of the trial courts and provide clarity and guidance for related future rulings by the lower courts is carried out when lawyers act in good faith on behalf of the parties they represent. With *Perry v. Schwarzenegger,* the people of California were not represented in good faith by the chief law officer of the state, and the chief executive officer did not remedy the situation, and a questionable district court ruling was not successfully appealed. Hence the important and critical

function of the federal appellate courts was impaired with respect to the interests of the people of California in defending the state's laws.

10) Dereliction of duty by the Attorney General and Governor.

In the opinion to the Ninth Circuit court of appeals, *Perry v. Brown, 52 Cal.4th 1116, 265 P.3d 1002, Cal.,2011,* the California Supreme Court eloquently recognized with respect to referendums and initiatives “the duty of the courts to jealously guard this right of the people”. There is no such specific duty explicitly authored into our constitution, and there is no need for such a duty to be explicitly mentioned. This is the same duty that applies to the attorney general and the governor. The fact that the duty has not been explicitly written into the constitution, does not make it any less of a duty. Our state constitution requires all state officials to effectuate the initiative powers of the people, if and when in their official capacity they can facilitate such effectuation.

11) Selection of one or more individuals to represent the state in the courts.

The California Supreme Court did make a strong case for allowing the proponents of initiatives to defend the state laws brought about by the initiatives in a recent response to a request by the United States Court of Appeals for the Ninth circuit, *Perry v. Brown, 52 Cal.4th 1116, 265 P.3d 1002, Cal.,2011*. The United States Supreme Court however chose to find the reasoning insufficient.

We would like to raise some concerns about limiting the possible alternate representatives of the state to just the proponents of an initiative. If the law in question had been entered into our constitution, by the people, about a hundred years ago, and no one who was a proponent of that initiative was still alive, then too the interests of the people in providing for a good legal defense of the law would still be about the same. Moreover, proponents of voter initiatives can change their views, and may choose to not provide for the legal defense of the law.

In the opinion to the Ninth Circuit court of appeals, *Perry v. Brown, 52 Cal.4th 1116, 265 P.3d 1002, Cal.,2011*, the California Supreme Court recognized with respect to referendums and initiatives “the duty of the courts to jealously guard this right of the people”. There is no such specific duty explicitly authored into our constitution, but there is no need for such a duty to be explicitly mentioned. This is the same duty that applies to the attorney general and the governor. The fact that the duty has not been explicitly written into the constitution does not make it any less of a duty. The attorney general and governor of California have already proved themselves to be untrustworthy of carrying out their duty to provide for the legal defense of Article 1, Section 7.5 of the California Constitution with vigor or with the objectives and interests of the voters paramount in mind. We ask this court to fulfill the court's duty to guard our initiative powers by officially selecting one or more alternate individuals to represent the state in the courts of the land to defend Article 1, Section 7.5 of the California Constitution and closely related laws on behalf of the state in good faith.

While no specific law was passed to authorize the courts to designate anybody as a representative of the state, the California Constitution necessitates the remedial measure towards preventing or minimizing the

harm that could be caused by future unconstitutional violations of the kind alleged in this lawsuit.

This court did already opine that state law allows proponents of voter initiatives to defend the related state laws. The court should formalize the assignment of the duty to defend the law, such that any volunteers selected by the court are not simply representing their own interests that aligns with the case, but are sworn in to provide for the legal defense of the law in good faith as official representatives of the state. Such selected individuals could be the proponents of the related voter initiatives, trusted members of the state legislature, the plaintiffs of this lawsuit, the court's own staff attorneys, or anyone else that the court has reason to believe will carry out the important function of providing for the legal defense of the state laws in good faith.

This becomes all the more important in courts that allow arbitration. There is a risk that state officials who do not act in good faith could agree to terms that would be tantamount to repealing the law. When there is good reason for such a concern, then anyone should be able to ask the courts for alternate trustworthy official representatives for the state to defend the challenged laws.

In the ruling in this case, we hope the courts will clarify that such selection is necessitated by the California Constitution, and do so as eloquently as was done in the response to a request by the United States Court of Appeals for the Ninth circuit, *Perry v. Brown, 52 Cal.4th 1116, 265 P.3d 1002, Cal.,2011*.

12) Edmund Brown didn't defend state law on the grounds that it was unconstitutional.

As can be seen in Exhibit B, in *Beckley v. Schwarzenegger*, then Deputy Attorney General representing then Attorney General Edmund Brown writes the below to the court.

“In the District Court the Attorney General filed an answer admitting the material allegations of the complaint, did not defend Proposition 8 at trial, and opposed a stay of the judgment pending appeal.”

Rather than defend the state law, Edmund Brown agreed with the plaintiffs that the law was unconstitutional and chose to not defend the state law.

13) Kamala Harris didn't defend state law on the grounds that it was unconstitutional.

In many public interviews and writings Kamala Harris has indicated a refusal to defend the state law on the grounds that it was in violation of the United States Constitution. As seen in exhibit A, on a page from a social networking Web site, there is a relevant quote by Kamala Harris, the then candidate for Attorney General of California.

“Attorney General Brown, Judge Walker, and I have all sworn to defend and uphold the Constitution of the United States. So, if I am given the privilege to serve as California's next Attorney General, I will not defend the anti-gay Proposition 8 in Federal court.”

14) Edmund Brown represented self instead of the state.

As can be seen in exhibit B, in *Beckley v. Schwarzenegger*, then Deputy Attorney General representing then Attorney General Edmund Brown writes the below to the court.

“In view of his public and consistent position both in this Court in *In re Marriage Cases* and in the district court in Perry, it would have been inconsistent and legally suspect (if not sanctionable) for the Attorney General to abruptly change course and file a notice of appeal.”

As attorney general or governor, Edmund Brown should not be concerned about maintaining a consistent position on a challenged law, and should instead be focused on representing the state. The view that the law was unconstitutional is not one that the people expressed in a recent voter initiative. That is Edmund Brown's view, and not that of the state.

15) Kamala Harris represented self and a class of people instead of the state.

As can be seen in exhibit D, in an interview on a show called 'The Rachel Maddow Show' in March 2013, Kamala Harris stated the following.

“... the reason I have refused to defend Prop 8 is, one simple reason, it is unconstitutional. And it has actually been found by a court to be unconstitutional. And frankly Rachel, as the daughter of parents who were active in the civil rights movement, I refuse to stand in the doorway of the wedding chapel blocking same-sex couples' ability to marry.”

As can be seen in exhibit C, in an interview on a show called “The War Room” in Feb 2012, Kamala Harris stated the following regarding the issue of defending the marriage law.

“And it is ironic frankly that, and I say this again as a native Californian, that we are still battling this in California, and all these other states, you know we consider ourselves to be so progressive.”

“I think that when you are talking about something as fundamental as equality, and civil rights, it should not be the subject of any political process.”

As attorney general, Kamala Harris should not be concerned about what Kamala Harris' ancestry would permit Kamala Harris to do or not do, or about what is appropriate for a “progressive” state, and should instead be focused on representing the state. Kamala Harris also shows disdain for the political process that brought about Proposition 8, a process that the California Supreme Court would like to “jealously guard”. The view that the law was unconstitutional is not one that the people expressed in a recent voter initiative. That is Kamala Harris' view, and not that of the state.

16) State officials are not constitutionally authorized to compromise the political power of the people.

In 2013, in *Hollingsworth v. Perry, 133 S.Ct. 2652 U.S.,2013*, the implication that in defending laws the governor of California and the attorney general of California are to take into account “resource constraints, changes in public opinion, or potential ramifications for other state priorities” is questionable and in conflict with the idea of being a nation of laws. If public opinion should change and there is a compelling interest in changing or removing a law, then there are mechanisms in place to effectuate such change. It can be difficult to distinguish whether those with the fiduciary obligation to the state choose to not defend a law due to perceived changes in public opinion, or due to self-centered political

motives, or because they fancy selves as United States Supreme Court judges. Moreover, defendants have made public statements as can be seen in exhibits A, B, C and D about personal views and biases influencing their decision to not defend the state laws in question. Even the United States Supreme Court is likely to deem as unconstitutional abuses of their discretionary powers, the choice to not defend a state law because of concerns about how one looks if they change their stance, or due to a bias towards being progressive, or because of one's ancestry.

Regardless, the defendants have yet to point to anything in the California Constitution that authorizes them to strip the people off of any of their political power by not representing the state in good faith in the courts of the land.

17) Defending or not defending state laws based on personal views is an abuse of power.

Consider the hypothetical situation where a clause identical to the current Article 1, Section 7.5 of the California Constitution was in the Constitution of the United States, and California passed a law specifically authorizing same-sex marriages. In this scenario it is highly likely that the class of people with views like the current attorney general of California and current governor of California would still defend the state law whether or not current polls indicated support for the presumably 'unconstitutional' state law. Also, it is highly likely that if a lower federal court determines that a current law that allows students to choose facilities in line with their chosen gender, violates privacy rights, then Kamala Harris, as attorney general of California, would defend the law with vigor, and appeal such a ruling. Thus, they would likely support the challenging of the United States

Constitution when they personally favor a state law, but likely not defend a state law that they are personally strongly against. This is an abuse of the executive power entrusted to those offices.

18) Unconstitutional defenses of the United States Constitution should not be tolerated.

The proper course of action for those who find it difficult to play any role in furthering views that they strongly object to, is to seek to recuse selves from any such roles that are part of their jobs.

Just like cities can not refuse to permit a rally to promote traditional marriage laws on the grounds that the laws would be unconstitutional, state officials whose role is to defend the state's laws should not be allowed to refuse to provide for the legal defense of the laws on behalf of the state in good faith, on the grounds that the laws are unconstitutional.

The courts should not tolerate any such unconstitutional violations as are alleged in this lawsuit. We are not an oligarchy where a few state officials should be allowed to shape society as they see fit at the expense of the political power of the people.

19) State officials, especially attorney generals, should represent the state, and not selves, in good faith.

I hope this discussion is totally unnecessary, and that we all take it for granted that in their official capacity, state officials should represent the state and not selves. Attorney generals are attorneys for the state. Attorneys should represent their clients in good faith. Attorney generals' legal

opinions and personal convictions should not interfere with representing their clients, the states, in good faith.

20) Nation of Laws.

Public opinions change. Polling is an inaccurate way of gauging how people will vote when given various arguments for and against an issue. We are a nation of laws, and we have mechanisms in place to alter any law. Though not all these procedures effectuate equal power sharing by the people, voter initiatives comes closest of all to the ideal of equal power sharing by the people. People are relatively more active about winning over people of differing views when an issue is the subject of a voter initiative, and public opinions can swing quite a bit on being exposed to various related issues. To know where a state stands on any issue, we should be guided by the laws, especially relatively recent ones passed by the voters themselves.

21) Pros and cons of a ruling in favor of the plaintiffs.

Same-sex couples interested in the state benefits of marriage can become official domestic partners. Same-sex couples interested in the federal benefits would have to travel out of state to Massachusetts, get legally married, and then obtain the federal benefits of marriage.

The major con for same-sex couples who want to get married are that the state will relay the message that committed cross-sex relationships are in some way more preferred than committed same-sex relationships, till the laws are changed or such marriage laws are definitively ruled

unconstitutional by the United States Supreme Court. I would consider it a minor con that some travel expenses and inconveniences are involved to get the federal benefits of marriage.

The major pro for the people of California is that our political power, including initiative powers, will be guarded by the courts in an expedient and reassuring manner. Also, further unconstitutional violations by state officials will be discouraged.

At least one of the plaintiffs believes that more people will choose to get into healthy committed cross-sex relationships, and raise their children in the healthier setting with values that are more likely to benefit society at large.

A pro that is rather nuanced but nonetheless important is as follows. There has been animosity towards same-sex couples due to what many rightfully see as an illegitimate victory for those who want to legalize civil same-sex marriages. The animosity will decrease with the sought remedies. A number of people with differing views were engaged in conversations with strangers of opposing views towards preparing for an attempt to remove Article 1, Section 7.5 from the California Constitution democratically. Whatever the outcome of those conversations and future related voter initiatives, the dialogues are a very important component of healthy democracies. Those dialogues will continue with vigor if and when the sought remedies are granted.

Plaintiffs believe that the main winners in the whole fiasco brought about by the unconstitutional violations alleged in this lawsuit are those who gain politically from it. For the most part, the rest of us have been victimized. A ruling in plaintiffs favor in this lawsuit will hopefully help

benefit all of us in the long run.

22) Conflicting views on entitlements.

As at least one of the plaintiffs finds that the usage of the word 'rights' often gets in the way of meaningful discussions, we will use the concept of entitlements rather than the concept of rights to discuss this. Many of the hotly contested issues are and were about conflicting desires and notions of entitlements. One such issue is related to whether or not it should be legal to harm fetuses in the absence of compelling medical reasons. Desires to entitle fetuses to have a good chance at developing normally comes into conflict with desires to entitle the humans carrying fetuses to the freedom from the burden of full term pregnancies and from having children not wanted by the humans. The desires for entitlements associated with the challenged state law relevant to this lawsuit include the following.

- All people in society, including adults and children, should be entitled to healthy guidance on many of the important choices they will face in life. Many of the people who are in favor of the challenged state law, believe that a committed union between a man and a woman raising their children is a healthier environment for raising children, and that forming a society largely consisting of such family units makes the society healthier in a lot of other ways too.
- People should be entitled to shape and guide their societies in ways that they choose to. Article 2, Section 1 of the California Constitution does state that “all political power is inherent in

the people."

- People should be entitled to have healthier sexual preferences presented to them as such.
- People should be entitled to be cautioned about commonly encountered unhealthy sexual preferences and practices.

The desires of many of the proponents of the challenged state law for the above entitlements often conflicts with the desires of many of the opponents of the challenged state law to entitle those in committed same-sex relationships to the same degree of societal approval that has been conferred upon committed cross-sex relationships.

Too often people who are strongly on either side of a hotly debated issue try to only recognize the valid desires that favors their side. The marriage laws have been wrongfully portrayed as simply being motivated by desires to demean those in committed same-sex relationships. We hope the courts will recognize this.

23) Challenging the United States Constitution through state laws.

Even when a state law is clearly and unapologetically in violation of the United States Constitution, or against some other federal law, then too no state officials should stand in the way of providing for the legal defense of the state law. This is because it is an appropriate way in which the people can seek reconsideration of federal law or interpretations of the United States Constitution by higher federal courts all the way up to the United States Supreme Court, if that court's judges are so willing. This is especially important on issues with closely split decisions, where a change in judges or a change in a judge's mind, can change how a court rules.

24) Challenged marriage laws should enjoy free-speech protections.

A primary function of the challenged marriage laws is to communicate the message that raising children in committed cross-sex relationships is best for society at large. The class of people who value a lot of traditionally valued traditions and practices, and view the traditions and practices as better for society see many recent trends related to the marriage laws as a major threat to a cornerstone of society. Across many societies, marriage has been promoted over the ages as the preferred way for a man and a woman to experience the benefits of a conjugal relationship with each other, and raise the children borne of their union. Until recently, most people in many societies partook in the institution of marriage for life, and raised their biological children together as a family unit. Many of them view this cornerstone of many societies as being eroded in a manner that is detrimental to societies. They believe that the increase in the number of children not raised in a loving relationship between their biological parents is proportional to the increase in the number of children who don't grow into healthy responsible members of society.

The likes of the challenged marriage laws are largely about the perceived benefits for society at large, and less so about deeming same-sex relationships as abominations. The main objective is not to demonize any members of society, but to help guide society and the people therein to make choices that they believe are healthier for society. Given that the tangible state and federal benefits of marriage are not prevented by this law, it should be apparent that a major function of this law is to promote the

message that raising children in committed cross-sex relationships is better for society at large. It should enjoy the same free-speech protections as any other message that people try to give to society through our state functions.

Many are also greatly concerned that the propaganda to promote same-sex relationships as being virtually identical to cross-sex relationships may confuse the children of the state, including one's own children, into not getting into healthy committed cross-sex relationships. They do not want the children to be swayed by any propaganda to explore relationships that are detrimental to society at large. The challenged laws are meant to send a clear message to all in society, that marriage between a woman and a man is the preferred way.

25) Entitlements can be provided unequally due to competing interests.

Despite marriage being described as a 'fundamental right', currently many legal polygamous marriages from around the world are not recognized as valid marriages by this country. Even within this country, many children in family units that would have been polygamous if the law allowed for it, are being raised in such family units without the societal approval and benefits often associated with marriage. Just like polygamy was not illegal in some states before being made illegal, societies are entitled to strip away entitlements.

26) Valuing the democratic ideal of equal power sharing.

Too often people are unwilling to give up anything of value for the

sake of sharing power equally with others in society, including those who have conflicting values. We should encourage people to not be accepting of the kind of violations alleged in this lawsuit, as it undermines voter initiatives and hence the democratic ideal of equal power sharing. Even if we, the people, believe that a challenged law is in violation of the United States Constitution, we ought to ensure that all challenged laws get full judicial reviews towards protecting our system of government and our political power. It is understandable that we will be tempted to subvert democratic processes to prevent great wrongs, but let us try to have enough value for democratic processes to not subvert it for anything but the greatest of wrongs.

As Franklin D. Roosevelt said, “let us never forget that government is ourselves and not an alien power over us. The ultimate rulers of our democracy are not a President and senators and congressmen and government officials, but the voters of this country.” To become comfortable with individuals in positions of power abusing their powers at the expense of our voting power, is to weaken ourselves, and become the ruled more so than the rulers.

27) No delay or stay on the freeing of California Family Code Section 308.5.

In order to minimize the number of flips in the status of the legality of same-sex marriages in the state, this court may be tempted to delay or stay the decision to free California Family Code Section 308.5 till the United States Supreme Court makes a definitive ruling in *Sevcik v. Sandoval*. We believe such a stay or delay would undermine the power of voter initiatives. When we voters bring about a state law through the

initiative process, we should be entitled to have that be the law of the land till we decide otherwise ourselves, or till after a full judicial review the law is deemed unconstitutional. Article 1, Section 7.5 of the California Constitution has not yet had the full judicial review it should have been afforded due to the unconstitutional violations alleged in this lawsuit. We voters should be entitled to have this court guard the voters' power expressed in Proposition 8 of 2008 and Proposition 22 of 2000 to the fullest extent this court can, as soon as practicable. It should be noted that this court did not stay the ruling in *In re Marriage Cases (2008) 43 Cal.4th 757*, by several months till the voters decided on Proposition 8 of 2008. To stay or delay the freeing of California Family Code Section 308.5 would be perceived as grossly unfair to the class of people who believe raising children in healthy committed cross-sex relationships is best not only for the children, but for society at large.

28) Effective filing date should be December 2013

If there is any concern about the number of months that have passed since the United States Supreme court ruling in June 2013 in *Hollingsworth v. Perry*, then plaintiffs would like the court to consider this case to have been filed in December 2013. This petition is a slightly modified petition to the one that plaintiffs submitted to this court around the end of November 2013. Exhibits E, F and G should prove that plaintiffs submitted a related petition that was returned unfiled to the plaintiffs. If required, then plaintiffs can explain further as to why the delay from Dec 2013 to around the end of April 2014 was not the plaintiffs' fault.

XII - Verifications

1) Verification by Aouie Goodnis

I, Aouie Goodnis, am a party to this action. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

Executed on (date)_____, at
_____ , California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Aouie Goodnis

2) Verification by Dhun May

I, Dhun May, am a party to this action. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

Executed on (date)_____, at
_____ , California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dhun May

XIII - Individual personal statements from the plaintiffs.

1) Personal statement of Aouie Goodnis.

I am a California voter, and I share this voting power equally with other California voters. While I may argue with fellow voters as to what we should or should not be voting for or entitling people to, any constitutional amendment passed by us is part of our cherished constitution. When we, the voters of California, write a law into our constitution, any attempts by state officials to undermine that law is to undermine the voting power of the California voters. I sense this as an affront to my state's system of governance and the democratic ideal of equal power sharing. I have a profound sense of the loss of my political power, and feel violated in many of the ways alleged in this lawsuit.

Every now and then the judges of the United States Supreme Court as well as lower courts find new entitlements in the United States Constitution, and not surprisingly this rarely happens before there is sufficient public support for the cause to not result in the removal of those judges from their offices. As part of the natural progression of overcoming religious, cultural and social barriers to thinking freely, we may find growing support around the world for entitlements to engage in same-sex relationships, polyamorous relationships, incestuous relationships, non-abusive sex across the age barrier, public nudity or even public sex that is not intended to offend, etceteras. When grievous wrongs are done to those who don't wait for the sanction from society, then I can understand, maybe even condone, the decisions by state officials and judges to not wait till the aforementioned entitlements are granted democratically. Gone are the days

when sexual acts between people of the same sex was a crime in and of itself in this country. As the laws related to this lawsuit were not bringing about grievous harm, I choose not to stand idly by when state officials blatantly undermine and violate my state's constitution and harm our political power.

I have already encountered resistance to sponsoring and otherwise supporting a voter initiative to outlaw the genital cutting of all children except to treat significant medical problems, on the grounds that the state officials will not defend that law. The violations alleged in this lawsuit are personally affecting my ability to ensure that the children of this state, and potentially my own children, not be wrongfully deprived of intact genitals. It is affecting my political power to bring about change through voter initiatives.

There are many voter initiatives that try to reduce the harms to non-human animals, that I value a lot. In a world where too many 'experts' apparently think of animals as not much more than automata, it bothers me that courts would use 'expert' opinion to try to gauge the validity of people's choices expressed in an election. Unfortunately, such is how the court systems work. But, I do not want the additional hindrance to the democratic ideal of equal power sharing of having state officials selectively choose to not defend laws based on information from their preferred 'experts'.

People are used to courts limiting their political power based on the stretched interpretations of laws by various judges, and someday I hope we will stop that too. I don't want people to get used to state officials unconstitutionally undermining our state laws, especially the ones brought about by voter initiatives.

I wish most of us would have a greater value for and appreciation of

the democratic ideal of equal power sharing. I wish we would see each other less as opponents to defeat any which way we can, than as our fellow members of society, some of whom hold views that we find intensely disagreeable. I wish we will try to win other people over through compassion, reason and logic on issues that we feel strongly about. I wish most of us would choose to not turn a blind eye to such transgressions by state officials. I wish we would see that allowing such transgressions to counter the 'tyranny of the majority' on such hot button issues, results in the relatively unchecked continuation of the 'tyranny of some minorities' on what we should recognize as more important issues that affects not only the people in this country, but people all over the world in very bad ways.

We have this wonderful opportunity to restore people's faith in democracy and engage in direct conversations between people with differing views towards swaying each other, instead of increasing the animosity against each other by engaging in undemocratic maneuvers to subvert each others views.

I value and promote Direct Representation, a system that idealizes and effectuates the democratic ideal of equal power sharing. A system in which the political power of the people will not be dependent on the approval of four or more judges in the highest court of this state, or five or more judges in the highest court of this country, and most definitively not dependent on the approval of the attorney general or governor of this state. Voter initiatives shares the idealization of equal power sharing in deciding on important issues. I hope that we will realize the system of Direct Representation incrementally through various voter initiatives. The continued undermining of voter initiatives will be a major threat to me, my desires, my powers, my aspirations, and a lot of other things that I value.

I hope the judges will make the righteous and bold move to grant the remedies we seek, and that over time the judges will be widely recognized as the heroes of direct democracy, who, at the risk of losing their own positions of power, truly guarded the political power of the people.

Sincerely,

Aouie Goodnis

2) Personal statement of Dhun May

The purpose of this lawsuit is to re-establish Proposition 8 and the right of the people of California to have initiatives that have been voted into law defended, if need be, by the Governor and Attorney General.

Toward that end, **with goodwill to all**, I pose the following questions:

--Should the United States Supreme Court disregard California's Constitution?

--Should Proposition 8, a duly enacted law brought about by the initiative of California residents and financially supported by many voters (including myself), be left defenseless?

--Should commonly held values that have been part of societal fabric for millennia be suddenly abdicated? Should society constantly be pressured to accept, think about, and legitimize sodomy, which, after all, is the **private** affair of those involved?

--Should the concept of free speech apply less to speech that promotes what has traditionally been considered wholesome?

--Should belligerent, brazen, intimidating, uncivil behavior (which threatens our constitutional rights) be condoned just because those involved are “politically correct”?

--Why have some **former** members of the LGBT community claimed that they **now** face **much more** discrimination?

--In general, is it not better for a child to be raised by a father AND a mother? Are the Supreme Court justices aware that, according to some Internet article(s), a disproportionate percent of children who have a guardian or guardians involved in a sexual relationship with someone of the same gender have been molested by their “guardian”?

--Why is little mention being made of the proportionately higher rates of physical and mental illnesses and the significantly shorter lifespan on average in the LGBT community as compared to other groups of similar socioeconomic status?

--Shouldn’t prohibitions in religious teachings give us reason to pause? Isn’t it arrogant of us to disregard religious injunctions (which may protect and guide us)?

--Has the increased emphasis on sexuality resulted in a happier, healthier and wiser society?

Court rulings should honor the Constitution of the state involved and in addition should promote the betterment of society. The rights of **all** citizens, including those whose lifestyles collide with traditional values, must be considered. However, any ruling or law that results largely from the effort of a well-financed special interest group whose values are contrary to those of most religious teachings, traditional secular mores, and most seniors might be detrimental to society. Long standing societal and religious mores should be taken into consideration by the United States Supreme Court and state Supreme Courts when they directly apply to the matter at hand. The strong disapproval of any lifestyle by most religions, including most sects of Christianity, Judaism, Islam and Zoroastrianism (the oldest of the well-known monotheistic religions) should be respectfully considered. After all, many people believe that religious teachings can help people to be happy, healthy, holy, humble, compassionate, successful, prosperous, peaceful and protected. Conversely, one might infer that going against religious and spiritual injunctions could put one in the scary position of being distanced from God, having less protection, having less self-esteem and ultimately less victory in life.

Not all laws and rulings are beneficial to society and some good people are feeling “squeezed” by some recent trends. For example, I recall being apparently negatively impacted professionally because I honestly answered a pupil’s question. People are having to decide between what their consciences dictate and what is expedient.

The recent controversial ruling by the United States Supreme Court is problematic **even for many people who were opposed to Proposition 8** because it threatens the right of the people of California to successfully utilize the initiative process allowed by their state's constitution. I hope this lawsuit will resurrect an important right for **all** Californians.

Dhun May

XIV - Certificate of word count

I, Aouie Goodnis, a plaintiff in this case, relying on the word count function of LibreOffice, the computer program used to prepare this document, certify that that the word count for this petition is 12806, which does not include the cover, the tables, the proof of service or the verifications.

Aouie Goodnis

XV - Proof of Service

I am over the age of 18 and a party to this action.

My residence or business address is:

12752 Longworth Ave, Norwalk, CA 90650

I served true and correct copies of the attached document entitled:

"To remedy unconstitutional harm to our political power, we seek relief from an earlier ruling against California Family Code Section 308.5, a related alternative writ of mandate, select alternate representative(s) of the state to defend marriage laws, ..."

I served the document on the persons below:

Kamala D. Harris

Attorney General of California

Office of the Attorney General

1300 "I" Street

Sacramento, CA 95814-2919

(916) 445-9555

Edmund G. Brown, Jr.

Governor of California

Office of the Governor

c/o State Capitol, Suite 1173

Sacramento, CA 95814

(916) 445-2841

I enclosed the document and a DVD disc in sealed envelopes or packages addressed to the above persons, and deposited the sealed envelopes or packages with the United States Postal Service, with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

Aouie Goodnis_____ _____

Name of Declarant Signature of Declarant

EXHIBIT A

image is not in this electronic document

EXHIBIT B

image is not in this electronic document

EXHIBIT C

Transcript of an excerpt from the show The War Room with Jennifer Granholm - Feb 27, 2012 9PM to 10PM

File TWR_JG_20120228.mp4 is a 3min 55sec MPEG-4 file that contains below portion.

Transcript of portion from 00:00:15 to 00:02:25

(JG -> Jennifer Granholm, KH -> Kamala Harris)

JG: One of the other issues that is there is a discussion about is ofcourse is gay marriage. Now, California has seen the proposal go up. And and I don't know whether it will go to the Supreme Court or not. Does the attorney general have a role at that point or not.

KH: So, we had a role and I was unapologetically opposed to anything that would restrict their ability to marry.

JG: So, do you represent that, the legislation as the people enacted it, when it goes up through the courts?

KH: So, Prop 8 was passed and and was a measure that would prohibit gay couples from marrying. I was opposed to Prop 8 and believed that since a court had already ruled it unconstitutional, I should not use the limited resources of California to defend it. So, we chose not to defend it. It then went before a - the district court and and was found based - after the standing issue - the detail - the legal details - was found to be unconstitutional. So, we don't have any role at this point. And I believe that it should it should remain where it is is the last court to rule it found it unconstitutional, which I believe it is, and and lets go forward. And it is ironic frankly that, and I say this again as a native Californian, that we are still battling this in California, and all of these other states, you know we consider ourselves to be so progressive.

JG: Exactly. But, but what is is interesting is that in these other states like, for example I was speaking with Governor Gregoire of Washington and who signed it in. But there are those who are putting it on the ballot to try to - um you know - circumvent the legislature and that activity there. The question for America really is in all of these states, and that is what Maryland is going to be facing, and that is what New Jersey is, is this - when you have an issue of equality for a minority group - do you put that on the ballot, or is this something that the legislature should be leading and putting putting enacting - other than allowing to go on the ballot. And that to me is a really fundamental issue.

KH: Right. And I think it has been said by by - better than I am going to say it. But, I think that when you are talking about something as as fundamental as equality, and and civil rights, it should not be the subject of any political process.

EXHIBIT D

Transcript of an excerpt from an interview on a show called The Rachel Maddow Show in March 2013.

File RM_20130326.mp4 is a 5min 18sec MPEG-4 file that contains below portion.

Transcript of portion from 00:00:00 to 00:01:14

(RM -> Rachel Maddow, KH -> Kamala Harris)

RM: From the dominant focus of the arguments today, we know that the justices care very much about how this case got to the court. Specifically, the decision of the California governor and the California state attorney general to not defend Prop 8 in court. That is what they were focused on today. And joining us right now, live, is the attorney general of the state of California, Kamala Harris. Attorney general Harris, thank you so much for being with us tonight. It is a real pleasure.

KH: Glad to be with you. Thank you.

RM: So, Prop 8 passed in California in in 2008. As I understand it when you won state-wide office a couple of years after that, you said that if you were elected you would not defend that ban in court. Why why did you make that decision and how do you think it is playing out?

KH: Um .. You are exactly right. I did and and we should also note that my opponent said that he would defend Prop 8, and ofcourse my opponent was not elected. And um the reason I said that and the I have refused to defend Prop 8 is, one simple reason, it is unconstitutional. And it has actually been found by a court to be unconstitutional. And frankly Rachel, as the daughter of parents who were active in the civil rights movement, I refuse to stand in the doorway of the wedding chapel blocking same-sex couples' ability to marry.

EXHIBIT E

image is not in this electronic document

EXHIBIT F

RE: Protecting the political power of the people, including the initiative powers.

Aouie Goodnis and Dhun May vs Attorney General of California, currently Kamala D. Harris, and Governor of California, currently Edmond G. Brown Jr

2013-12-09

Greetings California Supreme Court representative/s.

The accompanying petition was returned unfiled due to an erroneous belief that "this court has already rendered its decision in this matter."

This case is about several issues related to failing to provide for the legal defense of laws brought about by initiatives, in light of a related decision by the United States Supreme Court in June of 2013. The issues include whether or not such failure constitutes an unconstitutional harm to the political power of the people, violates due process protections, violates free speech protections, violates equal protection principles and violates the principle of separation of the judicial, legislative and executive powers. Many of the remedies sought will enhance the political power of the people by strengthening and protecting initiatives. One of the remedies sought (the second one) is an enhancement of this court's opinion rendered in Hollingsworth v Perry, Case No. S189476, that the United States Supreme Court found to be lacking.

The following four cases had some relation to this case, but do not cover the issues addressed in this lawsuit. Hollingsworth v Perry, Case No. S189476 (2011), Beckley v. Schwarzenegger, Case No. S186072 (2010), In re Marriage Cases, 43 Cal.4th 757 (2008) and Hollingsworth v. O'Connell, Case No. S211990 (2013).

It appears highly unusual to return the petition unfiled for the stated reason. It is difficult to know whether it was due to the mistaken stated belief and a desire to save the plaintiffs the cost of the lawsuit, or an act of impropriety, or some other reason. As per today's conversation with the Assistant Clerk / Administrator Jorge Navarrete, this case is being resubmitted with this letter. Jorge Navarrette reassured that the letter and the petition will be forwarded to the court. This letter is being mailed to the defendants too.

Please understand that the plaintiffs' have a strong commitment to protect our initiative powers. Plaintiffs seek to exercise the right to petition the courts. A disposition by this court any which way the court chooses will end this attempt to protect initiatives through the courts.

Thank you for your consideration.

Sincerely,

Aouie Goodnis
http://ProtectInitiatives.com/

EXHIBIT G

image is not in this electronic document