

No. S _____

IN THE
SUPREME COURT OF CALIFORNIA

CALIFORNIA COUNCIL OF CHURCHES, THE RIGHT REVEREND
MARC HANDLEY ANDRUS, Episcopal Bishop of California, THE
RIGHT REVEREND J. JON BRUNO, Episcopal Bishop of Los Angeles,
GENERAL SYNOD OF THE UNITED CHURCH OF CHRIST,
NORTHERN CALIFORNIA NEVADA CONFERENCE OF THE
UNITED CHURCH OF CHRIST, SOUTHERN CALIFORNIA NEVADA
CONFERENCE OF THE UNITED CHURCH OF CHRIST,
PROGRESSIVE JEWISH ALLIANCE, UNITARIAN UNIVERSALIST
ASSOCIATION OF CONGREGATIONS, and UNITARIAN
UNIVERSALIST LEGISLATIVE MINISTRY CALIFORNIA,
Petitioners,

vs.

MARK D. HORTON, in his official capacity as State Registrar of Vital
Statistics of the State of California and Director of the California
Department of Public Health; LINETTE SCOTT, in her official capacity as
Deputy Director of Health Information & Strategic Planning for the
California Department of Public Health; and EDMUND G. BROWN, JR.,
in his official capacity as Attorney General for the State of California,
Respondents.

PETITION FOR WRIT OF MANDATE OR PROHIBITION

(RELATED PROCEEDINGS PENDING: S168047, S168066, S168078,
S168281)

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General Synod of the United Church of Christ; Northern California Nevada
Conference of the United Church of Christ; Southern California Nevada
Conference of the United Church of Christ; Progressive Jewish Alliance;
Unitarian Universalist Association of Congregations, and the Unitarian
Universalist Legislative Ministry California

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PETITION FOR WRIT OF MANDATE OR PROHIBITION

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE STATE OF
CALIFORNIA:

INTRODUCTION

California's constitutional right of equal protection is sacrosanct. Not even the electorate can take it away selectively – at least not without a two-thirds vote of the Legislature or a constitutional convention. This writ petition seeks to enforce that basic principle.

The California Supreme Court has “original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition.” (Cal. Const., art. VI, §10.) This court's assumption of original jurisdiction is reserved for cases where “the issues are of great public importance and should be resolved promptly.” (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 241 (*Brosnahan*)). This is such a case.

Proposition 8, a ballot initiative passed by a bare majority of votes on November 4, 2008, purports to do something unprecedented in California by changing our state Constitution to undermine a fundamental constitutional and human-rights principle – the right of all citizens to equal protection of the laws

– by taking that right away from some of those citizens. The California Constitution, however, provides safeguards against such threats to equal protection: Under article XVIII, such a change is a “revision” which cannot occur by initiative but instead requires a two-thirds vote of the Legislature, or a constitutional convention, followed by a vote of the people. In this way, the California Constitution insulates its guarantee of equal protection from the passions of popular prejudice that occasionally creep into the political process – much like the United States Constitution ensures the endurance of the federal guarantee of equal protection by requiring a three-fourths vote of state legislatures or conventions to amend the Bill of Rights. (See U.S. Const. art. V.)

The religious institutions that file this petition – and their member congregations and parishioners – count on article XVIII to ensure that the California Constitution’s guarantee of equal protection for *religious minorities* cannot be taken away without a deliberative process of the utmost care possible in a representative democracy. If Proposition 8 is upheld, however, the assurance will disappear – for, just as surely as gay men and lesbians could be deprived of equal protection by a simple majority vote, so too could religious minorities be deprived of equal protection – a terrible irony in a nation founded by people who emigrated to escape religious persecution. Petitioners seek this court’s pronouncement on Proposition 8 because of past experience and fear for the future – the experience of historical persecution

against religious minorities, and the fear that it could happen again, here in California, if a path is cleared for an initiative-based selective deprivation of equal protection.

There is no matter of greater public importance to California than the damage Proposition 8 does to our Constitution's guarantee of equal protection. And that damage is happening *now*, as of November 5, 2008. Today, tomorrow, and every day until this court acts, a basic human right is being selectively withheld from some of our citizens, who are hurting deeply from what they have lost. Their hurt is real and palpable, and it cannot be undone in hindsight by a decision of this court – which is surely inevitable – a few years down the line in the routine course of the judicial process. Extraordinary injustice calls for extraordinary relief. The time for this court's decision – like the effective date of Proposition 8 – is *now*.

PRELIMINARY JURISDICTIONAL STATEMENT

1. By this original petition for writ of mandate or prohibition, petitioners California Council of Churches, the Rt. Rev. Marc Handley Andrus, Episcopal Bishop of California, the Rt. Rev. J. Jon Bruno, Episcopal Bishop of Los Angeles, General Synod of the United Church of Christ, Northern California Nevada Conference of the United Church of Christ, Southern California Nevada Conference of the United Church of Christ, Progressive Jewish Alliance, Unitarian Universalist Association of Congregations, and Unitarian Universalist Legislative Ministry California,

respectfully seek a writ of mandate or prohibition under California Constitution article VI, section 10, and California Code of Civil Procedure sections 1085 and 1103, enjoining State Registrar of Vital Statistics of the State of California and Director of the California Department of Public Health Mark B. Horton, MD, MSPH, Deputy Director of Health Information & Strategic Planning of the California Department of Public Health Linette Scott, MD, MPH, and California Attorney General Edmund G. Brown, Jr., all in their official capacities, from enforcing, taking any steps to enforce, directing any persons or entities to enforce, or otherwise seeking to implement or give effect to Proposition 8, the initiative measure entitled "Eliminates the Right of Same-Sex Couples to Marry," which has received a majority of the votes cast in the November 4, 2008, election.

2. This petition is brought on the ground that Proposition 8's purported amendment of California's Constitution to deprive a distinct segment of the population of equal protection of the laws and withdraw from them a fundamental civil right amounts to a revision and not an amendment that can be accomplished by initiative upon a simple majority vote. (See Cal. Const., art. XVIII.)

3. As such, Proposition 8 is a nullity, the enforcement of which threatens petitioners' legitimate interests.

4. Petitioners, as diverse religious organizations, have a profound interest in the guarantee of equal protection secured by the California

Constitution both under the express equal protection clause of article I, section 7, and as an implicit requirement of the fundamental right to religious liberty and freedom, which must be applied equally to all persons and religious faiths without government favoritism or partiality.

5. Petitioners the Rt. Rev. Marc Handley Andrus, the Rt. Rev. J. Jon Bruno, the California Council of Churches, Northern California Nevada Conference of the United Church of Christ, Southern California Nevada Conference of the United Church of Christ, and the Unitarian Universalist Legislative Ministry are citizens of California.

6. Each organizational petitioner's membership includes many citizens of California.

7. As citizens of California, and as organizations representing diverse religious faiths whose membership includes many citizens of California, petitioners have a beneficial interest in the continuing vitality and integrity of the equality guarantees of the California Constitution and of the safeguard against hasty or improvident changes to our state Constitution established by article XVIII, which prohibits the use of the initiative process for a constitutional change of the magnitude of Proposition 8. (See Code Civ. Proc., §§1086, 1103.)

8. Petitioners have no other plain, speedy or adequate remedy at law. No administrative or other proceedings are reasonably available to enjoin the enforcement of Proposition 8.

9. Petitioners respectfully invoke the original jurisdiction of this Court under California Constitution article VI, section 10; Code of Civil Procedure sections 1085 and 1103; and rule 8.490 of the California Rules of Court.

10. This petition presents no questions of fact that would have to be resolved before granting the relief sought.

THE PARTIES

1. Petitioner **California Council of Churches** is an organization of California's Christian churches that traces its history to a gathering at San Francisco's Central Methodist Church where, on January 28, 1913, twenty delegates from several county and city church federations organized a statewide California Church Federation, with a constitution declaring: "In the providence of God, the time has come more fully to manifest the essential oneness of the Christian Churches of America in Jesus Christ as their Divine Lord and Savior, and to promote the spirit of fellowship, service and cooperation among them." The Council today is a leading voice representing the theological diversity in the state's mainstream and progressive communities of faith. Its membership includes 51 denominations and judicatories in California, representing over 4,000 congregations and more than 1.5 million members drawn from the mainstream Protestant and Orthodox Christian communities, as well as allies from other faith traditions. They include: **American Baptist Churches** (American Baptist Churches of the

West; Pacific Southwest Region); **African Methodist Episcopal Church** (Fifth Episcopal District); **African Methodist Episcopal Zion Church**; **Armenian Church of America** (Western Diocese of the Armenian Church); **Christian Methodist Episcopal Church** (Ninth Episcopal District); **Church of the Brethren** (Pacific Southwest District); **Christian Church (Disciples of Christ)** (Northern California-Nevada Region; Pacific Southwest Region); **Community of Christ**; **The Episcopal Church** (Episcopal Diocese of California; Episcopal Diocese of El Camino Real; Episcopal Diocese of Los Angeles; Episcopal Diocese of Northern California; Episcopal Diocese of San Diego; Episcopal Diocese of San Joaquin); **Ethiopian Orthodox Church**; **Evangelical Lutheran Church in America** (Pacifica Synod; Sierra Pacific Synod; Southwest California Synod); **Greek Orthodox Church** (Orthodox Diocese of San Francisco); **Independent Catholic Churches International**; **Moravian Church**; **National Baptist Convention**; **Presbyterian Church (U.S.A.)** (Presbytery of Los Ranchos; Presbytery of the Pacific; Presbytery of the Redwoods; Presbytery of Riverside; Presbytery of Sacramento; Presbytery of San Diego; Presbytery of San Fernando; Presbytery of San Francisco; Presbytery of San Gabriel; Presbytery of San Joaquin; Presbytery of San Jose; Presbytery of Santa Barbara; Presbytery of Stockton; Sierra Mission Partnership; Synod of the Pacific; Synod of Southern California & Hawaii); **Reformed Church in America**; **Swedenborgian Church**; **United Church of Christ** (Northern California Nevada Conference; Southern California Nevada

