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11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 KRISTIN M. PERRY, *et al.*,
 14 Plaintiffs,
 15 and
 16 CITY AND COUNTY OF SAN FRANCISCO,
 17 Plaintiff-Intervenor,
 v.
 18 ARNOLD SCHWARZENEGGER, *et al.*,
 19 Defendants,
 20 and
 21 PROPOSITION 8 OFFICIAL PROPONENTS
 22 DENNIS HOLLINGSWORTH, *et al.*,
 23 Defendant-Intervenors.

Case No. 09-CV-2292 VRW

**MOTION OF THE BECKET
 FUND FOR RELIGIOUS
 LIBERTY FOR LEAVE TO FILE
 BRIEF AS AMICUS CURIAE IN
 SUPPORT OF DEFENDANT-
 INTERVENORS**

Date: To be determined by Court
 Time: To be determined by Court
 Place: To be determined by Court

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT The Becket Fund for Religious Liberty hereby moves the
3 Court for leave to file its brief *amicus curiae* in the above-captioned case, to address the poten-
4 tial conflict between same-sex marriage and religious liberty. The Becket Fund has conferred
5 with counsel for all parties. Counsel for Defendants and Defendant-Intervenors consent to this
6 motion; counsel for Plaintiffs and Plaintiff-Intervenor do not object to this motion but maintain
7 they are not in a position to grant consent given the Court's statements regarding amicus briefs
8 at the December 16, 2009, pre-trial conference.
9

10 **I. STANDARD**

11 The Court has broad discretion to permit a non-party to participate in an action as *amicus*
12 *curiae*. See, e.g., *Gerritson v. de la Madrid Hurtado*, 819 F.2d 1511, 1514 n.3 (9th Cir. 1987);
13 *Nat. Res. Def. Council v. Evans*, 243 F. Supp. 2d 1046, 1047 (N.D. Cal. 2003) (amici "may file
14 briefs and may possibly participate in oral argument" in district court actions). As this Court
15 has noted, "[d]istrict courts frequently welcome amicus briefs from non-parties concerning le-
16 gal issues that have potential ramifications beyond the parties directly involved or if the amicus
17 has 'unique information or perspective that can help the court beyond the help that the lawyers
18 for the parties are able to provide.'" *Sonoma Falls Dev., LLC v. Nevada Gold & Casinos, Inc.*,
19 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003) (quoting *Cobell v. Norton*, 246 F Supp 2d 59, 62
20 (D.D.C. 2003)) (citation omitted); see also *In re Na'l Sec. Agency Tele. Records Litig.*, No. 06-
21 1791 VRW, 2009 WL 1561818, at *9-10 (N.D. Cal. June 3, 2009) (relying on submissions of
22 *amici curiae* regarding proper interpretation of statute).
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24

25 **II. IDENTITY AND INTEREST OF AMICUS**

26 The Becket Fund for Religious Liberty is a non-profit, nonpartisan law firm dedicated to
27 protecting the free expression of all religious traditions. It has represented agnostics, Buddhists,
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1 Christians, Hindus, Jews, Muslims, Native Americans, Santeros, Sikhs, and Zoroastrians,
2 among others, in lawsuits across the country and around the world. It is frequently involved,
3 both as counsel of record and as *amicus curiae*, in cases seeking to preserve the freedom of *all*
4 religious people to pursue their beliefs without excessive government interference. The Becket
5 Fund has also represented religious people and institutions with a wide variety of views about
6 same-sex marriage and homosexuality, including religious people and institutions on all sides
7 of the same-sex marriage debate.

9 The Becket Fund has long sought to facilitate the neutral, academic discussion of the im-
10 pact that legalizing same-sex marriage could have on religious liberty. In December 2005, it
11 hosted a conference of noted First Amendment scholars—representing the full spectrum of
12 views on same-sex marriage—to assess the religious freedom implications of legalized same-
13 sex marriage. The conference resulted in the book *SAME-SEX MARRIAGE AND RELIGIOUS LIBERTY:
14 EMERGING CONFLICTS* (Douglas Laycock, Anthony R. Picarello Jr. & Robin Fretwell Wilson,
15 eds., Rowman & Littlefield 2008). To date, *EMERGING CONFLICTS* remains the touchstone of
16 scholarly discourse about the intersection of same-sex marriage and religious liberty.

18 Based on its expertise in the field of religious liberty generally, and the intersection of
19 same-sex marriage and religious liberty specifically, the Becket Fund submits this brief to
20 demonstrate that concerns about the potential conflict between same-sex marriage and religious
21 liberty are both rational and well-founded in fact.

23 **III. CONCLUSION**

24 For these reasons, the Court should grant The Becket Fund leave to file the accompanying
25 amicus curiae brief and to participate in the proceedings.

1 Dated: January 8, 2010

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