American Foundation for Equal Rights

July 8, 2009

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Jennifer Pizer
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Western Regional Office
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ACLU of Southern California
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Los Angeles, CA 90017

Dear Kate, Jennifer and Mark:

On behalf of the plaintiffs and our board, donors and supporters, I am writing to ask that you not intervene in *Perry v. Schwarzenegger*.

Given our willingness to collaborate with you, and your efforts to undercut this case, we were surprised and disappointed when we became aware of your desire to intervene.

You have unrelentingly and unequivocally acted to undermine this case even before it was filed. In light of this, it is inconceivable that you would zealously and effectively litigate this case if you were successful in intervening. Therefore, we will vigorously oppose any motion to intervene.

In public and private, you have made it unmistakably clear that you strongly disagree with our legal strategy to challenge Prop. 8 as a violation of the Due Process and Equal Protection Clauses of the United States Constitution. Your strident criticism of our suit has been constant:

- May 27, Joint Statement from ACLU, Lambda, NCLR and Other Organizations
  "Now that the California Supreme Court has refused to strike down Proposition 8, we need to go back to the voters. Since we lost Proposition 8 just six months ago, and since a

ballot initiative to repeal is likely to require a huge investment in time and money, it is tempting to at least try a federal lawsuit first. But it's a temptation we should resist."

- May 27, The Advocate
  "'This is an attempt to short-circuit the process, to go all the way to the end….To us, that seems like a lot of risk for a long shot when we know that if we worked to establish more of the predicates, we could do this and not be taking such a big risk.'" (Matt Coles, ACLU)

- May 27, New York Times
  "'We think it's risky and premature,' said Jennifer C. Pizer, marriage project director for Lambda Legal in Los Angeles."

- May 27, New York Times
  "'Federal court. Wow. Never thought of that.'" (Matt Coles, ACLU)

- June 26, Associated Press
  (Within a story on the filing of the ACLU, Lambda and NCLR amicus briefs): "ACLU attorney Matt Coles said the groups filed their arguments reluctantly because they still believe federal court is the wrong forum for their fight."

Even after you filed an *amicus curiae* brief urging the district court to grant our motion for a preliminary injunction against the enforcement of Prop. 8, you refused to characterize your position as one of "support." Indeed, Jennifer Pizer of Lambda Legal went so far as to insist that we alter a press release that described your *amicus curiae* brief as "supporting" our suit. In response, we issued a second release addressing her concerns.

Having gone to such great lengths to dissuade us from filing suit and to tar this case in the press, it seems likely that your misgivings about our strategy will be reflected—either subtly or overtly—in your actions in court.

Despite your well-publicized hostility toward filing suit in federal court, we actively sought out your advice and counsel, and have incorporated it on many occasions. We value your leadership, experience and expertise on the issue of marriage equality. Thus, from the outset, we have sought to stand together with you, shoulder to shoulder, in this battle. Some examples:

- In the fall of 2008, a representative from what would become AFER spoke to Paul Smith, co-chair of Lambda Legal's board of directors, and asked him to play a role in the case. He declined.

- In May 2009, an AFER board member discussed the case in New York with Jon Davidson of Lambda Legal, asking for Lambda's involvement. Several days later, AFER board members had a conference call with Lambda in which we again asked for Lambda's involvement.

- On May 14, 2009, a meeting was held in the home of an AFER board member with Ramona Ripston and Mark Rosenbaum of ACLU, and Jennifer Pizer and Jon Davidson of Lambda. Both groups declined to participate in the case and urged AFER to cease its efforts.

- On June 2, 2009, Theodore Olson and other members of the legal team spoke with and solicited the input of Kate Kendell and Shannon Minter (NCLR) via conference call.

- On June 8, 2009, Kate Kendell and Shannon Minter actively participated in a lengthy strategy meeting with our legal team at the Los Angeles offices of Gibson, Dunn & Crutcher.

- On June 9, 2009, members of the legal team solicited the input of Jennifer Pizer and Jon Davidson of Lambda Legal via conference call.

- Representatives from Lambda Legal, ACLU and NCLR were invited to participate in a moot court exercise scheduled to take place in San Francisco on July 1, 2009 in advance of the first court hearing in this case.

- When the moot court was delayed due to an order by the Judge, representatives of Lambda Legal, ACLU and NCLR participated in a conference call where we discussed the order and potential next steps.

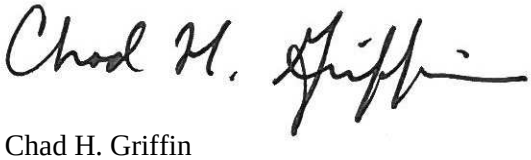
- That call was followed by two subsequent calls that afternoon to discuss how to further integrate Lambda, NCLR and ACLU.

Regrettably, you embarked on a public and private campaign to undermine our efforts to vindicate the federal constitutional rights of California's gay and lesbian residents. We nevertheless remain willing to work closely with you at all stages of this case and welcome your continued participation in the district court proceedings as an *amicus curiae*.

But we cannot and will not support your motion to intervene. Your intervention would create a complex, multi-party proceeding that would inevitably be hampered by procedural inefficiencies that are directly at odds with our goal—and the goal of Chief Judge Walker—of securing an expeditious, efficient, and inexpensive resolution to the district court proceedings. As a result of your intervention, we could be mired in procedurally convoluted pre-trial maneuvering for years—while gay and lesbian individuals in California continue to suffer the daily indignity of being denied their federal constitutional right to marry the person of their choosing. Such potentially interminable delay is antithetical to the values on which your organization was founded and for which you and your supporters have fought so tirelessly. Delaying equal marriage rights in California serves none of our interests.

Again, we continue to welcome your input and advice as we move forward in this case. We look forward to working with you to resolve this issue and bring the focus back to the constitutional issues at hand.

Sincerely,



Chad H. Griffin
Board President