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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KRISTIN PERRY; SANDRA B. STIER; PAUL T. KATAMI; JEFFREY J. ZARRILLO,

Plaintiffs,

vs.

ARNOLD SCHWARZENEGGER, in his official capacity as governor of California; EDMUND G. BROWN, JR., in his official capacity as attorney general of California; MARK B. HORTON, in his official capacity as director of the California Department of Public Health and state registrar of vital statistics; LINETTE SCOTT, in her official capacity as deputy director of health information & strategic planning for the California Department of Public Health; PATRICK O'CONNELL, in his official capacity as clerk-recorder of the County of Alameda; and DEAN C. LOGAN, in his official capacity as registrar-recorder/county clerk for the County of Los Angeles,

Defendants.

DENNIS HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ, HAKSHING WILLIAM TAM, and MARK A. JANSSON, as official proponents of Proposition 8,

Defendant-Intervenors.

Case No. **C 09-2292**
Assigned to the Hon. Vaughn R. Walker

NON-PARTY MEDIA COALITION'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REQUEST FOR ORDER PERMITTING TELEVISION COVERAGE OF THE TRIAL

Date: 10 a.m.
Time: January 6, 2010
Ctrm.: 6

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The Non-Party Media Coalition respectfully submits the following memorandum of points and authorities in support of the Media Coalition's request for an order permitting television coverage of the trial.

MEMORANDUM OF POINTS AND AUTHORITIES

1.
INTRODUCTION

On December 17, 2009, the Judicial Council of the Ninth Circuit voted unanimously to permit live television coverage of some proceedings in civil non-jury cases. Burke Decl. Ex. A. In announcing this experiment, Chief Judge Alex Kozinski stated that the Judicial Council of the Ninth Circuit "hope[s] that being able to see and hear what transpires in the courtroom will lead to a better public understanding of our judicial processes and enhanced confidence in the rule of law." Id. On December 22, 2009, Local Rule 77-3 was amended to allow the use of television cameras in civil cases approved under test programs. See Civil Local Rule 77-3 (providing that "[u]nless allowed by a Judge or a Magistrate Judge … for participation in a pilot or other project authorized by the Judicial Council of the Ninth Circuit, the taking of photographs, public broadcasting or televising … in connection with any judicial proceeding[] is prohibited." (Revisions emphasized.). This civil bench trial presents an excellent opportunity for the Court to test its new policy and allow televised proceedings, because it involves important constitutional issues on a matter of substantial public interest – whether California's constitutional amendment (Proposition 8) prohibiting same sex couples from marrying violates the due process and equal protection clauses of the federal Constitution.

The dozens of decisions during the modern era that consistently have expanded the public's rights to obtain information about trials and the judiciary have rested on the public's "right to observe the conduct of trials." Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 572 (1980) (emphasis added). This right of observation guarantees not just that members of the public may visit courtrooms, but that all members of the public have the right to view trials. See id. at 594 (Brennan, J. concurring) (citing Cowley v. Pulsifer, 137 Mass. 392, 394 (1884) (Holmes, J.) ("It is desirable that the trial of causes should take place under the public eye [so that] every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed")). By logical extension, if the public's First Amendment right to observe proceedings is to be fully realized in the modern, urbanized world, it must presumptively

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encompass not just attendance in the courtroom, but also observation of these judicial proceedings by citizens watching on television or accessing the proceedings via the Internet or other electronic means. Presumably that is why the Ninth Circuit is permitting its district courts to join all 50 states and several other federal courts that allow live television coverage of at least some of their proceedings.

In this case, the members of the Media Coalition are requesting permission to televise the trial – from the opening statements until the announcement of the verdict – as it occurs in court. Such gavel-to-gavel coverage provides the public with an accurate and comprehensive understanding of these judicial proceedings. Just as the chronicles of the trial concerning the place of teaching evolution in schools riveted the country in the 1920s, televising this modern-day Scopes trial would present viewers with a national civics lesson on a hotly contested issue that crosses social, political, educational, and religious boundaries. The California Supreme Court recently permitted live camera coverage of the oral argument on the constitutional challenge to Proposition 8, allowing millions to observe its proceedings. Many other courts have permitted the media to broadcast newsworthy judicial proceedings, including the Florida Supreme Court during the Bush v. Gore Florida recount. The recognition of these courts of the public's right of access to televised proceedings has greatly enhanced the ability of the public to observe what transpires in the public courtroom and has demystified the judicial process for millions of people.

In addition to the enormous public interest in this matter, the parties opposing cameras in the courtroom have advanced no countervailing interests – nor could they – that would justify barring cameras from this trial. This is not a criminal trial that implicates Sixth Amendment rights, nor is there any concern about jury taint in a bench trial. Both sides are represented by experienced trial counsel. Any witnesses would be testifying in public at the trial with heavy accompanying publicity in the print and electronic media, so the presence of cameras is hardly a deterrent. As the many state and federal courts that allow television coverage have learned, the cameras used to televise trials in this digital age are unobtrusive, and members of the Media Coalition will fully cooperate with the Court to ensure that any requirements relating to equipment placement and "pooled" camera coverage are satisfied. Seasoned professionals from

In Session, formerly known as "Court TV", are prepared to broadcast these proceedings gavel to gavel on a pooled basis. In recent days, this Court has already taken steps to address the significant media attention this trial will generate regardless of whether it is televised, but allowing camera coverage will provide the public with the most complete and accurate information about what transpires during this historic trial.

2.

THE COURT SHOULD PERMIT TELEVISION COVERAGE OF THE ENTIRE TRIAL.

A. Public Policy Strongly Supports Permitting Televised Coverage Of These Proceedings.

The presence of cameras in the courtroom confers numerous benefits on the public. The media – and, in particular, television – play an indispensable role in informing the public about the conduct of judicial proceedings. In Richmond Newspapers, 448 U.S. at 573, the United States Supreme Court noted that "[i]nstead of acquiring information about trials by first hand observation or by word of mouth from those who attend, people now acquire it chiefly through the print and electronic media." 448 U.S. at 573. The Court explained that this development "validates the media claim of functioning as surrogates for the public." Id. at 573. Full media access to judicial proceedings is especially important given the pace of modern life and the size of our metropolitan areas. With the myriad commitments and responsibilities that each person faces on a daily basis, there is simply no time to attend judicial proceedings in person.

While an individual may be available to attend trial proceedings, the sheer number of such interested observants in cases like this one guarantees that only a small fraction could be admitted at any given time. Even with the overflow courtrooms the Court has planned for this trial, the Court has limited physical space. This reality has not been lost on courts and legislatures that have considered the issue. As a committee of the California Legislature recognized in 1967, long before technological advances permitted the unobtrusive recording of court proceedings, because "sprawling urbanism has replaced concentrated ruralism," and because "no courtroom in the land could hold even a minute fraction of the people interested in specific cases, … a trial is not truly public unless news media are free to bring it to the home of the citizens by newspaper, magazine,

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radio, television or whatever device they have."[1] Similarly, the Third Circuit acknowledged the practical obstacles that prevent full public attendance at trials, asking rhetorically, "What exists of the right of access if it extends only to those who can squeeze through the [courtroom] door?" United States v. Antar, 38 F.3d 1348, 1360 (3d Cir. 1994). In other words, a courtroom is open only in theory when the general public has no opportunity to view the events transpiring therein.

Furthermore, the media can best keep the public informed of events such as trials where the news organizations are permitted to provide live electronic access to proceedings. The ability to show the public exactly what happens in the courtroom is a crucial component of news coverage in the digital age. As Justice Marshall observed in Richmond Newspapers, "[i]n advancing the [] purposes [of open judicial proceedings], the availability of a trial transcript is no substitute for a public presence at the trial itself. As any experienced appellate judge can attest, the 'cold' record is a very imperfect reproduction of events that transpire in the courtroom." 448 U.S. at 597 n.22 (Marshall, J., concurring). To enable the media to perform its surrogate function most effectively, the maximum amount of information must be available to the public. The most effective means of making accurate, objective information available is through courtroom cameras.

B. The First Amendment Presumptive Right In Favor Of Full Public Access To Judicial Proceedings Also Supports Electronic Access To Entire Trials.

The Supreme Court has long recognized that a trial is a "public event." Craig v. Harney, 331 U.S. 367, 374 (1947). In 1980, the Supreme Court reaffirmed this principle, finding that the press and the public have a constitutional right to observe trials, absent compelling and clearly articulated reasons for closing such proceedings. Richmond Newspapers, 448 U.S. at 580. As the Court stated, "[T]he appearance of justice can best be provided by allowing people to observe it." Id. at 571. The Court noted that the strong historical tradition in Western jurisprudence in favor of public observation of trials is a practice that predates the Norman Conquest. Id. at 565. This

[1] Final Report Of The Subcommittee On Free Press – Fair Trial, Assembly Interim Committee On Judiciary, January 5, 1967, at 9. See Burke Decl. Ex. B.

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tradition of public access assumes even greater importance in our democratic system, where the government and all of its actions ultimately are held accountable by the voters. "People in an open society do not demand infallibility from their institutions," the Court concluded, " but it is difficult for them to accept what they are prohibited from observing." Id. at 572. For these reasons, the Court noted that "historically both civil and criminal trials have been presumptively open" to the public. Id. at 580 n.17 (emphasis added). See also id. at 598 (Stewart, J. concurring) ("stating that "the First and Fourteenth Amendments clearly give the press and the public a right of access to trials themselves, civil as well as criminal").

The concept of observation – that members of the public ought to be allowed to see for themselves public trials – is a cornerstone of the constitutional right recognized in Richmond Newspapers. As Chief Justice Burger stated in tracing our historical tradition of open proceedings, "part of the very nature of a criminal trial was its openness to those who wished to attend." Id. at 568. Members of the community always possessed the "right to observe the conduct of trials." Id. at 572. In contemporary society, however, demographics preclude the overwhelming majority of Americans from physically attending trials, and therefore, from observing them. Id. at 572-573. Yet those societal changes do not mean that the constitutional right of access can be exercised only by the small number of citizens who actually fit into the courtroom. Through cameras in the courtroom, citizens again have a meaningful opportunity to exercise their constitutional right to observe trials. For that right to have meaning, the First Amendment right of access must include a presumptive right for the media (including the Media Coalition) to televise trials and for the public to observe trials on television.

The purposes of the constitutional rights to attend and observe trials are well established, and are promoted by the use of cameras in the courtroom. Not only does public observation of trials educate the public about the rule of law and the functioning of the justice system, it also serves to reinforce public acceptance – crucial in a democratic society – of "both the process and its results." Id. at 571. As Justice Brennan declared:

> Secrecy of judicial action can only breed ignorance and distrust of courts and suspicion concerning the competence and impartiality of judges; free and robust reporting, criticism, and debate can contribute to public understanding to the rule

> of law and to comprehension of the functioning of the entire criminal justice system, as well as improve the quality of that system by subjecting it to the cleansing effects of exposure and public accountability.

Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 587 (1976) (Brennan, J. concurring). Similarly, in Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 606 (1982), the Court emphasized that public access to court proceedings allows "the public to participate in and serve as a check upon the judicial process – an essential component in our structure of self-government."

Lower courts have found that this presumption of openness applies equally to civil proceedings because "[t]he community catharsis, which can only occur if the public can watch and participate, is also necessary in civil cases" and because "secrecy insulates the participants, masking impropriety, obscuring incompetence and concealing corruption." Brown & Williamson Tobacco Corp. v. FTC, 710 F.2d 1156, 1179 (6th Cir. 1983). Numerous other federal and state courts have agreed with this assessment. As one judge in the Central District of California has explained:

> The public interest at issue here has a venerable heritage rooted in the need for openness in a democratic society. The courts' legitimacy in our system of government derives in large measure from our historical commitment to offering reasoned decisions publicly setting forth our rationale not only to litigants, but to the people in whose name we administer justice. As Oliver Wendell Holmes observed: 'It is desirable that the trial of [civil] causes should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.' Cowley v. Pulsifer, 137 Mass. 392, 394 (1884).

California ex rel. Lockyer, 355 F. Supp. 2d 1111, 1125 (C.D. Cal. 2005). The district court also cited with approval a decision by the California Supreme Court that recognized a First Amendment right of access to civil trials because "the public has an interest in all civil cases in observing and assessing the performance of its public judicial system …." NBC Subsidiary (KNBC-TV), Inc. v. Superior Court, 20 Cal.4th 1178, 1210 (1999) (emphasis added) (cited in California ex rel. Lockyer, 355 F. Supp. 2d at 1125).

The Third Circuit emphasized these same considerations in Publicker Industries, Inc. v. Cohen, 733 F.2d 1059, 1069 (3d Cir. 1984), underscoring that "the civil trial, like the criminal trial, plays a particularly significant role in the functioning of the judicial process and the

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1 government as a whole," and that "[p]ublic access to civil trials, no less than criminal trials, 'plays
2 an important role in the participation and free discussion of governmental affairs.'" Id. at 1070
3 (citations omitted). Accordingly, the court "h[e]ld that the 'First Amendment embraces a right of
4 access to [civil] trials... to ensure that this constitutionally protected discussion of governmental
5 affairs is an informed one.'" Id. (citations omitted). See also Matter of Continental Illinois
6 Securities Litigation, 732 F.2d 1302, 1308 (7th Cir. 1984) (stating that the "policy reasons for
7 granting public access to criminal proceedings apply to civil cases as well").

8 Taken together, these cases stand for the proposition that courts must maximize public
9 access to judicial proceedings. Since television and electronic media serve as the primary news
10 source today for most Americans, the only realistic way to vindicate the public's right of access is
11 to allow cameras in the courtroom. Electronic media coverage fulfills the educational function of
12 enhancing public understanding of the judicial system. Moreover, cameras provide an opportunity
13 for the public to experience the sights and sounds of a trial. As a federal district court in Georgia
14 observed in Cable News Network v. American Broadcasting Cos., 518 F. Supp. 1238, 1245 (N.D.
15 Ga. 1981), "visual impressions can and sometimes do add a material dimension to one's
16 impression of particular news events. Television film coverage of the news provides a
17 comprehensive visual element and an immediacy, or simultaneous aspect, not found in print
18 media." The fact that television cameras provide the largest number of citizens with the best
19 opportunity to see trial proceedings firsthand is a compelling reason for permitting, not denying,
20 camera access. To conclude otherwise is inconsistent with the fundamental meaning of
21 Richmond Newspapers and these other above-cited cases.

22 Given the increasing weight accorded to the public's right of access, it is not surprising
23 that some lower courts have recognized that the First Amendment guarantees the right to observe
24 televised trial court proceedings. For example, in Katzman v. Victoria's Secret Catalogue, 923 F.
25 Supp. 580, 589 (S.D.N.Y. 1996), the federal district court noted that because of "advances in
26 technology, the old objections to cameras in the courtroom – that they were obtrusive and would
27 disrupt the trial – "should no longer stand as a bar to a presumptive First Amendment right of the
28 press to televise ... court proceedings, and of the public to view those proceedings on television."

Id. Similarly, a New York state court granted Court TV's request to televise the trial of four New York policeman charged in the shooting of an unarmed African immigrant, Amadou Diallo. See People v. Boss, 182 Misc. 2d 700, 705 (N.Y. Supreme Ct. 2000). Even though the case had been transferred because of pretrial publicity, the court in Boss held that there was a "presumptive First Amendment right of the press to televise court proceedings, and of the public to view those proceedings on television." Id. In spite of objections from the defendants, the court declared that televised coverage was warranted because the "denial of access to the vast majority will accomplish nothing but more divisiveness while the broadcast of the trial will further the interests of justice, enhance public understanding of the judicial system and maintain a high level of public confidence in the judiciary." Id. at 706.

By permitting camera coverage in this case, this Court may ensure that the public has the most complete and accurate account of the proceedings. The trial will be the subject of intense publicity regardless of whether the Court allows cameras into the courtroom. As the Florida Supreme Court acutely observed, "newsworthy trials are newsworthy trials, and ... they will be extensively covered by the media both within and without the courtroom," whether or not cameras are permitted. In re Petition of Post-Newsweek Stations, Inc., 370 So.2d 768, 776 (Fla. 1979). Written reports on trials can and do provide thoughtful, accurate and detailed accounts of what transpires in the courtroom. Yet only through allowing electronic coverage of the actual testimony in the courtroom may the Court ensure that the public receives the most complete account of the proceedings. Since citizens will judge the proceedings with whatever information they possess, public understanding will be enhanced by allowing all interested members of the public to observe through cameras what actually takes place in the trial concerning the constitutionality of Proposition 8, consistent with the media's presumptive right of access to judicial proceedings.

C. There Are No Countervailing Interests That Overcome The Strong Public Policy Favoring Electronic Access To The Entire Trial.

The public benefits achieved by allowing electronic camera access to these trial proceedings will further the fairness and efficiency of the proceedings, especially when there are

no countervailing interests to balance against the First Amendment presumptive right of access. Modern television equipment has evolved to the point where concerns about intrusive cables, microphones, and camerapersons are inapplicable. In fact, it has been nearly four decades since the United States Supreme Court overturned a conviction based on the "considerable disruption" of early-model television equipment. See Estes v. Texas, 381 U.S. 532, 536 (1965).[2] Even then, Justice Harlan, the dispositive concurring vote, recognized that the day might come when "television will have become so commonplace an affair in the daily life of the average person as to dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process. If and when that day arrives the constitutional judgment called for now would of course be subject to re-examination in accordance with the traditional workings of the Due Process Clause." Id. at 595–96 (Harlan, J., concurring).

Justice Harlan's prescience was vindicated in 1981, when a unanimous Supreme Court held that televising a trial – over the objections of two criminal defendants – was not a violation of their due process rights. Chandler v. Florida, 449 U.S. 560, 576 (1981). Chief Justice Burger's opinion emphasized that Estes had not established a rule banning states from experimenting with an "evolving technology, which, in terms or modes of mass communication, was in its relative infancy in 1964 . . ., and is, even now, in a state of continuing change." Id. at 560. The unanimous Chandler opinion also observed that "the data thus far assembled was cause for some optimism about the ability of states to minimize the problems that potentially inhere in electronic coverage of trials." Id. at 576 n.11. Therefore, in roughly fifteen years the technological advance that Justice Harlan had anticipated made televised coverage of trials acceptable as a matter of Supreme Court precedent.

Now, almost thirty years after Chandler, further technological progress has removed any doubt that cameras can be present in the courtroom without any concomitant disruption. It is not surprising, therefore, that several lower courts recently have had little trouble distinguishing Estes,

[2] Unlike in Estes, 381 U.S. at 539, and many other criminal cases, this civil case does not involve any Sixth Amendment fair trial right to be balanced against the First Amendment presumptive right of access.

noting that the Court in that case "explicitly recognized that its holding ultimately relied on the then-state of technology[.]" Katzman v. Victoria's Secret Catalogue, 923 F. Supp. at 589 ; see also People v. Spring, 153 Cal. App. 3d 1199 (1984) (presence of television camera during trial did not violate criminal defendant's Sixth Amendment right to a fair trial); State of New Hampshire v. Smart, 622 A.2d 1197 (N.H. 1993) (televised coverage of high-profile murder trial did not prejudice defendant); Stewart v. Commonwealth of Virginia, 427 S.E.2d 394 (Va. 1993) (presence of video cameras during criminal trial did not violate defendant's due process rights).

In fact, any concerns about the adverse impact of full-time camera coverage are belied by the research conducted in various states, including California, which have reached virtually identical conclusions concerning the impact – or lack of impact – on trial participants from the presence of cameras. At least a dozen states – including Arizona, California, Florida, Hawaii, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New York, Ohio, and Virginia – have studied the potential impact of electronic media coverage on courtroom proceedings, particularly focusing on the effect cameras have upon courtroom decorum and upon witnesses, attorneys and judges. See Burke Decl. Ex. C at 38-42. The results from the state studies were unanimous: the claims of a negative impact from electronic media coverage of courtroom proceedings – whether civil or criminal – are baseless. Id. For example, the state studies revealed that fears about witness distraction, nervousness, distortion, fear of harm, and reluctance or unwillingness to testify were unfounded. Id.

California's 1981 report on the effect of electronic coverage of court proceedings is one of the most comprehensive of the state evaluations that have been completed. Burke Decl. Ex. D. The California study included observations and comparisons of proceedings that were covered by the electronic media, and proceedings that were not. Id. Not only did California's survey results mirror those of other states – finding that there was no noticeable impact upon witnesses, judges, counsel, or courtroom decorum when cameras were present during judicial proceedings – the "observational" evaluations completed in California further buttressed these results. Id. For example, after systematically observing proceedings where cameras were and were not present, consultants who conducted California's study concluded that witnesses were equally effective at

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communicating in both sets of circumstances. Id. Not surprisingly, the California study also revealed that there was no, or only minimal, impact upon courtroom decorum from the presence of cameras. Id.[3]

The positive results of the state court evaluations were further bolstered by the Federal Judicial Center's 1994 study of a three-year pilot program that permitted electronic media coverage in civil proceedings in six federal district courts and two circuit courts. Burke Decl. Ex. C. The federal study concluded that no negative impact resulted from having cameras in the courtroom. Id. Thus, the extensive empirical evidence that has been collected on the impact of electronic coverage consistently has concluded that such coverage is not detrimental to the parties, to witnesses, to counsel, or to courtroom decorum. Id.

These recent court decisions and empirical studies are consistent with the Ninth Circuit's recent decision to experiment with allowing federal district courts to allow camera coverage of civil, non-jury trials. The parties here are represented by experienced counsel. Any concerns about "privacy" are undermined by the fact that witnesses at the trial would be testifying publicly, and would be the subject of intense media attention regardless of whether the proceedings were broadcast on television. In any event, absent "'exceptional circumstances,' the public's right of access to court proceedings and records trumps individual privacy interests." Copley Press, Inc. v. Superior Court, 63 Cal. App. 4th 367, 376 (1998) (not even a 15-year-old high school student's interest in maintaining the confidentiality of court documents detailing a sexual assault against him outweighed the public's right of access to the documents); see also New York Times Co. v. Superior Court, 52 Cal. App. 4th 97, 104 (1997) ("[f]ear of possible opprobrium or

[3] These findings were reinforced by the final report of a special task force appointed after the O.J. Simpson criminal trial to evaluate whether television coverage of trials should be continued in California. Based on all the evidence it gathered, the task force concluded in May 1996 that cameras should remain in the California courtrooms. Strikingly, the task force found that judges who actually had presided over televised trials favored allowing cameras in the courtroom. Ninety-six percent of those judges reported that the presence of a video camera did not affect the outcome of a trial or hearing in any way. In addition, the overwhelming majority of them reported that a camera did not affect their ability to maintain control of the proceedings, nor did it diminish jurors' willingness to serve. See 1996 Report of Task Force on Photographing, Recording, and Broadcasting in the Courtroom (attached as Burke Decl. Ex. E).

embarrassment is insufficient to prevent disclosure" of public records); United States v. Posner, 594 F. Supp. 930, 935-936 (S.D. Fla. 1985) (individual's privacy interest in income tax return could not overcome public's right of access because return already had been admitted in evidence at trial). There has been no showing in this case that any such exceptional circumstances are present that would require prohibiting the public from viewing the trial firsthand on television. Even if this showing could be made, the Court obviously has numerous safeguards at its disposal that can address any issues that arise and any such concerns are not a legitimate basis for completely barring television cameras from these historic proceedings.

3.
CONCLUSION

As Supreme Court Justice Anthony Kennedy told Congress, in discussing whether electronic access of court proceedings should be permitted:

> You can make the argument that the most rational, the most dispassionate, the most orderly presentation of the issue is in the courtroom, and it is the outside coverage that is really the problem. In a way, it seems perverse to exclude television from the area in which the most orderly presentation of the evidence takes place.

Hearings Before a Subcm. Of the House Comm. on Appropriations, 104th Congress, 2d Sess. 30 (1996). Justice Kennedy is right. If there is a public benefit to public trials – and there is – then there also is a public benefit to complete access to public trials. Two hundred years ago, the court accommodated the public's interest in court proceedings by moving high profile proceedings to a larger building. As the Supreme Court noted in Press Enterprise v. Superior Court (Press Enterprise II"), 478 U.S. 1, 10 (1986), the probable cause hearing in the Aaron Burr trial "was held in the Hall of the House of Delegates in Virginia, the courtroom being too small to accommodate the crush of interested citizens." Through the use of cameras in the courtroom, today's technology affords a much easier way to provide access to members of the public who are interested in following this important case, in which the Court will adjudicate the constitutionality of California's constitutional ban prohibiting same sex couples from marrying. To promote public confidence in and understanding of the judicial system and the outcome of this closely

watched case, the Media Coalition respectfully requests that the Court issue an order permitting live electronic coverage of these historic trial proceedings.

DATED: December 31, 2009

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By: : /s/
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