Democratizing the Courts: How an Amicus Brief Helped Organize the Asian American Community to Support Marriage Equality

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Each day, courts routinely rule on issues that may change the law and affect many people beyond the litigants of specific cases. Courts are undemocratic institutions compared to the legislative system, which rely upon several avenues for the public to voice their opinions. Before legislators pass or repeal laws, they have likely heard from the community through formal hearings with experts and affected individuals or less formal advocacy strategies such as phone calls, faxes, emails, letters and office visits. In contrast to the legislative system, the litigation arena is often a closed system, with little opportunity for non-lawyers to participate.

While opportunities for "outsider" input are generally limited in the judicial context, the public can weigh in on court decisions through the filing of amicus curiae briefs. Defined as "friend of the court" briefs, amicus briefs allow interested individuals and groups not directly involved in the litigation to provide their analysis for the court's consideration. Most amicus briefs are filed when an important public policy issue is at stake; either to introduce voices not otherwise represented in the case or to submit additional arguments that the parties to the case might not have raised. In other words, the traditional rationales for amicus briefs are that the court might be influenced by hearing from the affected group[1] or by receiving additional information.[2]

However, although important or well-known amici may have significant impact,[3] evidence suggests that the impact of amicus briefs on the out-

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1. The affected group hypothesis holds that "amicus briefs are efficacious because they signal to the Court that a wide variety of outsiders to the suit will be affected by the Court's decision." Paul M. Collins, Jr., *Friends of the Court: Examining the Influence of Amicus Curiae Participation in U.S. Supreme Court Litigation*, 38 LAW & SOC'Y REV. 807, 808 (2004).

2. The information hypothesis holds that "amicus briefs are effective, not because they signal how many affected groups will be impacted by the decision, but because they provide litigants with additional social, scientific, legal, or political information supporting their arguments." *Id*. at 808.

3. *Id*. at 827. It is important to note that most studies have focused on the U.S. Supreme Court and that the Collins study examines a limited historical period. See id. at 817 (period examined was 1953-1985, the Warren and Burger Courts).

come of a case is uncertain and perhaps marginal.[4] If amicus briefs generally have little direct impact on litigation outcomes, then why file them?[5] And for nonprofit legal organizations, what theory of social change justifies the resources and efforts invested in producing an amicus brief?

In this essay, we offer an alternative rationale for amicus practice. This rationale emerges from our experience working on a brief in support of marriage equality that sixty-three Asian American organizations endorsed.[6] We found that an amicus brief can be an effective tool to engage and educate community-based organizations and their constituencies.thereby helping to advance social justice issues. Our story also illustrates how amicus practice can be used to organize communities around a legal issue and to democratize the courts.[7] In this way, even if the effect of amicus briefs on litigation outcomes may be marginal, the process of creating an amicus brief can have a very powerful impact.

Background

In the spring and summer of 2004, thousands of Chinese Americans gathered in San Francisco, California, and Alhambra, California, (near Los Angeles) to protest gay marriage.[8] These protests took place on the heels of the City of San Francisco issuing marriage licenses to same-sex couples. Organized by churches in the Chinese immigrant community, the protests attracted thousands in both cities.[9] Although events and activities in the Asian American community rarely receive mainstream media coverage, major English-language newspapers covered these two protests.[10] Asian American activists for civil rights and lesbian, gay, bisexual and transgender (LGBT) rights were shocked and dismayed by the media coverage, fearing that it would send a message that these protesters represented all Asian Americans.

In response, community activists founded Asian and Pacific Islander (API)[11] coalitions in both San Francisco and Los Angeles to raise an alter-

4. *Id*. at 824-25.

5. *Id*. at 825-26.

6. *See infra* Part II, Brief for Asian American Bar Association of the Greater Bay Area et al. as Amici Curiae Supporting Respondents, *In re* Marriage Cases, 43 Cal. 4th 757 (2008) (No. S147999).

7. This vision of amicus practice will be implemented in institutionally by the Fred T. Korematsu Center for Law and Equality when it begins its Civil Rights Amicus Clinic in Fall 2010.

8. Ulysses Torassa, *Thousands Protest Legalizing Same-Sex Marriage: Asian Americans, Christians Rally in Sunset District*, S. F. Chron., Apr. 26, 2004, at B1 (most of the organizers and the majority of the participants where Chinese Americans); Emanuel Parker, *Group Protests Same-Sex Marriage*, San Gabriel Valley Trib., June 27, 2004, at A1.

9. Torassa, *supra* note 7; Parker, *supra* note 7.

10. Torassa, *supra* note 7; Parker, *supra* note 7.

11. A note on terminology – in this essay we use both "Asian and Pacific Islander" and "Asian American." With respect to the work of the two coalitions, API Equality-LA and API Equality, we use the term "Asian and Pacific Islander" (API) to describe their broader education and organizing work. In the context of the amicus brief, we use the term "Asian American" since the amicus brief focused on the history and experiences of Asian immigrants.

native voice, one that showed strong API support for the freedom of gays and lesbians to marry and that included both LGBT and allied members. As independent entities with a common mission, San Francisco-based API Equality and Los Angeles-based API Equality-LA began the challenging task of advancing the issue of marriage equality within Asian and Pacific Islander communities.[12] The coalitions adopted multiple strategies, aimed primarily at changing the hearts and minds of API community members.

For example, in Los Angeles County, API Equality-LA members attended ethnic community festivals to speak one-on-one with individuals and identify supporters for future advocacy. To reach a broader segment of the community, API Equality-LA also launched mass media efforts, placing dozens of stories in Asian language newspapers and other media about impacted API gays and lesbians and their family members.[13] API Equality-LA also built a strong coalition in support of marriage equality by cultivating support from across the Southern California API community. Over the course of three years, API Equality-LA garnered the support of 50 API organizations, ranging from social service to advocacy to legal groups.[14] Many highly respected API individuals also lent their names to support marriage equality, including state legislators, nonprofit directors, faith leaders, activists and celebrities.[15] Most of these organizational and individual supporters are not LGBT-focused or identified.

The Legal Turn

In February 2004, as the city of San Francisco married thousands of same-sex couples, a number of individuals and groups sued to halt these marriages.[16] However, the San Francisco Superior Court denied the request for an immediate stay of the issuance of marriage licenses to same-sex couples.[17] Shortly thereafter, California Attorney General Bill Lockyer sued separately to halt these marriages.[18] In March 2004, the California Supreme Court stopped the issuance of marriage licenses to same-sex couples. Following appeals and cross appeals by the parties, the cases were consolidated. In August 2004, the Court invalidated the earlier marriages, ruling that city officials in San Francisco exceeded their authority in issuing marriage licenses to same-sex couples.[19]

12. These organizations can be found at http://apiequality.org/ and http://www.apiequalityla.org/, respectively.

13. Some of these stories can be found at http://www.apiequalityla.org/news.php.

14. A list of supporters can be found at http://www.apiequalityla.org/endorsements.php.

15. *Id*.

16. *Thomassom v. Newsom* (Super. Ct. S.F. City and County 2004, No. CGC-04-428794); *Proposition 22 Legal Defense and Education Fund v. City and County of San Francisco* (Super. Ct. S. F. City and County, 2004, No. CPF-04-50943).

17. Rona Marech, *The Battle Over Same-Sex Marriage: One Year Later*, S. F. Chron., Feb. 12, 2005 at A1.

18. Harriet Chiang, *Lockyer Says Case in State Domain but Leap to High Court May Bring a Rebuff,* S. F. Chron., Feb. 25, 2004, at A11.

19. *Lockyer v. City and County of San Francisco,* 95 P.3d 459 (Cal. 2004).

Although the California Supreme Court ordered a halt to the marriages of same-sex couples, this was not the end of the legal battle, as the Court invited review of the constitutionality of denying marriage licenses to gays and lesbians.[20] Lawsuits brought by various parties were consolidated as *In Re Marriage Cases*, which landed before the California Supreme Court in 2007.[21]

Motivations for Our Amicus Brief

As these cases made their way through the trial and appellate courts, API activists developed a strategy to engage in advocacy, public education, and community organizing by submitting an amicus brief to the Court.[22] The brief also served several specific goals: to draw parallels between struggles for racial justice and LGBT rights; to educate the Asian American community about a key social justice issue; and to build a strong coalition of Asian American voices that included both LGBT and allied members of our community.

One of the most important goals of the brief was to educate Asian Americans about our own history and our shared struggles with other minority communities. We wanted to educate the LGBT community about the same. We hoped to create in each community a spark of recognition, so that each could see in themselves the other. That was achieved by highlighting the parallels between California's past laws intended to control family formation in Asian immigrant communities (such as anti-miscegenation statutes) and the current fight for marriage equality.

In the late 19th and early 20th centuries, state and federal anti-miscegenation laws prohibited interracial marriages, and in California, such laws specifically targeted Asians.[23] The justifications given a century ago are shockingly similar to the anti-gay marriage rhetoric employed today, raising social, religious and biological reasons to invalidate interracial marriages.[24] At its simplest level, calling on the anti-miscegenation analogy

20. Bob Egelko, *Marriage Law Goes to High Court*, S. F. Chron., Dec. 21, 2006 at B1.

21. See *In re Marriage Cases*, 43 Cal. 4th 757 (2008).

22. *In re Marriage Cases* drew an unprecedented number of amicus briefs, with 30 briefs filed on behalf of more than 500 organizations in support of marriage equality. In addition to civil rights, community and bar organizations, amici also included religious groups, law professors, and even cities. See http://www.lambdalegal.org/our-work/in-court/cases/in-re-marriage-cases.html (accessed April 9, 2009).

23. An 1880 state law banned the issuance of marriage licenses between whites and "Mongolians". *See* 1880 Cal. Stat. Ch. 41, Sec. 1, p. 3. In 1933, a California Court of Appeal ruled that Filipinos were "Malay" and not "Mongolian" and were thus not subject to the anti-miscegenation ban. *See* Roldan v. Los Angeles County, 129 Cal. App. 267 (2d Dist. 1933). The state legislature quickly remedied that oversight so that "Malays" also were covered. *See* Leti Volpp, *American Mestizo: Filipinos and Anti-miscegenation Laws in California*, 33. U.C. Davis L. Rev. 795, 822-23 (2000).

24. *See, e.g.,* Stan Yogi, *Nikkei Should Stand for Equality: 'No' on 8,* Nichi Bei Times Weekly, Oct. 23, 2008 (describing the arguments raised in 1909 in opposition to marriage between a white woman and a Japanese American man, e.g., that their marriages would "interfere with the workings of the community" or "be a detriment of the church").

equates the racial restrictions on marriage with today's same-sex restrictions.[25] Doing so also calls on the communities that suffered such discrimination to prevent the same kind of discrimination from being imposed on another community.

We also wanted to tell a story that went deeper than the anti-miscegenation analogy. Beyond marriage itself, we examined the role that marriage has played in family formation, including access to extended family networks, and how family served as a crucial site for integration of individuals into society. We told this story through the histories of the major Asian immigrant groups present at the turn of the 20th century, including Chinese, Filipinos, Japanese and South Asians.[26]

The brief's focus on the Asian immigrant experience allowed us to educate a broad cross-section of the Asian American community about marriage equality. Few Asian Americans see any link between their lives and the freedom of same-sex couples to marry. Drawing attention to the shared history of Asian Americans and the LGBT community enabled us to have conversations with Asian Americans about marriage equality in the context of Asian American civil rights struggles. Not surprisingly, this argument proved particularly effective in securing support from legal groups. For example, some bar associations who expressed reluctance at taking positions on legislation or ballot measures found it appropriate to weigh in on this issue through an amicus brief. But, in general, the brief's focus on the shared history between Asian immigrants and gay and lesbian couples allowed us to initiate dialogues with many organizations who had otherwise avoided addressing LGBT issues.

The amicus brief also strengthened coalition-building within the Asian American community as well as beyond it. Asian Americans are a very diverse group[27] with as many differences (e.g., language, culture, religion) as commonalities. Since many of the ethnic groups that comprise the category of "Asian American" had no history of working together before arriving in the United States, the coalition and alliance building constructed Asian America itself.[28] And while the Asian American community is growing rapidly,[29] it lacks sufficient size to generate political clout. There-

25. *See infra,* Part II.

26. Note that these earlier persons of Asian ancestry could not technically have been Asian American as that term was not coined and popularized until the late 1960s. Yuji Ichioka is one of the people credited with coining the term "Asian American." *See* K. Connie Kang, *Yuji Ichioka, 66, Led Way in Studying Lives of Asian Americans*, L.A. TIMES, Sept. 7, 2002, at B16.

27. *See, e.g.,* Asian Pacific American Legal Center, *The Diverse Face of Asians and Pacific Islanders in California* (2005) (providing detailed data on the 15 largest Asian ethnic groups in the state) [hereinafter *The Diverse Face*]; Asian American Justice Center and Asian Pacific American Legal Center, *A Community of Contrasts: Asian Americans and Pacific Islanders in the U.S.* (2006) (providing similar data at national level).

28. *See* Robert S. Chang, DISORIENTED: ASIAN AMERICANS, LAW, AND THE NATION-STATE 1 (1999) ("To bastardize Simone de Beauvoir's famous phrase, one is not born an Asian Americans, one becomes one.").

29. *See The Diverse Face*, *supra* note 26, at 4 ("Between 1990 to 2000, the Asian population grew by as much as 52%, followed by Latinos, who grew 43% . . .").

fore, in order for Asian Americans to have a powerful voice, they must work in coalition with other communities that have overlapping interests. The marriage equality amicus brief offered a chance to publicly unite a pan-Asian voice in support of a LGBT rights issue.

At the same time, the amicus brief provided a way for Asian Americans to claim a greater stake in the LGBT community, one that at times has ignored issues involving communities of color.[30] In doing so, the brief also provided an opportunity to recognize that Asian American LGBT individuals are part of both the Asian American and LGBT communities.[31]

Eclipsing these goals were the knowledge — and fear — that a ballot initiative to constitutionally prohibit marriage of same-sex couples was likely headed to California's voters, on a track parallel to the *In Re Marriage Cases* litigation.[32] The possibility of such an initiative added urgency to our public education and community organizing efforts. We realized that the amicus brief would allow us to begin laying the groundwork for a potential battle at the ballot box. We did not want to miss any opportunities to remind the public that California has a history of restricting marriage and family formation based on racial prejudice. We hoped that in learning this shameful past, voters might avoid repeating history.

How the Amicus Brief Helped to Organize the Community

Over the course of many months in 2007, a team of lawyers and advocates came together to plan the amicus brief to be filed with the California Supreme Court — the team included Robert Chang, Kevin Fong, Alex Fukui, Alice Kwong Ma Hayashi, Victor Hwang, Deanna Kitamura, Karin Wang, Andy Wong, Brian Wong, and Doreena Wong.[33] In addition, several organizations played a role in the amicus brief, including API Equality, API Equality-LA, Asian Pacific American Legal Center, Asian Pacific Islander Legal Outreach, Chinese for Affirmative Action, and Pillsbury Winthrop Shaw & Pittman, LLC.

Working together was exciting, bringing together Northern and Southern Californian APIs, as well as academics, civil rights and LGBT rights advocates, and pro bono lawyers. Together, the team discussed possible

30. *See, e.g.,* Darren L. Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 Conn. L. Rev. 561, 585 (1997) (criticizing the operation of gay and lesbian essentialism which excludes race from the analysis).

31. *See, e.g.,* Gary Gates & Brad Sears, *Asians and Pacific Islanders in Same-Sex Couples in California* (Sept.2005) (finding, based on Census 2000 data, more than 13,000 APIs in same-sex relationships in California, meaning that in more than seven percent of same-sex partnerships in the state, there was at least API partner).

32. *See* discussion regarding California Proposition 8, infra.

33. There were two Asian American-focused amicus briefs submitted as part of the litigation process in *In Re Marriage Cases*: one in 2006 to the lower Court of Appeal and one in 2007 to the California Supreme Court. The latter is the focus of this essay, as most of the community organizing and public education focused on the Supreme Court brief. Several members of the Supreme Court amicus team also worked on the Court of Appeal amicus brief and the first brief provided important groundwork for the second brief. The appellate court brief can be found at 13 Asian Am. L.J. 119 (2006).

legal theories as well as the best presentation of the history and stories of the different Asian immigrant groups. We divided tasks, with some team members responsible for researching, drafting, editing or cite-checking the brief, while others focused on soliciting endorsements from community groups and generating media coverage. The whole team reviewed and commented on drafts.

Although the brief was not filed until September 2007, amicus team members began requesting endorsements from Asian American community organizations months in advance, as the brief was being planned and drafted. We knew that the process of securing organizational endorsements would take time, as many groups needed to obtain approval from their board or management. The team identified a list of target organizations at the regional, state, and national levels and we divided the list according to who had the best contact with a particular group. Since we did not have a draft of the Supreme Court brief at the outset, we provided other information including fact sheets detailing the history of anti-miscegenation and other discrimination against Asian immigrants and the impact of the marriage equality struggle on Asian American community members. We also circulated an outline of the proposed Supreme Court brief and a copy of the Court of Appeals brief.

The amicus team built on past relationships established by API Equality and API Equality-LA, urging organizations that supported the coalitions to take a further step and publicly advocate for marriage equality through endorsing the amicus brief. Because we knew the issue was difficult for many groups, we offered to make presentations and answer questions. Team members attended one bar association board meeting to field questions about the legal case and the amicus brief. For another bar association, team members provided extensive research and background information over several months to help board members reach a decision to endorse the brief. Many organizations wanted to know who had already endorsed, so we carefully tracked our progress in securing support and regularly informed target groups of new sign-ons. As more organizations endorsed the brief, it became easier to convince remaining groups to join.

Given the controversial nature of the issue, the team expected only a few dozen endorsements. To the team's delight and excitement, Asian American groups found the parallels between the current marriage equality cases and California's historical discrimination against Asian American family formation to be compelling. By the time we filed with the California Supreme Court in September 2007, we had secured sixty-three Asian American organizations, mostly non-LGBT, to endorse the brief.[34]

34. There were also several individuals who provided invaluable support: John Lewis, who was a plaintiff in the Woo v. Lockyer case along with his future spouse Stuart Gaffney, and Jennifer Pizer of Lambda Legal, who was co-counsel in Woo and three of the other California marriage equality cases. Both consulted with the amicus team during the brief-drafting process and as part of the outreach efforts. In addition, APALC intern Cynthia Liao provided great assistance in reaching out to community groups.

Supporting groups included many of the largest and most prominent Asian American civil rights advocacy organizations, bar associations, social service providers, and community groups.[35] Some were national entities with an interest in California issues but the vast majority was Californian or local Asian American groups. Nearly every major urban area in the state with a significant Asian American population was represented, including the Los Angeles metropolitan area, Orange County, San Diego, the San Francisco Bay Area, and the Silicon Valley. The brief also represented the broad diversity of the Asian American community, including Chinese, Filipino, Japanese, Khmer, Korean, South Asian, and Southeast Asians.

In addition to legal civil rights organizations (e.g., Asian American Justice Center, Asian Law Caucus, Asian Pacific American Legal Center), a total of fifteen bar associations endorsed the brief, including the National Asian Pacific American Bar Association, the Asian/Pacific Bar of California, and API bars from the counties of Los Angeles, San Diego, San Francisco and Santa Clara.[36]

Garnering the support of all of these groups advanced the issue of marriage equality within the Asian American community in several ways. First, our request to endorse the brief forced many Asian American groups to discuss or consider pro-LGBT issues for the first time. Some organizations reached a decision to sign on relatively easily. However, for many groups, the request required approval by their board or management and initiated complex conversations about the issue of marriage equality as well as the meaning of "civil rights" for an Asian American organization. For a few groups, it prompted a discussion that was not resolved in time to endorse the amicus brief but ultimately led these organizations to adopt a position in support of marriage equality.[37]

Second, the significant level of support in the Asian American community, especially by high profile organizations such as the Asian American Justice Center, Japanese American Citizens League, and the National Asian Pacific American Bar Association, gave the amicus team an opportunity to draw extensive media coverage. On September 26, 2007, the day we filed the amicus brief, the amicus team hosted simultaneous press conferences in San Francisco and Los Angeles. At both events, community lead-

35. *See* Asian Pacific American Legal Center, *Press Release: Unprecedented Coalition of Over 60 Asian American Organizations File Legal Brief Supporting Equal Marriage Rights in California* (Sept. 26, 2007).

36. Particularly noteworthy is that in Los Angeles County, all major Asian American bar associations supported the brief: the Asian Pacific American Bar Association (APABA), Korean American Bar Association (KABA), Japanese American Bar Association (JABA), Philippine American Bar Association (PABA), South Asian Bar Association (SABA) and Southern California Chinese Lawyers Association (SCCLA).

37. For example, the Organization of Chinese Americans (OCA), a national API civil rights organization, began discussions about marriage equality after being approached to endorse the amicus brief. On October 20, 2007, the national board of OCA passed a resolution in support of marriage equality, entitled "Resolution in Support of Legal Protections of Family Relationships." Although OCA was unable to endorse the amicus brief, the passage of the resolution allowed California chapters of OCA to publicly support marriage equality.

ers spoke eloquently about their support for marriage equality for same-sex couples.[38] Despite the fact that dozens of other amicus briefs were filed the same day, we were able to draw both mainstream and Asian language press coverage, thus expanding our influence from sixty-three organizations to tens of thousands of community members.

Finally, the conversations that began with a simple request to endorse the amicus brief opened the door for many additional conversations with the organizations approached to endorse the brief. As the issue evolved — with the California Supreme Court ruling in favor of marriage equality in May 2008[39] and Proposition 8 ("Prop 8"), which challenged the basis for the ruling, qualifying for the November 2008 election[40] — the groundwork laid by the amicus brief proved invaluable in subsequent marriage equality advocacy. In fall 2008, the relationships strengthened through the amicus brief helped line up dozens of Asian American groups against Prop 8. After the measure passed on November 4, 2008,[41] many of the groups that had joined our Supreme Court amicus brief also joined amicus briefs in support of the legal challenge to the implementation of Prop 8.[42]

CONCLUSION

Although Prop 8 narrowly passed (52 to 48 percent),[43] the Asian American vote on the issue inspires hope for change. Following the elec-

38. For example, President Paul Chan of the Southern California Chinese Lawyers Association (SCCLA) stated: "[SCCLA] is one of the oldest and largest minority bar associations in California.. . .SCCLA takes social and political issues seriously and does not take positions on them lightly, but given the history of marriage discrimination against Chinese immigrants, we firmly and enthusiastically stand together with other civil rights groups in supporting marriage equality." *See* Press Release, *supra* note 35. On behalf of the South Asian Bar Association of Northern California, board member Vid Prabhakaran stated: " R

> The South Asian community has felt the burden of laws and policies that limit their marriage rights in its past. Today, we stand with the gay and lesbian community – both inside and outside the South Asian community – as they face similar discrimination."

Id.

39. *See In Re Marriage Cases*, 43 Cal. 4th 757 (2008) (ruling that barring gay and lesbian couples from civil marriage violates the California Constitution).

40. In June 2008, Proposition 8 qualified for the November 4, 2008 general election. Caleb Groos, *California's Battle Over Proposition 8 and Same-Sex Marriage Rights*, FINDLAW.COM, http://news.findlaw.com/features/prop8.html (last visited Apr. 11, 2009).

41. The May 2008 California Supreme Court decision in *In Re Marriage Cases* was overturned by the passage of Proposition 8 on Nov. 4, 2008. *See* John Wildermuth, *Proposition 8: State Voters Backing Constitutional Ban on Same-Sex Marriage,* S.F. CHRON., Nov. 5, 2008, at A3.

42. The case against Prop 8 is *Strauss v. Horton, Case No, S168047 (2009),* which is pending the California Supreme Court's decision. Although there was no Asian American-specific brief filed in this litigation, at least 40 Asian American organizations joined at least three different briefs that all articulated the same basic premise: that allowing Prop 8 to stand would contradict basic Constitutional protections intended to protect unpopular minorities from the will of the majority. *See* Karin Wang, *The Real Threat of Prop 8 and Why It Must Be Overturned*, California Progress Report, Mar. 3, 2009, *available at* http://www.californiaprogressreport.com/2009/03/the_real_threat.html.

43. Kevin Fagan and John King, *National Protests condemn Prop. 8; Same-Sex Marriage; Thousands Rally for Marriage Equality*, S. F. CHRON., Nov. 16, 2008, at A1.

tion, several sets of data emerged regarding Asian American voters. The main exit poll, commissioned by CNN and other national media outlets, reported that Asian Americans *opposed* Prop 8 by a small margin (51 to 49 percent).[44] A separate exit poll, conducted by the Asian Pacific American Legal Center (APALC), found that Asian Americans in Southern California voted similarly to all voters, with 54% voting *for* Prop 8.[45] The apparently contradictory data can be reconciled because only the APALC exit poll was conducted in Asian languages, in addition to English. APALC's analysis of its exit poll data indicates that English-speaking Asian Americans were much more likely to vote "no" on Prop 8 than those who lacked English proficiency.[46]

However, the more compelling finding about Asian American voters was the dramatic change in Asian American support for marriage equality in a fairly short period of time.

In the March 2000 election, California voters considered Proposition 22 ("Prop 22"), a ballot initiative to statutorily prohibit California from recognizing marriage between same-sex partners. APALC's exit poll from that election showed that Asian American voters supported Prop 22 by wide margins, with 68 percent in support of Prop 22 and only 32 percent opposed.[47] Voters overall supported Prop 22 (59 to 41 percent).[48] In the eight years between Propositions 22 and 8, the state of California made remarkable strides in building support for marriage equality, with the gulf between voters who support and oppose marriage equality narrowing from 18 points (59 vs. 41 percent) in 2000 to only four percent (52 vs. 48 percent) in 2008 – a remarkable shift in less than a decade.

But more striking is the even greater shift over the same time in the Asian American community – tumbling from a 36-point margin (68 vs. 32 percent) in 2000 to six percent (54 vs. 46 percent) in 2008. In other words, in the same span of time, Asian American voters moved more rapidly towards support for marriage equality than the general electorate.

While many factors can be attributed to this change, we believe that the education and organizing efforts behind our amicus brief had a clear impact. The Asian American amicus brief was part of a much larger strategy to reach out to and change API hearts and minds on the issue of mar-

44. California General Exit Poll Weighted Data for Proposition 8 (2008), http://media.sacbee.com/smedia/2008/11/05/18/prop8.source.prod_affiliate.4.pdf.

45. Asian Pacific American Legal Center, *Preliminary Findings from the 2008 Southern California Voter Survey* (Nov. 6, 2008) at p. 4. Although only preliminary findings (unweighted) were available at the time this essay was drafted, the final findings (weighted to more closely approximate actual voter turnout) are not expected to change the analysis in this section. Final findings from the 2008 voter survey are forthcoming in May 2009.

46. Press Release, Asian Pacific American Legal Center, *Data Released Showing That Asian American Voting on Proposition 8 Significantly Influenced by Age, English Proficiency and Religiosity* (Jan. 22, 2009).

47. Asian Pacific American Legal Center, *Exit Poll Data for March 2000 California Election* (March 2000) (on file with the Asian Pacific American Legal Center Archives).

48. *Id*.

riage equality. The brief gave us an unprecedented way to provide a coordinated and focused effort that helped open doors, provoked important conversations, and resulted in many organizations publicly supporting a LGBT issue for the first time. The amicus team believes these efforts collectively have accelerated the pace of change in our community.

Amicus briefs can be very powerful. In the *In Re Marriage Cases*, the Asian American amicus brief allowed Asian American organizations to have a voice in and to claim ownership in one of the landmark civil rights cases of our times. In this case, filing an amicus brief with the state Supreme Court enhanced democratic participation in the judicial system, generally an undemocratic institution, by allowing a broad range of groups without a direct role in the litigation to weigh in with the Court. More importantly, the amicus brief provided an opportunity to educate and organize the Asian American community and through that process to advance social justice beyond the courts.