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CONSENT CALENDAR

December 8, 2008

To: Honorable Mayor and Members of the City Council
 From: Councilmembers Kriss Worthington and Darryl Moore
 Subject: City of Berkeley Joining Lawsuit to Invalidate Proposition 8

RECOMMENDATION:

That the City of Berkeley join San Francisco, Los Angeles and many other cities throughout the state in participating in the lawsuit to invalidate Proposition 8.

BACKGROUND:

In their May 15, 2008 ruling, the California State Supreme Court overturned a prior ban on same sex marriage. The decision recognized gays and lesbians as a suspect class under the California Constitution's equal protection clause, including it among protected classes subject to a standard of strict scrutiny for judicial review.

The recent passage of Proposition 8 attempts to supercede the court's May decision, which is why the City and County of San Francisco, Los Angeles, and many other cities have filed a petition for writ of mandate with the State Supreme Court arguing that the California Constitution's equal protection provisions do not allow a slim majority of voters to use the initiative process to take away constitutional rights.

Civil rights groups such as the NAACP Legal Defense & Education Fund, the Asian Pacific American Legal Center, the Mexican American Legal Defense & Education Fund, the American Civil Liberties Union and the National Center for Lesbian Rights have also filed suit over the constitutionality of Proposition 8. The City of Berkeley has officially supported marriage equality and also opposed Proposition 8. The Council should reaffirm its position and the right of all people to marry by joining the lawsuit to invalidate Proposition 8.

FINANCIAL IMPLICATIONS:

None

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