

Exhibit B

1 litigation.

2           It bears emphasis at the outset that the motion to  
3 intervene is to be liberally construed in favor of  
4 intervention, but --

5           (Reporter interruption)

6           **THE COURT:** Well, are you saying -- are you saying  
7 that your client's interests go beyond those that are  
8 represented by the Intervenor Defendants, represented by  
9 Mr. Cooper? Is that what you're saying?

10           **MS. LINDEVALDSEN:** They include and go beyond those  
11 represented by the current Defendants, insofar as the Campaign  
12 for California Families has fought for 15 years in this state  
13 on behalf of voters to both protect the name of marriage, which  
14 is what Proposition 8 does, as well as the substantive rights  
15 of marriage and benefits.

16           **THE COURT:** Okay. Explain, then, to me where your  
17 client's interests go beyond those represented by Mr. Cooper's  
18 client.

19           **MS. LINDEVALDSEN:** Sure. The interests -- and  
20 probably the best way to show this is I've actually gone  
21 through the case management statement, and come up with eleven  
22 arguments or facts that the Proposition 8 Defendants are  
23 willing to stipulate to, in whole or part, that the Campaign,  
24 in order to vigorously defend marriage as between a man and a  
25 woman, which is what the voters so voted to protect in November

Belle Ball, CSR #8785, RMR, CRR  
Official Reporter - U.S. District Court  
(415) 373-2529

1 of 2008, they're willing to concede too much of Plaintiffs'  
2 case, both with regard to the similarly-situated aspect of the  
3 case, and the factors that Plaintiff have to show to be a  
4 suspect classification.

5           So, I can point those out to the Court, but with  
6 regard to the interests -- and in fact, this is the  
7 give-and-take --

8           **THE COURT:** Well, that would be interesting, if you  
9 would do so.

10           **MS. LINDEVALDSEN:** Sure. The Campaign --

11           **THE COURT:** Let me catch up with you, and get the  
12 case management statement.

13           **MS. LINDEVALDSEN:** The August 17th filing, yes.

14           **THE COURT:** Yes.

15           **MS. LINDEVALDSEN:** Exhibit B to the case management  
16 statement filed by Proposition 8 Defendants has a list of  
17 proposed stipulations by the Plaintiffs that the Proposition 8  
18 Defendants are willing to agree, in whole or in part.

19           **THE COURT:** All right.

20           **MS. LINDEVALDSEN:** And I have gone through those, and  
21 can indicate where the Campaign stands ready to make arguments  
22 that the Proposition 8 Defendants are not ready to make  
23 arguments on, that are necessary to preserve marriage.

24           **THE COURT:** Okay. Well, give me have a couple of  
25 examples, here.

1           **MS. LINDEVALDSEN:** Sure. For example, Proposition 8  
2 Defendants -- I'll start with No. 64.

3           **THE COURT:** Okay. Hold on.

4           **MS. LINDEVALDSEN:** -- are ready -- have agreed --  
5 have agreed in whole that gays and lesbians, including  
6 Plaintiffs, have formed lasting, committed relationships. And,  
7 the Proposition 8 Defendants stand ready to agree to that one.

8           Based -- first of all, there's no -- there's no  
9 evidence in the sociological research that's out there that  
10 indicates this should be agreed to, in whole. Perhaps in part.  
11 And this goes to the similarly-situated aspect of Plaintiffs'  
12 case.

13           No. 19. Proposition 8 Defendants are willing to  
14 agree in whole that with the exception of, quote, "certain  
15 matters related to procreation," end quote, sexual orientation  
16 bears no relationship on the ability to contribute to society.

17           It does impact more than the ability to procreate.  
18 It impacts the ability to raise children, according to  
19 sociological research, educate them, and also given high-risk  
20 factors of certain pathologies, is going to go to the four  
21 factors necessary to show sexual orientations as suspect  
22 classification.

23           No. 21, "Same-sex sexual orientation does not result  
24 in any impairment of judgment..." Given the high risk factors  
25 that is out there right now in the scientific and psychological

1 research, concerning medical, psychological and relationship  
2 dysfunctions. This concedes too much to agree to this in  
3 whole. And this will relate to the suspect classification  
4 aspect.

5           One more that they've agreed in whole, Nos. 35 and  
6 36, that lesbians and gays are unable to secure hate crimes in  
7 federal legislation protecting them in employment, housing,  
8 et cetera.

9           While it's true they haven't secured the legislation,  
10 it goes too far to agree to this in whole, because there is no  
11 evidence to indicate, as the Congressional testimony back and  
12 forth has indicated, that they need protecting in this area  
13 because there's no evidence of discrimination in this area.

14           Some of the other ones in particular that they  
15 indicate they are willing to agree in part go directly to the  
16 suspect classifications.

17           No. 14, that gays and lesbians have suffered severe  
18 discrimination. This will go to the history of discrimination.  
19 And the Campaign stands ready to make arguments that it appears  
20 the Proposition 8 Defendants are not.

21           That discrimination, including hate crimes, exists  
22 today, No. 29. Again, the Campaign is willing to make  
23 arguments Proposition 8 is not.

24           "Sexual orientation is the kind of distinguishing  
25 characteristic that defines gays and lesbians as a discrete

1 group." This practically gives away Factor 2 in the suspect  
2 classification.

3 And according to the research, there's no evidence  
4 for the Proposition 8 Defendants to agree to this, even in  
5 part.

6 **MR. COOPER:** Forgive me. I didn't follow --

7 **MS. LINDEVALDSEN:** Oh, that was No. 28. I apologize.

8 No. 27, again going to suspect classification, that  
9 sexual orientation is fundamental to a person's identity.

10 I have three more.

11 No. 26, "harmful to an individual to attempt to  
12 change sexual orientation." In light of the APA -- the  
13 American Psychological Association's task force report that  
14 just came out in August of 2009, even that report by the APA  
15 indicates that there is no research to show that it's harmful  
16 to attempt to change your sexual orientation.

17 And yet, No. 26, the Proposition 8 Defendants are  
18 willing to concede to some form of stipulation on this, which  
19 gives away part of Plaintiffs' case, that they will have to  
20 show that they are entitled to suspect classification.

21 There are two more, Nos. 20 and 59, that are related  
22 to this, again, that help to identify for suspect  
23 classification.

24 The medical and psychological communities do not  
25 consider sexual orientation to be an illness or disorder.

1 Again, the APA task force report just issued in the beginning  
2 of August admits that part of the reason the APA declassified  
3 homosexuality as a disorder was based in politics. The report  
4 admits that.

5 And there are major medical organizations today that  
6 believe that individuals should be entitled to treatment to  
7 change your sexual orientation, that it's not harmful. And in  
8 fact, two past presidents of the APA indicate that individuals  
9 should be able to change their sexual orientation.

10 And finally, No. 59, an individual's capacity to  
11 raise children does not depend on one's sexual orientation.  
12 Proposition 8 Defendants stand ready to stipulate in some form  
13 to this, when the sociological and psychological research  
14 suggests that it is relevant to raising children.

15 And, the Campaign stands ready to make argument,  
16 based on the scientific literature, that Proposition 8  
17 Defendants apparently stand ready not to make.

18 Going back again, since one of the factors is the  
19 inability -- the -- there are arguments that are likely not to  
20 be made by existing parties, I went through those arguments on  
21 that factor.

22 Back to the interest just briefly -- and then I'll  
23 conclude, Your Honor -- the Campaign's interests includes in  
24 part defense of the definition of "marriage." But the Campaign  
25 has a broader interest it's fought for for years that if this

Belle Ball, CSR #8785, RMR, CRR  
Official Reporter - U.S. District Court  
(415) 373-2529

1 case goes the wrong way, it will not be able to pursue.

2           If the Plaintiffs win this case, the Campaign will  
3 not be able to pursue, as it has tried to do for the past 15  
4 years, to fully protect the rights of marriage solely for a man  
5 and a woman.

6           **THE COURT:** How so?

7           **MS. LINDEVALDSEN:** If the Plaintiffs win their case  
8 here, and it's declared unconstitutional simply to define  
9 "marriage" as one man and one woman, it's going to impair the  
10 Campaign's ability to seek an even stronger amendment, as I  
11 would characterize it, that preserves the name and the rights  
12 of marriage.

13           Not only will the Campaign's interests be impaired if  
14 the Plaintiffs win, but the Campaign's interests will be  
15 impaired if the Plaintiffs lose, and the Defendants have  
16 conceded too much on sexual orientation and suspect  
17 classification.

18           This Court is being asked to be the first court in  
19 this -- federal court in this nation to declare sexual  
20 orientation to be a suspect classification. Proposition 8's  
21 case management statement makes very clear that they do not  
22 stand ready to make all of the available arguments based on the  
23 available sociological, psychological, and medical research to  
24 defend against a classification of sexual orientation as a  
25 suspect classification.

Belle Ball, CSR #8785, RMR, CRR  
Official Reporter - U.S. District Court  
(415) 373-2529



1           The Campaign stands ready do that, and it must be  
2 done, in order to preserve marriage in the state of California.

3           **THE COURT:** Very well. Well, thank you very much,  
4 Ms. Lindevaldsen.

5           Now let's hear from the City and County of  
6 San Francisco. Ms. Stewart?

7           **MS. STEWART:** Thank you, Your Honor.

8           As the Court's aware, the City has sought  
9 intervention under the permissive part of Rule 24, which really  
10 is, focuses on a bit of a different inquiry than 24(a).

11           Instead of really being about a movant's right to be  
12 at the table, the focus of the Rule 24(b) inquiry really is  
13 about whether the moving party will contribute to the  
14 development of a factual and legal record, and help assist the  
15 Court in arriving at a good and solid legal and factual  
16 decision.

17           **THE COURT:** You make an interesting argument that's a  
18 little different from those that we have heard from the Our  
19 Family Coalition or the Campaign for California Families.

20           And, that is that the City and County of  
21 San Francisco has a governmental interest in the outcome of  
22 this litigation that is different from the Plaintiffs, and  
23 different from any of the intervenors.

24           Just exactly what is that interest?

25           **MS. STEWART:** Thank you, Your Honor. It is a

1           The diversity of their membership adds nothing to the  
2 actual claims. It doesn't change the actual claims, it doesn't  
3 change the actual relief sought by the Plaintiffs. At bottom,  
4 they tender nothing new to this case, other than the talent and  
5 experience of the lawyers that they have selected. And, we  
6 respect that. But that is not a basis for intervention.

7           And the Plaintiffs chose lawyers whose talents and  
8 expertise they respected. And their choice should not be  
9 usurped by the proposed intervenors, by --

10           **THE COURT:** What about the other two intervenors, the  
11 Campaign for California Families, and then the City and County?

12           **MR. OLSON:** Well, the Campaign for California  
13 Families demonstrated today that it's going to be a great deal  
14 longer and more complicated case, because they are not willing  
15 to stipulate to things that the State of California implicitly  
16 agrees to by acknowledging that the statute -- the proposition  
17 is unconstitutional, that the proponents of Proposition 8 --  
18 and they are very skilled individuals represented by very  
19 skilled lawyers -- they are willing to stipulate to certain  
20 things because, I'm confident, they believe that we could prove  
21 those things if we had to go through a six-month trial with  
22 expert witnesses and all of that.

23           To their credit, and as you suggested in your orders  
24 and in hearing on July 2nd, we need to work together to resolve  
25 those issues that don't need to be contested. This, this

1 intervening -- proposed intervening group wants to challenge  
2 virtually everything.

3           And I submit that you could find any number of  
4 groups, any number of permutations of groups in the United  
5 States that were willing to say "The proponents are not being  
6 adequately represented because they are admitting something  
7 that I'm not willing to admit, and I want to put them to their  
8 proof, and I'm going to bring in evidence and so forth."

9           And so I think that they only add delay which  
10 competent counsel -- very competent counsel are willing to  
11 avoid.

12           **THE COURT:** What about the City and County of  
13 San Francisco?

14           **MR. OLSON:** The City and County of San Francisco I  
15 think is, as you suggested, a slightly different case. I  
16 listened to the presentation by Ms. Stewart this morning, and I  
17 read the materials very carefully.

18           We have the same concerns about additional parties  
19 and additional -- because it's a permutation thing, everything  
20 takes a little bit longer. But I do acknowledge that the City  
21 of San Francisco, because in a sense, it's a *parens patriae*  
22 kind of thing. They are looking out for citizens that are  
23 affected by an unconstitutional statute.

24           And they do indicate that they are capable of  
25 addressing and willing to address governmental perspectives

1 that cause this statute to be unconstitutional, and cause this  
2 statute to discriminate and hurt individuals in their city.  
3 Many -- so many individuals that are affected live in the City  
4 of San Francisco.

5           And they are apparently willing to present reasons  
6 that the State of California, through the Governor and the  
7 Attorney General's office, while they are willing to concede  
8 that Proposition 8 is unconstitutional, they are not willing to  
9 say why they think, as representative of the citizens of  
10 California, why it is unconstitutional. They want to play --  
11 and I respect this, but they want to play a passive role.

12           The City of San Francisco seems to me willing to add  
13 something to this case that we probably, on behalf of the  
14 Plaintiffs, are not in a position very well to add. We don't  
15 see things from the perspective of a government being adversely  
16 affected by an unconstitutional constitutional provision.

17           So although we're not withdrawing our opposition, I  
18 do think it is a separate situation, that -- the other thing  
19 about The City and County of San Francisco is what they wish to  
20 add seems to me does not appreciably encumber the proceedings  
21 or delay the process.

22           They want to focus on certain narrow things about  
23 which they do have expertise. They're not interested in  
24 duplicating the things that the Plaintiffs are interested in  
25 doing. So, I do think it's a slightly different story.

1 I think at the end of the day, whatever you decide  
2 with respect to intervention, I can't stress enough that -- and  
3 again I'm turning back to the Coalition. These are individuals  
4 and attorneys who had the opportunity to raise federal  
5 constitutional questions in the Proposition 8 litigation in the  
6 California Supreme Court.

7 For reasons that --

8 **THE COURT:** So did the Attorney General.

9 **MR. OLSON:** Yes.

10 **THE COURT:** And the Attorney General is under an oath  
11 to uphold the Constitution of the United States. And he didn't  
12 raise these issues in the California Supreme Court.

13 **MR. OLSON:** And I'm not going to criticize the  
14 Attorney General of California, because the Attorney General of  
15 California -- particularly because the Attorney General of  
16 California has now recognized that it is an unconstitutional  
17 statute. And we welcome that.

18 But my point, I guess, is that the issues were not --  
19 that were not raised before the California courts and then were  
20 not raised by the attorneys who wish to participate now, those  
21 decisions were made for tactical, strategic reasons. And we  
22 respect that, and we respect them.

23 But, these Plaintiffs are real people. They have  
24 announced their intention to get married now, if they possibly  
25 can. They're not groups. And I respect the fact that these

Belle Ball, CSR #8785, RMR, CRR  
Official Reporter - U.S. District Court  
(415) 373-2529

1 groups represent interests. But we represent real people with  
2 real concerns that are -- present, ripe for adjudication now,  
3 and represent issues. And they have demonstrated that they are  
4 going to present the issues responsibly, professionally,  
5 thoroughly and expeditiously.

6 We respectfully submit that whatever you decide with  
7 respect to intervention, the lawyers that were selected by the  
8 Plaintiffs should remain in control of this case.

9 And I refer to the *Stringfellow* case, which is a  
10 Ninth Circuit decision that went to the Supreme Court, where  
11 limitations were imposed.

12 And I simply request in closing that if there is any  
13 further intervention on the side of the Plaintiffs, at least,  
14 that the Plaintiffs' lawyers who were carefully selected by the  
15 Plaintiffs who are willing to take the chance by bringing this  
16 case remain in full control, unequivocal control, and  
17 undisputable control over the destiny of the case they choose  
18 to bring, and others chose not to bring.

19 **THE COURT:** Very well. Thank you, Mr. Olson.

20 Mr. Cooper, are you going to be speaking on behalf of  
21 the proponents of Proposition 8?

22 **MR. COOPER:** With the Court's permission, my  
23 colleague Mr. Thompson would like to address the Court on  
24 intervention. Thank you.

25 **THE COURT:** That's fine.

1 Well, Mr. Thompson, that was kind of an unkind cut  
2 that Ms. Lindevaldsen cast in your direction. What is your  
3 response?

4 **MR. THOMPSON:** Well, we saw vivid reflection and  
5 example, Your Honor, of the complexity that will be brought to  
6 trying to resolve this expeditiously if another Defendant  
7 Intervenor is permitted into the case.

8 In terms of negotiating stipulations, they don't  
9 become easier the more lawyers you put in a room, Your Honor.  
10 The experts will multiply like locusts, if they are permitted  
11 and other intervenors are permitted to come into this.

12 So we would respectfully suggest that in terms of  
13 permissive intervention, it would be a grave error.

14 In terms --

15 **THE COURT:** Well, Ms. Lindevaldsen says that you're  
16 not raising the issues, you're not adequately defending all of  
17 the interests at stake here.

18 **MR. THOMPSON:** Well, we are -- she -- they have not  
19 identified any interest that we are not going to vigorously  
20 pursue.

21 What they are saying is they disagree on tactics with  
22 us. They say it's a tactical mistake not to contest each one  
23 of these points that the Plaintiffs could make the rubber  
24 bounce on, and that we need to be in the trenches fighting  
25 every war, even battles that can't be won. And, that is a

1 tactical concern.

2           And under Rule 24(a), that is not sufficient to show  
3 inadequacy of representation. And moreover -- it's rather,  
4 which arguments should be advanced. They need to be able to  
5 show that there's some divergence of interests. They need to  
6 be able to establish under 24(a) that they have an interest  
7 that is different from ours. And they haven't done it.

8           In their brief, they try to conjure up the notion  
9 that, well, there are three other statutes that reference  
10 marriage is between a man and a woman. And, all those statutes  
11 are being challenged, and the proponents are only interested in  
12 upholding the validity of Proposition 8.

13           Your Honor, we will defend all -- all those three  
14 statutes and Proposition 8. And those three statutes raise or  
15 fall with Proposition 8. So there's just no separate interest.  
16 All we have heard are tactical concerns about what is  
17 well-advised and not advised to stipulate to.

18           So that, that would be our submission on the  
19 California Families. They were denied the right to intervene  
20 in the *Strauss* case in the California Supreme Court, and we  
21 would respectfully suggest they should be -- the same result  
22 should obtain here.

23           **THE COURT:** What about the other two intervenors?

24           **MR. THOMPSON:** With respect to the ACLU, the  
25 community organizations, we've read their briefs very



1 broader than merely upholding Proposition 8 because it wishes  
2 to assure marriage is defined only as an opposite-sex union.  
3 But the Campaign fails to explain the practical effect of this  
4 broader interest, or to explain how the Court could protect  
5 this interest, or how Proposition 8, if upheld as  
6 constitutional, would fail to assure this claimed broader  
7 interest in defining marriage as only an opposite-sex union.

8           Accordingly, the Campaign's interest is not  
9 significantly protectible, and intervention of right is not  
10 appropriate.

11           Even if the Campaign had asserted a protectible  
12 interest in the litigation, however, the Campaign has failed to  
13 explain that its interest is not adequately represented by the  
14 Intervenor Defendants who are, after all, the official  
15 proponents of Proposition 8.

16           The Court considers several factors to determine  
17 whether representation is adequate, including whether the  
18 current parties will undoubtedly make all of the Intervenor's  
19 arguments appropriate to the case in controversy, whether the  
20 current parties are capable and willing to make such arguments,  
21 and whether the intervenor offers a necessary element to the  
22 proceedings that would otherwise be neglected.

23           And I'm essentially quoting from the *Sagebrush*  
24 *Rebellion* case in the Ninth Circuit, of 1983.

25           The burden of making this showing is minimal. But