



**ADVOCATES  
FOR FAITH & FREEDOM**  
*Protecting Religious Liberty in the Courts!*

November 30, 2009

Ms. Molly C. Dwyer  
Clerk of the Court  
United States Court of Appeals for the  
Ninth Circuit  
James Browning Courthouse  
San Francisco, California 94103

RE: *In re: Perry v. Hollingsworth,*  
*Appeal Nos. 09-17241, 09-17551*

Dear Ms. Dwyer:

Advocates for Faith and Freedom respectfully requests leave to submit this letter brief on behalf of Schubert Flint Public Affairs, Inc., Frank Schubert and Jeff Flint (collectively referred to as "*Amici*"). *Amici* submit this letter brief in support of Appellants/Petitioners PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIFORNIA RE-NEWAL and PROPOSITION 8 OFFICIAL PROPONENTS DENNIS HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ, HAK-SHING WILLIAM TAM, and MARK A. JANSSON (collectively referred to as "**Proponents**").

Proponents have sought an emergency stay of the discovery authorized by the district court's orders of October 1, 2009 (Doc. 214), and November 11, 2009 (Doc. 252) pending resolution of their appeal. A stay was granted and expedited briefing was ordered. The appeals have been consolidated and the matter is set for hearing before Circuit Judges Fisher, Berzon and Wardlaw on December 1, 2009. Due to the expedited nature of the briefing, and due to the fact that no procedure for filing an amicus brief in this circumstance is clearly contemplated by the Federal Rules of Appellate Procedure or by the Circuit Rules, *Amici* respectfully requests that this letter brief be accepted and immediately submitted to Circuit Judges Fisher, Berzon and Wardlaw.

**Interest of *Amici***

Schubert Flint Public Affairs, Inc. was hired by Proponents in June, 2008, to serve as the Campaign Manager for PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIFORNIA RE-NEWAL ("YES ON 8"). Frank Schubert and Jeff Flint are shareholders of

Schubert Flint Public Affairs, Inc. and were primarily responsible in directing the YES ON 8 campaign. Frank Schubert and Jeff Flint have been subpoenaed to testify in a deposition, which is currently being scheduled to take place in December, 2009. Schubert Flint Public Affairs, Inc. has been subpoenaed to produce documents in relation to its work in managing YES ON 8. This Court's order will have a direct and immediate impact on the scope of questioning and document production to which *Amici* will be subjected in this case.

Schubert Flint Public Affairs, Inc. was subpoenaed to produce documents, substantially of the same nature and extent as those documents requested of Proponents by Appellees. A copy of the subpoena is attached hereto as Exhibit "A". Effectively, Appellees have sought all public campaign materials as well as all nonpublic confidential communications and materials in relation to *Amici's* work on the Proposition 8 campaign. *Amici* does not contest the discoverable nature of the public oriented documents, but *Amici* do object to the production of nonpublic confidential communications and materials. Although it appears that Appellees will agree to narrow their subpoena to production of those internal documents relating to advertising and messaging strategies in compliance with the district court's narrowing order on November 11, 2009, *Amici* still object to the remaining documents being sought by Appellees, which include, internal emails, internal correspondence, nonpublic drafts of campaign material, and other nonpublic confidential material.

### Argument

*Amici* are professional campaign managers and campaign strategists who have relied upon their understanding that the First Amendment has always protected their internal communications, confidential documents and campaign strategies from compelled disclosure to their political opponents. Their reliance on the First Amendment is not misplaced. However, as will be discussed below, the district court's orders concerning discovery will ravage the direct democratic process and have a detrimental impact on the function of all political campaigns, regardless of the campaign's philosophical perspective.

The communication and strategy incorporated into the confidential documents that Appellees seek to acquire from Proponents and other third party campaign consultants is precisely the core speech that is protected by the First Amendment.<sup>1</sup> "The First Amendment affords the broadest protection to such political expression in order 'to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people'." *McIntyre v. Ohio Elections Com'n*, 514 U.S. 334, 347, 115 S.Ct. 1511 (1997) (quoting

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<sup>1</sup> Appellees have argued that "[i]f [Proponents] do not wish to comply with Plaintiffs' routine document requests, they can withdraw their intervention. But where they choose to litigate, they must do so on the same terms as other litigants." (Appellees' Opposition To Appellants' Emergency Motion For Stay, p. 26.) This argument ignores the fact that *Amici*, along with numerous other third parties that worked on YES ON 8, have been subpoenaed to produce many of the same nonpublic confidential communications and materials that were requested of the Proponents. A ruling on Proponents' appeal is necessary to protect not only the First Amendment rights of Proponents, but also of those third parties that have been subpoenaed to produce privileged documents or have been subpoenaed to testify concerning privileged communications.

*Roth v. United States*, 354 U.S. 476, 484, 77 S.Ct. 1304 (1957). Here, the interchange of ideas reflected in the confidential documents that were instrumental in the passage of Proposition 8 must be afforded the greatest protection. This Court has affirmed that strict scrutiny applies to protect the core speech inherent in initiative campaigns – such as Proposition 8. *California Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1101 (9th Cir. 2003). *California Pro-Life Council, Inc.* held that

“[C]ompelled disclosure [of political expenditures and contributions] -which applies to both express candidate and ballot-measure advocacy-unquestionably infringes upon the exercise of First Amendment rights. Because it burdens core political speech, the [California Political Reform Act] disclosure regime “must be justified by a compelling state interest.”

*Id.* (internal citation omitted) (citing *Federal Election Com'n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 256, 107 S.Ct. 616 (1986)). Likewise, the district court’s order compelling disclosure of the confidential documents is subject to strict scrutiny. The district court order compelling discovery cannot survive strict scrutiny because such compelled disclosure will suffocate the “unfettered interchange of ideas” in future initiative campaigns. The unfettered interchange of ideas between initiative proponents, campaign managers, and other campaign workers is crucial to the effective advocacy in political campaigns.

As campaign managers and campaign strategists, one of *Amici’s* most important responsibilities is to work with clients in conducting a comprehensive review of potential campaign strategies, tactics, themes, arguments, counter-arguments and other messaging in order to make recommendations on the actual messages that are broadcast to the public. This necessarily involves a rigorous examination of many possible approaches, evaluating and testing them for effectiveness, and then assessing their effectiveness in relation to other possible approaches. The process of selecting the appropriate work-product involves casting a wide net designed to capture every conceivable approach for examination. A campaign manager and his or her client must then engage in a winnowing approach, tossing aside potential approaches in favor of other, more promising ideas. Campaign managers frequently utilize qualitative and quantitative research methodologies, among other research techniques to assist in the winnowing process.

There may be dozens of possible arguments to advance in favor of or opposition to a prospect ballot initiative. Not all of those arguments will be equally effective. Some may be effective only if they can be conclusively demonstrated to be true, necessitating an exhaustive issue research regimen to determine the extent to which the argument can be conclusively proven. Others may require too great an expenditure of resources to establish them as resonate with the electorate. Still others may be effective only to the extent that a particularly credible individual or group makes the argument. Still other arguments will be effective, but not as effective as other arguments.

Eventually, the campaign manager and proponents will settle on a set of recommended strategies, tactics, themes, arguments, counter-arguments and messages, and develop a comprehensive campaign plan as to how best to make the case to voters. This process can take weeks or months. Even when the strategies and approaches are determined, however, the work has only just begun. The campaign must constantly evaluate how the recommended approaches are being implemented and evaluate how they are being received by voters. Further, the campaign strategies are not played out in a vacuum. They exist in the context of an active opponent contesting the strategies, themes and messages with those of their own.

Marketing professionals in fields similar to political campaigning might apply these disciplines in marketing, advertising, promotion and public relations. These might, for example, include examining product designs and features, pricing considerations, packaging designs, public relations strategies and marketing tactics. However, unlike work on commercial products and services, political campaigning involves core political speech on some of the most important issues facing the nation. *Amici*, for example, have been involved in such critical issues as health care reform, education policy, environmental policy, transportation, energy, casino gaming, insurance and tort reform, same-sex marriage and other crucially important issues.

Political campaigning does not merely involve, for example, whether a package of soap should be green or blue. It involves, by way of example, whether America should have a single-payer health care system, whether taxes should be increased to fund various public policy proposals, and whether – as was the case with Proposition 8 – same-sex marriage should be legal in California. These are weighty issues of central importance to our democratic republic and the internal analysis that is undertaken by proponents of each side of the debate is at the heart of the privileged information that the First Amendment is supposed to protect.

The process of developing a campaign strategy as described above is readily known and implemented by campaign consultants of all persuasions. This description of “developing a campaign strategy” is helpful for the purpose of bringing clarity to the depth of analysis, research and intellectual thought required in a campaign. It is not necessarily the academic process, readily observable by the public, that *Amici* contends is privileged under the First Amendment, but it is the internal and nonpublic execution of that process that is privileged. For example, every professional campaign manager knows how to hire a consultant to conduct focus groups for the purpose of testing messaging to potential voters. However, the actual testing itself, the sample group selected, the messages tested, and the results of those tests are clearly privileged.

The process of developing strategies, tactics, themes, arguments, counter-arguments and other messaging discussed above was similarly used by *Amici* and Proponents to win the majority vote for Proposition 8. The process described required significant intellectual input, took thousands of hours, and required a large financial investment. Much of this confidential information is reflected in documented research, analysis, and internal communications that were drafted for the purpose of exchanging ideas between *Amici* and Proponents. Some of that confidential information was necessarily exchanged with other campaign consultants hired to perform particular tasks like direct mail solicitation and television advertising. All of the

communication occurred with the belief that the First Amendment would protect the “unfettered interchange of ideas for the bringing about of political and social changes” sought by the Proponents. *McIntyre*, 514 U.S. at 347.

While addressing the Proponents’ claims of privilege, the district court points to certain post-election public statements made by *Amici* to suggest that *Amici* undermines Proponent’s interest in maintaining the confidentiality of communications concerning campaign strategy. (Doc. 214, p. 11.) However, the district court did not appear to appreciate the fact that *Amici* only discussed the process of developing the YES ON 8 strategy and related information that was readily available and discernable to the public via the internet, television and other publications.

*Amici* did not disclose the nonpublic and confidential communications and materials that were internally analyzed, debated, discussed and developed in the actual execution of the Proposition 8 campaign strategy. For example, it is a readily discernable fact from public campaign materials that YES ON 8 made the argument that “gay marriage was not simply ‘live and let live’ - that there would be consequences if gay marriage were to be permanently legalized.” (See, Appellees’ Opposition To Appellant’s Emergency Motion For Stay, p.29.) This messaging was clearly revealed through YES ON 8 advertising throughout the campaign. However, what is not readily discernable from the public air waves is the research, analysis, testing, internal communications, and other mental gymnastics that Proponents and *Amici* undertook to develop such a message. This nonpublic and confidential information was not revealed by *Amici* in any post-election commentary.

Compelled disclosure of documents evidencing confidential strategies will severely impact the function of political campaigns in the future. Consultants and proponents will hesitate to exchange their ideas in an email, express internal dissension in writing, or even formulate written strategies for fear that such information may be discoverable in some future legal proceeding brought by their political opponents. Communication between the consultants and proponents of the campaign will not be unfettered. Rather, internal communication will be restricted.

In this case, *Amici* have been requested to produce thousands of documents through a nonparty subpoena. Worse, *Amici* have been requested to produce responsive email communications, which will require *Amici* and their counsel to review tens of thousands of emails relating to Proposition 8. The time and expense of responding to the subpoena will require hundreds of man hours and tens of thousands of dollars. In many contentious issue campaigns like Proposition 8, proponents will find it difficult, if not impossible, to hire qualified campaign consultants because of the threat of future litigation. Strategists will always be looking behind their back for the next subpoena to be served instead of looking ahead at the serious social, political, and economic concerns that are appropriate for public debate.

### Conclusion

Appellees' Opposition To Appellants' Emergency Motion For Stay did not put forth any compelling interest to justify the irreparable chill on the First Amendment liberties that will occur if the district court's discovery orders are affirmed. The voter initiative process permitted in California and other states cannot tolerate such an infringement on the First Amendment wherein proponents of one side of a voter initiative are allowed to breach the most confidential and proprietary information developed by their opposition. Regardless of one's political view, proponents of liberty can agree that permitting this invasion would be repugnant to the First Amendment. Therefore, *Amici* request that this Court permanently enjoin the district court's orders requiring disclosure of nonpublic campaign materials.

Respectfully Submitted,



Robert H. Tyler, CA State Bar No. 179572  
Jennifer Lynn Monk, CA State Bar No. 245512  
Attorneys for Proposed Amicus Curiae,  
Schubert Flint Public Affairs, Inc., Frank  
Schubert and Jeff Flint

RHT/JLM:jal

cc: All counsel

EXHIBIT “A”

UNITED STATES DISTRICT COURT

for the

Northern District of California

Kristin M. Perry, et al.
Plaintiff
v.
Arnold Schwarzenegger, et al.
Defendant
Civil Action No. 09-cv-2292 VRW
(If the action is pending in another district, state where: Northern District of California)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES

To: Schubert Flint Public Affairs, Inc.
1415 L Street, Suite 1250, Sacramento, CA 95814

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See attached Exhibit A for list of requested documents and electronically stored information.

Place: BOIES, SCHILLER & FLEXNER LLP
1999 HARRISON STREET, SUITE 900
OAKLAND, CA 94612
Date and Time: 10/30/2009 12:00 pm

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 10/23/2009

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Kristin M. Perry, et al. Plaintiffs, who issues or requests this subpoena, are:

THEODORE H. UNO (tuno@bsflip.com)
BOIES, SCHILLER & FLEXNER LLP, 1999 HARRISON STREET, SUITE 900, OAKLAND, CA 94612
(510) 874-1000



Civil Action No. 09-cv-2292 VRW

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the subpoena on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ ; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the subpoena to *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because \_\_\_\_\_ ; or

other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**

**(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.**

These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

EXHIBIT A

**DEFINITIONS:**

1. "You" and "your" mean the organization identified in the Subpoena to which this Exhibit is attached. It includes all predecessor or successor organizations regardless of their names. It also includes all employees, agents, or representatives of that organization.

2. "Proposition 8" means the proposition that was placed on the November, 2008 ballot in the State of California and became known as "Proposition 8" for purposes of that election. No reference to "Proposition 8" shall be construed as limited by the date on which Proposition 8 received its official number ("8") or ballot title on the November, 2008 California ballot.

3. "Document" shall be synonymous in meaning and equal in scope to the broadest meaning provided by Rule 34 of the Federal Rules of Civil Procedure, including without limitation, hard copies, electronic documents, electronic or computerized data compilations, software, software images, or downloads. This term shall apply to documents, whether in hard copy or electronic form, on your computers or the computers of your employees and independent contractors or consultants, whether provided by you to such individuals or otherwise.

4. "Communication" means the transmittal of information in the form of facts, ideas, inquiries, thoughts, or otherwise, and without limitation as to means or method.

5. "Protect Marriage" means Proposition 8 Campaign Committee ProtectMarriage.com – Yes on 8, a Project of California Renewal.

6. The terms "any," "all," "each," and "every" should be understood in either their most or least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of their scope.

7. Each of the words "reflecting," "relating," "supporting," "concerning," "evidencing," and "referring" as used herein include the common meanings of all those terms, as well as indirect and direct references to the subject matter set forth in the document request.

8. The words "and" and "or" shall be construed conjunctively or disjunctively, whichever makes the request most inclusive.

1 **INSTRUCTIONS:**

2 1. In producing documents and things, you are required to furnish all documents or  
3 things in your possession, custody, or control, or known or available to you, regardless of whether  
4 such documents or things are possessed directly by you or your employees, agents, representatives,  
5 accountants, attorneys, investigators, and consultants.

6 2. All documents should be produced in the same order as they are kept or maintained  
7 by you in the ordinary course of business, or the documents should be organized and labeled to  
8 correspond to the categories of the documents requested below.

9 3. All electronically stored information should be produced in the same manner as it is  
10 kept in the ordinary course of business, or that information should be organized and labeled to  
11 correspond to the categories in these requests.

12 4. If you object to a portion or an aspect of a request, state the grounds for your  
13 objection with specificity. If any document called for by these requests is withheld because you  
14 claim that such information is protected under the attorney-client privilege, work product doctrine,  
15 or other privilege or doctrine, you are requested to so state, specifying for each such document its  
16 title, subject matter, sender, author, each person to whom the original or copy was circulated,  
17 recipients of copies, the persons present during the communication, the identity of the privilege  
18 being asserted, and the basis upon which the privilege is claimed.

19 5. If production of any portion of a document is required pursuant to these requests,  
20 produce the entirety of that document.

21 6. If any document cannot be produced in full, produce to the extent possible,  
22 specifying the reasons for your inability to produce the remainder and stating whatever information,  
23 knowledge, or belief you do have concerning the portion not produced.

24 7. Each request applies to the period from January 1, 2006 through and including the  
25 date of production.

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1 **REQUESTS:**

2 1. All documents, including without limitation literature, pamphlets, flyers, direct mail,  
3 advertisements, emails, text messages, press releases, or other materials, that you distributed to  
4 voters, donors, potential donors, or members of the media regarding Proposition 8.

5 2. All versions of any internet advertisement relating to Proposition 8 that you had any  
6 involvement in producing, creating, or distributing.

7 3. All versions of any television advertisement relating to Proposition 8 that you had  
8 any involvement in producing, creating, or distributing.

9 4. All versions of any radio advertisement relating to Proposition 8 that you had any  
10 involvement in producing, creating, or distributing.

11 5. All plans, schematics, and versions of the websites relating to Proposition 8 that you  
12 hosted, paid for, designed, or sponsored.

13 6. All documents that you prepared for use in communicating with voters, donors,  
14 potential donors, or members of the media, including but not limited to speeches, scripts, talking  
15 points, articles, notes, and automated telemarketing phone calls.

16 7. All documents constituting postings relating to Proposition 8 that were made by you  
17 on social networking websites, including but not limited to Facebook, MySpace, and Twitter.

18 8. Please produce all versions of any documents that reflect communications relating to  
19 Proposition 8 between you and those who (1) had any role in managing or directing  
20 ProtectMarriage.com or the Yes on 8 campaign, or (2) provided advice, counseling, information, or  
21 services with respect to the efforts to encourage persons to vote for Proposition 8 or otherwise to  
22 educate persons about Proposition 8, including its meaning, intent, effects if enacted, or effects if  
23 rejected; including communications among and between any two or more of the following persons  
24 or entities: Defendant-Intervenors, members of the Ad Hoc Committee described at the September  
25 25, 2009 hearing in this matter, Frank Schubert, Jeff Flint, Sonja Eddings Brown, Andrew Pugno,  
26 Chip White, Ron Prentice, Cheri Spriggs Hernandez, Rick Ahern, Laura Saucedo Cunningham,  
27 Schubert Flint Public Affairs, Lawrence Research, Bader & Associates, Bieber Communications,  
28 Candidates Outdoor Graphic Service Inc., Cardinal Communication Strategies, Church

1 Communication Network Inc., The Monaco Group, Connell Donatelli, Message Impact Consulting,  
2 K Street Communications, Marketing Communications Services, Sterling Corp, and JRM  
3 Enterprises. In addition, please produce all versions of any documents with your possession,  
4 custody or control that constitute analyses of, or communications related to, one or both of the  
5 following topics: (1) campaign strategy in connection with Proposition 8; and (2) messages to be  
6 conveyed to voters regarding Proposition 8, without regard to whether the voters or voter groups  
7 were viewed as likely supporters or opponents or undecided about Proposition 8 and without regard  
8 to whether the messages were actually disseminated or merely contemplated.

9 9. Documents sufficient to show the title of everyone employed by you from January 1,  
10 2006 to December 31, 2008, including but not limited to organizational charts.

11 10. All documents reflecting public media coverage of Proposition 8 referring or related  
12 to your organization.

13 11. All documents constituting, reflecting, or referring to coordination or cooperation  
14 among organizations and/or individuals supporting the passage of Proposition 8.

15 12. All minutes or other memorializations for meetings in which you participated  
16 concerning Proposition 8.

17 13. Documents sufficient to show all expenditures by you and payments to you in  
18 connection with Proposition 8.

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## CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2009, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF Users and that service was accomplished by the appellate CM/ECF system.

Dated: November 30, 2009

\_\_\_\_\_  
s/Robert H. Tyler