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December 1, 2009

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T 36330-00001DELIVERED VIA ECF FILINGMs. Molly C. Dwyer  
Clerk of the Court  
United States Court of Appeals  
for the Ninth Circuit  
James Browning Courthouse  
San Francisco, CA 94103Re: *Perry et al. v. Hollingsworth et al.*, Nos. 09-17241, 09-17551

Dear Ms. Dwyer:

On behalf of Plaintiffs-Appellees (“Plaintiffs”) and pursuant to FRAP 28(j), I write to bring to the Court’s attention a document apparently authored by one of the Proponents of Proposition 8, Hak-Shing William “Bill” Tam, that was not produced by Proponents—presumably pursuant to Proponents’ claim of privilege—but nevertheless was discovered by Plaintiffs on the internet.

The document, which can be found at [http://presencefamily.org/index.php?option=com\\_content&view=article&id=45:what-if-we-lose&catid=16:current-issues&Itemid=22](http://presencefamily.org/index.php?option=com_content&view=article&id=45:what-if-we-lose&catid=16:current-issues&Itemid=22), is attached. Although this document is not in the record before the district court, “[u]nder Fed. R. Evid. 201, a court may take judicial notice of matters of public record.” *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).

This document is pertinent to the scope of Proponents’ claim of privilege, which Proponents’ response to this Court’s order to show cause suggests is limited to “internal campaign documents and communications.” Show Cause Resp. 4.

Ms. Molly C. Dwyer  
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The document is also pertinent to Proponents' claim that "the internal, confidential political information at issue" is "*not* relevant to Plaintiffs' constitutional claim," because "nonpublic communications with their political associates would reveal nothing about the voters' intent." Stay Mot. 14.

Very truly yours,

*/s/ Theodore J. Boutrous, Jr.*  
Theodore J. Boutrous, Jr.

TJB/tek

Attachment as stated

cc: All counsel



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## What if We Lose



Dear friends,

This November, San Francisco voters will vote on a ballot to "legalize prostitution". This is put forth by the SF city government, which is under the rule of homosexuals. They lose no time in pushing the gay agenda --- after legalizing same-sex marriage, they want to legalize prostitution. What will be next? On their agenda list is: legalize having sex with children.

I hope we all wake up now and really work to pass Prop 8. We have only 48 days left. Even if you have church building projects, mission projects, concert projects, etc, please consider postponing them and put all the church man/woman power to work on Prop 8. We can't lose this critical battle. If we lose, this will very likely happen.....

1. Same-Sex [marriage](#) will be a permanent law in California. One by one, other states would fall into Satan's hand.

2. Every child, when growing up, would fantasize marrying someone of the same sex. More children would become homosexuals. Even if our children is safe, our grandchildren may not. What about our children's grandchildren?

3. Gay activists would target the big churches and request to be married by their pastors. If the church refuse, they would sue the church. Even if they know they may not win, they would still sue because they have a big army of lawyers from ACLU who would work for free. They know a prolonged law suit would cripple the church. They had sued the California government many times before. They sue until they win. They would not be afraid to sue a church. The church would have to spend lots of money in defending the case. The court fight would be long and the congregation would be discouraged and leave - -- how long are they willing to shoulder the law suit costs. The church may give in and accept them, their membership would grow and take over the church. Then a righteous pastor would have to leave. Such scenarios have happened in Scandinavian countries. At that time, churches would keep quiet, hoping that they won't be picked as the next target. If your church is sued, don't expect others to help your church. You would be in the battle alone, and chances are you would lose. If that happens, whatever nice building your church have built now would become meaningless.

In order not to let this happen, we better team up at the current battle to defeat same-sex marriage. Collectively, we have a chance to win. Right now, each church sacrifice a little. For 48 days, delay your projects, put your resources (\$ and manpower) into Prop 8. We'd have great power if we pool our resources together. Let's win this battle. After victory, your congregation would be energized and go back to the original projects with joy and cheer. They may want to give more and build a bigger building to thank God. Our God would be pleased and bless us more.

But if we lose, our congregation would lose heart. They might not want to work as hard. Our opponents would be overjoyed. They would do more and change more laws so as to persecute us easier. Churches would have a much much harder time to survive. We would be collecting offerings to fight law suits instead of building new buildings. I pray that day would not come. The choice is yours. Talk to the leaders of your church. Your actions would change the history in either direction.

Thanks for your efforts,  
 Bill Tam  
 Traditional Family Coalition  
 Last Updated on Friday, 04 September 2009 09:50

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I hereby certify that on (date) , 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 will be accomplished by the appellate CM/ECF system.

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\*\*\*\*\*

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When Not All Case Participants are Registered for the  
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I hereby certify that on (date) Dec 1, 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.

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I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Please see attached service list attachment.

Signature

/s/Theodore J. Boutrous, Jr.

## SERVICE LIST

Case Name: *Perry, et al. v. Hollingsworth, et al.*

Case No: U.S. Court of Appeals, Ninth Circuit, Case No. 09-17241  
(Consolidated with Case No. 09-17551 as of 11/19/09)

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