

Case No. S189476

SUPREME COURT OF THE STATE OF CALIFORNIA

**KRISTIN M. PERRY; SANDRA B. STIER; PAUL T. KATAMI;  
JEFFREY J. ZARRILLO,**

Plaintiffs/Respondents,

**CITY AND COUNTY OF SAN FRANCISCO,**

Plaintiff-Intervener/Respondent,

vs.

**EDMUND G. BROWN JR ET AL.,**

Defendants,

**DENNIS HOLLINGSWORTH; GAIL J. KNIGHT; MARTIN F.  
GUTIERREZ; MARK A. JANSSON; PROTECTMARRIAGE.COM -  
YES ON 8, A PROJECT OF CALIFORNIA RENEWAL,** as official  
proponents of Proposition 8,

Defendants-Interveners/Petitioners,

**HAK-SHING WILLIAM TAM,**

Defendant-Intervener.

**CITY AND COUNTY OF SAN FRANCISCO'S  
APPENDIX TO ANSWER BRIEF**

On Request from the United States Court of Appeals for the Ninth Circuit,  
Case No. 10-16696

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SAN FRANCISCO'S APPENDIX  
CASE NO. S189476

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PROJECT OF CALIFORNIA RENEWAL

14 \* *Pro hac vice* application forthcoming  
15 + Application for admission forthcoming

16 **UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

17 KRISTIN M. PERRY, SANDRA B. STIER, PAUL  
18 T. KATAMI, and JEFFREY J. ZARRILLO,

19 Plaintiffs,

20 v.

21 ARNOLD SCHWARZENEGGER, in his official  
22 capacity as Governor of California; EDMUND G.  
BROWN, JR., in his official capacity as Attorney  
23 General of California; MARK B. HORTON, in his  
24 official capacity as Director of the California  
Department of Public Health and State Registrar of  
25 Vital Statistics; LINETTE SCOTT, in her official  
26 capacity as Deputy Director of Health Information  
& Strategic Planning for the California Department  
27 of Public Health; PATRICK O'CONNELL, in his  
28 official capacity as Clerk-Recorder for the County  
of Alameda; and DEAN C. LOGAN, in his official  
capacity as Registrar-Recorder/County Clerk for

CASE NO. 09-CV-2292 VRW

**PROPOSED INTERVENORS'  
NOTICE OF MOTION AND MOTION  
TO INTERVENE, AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO INTERVENE**

Date: July 2, 2009  
Time: 10:00 a.m.  
Judge: Chief Judge Vaughn R. Walker  
Location: Courtroom 6, 17th Floor

1 the County of Los Angeles,

2 Defendants,

3 and

4 PROPOSITION 8 OFFICIAL PROPONENTS  
5 DENNIS HOLLINGSWORTH, GAIL J.  
6 KNIGHT, MARTIN F. GUTIERREZ, HAK-  
7 SHING WILLIAM TAM, and MARK A.  
8 JANSSON; and PROTECTMARRIAGE.COM –  
9 YES ON 8, A PROJECT OF CALIFORNIA  
10 RENEWAL,

11 Proposed Intervenors.

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PROPOSED INTERVENORS' NOTICE OF MOTION AND MOTION TO INTERVENE, AND MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MOTION TO INTERVENE – CASE NO. 09-CV-2292 VRW

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1 **TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on July 2, 2009, at 10:00 a.m., or as soon thereafter as the  
3 matter may be heard, before the Honorable Vaughn R. Walker, United States District Court,  
4 Northern District of California, 450 Golden Gate Avenue, San Francisco, California, Proposed  
5 Intervenor Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Hak-Shing William Tam,  
6 Mark A. Jansson, and ProtectMarriage.com – Yes on 8, a Project of California Renewal,  
7 (collectively referred to as “Proposed Intervenor”) will move this Court for an order allowing them  
8 to intervene in this case.

9 Proposed Intervenor respectfully request an order allowing them to intervene in this case to  
10 guard their significant protectable interest in the subject matter of this lawsuit.

11 **INTRODUCTION**

12 The Ninth Circuit has repeatedly permitted sponsors and supporters of ballot initiatives and  
13 constitutional amendments to intervene in lawsuits challenging those provisions. Proposed  
14 Intervenor are the official proponents and campaign committee for Proposition 8, the California  
15 constitutional provisions challenged in this lawsuit. This Court should thus allow them to intervene  
16 in this case.

17 **PROCEDURAL HISTORY**

18 On May 22, 2009, Plaintiffs filed this suit, asserting claims against various California state  
19 and local officials. Plaintiffs allege that California’s recently enacted Proposition 8, which is now  
20 embodied in Article I, Section 7.5 of the State Constitution, violates the Due Process and Equal  
21 Protection Clauses of the Fourteenth Amendment to the United States Constitution. They seek  
22 declaratory and injunctive relief against the enforcement of Article I, Section 7.5 of the State  
23 Constitution.

24 A few days after the initial filing of this lawsuit, on May 27, 2009, Plaintiffs filed a motion  
25 for preliminary injunction, asking this Court to enjoin California state officials from enforcing  
26 Article I, Section 7.5 of the State Constitution. Plaintiffs set their preliminary-injunction hearing  
27 for July 2, 2009.



1 Now Proposed Intervenor respectfully request that this Court allow them to intervene.  
2 They have expeditiously filed this intervention motion so as not to cause any unnecessary delay in  
3 these proceedings. And, to aid this Court in economically addressing the preliminary issues raised  
4 in this case, Proposed Intervenor have proposed to schedule their intervention hearing for the same  
5 time as Plaintiffs' preliminary-injunction hearing.

#### 6 FACTUAL HISTORY

7 Article II, Section 8 of the California Constitution gives "electors" the right "to propose  
8 statutes and amendments to the [State] Constitution" through the initiative process. *See* Cal. Const.  
9 art. II, § 8. Five California "electors"—Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez,  
10 Hak-Shing William Tam, and Mark A. Jansson (collectively referred to as "Proponents")—  
11 exercised this state constitutional right by taking the necessary legal steps to become the "Official  
12 Proponents" of Proposition 8.

13 In the fall of 2007, Proponents started the process of satisfying all legal requirements for  
14 placing Proposition 8 on the November 2008 ballot. Proponents began by supervising the drafting  
15 and ultimately approving the language of Proposition 8. Declaration of Dennis Hollingsworth at ¶ 6  
16 (attached as Exhibit A); Declaration of Gail J. Knight at ¶ 6 (attached as Exhibit B); Declaration of  
17 Martin F. Gutierrez at ¶ 6 (attached as Exhibit C); Declaration of Hak-Shing William Tam at ¶ 6  
18 (attached as Exhibit D); Declaration of Mark A. Jansson at ¶ 6 (attached as Exhibit E). Proponents  
19 then submitted the requisite legal forms prompting the California Attorney General to prepare  
20 Proposition 8's "Title and Summary" for the signature petitions. *Id.* By approving the language  
21 and submitting the forms, Proponents became the "Official Proponents" of Proposition 8 within the  
22 meaning of California law. *See* Cal. Elec. Code § 342. As such, Proponents assumed various legal  
23 duties and acquired numerous legal rights: among other things, they were responsible for paying  
24 the initiative filing fee; they could compel the California Attorney General to draft a Title and  
25 Summary for the initiative; and they were the only persons authorized to submit amendments to the  
26 initiative. *See* Cal. Elec. Code § 9004.

27 On November 29, 2007, the California Attorney General issued to Proponents a  
28

1 “circulating” Title and Summary for Proposition 8. Ex. A at ¶ 10; Ex. B at ¶ 10; Ex. C at ¶ 10; Ex.  
2 D at ¶ 10; Ex. E at ¶ 10. But before they could collect signatures, Proponents needed to comply  
3 with additional legal requirements. For instance, they needed to prepare petition forms that  
4 complied with the California Elections Code. *See* Cal. Elec. Code §§ 9001, 9008, 9012, 9014.  
5 Proponents were also required to retain an executed certification from each supervising signature-  
6 gatherer, certifying that he or she would not allow the Proposition 8 signatures to be used for any  
7 purpose other than qualifying the measure for the ballot. *See* Cal. Elec. Code § 9609. And  
8 Proponents had a legal duty to instruct all signature-collectors about the petition-circulation and  
9 signature-gathering requirements under state law. *See* Cal. Elec. Code § 9607. No person or entity  
10 other than Proponents could submit petitions to the State for signature verification; the State would  
11 have summarily rejected petitions submitted by others. *See* Cal. Elec. Code § 9032.

12 California law places onerous, time-constrained signature-gathering requirements on  
13 Proponents. They were responsible for obtaining at least 694,354 valid petition signatures between  
14 November 29, 2007, and April 28, 2008. Ex. A at ¶ 16; Ex. B at ¶ 16; Ex. C at ¶ 16; Ex. D at ¶ 16;  
15 Ex. E at ¶ 16. In other words, Proponents needed to supervise the collection of, on average, at least  
16 4,629 valid petition signatures per day during a five-month period.

17 Even after a sufficient number of signatures had been collected, Proponents retained the  
18 exclusive statutory right to decide whether to file the initiative petitions for signature verification.  
19 *See* Cal. Elec. Code § 9032 (“The right to file the petition shall be reserved to its proponents, and  
20 any section thereof presented for filing by any person or persons other than the proponents . . . shall  
21 be disregarded by the elections official”). No person other than Proponents possessed this unique  
22 legal right.

23 Near the beginning of this initiative process, Proponents helped to establish  
24 ProtectMarriage.com – Yes on 8, a Project of California Renewal (“Committee”), as a “primarily  
25 formed ballot measure committee” under the California Political Reform Act. Ex. A at ¶ 13; Ex. B  
26 at ¶ 13; Ex. C at ¶ 13; Ex. D at ¶ 13; Ex. E at ¶ 13. The Committee exists with one purpose: to  
27 support Proposition 8. *See* Declaration of David Bauer at ¶ 4 (attached as Exhibit F). Proponents

1 endorsed the Committee as the official Proposition 8 campaign committee, and designated it to  
2 receive all contributions and disburse all expenditures for the Proposition 8 campaign. *Id.* at ¶ 6.

3 Since its formation, the Committee has received financial contributions from over 83,000  
4 individuals, the vast majority of which are registered California voters. *Id.* at ¶ 8. From these  
5 financial supporters, the Committee has amassed more than \$39 million in total contributions. *Id.* at  
6 ¶ 9. Aside from the statutory powers and duties reserved exclusively to Proponents, the Committee  
7 was directly responsible for all aspects of the campaign to qualify Proposition 8 for the ballot and  
8 enact it into law. *Id.* at ¶¶ 6, 10. During the campaign, the Committee spent over \$37 million to  
9 qualify Proposition 8 for the ballot and operate a statewide campaign to persuade a majority of  
10 California voters to approve it. *Id.* at ¶ 11. The Committee's substantial investments of time and  
11 money, in addition to its unique status as a "primarily formed ballot measure committee" under  
12 state law, distinguish its interest in Proposition 8 from that of other supporters in the general public.  
13 *Id.* at ¶ 15.

14 On April 24, 2008, Proponents authorized the Committee to submit the petitions, containing  
15 the signatures of over 1.2 million Californians, for signature verification by county-elections  
16 officials. Ex. A at ¶ 19; Ex. B at ¶ 19; Ex. C at ¶ 19; Ex. D at ¶ 19; Ex. E at ¶ 19. California law  
17 provides that county-elections officials and the Secretary of State must provide certain notices to  
18 Proponents during the signature-verification process. *See* Cal. Elec. Code §§ 9030, 9031, 9033. On  
19 June 2, 2008, the California Secretary of State notified Proponents that the county-elections  
20 officials had verified the requisite number of voter signatures and that, consequently, Proposition 8  
21 qualified for inclusion on the November 2008 ballot. Ex. A at ¶ 21; Ex. B at ¶ 21; Ex. C at ¶ 21;  
22 Ex. D at ¶ 21; Ex. E at ¶ 21.

23 After Proposition 8 was approved for the ballot, Proponents had the statutory authority to  
24 designate the arguments in favor of Proposition 8 to appear in the statewide voter-guide. Ex. A at ¶  
25 22; Ex. B at ¶ 22; Ex. C at ¶ 22; Ex. D at ¶ 22; Ex. E at ¶ 22. The voter-guide contains only one  
26 argument in favor of each ballot initiative. *See* Cal. Elec. Code § 9067. If multiple arguments are  
27 submitted, the Secretary of State publishes only the argument designated by Proponents and omits  
28

1 those submitted by other persons or entities. *See* Cal. Elec. Code § 9067(b). Thus, California law  
2 gives Proponents a preferred status as official advocate for Proposition 8.

3 In addition to satisfying their many legal duties, Proponents dedicated substantial time,  
4 effort, reputation, and personal resources in campaigning for Proposition 8. Ex. A at ¶ 27; Ex. B at  
5 ¶ 27; Ex. D at ¶ 27; Ex. E at ¶ 27. Mr. Hollingsworth, for example, authored campaign literature  
6 and helped to raise more than \$2 million for the campaign. Ex. A at ¶ 27. Mr. Tam spent most of  
7 his working hours during 2008 advocating for Proposition 8; among other things, he coordinated  
8 Proposition 8 rallies and organized volunteers from the Asian-American community. Ex. D at ¶ 27.  
9 Mrs. Knight donated personal funds to the campaign and gave a presentation at a large Proposition  
10 8 rally. Ex. B at ¶ 27. And Mr. Jansson spent hundreds of hours working in support of Proposition  
11 8—work which included circulating signature petitions, organizing volunteers, speaking to  
12 community organizations, and serving on the Committee. Ex. E at ¶ 27. Proponents' tireless  
13 support of Proposition 8, and unique status as official proponents, separates their interest in  
14 Proposition 8 from that of other supporters in the general public. Ex. A at ¶ 5; Ex. B at ¶ 5; Ex. C at  
15 ¶ 5; Ex. D at ¶ 5; Ex. E at ¶ 5.

16 In late June 2008, Proponents were sued as Real Parties in Interest in a pre-election legal  
17 challenge to Proposition 8 filed in the California Supreme Court. *See* Petition for Extraordinary  
18 Relief, *Bennett v. Bowen*, No. S164520 (attached as Exhibit G). The petitioners in that case alleged  
19 that Proposition 8 was a constitutional "revision" (rather than an "amendment"), and thus could not  
20 be enacted through the initiative process. *Id.* at p. 12. The petitioners also asserted that the Title  
21 and Summary on the circulated petitions were false and misleading. *Id.* at p. 34. Proponents  
22 defended against those allegations, and the California Supreme Court summarily denied that legal  
23 challenge. *See Bennett v. Bowen*, No. S164520 (Cal. July 16, 2008) (attached as Exhibit H).

24 On November 4, 2008, a majority of California voters approved Proposition 8 as an  
25 amendment to the State Constitution. Thus, on November 5, 2008, Proposition 8 became Article 1,  
26 Section 7.5 of the California Constitution, which states: "Only marriage between a man and a  
27 woman is valid or recognized in California." Cal. Const. art. 1, § 7.5.

1 On that same day, November 5, 2008, three post-election lawsuits were filed in the  
2 California Supreme Court, arguing that Proposition 8 was enacted in violation of the State  
3 Constitution. See Amended Petition for Extraordinary Relief, *Strauss v. Horton*, No. S168047  
4 (attached as Exhibit I). Although not initially named as parties, Proponents and the Committee  
5 successfully intervened in that suit and defended Proposition 8. See *Strauss v. Horton*, No.  
6 S168047 (Cal. Nov. 19, 2008) (attached as Exhibit J). In that litigation, the California Attorney  
7 General opposed Proposition 8, arguing that it “should be invalidated . . . because it abrogates  
8 fundamental rights . . . without a compelling interest.” See Answer Brief in Response to Petition  
9 for Extraordinary Relief, *Strauss v. Horton*, No. S168047, at p. 75 (attached as Exhibit K). On May  
10 26, 2009, the California Supreme Court denied those legal challenges and upheld Proposition 8.  
11 See *Strauss v. Horton*, Nos. S168047, S168066, S168078, 2009 WL 1444594 (Cal. May 26, 2009).

12 On May 6, 2009, Proponents and the Committee successfully intervened in another  
13 challenge to Proposition 8 currently pending before the United States District Court for the Central  
14 District of California. See *Smelt v. United States*, Case No. SACV-09-286 DOC (MLGx) (C.D.  
15 Cal. May 6, 2009) (attached as Exhibit L); see also Ex. A at ¶ 30; Ex. B at ¶ 30; Ex. C at ¶ 29; Ex.  
16 D at ¶ 30; Ex. E at ¶ 30; Ex. F. at ¶ 19. That case, like this one, challenges the legality of  
17 Proposition 8 under the United States Constitution. Proponents and the Committee through their  
18 legal counsel are currently defending against that federal constitutional challenge to Proposition 8.

19 Proponents believe that no other party in this case will adequately represent their interests as  
20 official proponents with state constitutional and statutory rights to propose Proposition 8. Ex. A at  
21 ¶ 29; Ex. B at ¶ 29; Ex. C at ¶ 28; Ex. D at ¶ 29; Ex. E at ¶ 29. The Committee likewise believes  
22 that no other party will adequately represent its interests as the official Proposition 8 campaign  
23 committee. Ex. F at ¶ 18.

## 24 ARGUMENT

### 25 I. PROPOSED INTERVENORS ARE ENTITLED TO INTERVENE AS OF RIGHT.

26 Four requirements must be satisfied to intervene as a matter of right under Fed. R. Civ. P.  
27 24(a)(2): (1) the intervention motion must be timely filed; (2) the applicant must have a  
28

1 “significantly protectable” interest relating to the subject of the action; (3) the disposition of the  
2 action might, as a practical matter, impair the applicant’s ability to protect its interest; and (4) the  
3 applicant’s interest might be inadequately represented by the existing parties. *Sw. Ctr. for*  
4 *Biological Diversity v. Berg*, 268 F.3d 810, 817-18 (9th Cir. 2001) (citing *Nw. Forest Res. Council*  
5 *v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996)). Each of these requirements must be evaluated  
6 liberally in favor of intervention:

7  
8 A liberal policy in favor of intervention serves both efficient resolution of issues and  
9 broadened access to the courts. By allowing parties with a practical interest in the  
10 outcome of a particular case to intervene, [the court] often prevent[s] or simplif[ies]  
future litigation involving related issues; at the same time, [the court] allow[s] an  
additional interested party to express its views . . . .

11 *United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002) (citing *Forest Conservation*  
12 *Council v U.S. Forest*, 66 F.3d 1489, 496 n.8 (9th Cir. 1995)); *see also Berg*, 268 F.3d at 818;  
13 *Washington State Bldg. & Constr. Trades Council v. Spellman*, 684 F.2d 627, 630 (9th Cir. 1982).  
14 Proposed intervenors satisfy all four intervention requirements, each of which will be addressed in  
15 turn.

16 **A. Proposed Intervenors Have Timely Filed This Motion.**

17 Three criteria determine whether a motion to intervene satisfies the timeliness requirement:  
18 (1) the stage of the proceedings; (2) the reason for delay, if any, in moving to intervene; and (3)  
19 prejudice to the parties. *Glickman*, 82 F.3d at 836-837. Proposed intervenors filed their motion at  
20 the very earliest stages of this proceeding (less than a week after these proceedings began); they  
21 have not delayed in moving to intervene; and the parties will not be prejudiced in any way.

22 **B. Proposed Intervenors Have A Significantly Protectable Interest In The Subject**  
23 **Matter Of This Lawsuit.**

24 The Ninth Circuit has adopted “a virtual *per se* rule that the sponsors of a ballot initiative  
25 have a sufficient interest in the subject matter of the litigation to intervene pursuant to Fed. R. Civ.  
26 P. 24(a).” *Yniguez v. State of Arizona*, 939 F.2d 727, 735 (9th Cir. 1991); *see also Prete v.*  
27 *Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006) (ruling that a public-interest group and chief petitioner

1 who supported “an initiative [had] a ‘significant protectable interest’ in defending the legality of the  
2 measure”); *Spellman*, 684 F.2d at 630 (holding that “the public interest group that sponsored the  
3 [challenged] initiative[] was entitled to intervention as a matter of right under Rule 24(a)”). “The  
4 individualized interest of official proponents of ballot initiatives in defending the validity of the  
5 enactment they sponsored is sufficient to support intervention as of right.” *Bates v. Jones*, 904 F.  
6 Supp. 1080, 1086 (N.D. Cal. 1995).

7 A long line of Ninth Circuit precedent supports intervention by initiative proponents,  
8 initiative sponsors, and constitutional-amendment supporters. In *Yniguez*, the Ninth Circuit held  
9 that an organization and spokesman who campaigned for a ballot initiative had “sufficient  
10 interest[s] in the subject matter of the litigation to intervene” in a suit challenging that initiative.  
11 *Yniguez*, 939 F.2d at 735. In *Prete*, the court ruled that the chief initiative petitioner and a public-  
12 interest group that supported the initiative had “a ‘significant protectable interest’ in defending the  
13 legality of the measure.” *Prete*, 438 F.3d at 954. Similarly, in *Spellman*, the court found that “the  
14 public interest group that sponsored the [challenged] initiative[] was entitled to intervention as a  
15 matter of right under Rule 24(a).” *Spellman*, 684 F.2d at 630. And, in *Idaho v. Freeman*, 625 F.2d  
16 886, 887 (9th Cir. 1980), the Ninth Circuit concluded that an organization had the right to intervene  
17 in a suit challenging the ratification procedures for a constitutional amendment supported by that  
18 organization. Likewise, in *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983), a  
19 case challenging the federal government’s creation of a wildlife conservation area, the court held  
20 that “there [could] be no serious dispute . . . concerning . . . the existence of a protectable interest”  
21 on the part of an organization that supported the conservation area’s creation. This Court has  
22 dutifully followed this guidance: in *Bates*, for example, this Court permitted intervention by the  
23 “official proponents” of a state constitutional amendment setting term limits for state legislators.  
24 *Bates*, 904 F. Supp. at 1086.

25 Here, Proposed Intervenors are the official proponents and campaign committee of  
26 Proposition 8, and as such, they hold unique legal statuses regarding that initiative. By creating,  
27 proposing, and campaigning for Proposition 8, Proponents have exclusively exercised many state  
28

1 statutory and constitutional rights: (1) the constitutional right to propose Proposition 8 by initiative,  
2 see Cal. Const. art. II, § 8; (2) the statutory right to submit completed signature petitions, thereby  
3 authorizing the State to place Proposition 8 on the ballot, see Cal. Elec. Code § 9032; and (3) the  
4 statutory right to designate arguments in support of Proposition 8 for the official voter-guide, see  
5 Cal. Elec. Code § 9067. Cf. *Yniguez*, 939 F.2d at 733 (“[State] law recognizes the ballot initiative  
6 sponsor’s heightened interest in the measure by giving the sponsor official rights and duties distinct  
7 from those of the voters at large”). Similarly, the Committee holds a distinctive legal position: it is  
8 the only “primarily formed ballot measure committee” under California law endorsed by  
9 Proponents in support of Proposition 8. In short, Proposed Intervenor’s unique legal statuses  
10 regarding Proposition 8 are unmatched by any other person or organization.

11 Proposed Intervenor has indefatigably labored in support of Proposition 8. Proponents  
12 complied with a myriad of legal requirements to procure Proposition 8’s enactment, such as (1)  
13 filing forms prompting the State to prepare Proposition 8’s Title and Summary, (2) paying the  
14 initiative filing fee, (3) drafting legally compliant signature petitions, (4) overseeing the collection  
15 of more than 1.2 million signatures, (5) instructing signature-collectors on state-law guidelines, and  
16 (6) obtaining certifications from supervising signature-gatherers. Proponents devoted substantial  
17 time, effort, and resources through fundraising, campaigning, monetary donations, organizing  
18 volunteers, and assisting the Committee. Likewise, the Committee—which was responsible for all  
19 aspects of the campaign (aside from those legal duties assigned exclusively to Proponents)—  
20 labored incessantly, collecting and disbursing approximately \$39 million, all with the goal of  
21 achieving Proposition 8’s enactment. Proposed Intervenor has also battled for Proposition 8 in  
22 the courtroom: Proponents successfully defended against a pre-election legal challenge; and  
23 Proponents as well as the Committee intervened and successfully defended against a post-election  
24 challenge filed in the California Supreme Court. See *Strauss v. Horton*, Nos. S168047, S168066,  
25 S168078, 2009 WL 1444594 (Cal. May 26, 2009). Currently, Proposed Intervenor continues their  
26 legal defense of Proposition 8. They have recently intervened and are litigating in a federal-court  
27 suit, which, like this case, challenges the legality of Proposition 8 under the United States  
28



1 Constitution. *See Smelt v. United States*, Case No. SACV-09-286 DOC (MLGx) (C.D. Cal.). It is  
2 thus clear that Proposed Intervenor—unlike any other person or organization—have invested  
3 greatly in enacting and protecting Proposition 8.

4 In this case, Plaintiffs directly challenge Proposition 8 under the Federal Constitution. It is  
5 well settled under Ninth Circuit precedent that Proposed Intervenor’s unique legal status as  
6 Proposition 8’s official proponents and campaign committee endow them with a significantly  
7 protectable interest permitting them to intervene as of right. *See Yniguez*, 939 F.2d at 735; *Prete*,  
8 438 F.3d at 954; *Spellman*, 684 F.2d at 630; *Bates*, 904 F. Supp. at 1086. Ninth Circuit precedent  
9 also demonstrates that Proposed Intervenor’s tireless support of Proposition 8 also establishes their  
10 right to intervene. *See Sagebrush Rebellion*, 713 F.2d at 528; *Freeman*, 625 F.2d at 887.

11 **C. This Court’s Ruling Might Impair Proposed Intervenor’s Significantly**  
12 **Protectable Interest.**

13 When a proposed intervenor “would be substantially affected in a practical manner by the  
14 determination made in the action, he should, as a general rule, be entitled to intervene.” *Berg*, 268  
15 F.3d at 822 (quoting the advisory committee’s notes from Fed. R. Civ. P. 24). Not surprisingly, the  
16 Ninth Circuit has routinely concluded that an initiative- or amendment-supporters’ sufficiently  
17 protectable interest could be impaired by a suit challenging the supported provision. *See Prete*, 438  
18 F.3d at 954 (“[A]n adverse court decision on such [an initiative] measure may, as a practical matter,  
19 impair the interest held by the public interest group”); *Bates*, 904 F. Supp. at 1086 (“The interest of  
20 . . . the official proponents of [the challenged] Proposition . . . in its continued validity could  
21 obviously be impaired in this litigation”); *Freeman*, 625 F.2d at 887 (holding that an organization’s  
22 protectable interest in a constitutional amendment supported by that organization “would as a  
23 practical matter be significantly impaired by an adverse decision”); *Sagebrush Rebellion*, 713 F.2d  
24 at 528 (holding that “there can be no serious dispute . . . concerning . . . the existence of a  
25 protectable interest on the part of the [proposed intervenor] which may, as a practical matter, be  
26 impaired”).

27 Here, Plaintiffs ask this Court to declare that Proposition 8 violates the United States  
28

1 Constitution. They also seek to enjoin California state officials from enforcing that newly enacted  
2 provision of the State Constitution. If the Court grants this relief, all Proposed Intervenors' labor in  
3 support of Proposition 8 will be for naught. Thus, this Court's ruling could directly impair  
4 Proposed Intervenors' interest in Proposition 8, by undoing all that they have done in obtaining its  
5 enactment.

6 **D. The Existing Parties Will Not Adequately Represent Proposed Intervenors'**  
7 **Interests.**

8 “[T]he requirement of inadequacy of representation is satisfied if the [proposed intervenor]  
9 shows that representation of its interests ‘*may be*’ inadequate.” *Sagebrush Rebellion*, 713 F.2d at  
10 528 (emphasis added); *accord Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10  
11 (1972). “[T]he burden of making this showing is minimal.” *Sagebrush Rebellion*, 713 F.2d at 528;  
12 *accord Trbovich*, 404 U.S. at 538 n.10; *Bates*, 904 F. Supp. at 1087.

13 Presumably, California Attorney General, Edmund G. Brown, will represent the California  
14 state officials sued in this case. The Ninth Circuit has found that intervention is warranted where  
15 the facts indicate that the defendant government official desires the same legal outcome sought by  
16 the plaintiff. *See Sagebrush Rebellion*, 713 F.2d at 528. Attorney General Brown has made it clear  
17 that he opposes Proposition 8's validity. In the challenge to Proposition 8 recently decided by the  
18 California Supreme Court, Attorney General Brown argued that “Proposition 8 should be  
19 invalidated . . . because it abrogates fundamental rights . . . without a compelling interest.” *See Ex.*  
20 *K* at p. 75. The Attorney General's deputy communicated this message more pointedly at oral  
21 argument, when he identified himself as a “challenger” to Proposition 8. *See California Supreme*  
22 *Court Website, Proposition 8 Cases, available at [http://www.courtinfo.ca.gov/courts/supreme/](http://www.courtinfo.ca.gov/courts/supreme/highprofile/prop8.htm)*  
23 *highprofile/prop8.htm* (last visited on May 27, 2009) (linking to audio and video coverage of the  
24 oral argument). A self-identified “challenger” to Proposition 8 will not adequately represent the  
25 interests of those who diligently labored for its enactment.

26 The Ninth Circuit has also found that a state attorney general inadequately represents the  
27 views of initiative proponents if he interprets the initiative amendment differently than the  
28

1 proponents. *See Yniguez*, 939 F.2d at 738. Attorney General Brown's legal views about  
2 Proposition 8 conflict sharply with those held by Proposed Intervenors. As previously mentioned,  
3 the Attorney General believes that Proposition 8 should be invalidated, while Proposed Intervenors  
4 firmly maintain its legal propriety. Additionally, Attorney General Brown contends that  
5 Proposition 8 should be interpreted narrowly, *i.e.*, that the State should recognize all relational  
6 unions that were considered to be "marriages" when they were formalized (regardless of whether  
7 they conform to Proposition 8's structure of one man and one woman). *See Ex. K* at pp. 61-75  
8 (arguing that the State should recognize same-sex "marriages" previously solemnized within its  
9 borders). In contrast, Proposed Intervenors maintain that Proposition 8 should be interpreted  
10 broadly, *i.e.*, that it prevents the State from "recogniz[ing]" as "marriage" any relational union that  
11 does not conform to Proposition 8's structure of one man and one woman (regardless of when or  
12 where it was solemnized). *See Cal. Const. art. 1, § 7.5*. These significant distinctions between  
13 Attorney General Brown's and Proposed Intervenors' legal views about Proposition 8 demonstrate  
14 that he is unable to adequately represent Proposed Intervenors' interests.

15 The inadequate-representation prong is also satisfied where the existing parties—because of  
16 inability or unwillingness—might not present intervenor's arguments. *See Sagebrush Rebellion*,  
17 713 F.2d at 528; *Blake v. Pallan*, 554 F.2d 947, 954-55 (9th Cir. 1977). In 2000, Californians  
18 enacted a statutory initiative that defined "marriage," like Proposition 8 does, as a union between "a  
19 man and a woman." Cal. Fam. Code § 308.5 (2000). Attorney General Brown unsuccessfully  
20 defended that statute against state constitutional attack. *See In re Marriage Cases*, 43 Cal.4th 757,  
21 76 Cal.Rptr.3d 683 (Cal. 2008). When litigating that case, he presented only two state interests for  
22 defining marriage as the union of a man and a woman: (1) the government's interest in maintaining  
23 its longstanding definition of marriage; and (2) its interest in affirming the will of its citizens. *See*  
24 *Answer Brief of State of California and the Attorney General to Opening Brief on the Merits, In re*  
25 *Marriage Cases*, No. S147999, at pp. 43-54 (attached as Exhibit M). Here, Proposed Intervenors  
26 intend to argue additional state interests including but not limited to: promoting stability in  
27 relationships between a man and a woman because they naturally (and at times unintentionally)

1 produce children; and promoting the statistically optimal child-rearing household where children  
2 are raised by both a mother and a father. The Attorney General has proven unwilling to argue these  
3 state interests, which have been found by other courts to satisfy rational-basis review. *See, e.g.,*  
4 *Hernandez v. Robles*, 7 N.Y.3d 338, 855 N.E.2d 1 (N.Y. 2006). His refusal to do so here will  
5 unnecessarily hinder the constitutional defense of Proposition 8.

6 “[Another] way for the intervenor to show inadequate representation is to demonstrate that  
7 its interests are sufficiently different in . . . degree from those of the named party.” *B. Fernandez &*  
8 *Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 546 (1st Cir. 2006); *see also Glancy v. Taubman*  
9 *Ctrs., Inc.*, 373 F.3d 656, 675 (6th Cir. 2004) (“Asymmetry in the intensity . . . of interest can  
10 prevent a named party from representing the interests of the absentee”). The Ninth Circuit has  
11 acknowledged that oftentimes the government’s motivation to defend a voter-enacted initiative is  
12 much less than the proponent’s hearty enthusiasm:

13 [A]s appears to be true in this case, the government may be less than enthusiastic  
14 about the enforcement of a measure adopted by ballot initiative; for better or worse,  
15 the people generally resort to a ballot initiative precisely because they do not believe  
16 that the ordinary processes of representative government are sufficiently sensitive to  
17 the popular will with respect to a particular subject. While the people may not  
18 always be able to count on their elected representatives to support fully and fairly a  
19 provision enacted by ballot initiative, they can invariably depend on its sponsors to  
20 do so.

21 *Yniguez*, 939 F.2d at 733. This Court has similarly reasoned:

22 [A]n official sponsor of a ballot initiative may be considered to add an element not  
23 covered by the government in defending the validity of the initiative in that the very  
24 act of resorting to a ballot initiative indicates a rift between the initiative’s  
25 proponents and voters and their elected officials on the issue that underlies the  
26 initiative.

27 *Bates*, 904 F. Supp. at 1087 (citations omitted).

28 The marriage issue in California reflects this sharp “rift” between the people and their  
elected representatives. As previously mentioned, in 2000, Californians enacted a statutory  
initiative that defined “marriage” as a union between “a man and a woman.” Cal. Fam. Code §  
308.5 (2000). In 2005 and 2007, however, the California Legislature sought to overturn the

1 people's will by approving bills that would have allowed marriage between persons of the same  
2 sex, but on both occasions, the Governor vetoed those bills. See A.B. 849, 2005-2006 Leg., Reg.  
3 Sess. (Cal. 2005); A.B. 43, 2007-2008 Leg., Reg. Sess. (Cal. 2007). These repeated legislative  
4 efforts to permit same-sex "marriage" demonstrate the representatives' hostility to the people's will  
5 on marriage. This prompted Proposed Intervenors to endure the personally arduous initiative  
6 process to enact the constitutional amendment desired by the people. Moreover, the Attorney  
7 General's legal opposition to Proposition 8 also demonstrates the rift between Californians and their  
8 elected representatives. Californians thus depend on Proposed Intervenors, and not their elected  
9 officials, to defend Proposition 8 vigorously.

10 In sum, Proposed Intervenors satisfy all the requirements for intervention as of right. This  
11 Court should grant their request to intervene.

12 **II. PROPOSED INTERVENORS HAVE SATISFIED THE REQUIREMENTS FOR PERMISSIVE**  
13 **INTERVENTION.**

14 Fed. R. Civ. P. 24(b)(1)(B) establishes the requirements for permissive intervention. "[A]  
15 court may grant permissive intervention where the applicant for intervention shows (1) independent  
16 grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the  
17 main action, have a question of law or question of fact in common." *City of Los Angeles*, 288 F.3d  
18 at 403. Proposed Intervenors satisfy each of these requirements.

19 First, Proposed Intervenors have independent grounds for jurisdiction in this case.  
20 Plaintiffs' claims seek to undermine Proposed Intervenors' state constitutional and statutory rights  
21 as the official proponents and campaign committee for Proposition 8. This direct attack on  
22 Proposed Intervenors' rights creates sufficient grounds for jurisdiction.

23 Second, Proposed Intervenors have timely filed their motion to intervene. In determining  
24 timeliness for purposes of permissive intervention, the Ninth Circuit "considers precisely the same  
25 three factors—the stage of the proceedings, the prejudice to existing parties, and the length of and  
26 reason for the delay"—that it considers when determining timeliness for purposes of mandatory  
27 intervention. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1308 (9th Cir. 1997).

1 As previously demonstrated, Proposed Intervenors satisfy the timeliness requirement: they filed  
2 their motion at the very earliest stages of this proceeding; they have not delayed in moving to  
3 intervene; and the parties will not be prejudiced in any way.

4 Third, Proposed Intervenors' defenses to Plaintiffs' claims present questions of law in  
5 common with the issues involved in the "main action." Plaintiffs' claims and Proposed  
6 Intervenors' defenses both involve the constitutionality of Proposition 8 under the Federal  
7 Constitution: Plaintiffs seek a declaration that Proposition 8 violates the Federal Constitution, and  
8 Proposed Intervenors contend that Proposition 8 complies with the Federal Constitution. These  
9 arguments present inextricably intertwined and completely overlapping questions of law.

10 In sum, Proposed Intervenors satisfy all the requirements for permissive intervention. This  
11 Court should therefore grant their request to intervene.

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**CONCLUSION**

Proposed Intervenors have significantly protectable interests in Proposition 8. The California Attorney General will not adequately represent their interests because he has argued that Proposition 8 should be invalidated; he interprets Proposition 8 differently than Proposed Intervenors; and he will not present all their arguments. This Court should thus allow Proposed Intervenors to intervene in this action.

Dated: May 28, 2009

ALLIANCE DEFENSE FUND  
ATTORNEYS FOR PROPOSED INTERVENORS DENNIS  
HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F.  
GUTIERREZ, HAK-SHING WILLIAM TAM, MARK A.  
JANSSON, AND PROTECTMARRIAGE.COM – YES ON  
8, A PROJECT OF CALIFORNIA RENEWAL

By: s/Timothy Chandler  
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9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 11  
 12

13 **KRISTIN M. PERRY, ET AL.,**

14 Plaintiffs,

15 v.

17 **GOVERNOR ARNOLD SCHWARZENEGGER, ET**  
 18 **AL.,**

19 Defendants.

3:09-cv-02292-VRW

**ANSWER OF ATTORNEY GENERAL**  
**EDMUND G. BROWN JR.**

Date:  
 Time:  
 Courtroom:  
 Judge: Hon. Vaughn R. Walker, C.J.  
 Trial Date:  
 Action Filed: May 22, 2009

20 This case arises under a factual and legal history that is unique to California. In May 2008,  
 21 the California Supreme Court held that denying same-sex couples the right to marry while  
 22 affording them the benefits of marriage through the domestic partnership law violated principles  
 23 of equal protection, liberty, and privacy. *In re Marriage Cases*, 43 Cal.4th 757 (2008). The  
 24 following November, a bare majority of California voters passed Proposition 8, which amended  
 25 the State Constitution to declare that only marriages between a man and a woman would be  
 26 recognized. Between May and November 2008, over 18,000 same-sex couples were married. In  
 27 2009, the California Supreme Court upheld the validity of these marriages but declared that the  
 28



1 voters had the authority to carve out of the state constitution an exception to the rights of liberty  
2 and equal protection with respect to marriage. *Strauss v. Horton*, \_\_\_ Cal.4th \_\_\_, 93 Cal.Rptr.3d  
3 591 (2009). Still, the court reaffirmed the liberty and equal protection principles that were  
4 recognized in the *In re Marriage Cases* and that are at issue in this federal constitutional  
5 challenge.

6 The Attorney General of California is sworn to uphold the Constitution of the United States  
7 in addition to the Constitution of the State of California. Cal. Const., art. XX, § 3. The United  
8 States Constitution is the "supreme law of the land." U.S. Const., art. VI, § 2; Cal. Const., art. III,  
9 § 1. Taking from same-sex couples the right to civil marriage that they had previously possessed  
10 under California's Constitution cannot be squared with guarantees of the Fourteenth Amendment.  
11 Accordingly, the Attorney General answers the Complaint consistent with his duty to uphold the  
12 United States Constitution, as Attorney General Thomas C. Lynch did when he argued that  
13 Proposition 14, passed by the California voters in 1964, was incompatible with the Federal  
14 Constitution. *Reitman v. Mulkey*, 387 U.S. 369 (1967).

15 1. In response to paragraph 1 of the Complaint, the Attorney General admits that in  
16 November 2008 California adopted Proposition 8; that Proposition 8 amended Article I of the  
17 California Constitution by adding section 7.5 which provides that "[o]nly marriage between a  
18 man and a woman is valid or recognized in California;" and that the effect of Proposition 8 is to  
19 deny gay men and lesbians and their same-sex partners access to civil marriage in California and  
20 to deny them recognition of their civil marriages performed elsewhere. The Attorney General  
21 admits that lesbians and gay men and their same-sex partners may form domestic partnerships in  
22 California pursuant to California Family Code sections 297 through 299.6, and that such domestic  
23 partnerships are not equal to civil marriage, and that this unequal treatment denies lesbians and  
24 gay men rights guarantees by the Fourteenth Amendment to the United States Constitution.  
25 Except as specifically admitted herein, the Attorney General denies the allegations of paragraph 1  
26 of the Complaint.

27 2. In response to paragraph 2 of the Complaint, the Attorney General admits that it is for  
28 the reasons stated in paragraph 1 of the Complaint that the Plaintiffs ask this court to enjoin

1 enforcement of Proposition 8 and other California statutes. Except as specifically admitted  
2 herein, the Attorney General denies the allegations of paragraph 2 of the Complaint.

3 3. In response to paragraph 3 of the Complaint, the Attorney General admits that this  
4 Court has jurisdiction over claims for injunctive and declaratory relief against the officials  
5 exercising executive powers that are named as defendants in the Complaint, and which may  
6 operate to enjoin future enforcement of Proposition 8. Except as specifically admitted herein, the  
7 Attorney General denies the allegations of paragraph 3 of the Complaint.

8 4. The Attorney General admits the allegations of paragraph 4 of the Complaint.

9 5. In response to paragraph 5 of the Complaint, the Attorney General admits that  
10 Plaintiffs seek the relief that they allege for the reasons that they allege. Except as specifically  
11 admitted herein, the Attorney General denies the allegations of paragraph 5 of the Complaint.

12 6. In response to paragraph 6 of the Complaint, the Attorney General admits that  
13 Plaintiffs seek the relief that they allege for the reasons that they allege. Except as specifically  
14 admitted herein, the Attorney General denies the allegations of paragraph 6 of the Complaint.

15 7. In response to paragraph 7 of the Complaint, the Attorney General admits that  
16 Proposition 8 denies same-sex couples the right to civil marriage in California, and that it  
17 therefore violates the Fourteenth Amendment to the United States Constitution. The Attorney  
18 General lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
19 matters asserted in paragraph 7 of the Complaint and on that basis denies them.

20 8. In response to paragraph 8 of the Complaint, the Attorney General admits that  
21 Plaintiffs seek the relief that they allege for the reasons that they allege. Except as specifically  
22 admitted herein, the Attorney General denies the allegations of paragraph 8 of the Complaint.

23 9. The Attorney General lacks knowledge or information sufficient to form a belief as to  
24 the truth of the allegations of paragraph 9 of the Complaint and on that basis denies them.

25 10. The Attorney General lacks knowledge or information sufficient to form a belief as to  
26 the truth of the allegations of paragraph 10 of the Complaint and on that basis denies them.

27 11. The Attorney General lacks knowledge or information sufficient to form a belief as to  
28 the truth of the allegations of paragraph 11 of the Complaint and on that basis denies them.

1           12. The Attorney General lacks knowledge or information sufficient to form a belief as to  
2 the truth of the allegations of paragraph 12 of the Complaint and on that basis denies them.

3           13. In response to paragraph 13 of the Complaint, the Attorney General admits that  
4 Arnold Schwarzenegger is the Governor of the State of California; that in his official capacity the  
5 supreme executive power of the state is vested in him; that it is his duty to properly execute the  
6 laws of the state; and that the Governor has a district office in San Francisco. Except as  
7 specifically admitted herein, the Attorney General denies the allegations of paragraph 13 of the  
8 Complaint.

9           14. In response to paragraph 14 of the Complaint, the Attorney General admits that he is  
10 the Attorney General of the State of California; that in his official capacity he is the chief law  
11 officer of the state; that it is his duty to see that the laws of the state are uniformly and adequately  
12 enforced; and that the Attorney General has offices in Oakland and San Francisco. Except as  
13 specifically admitted herein, the Attorney General denies the allegations of paragraph 14 of the  
14 Complaint.

15           15. In response to paragraph 15 of the Complaint, the Attorney General admits that Mark  
16 B. Horton is the Director of the California Department of Public Health. The Attorney General  
17 lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
18 allegations of paragraph 15 of the Complaint and on that basis denies them.

19           16. In response to paragraph 16 of the Complaint, the Attorney General admits that  
20 Linette Scott is the Deputy Director of Health Information and Strategic Planning for the  
21 California Department of Public Health. The Attorney General lacks knowledge or information  
22 sufficient to form a belief as to the truth of the remaining allegations of paragraph 16 of the  
23 Complaint and on that basis denies them.

24           17. In response to paragraph 17 of the Complaint, the Attorney General admits that  
25 Patrick O'Connell is the Auditor-Controller of Alameda County, which supervises the Clerk-  
26 Recorder's Office. The Attorney General lacks knowledge or information sufficient to form a  
27 belief as to the truth of the remaining allegations of paragraph 17 of the Complaint and on that  
28 basis denies them.

1 18. In response to paragraph 18 of the Complaint, the Attorney General admits that Dean  
2 C. Logan is the Registrar-Recorder/County Clerk for Los Angeles County. The Attorney General  
3 lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
4 allegations of paragraph 18 of the Complaint and on that basis denies them.

5 19. The Attorney General admits that he has enforcement responsibilities in relation to  
6 California law, which includes Proposition 8, and that Plaintiffs seek the relief that they allege.  
7 Except as specifically admitted herein, the Attorney General denies the allegations of paragraph  
8 19 of the Complaint.

9 20. In response to paragraph 20 of the Complaint, the Attorney General admits that  
10 sexual orientation is a characteristic that bears no relation to a person's ability to perform or  
11 contribute to society and that the sexual orientation of gays and lesbians has been associated with  
12 a stigma of inferiority and second-class citizenship, manifested by the group's history of legal and  
13 social disabilities (see *In re Marriage Cases*, 43 Cal.4th at 841). The Attorney General admits the  
14 remaining allegations of paragraph 20 of the Complaint.

15 21. In response to paragraph 21 of the Complaint, the Attorney General admits that in the  
16 mid-1970s several same-sex couples sought and were denied marriage licenses from county  
17 clerks in California; and that in 1977, the California Legislature enacted California Family Code  
18 section 300, which defined marriage as "a personal relation arising out of a civil contract between  
19 a man and a woman, to which the consent of the parties capable of making that contract is  
20 necessary" (see *In re Marriage Cases*, 43 Cal.4th at 795). The Attorney General lacks knowledge  
21 or information sufficient to form a belief as to the truth of the remaining allegations of paragraph  
22 21 of the Complaint and on that basis denies them.

23 22. In response to paragraph 22 of the Complaint, the Attorney General admits that in  
24 1999 the California Legislature adopted a domestic partnership law codified at California Family  
25 Code sections 297-299.6; that the law defines domestic partners as "two adults who have chosen  
26 to share one another's lives in an intimate and committed relationship of mutual caring;" and that  
27 under the law domestic partners must share a common residence, each be at least 18 years of age,  
28 be unrelated by blood in any way that would prevent them from being married to one another, not

1 be married or a member of another domestic partnership, be capable of consenting, and either  
2 both be of the same sex or include one person more than 62 years of age. The Attorney General  
3 lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
4 allegations of paragraph 22 of the Complaint and on that basis denies them.

5 23. In response to paragraph 23 of the Complaint, the Attorney General admits that  
6 California's domestic partnership law gives same-sex couples many of the substantive legal  
7 benefits and privileges that California civil marriage provides; that the domestic partnership law  
8 does not permit the marriage of same-sex couples; and that the California Supreme Court has  
9 noted at least nine ways in which statutes concerning marriage differ from corresponding statutes  
10 concerning domestic partnerships (see *In re Marriage Cases*, 43 Cal.4th at 805 fn. 24). The  
11 Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the  
12 remaining allegations of paragraph 23 of the Complaint, and on that basis denies them.

13 24. In response to paragraph 24 of the Complaint, the Attorney General admits that in  
14 2000, California voters approved Proposition 22 (codified as Cal. Fam. Code § 308.5), which  
15 provided that "[o]nly marriage between a man and a woman is valid or recognized in California;  
16 and that in *Lockyer v. City & County of San Francisco*, 33 Cal.4th 1055 (2004), the California  
17 Supreme Court found that Family Code sections 300 and 308.5 prohibited the City and County of  
18 San Francisco from issuing marriage licenses to same-sex couples but did not address whether  
19 those statutes were constitutional. The Attorney General lacks knowledge or information  
20 sufficient to form a belief as to the truth of the remaining allegations of paragraph 24 of the  
21 Complaint and on that basis denies them.

22 25. In response to paragraph 25 of the Complaint, on information and belief, the Attorney  
23 General admits proponents of Proposition 8 submitted petitions with sufficient signatures to place  
24 it on the November 2008 ballot. The Attorney General lacks knowledge or information sufficient  
25 to form a belief as to the truth of the remaining allegations of paragraph 25 of the Complaint and  
26 on that basis denies them.

27 26. The Attorney General admits the allegations of paragraph 26 of the Complaint.  
28

1           27. In response to paragraph 27 of the Complaint, on information and belief, the Attorney  
2 General admits that the California Secretary of State certified that Proposition 8 qualified for the  
3 November 2008 General Election ballot; admits that the Official Title and Summary (prepared by  
4 the Attorney General) printed in the Voter Information Guide stated that Proposition 8 “Changes  
5 the California Constitution to eliminate the right of same-sex couples to marry in California” and  
6 “Provides that only marriage between a man and a woman is valid or recognized in California;”  
7 admits that the effect of passage of Proposition 8 was to overturn the decision of the California  
8 Supreme Court in *In re Marriage Cases*, by taking away the rights previously protected by the  
9 California Constitution to same-sex civil marriage in California, and the right to have a same-sex  
10 civil marriages that are performed elsewhere recognized in California; and admits that in doing so  
11 Proposition 8 imposed a special disability on gays and lesbians and their families on the basis of  
12 sexual orientation. The Attorney General lacks knowledge or information sufficient to form a  
13 belief as to the truth of the remaining allegations of paragraph 27 of the Complaint, and on that  
14 basis denies them.

15           28. The Attorney General admits the allegations of paragraph 28 of the Complaint.

16           29. In response to paragraph 29 of the Complaint, the Attorney General admits that since  
17 the passage of Proposition 8 it has not been lawful to issue a marriage license to same-sex couples  
18 in California. The Attorney General lacks knowledge or information sufficient to form a belief as  
19 to the truth of the remaining allegations of paragraph 29 of the Complaint, and on that basis  
20 denies them.

21           30. In response to paragraph 30 of the Complaint, the Attorney General admits that since  
22 the passage of Proposition 8, California law has restricted civil marriage to opposite-sex couples,  
23 and denied civil marriage to same-sex couples; that under California law, gay and lesbian couples  
24 cannot enter into a civil marriage with a person of their choice; and that, as the California  
25 Supreme Court found in *In re Marriage Cases*, 43 Cal.4th at 782, the inability to marry the  
26 person of their choice denies gays and lesbians, as well as their families, the personal and public  
27 affirmation that accompanies state-sanctioned civil marriage. Except as specifically admitted  
28 herein, the Attorney General denies the allegations of paragraph 30 of the Complaint.



1 Constitution on its face. The Attorney General lacks knowledge or information sufficient to form  
2 a belief as to the truth of the remaining allegations of paragraph 38 of the Complaint, and on that  
3 basis denies them.

4 39. In response to paragraph 39 of the Complaint, the Attorney General admits that, to the  
5 extent that Proposition 8 took from Plaintiffs their previously held fundamental right to marry, the  
6 measure violates the Due Process clause of the Fourteenth Amendment to the United States  
7 Constitution on its face; and that by denying civil marriage to gay and lesbian same-sex couples  
8 that it affords to heterosexual opposite-sex couples, the California Constitution denies gay and  
9 lesbian couples and their families the same dignity, respect, and stature afforded families headed  
10 by a married couple. *See In re Marriage Cases*, 43 Cal.4th at 846-47.

11 **CLAIM TWO: EQUAL PROTECTION**

12 40. In response to paragraph 40 of the Complaint, the Attorney General incorporates here  
13 by reference paragraphs 1 through 39 of this Answer as if fully set forth herein.

14 41. In response to paragraph 41 of the Complaint, and in light of the state constitutional  
15 rights confirmed by the California Supreme Court in *In re Marriage Cases*, the Attorney General  
16 admits that the passage of Proposition 8 violates the Equal Protection Clause of the Fourteenth  
17 Amendment to the United States Constitution on its face. The Attorney General lacks knowledge  
18 or information sufficient to form a belief as to the truth of the remaining allegations of paragraph  
19 41 of the Complaint, and on that basis denies them.

20 42. In response to paragraph 42 of the Complaint, the Attorney General admits that  
21 Proposition 8 restricts civil marriage in California to opposite-sex couples; that gays and lesbians  
22 are therefore unable to enter into a civil marriage with the person of their choice; that the  
23 California Constitution treats similarly-situated persons differently by providing civil marriage to  
24 opposite-sex couples, but denying it to same-sex couples; that domestic partnership under  
25 California law is available to same-sex couples, but is not the equivalent of civil marriage; that  
26 even if domestic partnership were the substantive equivalent to civil marriage, it would still be  
27 unequal to deny civil marriage to same-sex couples because, as recognized by the California  
28 Supreme Court in *In re Marriage Cases*, domestic partnership would carry with it a stigma of



1 inequality and second-class citizenship; that under the California Constitution, gay and lesbian  
2 same sex couples are unequal to heterosexual opposite sex couples; and that article 1, section 7.5  
3 of the California Constitution discriminates on the basis of sexual orientation. The Attorney  
4 General lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
5 allegations of paragraph 42 of the Complaint, and on that basis denies them.

6 43. In response to paragraph 43 of the Complaint, the Attorney General admits that article  
7 1, section 7.5 of the California Constitution was passed as a result of disapproval of or animus by  
8 the majority of voters against same-sex marriages; that Proposition 8 took away from gays and  
9 lesbians and their families rights that the California Supreme Court previously recognized to exist  
10 in the California Constitution (see *In re Marriage Cases*, 43 Cal.4th at 853-54); that in doing so,  
11 Proposition 8 imposed a special disability on gays and lesbians alone; and that as a result,  
12 Proposition 8 violates the Equal Protection Clause of the Fourteenth Amendment to the United  
13 States Constitution. The Attorney General lacks knowledge or information sufficient to form a  
14 belief as to the truth of the remaining allegations of paragraph 43 of the Complaint, and on that  
15 basis denies them.

16 **CLAIM THREE: VIOLATION OF 42 U.S.C. § 1983**

17 44. In response to paragraph 44 of the Complaint, the Attorney General incorporates here  
18 by reference paragraphs 1 through 43 of this Answer as if fully set forth herein.

19 45. The Attorney General lacks knowledge or information sufficient to form a belief as to  
20 the truth of the allegations of paragraph 45 of the Complaint, and on that basis denies them.

21 **IRREPARABLE INJURY**

22 47. In response to paragraph 47 of the Complaint, the Attorney General incorporates here  
23 by reference paragraphs 1 through 46 of this Answer as if fully set forth herein.

24 48. The Attorney General lacks knowledge or information sufficient to form a belief as to  
25 the truth of the allegations of paragraph 48 of the Complaint, and on that basis denies them.

26 49. The Attorney General lacks knowledge or information sufficient to form a belief as to  
27 the truth of the allegations of 49 of the Complaint, and on that basis denies them.

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Dated: June 12, 2009

Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General of California  
JONATHAN K. RENNER  
Senior Assistant Attorney General

/S/  
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7 California, Mark B. Horton, in his official capacity as Director of the  
California Department of Public Health and State Registrar of Vital  
8 Statistics, and Linette Scott, in her official capacity as Deputy Director  
of Health Information & Strategic Planning for the California Department  
9 of Public Health

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 KRISTIN M. PERRY, SANDRA B. STIER, ) Case No. 09-CV-02292 VRW  
14 PAUL T. KATAMI, and JEFFREY J. )  
ZARRILLO, )

15 Plaintiffs, )

16 v. )

17 ARNOLD SCHWARZENEGGER, in his )  
18 official capacity as Governor of California; )  
EDMUND G. BROWN, JR., in his official )  
19 capacity as Attorney General of California; )  
MARK B. HORTON, in his official )  
20 capacity as Director of the California  
Department of Public Health and State  
21 Registrar of Vital Statistics; LINETTE  
SCOTT, in her official capacity as Deputy )  
22 Director of Health Information & Strategic  
Planning for the California Department  
23 of Public Health; PATRICK O'CONNELL,  
in his official capacity as Clerk-Recorder for )  
24 the County of Alameda; and DEAN C.  
LOGAN, in his official capacity as )  
25 Registrar-Recorder/County Clerk for the  
County of Los Angeles, )

26 Defendants. )  
27  
28

**THE ADMINISTRATION'S ANSWER TO  
COMPLAINT FOR DECLARATORY,  
INJUNCTIVE, OR OTHER RELIEF**

1 Defendants Arnold Schwarzenegger, Mark B. Horton, and Linette Scott  
2 (collectively "the Administration"), by and through counsel, answer Plaintiffs' Complaint for  
3 Declaratory, Injunctive, or Other Relief as follows:

4 Plaintiffs' Complaint presents important constitutional questions that require and  
5 warrant judicial determination. In a constitutional democracy, it is the role of the courts to  
6 determine and resolve such questions. To the extent that Plaintiffs have stated a justiciable  
7 controversy, setting forth federal constitutional challenges to Proposition 8, it is appropriate for  
8 the federal courts to determine and resolve those challenges. The Administration encourages the  
9 Court to resolve the merits of this action expeditiously.

10 In response to each of the specific allegations in Plaintiff's Complaint, the  
11 Administration responds as follows:

12 1. In response to Paragraph 1 of the Complaint, the Administration admits  
13 that, in November 2008, California voters passed Proposition 8, and that Proposition 8 amended  
14 the California Constitution by adding a provision that states: "Only marriage between a man and  
15 a woman is valid or recognized in California." Cal. Const. art. I, § 7.5. The Administration also  
16 admits that the California Family Code contains provisions that allow for the recognition of  
17 same-sex unions as domestic partnerships. The Administration also admits that the United States  
18 Supreme Court decided *Loving v. Virginia* in 1967, and the Supreme Court's decision contains  
19 the language quoted in Paragraph 1 of Plaintiffs' Complaint. As to the remaining allegations of  
20 Paragraph 1, the Administration notes that those remaining allegations state opinions and legal  
21 conclusions which require no answer. To the extent that the remaining allegations of  
22 Paragraph 1 contains allegations that require a response, the Administration responds by stating  
23 that it lacks knowledge or information sufficient to admit or deny those allegations.

24 2. In response to Paragraph 2 of the Complaint, the Administration admits  
25 that Plaintiffs have asked this Court to enjoin, preliminarily and permanently, enforcement of  
26 Proposition 8 (as set forth in the California Constitution, in article I, section 7.5) and certain  
27 California statutes. As to any remaining allegations of Paragraph 2, the Administration lacks  
28 knowledge or information sufficient to admit or deny those remaining allegations.

1           3.     The Administration admits that the Complaint presents a claim under 42  
2 U.S.C. section 1983, and that this Court has subject matter jurisdiction under 28 U.S.C. section  
3 1331.

4           4.     The allegations of Paragraph 4 of the Complaint consist of legal  
5 conclusions which require no answer. To the extent that Paragraph 4 contains an allegation that  
6 requires a response, the Administration lacks knowledge or information sufficient to admit or  
7 deny any such allegation.

8           5.     In response to Paragraph 5 of the Complaint, the Administration admits  
9 that Plaintiffs have brought an action pursuant to 42 U.S.C. section 1983 seeking the declarations  
10 and preliminary and permanent injunctions described by Plaintiffs in Paragraph 5. The  
11 Administration lacks knowledge or information sufficient to admit or deny the remaining  
12 allegations, if any, in Paragraph 5.

13           6.     In response to Paragraph 6 of the Complaint, the Administration admits  
14 that Plaintiffs have brought an action seeking the declarations and preliminary and permanent  
15 injunctions described by Plaintiffs in Paragraph 6 of the Complaint. The Administration lacks  
16 knowledge or information sufficient to admit or deny the remaining allegations, if any, in  
17 Paragraph 6.

18           7.     In response to Paragraph 7 of the Complaint, the Administration lacks  
19 knowledge or information sufficient to admit or deny these allegations.

20           8.     The Administration admits that Plaintiffs have brought an action seeking  
21 the declarations and preliminary and permanent injunctions described by Plaintiffs in Paragraph 8  
22 of the Complaint, and that Plaintiffs seek to recover attorneys' fees, costs, and expenses incurred  
23 in this action and any other relief that this Court may order. The Administration lacks knowledge  
24 or information sufficient to admit or deny the remaining allegations of Paragraph 8, if any.

25           9.     The Administration lacks knowledge or information sufficient to admit or  
26 deny the allegations of Paragraph 9 of the Complaint.

27           10.    The Administration lacks knowledge or information sufficient to admit or  
28 deny the allegations of Paragraph 10 of the Complaint.

1           11.    The Administration lacks knowledge or information sufficient to admit or  
2 deny the allegations of Paragraph 11 of the Complaint.

3           12.    The Administration lacks knowledge or information sufficient to admit or  
4 deny the allegations of Paragraph 12 of the Complaint.

5           13.    The Administration admits the allegations in Paragraph 13 of the  
6 Complaint.

7           14.    The Administration admits the allegations in Paragraph 14 of the  
8 Complaint.

9           15.    The Administration admits the allegations in Paragraph 15 of the  
10 Complaint.

11          16.    The Administration admits the allegations in Paragraph 16 of the  
12 Complaint.

13          17.    The Administration lacks knowledge or information sufficient to admit or  
14 deny the allegations of Paragraph 17 of the Complaint.

15          18.    The Administration lacks knowledge or information sufficient to admit or  
16 deny the allegations of Paragraph 18 of the Complaint.

17          19.    In response to Paragraph 19 of the Complaint, the Administration admits  
18 that the California Supreme Court has held that, under California law, county clerks and county  
19 recorders have a mandatory ministerial duty to enforce marriage laws and generally do not have  
20 the authority, in the absence of a judicial determination of unconstitutionality, to refuse to  
21 enforce such laws on the basis of a belief that they are unconstitutional. *Lockyer v. City &*  
22 *County of San Francisco*, 33 Cal. 4th 1055, 1082 (2004); *see also* Cal. Fam. Code § 350  
23 (marriage requires applicant to obtain license from county clerk); Cal. Health & Safety Code  
24 § 102285 (county recorder is local registrar of marriages). The Administration further admits  
25 that the Director of Public Health, who is designated as the State Registrar of Vital Statistics, is  
26 required to prescribe and furnish forms for use in registering marriages and to supervise local  
27 officials in the use of those forms (Cal. Health & Safety Code §§ 102175, 102100, 102180,  
28 102200), and that the Deputy Director of Health Information and Strategic Planning assists the

1 Director of Public Health in the fulfillment of his responsibilities. The Administration admits  
2 that the Governor has a duty to ensure that the laws are uniformly enforced. Cal. Const., art. V,  
3 sec. 1. As to the remaining allegations of Paragraph 19 of the Complaint, the Administration  
4 lacks knowledge or information sufficient to admit or deny any such remaining allegations.

5           20. The Administration lacks knowledge or information sufficient to admit or  
6 deny the allegations of Paragraph 20 of the Complaint.

7           21. In response to Paragraph 21 of the Complaint, the Administration admits  
8 that, in 1977, the California Legislature enacted legislation amending Civil Code section 4100,  
9 now codified at California Family Code section 300, and that section 300 defined marriage using  
10 the language quoted in Paragraph 21 of the Complaint. As to the remaining allegations of  
11 Paragraph 21 of the Complaint, the Administration lacks knowledge or information sufficient to  
12 admit or deny those remaining allegations.

13           22. In response to Paragraph 22 of the Complaint, the Administration admits  
14 that in 1999 the California Legislature adopted a domestic partnership law codified at California  
15 Family Code sections 297-299.6, that the law defines domestic partners using the language  
16 quoted in Paragraph 22 of the Complaint, and that the domestic partnership law sets forth certain  
17 requirements for persons who seek to enter into a domestic partnership (at Family Code section  
18 297(b)), including the requirements described in Paragraph 22 of the Complaint. As to the  
19 remaining allegations of Paragraph 22 of the Complaint, the Administration lacks knowledge or  
20 information sufficient to admit or deny those remaining allegations.

21           23. The allegations of Paragraph 23 of the Complaint contain legal  
22 conclusions which require no answer. To the extent that the allegations of Paragraph 23 require a  
23 response, the Administration responds by stating that it lacks knowledge or information sufficient  
24 to admit or deny those allegations.

25           24. The Administration admits that, in 2000, California voters approved  
26 Proposition 22 (codified at California Family Code section 308.5), which provided: "Only  
27 marriage between a man and a woman is valid or recognized in California." The Administration  
28 also admits that, in 2004, the California Supreme Court decided *Lockyer v. City & County of San*

1 *Francisco*. That decision speaks for itself. As for any remaining allegations of Paragraph 24 of  
2 the Complaint, the Administration lacks knowledge or information sufficient to admit or deny  
3 those remaining allegations.

4           25. The Administration admits that Proposition 8's proponents submitted  
5 petitions with enough signatures to place Proposition 8 on the ballot for the November 2008  
6 election. As for the remaining allegations of Paragraph 25, the Administration lacks knowledge  
7 or information sufficient to admit or deny those remaining allegations.

8           26. The Administration admits the allegations in Paragraph 26 of the  
9 Complaint.

10           27. The Administration admits that on June 2, 2009, the California Secretary  
11 of State certified that Proposition 8 qualified for placement on the ballot for the November 2008  
12 election. The Administration admits that the General Election Voter Information Guide,  
13 prepared by the Attorney General, stated, among other things, that Proposition 8 "Changes the  
14 California Constitution to eliminate the right of same-sex couples to marry in California." As for  
15 the remaining allegations of Paragraph 27 of the Complaint, the Administration lacks knowledge  
16 or information sufficient to admit or deny those remaining allegations.

17           28. The Administration admits the allegations in Paragraph 28 of the  
18 Complaint.

19           29. In response to Paragraph 29 of the Complaint, the Administration admits  
20 that, since Proposition 8 took effect, California law precludes the issuance of marriage licenses to  
21 same-sex couples.

22           30. The allegations of Paragraph 30 of the Complaint contain legal  
23 conclusions which require no answer. To the extent that Paragraph 30 of the Complaint contains  
24 allegations that require a response, the Administration responds by stating that it lacks  
25 knowledge or information sufficient to admit or deny those allegations.

26           31. The allegations of Paragraph 31 of the Complaint contain legal  
27 conclusions which require no answer. To the extent that Paragraph 31 of the Complaint contains  
28



1 allegations that require a response, the Administration responds by stating that it lacks  
2 knowledge or information sufficient to admit or deny those allegations.

3           32.     The Administration lacks knowledge or information sufficient to admit or  
4 deny the allegations of Paragraph 32 of the Complaint.

5           33.     The Administration lacks knowledge or information sufficient to admit or  
6 deny the allegations of Paragraph 33 of the Complaint.

7           34.     The allegations of Paragraph 34 of the Complaint contain legal  
8 conclusions which require no answer. To the extent that Paragraph 34 of the Complaint contains  
9 allegations that require a response, the Administration responds by stating that it lacks  
10 knowledge or information sufficient to admit or deny those allegations.

11           35.     In response to Paragraph 35 of the Complaint, the Administration admits  
12 that the United States Supreme Court decided *Loving v. Virginia* in 1967, and the Supreme  
13 Court's decision contains the language quoted in Paragraph 35 of Plaintiffs' Complaint. As to  
14 the remaining allegations of Paragraph 35, the Administration notes that those remaining  
15 allegations state opinions and legal conclusions which require no answer. To the extent that the  
16 remaining allegations of Paragraph 35 contain allegations that require a response, the  
17 Administration responds by stating that it lacks knowledge or information sufficient to admit or  
18 deny those allegations.

19           36.     In response to Paragraph 36 of the Complaint, the Administration admits  
20 that, in the absence of an injunction barring the enforcement of Proposition 8 or a final judicial  
21 determination that Proposition 8 is unconstitutional, California law provides that "Only marriage  
22 between a man and a woman is valid or recognized in California." As for the remaining  
23 allegations of Paragraph 36, those remaining allegations state opinions and legal conclusions  
24 which require no answer. To the extent that the remaining allegations of Paragraph 36 require a  
25 response, the Administration responds by stating that it lacks knowledge or information sufficient  
26 to admit or deny those allegations.

27           37.     In response to Paragraph 37 of the Complaint, the Administration  
28 incorporates by reference its answers to paragraphs 1 through 36 as if fully set forth herein.

1           38.     The allegations of Paragraph 38 of the Complaint contain legal  
2 conclusions which require no answer. To the extent Paragraph 38 contains allegations that  
3 require a response, the Administration responds by stating that it lacks knowledge or information  
4 sufficient to admit or deny those allegations.

5           39.     The allegations of Paragraph 39 of the Complaint contain legal  
6 conclusions which require no answer. To the extent Paragraph 39 contains allegations that  
7 require a response, the Administration responds by stating that it lacks knowledge or information  
8 sufficient to admit or deny those allegations.

9           40.     In response to Paragraph 40 of the Complaint, the Administration  
10 incorporates by reference its answers to paragraphs 1 through 39 as if fully set forth herein.

11           41.     The allegations of Paragraph 41 of the Complaint contain legal  
12 conclusions which require no answer. To the extent Paragraph 41 contains allegations that  
13 require a response, the Administration responds by stating that it lacks knowledge or information  
14 sufficient to admit or deny those allegations.

15           42.     The allegations of Paragraph 42 of the Complaint contain legal  
16 conclusions which require no answer. To the extent Paragraph 42 contains allegations that  
17 require a response, the Administration responds by stating that it lacks knowledge or information  
18 sufficient to admit or deny those allegations.

19           43.     The allegations of Paragraph 43 of the Complaint contain legal  
20 conclusions which require no answer. To the extent Paragraph 43 contains allegations that  
21 require a response, the Administration responds by stating that it lacks knowledge or information  
22 sufficient to admit or deny those allegations.

23           44.     The allegations of Paragraph 44 of the Complaint contain legal  
24 conclusions which require no answer. To the extent that Paragraph 44 contains allegations that  
25 require a response, the Administration lacks knowledge or information sufficient to admit or  
26 deny the remaining allegations.

27           45.     In response to Paragraph 45 of the Complaint, the Administration  
28 incorporates by reference its answers to paragraphs 1 through 44 as if fully set forth herein.

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46. The allegations of Paragraph 46 of the Complaint contain legal conclusions which require no answer. To the extent Paragraph 46 contains allegations that require a response, the Administration responds by stating that it lacks knowledge or information sufficient to admit or deny those allegations.

47. In response to Paragraph 47 of the Complaint, the Administration incorporates by reference its answers to paragraphs 1 through 46 as if fully set forth herein.

48. The allegations of Paragraph 48 of the Complaint contain legal conclusions which require no answer. To the extent Paragraph 48 contains allegations that require a response, the Administration responds by stating that it lacks knowledge or information sufficient to admit or deny those allegations.

49. The Administration admits that Proposition 8, as embodied in the California Constitution, is presently in effect in California. The Administration also admits that the Complaint presents important legal issues that require and warrant a judicial determination. As for the remaining allegations of Paragraph 49, if any, the Administration lacks knowledge or information sufficient to admit or deny the remaining allegations.

WHEREFORE, the Administration respectfully requests that this Court grant any and all relief the Court determines to be just and proper.

Dated: June 16, 2009

MENNEMEIER, GLASSMAN & STROUD LLP  
KENNETH C. MENNEMEIER  
KELCIE M. GOSLING  
LONDON D. BAILEY

By: Kenneth C. Mennemeier  
Kenneth C. Mennemeier  
Attorneys for Defendants Arnold Schwarzenegger,  
Mark B. Horton, and Linette Scott

1 Case Name: *Perry, et al. v. Schwarzenegger, et al.*;  
2 Case No: US District Court, Northern District, Case No. 3:09-cv-09-2292 VRW  
3

4 **CERTIFICATE OF SERVICE**

5 I declare as follows:

6 I am a resident of the State of California and over the age of eighteen years, and  
not a party to the within action; my business address is 980 9th Street, Suite 1700, Sacramento,  
California 95814. On June 16, 2009, I served the within documents:

7 **THE ADMINISTRATION'S ANSWER TO COMPLAINT FOR DECLARATORY,  
8 INJUNCTIVE, OR OTHER RELIEF**



10 by placing the document(s) listed above in a sealed Federal Express  
envelope and affixing a pre-paid air bill, and delivering to a Federal  
Express agent for delivery.




12 by placing the document(s) listed above in a sealed envelope, with postage  
thereon fully prepared, in the United States mail at Sacramento, California  
addressed as set forth below.

13 **SEE ATTACHED SERVICE LIST**

14 I am readily familiar with the firm's practice of collection and processing  
15 correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal  
16 Service on that same day with postage thereon fully prepared in the ordinary course of business.

17 I declare that I am employed in the office of a member of the bar of this Court at  
whose direction this service was made.

18 Executed on June 16, 2009, at Sacramento, California.

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20 Angela Knight  
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**SERVICE LIST**

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