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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

No C 09-2292 VRW  
ORDER

Plaintiffs,

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Intervenor,

v

ARNOLD SCHWARZENEGGER, in his  
official capacity as governor of  
California; EDMUND G BROWN JR, in  
his official capacity as attorney  
general of California; MARK B  
HORTON, in his official capacity  
as director of the California  
Department of Public Health and  
state registrar of vital  
statistics; LINETTE SCOTT, in her  
official capacity as deputy  
director of health information &  
strategic planning for the  
California Department of Public  
Health; PATRICK O'CONNELL, in his  
official capacity as clerk-  
recorder of the County of  
Alameda; and DEAN C LOGAN, in his  
official capacity as registrar-  
recorder/county clerk for the  
County of Los Angeles,

Defendants,

DENNIS HOLLINGSWORTH, GAIL J  
KNIGHT, MARTIN F GUTIERREZ,  
HAKSHING WILLIAM TAM, MARK A  
JANSSON and PROTECTMARRIAGE.COM -  
YES ON 8, A PROJECT OF  
CALIOFORNIA RENEWAL, as official  
proponents of Proposition 8,

Defendant-Intervenors.

United States District Court  
For the Northern District of California

United States District Court  
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1 Defendant-intervenors, the official proponents of  
2 Proposition 8 ("proponents") move to realign the California  
3 Attorney General as a party plaintiff. Doc #216. Plaintiffs filed  
4 a complaint in May 2009 against the California Governor, Attorney  
5 General and other state and county administrative officials seeking  
6 declaratory and injunctive relief to enjoin enforcement of  
7 Proposition 8 and any other California law that bars same-sex  
8 marriage. Doc #1. No government official has sought to defend the  
9 constitutionality of Proposition 8, see Doc ##41, 42, 46, and the  
10 Attorney General has admitted the material allegations of  
11 plaintiffs' complaint, Doc #39. Proponents now seek to re-align  
12 the Attorney General as a plaintiff because he has "embraced  
13 plaintiffs' claims that Proposition 8 violates the Fourteenth  
14 Amendment." Doc #216 at 1. Plaintiffs and the Attorney General  
15 oppose realignment. Doc ##239, 240. For the reasons explained  
16 below, proponents' motion to realign the Attorney General is  
17 DENIED.

18  
19 I

20 Proponents argue realignment is appropriate because the  
21 Attorney General has admitted all material allegations in  
22 plaintiffs' complaint and, according to proponents, has become a  
23 "litigation partner[]" with plaintiffs. Doc #216 at 8-10.  
24 Proponents assert they have been prejudiced by the Attorney  
25 General's actions, as plaintiffs used the Attorney General's  
26 admissions in their opposition to proponents' motion for summary  
27 judgment. Doc #204 Exh A. Proponents note that the Attorney  
28 General served his admissions on plaintiffs a day before they were

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1 due, which allowed plaintiffs to use the admissions in their  
2 opposition. Doc #216 at 9.

3 Plaintiffs argue proponents' motion should be denied  
4 because the Attorney General has not "direct[ed] state officials to  
5 cease their enforcement" of Proposition 8. Doc #140 at 2.  
6 Plaintiffs point out that the Attorney General was sued in his  
7 official capacity and that a new Attorney General might decide to  
8 defend the constitutionality of Proposition 8. The Attorney  
9 General argues realignment is inappropriate because "the government  
10 has the duty to enforce the law until a court declares it invalid."  
11 Doc #239 at 14. Although the Attorney General has admitted  
12 plaintiffs' material allegations, he will continue to enforce  
13 Proposition 8 absent a court order. Id.

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15 II

16 The court has the power and the duty to "look beyond the  
17 pleadings" to the "realities of the record" to realign parties  
18 according to the principle purpose of a suit. Indianapolis v Chase  
19 National Bank, 314 US 63, 69 (1941) (internal citations omitted).  
20 The most frequent use of realignment has been to maintain or defeat  
21 diversity jurisdiction. See Dolch v United California Bank, 702  
22 F2d 178, 181 (9th Cir 1983) ("If the interests of a party named as  
23 a defendant coincide with those of the plaintiff in relation to the  
24 purpose of the lawsuit, the named defendant must be realigned as a  
25 plaintiff for jurisdictional purposes."). But, as the court noted  
26 in a previous case, nothing "explicitly limits the test" to  
27 jurisdictional matters. Plumtree Software, Inc v Datamize, LLC,  
28 02-5693 VRW Doc #32 at 6 (ND Cal October 6, 2003). See also Larios

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1 v. Perdue, 306 F Supp 1190, 1195 (ND Ga 2003); League of United  
2 Latin American Citizens v Clements, 999 F2d 831, 844 (5th Cir  
3 1993); Delchamps, Inc v Alabama State Milk Control Board, 324 F  
4 Supp 117, 118 (MD Ala 1971). In Larios, the court realigned a  
5 Georgia Republican state senator as a plaintiff in a suit brought  
6 by Georgia Republicans because the senator took "precisely the same  
7 positions espoused by plaintiffs." 306 F Supp at 1196. The court  
8 in Delchamps granted the Alabama Attorney General's motion to be  
9 realigned as a plaintiff based on his belief that the statute at  
10 issue was unconstitutional. 324 F Supp at 118. Thus, realignment  
11 is available to the court as a procedural device even if  
12 realignment would have no jurisdictional consequences.

13 The Ninth Circuit applies a "primary purpose" test to  
14 determine whether realignment is appropriate and vests the court  
15 with responsibility to align "those parties whose interests  
16 coincide respecting the 'primary matter in dispute.'" Prudential  
17 Real Estate Affiliates v PPR Realty, 204 F3d 867, 873 (9th Cir  
18 2000) (citing Continental Airlines v Goodyear Tire & Rubber Co, 819  
19 F2d 1519, 1523 (9th Cir 1987)). Realignment is only appropriate,  
20 however, where the party to be realigned "possesses and pursues its  
21 own interests respecting the primary issue in a lawsuit."  
22 Prudential Real Estate Affiliates, 204 F3d at 873; see also Dolch,  
23 702 F2d at 181 (noting that the defendant to be realigned would  
24 "benefit" from a decision in favor of plaintiff).

25 The primary purpose of plaintiffs' complaint is to enjoin  
26 enforcement of Proposition 8. Doc #1. The Attorney General has  
27 admitted the material allegations of the complaint but has taken no  
28 affirmative steps in support of the relief plaintiffs seek. See

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1 Doc #153 at 2 (stating that the Attorney General does not intend to  
2 conduct discovery or present evidence). The Attorney General's  
3 primary interest in the lawsuit is to act as the chief law  
4 enforcement officer in California. The Attorney General's position  
5 regarding the constitutionality of Proposition 8 is now well-known,  
6 but he would not benefit in any meaningful way from a decision in  
7 favor of plaintiffs. Cf Dolch, 702 F2d at 181.

8 Any prejudice proponents may experience because of the  
9 Attorney General's position regarding the constitutionality of  
10 Proposition 8 would not be remedied if the Attorney General were  
11 realigned. Counsel for the Attorney General filed a declaration  
12 explaining that any apparent collusion between the Attorney General  
13 and plaintiffs resulting from service of the Attorney General's  
14 admissions was the result of an unintentional email error. Doc  
15 #239-1 at ¶ 6. The Attorney General continues to enforce  
16 Proposition 8 and has informed the court he will continue to do so  
17 unless and until he is ordered by a court to do otherwise. Doc  
18 #239 at 14. Because the Attorney General does not intend to  
19 present evidence at trial, no procedural benefit would result from  
20 his realignment.

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2 For the reasons explained above, realigning the Attorney  
3 General as a plaintiff would benefit neither the parties nor the  
4 court. Accordingly, proponents' motion to realign the Attorney  
5 General is DENIED.

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7 IT IS SO ORDERED.

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10 VAUGHN R WALKER  
11 United States District Chief Judge  
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United States District Court  
For the Northern District of California



**DEBRA BOWEN | SECRETARY OF STATE**  
**STATE OF CALIFORNIA | ELECTIONS**

1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

To Whom It May Concern:

We are pleased to provide the California Voter Information Guide for the November 4, 2008, General Election, which has been prepared by this office to assist California voters in determining how to cast their votes on statewide ballot measures on Election Day. These guides are being distributed to you as required by Section 9096 of the California Elections Code.

If you would like additional copies of the guide, please contact the Secretary of State's Elections Division at (916) 657-2166.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF  
CALIFORNIA

Case number: 3:09-cv-02292-VRW

PLTF            EXHIBIT NO. PX0001

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

By: \_\_\_\_\_

DEFINT\_PM\_003360



**DEBRA BOWEN | SECRETARY OF STATE**  
**STATE OF CALIFORNIA | ELECTIONS**

1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | [www.sos.ca.gov](http://www.sos.ca.gov)

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C A L I F O R N I A  
**GENERAL**  
**ELECTION**

**TUESDAY, NOVEMBER 4, 2008**

★ OFFICIAL VOTER INFORMATION GUIDE ★

*Certificate of Correctness*

I, Debra Bowen, Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the General Election to be held throughout the State on November 4, 2008, and that this guide has been correctly prepared in accordance with the law.

Witness my hand and the Great Seal of the State in Sacramento, California, on this 11th day of August, 2008.

*Debra Bowen*



Debra Bowen  
*Secretary of State*

# QUICK-REFERENCE GUIDE

OP RENEWABLE ENERGY GENERATION.  
7 INITIATIVE STATUTE.

## SUMMARY

Put on the Ballot by Petition Signatures

Requires government-owned utilities to generate 20% of their electricity from renewable energy by 2010, a standard currently applicable to private electrical corporations. Raises requirements for all utilities to 40% by 2020 and 50% by 25. Fiscal Impact: Increased state administrative costs up to \$3.4 million annually, paid by fees. Unknown impact on state and local government costs and revenues due to the measure's uncertain impact on retail electricity rates.

## WHAT YOUR VOTE MEANS

**YES** A YES vote on this measure means: Electricity providers in California, including publicly and utilities, would be required to increase their proportion of electricity generated from renewable resources, such as solar and wind power, beyond the current requirement of 20 percent by 2010, to 40 percent by 2020 and 50 percent by 2025, or face specified penalties. The requirement for privately owned electricity providers to acquire renewable electricity would be limited by a cost cap requiring such acquisitions only when the cost is no more than 10 percent above a specified market price for electricity. Electricity providers who fail to meet the renewable resources requirements would potentially be subject to a 1 cent per kilowatt-hour penalty rate set in statute, without a cap on the total annual penalty amount. The required time frames for approving new renewable electricity plants would be shortened.

**NO** A NO vote on this measure means: Electricity providers in California, except publicly owned ones, would continue to be required to increase their proportion of electricity generated from renewable resources to 20 percent by 2010. The current requirements on privately owned utilities to purchase renewable electricity would continue to be limited by an annual cost cap on the total amount of such purchases. Electricity providers would continue to be subject to the existing penalty process, in which the penalty rate (currently 5 cents per kilowatt-hour) and a total annual penalty cap (currently \$25 million per provider) are set administratively. The required time frames for approving new renewable electricity plants would not be shortened.

## ARGUMENTS

**PRO** Vote Yes on 7 to require all utilities to provide 50% renewable electricity by 2025. Support solar, wind, and geothermal power to combat rising energy costs and global warming. Proposition 7 protects consumers, and favors solar and clean energy over expensive fossil fuels and dangerous offshore drilling.

**CON** Prop. 7: opposed by leading environmental groups, renewable power providers, taxpayers, business, and labor. 7 is poorly drafted, results in less renewable power, higher electric rates, and potentially another energy crisis. 7 forces small renewable companies out of California's market. Power providers could always charge 10% above market rates.  
[www.NoProp7.com](http://www.NoProp7.com)

## FOR ADDITIONAL INFORMATION

**FOR**  
Jill Gonzalez  
Californians for Solar and Clean  
Energy  
830 N Street  
Sacramento, CA 95811  
(916) 444-2425 / 449-6190  
jg@jggonzalez.com  
[www.Yeson7.net](http://www.Yeson7.net)

**AGAINST**  
Californians Against Another Costly  
Energy Scheme  
(866) 811-9255  
[www.NoProp7.com](http://www.NoProp7.com)

PROP 8 ELIMINATES RIGHT OF SAME-SEX COUPLES TO MARRY.  
8 INITIATIVE CONSTITUTIONAL AMENDMENT.

## SUMMARY

Put on the Ballot by Petition Signatures

Changes California Constitution to eliminate the right of same-sex couples to marry. Provides that only marriage between a man and a woman is valid or recognized in California. Fiscal Impact: Over next few years, potential revenue loss, mainly sales taxes, totaling in the several tens of millions of dollars, to state and local governments. In the long run, likely little fiscal impact on state and local governments.

## WHAT YOUR VOTE MEANS

**YES** A YES vote on this measure means: The California Constitution will specify that only marriage between a man and a woman is valid or recognized in California.

**NO** A NO vote on this measure means: Marriage between individuals of the same sex would continue to be valid or recognized in California.

## ARGUMENTS

**PRO** Proposition 8 restores what 61% of voters already approved: marriage is only between a man and a woman. Four judges in San Francisco should not have overturned the people's vote. Prop. 8 fixes that mistake by reaffirming traditional marriage, but doesn't take away any rights or benefits from gay domestic partners.

**CON** Equality under the law is a fundamental freedom. Regardless of how we feel about marriage, singling people out to be treated differently is wrong. Prop. 8 won't affect our schools, but it will mean loving couples are treated differently under our Constitution and denied equal protection under the law. [www.NoonProp8.com](http://www.NoonProp8.com)

## FOR ADDITIONAL INFORMATION

**FOR**  
ProtectMarriage.com - Yes on  
Proposition 8  
915 L Street #C-259  
Sacramento, CA 95814  
(916) 446-2956  
[www.protectmarriage.com](http://www.protectmarriage.com)

**AGAINST**  
Equality for ALL  
NO on Proposition 8  
921 11th Street, 10th Floor  
Sacramento, CA 95814  
(916) 717-1411  
[www.NoonProp8.com](http://www.NoonProp8.com)

**ELIMINATES RIGHT OF SAME-SEX COUPLES TO MARRY,  
INITIATIVE CONSTITUTIONAL AMENDMENT.**

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OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

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**ELIMINATES RIGHT OF SAME-SEX COUPLES TO MARRY. INITIATIVE CONSTITUTIONAL AMENDMENT.**

- Changes the California Constitution to eliminate the right of same-sex couples to marry in California.
- Provides that only marriage between a man and a woman is valid or recognized in California.

**Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:**

- Over the next few years, potential revenue loss, mainly from sales taxes, totaling in the several tens of millions of dollars, to state and local governments.
  - In the long run, likely little fiscal impact on state and local governments.
-

---

**ANALYSIS BY THE LEGISLATIVE ANALYST**

**BACKGROUND**

In March 2000, California voters passed Proposition 22 to specify in state law that only marriage between a man and a woman is valid or recognized in California. In May 2008, the California Supreme Court ruled that the statute enacted by Proposition 22 and other statutes that limit marriage to a relationship between a man and a woman violated the equal protection clause of the California Constitution. It also held that individuals of the same sex have the right to marry under the California Constitution. As a result of the ruling, marriage between individuals of the same sex is currently valid or recognized in the state.

**PROPOSAL**

This measure amends the California Constitution to specify that only marriage between a man and a woman is valid or recognized in California. As a result, notwithstanding the California Supreme Court ruling of May 2008, marriage would be limited to individuals of the opposite sex, and individuals of the same sex would not have the right to marry in California.

**FISCAL EFFECTS**

Because marriage between individuals of the same sex is currently valid in California, there would likely be an increase in spending on weddings by same-sex couples in California over the next few years. This would result in increased revenue, primarily sales tax revenue, to state and local governments.

By specifying that marriage between individuals of the same sex is not valid or recognized, this measure could result in revenue loss, mainly from sales taxes, to state and local governments. Over the next few years, this loss could potentially total in the several tens of millions of dollars. Over the long run, this measure would likely have little fiscal impact on state and local governments.

PROP  
8

ELIMINATES RIGHT OF SAME-SEX COUPLES TO MARRY.  
INITIATIVE CONSTITUTIONAL AMENDMENT.

★ ARGUMENT IN FAVOR OF PROPOSITION 8 ★

Proposition 8 is simple and straightforward. It contains the same 14 words that were previously approved in 2000 by over 61% of California voters: "Only marriage between a man and a woman is valid or recognized in California."

Because four activist judges in San Francisco wrongly overturned the people's vote, we need to pass this measure as a constitutional amendment to RESTORE THE DEFINITION OF MARRIAGE as a man and a woman.

Proposition 8 is about preserving marriage; *it's not an attack on the gay lifestyle.* Proposition 8 doesn't take away any rights or benefits of gay or lesbian domestic partnerships. Under California law, "domestic partners shall have the same rights, protections, and benefits" as married spouses. (Family Code § 297.5.) There are NO exceptions. Proposition 8 WILL NOT change this.

YES on Proposition 8 does three simple things:

*Is removes the definition of marriage to what the vast majority of California voters already approved and human history has understood marriage to be.*

*Is overturn the outrageous decision of four activist Supreme Court judges who ignored the will of the people.*

*Is protects our children from being taught in public schools that "same-sex marriage" is the same as traditional marriage.*

Proposition 8 protects marriage as an essential institution of society. While death, divorce, or other circumstances may prevent the ideal, the best situation for a child is to be raised by a married mother and father.

The narrow decision of the California Supreme Court isn't just about "live and let live." State law may require teachers to instruct children as young as kindergarteners about marriage. (Education Code § 51890.) If the gay marriage ruling is not overturned, TEACHERS COULD BE REQUIRED to teach young children there is no difference between gay marriage and traditional marriage.

We should not accept a court decision that may result in public schools teaching our kids that gay marriage is okay. That is an issue for parents to discuss with their children according to their own values and beliefs. *It shouldn't be forced on us against our will.*

Some will try to tell you that Proposition 8 takes away legal rights of gay domestic partnerships. That is false. Proposition 8 DOES NOT take away any of those rights and does not interfere with gays living the lifestyle they choose.

However, while gays have the right to their private lives, *they do not have the right to redefine marriage for everyone else.*

CALIFORNIANS HAVE NEVER VOTED FOR SAME-SEX MARRIAGE. If gay activists want to legalize gay marriage, they should put it on the ballot. Instead, they have gone behind the backs of voters and convinced four activist judges in San Francisco to redefine marriage for the rest of society. That is the wrong approach.

Voting YES on Proposition 8 RESTORES the definition of marriage that was approved by over 61% of voters. Voting YES overturns the decision of four activist judges. Voting YES protects our children.

Please vote YES on Proposition 8 to RESTORE the meaning of marriage.

RON PRENTICE, President  
California Family Council  
ROSEMARIE "ROSIE" AVILA, Governing Board Member  
Santa Ana Unified School District  
BISHOP GEORGE MCKINNEY, Director  
Coalition of African American Pastors

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 8 ★

Don't be tricked by scare tactics.

• PROP. 8 DOESN'T HAVE ANYTHING TO DO WITH SCHOOLS

There's NOT ONE WORD IN 8 ABOUT EDUCATION. In fact, local school districts and parents—not the state—develop health education programs for their schools.

NO CHILD CAN BE FORCED, AGAINST THE WILL OF THEIR PARENTS, TO BE TAUGHT ANYTHING about health and family issues. CALIFORNIA LAW PROHIBITS IT.

And NOTHING IN STATE LAW REQUIRES THE MENTION OF MARRIAGE IN KINDERGARTEN!

It's a smokescreen.

• DOMESTIC PARTNERSHIPS and MARRIAGE AREN'T THE SAME.

CALIFORNIA STATUTES CLEARLY IDENTIFY NINE REAL DIFFERENCES BETWEEN MARRIAGE AND DOMESTIC PARTNERSHIPS. Only marriage provides the security that spouses provide one another—it's why people get married in the first place!

Think about it. Married couples depend on spouses when they're sick, hurt, or aging. They accompany them into ambulances or hospital rooms, and help make life-and-death decisions, with no questions asked. ONLY MARRIAGE ENDS

THE CONFUSION AND GUARANTEES THE CERTAINTY. COUPLES CAN COUNT ON IN TIMES OF GREATEST NEED.

Regardless of how you feel about this issue, we should guarantee the same fundamental freedoms to every Californian.

• PROP. 8 TAKES AWAY THE RIGHTS OF GAY AND LESBIAN COUPLES AND TREATS THEM DIFFERENTLY UNDER THE LAW.

Equality under the law is one of the basic foundations of our society.

Prop. 8 means one class of citizens can enjoy the dignity and responsibility of marriage, and another cannot. That's unfair.

PROTECT FUNDAMENTAL FREEDOMS. SAY NO TO PROP. 8.

[www.NoonProp8.com](http://www.NoonProp8.com)

ELLYNE BELL, School Board Member  
Sacramento City Schools  
RACHAEL SALCIDO, Associate Professor of Law  
McGeorge School of Law  
DELAINE EASTIN  
Former California State Superintendent of Public Instruction

**PROP 8** ELIMINATES RIGHT OF SAME-SEX COUPLES TO MARRY.  
INITIATIVE CONSTITUTIONAL AMENDMENT.

★ ARGUMENT AGAINST PROPOSITION 8 ★

OUR CALIFORNIA CONSTITUTION—the law of our land—SHOULD GUARANTEE THE SAME FREEDOMS AND RIGHTS TO EVERYONE—NO ONE group SHOULD be singled out to BE TREATED DIFFERENTLY.

In fact, our nation was founded on the principle that all people should be treated equally. EQUAL PROTECTION UNDER THE LAW IS THE FOUNDATION OF AMERICAN SOCIETY.

That's what this election is about—equality, freedom, and fairness, for all.

Marriage is the institution that conveys dignity and respect to the lifetime commitment of any couple. PROPOSITION 8 WOULD DENY LESBIAN AND GAY COUPLES that same DIGNITY AND RESPECT.

That's why Proposition 8 is wrong for California.

Regardless of how you feel about this issue, the freedom to marry is fundamental to our society, just like the freedoms of religion and speech.

PROPOSITION 8 MANDATES ONE SET OF RULES FOR GAY AND LESBIAN COUPLES AND ANOTHER SET FOR EVERYONE ELSE. That's just not fair. OUR LAWS SHOULD TREAT EVERYONE EQUALLY.

In fact, the government has no business telling people who can and cannot get married. Just like government has no business telling us what to read, watch on TV, or do in our private lives. We don't need Prop. 8; WE DON'T NEED MORE GOVERNMENT IN OUR LIVES.

REGARDLESS OF HOW ANYONE FEELS ABOUT MARRIAGE FOR GAY AND LESBIAN COUPLES, PEOPLE SHOULD NOT BE SINGLED OUT FOR UNFAIR TREATMENT UNDER THE LAWS OF OUR STATE.

Those committed and loving couples who want to accept the responsibility that comes with marriage should be treated like everyone else.

DOMESTIC PARTNERSHIPS ARE NOT MARRIAGE.

When you're married and your spouse is sick or hurt, there is no confusion: you get into the ambulance or hospital room with no questions asked. IN EVERYDAY LIFE, AND ESPECIALLY IN EMERGENCY SITUATIONS, DOMESTIC PARTNERSHIPS ARE SIMPLY NOT ENOUGH. Only marriage provides the certainty and the security that people know they can count on in their times of greatest need.

EQUALITY UNDER THE LAW IS A FUNDAMENTAL CONSTITUTIONAL GUARANTEE. Prop. 8 separates one group of Californians from another and excludes them from enjoying the same rights as other loving couples.

Forty-six years ago I married my college sweetheart, Julia. We raised three children—two boys and one girl. The boys are married, with children of their own. Our daughter, Liz, a lesbian, can now also be married—if she so chooses.

All we have ever wanted for our daughter is that she be treated with the same dignity and respect as her brothers—with the same freedoms and responsibilities as every other Californian.

My wife and I never treated our children differently, we never loved them any differently, and now the law doesn't treat them differently, either.

Each of our children now has the same rights as the others, to choose the person to love, commit to, and to marry.

Don't take away the equality, freedom, and fairness that everyone in California—straight, gay, or lesbian—deserves.

Please join us in voting NO on Prop. 8.

SAMUEL THORON, Former President  
Parents, Families and Friends of Lesbians and Gays  
JULIA MILLER THORON, Parent

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 8 ★

Proposition 8 is about traditional marriage; it is not an attack on gay relationships. Under California law gay and lesbian domestic partnerships are treated equally; they already have the same rights as married couples. Proposition 8 does not change that.

What Proposition 8 does is restore the meaning of marriage to what human history has understood it to be and over 61% of California voters approved just a few years ago.

Your YES vote ensures that the will of the people is respected. It overturns the flawed legal reasoning of four judges in San Francisco who wrongly disregarded the people's vote, and ensures that gay marriage can be legalized only through a vote of the people.

Your YES vote ensures that parents can teach their children about marriage according to their own values and beliefs without conflicting messages being forced on young children in public schools that gay marriage is okay.

Your YES vote on Proposition 8 means that only marriage between a man and a woman will be valid or recognized in California, regardless of when or where performed. But Prop. 8 will NOT take away any other rights or benefits of gay couples.

Gays and lesbians have the right to live the lifestyle they choose, but they do not have the right to redefine marriage for everyone else. Proposition 8 respects the rights of gays while still reaffirming traditional marriage.

Please vote YES on Proposition 8 to RESTORE the definition of marriage that the voters already approved.

DR. JANE ANDERSON, M.D., Fellow  
American College of Pediatricians  
ROBERT BOLINGBROKE, Council Commissioner  
San Diego-Imperial Council, Boy Scouts of America  
TERALEE SMITH, Director of Education/California  
Parents and Friends of Ex-Gays and Gays (PFOX)

## TEXT OF PROPOSED LAWS

consistent with Section 25740.5, the Public Utilities Commission shall encourage and give the highest priority to allocations for the construction of, or payment to supplement the construction of, any new or modified electric transmission facilities necessary to facilitate the state achieving its renewables portfolio standard targets.

(e) All projects receiving funding, in whole or in part, pursuant to this section shall be considered public works projects subject to the provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, and the Department of Industrial Relations shall have the same authority and responsibility to enforce those provisions as it has under the Labor Code.

SEC. 28. Section 25745 is added to the Public Resources Code, to read: 25745. The Energy Commission shall use its best efforts to attract and encourage investment in solar and clean energy resources, facilities, research and development from companies based in the United States to fulfill the purposes of this chapter.

SEC. 29. Section 25751.5 is added to the Public Resources Code, to read: 25751.5. (a) The Solar and Clean Energy Transmission Account is hereby established within the Renewable Resources Trust Fund.

(b) Beginning January 1, 2009, the total annual adjustments imposed pursuant to subdivision (h) of Section 399.8 of the Public Utilities Code shall be allocated to the Solar and Clean Energy Transmission Account.

(c) Funds in the Solar and Clean Energy Transmission Account shall be used, in whole or in part, for the following purposes:

(1) The purchase of property or right-of-way pursuant to the commission's authority under Chapter 8.9 (commencing with Section 25790).

(2) The construction of, or payment to supplement the construction of, any new or modified electric transmission facilities necessary to facilitate the state achieving its renewables portfolio standard targets.

(h) Title to any property or project paid for in whole pursuant to this section shall vest with the commission. Title to any property or project paid for in part pursuant to this section shall vest with the commission in a part proportionate to the commission's share of the overall cost of the property or project.

(e) Funds deposited in the Solar and Clean Energy Transmission Account shall be used to supplement, and not to supplant, existing state funding for the purposes authorized by subdivision (c).

(f) All projects receiving funding, in whole or in part, pursuant to this section shall be considered public works projects subject to the provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, and the Department of Industrial Relations shall have the same authority and responsibility to enforce those provisions as it has under the Labor Code.

SEC. 30. Chapter 8.9 (commencing with Section 25790) is added to Division 15 of the Public Resources Code, to read:

25790. The Energy Commission may, for the purposes of this chapter, purchase and subsequently sell, lease to another party for a period not to exceed 99 years, exchange, subdivide, transfer, assign, pledge, encumber, or otherwise dispose of any real or personal property or any interest in property. Any such lease or sale shall be conditioned on the development and use of the property for the generation and/or transmission of renewable energy.

25791. Any lease or sale made pursuant to this chapter may be made without public bidding but only after a public hearing.

SEC. 31. Severability

The provisions of this act are severable. If any provision of this act, or part thereof, is for any reason held to be invalid under state or federal law, the remaining provisions shall not be affected, but shall remain in full force and effect.

SEC. 32. Amendment

The provisions of this act may be amended to carry out its purpose and intent by statutes approved by a two-thirds vote of each house of the Legislature and signed by the Governor.

SEC. 33. Conflicting Measures

(a) This measure is intended to be comprehensive. It is the intent of the people that in the event that this measure and another initiative measure relating to the same subject appear on the same statewide election ballot, the provisions of the other measure or measures are deemed to be in conflict with this measure. In the event this measure shall receive the greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-

executing and given full force of law.

SEC. 34. Legal Challenge

Any challenge to the validity of this act must be filed within six months of the effective date of this act.

## PROPOSITION 8

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

SECTION 1. Title

This measure shall be known and may be cited as the "California Marriage Protection Act."

SECTION 2. Section 7.5 is added to Article I of the California Constitution, to read:

SEC. 7.5. *Only marriage between a man and a woman is valid or recognized in California.*

## PROPOSITION 9

This initiative measure is submitted to the people of California in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends a section of the California Constitution and amends and adds sections to the Penal Code; therefore, existing provisions proposed to be deleted are printed in *strikeout-type* and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

## VICTIMS' BILL OF RIGHTS ACT OF 2008: MARSY'S LAW

SECTION 1. TITLE

This act shall be known, and may be cited as, the "Victims' Bill of Rights Act of 2008: Marsy's Law."

SECTION 2. FINDINGS AND DECLARATIONS

The People of the State of California hereby find and declare all of the following:

1. Crime victims are entitled to justice and due process. Their rights include, but are not limited to, the right to notice and to be heard during critical stages of the justice system; the right to receive restitution from the criminal wrongdoer; the right to be reasonably safe throughout the justice process; the right to expect the government to properly fund the criminal justice system, so that the rights of crime victims stated in these Findings and Declarations and justice itself are not eroded by inadequate resources; and, above all, the right to an expeditious and just punishment of the criminal wrongdoer.

2. The People of the State of California declare that the "Victims' Bill of Rights Act of 2008: Marsy's Law" is needed to remedy a justice system that fails to fully recognize and adequately enforce the rights of victims of crime. It is named after Marsy, a 21-year-old college senior at U.C. Santa Barbara who was preparing to pursue a career in special education for handicapped children and had her whole life ahead of her. She was murdered on November 30, 1983. Marsy's Law is written on behalf of her mother, father, and brother, who were often treated as though they had no rights, and inspired by hundreds of thousands of victims of crime who have experienced the additional pain and frustration of a criminal justice system that too often fails to afford victims even the most basic of rights.

3. The People of the State of California find that the "broad reform" of the criminal justice system intended to grant these basic rights mandated in the Victims' Bill of Rights initiative measure passed by the electorate as Proposition 8 in 1982 has not occurred as envisioned by the people. Victims of crime continue to be denied rights to justice and due process.

4. An inefficient, overcrowded, and arcane criminal justice system has failed to build adequate jails and prisons, has failed to efficiently conduct court proceedings, and has failed to expeditiously finalize the sentences and punishments of criminal wrongdoers. Those criminal wrongdoers are being released from custody after serving as little as 10 percent of the sentences imposed and determined to be appropriate by judges.

5. Each year hundreds of convicted murderers sentenced to serve life in prison seek release on parole from our state prisons. California's "release from prison parole procedures" torture the families of murdered victims and waste

1 COOPER AND KIRK, PLLC  
 Charles J. Cooper (DC Bar No. 248070)\*  
 2 *ccooper@cooperkirk.com*  
 David H. Thompson (DC Bar No. 450503)\*  
 3 *dthompson@cooperkirk.com*  
 Howard C. Nielson, Jr. (DC Bar No. 473018)\*  
 4 *hnielson@cooperkirk.com*  
 Nicole J. Moss (DC Bar No. 472424)\*  
 5 *nmoss@cooperkirk.com*  
 Peter A. Patterson (OH Bar No. 0080840)\*  
 6 *ppatterson@cooperkirk.com*  
 7 1523 New Hampshire Ave. N.W., Washington, D.C. 20036  
 8 Telephone: (202) 220-9600, Facsimile: (202) 220-9601

9 LAW OFFICES OF ANDREW P. PUGNO  
 Andrew P. Pugno (CA Bar No. 206587)  
 10 *andrew@pugnolaw.com*  
 11 101 Parkshore Drive, Suite 100, Folsom, California 95630  
 Telephone: (916) 608-3065, Facsimile: (916) 608-3066

12 ALLIANCE DEFENSE FUND  
 Brian W. Raum (NY Bar No. 2856102)\*  
 13 *braum@telladf.org*  
 James A. Campbell (OH Bar No. 0081501)\*  
 14 *jcampbell@telladf.org*  
 15 15100 North 90th Street, Scottsdale, Arizona 85260  
 Telephone: (480) 444-0020, Facsimile: (480) 444-0028

16 ATTORNEYS FOR DEFENDANT-INTERVENORS DENNIS HOLLINGSWORTH,  
 GAIL J. KNIGHT, MARTIN F. GUTIERREZ, MARK A. JANSSON,  
 17 and PROTECTMARRIAGE.COM – YES ON 8, A  
 PROJECT OF CALIFORNIA RENEWAL

18 \* Admitted *pro hac vice*

19 **UNITED STATES DISTRICT COURT**  
 20 **NORTHERN DISTRICT OF CALIFORNIA**

21 KRISTIN M. PERRY, SANDRA B. STIER, PAUL  
 22 T. KATAMI, and JEFFREY J. ZARRILLO,

23 Plaintiffs,

24 v.

25 ARNOLD SCHWARZENEGGER, in his official  
 capacity as Governor of California; EDMUND G.  
 26 BROWN, JR., in his official capacity as Attorney  
 General of California; MARK B. HORTON, in his  
 27 official capacity as Director of the California  
 28 Department of Public Health and State Registrar of

CASE NO. 09-CV-2292 VRW

**DEFENDANT-INTERVENORS**  
**DENNIS HOLLINGSWORTH, GAIL**  
**J. KNIGHT, MARTIN F.**  
**GUTIERREZ, MARK A. JANSSON,**  
**AND PROTECTMARRIAGE.COM'S**  
**OPPOSITION TO MOTION TO**  
**ENLARGE TIME**



1 Vital Statistics; LINETTE SCOTT, in her official  
2 capacity as Deputy Director of Health Information  
3 & Strategic Planning for the California Department  
4 of Public Health; PATRICK O'CONNELL, in his  
5 official capacity as Clerk-Recorder for the County  
6 of Alameda; and DEAN C. LOGAN, in his official  
7 capacity as Registrar-Recorder/County Clerk for  
8 the County of Los Angeles,

9 Defendants,

10 and

11 PROPOSITION 8 OFFICIAL PROPONENTS  
12 DENNIS HOLLINGSWORTH, GAIL J. KNIGHT,  
13 MARTIN F. GUTIERREZ, HAK-SHING  
14 WILLIAM TAM and MARK A. JANSSON; and  
15 PROTECTMARRIAGE.COM –  
16 YES ON 8, A PROJECT OF CALIFORNIA  
17 RENEWAL,

18 Defendant-Intervenors.

19 Additional Counsel for Defendant-Intervenors

20 ALLIANCE DEFENSE FUND

21 Timothy Chandler (CA Bar No. 234325)

22 *tchandler@telladf.org*

23 101 Parkshore Drive, Suite 100, Folsom, California 95630

24 Telephone: (916) 932-2850, Facsimile: (916) 932-2851

25 Jordan W. Lorence (DC Bar No. 385022)\*

26 *jlorence@telladf.org*

27 Austin R. Nimocks (TX Bar No. 24002695)\*

28 *animocks@telladf.org*

801 G Street NW, Suite 509, Washington, D.C. 20001

Telephone: (202) 393-8690, Facsimile: (202) 347-3622

\* Admitted *pro hac vice*

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*Manual for Complex Litigation, Fourth*, § 14.222 (2004) ..... 2, 3

1 Defendant-Intervenors Hollingsworth, Knight, Gutierrez, Jansson, and ProtectMarriage.com  
2 ("Proponents") submit the following opposition to Plaintiffs' and Plaintiff-Intervenor's Motion to  
3 Enlarge Time. See Doc #729, Doc #742.

#### 4 INTRODUCTION

5 Plaintiffs' motion to delay indefinitely this Court's consideration of their request for  
6 attorney's fees and costs contradicts the very reasons supporting the 14-day deadline established in  
7 Rule 54. Those reasons are stated unambiguously in the Advisory Committee Notes: "One purpose  
8 of this provision is to assure that the opposing party is informed of the claim before the time for  
9 appeal has elapsed. . . . Prompt filing [also] affords an opportunity for the court to resolve fee  
10 disputes shortly after trial, while the services performed are freshly in mind." Advisory Committee  
11 Notes to 1993 Amendments, Fed. R. Civ. P. 54(d)(2)(B). Both of those policy reasons are relevant  
12 here.

13 Moreover, the interests in giving opposing parties notice of fees claims and resolving the  
14 issue while the case is fresh in the court's mind easily outweigh any detriment to Plaintiffs here,  
15 especially considering the relatively minimal effort needed to file their motion and supporting  
16 documents. Plaintiffs have plainly demonstrated that they have more than sufficient staff dedicated  
17 to the case. And it should be particularly easy to complete the motion from the contemporaneous  
18 time records that they were required to keep.

19 Finally, courts generally view Plaintiffs' sole reason for delaying their fees motion—the  
20 pending appeal in this case—as insufficient to disregard Rule 54's requirement for prompt  
21 resolution of fee disputes. Therefore, the Court should deny Plaintiffs' motion.

#### 22 ARGUMENT

23 Several circuit courts have recognized that the intent of Rule 54's time requirement is both  
24 to ensure that opposing parties have informed notice of the fees claim before the time for appeal  
25 elapses and, importantly, to enable the district court to decide the issue while the case is still in  
26 mind. One appellate court, for example, long ago noted that prompt resolution of fee disputes is  
27 important because "[a]n adverse party must be able to assess his position following the trial within  
28 the time limits prescribed by the rules of the court, and be guided as to his future action

1 accordingly.” *Woods Constr. Co. v. Atlas Chem. Indus., Inc.*, 337 F.2d 888, 891 (10th Cir. 1964).  
2 Other courts have followed suit, recognizing the strong policy reasons that support the rule. *See*,  
3 *e.g.*, *Tancredi v. Metropolitan Life Ins. Co.*, 378 F.3d 220, 227 (2d Cir. 2004); *United Indus., Inc. v.*  
4 *Simon-Hartley, Ltd.*, 91 F.3d 762, 766 (5th Cir. 1996) (noting that the 14-day requirement “serves  
5 several laudable purposes,” including the purpose of ensuring that opposing parties have notice of  
6 the fees claim); *see also Gaskins v. BFI Waste Services, LLC*, 281 Fed. Appx. 255, 259 (4th Cir.  
7 2008) (unpublished) (same).

8 Indeed, “[t]he weight of authority . . . is that the usual course is for the Court to consider  
9 attorneys’ fees promptly after the merits decision rather than stay the Fee Petition until resolution of  
10 the appeal.” *Unisys Corp. Retiree Medical Benefits ERISA Litigation v. Unisys Corp.*, No. 03-3924,  
11 2007 WL 4287393, at \*2, 2007 U.S. Dist. LEXIS 89317, at \*6 (E.D. Pa. Dec. 4, 2007); *see also*  
12 *Manual for Complex Litigation, Fourth*, § 14.222 (2004) (recommending that prompt filing of the  
13 motion is necessary to give interested parties notice of fee claim before time for appeal has expired  
14 and while services are still fresh in mind).

15 The policy reasons for providing notice of claims for fees and costs in anticipation of appeal  
16 have particular force in this case. Proponents, to be sure, have already noticed an appeal of the  
17 district court’s ruling. But because controlling authority makes clear that Proponents cannot be held  
18 liable for attorney’s fees, *see, e.g., Democratic Party of Wash. State v. Reed*, 388 F.3d 1281, 1288  
19 (9th Cir. 2004), *quoting Indep. Fed. of Flight Attendants v. Zipes*, 491 U.S. 754, 761 (1989),  
20 Plaintiffs’ fee request assuredly will be targeted at parties that have yet to appeal—*i.e.*, the  
21 Governor and the other Administration Defendants, the Attorney General, and the County Clerks  
22 for Los Angeles and Alameda counties. Particularly given California’s fiscal challenges, these  
23 parties—not to mention the voters who put them in office and the legislators who are embroiled in a  
24 budget stand-off with the Governor, *see Shane Goldmacher, Holding Budget Ransom May Be*  
25 *Schwarzenegger’s Last Hope*, L.A. Times, Aug. 22, 2010, *available at*  
26 <http://articles.latimes.com/2010/aug/22/local/la-me-arnold-budget-20100823>—deserve to know  
27 before the time to appeal has expired the potential liability they face from attorney’s fees and costs  
28 generated by Plaintiffs. And although these parties have not objected to Plaintiffs’ motion to

1 enlarge time, they cannot by doing so evade the clear interest the State and its People have in  
2 making a fully informed decision on whether to appeal. *See, e.g.*, Cal. Const. art. II, § 1 ("All  
3 political power is inherent in the people."); *id.* art. I, § 3(a) ("The people have the right to instruct  
4 their representatives, petition government for redress of grievances, and assemble freely to consult  
5 for the common good.").

6 The second reason for the 14-day requirement—to ensure that the facts and litigation are  
7 fresh in the judge's mind—is also important in a case like this that involved dozens of attorneys and  
8 a 12-day trial with extended closing argument. It is unfair to the parties and to the Court to try to  
9 evaluate a fee award in such intense litigation after all appeals are exhausted, which is potentially  
10 years away. *See* Rule 54 Advisory Committee Notes to 1993 Amendments ("Prompt filing affords  
11 an opportunity for the court to resolve fee disputes shortly after trial, while the services performed  
12 are freshly in mind"); *Mazloun v. District of Columbia*, No. 06-0002, 2008 WL 4876156, at \*1  
13 (D.D.C. Nov. 12, 2008) (finding that "[p]olicy reasons favor pre-appeal fee petitions" including the  
14 benefit of resolving fee disputes while the services performed are freshly in mind); *see also Manual*  
15 *for Complex Litigation, Fourth, § 14.222* (2004) (same). Plaintiffs have offered no reason  
16 whatsoever for disregarding this important rationale for Rule 54.

17 While it is true that Rule 54 gives courts discretion to modify that timeframe, the only  
18 reason Plaintiffs give for their motion is the pending appeal in this case. When the sole reason for  
19 delaying a fee application is the mere fact that an appeal has been filed, courts routinely refuse to  
20 exercise their discretion to stay the issue of attorney's fees until all appeals have been exhausted.  
21 *See Klein v. Central States, Se. & Sw. Areas Health & Welfare Plan*, 621 F. Supp. 2d 537, 540  
22 (N.D. Ohio 2009) ("Generally, an appeal alone does not justify postponing a decision on a request  
23 for attorney's fees. . . . [E]fficiency favors ruling on the motion for fees and costs now."); *Unisys*  
24 *Corp.*, 2007 WL 4287393, at \*2, 2007 U.S. Dist. LEXIS 89317, at \*6 ("[A] number of courts have  
25 found that a pending appeal, standing alone, is insufficient reason to postpone a fee decision for an  
26 indefinite period"); *Lyon v. Kimberly Clark Corp. Pension Plan*, No. 15-3201, 2007 WL 1852215,  
27 at \*1, 2007 U.S. Dist. LEXIS 46424, at \*3 (D.N.J. June 26, 2007) ("Defendant has proffered no  
28 reason why a pending appeal alone should constitute sufficient grounds for this Court to deny

1 Plaintiff's motion [to delay the consideration of a request for attorney's fees]"); *McCloud v. City of*  
2 *Sunbury*, No. 04-2322, 2006 WL 449198, at \*1, 2006 U.S. Dist. LEXIS 9187, at \*2 (M.D. Pa. Feb.  
3 23, 2006) (noting that the court had never stayed a motion for attorney's fees and expenses simply  
4 because an appeal had been filed). In short, Plaintiffs' attempt to revise Congress's policy  
5 preference by arguing that it is more appropriate to resolve fee disputes after all the appeals have  
6 been fully exhausted has been repeatedly rejected and therefore does not support their motion.

7 Neither does the relatively small burden on Plaintiffs justify their motion. To fulfill their  
8 obligation under Rule 54, Plaintiffs simply need to file a motion with supporting evidence and time  
9 records. See Civil Local Rule 54-5(b). Plaintiffs have demonstrated that they have more than  
10 enough staff dedicated to this case to accomplish the work required to file a motion and supporting  
11 papers for attorney's fees and costs. This relatively light burden imposed by Rule 54 cannot  
12 possibly outweigh Congress's strong policy reasons for prompt consideration of fee disputes. See  
13 *44 Liquormart, Inc. v. Rhode Island*, 940 F. Supp. 437, 443 (D.R.I. 1996).<sup>1</sup>

14 For these reasons, the Court should also deny Plaintiffs' alternative request that they have  
15 "45 days of the latter of: (A) the entry of an order resolving the instant motion, or (B) the entry of  
16 judgment by this Court." Pl.'s Mot. to Enlarge Time, Doc #729 at 4. First, granting this 45-day  
17 extension would ignore that the purpose of Rule 54's 14-day requirement is to give opposing parties  
18 notice of the amount of the fees claim before time for appeal elapses, since a party has only 30 days  
19 to decide whether to appeal. Second, the relatively easy task of computing a fee total does not  
20 justify a 45-day delay any more than it would justify delay until appeals are exhausted. As noted  
21 above, the 14-day time limit takes into account that the fees motion is not complicated, especially  
22 since Plaintiffs' attorneys are required to keep contemporaneous time records and those records  
23 should be relatively easy to compile. See Civil Local Rule 54-5(b)(2); *Ackerman v. Western Elec.*  
24 *Co., Inc.*, 643 F. Supp. 836, 863 (N.D. Cal. 1986) ("In the absence of contemporaneous time  
25 records, the court in its discretion may deny an award of attorney's fees") (citing *Hensley v.*

26  
27 <sup>1</sup> Even if the Court is inclined to grant Plaintiffs' motion to delay submission of supporting  
28 evidence for attorney's fees and costs, it should at the very least require Plaintiffs to file their  
motion for fees now so that opposing parties have some notice about the nature of their fee claims.



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*Eckerhart*, 461 U.S. 424, 433 (1983)).

**CONCLUSION**

In sum, Congress has been clear about why Rule 54 imposes a 14-day timeframe to file a motion for attorney's fees and costs. Courts have routinely recognized those reasons, holding that delay is not justified simply because there is a pending appeal. This Court should do the same here.

Because Plaintiffs have given no good reason for disregarding Rule 54's 14-day notice requirement, Defendant-Intervenors respectfully request that the Court deny their motion to delay consideration of attorney's fees and costs.<sup>2</sup> Even if the Court is inclined to give Plaintiffs additional time to provide their supporting documentation, it should at the very least require Plaintiffs to file a motion stating the total amount of fees requested.

DATED: August 23, 2010

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

By: /s/ Brian W. Raum  
Brian W. Raum

<sup>2</sup> For the reasons stated herein, the Court should deny both Plaintiffs' original motion to enlarge time, Doc #729, and the motion to enlarge time to file a bill of costs they later filed "in an abundance of caution and for avoidance of doubt," Doc #742.

**PROOF OF SERVICE**

I, Catheryn M. Daly, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Seventh Floor, San Francisco, CA 94102.

On April 4, 2011, I served the following document(s):

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

on the following persons at the locations specified:

Jesse Panuccio  
David Thompson  
Charles J. Cooper  
Nichole Jo Moss  
Peter A. Patterson  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, DC 20036

Attorneys for Defendants, Intervenors, and  
Appellants Hollingsworth, Inight, Gutierrez,  
Jansson, and Protect Marriage.com

Andrew P. Pugno  
Law Offices of Andrew P. Pugno  
101 Parkshore Drive, Suite 100  
Folsom, CA 95630

Attorneys for Defendants, Intervenors, and  
Appellants Hollingsworth, Inight, Gutierrez,  
Jansson, and Protect Marriage.com

David Boies  
Rosanne C. Baxter  
BOIES, SCHILLER & FLEXNER  
333 Main Street  
Armonk, NY 10504

Theodore J. Boutrous, Jr.  
Christopher D. Dusseault  
Theane Evangelis Kapur  
GIBSON DUNN & CRUTCHER, LLP  
333 South Grand Avenue, Suite 5350  
Los Angeles, CA 90071-3197

Brian William Raum, Senior Counsel  
James Andrew Campbell  
Litigation Staff Counsel  
ALLIANCE DEFENSE FUND  
15100 N 90<sup>th</sup> Street  
Scottsdale, AZ 85260

Attorneys for Defendants, Intervenors, and  
Appellants Hollingsworth, Inight, Gutierrez,  
Jansson, and Protect Marriage.com

Terry L. Thompson  
Law Office of Terry L. Thompson  
P.O. Box 1346  
Alamo, CA 94507

Theodore Olson  
Matthew McGill  
Amir C. Tayrani  
GIBSON DUNN & CRUTCHER, LLP  
1050 Connecticut Ave., NW  
Washington, DC 20036-5306

Ethan Douglas Dettmer  
Enrique Antonio Monagas  
Sarah E. Piepmeier  
GIBSON DUNN & CRUTCHER, LLP  
555 Mission Street, Suite 3000  
San Francisco, CA 94105-2933

Jeremy Michael Goldman  
BOIES, SCHILLER & FLEXNER, LLP  
1999 Harrison Street  
Oakland, CA 94612

Theodore H. Uno  
BOIES, SCHILLER & FLEXNER, LLP  
2435 Hollywood Blvd.  
Hollywood, FL 33020

Joshua Irwin Schiller  
Richard Jason Bettan  
BOIES, SCHILLER & FLEXNER, LLP  
575 Lexington Avenue, 7<sup>th</sup> Floor  
New York, NY 10022

Tamar Pachter, Deputy Attorney General  
Daniel Powell, Deputy Attorney General  
CALIFORNIA DEPT. OF JUSTICE  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102

Kenneth C. Mennemeier, Jr.  
Andrew W. Stroud  
MENNEMEIER, GLASSMAN &  
STROUD LLP  
980 9<sup>th</sup> Street, Suite 1700  
Sacramento, CA 95814

Claude Franklin Kolm  
OFFICE OF COUNTY COUNSEL  
1221 Oak Street, Suite 450  
Oakland, CA 94612-4296

Judy W. Whitehurst  
Principal Deputy County Counsel  
LOS ANGELES COUNTY COUNSEL  
6<sup>th</sup> Floor  
648 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012-2713

Clerk of the Court  
United States Court of Appeals for the  
Ninth Circuit  
James Browning Courthouse  
95 7<sup>th</sup> Street  
San Francisco, CA 94103

Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814

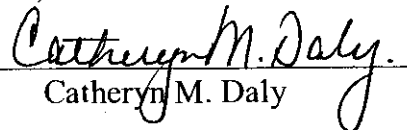
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**BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed:

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed April 4, 2011, at San Francisco, California.

  
Catheryn M. Daly

1 COOPER AND KIRK, PLLC  
Charles J. Cooper (DC Bar No. 248070)\*  
2 *ccooper@cooperkirk.com*  
David H. Thompson (DC Bar No. 450503)\*  
3 *dthompson@cooperkirk.com*  
Howard C. Nielson, Jr. (DC Bar No. 473018)\*  
4 *hnielson@cooperkirk.com*  
Nicole J. Moss (DC Bar No. 472424)\*  
5 *nmoss@cooperkirk.com*  
Peter A. Patterson (OH Bar No. 0080840)\*  
6 *ppatterson@cooperkirk.com*  
1523 New Hampshire Ave. N.W., Washington, D.C. 20036  
7 Telephone: (202) 220-9600, Facsimile: (202) 220-9601

8 LAW OFFICES OF ANDREW P. PUGNO  
Andrew P. Pugno (CA Bar No. 206587)  
9 *andrew@pugnotlaw.com*  
101 Parkshore Drive, Suite 100, Folsom, California 95630  
10 Telephone: (916) 608-3065, Facsimile: (916) 608-3066

11 ALLIANCE DEFENSE FUND  
Brian W. Raum (NY Bar No. 2856102)\*  
12 *braum@telladf.org*  
James A. Campbell (OH Bar No. 0081501)\*  
13 *jcampbell@telladf.org*  
15100 North 90th Street, Scottsdale, Arizona 85260  
14 Telephone: (480) 444-0020, Facsimile: (480) 444-0028

15 ATTORNEYS FOR DEFENDANT-INTERVENORS DENNIS HOLLINGSWORTH,  
GAIL J. KNIGHT, MARTIN F. GUTIERREZ, MARK A. JANSSON,  
16 and PROTECTMARRIAGE.COM – YES ON 8, A  
PROJECT OF CALIFORNIA RENEWAL

17 \* Admitted *pro hac vice*

18 **UNITED STATES DISTRICT COURT**  
19 **NORTHERN DISTRICT OF CALIFORNIA**

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

21 Plaintiffs,

22 CITY AND COUNTY OF SAN FRANCISCO,

23 Plaintiff-Intervenor,

24 v.

25  
26 ARNOLD SCHWARZENEGGER, in his official  
27 capacity as Governor of California; EDMUND G.  
BROWN, JR., in his official capacity as Attorney  
28 General of California; MARK B. HORTON, in his

CASE NO. 09-CV-2292 VRW

**DEFENDANT-INTERVENORS  
DENNIS HOLLINGSWORTH, GAIL  
J. KNIGHT, MARTIN F. GUTIERREZ,  
MARK A. JANSSON,  
AND PROTECTMARRIAGE.COM'S  
ANSWERS TO QUESTIONS FOR  
CLOSING ARGUMENTS**

1 official capacity as Director of the California  
2 Department of Public Health and State Registrar of  
3 Vital Statistics; LINETTE SCOTT, in her official  
4 capacity as Deputy Director of Health Information  
5 & Strategic Planning for the California Department  
6 of Public Health; PATRICK O'CONNELL, in his  
7 official capacity as Clerk-Recorder for the County  
8 of Alameda; and DEAN C. LOGAN, in his official  
9 capacity as Registrar-Recorder/County Clerk for  
10 the County of Los Angeles,

11  
12  
13 Defendants,

14 and

15 PROPOSITION 8 OFFICIAL PROPONENTS  
16 DENNIS HOLLINGSWORTH, GAIL J.  
17 KNIGHT, MARTIN F. GUTIERREZ, HAK-  
18 SHING WILLIAM TAM, and MARK A.  
19 JANSSON; and PROTECTMARRIAGE.COM –  
20 YES ON 8, A PROJECT OF CALIFORNIA  
21 RENEWAL,

22  
23 Defendant-Intervenors.  
24  
25  
26  
27  
28

Additional Counsel for Defendant-Intervenors

ALLIANCE DEFENSE FUND  
Timothy Chandler (CA Bar No. 234325)  
*tchandler@telladf.org*  
101 Parkshore Drive, Suite 100, Folsom, California 95630  
Telephone: (916) 932-2850, Facsimile: (916) 932-2851

Jordan W. Lorence (DC Bar No. 385022)\*  
*jlorence@telladf.org*  
Austin R. Nimocks (TX Bar No. 24002695)\*  
*animocks@telladf.org*  
801 G Street NW, Suite 509, Washington, D.C. 20001  
Telephone: (202) 393-8690, Facsimile: (202) 347-3622

\* Admitted *pro hac vice*

1 include in-laws. 26 U.S.C. § 152(d)(2)(G). The Domestic Partnership Act specifies that "[t]o the  
2 extent that provisions of California law adopt, refer to, or rely upon, provisions of federal law in a  
3 way that otherwise would cause registered domestic partners to be treated differently than spouses,  
4 registered domestic partners shall be treated by California law as if federal law recognized a  
5 domestic partnership in the same manner as California law." Cal. Fam. Code § 297.5(e). Thus,  
6 because California law seeks legal equality between spouses and domestic partners, as noted above,  
7 in-laws would likely be treated as dependants for domestic partners in the same way that they are  
8 for spouses.  
9

10 This same principle would likely apply to all other areas of California law that have created  
11 legal significance for in-law status. One such area of law includes conflict-of-interest laws. *See*,  
12 *e.g.*, Cal. Fin. Code § 31820(c) (including in-laws as close relatives).  
13

14  
15 14. What does the evidence show regarding the difficulty or ease with which the State of  
16 California regulates the current system of opposite-sex and same-sex marriage and opposite-sex and  
17 same-sex domestic partnerships?  
18

19 **ANSWER:** We are unaware of any evidence regarding the difficulty or ease with which the  
20 State of California regulates the current system of opposite-sex and same-sex marriage and  
21 opposite-sex and same-sex domestic partnership.<sup>10</sup>  
22

23  
24 15. If the court finds Proposition 8 to be unconstitutional, what remedy would "yield to the  
25

26 <sup>10</sup> In answers to requests for admission that have been made part of the record, the Attorney  
27 General either admits or claims to have seen documents supporting several costs related to  
28 maintaining and administering California's domestic partnership registry. *See* PX711 at 6-8.  
These figures, standing alone, do not lead to any conclusion regarding the difficulty or ease with  
which California regulates domestic partnerships and marriages.

1 constitutional expression of the people of California's will"? See Doc #605 at 18.

2  
3 **ANSWER:** If, as Plaintiffs maintain, Proposition 8 cannot be reconciled with its own non-  
4 retrospective application, as interpreted by the California Supreme Court, or with any other feature  
5 of California law, the remedy that would "yield to the constitutional expression of the people of  
6 California's will" is sustaining Proposition 8 by giving it retrospective effect or invalidating the  
7 conflicting feature of California law. Several factors support this conclusion. Proposition 8 is a  
8 provision of the California Constitution, and thus "constitute[s] the ultimate expression of the  
9 people's will." *In re Marriage Cases*, 183 P.3d 384, 450 (Cal. 2008). And through their votes on  
10 Proposition 22 and Proposition 8, the people of California have consistently expressed their  
11 commitment to maintaining the institution of marriage in its traditional form as the union of a man  
12 and a woman. A contrary result would entail the conclusion that the California judiciary and  
13 legislature—the very bodies the people's initiative process is designed to control—have the power  
14 to secure the invalidation of a state constitutional provision under the federal constitution by issuing  
15 judicial decisions or passing laws that rationally cannot be squared with the expressed will of the  
16 people. *Cf. Lofton*, 358 F.3d at 824 (executive's enforcement of decisions could not call into  
17 question the rationality of the legislature's action).

18  
19  
20  
21 Dated: June 15, 2010

22  
23 COOPER AND KIRK, PLLC  
24 ATTORNEYS FOR DEFENDANT-INTERVENORS  
25 DENNIS HOLLINGSWORTH, GAIL J. KNIGHT,  
26 MARTIN F. GUTIERREZ, MARK A. JANSSON, AND  
27 PROTECTMARRIAGE.COM – YES ON 8, A PROJECT  
28 OF CALIFORNIA RENEWAL

By: /s/Charles J. Cooper  
Charles J. Cooper

**PROOF OF SERVICE**

I, Catheryn M. Daly, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Seventh Floor, San Francisco, CA 94102.

On April 4, 2011, I served the following document(s):

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

on the following persons at the locations specified:

Jesse Panuccio  
David Thompson  
Charles J. Cooper  
Nichole Jo Moss  
Peter A. Patterson  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, DC 20036

Attorneys for Defendants, Intervenors, and Appellants Hollingsworth, Inight, Gutierrez, Jansson, and Protect Marriage.com

Andrew P. Pugno  
Law Offices of Andrew P. Pugno  
101 Parkshore Drive, Suite 100  
Folsom, CA 95630

Attorneys for Defendants, Intervenors, and Appellants Hollingsworth, Inight, Gutierrez, Jansson, and Protect Marriage.com

David Boies  
Rosanne C. Baxter  
BOIES, SCHILLER & FLEXNER  
333 Main Street  
Armonk, NY 10504

Theodore J. Boutrous, Jr.  
Christopher D. Dusseault  
Theane Evangelis Kapur  
GIBSON DUNN & CRUTCHER, LLP  
333 South Grand Avenue, Suite 5350  
Los Angeles, CA 90071-3197

Brian William Raum, Senior Counsel  
James Andrew Campbell  
Litigation Staff Counsel  
ALLIANCE DEFENSE FUND  
15100 N 90<sup>th</sup> Street  
Scottsdale, AZ 85260

Attorneys for Defendants, Intervenors, and Appellants Hollingsworth, Inight, Gutierrez, Jansson, and Protect Marriage.com

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555 Mission Street, Suite 3000  
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1999 Harrison Street  
Oakland, CA 94612

Theodore H. Uno  
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2435 Hollywood Blvd.  
Hollywood, FL 33020

Joshua Irwin Schiller  
Richard Jason Bettan  
BOIES, SCHILLER & FLEXNER, LLP  
575 Lexington Avenue, 7<sup>th</sup> Floor  
New York, NY 10022

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Daniel Powell, Deputy Attorney General  
CALIFORNIA DEPT. OF JUSTICE  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102

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Andrew W. Stroud  
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STROUD LLP  
980 9<sup>th</sup> Street, Suite 1700  
Sacramento, CA 95814

Claude Franklin Kolm  
OFFICE OF COUNTY COUNSEL  
1221 Oak Street, Suite 450  
Oakland, CA 94612-4296

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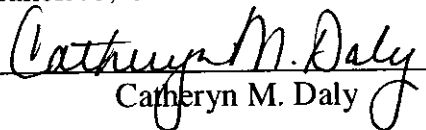
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