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7 Attorneys for Defendants  
 Department of Elections - City and County of San Francisco and  
 8 Dennis J. Herrera, City Attorney for the City and County of San Francisco

9  
 10 UNITED STATES DISTRICT COURT  
 11 EASTERN DISTRICT OF CALIFORNIA  
 12 SACRAMENTO DIVISION

13 **ProtectMarriage.com - Yes on 8, a Project**  
 14 **of California Renewal; National**  
 15 **Organization for Marriage California - Yes**  
 16 **on 8, Sponsored by National Organization**  
 17 **for Marriage, John Doe #1, an individual,**  
 18 **and as a representative of the Class of Major**  
 19 **Donors,**

20 Plaintiffs,

21 vs.

22 **Debra Bowen**, Secretary of State for the State  
 of California, in her official capacity; **Edmund**  
 23 **G. Brown, Jr.**, Attorney General for the State  
 of California, in his official capacity; **Dean C.**  
 24 **Logan**, Registrar-Recorder of Los Angeles  
 County, California, in his official capacity;  
 25 **Department of Elections - City and County**  
 26 **of San Francisco; Jan Scully**, District  
 Attorney for Sacramento County, California, in  
 27 her official capacity and as a representative of  
 the Class of District Attorneys in the State of  
 California; **Dennis J. Herrera**, City Attorney  
 for the City and County of San Francisco,  
 California, in his official capacity and as a  
 representative of the Class of Elected City  
 Attorneys in the State of California; **Ross**

Case No. 2:09-CV-00058-MCE-DAD

**DEFENDANTS DEPARTMENT OF**  
**ELECTIONS – CITY AND COUNTY OF SAN**  
**FRANCISCO AND DENNIS J. HERRERA'S**  
**ANSWER TO PLAINTIFFS' SECOND**  
**AMENDED COMPLAINT**

28 DEFENDANTS DEPARTMENT OF ELECTIONS  
 AND DENNIS J. HERRERA'S ANSWER TO  
 PLAINTIFFS' SECOND AMENDED COMPLAINT  
 CASE NO. 2:09-CV-00058-MCE-DAD

1 **Johnson, Timothy Hodson, Eugene**  
2 **Huguenin, Jr., Robert Leidigh, and Ray**  
3 **Remy**, members of the California Fair Political  
Practices Commission, in their official  
capacities,

4 Defendants.

5  
6 On behalf of themselves and no other persons or entities, Defendants Department of Elections  
7 – City and County of San Francisco and Dennis J. Herrera, City Attorney for the City and County of  
8 San Francisco, in his official capacity ("Defendants"), hereby answer the Second Amended Complaint  
9 ("Complaint") as follows:

10 1. Defendants admit this is a facial and as-applied challenge to the disclosure  
11 requirements of California's Political Reform Act of 1974 ("the Act"), and that Plaintiffs seek  
12 declaratory and injunctive relief. Except as so admitted, Defendants deny the allegations of  
13 Paragraph 1.

14 2. Defendants admit that Plaintiffs challenge application of the Act's disclosure  
15 requirements. Except as so admitted, Defendants deny the allegations of Paragraph 2.

16 3. Defendants admit that Plaintiffs challenge the Act's threshold for reporting contributors,  
17 both facially and as-applied to Plaintiffs. Except as so admitted, Defendants deny the allegations of  
18 Paragraph 3.

19 4. Defendants admit that Plaintiffs challenge the Act's disclosure requirements for post-  
20 election reporting. Except as so admitted, Defendants deny the allegations of Paragraph 4.

## 21 **I. JURISDICTION AND VENUE**

22 5. Defendants admit that the Second Amended Complaint invokes 42 U.S.C. § 1983 and  
23 the First and Fourteenth Amendment to the United States Constitution as the grounds for this action.

24 6. Defendants admit that this court has subject matter jurisdiction over this action pursuant  
25 to 28 U.S.C. §§ 1331 and 1343(a).



1 knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 14,  
2 and they therefore deny those allegations.

3 15. Defendants admit that Dean C. Logan is the Registrar-Recorder of Los Angeles County  
4 and that he is sued in his official capacity. Defendants admit that pursuant to CGC section 81008,  
5 campaign reports filed with the Registrar-Recorder of Los Angeles County pursuant to CGC section  
6 84215 are public records and are open to public inspection. Defendants lack sufficient knowledge or  
7 information to form a belief as to the truth of the remaining allegations of Paragraph 15, and they  
8 therefore deny those allegations.

9 16. Defendants admit that pursuant to CGC section 81008, campaign reports filed with  
10 Defendant Department of Elections for the City and County of San Francisco pursuant to CGC section  
11 84215 are public records and are open to public inspection. Defendants lack sufficient knowledge or  
12 information to form a belief as to the truth of the remaining allegations of Paragraph 16, and they  
13 therefore deny those allegations.

14 17. Defendants admit that Defendant Jan Scully is the District Attorney for Sacramento  
15 County, California, and that she is sued in her official capacity and as a representative of the putative  
16 class of District Attorneys in the State of California alleged in the Complaint. Defendants deny the  
17 allegations in the last sentence of Paragraph 17 because it is an incorrect and overly broad description  
18 of CGC section 91001, which speaks for itself. Defendants lack sufficient knowledge or information  
19 to form a belief as to the truth of the remaining allegations of Paragraph 17, and they therefore deny  
20 those allegations.

21 18. Defendants admit that Defendant Dennis J. Herrera is the City Attorney for the City and  
22 County of San Francisco, California. Defendants admit that Plaintiffs sue Defendant Herrera in his  
23 official capacity and as a representative of the putative class of elected City Attorneys in the State of  
24 California. Defendants deny the remaining allegations of Paragraph 18.

25 19. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
26 the third and seventh sentences of Paragraph 19, and they therefore deny those allegations.

27 Defendants admit the remaining allegations of Paragraph 19.

1 **III. CLASS ACTION ALLEGATIONS**

2 20. Defendants admit the allegations of the first sentence of Paragraph 20. Defendants lack  
3 sufficient knowledge or information to form a belief as to the truth of the remaining allegations of  
4 Paragraph 20, and they therefore deny those allegations.

5 21. Defendants admit the allegations of the first sentence of Paragraph 20. Defendants lack  
6 sufficient knowledge or information to form a belief as to the truth of the remaining allegations of  
7 Paragraph 20, and they therefore deny those allegations.

8 **IV. FACTS**

9 22. Defendants admit that Proposition 22, entitled the California Defense of Marriage Act,  
10 added California Family Code section 308.5. Defendants admit that section 308.5 states, "Only  
11 marriage between a man and a woman is valid or recognized in California." Defendants admit that  
12 Proposition 22 received approximately 61.4 percent of the vote. Defendants deny the remaining  
13 allegations in Paragraph 22.

14 23. Defendants admit that on February 10, 2004, the Mayor of the City and County of San  
15 Francisco directed the County Clerk to issue marriage licenses to same-sex couples. Defendants  
16 otherwise deny the incomplete description and characterization of the subsequent litigation.

17 24. Defendants admit that the California Supreme Court ruled that section 308.5 violated  
18 the California Constitution, but otherwise deny the incomplete description of the litigation contained  
19 in Paragraph 24.

20 25. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
21 the allegations of Paragraph 25, and they therefore deny those allegations.

22 26. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
23 the allegations of Paragraph 25, and they therefore deny those allegations.

24 27. Defendants admit that Proposition 8 provides for addition of the quoted language to the  
25 California Constitution. Defendants deny the remaining allegations of Paragraph 27.

26 28. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
27 the allegations of Paragraph 28, and they therefore deny those allegations.

1           29. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
2 the allegations of Paragraph 29, and they therefore deny those allegations.

3           30. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
4 the allegations of Paragraph 30, and they therefore deny those allegations.

5           31. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
6 the allegations of Paragraph 31, and they therefore deny those allegations.

7           32. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
8 the allegations of Paragraph 32, and they therefore deny those allegations.

9           33. Defendants deny the allegations of Paragraph 33.

10          34. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
11 the allegations of Paragraph 34, and they therefore deny those allegations.

12          35. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
13 the allegations of Paragraph 35, and they therefore deny those allegations.

14          36. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
15 the allegations of Paragraph 36, and they therefore deny those allegations.

16          37. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
17 the allegations of Paragraph 37, and they therefore deny those allegations.

18          38. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
19 the allegations of Paragraph 38, and they therefore deny those allegations.

20          39. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
21 the allegations of Paragraph 39, and they therefore deny those allegations.

22          40. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
23 the allegations of Paragraph 40, and they therefore deny those allegations.

24          41. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
25 the allegations of Paragraph 41, and they therefore deny those allegations.

26          42. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
27 the allegations of Paragraph 42, and they therefore deny those allegations.

1           43. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
2 the allegations of Paragraph 43, and they therefore deny those allegations.

3           44. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
4 the allegations of Paragraph 44, and they therefore deny those allegations.

5           45. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
6 the allegations of Paragraph 45, and they therefore deny those allegations.

7           46. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
8 the allegations of Paragraph 46, and they therefore deny those allegations.

9           47. Defendants admit that the quoted language is part of CGC section 82013.

10          48. Defendants admit that the quoted language is part of CGC section 82047.

11          49. Defendants admit that the quoted language is part of CGC section 82047.5, except as to  
12 omission of section "(d)" designation for the last subsection.

13          50. Defendants admit that a "primarily formed committee" may be required to file a  
14 Statement of Organization when it qualifies as a primarily formed committee, to file campaign  
15 statements, and to identify sponsors in the committee name. Except as so admitted, Defendants deny  
16 the allegations of Paragraph 50.

17          51. Defendants admit the allegations of Paragraph 51.

18          52. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
19 the allegations of Paragraph 52, and they therefore deny those allegations.

20          53. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
21 the allegations of Paragraph 53, and they therefore deny those allegations.

22          54. Defendants admit that the quoted language is part of CGC section 81009, with  
23 emphasis added.

24          55. Defendants admit the first two sentences of Paragraph 55. Defendants lack sufficient  
25 knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 55,  
26 and they therefore deny those allegations.





1           68. Defendants admit that the passages within quotation marks are accurately quoted and  
2 attributed. Except as so admitted, Defendants deny the allegations of Paragraph 68.

3           69. Defendants deny the allegations of Paragraph 69.

4           70. Defendants deny the allegations of Paragraph 70.

5           71. Defendants deny the allegations of Paragraph 71.

6           72. Defendants deny the allegations of Paragraph 72.

7           73. Defendants deny the allegations of Paragraph 73.

8           74. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
9 the allegations of Paragraph 74, and they therefore deny those allegations.

10          75. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
11 the allegations of Paragraph 75, and they therefore deny those allegations.

12          76. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
13 the allegations of Paragraph 76, and they therefore deny those allegations.

14          77. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
15 the allegations of Paragraph 77, and they therefore deny those allegations.

16          78. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
17 the allegations of Paragraph 78, and they therefore deny those allegations.

18          79. Defendants deny the allegations of Paragraph 79.

19          80. Defendants deny the allegations of Paragraph 80.

20          81. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
21 the allegations of Paragraph 81, and they therefore deny those allegations.

22          82. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
23 the allegations of Paragraph 82, and they therefore deny those allegations.

24          83. As to Paragraph 83, Defendants deny that Plaintiffs are entitled to the relief sought, or  
25 to any relief.

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1 **VI. COUNT 2**

2 84. Defendants admit that Plaintiffs reallege and incorporate by reference all allegations  
3 made in Paragraphs 1 through 83 of the Complaint.

4 85. Defendants admit that the passage within quotation marks is accurately quoted and  
5 attributed, except as to quotation marks and punctuation marks which are omitted.

6 86. Defendants admit that the passage within quotation marks is accurately quoted and  
7 attributed, except as to punctuation marks which are added.

8 87. Defendants deny the allegations of Paragraph 87.

9 88. Defendants admit that the passage within quotation marks is accurately quoted and  
10 attributed. Except as so admitted, Defendants deny the allegations of Paragraph 88.

11 89. Defendants admit that the passages within quotation marks are accurately quoted and  
12 attributed. Except as so admitted, Defendants deny the allegations of Paragraph 89.

13 90. Defendants deny the allegations of Paragraph 90.

14 91. Defendants admit that the passages within quotation marks are accurately quoted and  
15 attributed. Except as so admitted, Defendants deny the allegations of Paragraph 91.

16 92. Defendants admit that the passages within quotation marks are accurately quoted and  
17 attributed. Except as so admitted, Defendants deny the allegations of Paragraph 92.

18 93. Defendants deny the allegations of Paragraph 93.

19 94. Defendants deny the allegations of Paragraph 94.

20 95. Defendants deny the allegations of Paragraph 95.

21 96. As to Paragraph 96, Defendants deny that Plaintiffs are entitled to the relief sought, or  
22 to any relief.

23 **VII. COUNT 3**

24 97. Defendants admit that Plaintiffs reallege and incorporate by reference all allegations  
25 made in Paragraphs 1 through 96 of the Complaint.

26 98. Defendants admit that the passage within quotation marks is accurately quoted and  
27 attributed, except as to quotation marks and punctuation marks which are omitted.



1 115. Defendants admit that the passages within quotation marks are accurately quoted and  
2 attributed. Except as so admitted, Defendants deny the allegations of Paragraph 115.

3 116. Defendants deny the allegations of Paragraph 116.

4 117. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
5 the remaining allegations of Paragraph 117, and they therefore deny those allegations.

6 118. Defendants deny the allegations of Paragraph 118.

7 119. As to Paragraph 119, Defendants deny that Plaintiffs are entitled to the relief sought, or  
8 to any relief.

9  
10 **SEPARATE AND DISTINCT AFFIRMATIVE DEFENSES**

11 1. The Complaint fails to state facts sufficient to constitute any claim upon which relief  
12 can be granted against Defendants, or any of them.

13 2. Defendants, and each of them, have not deprived Plaintiffs of any right or privilege  
14 guaranteed by the Constitution or laws of the United States or California.

15 3. The Complaint does not present a case or controversy.

16 4. The Complaint is not ripe for adjudication by this Court.

17 5. This Court should abstain from hearing and deciding this action.

18 6. Some or all of Plaintiffs lack standing to maintain this action.

19 7. The Complaint is barred by all applicable statutes of limitation.

20 8. The Complaint is barred by the doctrine of laches.

21 9. The Complaint is barred by the doctrines of estoppel and waiver.

22 10. Defendants' investigation into the issues raised in the Complaint is at the preliminary  
23 stages, and therefore Defendants reserve the right to amend this Answer to add further affirmative  
24 defenses when they are discovered.

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**DEFENDANT’S PRAYER FOR RELIEF**

**WHEREFORE**, Defendants pray that

- 1. Plaintiffs take nothing by way of this action, and the Court issue neither injunctive nor declaratory relief;
- 2. The Complaint be dismissed with prejudice and judgment entered in favor of Defendants;
- 3. Defendants be awarded costs of suit, attorneys' fees and any other relief which the Court deems proper.

Dated: February 5, 2009

DENNIS J. HERRERA  
 City Attorney  
 WAYNE SNODGRASS  
 MOLLIE LEE  
 Deputy City Attorneys

By: \_\_\_\_\_ /s/  
 MOLLIE LEE

Attorneys for Defendants  
 DEFENDANTS CITY AND COUNTY OF SAN  
 FRANCISCO AND DENNIS HERRERA