

# Exhibit B

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5

6 **UNITED STATES DISTRICT COURT**  
7 **EASTERN DISTRICT OF CALIFORNIA**

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

9 Plaintiffs,

10 v.

11 ARNOLD SCHWARZENEGGER, in his official  
12 capacity as Governor of California; EDMUND G.  
13 BROWN, JR., in his official capacity as Attorney  
14 General of California; MARK B. HORTON, in his  
15 official capacity as Director of the California  
16 Department of Public Health and State Registrar of  
17 Vital Statistics; LINETTE SCOTT, in her official  
18 capacity as Deputy Director of Health Information  
19 & Strategic Planning for the California Department  
of Public Health; PATRICK O’CONNELL, in his  
official capacity as Clerk-Recorder for the County  
of Alameda; and DEAN C. LOGAN, in his official  
capacity as Registrar-Recorder/County Clerk for  
the County of Los Angeles,

20 Defendants,

21 and

22 PROPOSITION 8 OFFICIAL PROPONENTS  
23 DENNIS HOLLINGSWORTH, GAIL J.  
KNIGHT, MARTIN F. GUTIERREZ, HAK-  
24 SHING WILLIAM TAM, and MARK A.  
JANSSON; and PROTECTMARRIAGE.COM –  
25 YES ON 8, A PROJECT OF CALIFORNIA  
RENEWAL,

26 Defendant-Intervenors.  
27  
28

CASE NO. 09-CV-2292 VRW (Northern  
District of California)

**SCHUBERT FLINT’S RESPONSES  
AND OBJECTIONS TO PLAINTIFFS’  
SUBPOENA TO PRODUCE  
DOCUMENTS, INFORMATION, OR  
OBJECTS OR TO PERMIT  
INSPECTION OF PREMISES**

1 Pursuant to Rules 26 and 45 of the Federal Rules of Civil Procedure, Schubert Flint Public  
2 Affairs, Inc., (“Schubert Flint”) hereby objects to the Subpoena issued by Plaintiffs in the above  
3 captioned matter dated September 17, 2009 and served on Schubert Flint on September 24, 2009 as  
4 follows:

### 5 **GENERAL OBJECTIONS**

6  
7 1. Schubert Flint is still in the process of completing its factual investigation in connection  
8 with the Subpoena served on it less than two weeks ago. Accordingly, these objections and  
9 responses are provided without prejudice to Schubert Flint’s right to produce subsequently  
10 discovered documents and materials, or to modify, change or amend these responses and  
11 objections. The information provided in these objections is nevertheless true and correct to the  
12 best of Schubert Flint’s knowledge at this time.

13  
14 2. Schubert Flint specifically incorporates by reference the objections and arguments set  
15 forth by Defendant-Intervenors in the following: 1) Defendant-Intervenors’ responses to Plaintiffs’  
16 Discovery Requests; 2) Defendant-Intervenors’ Motion for Protective Order (Doc # 187); 3)  
17 Defendant-Intervenors’ Reply in Support of Motion for Protective Order (Doc # 197); and 4) in  
18 any stay and/or appeals papers Defendant-Intervenors may file regarding Plaintiffs’ attempt to  
19 discover internal campaign strategy documents and/or nonpublic and/or anonymous  
20 communications related to Proposition 8. These objections are based, *inter alia*, on relevance,  
21 burden, and First Amendment privilege grounds.

22  
23 3. More specifically, Schubert Flint shares in Defendant-Intervenors’ objection that  
24 Plaintiffs’ requests as set forth in the Subpoena violate protected First Amendment rights and  
25 therefore incorporates all of Defendant-Intervenors’ First Amendment arguments and objects on  
26 those grounds to producing anything other than the public documents that have already been  
27 provided to our client, Protect Marriage.com, for production to Plaintiffs. The incorporated  
28

1 objections referenced above also include but are not limited to the objections made by Defendant-  
2 Intervenor to producing drafts and other nonpublic pre-decisional documents or communications  
3 associated with preparing final documents or communications regarding Proposition 8 that were  
4 actually disseminated to the electorate and objections to producing documents and information  
5 postdating the passage of Proposition 8 in November 2008.

6  
7 4. Schubert Flint objects to these Requests as vague, ambiguous, and/or unduly  
8 burdensome to the extent that the terms “public” and “third-party” are not defined and/or limited in  
9 any way, and taken at face value would encompass all communications Schubert Flint may have  
10 had with any “third party”—even a single individual, whether or not a California voter—bearing  
11 any relationship to Proposition 8 whatsoever. Such documents include, but are not limited to,  
12 communications with individual donors, volunteers, or voters; communications with political  
13 strategists and other agents or contractors of Defendant-Intervenor; and communications with  
14 friends, colleagues, and casual acquaintances. Moreover, Plaintiffs seek these communications  
15 regardless of whether they relate to the public understanding of or motivation for enacting  
16 Proposition 8. This presents not only First Amendment concerns, but also creates an undue burden  
17 on Schubert Flint in attempting to gather, review, and produce all such communications.  
18

19  
20 5. Schubert Flint objects to the Subpoena on the grounds that it seeks production of  
21 documents which are not legally relevant to any claims or defenses in the litigation and are not  
22 reasonably calculated to lead to the discovery of admissible evidence as required by Fed. R. Civ. P.  
23 26(b)(1).

24  
25 6. Schubert Flint objects to the Subpoena on the grounds that it imposes undue burden and  
26 expense in violation of Fed. R. Civ. P. 45(c) including but not limited to requiring Schubert Flint to  
27 produce electronically-stored information (“ESI”) that is not reasonably accessible and/or the  
28 production of which would entail substantial cost. To the extent Schubert Flint is required to

1 produce documents that are not reasonably accessible and/or is required to undertake unduly  
2 burdensome measures in response to the Subpoena, the cost of any production (including but not  
3 limited to any electronic media restoration, processing, scanning, exporting, storage, etc.) would be  
4 borne by Plaintiffs.

5  
6 7. Schubert Flint objects to the Subpoena to the extent that it seeks information and  
7 documents that: are already in Plaintiffs' possession; are duplicative of documents already  
8 produced by Defendant-Intervenors; or are as equally available to Plaintiffs from other sources that  
9 are more convenient, less burdensome, and/or less expensive. Schubert Flint further objects to the  
10 Subpoena to the extent it purports to place an obligation on Schubert Flint to produce documents  
11 and information from entities and/or individuals who are not within Schubert Flint's custody and  
12 control in violation of Fed. R. Civ. P. 26(b)(2)(C)(ii).

13  
14 8. Schubert Flint objects to the Subpoena to the extent it requires disclosing confidential  
15 research and proprietary information.

16  
17 9. Schubert Flint objects to the Subpoena to the extent it calls for the production of  
18 documents or information protected from disclosure by any claim of privilege, including but not  
19 limited to the attorney-client privilege, the work-product doctrine, and the right to privacy. While  
20 Schubert Flint does not intend to produce any such privileged or protected documents or  
21 information, should any inadvertent disclosure occur, it shall not be deemed a waiver of any  
22 privilege.

23  
24 10. Schubert Flint objects to the Subpoena, and to the definitions and instructions included  
25 therewith, to the extent that it purports to impose upon Schubert Flint obligations broader than, or  
26 inconsistent with, the Federal Rules of Civil Procedure, the Local Rules and Orders of this Court,  
27 or the Local Rules and Order of the District Court for the Northern District of California where this  
28 action is pending.

1 11. Schubert Flint objects to the Subpoena, and to the definitions and instructions included  
2 therewith, to the extent that it calls for the production of documents or information beyond what is  
3 authorized by the order of October 1, 2009 (Doc # 214) issued by the District Court for the  
4 Northern District of California in this case.

5 Subject to and without waiving any of the foregoing General Objections, which are hereby  
6 incorporated into each response given below, Schubert Flint is answering these Requests in  
7 substance to the extent practicable and reasonable under the present circumstances, as stated  
8 below. Schubert Flint hereby objects and responds to the individual Requests as follows:

9  
10 SPECIFIC OBJECTIONS AND RESPONSES

11 **REQUEST FOR PRODUCTION NO. 1:**

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

15 **RESPONSE:**

16 Shubert Flint reiterates its General Objections as if specifically set forth below in response  
17 to this Request. Schubert Flint objects to this Request as calling for irrelevant documents and  
18 documents privileged from disclosure under the First Amendment. Schubert Flint further  
19 specifically objects to this Request to the extent it calls for the production of documents and  
20 information to “donors” or “potential donors.” Schubert Flint further specifically objects to this  
21 Request to the extent it calls for production of documents and information that are not relevant  
22 and/or protected by the First Amendment—including documents not publically distributed. As  
23 noted above, Schubert Flint incorporates by reference the objections and explanations set forth by  
24 Defendant-Intervenors in the briefing on their Motion for a Protective Order and any stay and/or  
25 appeal papers they may file.  
26  
27  
28

1 Subject to and without waiving any objection, and without conceding the relevancy of any  
2 materials being produced in response to this Request, Schubert Flint has already provided to  
3 Defendant-Intervenors for production to Plaintiffs final copies of public communications  
4 responsive to this Request that were distributed to and or available to the public.  
5

6 **REQUEST FOR PRODUCTION NO. 2:**

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

10 **RESPONSE:**

11 Schubert Flint reiterates its General Objections as if specifically set forth below in response  
12 to this Request. Schubert Flint objects to this Request as calling for irrelevant documents and  
13 documents privileged from disclosure under the First Amendment. Schubert Flint objects to  
14 producing drafts of final public communications, which would include, e.g., nonpublic versions of  
15 Internet advertisements relating to Proposition 8 that were never actually posted on the Internet.  
16 Schubert Flint objects to this Request to the extent it calls for production of documents not  
17 available to the public (e.g., Internet communications of limited or invite-only distribution).  
18 Schubert Flint also specifically objects to this Request to the extent it calls for the production of  
19 material from the Internet that is not uniquely within Schubert Flint's custody or control in  
20 violation of Fed. R. Civ. P. 26(b)(2)(C)(i). To the extent there were or are Internet advertisements  
21 related to Proposition 8 posted on the Internet that information is as equally available to Plaintiffs  
22 as it is to Schubert Flint and thus is not the proper subject of discovery to Schubert Flint.  
23  
24

25 Subject to and without waiving these objections, and without conceding the relevancy of  
26 any materials being produced in response to this Request, Schubert Flint has already provided to  
27  
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1 Defendant-Intervenors for production to Plaintiffs final versions of internet advertisements posted  
2 on the Internet that Schubert Flint had involvement in producing, creating, or distributing.

3  
4 **REQUEST FOR PRODUCTION NO. 3:**

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

7  
8 **RESPONSE:**

9 Schubert Flint reiterates its General Objections as if specifically set forth below in response  
10 to this Request. Schubert Flint objects to this Request as calling for irrelevant documents and  
11 documents privileged from disclosure under the First Amendment. Schubert Flint objects to  
12 producing drafts of final public communications, which would include nonpublic versions of  
13 television advertisements relating to Proposition 8 that were never actually aired. Schubert Flint  
14 objects to this Request to the extent it calls for production of documents not available to the public.  
15 Schubert Flint also specifically objects to this Request to the extent it calls for the production of  
16 material not uniquely within Schubert Flint's custody or control in violation of Fed. R. Civ. P.  
17 26(b)(2)(C)(i).

18  
19 Subject to and without waiving these objections, and without conceding the relevancy of  
20 any materials being produced in response to this Request, Schubert Flint has already provided to  
21 Defendant-Intervenors for production to Plaintiffs final versions of any television advertisements  
22 that Schubert Flint had any involvement in creating, producing, or distributing and that were  
23 actually aired on television.

24  
25  
26 **REQUEST FOR PRODUCTION NO. 4:**

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

**RESPONSE:**

Schubert Flint reiterates its General Objections as if specifically set forth below in response to this Request. Schubert Flint objects to this Request as calling for irrelevant documents and documents privileged from disclosure under the First Amendment. Schubert Flint objects to producing drafts of final public communications, which would include nonpublic versions of radio advertisements relating to Proposition 8 that were never actually aired. Schubert Flint objects to this Request to the extent it calls for production of documents not available to the public. Schubert Flint also specifically objects to this Request to the extent it calls for the production of material not uniquely within Schubert Flint's custody or control in violation of Fed. R. Civ. P. 26(b)(2)(C)(i).

Subject to and without waiving these objections, and without conceding the relevancy of any materials being produced in response to this Request, Schubert Flint has already provided to Defendant-Intervenors for production to Plaintiffs final versions of radio advertisements that Schubert Flint had involvement in creating, producing, or distributing that were actually aired on the radio.

**REQUEST FOR PRODUCTION NO. 5:**

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

**RESPONSE:**

Schubert Flint reiterates its General Objections as if specifically set forth below in response to this Request. Schubert Flint objects to this Request as calling for irrelevant documents and documents privileged from disclosure under the First Amendment. Schubert Flint objects to producing drafts of final public communications, which would include nonpublic versions of

1 websites relating to Proposition 8 that were never actually accessible by the public. Schubert Flint  
2 objects to this Request to the extent it calls for production of documents not available to the public.

3 Subject to and without waiving these objections, and without conceding the relevancy of  
4 any materials being produced in response to this Request, Schubert Flint has already provided to  
5 Defendant-Intervenors for production to Plaintiffs final versions of Internet pages from websites  
6 related to Proposition 8 that Schubert Flint hosted, paid or, designed, or sponsored.  
7

8 **REQUEST FOR PRODUCTION NO.6:**

9 All documents you prepared for use in communicating with voters, donors, potential donors, or  
10 members of the media, including but not limited to speeches, scripts, talking points, articles, notes,  
11 and automated telemarketing phone calls.  
12

13 **RESPONSE:**

14 Schubert Flint reiterates its General Objections as if specifically set forth below in response  
15 to this Request. Schubert Flint objects to this Request as calling for irrelevant documents and  
16 documents privileged from disclosure under the First Amendment. Schubert Flint objects to this  
17 Request as calling for confidential and proprietary information. As written, this Request on its  
18 face is not even limited to the subject matter of this litigation, Proposition 8. Schubert Flint also  
19 objects to this Request to the extent it calls for drafts of final public communications, which would  
20 include nonpublic versions of documents relating to Proposition 8 that were never actually  
21 distributed or available to the public.  
22

23 Subject to and without waiving these objections, and without conceding the relevancy of  
24 any materials being produced in response to this Request, Schubert Flint has already provided to  
25 Defendant-Intervenors for production to Plaintiffs final versions of documents responsive to this  
26 Request that are outside the scope of the stated objections.  
27  
28

1 **REQUEST FOR PRODUCTION NO.7:**

2 All documents constituting postings related to Proposition 8 that were made by you on social  
3 networking websites, including but not limited to Facebook, MySpace, and Twitter.

4 **RESPONSE:**

5  
6 Schubert Flint reiterates its General Objections as if specifically set forth below in response  
7 to this Request. Schubert Flint objects to this Request as calling for irrelevant documents and  
8 documents privileged from disclosure under the First Amendment. Schubert Flint objects to this  
9 Request to the extent it calls for production of documents not available to the public. Schubert  
10 Flint further specifically objects to this Request to the extent it purports to reach the nonpublic  
11 communications and postings of individual employees of Schubert Flint on their personal (as  
12 opposed to postings publicly accessible by any member of the electorate at large) social-  
13 networking sites. While Schubert Flint does not, at this time, believe that any such postings exist,  
14 were such postings to exist Schubert Flint would object to producing them, as this would violate  
15 the First Amendment rights of Schubert Flint and its employees and call for information that is  
16 entirely irrelevant to any issue in this matter. Thus, to the extent any such postings do exist,  
17  
18 Schubert Flint objects to their production.

19  
20 Subject to and without waiving these objections, and without conceding the relevancy of  
21 any materials being produced in response to this Request, Schubert Flint has already provided to  
22 Defendant-Intervenors for production to Plaintiffs postings on public social networking sites  
23 maintained for the Yes on 8 campaign.

24  
25 **REQUEST FOR PRODUCTION NO.8:**

26 All versions of any documents that reflect communications relating to Proposition 8 between  
27 you and any third party, including, without limitation, emails between you and Protect Marriage,  
28

1 documents you provided to Protect Marriage, and communications between you and members of  
2 the media.

3 **RESPONSE:**

4 Schubert Flint reiterates its General Objections as if specifically set forth below in response  
5 to this Request. Schubert Flint objects to this Request as calling for irrelevant documents and  
6 documents privileged from disclosure under the First Amendment. Schubert Flint objects to this  
7 Request to the extent it calls for production of documents not available to the public. Schubert  
8 Flint objects to producing drafts of final public communications, which would include nonpublic  
9 versions of communications relating to Proposition 8 that were never available to the public.

10 Schubert Flint objects to the phrase “any third party” as vague, ambiguous, not defined, and not  
11 reasonably narrowed. Schubert Flint further notes that when a similarly broad request was made to  
12 Defendant-Intervenors, the Court in which this action is pending found the request to be too broad  
13 and Defendant-Intervenors’ undue burden objections well-taken. Plaintiffs were directed “to  
14 revise request no 8 to target those communications most likely to be relevant to the factual issues  
15 identified by plaintiffs.” Doc. # 214 at 16. No such attempt to redraft the Request being  
16 propounded on Schubert Flint has been made. On its face, this Request appears to be seeking any  
17 communication related to Proposition 8 in any way, whether or not it is related to a public  
18 communication or was actually available to the public. This Request appears to include, for  
19 example: any and all communications Schubert Flint may have had with other vendors,  
20 consultants, donors, members, friends, associates, or other correspondents. Such a broad request is  
21 objectionable on First Amendment grounds and because of the undue burden and expense it would  
22 impose on Schubert Flint to gather, review, log and/or produce all responsive materials, the  
23 overwhelming majority of which are irrelevant to any issue in dispute in this case in violation of  
24 Fed. R. Civ. P. 26(b)(2)(C)(iii) and 45(c).

1 Based on the objections asserted above, Schubert Flint has no additional documents to  
2 produce at this time.

3 **REQUEST FOR PRODUCTION NO. 9:**

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

6  
7 **RESPONSE:**

8 Schubert Flint reiterates its General Objections as if specifically set forth below in response  
9 to this Request. Schubert Flint objects to this Request to the extent it seeks information pre-dating  
10 its involvement in the Proposition 8 campaign. Schubert Flint further objects to this Request as  
11 overly broad and as calling for irrelevant information. Not everyone employed by Schubert Flint  
12 worked on the Proposition 8 campaign nor did everyone who did work on the campaign have  
13 substantive involvement or decisionmaking authority related to the campaign; the identity of such  
14 employees is therefore irrelevant.  
15

16 Subject to and without waiving these objections, Schubert Flint is in the process of  
17 determining whether there are any reasonably accessible, non-privileged or non-confidential  
18 documents that already exist that can be produced in response to this Request.  
19

20  
21 **REQUEST FOR PRODUCTION NO. 10:**

22 All documents reflecting public media coverage of Proposition 8 referring or related to your  
23 organization.

24 **RESPONSE:**

25 Schubert Flint reiterates its General Objections as if specifically set forth below in response  
26 to this Request. Schubert Flint further specifically objects to this Request to the extent it purports  
27 to call for the production of publicly available information that is not uniquely within Schubert  
28

1 Flint's custody and control and is as readily available to Plaintiffs as it is to Schubert Flint. *See*  
2 Fed. R. Civ. P. 26(b)(2)(C)(i). To the extent Plaintiffs wish to review the public media coverage of  
3 Proposition 8, they can access such materials just as easily as Schubert Flint. Schubert Flint  
4 further objects to this Request to the extent it calls for collections, compilations, summaries, or  
5 analysis of public media coverage that may have been created by Schubert Flint for personal,  
6 political, strategic, or other reasons.  
7

8 Subject to and without waiving these objections, and without conceding the legal relevancy  
9 of such materials, Schubert Flint has already provided to Defendant-Intervenors for production to  
10 Plaintiffs documents created by Schubert Flint and produced to the media for dissemination to the  
11 public.  
12

13 **REQUEST FOR PRODUCTION NO. 11:**

14 All documents constituting, reflecting, or referring to coordination or cooperation among  
15 organizations and/or individuals supporting the passage of Proposition 8.  
16

17 **RESPONSE:**

18 Schubert Flint reiterates its General Objections as if specifically set forth below in response  
19 to this Request. In particular, Schubert Flint objects to this Request to the extent it calls for  
20 irrelevant documents and documents protected from disclosure under the First Amendment.  
21 Schubert Flint further objects to this Request as overly broad and unduly burdensome.  
22

23 **REQUEST FOR PRODUCTION NO. 12:**

24 All minutes or other memorializations for meetings in which you participated concerning  
25 Proposition 8.  
26

27 **RESPONSE:**

28 Schubert Flint reiterates its General Objections as if specifically set forth below in response

1 to this Request. In particular, Schubert Flint objects to this Request to the extent it calls for  
2 irrelevant documents and documents protected from disclosure under the First Amendment.  
3 Schubert Flint further objects to this Request as overly broad and unduly burdensome. The term  
4 “meetings” is undefined. As the campaign manager for Protect Marriage.com, staff for Schubert  
5 Flint engaged in thousands of discussions, conferences, gatherings, etc., which may or may not  
6 constitute a “meeting” covered by this Request. Thus, this Request read literally could require the  
7 production of scores of notes, emails, etc. bearing even the remotest relationship to Proposition 8  
8 whether or not actually related to Plaintiffs’ purported interests in seeking such discovery.  
9

10 Subject to these objections, Schubert Flint has no documents to produce at this time.  
11

12 **REQUEST FOR PRODUCTION NO. 13:**

13 Documents sufficient to show all expenditures by you and payments to you in connection with  
14 Proposition 8.  
15

16 **RESPONSE:**

17 Schubert Flint reiterates its General Objections as if specifically set forth below in response to this  
18 Request. In particular, Schubert Flint objects to this Request to the extent it calls for irrelevant  
19 documents and documents protected from disclosure under the First Amendment. Schubert Flint  
20 further objects to this Request as impermissibly seeking private and/or proprietary information. The  
21 amount of expenditures made or payments received by Schubert Flint in connection with Proposition  
22 8 are irrelevant to any claim or defense in this action and is not information designed to lead to the  
23 discovery of admissible evidence.  
24

25 Subject to these objections, Schubert Flint has no additional documents to produce at this  
26 time.  
27  
28

1 October 7, 2009

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

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