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

20 KRISTIN M. PERRY, *et al.*,
Plaintiffs,
21 and
22 CITY AND COUNTY OF SAN FRANCISCO,
Plaintiff-Intervenor,

23 v.

24 ARNOLD SCHWARZENEGGER, *et al.*,
25 Defendants,
26 and
27 PROPOSITION 8 OFFICIAL PROPONENTS
DENNIS HOLLINGSWORTH, *et al.*,
28 Defendant-Intervenors.

CASE NO. 09-CV-2292 VRW

**PLAINTIFFS' AND PLAINTIFF-
INTERVENOR'S NOTICE OF MOTION
AND MOTION *IN LIMINE* TO EXCLUDE
PORTIONS OF THE EXPERT REPORT,
OPINIONS, AND TESTIMONY OF
KENNETH P. MILLER**

PLAINTIFFS' MIL NO. 2 OF 2

*[Declaration of Jeremy M. Goldman In Support
and Proposed Order Filed Concurrently
Herewith]*

Date: December 16, 2009 [Pre-Trial Conf.]
Time: 10:00 a.m.
Judge: Chief Judge Walker
Location: Courtroom 6, 17th Floor
Trial Date: January 11, 2010

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 16, 2009, at 10:00 a.m., or as soon thereafter as counsel may be heard, in the United States District Court for the Northern District of California, San Francisco Division, Courtroom 6, located at 450 Golden Gate Avenue, San Francisco, California 94102, Plaintiffs Kristin M. Perry, Sandra B. Stier, Paul T. Katami, and Jeffrey J. Zarillo (collectively, “Plaintiffs”) and Plaintiff-Intervenor the City and County of San Francisco (“Plaintiff-Intervenor”) will and hereby do move *in limine* pursuant to Fed. R. Civ. P. 37(c)(1) for an order (1) striking Paragraphs 53 through 72 of the rebuttal expert report of Kenneth P. Miller, Ph.D., who was designated as a rebuttal expert witness in this matter by Defendant-Intervenors Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Hak-Shing William Tam, Mark A. Jansson, and ProtectMarriage.com – Yes on 8, A Project of California Renewal (collectively, “Proponents”), and (2) precluding Dr. Miller from offering any opinions or testimony at trial relating to the topics or materials in the stricken paragraphs.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Proponents have designated a rebuttal expert, Dr. Kenneth P. Miller, whose report contains a
 4 lengthy section on religion that duplicates almost in its entirety the previously served report of Dr.
 5 Paul Nathanson, and that does not actually rebut anything in the report of Plaintiffs' expert, Dr. Gary
 6 M. Segura. Accordingly, the challenged section of Dr. Miller's report is doubly improper and should
 7 be stricken on both grounds: (1) although it ostensibly rebuts the report of Dr. Segura, Dr. Miller's
 8 report does not actually do so and instead mischaracterizes a single sentence of the report as a pretext
 9 to offer non-responsive "rebuttal" testimony; and (2) that section of Dr. Miller's report impermissibly
 10 duplicates the report filed by Proponents' expert, Dr. Nathanson, in their case-in-chief.

11 **FACTS**

12 Pursuant to the Court's Civil Minute Order dated August 19, 2009 (the "August 19, 2009
 13 Order," Exhibit A to the Declaration of Jeremy M. Goldman, Esq., ("Goldman Decl.")), initial expert
 14 reports were filed by Plaintiffs and the Proponents on October 2, 2009. Plaintiffs served the report of
 15 Dr. Segura ("Segura Report," Goldman Decl. Ex. B). Proponents served the report of Paul
 16 Nathanson, Ph.D. ("Nathanson Report," Goldman Decl. Ex. C). Appended to the back of Dr.
 17 Nathanson's report was an "Index of Material Considered." Goldman Decl. Ex. D. In accordance
 18 with the agreement of the parties, rebuttal expert reports were served on November 9, 2009.
 19 Proponents served the rebuttal expert report of Kenneth P. Miller, Ph.D. ("Miller Report," Goldman
 20 Decl. Ex. E). Dr. Miller's report also included an "Index of Material Considered" at the end.
 21 Goldman Decl. Ex. F.

22 **The Miller Report Does Not Rebut the Segura Report**

23 Dr. Segura, a Professor of American Politics in the Department of Political Science at Stanford
 24 University, discusses in his report "the relative political power of gays and lesbians as a class of
 25 citizens, and their level of political vulnerability." Segura Report at 2. In one sentence of the report,
 26 Dr. Segura noted that "the San Francisco Chronicle reported that the campaign in favor of
 27 Proposition 8 was conceived and funded by a cooperative effort of the Roman Catholic Archbishop
 28 of San Francisco and the senior leadership of the Mormon Church." Segura Report at 12. Dr.

1 Segura does not refer to the role of religious leaders or denominations in the Proposition 8 campaign
2 in any other section of the report; he does not argue that religion played a role on only one side of the
3 controversy; he does not claim that religious leaders were active only to support the passage of
4 Proposition 8.

5 Nonetheless, based on this sentence in Dr. Segura's report, Dr. Miller devotes six single-spaced
6 pages of his report to "rebutting" a claim that "Proposition 8 was the result of concerted activity by
7 certain religious groups. *See* Segura Report at 12." Miller Report, ¶ 53. After attributing this
8 opinion to Dr. Segura, Dr. Miller does *not* offer the contrary opinion that Proposition 8 was not "the
9 result of concerted activity by certain religious groups." Instead, he writes: "Based on my own
10 review of the relevant materials, I conclude that religious groups both supported and opposed
11 Proposition 8." Miller Report, ¶ 53. Paragraphs 53-72 of the Miller Report then detail at length his
12 conclusions regarding the stances that various religious denominations took regarding Proposition 8.

13 As set forth below, pursuant to Fed. R. Civ. P. 26(a)(2)(C)(ii), a rebuttal expert report is
14 "intended solely to contradict or rebut evidence on the same subject matter identified by another party
15 under Rule 26 (a)(2)(B)." These sections of the Miller Report cannot be considered a rebuttal report
16 because they do not contradict or rebut a claim made by Dr. Segura. Thus, they do not constitute
17 proper rebuttal expert report material, and should be stricken, and Dr. Miller's testimony limited to
18 exclude any opinions or testimony regarding those sections at trial.

19 **The Miller Report Duplicates The Nathanson Report**

20 The Nathanson Report – served on October 2, 2009, and thus part of the Proponents' case-in-
21 chief – is devoted to the discussion of "religious attitudes toward Proposition 8." Nathanson Report,
22 ¶ 2. Like Dr. Miller – but over a month earlier – Dr. Nathanson offered the opinion in his report that
23 religious communities both supported and opposed Proposition 8:

24 Several religious communities—such as the (Mormon) Church of Jesus Christ of
25 Latter-day Saints, the Southern Baptists, and Orthodox Judaism—do support
26 Proposition 8. But within these communities are dissenters and even dissenting
27 organizations. Moreover, other religious communities—such as the Episcopal Church,
28

1 the Unitarian Universalist Association, the United Church of Christ, and Reform
2 Judaism—vigorously *oppose* Proposition 8.

3 *Id.* Thus, the thesis of the Nathanson Report is identical to that of Paragraphs 53-72 of the Miller
4 Report.

5 But the two reports share more than just a thesis; nearly every paragraph of the Miller Report
6 has an analog in the Nathanson Report. The striking and extensive similarities between the two
7 reports are set forth at length in the chart attached as Appendix A to this memorandum. Among those
8 similarities are the following:

- 9 • Dr. Miller concluded that “religious communities do not speak with one voice on matters
10 relating to same-sex marriage and homosexuality,” and that even within the Catholic
11 Church, which supported Proposition 8, “adherents can differ on the issue.” Miller
12 Report, ¶¶ 55-56. Dr. Nathanson concluded that “Bishops of the California Catholic
13 Conference support Proposition 8. So does a Catholic fraternal organization, the Knights
14 of Columbus.” Yet, he stated, “Catholics are profoundly divided over the issue,” and
15 “dissenters lack support from the hierarchy, it is true, but everyone hears their ‘voices.’”
16 Nathanson Report, ¶ 16.
- 17 • Dr. Miller cited the liberal position taken by some Protestant clergy, arguing that
18 “[n]umerous Christian laypersons, clergy, local congregations, and even entire
19 denominations, have stood at the forefront of the movement for LGBT rights and the
20 effort to win legal recognition for same-sex marriage.” Miller Report, ¶ 55. Dr.
21 Nathanson cited religious leaders who spoke against Proposition 8, saying that “[a]t the
22 very least, they confer religious prestige on the cause of opposition to Proposition 8,” and
23 then named several such religious leaders. Nathanson Report, ¶ 18.
- 24 • Dr. Miller cited the adoption in 2005 by the Twenty-fifth General Synod of the United
25 Church of Christ of a resolution urging congregations and individuals to support
26 legislation to grant equal marriage rights to couples regardless of gender. Miller Report, ¶
27 66. Dr. Nathanson stated that “[o]n 4 July 2005, the United Church of Christ officially
28 endorsed gay marriage.” Nathanson Report, fn. 18.

- Dr. Miller catalogues and contrasts the positions of the Orthodox, Conservative, Reform, and Reconstructionist Jewish communities. Miller Report, ¶ 70. Dr. Nathanson does the same. ¶¶ 31, 38, fn. 30.

In addition, the reports by Dr. Miller and Dr. Nathanson each include an “Index of Materials Considered.” Over 150 of the materials listed on Dr. Nathanson’s index also appear on Dr. Miller’s index. See Appendix B, attached hereto, comparing Goldman Decl. Ex. F with Goldman Decl. Ex. D. The nature of those materials – which include press releases, newspaper articles, and websites – makes it likely that Dr. Miller simply copied them from Dr. Nathanson to support the same opinion already offered in Dr. Nathanson’s report. Moreover, the index for Dr. Miller’s sources lists 28 websites that not only appear on Dr. Nathanson’s index, but also show the same “last visited” date – all of which precede the date when Dr. Segura’s report was served on the Proponents. Those sources are separately listed in Appendix C to this memorandum. The religion section of Dr. Miller’s report, and the support for it, is plainly duplicative of Dr. Nathanson’s report. Moreover, the fact that Dr. Nathanson addressed these same issues in his report, before Plaintiffs served their reports, makes clear that these opinions are not truly rebuttal at all but rather are opinions Proponents fully intend to offer in support of their own case.

ARGUMENT

The decision whether to admit or exclude expert testimony is submitted to the sound discretion of the trial court. *Clausen v. M/V New Carissa*, 339 F.3d 1049, 1055 (9th Cir. 2003). Federal Rule of Civil Procedure 26(a)(2)(C) requires the parties to disclose experts and their reports “at the times and in the sequence that the court orders.” Rebuttal reports are those “intended solely to contradict or rebut evidence on the same subject matter identified by another party.” Fed. R. Civ. P. 26(a)(2)(C)(ii). Failure to abide by the disclosure rules subjects a party to sanctions pursuant to Fed. R. Civ. P. 37(c)(1), including the exclusion of evidence. “Rule 37(c)(1) gives teeth to these requirements by forbidding the use at trial of any information required to be disclosed by Rule 26(a) that is not properly disclosed.” *Yeti By Molly Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001); *Internet Servs. v. Immersion Corp.*, No. C-06-02009, 2008 WL 2051028, at *1 (N.D. Cal. May 13, 2008) (quoting *Yeti By Molly Ltd.*, 259 F.3d at 1106); *Jarritos, Inc. v. Los Jarritos*, No.

1 C-05-02380, 2007 WL 1302506, at *3 (N.D. Cal. May 2, 2007) (same), *aff'd on this ground and*
2 *rev'd on other grounds*, 2009 WL 2487066 (9th Cir. Aug. 14, 2009).

3 The appropriate way to limit the expert's testimony at trial is through a motion *in limine*.
4 "[T]he remedy for noncompliant expert reports is usually exclusion of the witness' testimony under
5 Rule 37(c) upon a proper motion in limine." *Universal Trading & Inv. Co. v. Kiritchenko*, No. C-99-
6 03073, 2007 WL 2141296, at *3 (N.D. Cal. July 25, 2007); *see also Johnson v. Grays Harbor Cmty.*
7 *Hosp.*, No. C06-5502, 2007 WL 4510313, at *2 (W.D. Wash. Dec. 18, 2007).

8 **I. THE MILLER REPORT DOES NOT REBUT THE SEGURA REPORT**

9 Although it purports to rebut the Segura Report, the challenged section of the Miller Report
10 (Paragraphs 53-72) does not actually contradict any claim Dr. Segura made in his report. Since the
11 Miller Report was designated as a rebuttal expert report – and served on the November 9 date for
12 rebuttal reports rather than the October 2 date for initial reports – both the report and his testimony
13 must be limited to subjects and evidence that fairly rebut Plaintiffs' experts. *See Johnson*, 2007 WL
14 4510313, at *2 ("By virtue of Plaintiff's designation of his experts purely as rebuttal experts,
15 Plaintiff has limited his experts to rebuttal testimony.").

16 A rebuttal report may be stricken and the expert excluded from testifying at trial if the subject
17 matter of the report does not actually rebut the other party's expert testimony. The *Jarritos* court
18 struck the bulk of the rebuttal expert reports because "the substance of their reports [did] not actually
19 rebut or even directly address [opposing expert's] opinion." *Jarritos, Inc.*, 2007 WL 1302506, at *5.
20 In *J.W. v. City of Oxnard*, No. CV 07-06191, 2008 WL 4810298 (C.D. Cal. Oct. 27, 2008), the trial
21 court excluded the testimony of one of the plaintiff's expert rebuttal witnesses because the plaintiff
22 "failed to show that [the expert's] testimony would be given 'solely to contradict or rebut'
23 defendants' expert testimony," as the defendants had not designated any expert testimony on the
24 same subject that the plaintiff's expert could possibly rebut. *Id.* at *4; *see also Lindner v. Meadow*
25 *Gold Dairies, Inc.*, 249 F.R.D. 625, 637 (D. Haw. 2008) (portion of rebuttal witness report that does
26 not contradict or rebut anything in other party's expert report "does not constitute a proper rebuttal
27 report," would be stricken, and expert would not be permitted to testify at trial regarding that portion
28 of the report).

1 Dr. Miller's opinions in paragraphs 53 to 72 of his report consist of a survey of positions
2 taken by religious denominations related to Proposition 8:

- 3 • the position of the Catholic Church and most Evangelical churches in opposition to same-
4 sex marriage and homosexuality, and the support by Catholic Church and many
5 Evangelical churches for Proposition 8. Miller Report, ¶¶ 55-57.
- 6 • statements by the Southern Baptist Convention and the American Baptist Churches in the
7 U.S.A opposing same-sex marriage, and the formation of a dissenting group within the
8 Baptist organization. Miller Report, ¶¶ 58-59.
- 9 • the positions of the United Methodist Church, the Presbyterian Church, and the Lutheran
10 Church-Missouri Synod on homosexuality and same-sex marriage. Miller Report, ¶¶ 61-
11 63.
- 12 • efforts by liberal Protestant clergy to support LGBT rights, including same-sex marriage.
13 Miller Report, ¶ 55.
- 14 • positions taken by groups such as the United Church of Christ, the Unitarian Universalist
15 Association, the California Council of Churches and certain Episcopal church members
16 urging recognition of same-sex marriage. Miller Report, ¶¶ 65-68.
- 17 • the positions of Orthodox, Conservative, Reform, and Reconstructionist Jewish
18 movements regarding homosexuality and same-sex marriage. Miller Report, ¶ 70.

19 The single sentence of the Segura Report offered as the basis for these six pages of "rebuttal"
20 is pretext. Dr. Segura's reference to the San Francisco Chronicle article regarding the role of the
21 Roman Catholic and Mormon Churches in conceiving and funding the campaign for Proposition 8 is
22 not contradicted by the paragraphs describing positions taken by other religious denominations.
23 Rather than contradict or rebut Dr. Segura's report, Dr. Miller confirms that both the Catholic Church
24 and the Mormon Church supported Proposition 8. Miller Report, ¶¶ 56, 60. Moreover, it is improper
25 under Fed. R. Civ. P. 26(a)(2)(C) to use a single line from an expert's report as a springboard into an
26 tangential subject matter. In *United States v. Southern California Edison Co.*, 1:01-CV-5167, 2005
27 U.S. Dist. Lexis 24592, at *14-16 (E.D. Cal. Sept. 23, 2005), the court struck a rebuttal expert's
28 opinion that seized upon a single line in the other party's expert report to launch a "detailed and

1 expansive analysis” of an ancillary subject, writing that the party proffering the rebuttal “might as
2 well thread an elephant through the eye of a needle.” *Id.* at *15.

3 Paragraphs 53-72 of Dr. Miller’s report do not meet the requirement that they be “intended
4 solely to contradict or rebut” the evidence proffered in the single sentence of Dr. Segura’s report,
5 because they confirm, rather than contradict or rebut, the facts in Dr. Segura’s statement. Fed. R.
6 Civ. P. 26(a)(2)(C)(ii). Moreover, as discussed below, the use of that sentence is pretextual: It is an
7 impermissible effort to put into the mouth of a new expert words that were already offered by another
8 expert as part of Proponents’ case-in-chief.

9 **II. THE MILLER REPORT DUPLICATES THE NATHANSON REPORT**

10 Paragraphs 53-72 of Dr. Miller’s report present nearly identical information to that contained
11 in the Nathanson Report, served on October 2. Where a party designates a purported rebuttal witness
12 who simply repeats the analysis of a witness designated as part of that party’s case-in-chief, the
13 rebuttal witness’s testimony may be limited at trial to preclude any duplicative testimony. *See*
14 *Scientific Components Corp. v. Sirenza Microdevices, Inc.*, No. 03 CV 1851, 2008 WL 4911440, *3-
15 4 (E.D.N.Y. Nov. 13, 2008).

16 In *Scientific Components*, which centered on the merchantability of amplifiers, the plaintiff
17 had first offered a witness in its case-in-chief to discuss the stability of the amplifiers, but then
18 offered a second witness, ostensibly a rebuttal witness, who included in his report a section that
19 “improperly repeats and restates” the analysis of the original report. *Id.* at *3. The court held that the
20 repetitive portion was not “intended *solely* to contradict or rebut evidence” as required by Fed. R.
21 Civ. P. 26 (a)(2)(C)(ii) and prejudice to the other party could be eliminated by limiting the witness’s
22 trial testimony to exclude any testimony that would duplicate the other witness. *Id.* at *3-4 (original
23 emphasis).

24 As set forth *supra* and in Appendix A, the reports submitted by Drs. Miller and Nathanson are
25 startlingly alike:

- 26 • Each expresses the thesis that religious groups acted both in support of and in opposition
27 to Proposition 8.

- 1 • Each details the support for Proposition 8 by the Catholic Church, as well as that church's
- 2 views on homosexuality and same-sex marriage, and the views of the other major religion
- 3 that was a significant supporter of Proposition 8, the Mormon Church.
- 4 • Each examines denominations that have taken official stances either in support of
- 5 Proposition 8 or against same-sex marriage, but, according to Drs. Miller and Nathanson,
- 6 experience some dissent among their adherents on the issue.
- 7 • Each examines the positions on homosexuality or same-sex marriage by other
- 8 denominations – in fact, they often cite the same denominations.
- 9 • Each details efforts by some Protestants churches in California to advocate for same-sex
- 10 marriage.
- 11 • Each examines the varying positions among the Orthodox, Conservative, Reform, and
- 12 Reconstructionist branches of Judaism.

13 Moreover, the “Index of Materials Considered” appended to each report indicates that Drs. Miller and
14 Nathanson considered over 150 identical materials, including websites, press releases, and newspaper
15 articles. *See* Appendix B. That list of duplicative materials includes 28 websites that have the same
16 “last visited” date. *See* Appendix C. It is not plausible that Dr. Nathanson and Dr. Miller visited
17 these 28 websites on the exact same date – each of which, moreover, proceeds the date on which Dr.
18 Segura’s report was served on the Proponents and therefore available to Dr. Miller.

19 It appears that Proponents are likely violating the rules governing rebuttal reports in an
20 attempt to substitute a new expert for a prior expert with whom they may now not wish to proceed.
21 But whatever the Proponents’ motivation in serving a duplicative rebuttal report, their tactic is
22 improper. Rebuttal testimony “is limited to that which is precisely directed to rebutting new matter
23 or new theories” and “is not an opportunity for the correction of any oversights in the [party’s] case
24 in chief.” *Crowley v. Chait*, 322 F. Supp. 2d 530, 550-51 (D.N.J. 2004) (internal citations and
25 quotation marks omitted). Not only are Dr. Miller’s opinions duplicative and cumulative to the
26 extent they repeat opinions offered by Dr. Nathanson, they also are not proper rebuttal because
27 whatever need there is for such evidence was known to Proponents when they served their initial
28

1 reports. The portions of the Miller Report should be excluded and the witness's testimony limited at
2 trial to exclude any testimony regarding those subjects.

3 **CONCLUSION**

4 For the reasons set forth above, Plaintiffs and Plaintiff-Intervenor request that the Court enter
5 an order striking paragraphs 53-72 of Dr. Miller's report and precluding him from offering opinions
6 or testimony on the subject matters expressed therein.

7
8 Dated: December 7, 2009

BOIES, SCHILLER & FLEXNER LLP

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CITY AND COUNTY OF SAN FRANCISCO

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APPENDIX A
SIMILARITIES BETWEEN NATHANSON AND MILLER REPORTS

MILLER	NATHANSON
<p>Based on my own review of the relevant materials, I conclude that religious groups both supported and opposed Proposition 8. ¶ 53</p>	<p>As I will demonstrate, religious attitudes to Proposition 8 vary considerably. Several religious communities—such as the (Mormon) Church of Jesus Christ of Latter-day Saints, the Southern Baptists, and Orthodox Judaism—do support Proposition 8. But within these communities are dissenters and even dissenting organizations. Moreover, other religious communities—such as the Episcopal Church, the Unitarian Universalist Association, the United Church of Christ, and Reform Judaism—vigorously <i>oppose</i> Proposition 8. ¶ 2</p>
<p>It is notable that the religious community does not speak with one voice on matters relating to same-sex marriage and homosexuality. The Catholic Church and most Evangelical churches defend the historic Christian doctrine that marriage is a union between a man and a woman. Even within these faiths, adherents can differ on the issue of same-sex marriage. ¶ 55</p>	<p>Bishops of the California Catholic Conference support Proposition 8. So does a Catholic fraternal organization, the Knights of Columbus. Nonetheless, this position has “met with mixed reactions among church members, including clergy.” Catholics are profoundly divided over gay marriage (along with many other social and political problems); dissenters lack support from the hierarchy, it is true, but everyone hears their “voices.” ¶ 16 (footnote omitted)</p>
<p>California’s mainline Protestant congregations and clergy have often staked out the liberal position in these denominational controversies. Numerous Christian laypersons, clergy, local congregations, and even entire denominations, have stood at the forefront of the movement for LGBT rights and the effort to win legal recognition for same-sex marriage. ¶ 55</p>	<p>Although religious leaders usually speak officially for their denominations or their organizations, some who support [sic] Proposition 8 speak primarily for themselves—in this case, usually (though not always) as gay people or people with gay friends or relatives. At the very least, they confer religious prestige on the cause of opposition to Proposition 8. These supporters of gay rights include V. Gene Robinson (Episcopalian bishop of New Hampshire); Denise L. Eger (rabbi of Congregation Kol Ami in West Hollywood and president of the Board of Rabbis of Southern California); Mark Pelavin (associate director of the</p>

	<p>Religious Action Center for Reform Judaism in Washington D.C.); and Elliot Dorff (Conservative rabbi and rector of American Jewish University in Los Angeles). ¶ 18</p>
<p>The Roman Catholic Church has consistently defended church teaching that marriage is a union between a man and a woman, and has opposed efforts to grant legal recognition to same-sex unions. In 2003, the Administrative Committee of the U.S. Conference of Catholic Bishops issued a statement declaring: “we strongly oppose any legislative and judicial attempts, both at state and federal levels, to grant same-sex unions the equivalent status and rights of marriage—by naming them marriage, civil unions or by other means.” The Catholic Church actively supported Proposition 8. ¶ 56</p>	<p>As evidence, they point to the fact that that some churches—notably the Roman Catholic Church and the (Mormon) Church of Jesus Christ of Latter-day Saints—actively promoted Proposition 8. ¶ 15 (footnote omitted).</p> <p>Officially supporting Proposition 8, and therefore supporting traditional marriage, are the Roman Catholic Church . . . ¶ 17</p>
<p>The Southern Baptist Convention is the largest Protestant denomination in the United States. In 2003, the Southern Baptist Convention reaffirmed its support for the traditional definition of marriage and its opposition to legal recognition of “same-sex marriage or other equivalent unions.” ¶ 58</p>	<p>Several religious communities—such as the (Mormon) Church of Jesus Christ of Latter-day Saints, the Southern Baptists, and Orthodox Judaism—do support Proposition 8. ¶ 2.</p> <p>Officially supporting Proposition 8, and therefore supporting traditional marriage, are the Roman Catholic Church, the Mormon Church, the Lutheran Church-Missouri Synod, the Southern Baptist Convention, and various organizations that represent Orthodox Judaism. ¶ 17</p>
<p>The Church of Jesus Christ of Latter Day Saints (LDS) has approximately 6 million members in the U.S. and 700,000 in California. The church affirms that marriage between a man and a woman is ordained by God and it opposes legal recognition of same-sex relationships. ¶ 60</p>	<p>Several religious communities—such as the (Mormon) Church of Jesus Christ of Latter-day Saints, the Southern Baptists, and Orthodox Judaism—do support Proposition 8. ¶ 2.</p> <p>Officially supporting Proposition 8, and therefore supporting traditional marriage, are the Roman Catholic Church, the Mormon Church, the Lutheran Church-Missouri Synod, the Southern Baptist Convention, and various organizations that represent Orthodox Judaism. ¶ 17</p>

<p>The United Methodist Church (UMC), the nation's second-largest Protestant denomination (11 million members), is deeply divided over questions of homosexuality and same-sex unions. The General Conference of the UMC, the denomination's governing body, has affirmed that it "support[s] laws in civil society that define marriage as the union of one man and one woman." However, many Methodist congregations in California have been at the forefront of a movement in the church to affirm same-sex unions. Numerous United Methodist ministers in California have challenged denominational authorities by performing weddings for same-sex couples. In June 2009, 82 retired UMC pastors in Northern California signed a resolution offering to perform such ceremonies on behalf of active ministers who feel constrained by church discipline. The two United Methodist regional assemblies based in California declared their opposition to Proposition 8. The (Southern) California-Pacific assembly called on Methodists to "work with all their might for [Proposition 8's] defeat" and many UMC clergy and laypersons actively opposed the measure. ¶ 61</p>	<p>In September 2008, California Faith for Equality met in a West Hollywood church to oppose Proposition 8. Director Kerry Chaplin told clergy and laypeople that they should bear in mind the "spectrum of beliefs and opinions in the religious community [about gay marriage] ... Leaders in the Episcopal and United Methodist churches, two denominations torn over the homosexuality debate, oppose [Proposition 8] on civil rights grounds." On 1 November 2008, San Francisco's Glide Memorial [United Methodist] Church held an interreligious celebration of gay marriage. ¶ 21</p> <p>Central United Methodist Church in Sacramento sponsored "Sing Out the Vote and Take to the Streets: An Interfaith 'No on 8' Celebration." ¶ 22</p>
<p>The Presbyterian Church (U.S.A.) is another large mainline Protestant denomination that is internally divided on questions of homosexuality and same-sex unions. The General Assembly of PCUSA has not explicitly addressed the issue of same-sex marriage. PCUSA has denied ordination to persons in gay and lesbian relationships as a consequence of its rule that ministers must live in "fidelity within the covenant of marriage between a man and a woman, or chastity in singleness." A strong faction in the denomination has challenged this rule. The General Assembly has voted to remove this</p>	<p><i>The Presbyterian Church (USA):</i> Although not all Presbyterians oppose Proposition 8, many do. ¶ 28.</p>

<p>limitation, but this action has not received the necessary ratification from local presbyteries. ¶ 62</p>	
<p>The Lutheran Church-Missouri Synod supports the traditional definition of marriage and urged its members to support Proposition 8. ¶ 63</p>	<p>Officially supporting Proposition 8, and therefore supporting traditional marriage, are the Roman Catholic Church, the Mormon Church, the Lutheran Church-Missouri Synod, the Southern Baptist Convention, and various organizations that represent Orthodox Judaism. ¶ 17</p>
<p>The Episcopal Church (2.1 million members in the U.S.) has become increasingly active in promoting LGBT rights. In 2003, the Church consecrated its first openly gay bishop and the church supports the ordination of gay clergy, a position which causes tension within the global Anglican Communion. In 2006, the General Convention of the Episcopal Church stated its “support of gay and lesbian persons and [opposition to] any state or federal constitutional amendment prohibiting gay marriages or civil unions.” In September 2008, California’s six most senior Episcopal bishops issued a joint statement urging voters to defeat Proposition 8. The bishops argued that “the Christian values of monogamy, commitment, love, mutual respect, and witness of monogamy are enhanced for all by providing [the right to marry] to gay and straight alike.” ¶65</p>	<p>Moreover, other religious communities—such as the Episcopal Church, the Unitarian Universalist Association, the United Church of Christ, and Reform Judaism—vigorously <i>oppose</i> Proposition 8. ¶ 2</p> <p>But many other churches, including the United Church of Christ, the Episcopal dioceses of California, and the Unitarians opposed Proposition 8. ¶ 15</p>
<p>In October 2008, a national newsletter published by Integrity, a group within the Episcopal Church that advocates LGBT rights, reported: “We are delighted by the super work of our many ongoing groups in the Western Region—especially the many members, groups, and parishes opposing California's Proposition 8 (the anti-marriage amendment). We are very excited by the support of all the California bishops for the Vote No On Prop 8 campaign and by the work of many groups and parishes in hosting benefit parties, phone banks, and other anti-ballot</p>	<p>Two rabbinical associations came out against Proposition 8, as did Bishops in Episcopal, Lutheran, Methodist and several Black church traditions and other Christian leaders.” ¶ 25</p>

<p>events.” . . . In 2009, the General Convention voted to give bishops the option to bless same-sex unions. ¶ 65</p>	
<p>In 2005, the Twenty-fifth General Synod of the United Church of Christ (UCC) adopted a resolution urging congregations and individuals to “support local, state and national legislation to grant equal marriage rights to couples regardless of gender, and to work against legislation, including constitutional amendments, which denies civil marriage rights to couples based on gender.” Numerous UCC congregations in California have mobilized in support of same-sex marriage, by opposing Proposition 8 and endorsing legislation to grant marriage rights to same-sex couples. ¶ 66</p>	<p>On 4 July 2005, the United Church of Christ officially endorsed gay marriage:” Whereas the Bible affirms and celebrates human expressions of love and partnership, calling us to live out fully that gift of God in responsible, faithful, committed relationships that recognize and respect the image of God in all people; and Whereas the life and example of Jesus of Nazareth provides a model of radically inclusive love and abundant welcome for all; and Whereas we proclaim ourselves to be listening to the voice of a Still Speaking God at that at all times in human history there is always yet more light and truth to break forth from God’s holy word . . . Therefore let it be resolved that the Twenty-fifth General Synod of the United Church of Christ affirms equal marriage rights for couples regardless of gender and declares that the government should not interfere with couples regardless of gender who choose to marry and share fully and equally in the rights, responsibilities and commitment of legally recognized marriage; and Let it be further resolved that the Twenty-fifth General Synod of the United Church of Christ affirms equal access to the basic rights, institutional protections and quality of life conferred by the recognition of marriage . . .” Fn. 18</p>
<p>The Unitarian Universalist Association has adopted numerous resolutions supporting equal rights for LGBT persons, including support for same-sex unions. In 1996, the General Assembly of the UUA adopted a resolution reaffirming its support for legal recognition for marriage between members of the same sex and urged the organization to make its position known through the media and for local member congregations to promote it in</p>	<p>In 1996, the Unitarian Universalist Association officially endorsed gay marriage: “Because Unitarian Universalists affirm the inherent worth and dignity of every person; and Because marriage is held in honor among the blessings of life . . . Therefore be it resolved that the 1996 General Assembly of the Unitarian Universalist Association adopts a position in support of legal recognition for marriage between members of the same sex . . .” Fn.</p>

<p>their home communities. Unitarian Universalist congregations have actively pursued this goal. ¶ 67</p>	<p>19</p>
<p>The California Council of Churches is a prominent advocate of LGBT rights. This association represents 51 different mainline Protestant and Orthodox denominations and groups with more than 1.5 million members. Its member organizations include the denominations or local affiliates of the American Baptist Churches, African Methodist Episcopal Church, African Methodist Episcopal Zion Church, Armenian Church of America, Christian Church (Disciples of Christ), Christian Methodist Episcopal Church, Church of the Brethren, Church Women United, Community of Christ, Episcopal Church, Ethiopian Orthodox Church, Evangelical Lutheran Church of America, Greek Orthodox Church, Moravian Church, National Baptist Convention, Orthodox Clergy Council, Presbyterian Church (USA), Reformed Church in America, Swedenborgian Church, United Church of Christ, the United Fellowship of Metropolitan Community Churches, and the United Methodist Church. ¶ 68</p>	<p>At around that time, the Council of Churches of Santa Clara County Committee against Proposition 8, consisting of approximately 25 local churches, sponsored the following announcement in the <i>San Jose Mercury News</i>: “As people of faith, we believe that all people are made in the image of God. We believe in loving, faithful, and committed relationships. We affirm everyone’s right to the freedom to marry. We urge you to vote no on Proposition 8. Don’t eliminate marriage for anyone.”¹⁰ Among those who signed this announcement (in addition to members of the Metropolitan Community Church) were Episcopalians, Unitarians, United Methodists, Lutherans, Baptists, Presbyterians, and members of the United Church of Christ. ¶ 21</p>
<p>The California Council of Churches states that it is devoted to “creat[ing] a world that cares for all of its citizens regardless of economic class, ages, gender, race and ethnicity, religious belief, or sexual orientation.” The CCC operates an office in Sacramento to represent these member organizations on matters of public policy, and advocates on behalf of LGBT rights, including the right of same-sex couples to marry. It opposed Proposition 8, filed amicus briefs in support of same-sex marriage in both <i>In re Marriage Cases</i> and <i>Strauss v. Horton</i>, and through California Church IMPACT, endorsed A.B. 43 (Leno), the legislative measure seeking to end the ban</p>	<p>At around that time, the Council of Churches of Santa Clara County Committee against Proposition 8, consisting of approximately 25 local churches, sponsored the following announcement in the <i>San Jose Mercury News</i>: “As people of faith, we believe that all people are made in the image of God. We believe in loving, faithful, and committed relationships. We affirm everyone’s right to the freedom to marry. We urge you to vote no on Proposition 8. Don’t eliminate marriage for anyone.”¹⁰ Among those who signed this announcement (in addition to members of the Metropolitan Community Church) were Episcopalians, Unitarians, United</p>

<p>on same-sex marriage in California. ¶ 69</p>	<p>Methodists, Lutherans, Baptists, Presbyterians, and members of the United Church of Christ. ¶ 21</p> <p>[Religious denominations opposing Proposition 8] have described themselves to California’s Supreme Court,²² so there is no need to repeat that exhaustive account here. ¶ 26</p> <p>Fn. 22: Application for Leave to Join Brief of Amici Curiae California Council of Churches et al. in Support of Petitioners, Strauss et al. v. Horton et al., Nos. S168047/S168066 /S168078 (Cal. 2009)..</p>
<p>The leadership of Orthodox Judaism defines marriage as an institution between a man and a woman and does not accept same-sex marriage. ¶ 70</p>	<p>Orthodox Judaism generally supports Proposition 8 and therefore opposes gay marriage . . . ¶ 31.</p> <p>Hebrew scripture clearly forbids (male) homosexuality. Many groups that represent Orthodox Judaism <i>support</i> Proposition 8 (and therefore opposed gay marriage). Among the Orthodox organizations that take this position are the Orthodox Union, Agudath Israel of America, and Agudath Israel of California. ¶ 38 (footnote omitted)</p>
<p>The Conservative Jewish movement does not sanctify gay marriage, but grants autonomy to individual rabbis to choose whether or not to recognize same-sex unions. ¶ 70</p>	<p>(Conservative Jews are, as usual, more divided than the others.) ¶ 31.</p> <p>Conservative Judaism originated to occupy the middle ground between Orthodox traditionalism and Reform liberalism. It allows liberal interpretations of Jewish scripture and liberal rulings on matters of Jewish law, but it tries also to maintain the authority of both. This strategy does not always satisfy those at either end of the continuum between traditionalism and liberalism. As a result, Conservative Judaism allows a great deal of latitude to suit the needs of individuals, whether ordained or lay, and congregations. fn. 30.</p>

<p>The Reform and Reconstructionist Jewish movements strongly support LGBT rights, including the right of same-sex couples to marry. Numerous Jewish congregations, organizations, and rabbis have mobilized in favor of same-sex marriage and in opposition to Proposition 8. ¶ 70</p>	<p>Several Jewish denominations explicitly oppose Proposition 8 and therefore support gay marriage: Reform Judaism, Reconstructionist Judaism, and many independent Jewish communities. Moreover, many denominational and interdenominational Jewish organizations (most of them based in New York) take the same position. These include the American Jewish Committee; the National Council of Jewish Women, the Anti-Defamation League; the Union for Reform Judaism; and the Jewish Community Relations Council of San Francisco. ¶ 31</p>
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APPENDIX B
IDENTICAL SOURCES CITED IN DR. MILLER'S AND
DR. NATHANSON'S INDEXES OF MATERIALS CONSIDERED¹

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APPENDIX C
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