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6 INSTITUTE FOR MARRIAGE AND PUBLIC POLICY
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

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

13 Plaintiffs,

14 CITY AND COUNTY OF SAN FRANCISCO,

15 Plaintiff-Intervenor,

16 v.

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

Defendants,

and

PROPOSITION 8 OFFICIAL PROPONENTS
DENNIS HOLLINGSWORTH, GAIL J. KNIGHT,

CASE NO. 09-CV-2292 VRW

**BRIEF OF *AMICUS CURIAE*
INSTITUTE FOR MARRIAGE AND
PUBLIC POLICY IN SUPPORT OF
DEFENDANT-INTERVENORS**

Date: To be determined.
Time: To be determined.
Location: Courtroom 6, 17th Floor
Judge: Chief Judge Vaughn R. Walker

Trial Date: January 11, 2010

1 MARTIN F. GUTIERREZ, HAK-SHING
2 WILLIAM TAM, and MARK A. JANSSON; and
3 PROTECTMARRIAGE.COM – YES ON 8, A
4 PROJECT OF CALIFORNIA RENEWAL,

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Defendants-Intervenors.

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5	Youtube online video: Mormon Temple Los Angeles —Target of Gay Anger &	
6	Mob—LGBT Protest—Join the Impact LA (posted by Vintageyellow71, Nov. 7, 2008),	
7	http://www.youtube.com/watch?v=GxagcNFyHyc&feature=related	9
8	Youtube online video: No on Prop 8 Protest at Mormon Church, Front Gate 11/6/08	
9	(posted by MarcoMoonTV, Nov. 6, 2008),	
10	http://www.youtube.com/watch?v=P4m5yUhrXj0&feature=related	9
11	Youtube online video: Palm Springs Prop 8 Rally Turns Ugly (posted by PSConfidential,	
12	Apr. 30, 2009), http://www.youtube.com/watch?v=znXHJQsX78o	12

Other Sources

13	Memorandum from Kathryn Kolbert, President, People For the American Way	
14	Foundation, to Progressive Allies and Journalists (Nov. 7, 2008), <i>available at</i>	
15	http://site.pfaw.org/site/PageServer?pagename=issues_equality_prop_8_memo	10
16	Posting of Anthony Sorci to Sacto 9-1-1, <i>Arrests made in Roseville after Yes on</i>	
17	<i>Proposition 8 signs found in car</i> , , Oct. 28, 2008,	
18	http://www.sacbee.com/static/weblogs/crime/archives/2008/10/post-13.html	4
19	Posting of Pam Spaulding to www.pamshouseblend.com ,	
20	http://www.pamshouseblend.com/showDiary.do?diaryId=8077 (Nov. 7, 2008,	
21	16:15:00 PM EST)	10
22	Posting of Rod to rodonline.typepad.com/ , http://rodonline.typepad.com/rodonline/2008/11/n-	
23	word-and-raci.html (Nov. 7, 2008, 12:34 EST).....	10
24	Posting of Wayne Besen to www.truthwinsout.org , http://www.truthwinsout.org/blog/truth-	
25	wins-out-condemns-racial-intolerance-within-the-lgbt-community-following-proposition-8-	
26	defeat/ (Nov. 7, 2008).....	10
27	Press Release, Alliance Defense Fund, “Calif. Professor to Student: ‘Ask God What	
28	Your Grade Is,’” Feb. 12, 2009, <i>available at</i>	
	http://www.alliancedefensefund.org/news/pressrelease.aspx?cid=4823	7
	THOMAS M. MESSNER, THE PRICE OF PROP 8, HERITAGE FOUNDATION BACKGROUNDER,	
	NO. 2328 (Oct. 22, 2009), <i>available at</i>	
	http://www.heritage.org/research/family/bg2328.cfm	1

INTEREST OF AMICUS CURIAE

The Institute for Marriage and Public Policy (iMAPP) is a 501(c)(3) nonprofit, nonpartisan organization dedicated to high quality research and public education on ways that law and public policy can strengthen marriage as a social institution. Working with top scholars, public officials, and community leaders, iMAPP brings the latest research to bear on important policy questions, seeking to promote thoughtful, informed discussion of marriage and family policy at all levels of American government, academia, and civil society.

The Institute for Marriage and Public Policy is committed to advancing civil and thoughtful debate over the public purposes of marriage and our marriage laws. Accordingly, iMAPP is concerned by recent trends toward increasing hostility, intimidation and even violence surrounding the public debate over same-sex marriage.

By carefully documenting a wide range of reprisals directed against people and groups who supported Proposition 8, iMAPP believes this brief will assist the Court as it considers some of the legal issues presented in this case.

INTRODUCTION

Support for Proposition 8 has come with a heavy price for many individuals and institutions who think that marriage should be recognized as the union of husband and wife in California.¹ Publicly available sources show that expressions of support for Prop 8 have generated a range of reprisals, including harassment, intimidation, vandalism, racial scapegoating, blacklisting, loss of employment, economic hardships, angry protests, violence, at least two death threats, and gross

¹Much of the information and many of the incidents documented in this brief have been set forth in a report previously published by The Heritage Foundation. *See* THOMAS M. MESSNER, THE PRICE OF PROP 8, HERITAGE FOUNDATION BACKGROUNDER, No. 2328 (Oct. 22, 2009), *available at* <http://www.heritage.org/research/family/bg2328.cfm>. Restatements of parts of that report in this (Continued)

expressions of anti-religious bigotry.² Although many reprisals have likely gone unreported,³ published news stories and other sources provide some sense of what the New York Times has called the “ugly specter of intimidation” that many individuals and institutions have faced for supporting Prop 8.⁴

REPRISALS AGAINST PROP 8 SUPPORTERS

Many reports of hostility toward Prop 8 supporters involve acts of vandalism.⁵ For example, several Prop 8 supporters have had their cars vandalized.⁶ “One supporter had his automobile keyed

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brief are with permission of Thomas M. Messner and The Heritage Foundation.

² The phenomenon of intimidation and reprisals being directed against Prop 8 supporters has been cited in other federal court proceedings, including proceedings in the U.S. Supreme Court. *See, e.g.*, Petition for Writ of Certiorari, *Protect Marriage Washington v. Reed*, No. 09-559 (U.S. Nov. 6, 2009), Brief of The Cato Institute et al. as *Amici Curiae* in Support of Petitioners at 14-16, *Independence Institute v. Buescher*, No. 09-265 (U.S. Oct. 5, 2009); Reply Brief for Appellant at 28-29, *Citizens United v. FEC*, No. 08-205 (U.S. Mar. 17, 2009); Brief of *Amicus Curiae* Alliance Defense Fund in Support of Appellant at 17-22, *Citizens United v. FEC*, No. 08-205 (U.S. Jan. 15, 2009); Brief of The Institute for Justice as *Amicus Curiae* in Support of Appellant at 13, *Citizens United v. FEC*, No. 08-205 (U.S. Jan. 2009); Plaintiffs’ Memorandum in Support of Motion for Summary Judgment at 8, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009).

³ See Declaration of Sarah Troupis in Support of Defendant-Intervenors’ Motion for a Protective Order, *Perry v. Schwarzenegger*, No. 3:09-cv-2292-VRW (No. 187-13) (N.D. Cal. Sep. 15, 2009) (stating that some individuals who had suffered incidents of harassment and threats for supporting traditional marriage “were unwilling to submit declarations because of the fear that, despite the protective order, their names would become public knowledge and they would be subject to further threats and harassment”); *cf.* Letter from Charles J. Cooper to Hon. Chief Judge Walker at 7, *Perry v. Schwarzenegger*, No. 3:09-cv-2292-VRW (No. 324) (Dec. 28, 2009) (stating that “some potential witnesses have indicated that they will not be willing to testify at all if the trial is broadcast or webcast beyond the courthouse”).

⁴ Brad Stone, *Prop 8 Donor Web Site Shows Disclosure Law Is 2-Edged Sword*, N.Y. TIMES, Feb. 8, 2009, available at <http://www.nytimes.com/2009/02/08/business/08stream.html>.

⁵ See Declaration of John Doe 11 in Support of Plaintiffs’ Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009) (senior citizen who placed a pro-Prop-8 bumper sticker on her car had her car’s rear window smashed in); *Prop. 8 Passage Spawns Protests, Violence and Vandalism*, CHRISTIAN EXAMINER, Dec. 2008 (elderly couple who put a Yes on 8 sign in their yard had a block thrown through their window), available at http://www.christianexaminer.com/Articles/Articles%20Dec08/Art_Dec08_09.html.

⁶ See, e.g., Declaration of John Doe 12 in Support of Plaintiffs’ Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009) (woman with a “One (Continued)

1 with a swastika and the words, 'gay sex is love,' scratched into the paint down to the raw metal."⁷

2 Other supporters had Yes on Prop 8 bumper stickers scraped or ripped off their vehicles or
3 defaced.⁸ Some individuals found their homes and other property vandalized with spray paint.⁹

4 Vandals also targeted houses of worship. For example, swastikas and other graffiti were
5 scrawled on the walls of the Most Holy Redeemer Catholic Church in San Francisco, even though
6 the parish was known widely as being "gay-friendly."¹⁰ Signs supporting Prop 8 were twisted into a

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9 Man, One Woman" bumper sticker had her car keyed and tires deflated while she was in a grocery
10 store); Declaration of John Doe 13 in Support of Plaintiffs' Motion for Summary Judgment,
11 ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009) (Prop 8 supporter who
12 put stickers on her car reported that her car was keyed, leaving a gash about 27 inches long);
13 Declaration of John Doe 14 in Support of Plaintiffs' Motion for Summary Judgment,
14 ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009) (man who placed signs
15 in his yard and stickers on his cars and motorbike had his car egged, floured, and honeyed twice, his
16 motorbike pushed over, and bumper stickers scraped off the back glass windows of his cars); *see*
17 *also* Aaron Bruner, *Prop 8 Supporters Face Sign Theft, Vandalism*, THE CALIFORNIA AGGIE, Oct.
18 29, 2008, *available at* <http://theaggie.org/article/1747>.

19 ⁷Declaration of Frank Schubert in Support of Defendant-Intervenors' Motion for a Protective Order,
20 Perry v. Schwarzenegger, No. 3:09-cv-2292-VRW (No. 187-9) (N.D. Cal. Sep. 15, 2009).

21 ⁸*See* Declaration of John Doe 24 in Support of Plaintiffs' Motion for Summary Judgment,
22 ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009) (bumper sticker ripped
23 off); Declaration of John Doe 25 in Support of Plaintiffs' Motion for Summary Judgment,
24 ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009) (bumper sticker ripped
25 off); Declaration of John Doe 31 in Support of Plaintiffs' Motion for Summary Judgment,
26 ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009) (bumper sticker was
27 defaced by changing "Yes on 8" to "No on 8").

28 ⁹*See* Declaration of John Doe 14, *supra* note 6 (man who placed signs in his yard and stickers on his
cars and motorbike had his home egged and floured three times); Bob Banfield, *Neighborhood*
Vandalized Over Prop 8, KABC-TV, Oct. 31, 2008,

http://abclocal.go.com/kabc/story?section=news/local/inland_empire&id=6482810&pt=print; Rob
McMillan, *Anti-Prop 8 Vandals Hit Alta Loma Home*, KABC-TV, Oct. 28, 2008,
http://abclocal.go.com/kabc/story?section=news/local/inland_empire&id=6470557&pt=print;
Vandals Target Prop 8 Supporters in NorCal, KCAL-9, Oct. 28, 2008,
<http://cbs2.com/local/Proposition.8.Vandalism.2.850469.html>; *Vandals Strike Prop 8 Homes in SJ*,
KGO-TV, Oct. 27, 2008,

http://abclocal.go.com/kgo/story?section=news/local/south_bay&id=6472609&pt=print; Barbara Giasone, *Vandals Spray Paint Signs in Downtown Fullerton*, ORANGE COUNTY
REG., Oct. 20, 2008, *available at* <http://www.ocregister.com/articles/macdonald-one-police-2200383-paint-vandals>.

¹⁰Meredith May, *Vandals Desecrate Pro-Gay Catholic Church*, S.F. CHRON., Jan. 6, 2009,
(Continued)

1 swastika at Our Lady of Perpetual Help Catholic Church in Riverside.¹¹ Ten Mormon church
 2 buildings in the Sacramento region were vandalized in the first week after Prop 8 passed.¹²

3 In addition, reports of Yes on Prop 8 signs being defaced, damaged, dislocated, or stolen are
 4 almost too numerous to track reliably.¹³ Evidence submitted in this case refers to “video footage of
 5 roaming bands of thieves stealing hundreds of [Prop 8] signs and then displaying them as if they
 6 were a trophy.”¹⁴ Prop 8 supporters who replaced stolen signs often had their signs stolen again.¹⁵

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9 available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/01/06/BA5B1540PH.DTL>. See
 10 also *Prop 8 Protestors Vandalize Church*, KGO-TV, Jan. 4, 2009,
 11 http://abclocal.go.com/kgo/story?section=news/local/san_francisco&id=6584961.

12 ¹¹See *Vandals Arrange Prop. 8 Signs into Swastika*, KCAL-9, Nov. 7, 2008,
 13 <http://cbs2.com/local/Proposition.8.Vandalism.2.859176.html>; Chelsea Phua, *Mormon Church in*
 14 *Orangevale Vandalized in Wake of Prop. 8 Vote*, SACRAMENTO BEE, Nov. 9, 2008.

15 ¹²See Jennifer Garza, *Feds Investigate Vandalism at Mormon Sites*, SACRAMENTO BEE, Nov. 14,
 16 2008; see also Declaration of John Doe 23 at 2, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058
 17 (E.D. Cal. June 3, 2009) (orange paint used to vandalize a statue of the Virgin Mary outside one
 18 church); *Vandals Egg Downtown Fresno Church*, KFSN-TV, Oct. 28, 2008 (offices at church were
 19 egged), <http://abclocal.go.com/kfsn/story?section=news/local&id=6473251&pt=print>; Adrienne S.
 20 Gaines, *Radical Gay Activists Seek to Intimidate Christians*, CHARISMA MAG., Nov. 19, 2008
 21 (Assembly of God Church in San Luis Obispo was egged and toilet-papered and a Mormon church
 22 had an adhesive poured onto a doormat and keypad), available at
 23 <http://www.charismamag.com/index.php/news/19444>; *id.* (heavy object wrapped with a Yes on 8
 24 sign used to smash the window of a pastor’s office at Messiah Lutheran Church in Downey); CBS
 25 *13 News: Vandals Target Mormon Church in Orangevale* (television broadcast Nov. 7, 2008)
 26 (video footage showing vandalism of a Mormon church in Orangevale),
 27 <http://www.cbs13.com/video/?id=42005@kovr.dayport.com>.

28 ¹³See, for example, the summaries of declarations submitted by John Does 13, 14, 16, 18, 20, 22,
 29 24, 25, 26, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 55, 57, and 58 in
 30 *ProtectMarriage.com v. Bowen*. The summaries are provided in Plaintiffs’ Statement of Undisputed
 31 Facts in Support of Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-
 32 00058 (E.D. Cal. June 3, 2009) (Appendix B). See also Salvador Hernandez, *Prop. 8 Sign-Stealing*
 33 *Ignites Free Speech Debate*, ORANGE COUNTY REG., Oct. 30, 2008.

34 ¹⁴Declaration of Frank Schubert, *supra* note 7. See also Posting of Anthony Sorci to Sacto 9-1-1,
 35 *Arrests made in Roseville after Yes on Proposition 8 signs found in car*, Oct. 28, 2008 (describing
 36 arrests of people for allegedly “stealing ‘Yes on Proposition 8’ signs from residents’ yards”),
 37 <http://www.sacbee.com/static/weblogs/crime/archives/2008/10/post-13.html>.

38 ¹⁵See, e.g., Declaration of John Doe 45 in Support of Plaintiffs’ Motion for Summary Judgment,
 39 *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009) (stating that “the signs
 40 I had replaced the original in my yard with were also stolen” and “signs I had placed around the
 41 neighborhood were also stolen repeatedly”); Declaration of John Doe 47 in Support of Plaintiffs’
 42 (Continued)

Sign thefts also often involved the added element of trespass or fear of trespass.¹⁶

Several Prop 8 supporters were subjected to harassing telephone calls, e-mails, and mailings.¹⁷ Prop 8 supporters have reported receiving phone calls and voice mails calling them “bigot”¹⁸ and using vulgar language.¹⁹ Sometimes harassers called at work.²⁰ Other Prop 8

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Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009) (stating he began “bringing in the signs at night” after his second sign supporting Prop 8 was stolen); Posting of Sorci, *supra* note 14 (“In some cases, signs have been stolen multiple times.”).

¹⁶See Declaration of John Doe 41 in Support of Plaintiffs’ Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009) (“Because of the location of the signs, anyone who stole the signs would have had to trespass on my property.”); Declaration of John Doe 13, *supra* note 6 (stating that, after her sign was vandalized, she repaired it and placed it inside a low wall so vandals would have to go out of their way to reach it); Declaration of John Doe 26 in Support of Plaintiffs’ Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009) (stating that sign thief “had to climb a brick retaining wall that is approximately 5.5 to 6 feet tall”); Declaration of John Doe 33 in Support of Plaintiffs’ Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009) (“Whoever removed the signs had to climb up the slope of my property to remove the signs.”); Declaration of John Doe 45, *supra* note 15 (“On the evening that this first sign was destroyed, I went into the garage to put my recyclables in the recycle can and heard male voices in my front yard.”); Declaration of John Doe 47, *supra* note 15 (reporting that a suspected perpetrator quickly drove away when spotted through the front window of his house).

¹⁷Many reprisals against Prop 8 supporters have been facilitated by the dissemination of donor information on the Internet. See Messner, *supra* note 1, at 2-3; see also Reply Brief for Appellant at 28-29, *supra* note 2 (arguing that the “widespread economic reprisals against financial supporters of California’s Proposition 8 dramatically illustrate the unsettling consequences of disseminating contributors’ names and addresses to the public through searchable websites”); Jesse McKinley, *Donors against gay marriage want to be anonymous*, N.Y. TIMES, Jan. 19, 2009, available at <http://www.nytimes.com/2009/01/19/world/americas/19iht-letter.1.19482325.html>; Stone, *supra* note 4 (discussing how the Internet facilitated the “ugly specter of intimidation” of Prop 8 supporters).

¹⁸Declaration of John Doe 56 in Support of Plaintiffs’ Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009).

¹⁹See Declaration of John Doe 28 in Support of Plaintiffs’ Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009).

²⁰See *id.* (stating that “I received a voice mail from an unknown male at my workplace”); Declaration of John Doe 53 in Support of Plaintiffs’ Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009) (“Once my personal information was released to the public in February, I began to receive harassing phone calls at work.”); Declaration of John Doe 1 in Support of Plaintiffs’ Motion for Preliminary Injunction, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. Jan. 15, 2009) (“My stores received

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1 supporters received e-mails, letters, and postcards using vulgar language²¹ and offensive labels like
 2 “gay hater.”²² “[S]everal donors [] had . . . their employees harassed, and [] received hundreds of
 3 threatening emails and phone calls.”²³

4 Other forms of harassment were more unusual. For example, two women painted an arrow
 5 and the words “Bigots live here” on the window of an SUV and parked the vehicle in front of a
 6 household that had supported Prop 8.²⁴ One Prop 8 supporter received a book, sent anonymously
 7 through Amazon.com, that contained “the greatest homosexual love stories of all time.”²⁵ One

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10 numerous harassing phone calls that referenced my support of Proposition 8.”); Declaration of John
 11 Doe 56, *supra* note 18 (stating that “a man called my office and left me a voice mail message” after
 12 John Doe 56 donated to Prop 8 in the name of John Doe 56’s business).

13 ²¹See Declaration of John Doe 54 in Support of Plaintiffs’ Motion for Summary Judgment,
 14 ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009).

15 ²²Declaration of John Doe 51 in Support of Plaintiffs’ Motion for Summary Judgment,
 16 ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009). Other examples of
 17 harassment abound. For example, employers of donors to Protect Marriage “were called to ask
 18 about the employer’s non-discrimination policy and to inform them that they had an alleged bigot in
 19 their employ.” Declaration of Schubert, *supra* note 7. Through the contact form on his business’s
 20 Web site, one Prop 8 supporter received e-mails stating “burn in hell.” Declaration of John Doe 4 in
 21 Support of Plaintiffs’ Motion for Preliminary Injunction, ProtectMarriage.com v. Bowen, No. 2:09-
 22 cv-00058 (E.D. Cal. Jan. 15, 2009) (Exhibit B). One e-mail threatened to contact the parents of
 23 students at a school where a particular Prop 8 supporter worked. See Declaration of John Doe 10 in
 24 Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-
 00058 (E.D. Cal. June 3, 2009). One donor to Prop 8 has published an article recounting in chilling
 detail the harassment she experienced after her name was published on the Internet. See Maureen
 Mullarkey, *The New Blacklist*, WEEKLY STAND., Mar. 16, 2009, available at
<http://www.weeklystandard.com/Content/Public/Articles/000/000/016/252zsbwa.asp?pg=2>; see
 also Nancy Dillon, *Artist Draws Gays’ Ire for Same-Sex Nups Ban Support*, DAILY NEWS, Feb. 3,
 2009, available at [http://www.nydailynews.com/lifestyle/2009/02/03/2009-02-](http://www.nydailynews.com/lifestyle/2009/02/03/2009-02-03_artist_draws_gays_ire_for_samesex_nups_b.html)
[03_artist_draws_gays_ire_for_samesex_nups_b.html](http://www.nydailynews.com/lifestyle/2009/02/03/2009-02-03_artist_draws_gays_ire_for_samesex_nups_b.html). Also see John Diaz, *The Ugly Backlash Over*
Proposition 8, S.F. CHRON., Nov. 23, 2008 (editorial page editor describing “intimidation” of
 person who wrote letter to editor supporting Prop 8),
 available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/11/23/INOQ147155.DTL>.

25 ²³Declaration of Schubert, *supra* note 7.

26 ²⁴Matthai Kuruvila, *Mormons Face Flak for Backing Prop. 8*, S.F. CHRON., Oct. 27, 2008, available
 at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/10/27/BAP113OIRD.DTL>. See also
Heated Gay Marriage Debate Playing out in SJ Yard, CBS 5, Oct. 20, 2008 (source includes a
 photograph), <http://cbs5.com/local/gay.marriage.sign.2.844943.html>.

27 ²⁵Declaration of John Doe 23, *supra* note 12. See also Plaintiffs’ Statement of Undisputed Facts in
 28 (Continued)

woman who placed a pro-Prop-8 sign on her balcony reported finding that her staircase leading downstairs had been covered in urine; she also found a puddle of urine at the bottom of the stairs.²⁶

In another case, an individual who supported Prop 8 found himself the subject of a flyer distributed in his town; the flyer included a photo of him, labeled him a “Bigot,” and stated his name, the amount of his donation to Prop 8, and his association with a particular Catholic parish.²⁷ A professor at Los Angeles City College allegedly told students in his class, “If you voted yes on Proposition 8, you are a fascist bastard.”²⁸ At the University of California, Davis, a Yes on 8 table on the quad was reportedly attacked by a group of students throwing water balloons and shouting “you teach hate.”²⁹

Prop 8 supporters holding signs in public places also reported incidents of notable hostility. One woman who stood near a street with a Yes on 8 sign reported that drivers circled the block and yelled things like “You bitch” each time they drove by her.³⁰ Once a car with several men stopped, and a man in the back seat opened the door and threw something at her.³¹ Another source reports

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Support of Motion for Summary Judgment (Appendix B), *supra* note 13 (summarizing declaration submitted by John Doe 23).

²⁶See Declaration of John Doe 12, *supra* note 6.

²⁷See Declaration of John Doe 2 in Support of Plaintiffs’ Motion for Preliminary Injunction, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. Jan. 15, 2009); *id.* (Exhibit A).

²⁸Press Release, Alliance Defense Fund, “Calif. Professor to Student: ‘Ask God What Your Grade Is,’” Feb. 12, 2009, *available at*

<http://www.alliancedefensefund.org/news/pressrelease.aspx?cid=4823>; Gale Holland, *Student sues L.A. City College district over gay-marriage speech*, L.A. TIMES, Feb. 16, 2009, *available at* <http://articles.latimes.com/2009/feb/16/local/me-speech16>.

²⁹Bruner, *supra* note 6.

³⁰Declaration of John Doe 16 in Support of Plaintiffs’ Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009). The woman also reported that a man stopped his car and shouted at her, “You despicable filthy bag of shit.” *Id.*

³¹See *id.* One Prop 8 supporter who witnessed repeated vulgarities at sign-waving events said she felt nervous and scared and chose not to take her children with her. See Declaration of John Doe 13, *supra* note 16. Another Prop 8 supporter concluded that in the future she would make sure at least one man was with each group of wavers to ensure the protection and safety of the teenagers who participated. See Declaration of John Doe 20 in Support of Plaintiffs’ Motion for Summary (Continued)

1 that volunteers who supported Prop 8 by holding signs or distributing literature “were victims of
2 physical assaults such as being spat upon and having hot coffee thrown on them by passengers in
3 passing automobiles.”³²

4 Mormons were particularly and systematically targeted for supporting Prop 8.³³ The now-
5 infamous “Home Invasion” television ad, for example, depicted two Mormon missionaries invading
6 the home of a lesbian couple, ransacking their belongings, and tearing up their marriage license.
7 “Hi, we’re from the Church of Jesus Christ of Latter-day Saints,” says one of the Mormon
8 missionaries. “We’re here to take away your rights,” says the other. The ad concludes with script
9 and a voiceover stating, “Say NO to a Church taking over your government. Vote NO on
10 Proposition 8.”³⁴

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13 Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. June 3, 2009).

14 ³²Declaration of Ronald Prentice in Support of Defendant-Intervenors’ Motion for a Protective
15 Order, *Perry v. Schwarzenegger*, No. 3:09-cv-2292-VRW (No. 187-2) (Sep. 15, 2009).

16 ³³See, e.g., *Activists Target Mormons for Gay-Marriage Ban’s Success in California*,
17 FOXNews.com, Dec. 1, 2008, available at
18 http://www.foxnews.com/printer_friendly_story/0,3566,459544,00.html; Kathryn Lopez, *Mormons*
19 *in the Crosshairs*, TOWNHALL.COM, Nov. 26, 2008,
20 http://townhall.com/columnists/KathrynLopez/2008/11/26/mormons_in_the_crosshairs; Kuruvila,
21 *supra* note 24. One leading gay-rights activist in West Hollywood reportedly said, “‘The main
22 finger we are pointing is at the Mormon church.’” Jim Carlton, *Gay Activists Boycott Backers of*
23 *Prop 8*, WALL ST. J., Dec. 27, 2008 (quoting Vic Gerami and describing him as “a leading gay
24 activist in West Hollywood, Calif.”), available at
25 <http://sec.online.wsj.com/article/SB123033766467736451.html>. Joe Solmonese, head of the Human
26 Rights Campaign, echoed this sentiment on the *Dr. Phil* show when, in response to a question from
27 a Mormon audience member asking why his church was being targeted, he reportedly declared,
28 “We are going to go after your church every day for the next two years unless and until Prop 8 is
overturned.” Maggie Gallagher, *Above the Hate*, REAL CLEAR POLITICS, Nov. 26, 2008 (internal
quotations omitted), http://www.realclearpolitics.com/articles/2008/11/above_the_hate.html.
According to one source, “One Web site run by a Prop. 8 opponent, *Mormonsfor8.com*, identifies
the name and hometown of every Mormon donor.” Kuruvila, *supra*. This source also reported that,
“[o]n the Daily Kos, the nation’s most popular liberal blog, there is a campaign to use that
information to look into the lives of Mormons who financially support Prop. 8.” *Id.*

³⁴A video of the smear ad is posted at Youtube online video: Home Invasion: Vote No on Prop 8
(posted by CourageCampaign, Oct. 31, 2008), <http://www.youtube.com/watch?v=q28UwAyzUkE>.
This manifestation of undisguised religious bigotry undoubtedly caused great concern to many
(Continued)

After Prop 8 passed, crowds of same-sex marriage activists congregated for protests at Mormon houses of worship throughout the nation.³⁵ One video shows same-sex marriage activists massed outside the Mormon temple in New York City crying “fascist church” repeatedly.³⁶ Another video appears to show angry activists rattling the gates of the temple in Los Angeles and chanting “shame on you.”³⁷ Images from various protests show signs like “Mormon Scum,”³⁸ “Get your filthy church off me,”³⁹ and “Keep your hate in Salt Lake.”⁴⁰

(Cont’d)

people. The *Los Angeles Times*, on the other hand, lamented that same-sex marriage activists had failed to air more “hard-hitting” ads like it. Editorial, *Prop. 8’s Battle Lessons*, L.A. TIMES, Nov. 11, 2008, available at <http://www.latimes.com/news/opinion/editorials/la-ed-marriage11-2008nov11,0,3352846.story>.

³⁵Protests in the City of Los Angeles prompted the Los Angeles Police Department to call a “tactical alert.” *Several Gay Marriage Ban Protesters Arrested in Clashes with Police in California*, FOXNEWS, Nov. 6, 2008, <http://www.foxnews.com/story/0,2933,447744,00.html>. A protest in Long Beach, though characterized as mostly peaceful, reportedly involved the arrest of 15 people, a smashed police car window, and roughly 100 protestors who refused to leave, blocked traffic at an intersection, and attempted to incite others to riot. See Pamela Hale-Burns, *Prop. 8 Protest Mostly Peaceful Despite 15 Arrests*, LONG BEACH PRESS-TELEGRAM, Nov. 8, 2008, available at http://www.presstelegram.com/search/ci_10938555. Same-sex marriage supporters also protested in other cities throughout California and the nation. See, e.g., *Same-sex Marriage Rallies Stretch Across Nation*, CNN, Nov. 16, 2008, <http://www.cnn.com/2008/US/11/15/same.sex.marriage/index.html>; Wyatt Buchanan, *Prop. 8 Protests Could Become National Movement*, S.F. CHRON., Nov. 15, 2008, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/11/15/MNF0144O0P.DTL>.

³⁶A copy of this video can be viewed at Youtube online video: Gay Marriage Mormon Church Protest NYC (posted by Gllaftc, Nov. 14, 2008), <http://www.youtube.com/watch?v=PvdDoLeFXh0&feature=related>.

³⁷See, for example, the footage from 5:08 to 6:00 in the video posted at Youtube online video: Mormon Temple Los Angeles —Target of Gay Anger & Mob—LGBT Protest—Join the Impact LA (posted by Vintageyellow71, Nov. 7, 2008), <http://www.youtube.com/watch?v=GxagcNFyHyc&feature=related>.

³⁸See, e.g., Erin Gorski, *Anger Over Gay Marriage Vote Directed at Mormons*, USA TODAY, Nov. 13, 2008, available at http://www.usatoday.com/news/religion/2008-11-13-Mormon-gay-marriage_N.htm. The article reported that protestors chanted “Mormon scum” outside a Mormon temple in Los Angeles. Also see the photograph posted at Maurine Jensen Proctor, *The Hypocrisy of the Tolerance Movement*, MERIDIAN MAG., available at <http://www.meridianmagazine.com/familyleadernetwork/081114tolerance.html>.

³⁹The sign can be seen during the period, roughly, from 0:51 to 0:56 in the video posted at Youtube online video: No on Prop 8 Protest at Mormon Church, Front Gate 11/6/08 (posted by MarcoMoonTV, Nov. 6, 2008), (Continued)

1 The passage of Prop 8 also triggered hostility against African-Americans, who initially were
 2 reported to have supported the ballot measure by large margins. “According to eyewitness reports
 3 published on the Internet,” states one news source, “racial epithets have been used against African
 4 Americans at protests in California—with some even directed against blacks who are fighting to
 5 repeal Prop. 8.”⁴¹

7 Some of the animosity directed against people and groups who supported Prop 8 was openly
 8 threatening or even violent. For example, Mormon temples in California and Utah received
 9 packages containing suspicious white powder.⁴² At least one of those incidents triggered a domestic

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11 <http://www.youtube.com/watch?v=P4m5yUhrXj0&feature=related>.

12 ⁴⁰The sign can be seen during the period, roughly, from 2:51 to 2:55 in the YouTube online video
 13 Gay Marriage Mormon Church Protest NYC, *supra* note 36. Another sign sports a hand-drawn
 14 swastika. It can be seen during the period, roughly, from 3:40 to 3:44 in the video. The swastika
 15 was placed inside the letter “o” in the message “H8 IS TOXIC.” *Id.*

16 ⁴¹Alison Stateman, *What Happens If You’re on Gay Rights’ ‘Enemies List’*, TIME, Nov. 15, 2008,
 17 available at <http://www.time.com/time/nation/article/0,8599,1859323,00.html>. One man, for
 18 example, reported he was called a particular racial slur twice and said the anti-Prop-8 protest he
 19 attended “‘was like being at a klan rally except the klansmen were wearing Abercrombie polos and
 20 Birkenstocks.’” Posting of Pam Spaulding to www.pamshouseblend.com,
 21 <http://www.pamshouseblend.com/showDiary.do?diaryId=8077> (Nov. 7, 2008, 16:15:00 PM EST)
 22 (quoting Posting of Rod to rodonline.typepad.com/,
 23 <http://rodonline.typepad.com/rodonline/2008/11/n-word-and-raci.html> (Nov. 7, 2008, 12:34 EST)
 24 (internal quotations omitted)). Another man reported that “‘he and his boyfriend, who are both
 25 black, were carrying NO ON PROP 8 signs and still subjected to racial abuse.’” *Id.* (quoting Posting
 26 of Rod, *supra*). Also see Memorandum from Kathryn Kolbert, President, People For the American
 27 Way Foundation, to Progressive Allies and Journalists (Nov. 7, 2008) (describing as “inexcusable”
 28 the “speed with which some white gay activists began blaming African Americans—sometimes in
 appallingly racist ways—for the defeat of Proposition 8”), available at
http://site.pfaw.org/site/PageServer?pagename=issues_equality_prop_8_memo; Posting of Wayne
 Besen to www.truthwinsout.org, [http://www.truthwinsout.org/blog/truth-wins-out-condemns-racial-](http://www.truthwinsout.org/blog/truth-wins-out-condemns-racial-intolerance-within-the-lgbt-community-following-proposition-8-defeat/)
[intolerance-within-the-lgbt-community-following-proposition-8-defeat/](http://www.truthwinsout.org/blog/truth-wins-out-condemns-racial-intolerance-within-the-lgbt-community-following-proposition-8-defeat/) (Nov. 7, 2008) (expressing
 “grave disappointment” with “those in the LGBT community” who engaged in “scapegoating
 minorities”).

⁴²See Tami Abdollah, *L.A. Mormon Temple Closed After Suspicious Envelope Arrives in Mail*, L.A.
 TIMES, Nov. 14, 2008, available at [http://www.latimes.com/news/local/la-me-](http://www.latimes.com/news/local/la-me-mormon14-2008nov14,0,7206616.story?track=rss)
[mormon14-2008nov14,0,7206616.story?track=rss](http://www.latimes.com/news/local/la-me-mormon14-2008nov14,0,7206616.story?track=rss). White powder also was sent to a Knights of
 Columbus facility in New Haven, Connecticut. See Ben Winslow, *Powder Scares at 2 LDS*
Temples, Catholic Plant, DESERET NEWS, Nov. 14, 2008, available at
 (Continued)

1 terrorism investigation by the FBI.⁴³ In Colorado, perpetrators placed a Book of Mormon on the
 2 steps of a Mormon church and lit it on fire.⁴⁴ Police reportedly investigated the incident as a “bias-
 3 motivated arson” related to the church’s position on Prop 8.⁴⁵

4 Some Prop 8 supporters received death threats. In Fresno, the town mayor received a death
 5 threat for supporting Prop 8. The threat stated, “Hey Bubba, you really acted like a real idiot at the
 6 Yes of [sic] Prop 8 Rally this past weekend. Consider yourself lucky. If I had a gun I would have
 7 gunned you down along with each and every other supporter.”⁴⁶ One of the official proponents of
 8 Prop 8 was “threatened to be killed” and “told to leave the country.”⁴⁷ In addition, the New York
 9 Times has reported that some donors to groups supporting Prop 8 “have received death threats.”⁴⁸

10 In Modesto, a Prop 8 supporter was allegedly punched in the face by someone who had
 11

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 13 (Cont’d)

14 <http://deseretnews.com/article/content/mobile/1,5620,705262822,00.html?printView=true>.

15 ⁴³See Ben Winslow, *FBI to Run More Tests on Mystery Substance Mailed to LDS Church*, DESERET
 16 NEWS, Nov. 18, 2008, available at <http://www.deseretnews.com/article/1,5143,705263982,00.html>.

17 ⁴⁴See *Book of Mormon Set Ablaze on Church Door Step*, KMGH, Nov. 12, 2008,
<http://www.thedenverchannel.com/news/17964575/detail.html>.

18 ⁴⁵Jennifer Garza, *Protests over Proposition 8 Outcome Getting Personal*, DESERET NEWS, Nov. 13,
 2008, available at <http://deseretnews.com/article/content/mobile/1,5620,705262671,00.html>. See
 also *Book of Mormon Set Ablaze on Church Door Step*, *supra* note 44.

19 ⁴⁶John-Thomas Kobos, *Proposition 8 Email Threats*, KFSN-TV, Nov. 7, 2008,
<http://abclocal.go.com/kfsn/story?section=news/local&id=6494921>. The threat also mentioned a
 20 “little surprise” for a local pastor who supported Prop 8 and “his congregation of lowlife’s” [sic].
 21 “Keep letting him preach hate and he’ll be sorry,” the perpetrator threatened. “He will be meeting
 his maker sooner than expected.” *Id.* Police took the threat seriously, launching a criminal
 22 investigation and providing temporary security for the mayor and pastor. See Amanda Perez, *Prop 8*
Death Threats, KFSN-TV, Oct. 31, 2008,

23 <http://abclocal.go.com/kfsn/story?section=news/local&id=6479861>; see also CBS 2, *Mayor, Pastor*
Receive Death Threats Over Prop 8 (television broadcast Oct. 31, 2008) (video news report
 24 discussing death threats), <http://cbs2.com/video/?id=81887@kcbs.dayport.com>.

25 ⁴⁷Declaration of Hak-Shing William Tam in Support of Defendant-Intervenors’ Motion for a
 Protective Order, *Perry v. Schwarzenegger*, No. 3:09-CV-2292-VRW (No. 187-12) (Sep. 15, 2009)
 26 (“In response to public communications I made regarding Proposition 8, I was called derogatory
 names, threatened to be killed, and told to leave the country.”).

27 ⁴⁸Stone, *supra* note 4.

1 stolen several Yes on 8 signs.⁴⁹ In Palm Springs, an elderly woman present at an anti-Prop-8 protest
 2 was allegedly spit at and a cross she was carrying was knocked out of her hands and stomped on.⁵⁰
 3 A small group of Christians encountered similar hostilities when an angry crowd apparently took
 4 them for pro-Prop 8 demonstrators as they prayed and sang hymns on a sidewalk in the Castro
 5 District of San Francisco.⁵¹ Video footage posted on the Internet shows a band of police officers
 6 dressed in riot gear fending off the angry crowd and escorting the Christians to safety.⁵²

8 Same-sex marriage activists have also targeted the places where Prop 8 supporters work.

10 ⁴⁹According to news reports, Jose Nunez, who became a U.S. citizen just months before Prop 8
 11 passed, was waiting to distribute signs outside his Catholic church when a man grabbed several Yes
 12 on 8 signs and fled. See Seth Hemmelgarn, *Prop 8 Fight Gets Ugly on Both Sides*, BAY AREA
 13 REPORTER, Oct. 16, 2008, available at
 14 <http://www.ebar.com/news/article.php?sec=news&article=3403>; Catholic News Agency, *Attack*
 15 *Outside of Catholic Church Part of 'Wave of Intimidation,' Says Yes on 8*, Oct. 15, 2008,
 16 <http://www.catholicnewsagency.com/new.php?n=14069>. When Nunez followed the thief and tried
 17 to recover the signs, the thief reportedly yelled "What do you have against gays?" and punched
 18 Nunez in the face. Catholic News Agency, *supra*.

15 ⁵⁰See Gaines, *supra* note 12. Video footage posted on the Internet shows several men shouting at
 16 the woman as a television reporter tries to interview her. See the footage from 0:00 to 2:29 of the
 17 video posted at Youtube online video: Palm Springs Prop 8 Rally Turns Ugly (posted by
 18 PSConfidential, Apr. 30, 2009), <http://www.youtube.com/watch?v=znXHJQsX78o>. "Get out of
 19 here," one man shouts in the elderly woman's face. See the footage from 0:11-0:16 in the video
 20 posted at *id*.

18 ⁵¹See Gaines, *supra* note 12 (reporting understanding of the group that the crowd thought they were
 19 "marriage amendment demonstrators"); see also Colleen Raezler, *O'Reilly Alone Reports Gay*
 20 *Attack on Christians*, CULTURE AND MEDIA INSTITUTE, Nov. 19, 2008,
 21 <http://www.cultureandmediainstitute.org/printer/2008/20081119181938.aspx>.

21 ⁵²This video has been posted at Youtube online video: Christians Assaulted in San Francisco
 22 (posted by publicfreedom Nov. 20, 2008), <http://www.youtube.com/watch?v=nTuqXiHzZtk>. See
 23 *also Anger over Prop. 8 Erupts in San Francisco*, KTVU, Nov. 14, 2008,
 24 www.ktvu.com/print/17986914/detail.html ("San Francisco Police officers in riot gear formed a line
 25 and escorted the religious group into a van to safely get them out of the area."). One of the
 26 Christians reportedly later stated that the people in the crowd shouted words like "haters" and
 27 "bigots" and then "started throwing hot coffee, soda and alcohol on us and spitting (and maybe even
 28 peeing) on us." Raezler, *supra* note 51. See *also Anger over Prop. 8 Erupts in San Francisco*,
supra; Youtube online video: Gay Activist Attacks Female Christian Missionary In SF (Fox News
 television broadcast of Bill O'Reilly news report on this story posted by DPS72 on Nov. 21, 2008)
 (woman who allegedly was attacked recounting details of this incident),
<http://www.youtube.com/watch?v=TqCXONxwqPs&NR=1>.

Businesses and other institutions that employ individuals who personally donated to Prop 8 have been threatened with and in some cases subjected to picketing, protests, and damaging boycotts. Some Prop 8 donors have resigned from their jobs or taken leaves of absence to protect their employers and colleagues.⁵³ In one case, a mere \$100 donation by a 67-year-old restaurant employee triggered a boycott of the restaurant where she worked (which was owned by her mother) and led to “[b]oisterous street protests”⁵⁴ after she refused to renounce her support for Prop 8.⁵⁵ In other cases, business owners who supported Prop 8 either personally or through their enterprises have had their businesses targeted for reprisals by same-sex marriage activists.⁵⁶

⁵³See John R. Lott, Jr. & Bradley Smith, Op-Ed, *Donor Disclosure Has Its Downsides: Supporters of California's Prop. 8 Have Faced a Backlash*, WALL ST. J., Dec. 26, 2008, available at <http://online.wsj.com/article/SB123025779370234773.html>; see also Declaration of Ronald Prentice, *supra* note 32 (“I am aware of several individuals who chose to resign from their employment in order to escape the harassment and intimidation brought upon them and their employers.”); Editorial, *Prop. 8—boycott, or blacklist?*, L.A. TIMES, Dec. 10, 2008, available at <http://www.latimes.com/news/opinion/editorials/la-ed-boycott10-2008dec10,0,2703213.story>; Gregg Goldstein, *Richard Raddon Resigns Post*, HOLLYWOOD REPORTER, Nov. 25, 2008, available at http://www.hollywoodreporter.com/hr/content_display/news/e3ia4d7c75ed209875b1e63b36a5c025f44?pn=1; Rachel Abramowitz & Tina Daunt, *Prop. 8 Rifts Put Industry on Edge*, L.A. TIMES, Nov. 23, 2008, available at <http://articles.latimes.com/2008/nov/23/entertainment/et-shunned23>; Garza, *Protests over Proposition 8 Outcome Getting Personal*, *supra* note 45; *Prop. 8 Anger Spurs Donor Blacklists*, CBS News, Nov. 13, 2008, <http://www.cbsnews.com/stories/2008/11/13/eveningnews/main4601227.shtml>; Jesse McKinley, *Theater Director Resigns Amid Gay-Rights Ire*, N.Y. TIMES, Nov. 12, 2008, available at <http://www.nytimes.com/2008/11/13/theater/13thea.html>.

⁵⁴Carlton, *supra* note 33.

⁵⁵See *id.*; see also Steve Lopez, *Prop. 8 Stance Upends her Life*, L.A. TIMES, Dec. 14, 2008, available at <http://articles.latimes.com/2008/dec/14/local/me-lopez14>.

⁵⁶See, e.g., James Rasmussen, *Prop. 8 foes plan protest at Long Beach Hyatt*, WHITTIER DAILY NEWS, May 12, 2009, available at http://www.whittierdailynews.com/california/ci_12355993; Karen Grigsby Bates, *Backers of Calif. Gay Marriage Ban Face Backlash*, NPR, Mar. 5, 2009, available at <http://www.npr.org/templates/story/story.php?storyId=101460517>; Kevin Clerici, *Prop. 8 Foes Aim Their Ire at Lassen's Stores*, VENTURA COUNTY STAR, Nov. 19, 2008, available at <http://www.vcstar.com/news/2008/nov/19/prop-8-foes-aim-their-ire-at-local-lassens/>; Tami Abdollah & Cara Mia DiMassa, *Prop. 8 foes shift attention*, L.A. TIMES, Nov. 14, 2008, available at <http://articles.latimes.com/2008/nov/14/local/me-boycott14>; Martin Wisckol, *Prop. 8 Leaders Accuse Foes of Harassment, Intimidation*, ORANGE COUNTY REG., Nov. 14, 2008, available at <http://www.ocregister.com/common/printer/view.php?db=ocregister&id=197239>. A (Continued)

UNDERSTANDING THE ANIMOSITY SURROUNDING SUPPORT FOR PROP 8

Arguments for same-sex marriage, although often couched in terms of tolerance and inclusion, are frequently based on the idea that preserving marriage as unions of husband and wife is a form of bigotry, irrational prejudice, and even hatred against homosexual persons who want the state to license their relationships.⁵⁷ As increasing numbers of individuals and institutions, including public officials and governmental bodies, embrace this ideology, belief in marriage as a relationship between a man and a woman likely will come to be viewed as an unacceptable form of discrimination that should be purged from public life through legal, economic, and social pressure. The malevolence directed against Prop 8 supporters vividly illustrates this dynamic and the potential for it to morph into threatening, destructive, and even violent behavior.

Some same-sex marriage activists have condemned certain types of reprisals against Prop 8

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dentist in Palo Alto lost patients because he donated \$1,000. *See* Lott & Smith, *supra* note 53. An insurance company in Davis was picketed with signs after family members donated to Prop 8. *See* Garza, *supra* note 45. Protesters rallied and handed out free ice cream to retaliate against a family-owned creamery that supported Prop 8. *See Prop. 8 Opponents Protest Ice Cream Parlor*, KCRA, Nov. 17, 2008, <http://www.kcra.com/politics/17994183/detail.html>. Activists boycotted the Grand Hyatt hotel in San Diego because its developer donated money to help to put Prop 8 on the ballot. *See* William M. Welch, *Prop 8 Foes Turn to 'Blacklist' Tactics*, USA TODAY, Dec. 21, 2008, available at http://www.usatoday.com/news/nation/2008-12-21-blacklist_N.htm; *see also* Matthew T. Hall, *Hotelier Manchester Offering \$125,000 to Gay, Lesbian Groups*, SAN DIEGO UNION-TRIB., May 9, 2009, available at <http://www3.signonsandiego.com/stories/2009/may/09/1m9doug021135-hotelier-manchester-offering-125000-/>; Tony Cochran, *Rally Against Prop H8: Manchester Grand Hyatt*, INDYMEDIA, Nov. 18, 2008, <http://www.indybay.org/newsitems/2008/11/18/18552103.php>; Bill Ainsworth, *Gay Rights Groups to Boycott Manchester Grand Hyatt: Owner Donated to Proposition 8*, SAN DIEGO UNION-TRIBUNE, July 10, 2008, <http://weblog.signonsandiego.com/news/metro/20080710-9999-1m10boycott.html>. Same-sex marriage activists also targeted a self-storage company because its owner and his family donated money to Prop 8. *See* Welch, *supra*. Outside the commercial context, it was reported that “[s]everal student government leaders at American River College . . . [faced] a recall vote . . . after they supported Proposition 8, a statewide ballot measure that would ban same-sex marriage.” *Student Leaders Face Recall Over Prop. 8*, KCRA SACRAMENTO, Oct. 21, 2008, <http://www.kcra.com/news/17768622/detail.html>.

⁵⁷*See, e.g.,* David Boies, *Gay Marriage and the Constitution*, WALL ST. J., July 20, 2009 (describing Prop 8 as “the residue of centuries of figurative and literal gay-bashing”), available at (Continued)

1 supporters.⁵⁸ Some reprisals against Prop 8 supporters have involved illegal conduct. Some acts of
 2 hostility have been perpetrated by random individuals acting in isolation or by unpredictable crowds
 3 expressing anger and frustration.

4 But the fact remains that many Prop 8 supporters have paid a considerable price for
 5 defending marriage as the union of husband and wife. Indeed, no matter who is to blame for the
 6 hostility surrounding Prop 8, one lesson of Prop 8 cannot be denied: Individuals or institutions that
 7 publicly defend marriage as the union of husband and wife risk harassment, reprisal, and
 8 intimidation—at least some of it targeted and coordinated.

9 Because the issue of marriage is still very much alive in California and throughout the
 10 nation, the naked animosity and disapprobation manifested against people and groups who
 11 supported Prop 8 raises serious questions that should concern all parties interested in promoting
 12 civil society, democratic processes, and reasoned discourse on important matters of public policy
 13 like marriage.
 14

15 CONCLUSION

16 Wherefore, the Institute for Marriage and Public Policy respectfully submits this *amicus*
 17 *curiae* brief in support of Defendant-Intervenors.

18 Date: January 8, 2010

19 THE LAW FIRM OF J. HECTOR MORENO, JR.
 20 & ASSOCIATES

21 By: /s/ J. Hector Moreno, Jr.
 22 J. HECTOR MORENO, JR.

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 27 <http://online.wsj.com/article/SB124804515860263587.html>.

28 ⁵⁸See Messner, *supra* note 1, at 13 & n.11.