

Exhibit B

Page 1

1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF CALIFORNIA
 3 _____)
 4 KRISTIN M. PERRY, et al.,)
))
 5 Plaintiffs,)
))
 6 vs.) No. 09-CV-2292
) VRW
 7)
 8 ARNOLD SCHWARZENEGGER, et al.,)
))
 9 Defendants.)
))
 10 _____)
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 14
 15 VIDEOTAPED
 16 DEPOSITION OF FRANK SCHUBERT
 17 Sacramento, California
 18 Thursday, December 17, 2009
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 20
 21
 22
 23 Reported by: LANA L. LOPER RMR, CRR, CCP,
 CME, CLR, CCR, CSR No. 9667
 24 File No.: 9487
 25 Pages 1 - 266

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 19 Videotaped deposition of FRANK SCHUBERT, taken
 20 on behalf of Plaintiffs, at 400 Capitol Mall, Suite
 21 1400, Sacramento, California beginning at 8:20 a.m.
 22 and ending at 5:13 p.m., on Thursday, December 17,
 23 2009, before Lana L. Loper, RMR, CRR, CCP, CME, CLR,
 24 CCR, CSR No. 9667.
 25

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1 Sacramento, California; Thursday, December 17, 2009
 2 8:20 a.m. - 5:13 p.m.
 3 - - -
 4 THE VIDEOGRAPHER: We are going on the
 5 record. This is the beginning of Tape 1 of
 6 Volume I. The time is approximately 8:20 a.m.
 7 My name is Che E. Presant, CLVS, your
 8 videographer, and I represent Affinity Court
 9 Reporters, Incorporated, here on behalf of
 10 SiteLogic, Incorporated, here on behalf of Boies,
 11 Schiller & Flexner, LLP.
 12 I'm a certified legal video specialist and
 13 notary public. I am not financially interested in
 14 this action, nor am I a relative or employee of any
 15 attorney or any of the parties.
 16 The date is December 17, 2009. This
 17 deposition is taking place at 400 Capitol Mall,
 18 Suite 1400, Sacramento, California 95814.
 19 This is Case No. 09-CV-2292 VRW, entitled
 20 Kristin M. Perry vs Arnold Schwarzenegger, et al.
 21 This deposition is being taken on behalf
 22 of the plaintiffs. The deponent is Frank Schubert.
 23 The court reporter is Lana Loper, with
 24 Affinity Court Reporters, Incorporated, here on
 25 behalf of SiteLogic, Incorporated.

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1 **California 95814.**
 2 Q And your home address?
 3 A **I don't believe my home address is public**
 4 **information.**
 5 Q We may be able to deal with that.
 6 A **Thank you.**
 7 Q Have you testified previously at a
 8 deposition?
 9 A **I have not.**
 10 Q And how about at a trial?
 11 A **I have not.**
 12 Q So let me -- you probably discussed this
 13 with your counsel, but let me just go over the basic
 14 deposition procedures.
 15 It's important that you answer a question
 16 out loud so that the court reporter can get it down.
 17 Please, even if you know what I'm asking,
 18 let me finish the question before you start talking,
 19 and I'll try to do the same thing when you are
 20 answering, let you finish your answer, so that we're
 21 not talking over each other.
 22 If you don't understand a question I ask
 23 you, please let me know, and I'll try to rephrase it
 24 so we're on the same page.
 25 If you need a break at any time, that's

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1 Counsel and all parties present will now
 2 introduce themselves.
 3 MR. GOLDMAN: Jeremy Goldman, from Boies,
 4 Schiller & Flexner, on behalf of the plaintiffs.
 5 MR. UNO: Theodore Uno, Boies, Schiller &
 6 Flexner, for the plaintiffs.
 7 MR. TYLER: Robert Tyler, advocate for
 8 Faith and Freedom, for the deponent.
 9 MR. COOPER: Charles Cooper, with Cooper &
 10 Kirk, representing the defendant intervenors.
 11 THE VIDEOGRAPHER: Thank you.
 12 Would the court reporter please swear in
 13 the witness?
 14 FRANK SCHUBERT,
 15 having been first administered an
 16 oath in accordance with CCP Section
 17 2094, was examined and testified as
 18 follows:
 19 EXAMINATION
 20 BY MR. GOLDMAN:
 21 Q Good morning, Mr. Schubert.
 22 A **Good morning.**
 23 Q Could you tell me your business address,
 24 please.
 25 A **1415 L Street, Suite 1250, Sacramento,**

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1 fine. Just let me know. The only thing I would ask
 2 is that if there's a question pending, you answer
 3 the question first and then we can take a break.
 4 Now, is there any reason that you cannot
 5 testify truthfully and accurately today, that you're
 6 aware of?
 7 A **No.**
 8 Q What did you do to prepare for today's
 9 deposition?
 10 A **I reviewed public documents; the**
 11 **advertisements that were produced in the campaign;**
 12 **press releases that were issued and e-mail blasts**
 13 **that were distributed; also had conversations with**
 14 **my counsel.**
 15 Q Do you know who Kenneth Miller is?
 16 A **I don't believe I do.**
 17 Q Let me see if I can refresh your
 18 recollection. Kenneth Miller is an expert who has
 19 been retained by the defendant intervenors, and he
 20 testified that he had a conversation with you in
 21 about September in preparation for his expert
 22 testimony in this case. He's a professor at
 23 Claremont College.
 24 Does that ring a bell?
 25 A **It does not.**

1 Q You don't recall ever having spoken with
2 Mr. Miller?
3 A **I don't recall that, no.**
4 Q I take it you don't know if you have any
5 notes from that conversation.
6 A **I don't know.**
7 **Sorry.**
8 MR. TYLER: That's okay. Just give me
9 time.
10 BY MR. GOLDMAN:
11 Q Have you spoken to any of the other
12 experts retained by the defendant intervenors, so
13 far as you're aware?
14 A **I'm not aware that I have, no.**
15 Q Other than the lawyers, have you spoken
16 with anyone about testimony that they would give in
17 this case?
18 MR. TYLER: Objection. Vague.
19 BY MR. GOLDMAN:
20 Q You can answer the question.
21 A **I'll follow my counsel's direction.**
22 MR. TYLER: You can answer the question.
23 Unless I instruct you not to answer a question, you
24 can go ahead and answer it afterwards.
25 THE WITNESS: I discussed in the meeting

1 **distributed.**
2 MR. TYLER: I want to make sure, again,
3 that you're responding as to communications you had
4 with Jeff Flint, outside the presence of counsel.
5 THE WITNESS: Okay.
6 BY MR. GOLDMAN:
7 Q And what did you discuss about these
8 publicly distributed materials?
9 MR. TYLER: Objection. I want to make
10 sure that the response is not pertaining to
11 necessarily communications about strategy concerning
12 the campaign.
13 You can respond to communications you had
14 following the filing of this lawsuit and discussions
15 you had only in relation to the preparation for
16 depositions and outside the presence of counsel.
17 THE WITNESS: I had no conversations,
18 then, that would fit that category.
19 BY MR. GOLDMAN:
20 Q Well, when is the last time that you
21 discussed this case with Mr. Flint, apart from the
22 conversations in the presence of counsel?
23 A **I can't recall a specific conversation**
24 **prior to discussing it in counsel's presence.**
25 Q It's your testimony that you have not

1 with our counsel Mr. --
2 MR. COOPER: I --
3 MR. TYLER: Do not answer -- don't discuss
4 anything that we talked about in our communications.
5 THE WITNESS: I see.
6 MR. TYLER: Any communication between you
7 and I, or any other attorneys representing you, is
8 attorney-client privileged. Therefore, you can
9 respond to his question outside of that privilege.
10 Can you repeat the question?
11 MR. GOLDMAN: Can you read back the
12 question?
13 (The question was read as follows:)
14 "Q Other than the lawyers, have you
15 spoken with anyone about testimony
16 that they would give in this case?"
17 THE WITNESS: I spoke with Jeff Flint
18 about the case generally. I don't know what
19 testimony he might give.
20 BY MR. GOLDMAN:
21 Q What did you discuss generally with Jeff
22 Flint about the case?
23 A **I discussed public information, the**
24 **advertisements that were aired, press releases that**
25 **were issued, and e-mail blasts that were**

1 discussed this case with Mr. Flint, outside the
2 presence of counsel. Do I understand that
3 correctly?
4 A **I don't believe I testified to that. I**
5 **believe I said I don't recall specific conversation,**
6 **outside of the discussion with counsel present.**
7 Q But you do believe that you did have such
8 conversations. Is that correct?
9 A **I know there have been conversations about**
10 **the case generally, and that there would be an**
11 **interest in Mr. Flint and I testifying and being**
12 **deposed in that case.**
13 **We obviously were served with subpoenas,**
14 **so we're certainly aware of your interest in talking**
15 **with us. So as to a general matter, yes, there were**
16 **conversations about this case. I can't tell you**
17 **when they occurred or any specific elements of that**
18 **conversation, other than we were aware that you were**
19 **interested in speaking with us.**
20 Q Well, as a general matter, did you discuss
21 the campaign ads and other documents or videos that
22 were publicly disseminated during the campaign?
23 MR. TYLER: Are you speaking in
24 preparation for depositions?
25 MR. GOLDMAN: I am speaking about the

1 general conversations that Mr. Schubert just
2 testified to.

3 MR. TYLER: And I'll assert an objection
4 based upon attorney-client privilege.

5 You can respond, so long as it doesn't
6 pertain to conversations that you had in the
7 presence of counsel with Mr. Flint.

8 THE WITNESS: As I testified, there were
9 general conversations. I can't recall a specific
10 element of the discussion.

11 BY MR. GOLDMAN:

12 Q And when you say "a specific element," do
13 you mean that you can't recall whether you discussed
14 publicly disseminated campaign materials?

15 A I mean that I can't recall any specific
16 discussion about a particular element of the case,
17 whether it be publicly disseminated or not.

18 Q Other than counsel, and other than
19 Mr. Flint, did you discuss the case with anyone?

20 A Not to my recollection, no.

21 Q Can you just describe briefly for me your
22 education, starting with after high school?

23 A Certainly. I have an Associate of Arts
24 degree from American River College, and a Bachelor
25 of Science in business administration from

1 Q So was Schubert Flint Public Affairs
2 founded in 2003?

3 A The firm, as Schubert, was founded as
4 Schubert Public Affairs in 2003.

5 Q When did it become Schubert Flint Public
6 Affairs?

7 A I believe it was January 2006.

8 Q And I take it that Schubert Flint Public
9 Affairs is a for-profit entity. Is that right?

10 A Yes, it is.

11 Q And does part of the business of Schubert
12 Flint Public Affairs consist in assisting in
13 initiative campaigns?

14 A Yes, it does.

15 Q Is that work that Schubert Flint Public
16 Affairs hopes to continue to do in the future?

17 A Yes, it is.

18 Q Do you advertise?

19 MR. TYLER: Objection. Vague.

20 BY MR. GOLDMAN:

21 Q Do you understand the question?

22 A You're asking if we advertise. I assume
23 you mean our services as a consulting firm.

24 Q That's correct.

25 A Yes, we do.

1 California State University at Sacramento.

2 Q And have you had any sort of informal
3 education or certificate programs, or things like
4 that, that you've done since you graduated from
5 college?

6 A No.

7 Q Are you currently employed?

8 A I am.

9 Q Who is your employer?

10 A Schubert Flint Public Affairs.

11 Q What is your title at Schubert Flint
12 Public Affairs?

13 A I'm president of the firm.

14 Q How long have you held that position?

15 A Since 2003, October of 2003.

16 Q What did you do prior to that?

17 A Immediately prior to that, I was a partner
18 with a firm named Goddard Claussen Porter Novelli.

19 Q Is the work that you did at Goddard
20 Claussen similar to the work you do now?

21 A Yes.

22 Q And before Goddard Claussen?

23 A Before that, I was a partner in a
24 different iteration of that firm, when it was just
25 called Goddard Claussen.

1 Q Tell me about how and where you advertise
2 your services.

3 MR. TYLER: Objection. Vague. Calls for
4 a narration.

5 THE WITNESS: We -- we advertise on
6 various websites that are -- on various websites.
7 We, from time to time, publish advertisements in
8 various publications. From time to time, we'll do
9 mailings to prospective clients.

10 BY MR. GOLDMAN:

11 Q Anything else that you recall?

12 A Not specifically.

13 Q What are some of the publications in which
14 you publish ads?

15 MR. TYLER: Objection. Vague.

16 THE WITNESS: Well, I know one was a
17 publication recently with the Sacramento Choral
18 Society, published.

19 BY MR. GOLDMAN:

20 Q Do you recall the name of that
21 publication?

22 A I don't.

23 Q Is there any other publication that you
24 can think of in which Schubert Flint Public Affairs
25 has purchased advertising space to advertise its

Page 21

1 services?

2 MR. TYLER: Objection. Vague.

3 THE WITNESS: I believe we had an ad at

4 one time in the Comstock's Magazine.

5 BY MR. GOLDMAN:

6 Q What is Comstock's Magazine?

7 A **Comstock's is a business publication,**

8 **Sacramento region.**

9 Q Any others that you can think of?

10 A **Not immediately.**

11 Q And you mentioned websites. What kind --

12 what are some websites on which you've advertised?

13 A **We have advertised on the website Rough &**

14 **Tumble. We have advertised on the website**

15 **FlashReport. And we have advertised on the website**

16 **Red County.**

17 Q In how many initiative campaigns has

18 Schubert Flint Public Affairs been involved?

19 A **As a company, I can't give you a precise**

20 **answer. I would estimate two dozen, approximately.**

21 Q And of that two dozen, what percentage

22 were in California?

23 A **Again, I can't give you a precise answer,**

24 **but certainly the majority were in California.**

25 Q Three-quarters, for example, does that

Page 23

1 **do not do those services.**

2 Q What do you have in mind when you say, We

3 do not do those services, concretely?

4 MR. TYLER: Objection. Vague.

5 THE WITNESS: An example would be mounting

6 a professional signature-gathering campaign.

7 BY MR. GOLDMAN:

8 Q Now, you indicated that you might consult

9 with clients, even if you don't provide those kinds

10 of services.

11 Does the consulting include input on

12 drafting the language of an initiative?

13 A **It might.**

14 Q Are there cases in which you have

15 consulted about the language of a ballot initiative?

16 MR. TYLER: Objection. Privileged First

17 Amendment information.

18 I'll instruct you not to answer.

19 MR. GOLDMAN: It's just a yes-or-no

20 question.

21 MR. TYLER: That's fine.

22 MR. GOLDMAN: I'll try not to debate with

23 you the objection on the record, but we obviously

24 disagree with the assertion of privilege as to that

25 question.

Page 22

1 sound about right?

2 A **It is difficult to say, without looking at**

3 **a list of those campaigns, but certainly a majority**

4 **would have been in California.**

5 Q Has that work included efforts to qualify

6 measures for the ballot?

7 A **Well, could you be more specific in what**

8 **you mean by qualifying a measure to the ballot?**

9 Q Sure. I'm trying to distinguish it from

10 efforts to pass the measure, once it has been

11 qualified for the ballot. So efforts to qualify

12 measures for the ballot would mean submitting

13 something to the secretary of state, gathering

14 signatures, that kind of thing.

15 A **Okay. No, Schubert Flint does not qualify**

16 **measures to the ballot.**

17 Q So if I understand correctly, the

18 involvement of Schubert Flint Public Affairs only

19 comes after a measure has been qualified for the

20 ballot. Is that correct?

21 A **No, I don't think I said that. I said**

22 **that our -- the services that we provide to clients**

23 **do not include ballot qualification. We might**

24 **consult with a client who is seeking to qualify**

25 **measures to the ballot, but ourselves, we ourselves**

Page 24

1 BY MR. GOLDMAN:

2 Q Do the -- well, why don't you describe, in

3 general, the services that Schubert Flint Public

4 Affairs does provide with respect to ballot

5 initiatives.

6 A **In general, we provide a range of services**

7 **to clients, depending on their particular needs,**

8 **that could range from campaign management,**

9 **day-to-day management of the various functions of**

10 **the campaign, to supervising contractors, or it**

11 **could involve specific discrete services that are --**

12 **that we perform for a campaign, that might be**

13 **considered less than overall campaign management.**

14 Q Has Schubert Flint Public Affairs ever

15 played a role in drafting arguments that appear on

16 the official voter guide?

17 MR. TYLER: Objection. Vague.

18 THE WITNESS: Yes.

19 BY MR. GOLDMAN:

20 Q And has Schubert Flint Public Affairs ever

21 come up with an idea for a ballot measure and

22 approached someone about sponsoring it?

23 MR. TYLER: Objection. I believe that

24 violates my client's First Amendment privilege.

25 I'll instruct you not to answer that

1 question.

2 MR. GOLDMAN: Just to try to move things
3 along, I know in other depositions there has been a
4 stipulation that we've preserved our disagreements
5 about this, and I don't need to ask every question
6 that I might ask on that subject to preserve our
7 right to resume the deposition, and I wonder whether
8 you're agreeable to that.

9 MR. TYLER: Can you explain yourself a
10 little further with regard to what you mean by that?

11 MR. GOLDMAN: Sure. I could -- I could
12 ask a number of follow-up questions, but I assume
13 that the instruction would be the same: You would
14 instruct your client not to answer, and that would
15 waste a lot of time.

16 And so, instead, we'll just stipulate that
17 you are going to instruct the witness not to answer
18 these kinds of questions, and the -- in the event we
19 decide to go to the court and ask the court to issue
20 an order compelling the deposition to resume, I have
21 preserved my right to ask questions in this subject
22 area.

23 MR. COOPER: That arrangement would
24 certainly meet with my approval. As the record
25 reflects, I represent the defendant intervenors. I

1 have ever, as part of your advertising for Schubert
2 Flint Public Affairs, have you ever discussed
3 specific things that your firm has done, to the
4 extent that they include coming up with an idea for
5 a ballot measure and approaching someone about
6 sponsoring it; drafting arguments on official voter
7 guide? Have you already publicly disclosed that
8 Schubert Flint Public Affairs has done those things?

9 **A I don't recall.**

10 Q It's possible that you may have already
11 discussed that publicly. Is that correct?

12 MR. TYLER: Objection. I will assert a
13 privilege, First Amendment. He said he doesn't
14 recall whether or not there's been any advertising.
15 If you have some advertising to reflect public
16 statements made to refresh his recollection, you can
17 produce it at this time.

18 Otherwise, I'm going to instruct him not
19 to answer that to which he doesn't recall.

20 MR. GOLDMAN: You're instructing him not
21 to answer whether he recalls having discussed it
22 publicly.

23 MR. TYLER: I think he already responded.
24 You questioned him whether or not he ever advertised
25 performing certain functions in relation to a

1 do not represent Mr. Schubert, nor his organization.

2 But just to further this understanding, I
3 would point out that at such time as your questions
4 progressed to the point of asking about the
5 Proposition 8 petition drive and language with
6 respect to Proposition 8, the matters that
7 particularly concern my client and would implicate
8 my clients' First Amendment interests, then I would
9 be heard from in that, in those questions.

10 I would turn to Mr. Tyler, and I would
11 impose upon Mr. Tyler my request that he instruct
12 his client not to answer those questions, and I
13 would assert a First Amendment privilege, as well
14 as, depending upon the nature of the question, the
15 limitations as we see them that the court has
16 established in its discovery orders on the scope of
17 discovery.

18 So with that -- with that more fuller
19 explanation, what you're proposing would certainly
20 be fine with me.

21 MR. TYLER: I would -- I'll accept that
22 stipulation.

23 MR. GOLDMAN: Thank you.

24 BY MR. GOLDMAN:

25 Q Although maybe I should ask whether you

1 campaign, and he responded by saying, "I don't
2 recall."

3 Therefore, at this point in time, I'm not
4 going to allow him to respond and approach that
5 First Amendment privilege that I think has already
6 been asserted.

7 If you want to maybe rephrase your
8 question, or if you have some public documents to
9 present to him to help him refresh his recollection,
10 I have no problem. If it's public, he can testify
11 to it.

12 MR. GOLDMAN: I think the question was
13 whether it was possible that Schubert Flint has done
14 that. And I think you are right, he said he didn't
15 recall, but that maybe doesn't answer the question,
16 so I'll just restate the question.

17 BY MR. GOLDMAN:

18 Q Is it possible that Schubert Flint Public
19 Affairs has advertised that it has done these
20 specific things that we have been talking about?

21 MR. TYLER: I'll, again, assert the
22 objection because whether it's possible or not goes
23 directly to whether or not he provides certain
24 services that are protected under the First
25 Amendment privilege.

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1 Again, if you have some documents to
 2 produce to him that are public documents, he can
 3 testify to those documents. He's already testified
 4 he doesn't recall.
 5 Therefore, I'll instruct him not to answer
 6 that question.
 7 BY MR. GOLDMAN:
 8 Q What was Proposition 22?
 9 A **Are you speaking of a California**
 10 **amendment?**
 11 Q Yes, I am.
 12 A **Proposition 22 was a statutory proposal in**
 13 **the year 2002; statutorily defined marriage as**
 14 **between a man and a woman in the state of**
 15 **California.**
 16 Q And did you have any involvement in the
 17 campaign related to Proposition 22?
 18 A **I did not.**
 19 Q Just for purposes of the record, what is
 20 Proposition 8?
 21 A **Proposition 8 was a constitutional**
 22 **amendment, adopted by the people of California in**
 23 **November of 2008 to define marriage as between a man**
 24 **and a woman, 14 words that, I believe, are, "Only**
 25 **marriage between a man and a woman will be valid or**

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1 BY MR. GOLDMAN:
 2 Q Do you understand the question?
 3 A **I believe you're asking me, do I recall**
 4 **publicly discussing strategic decisions that we made**
 5 **during the campaign.**
 6 Q That's right.
 7 A **I certainly recall discussing the campaign**
 8 **and our role in it, and some of the decisions and**
 9 **discussing some of the decisions that we made in**
 10 **that campaign. And you may characterize some of**
 11 **those decisions as strategic, yes.**
 12 Q How would you define a strategic decision,
 13 in the context of a political campaign?
 14 A **Well, a strategic decision largely relates**
 15 **around -- around messages that you are conveying and**
 16 **the manner in which you are seeking to define an**
 17 **initiative proposal.**
 18 **(Mr. Stroud entered the proceedings.)**
 19 BY MR. GOLDMAN:
 20 Q Why did you decide to speak publicly about
 21 Schubert Flint Public Affairs' role in getting
 22 Proposition 8 enacted?
 23 MR. TYLER: I'm sorry. Could you repeat
 24 that question for me?
 25 (The question was read as follows:)

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1 **recognized in California."**
 2 Q And was Proposition 8 also called the
 3 California Marriage Protection Act?
 4 A **It may have been.**
 5 Q Is it fair to say that you have made
 6 public statements about Schubert Flint Public
 7 Affairs' role in getting Proposition 8 enacted?
 8 A **Yes.**
 9 Q And you've publicly discussed some
 10 strategic decisions that you made?
 11 A **I have publicly discussed the campaign. I**
 12 **would have to see a specific reference to determine**
 13 **whether it was a strategic decision or not.**
 14 Q As you sit here now, you don't recall
 15 whether you have discussed strategic decisions that
 16 you made in the Proposition 8 campaign?
 17 MR. TYLER: Objection. Vague as to
 18 "strategic decisions." Practically every decision
 19 in life is somewhat strategic. Whether you leave
 20 and go to the restroom right now or do it later is a
 21 strategic decision.
 22 I'd suggest that you narrow your
 23 questioning a little further. I prefer it not to be
 24 so vague and overbroad.
 25 ////

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1 "Q Why did you decide to speak
 2 publicly about Schubert Flint Public
 3 Affairs' role in getting
 4 Proposition 8 enacted?"
 5 THE WITNESS: Well, you would have to give
 6 me a specific example, so I could respond to answer
 7 that particular example.
 8 BY MR. GOLDMAN:
 9 Q Okay. Fair enough.
 10 Why don't we -- I'll just note for the
 11 record that we have had someone enter the room.
 12 Would you like to state your appearance?
 13 MR. STROUD: My name is Andrew Stroud,
 14 Mennemeier, Glassman & Stroud, appearing on behalf
 15 of Governor Arnold Schwarzenegger and the
 16 administration defendants.
 17 I apologize. I wasn't aware that the
 18 start-time kickoff had moved up to 8:00. I thought
 19 I was on time at 9:00.
 20 THE WITNESS: May I ask to get a bottle of
 21 water or a glass of water?
 22 MR. GOLDMAN: Sure. Why don't we go off
 23 the record, then, for a few minutes.
 24 MR. COOPER: All okay? Good.
 25 THE VIDEOGRAPHER: We are going off the

1 record. The time is approximately 8:56 a.m.
 2 (Discussion off the record.)
 3 THE VIDEOGRAPHER: We are going back on
 4 the record. The time is approximately 9:06 a.m.
 5 BY MR. GOLDMAN:
 6 Q Mr. Schubert, before we began with the
 7 first exhibit, I'm aware, certainly, of some
 8 instances in which you have spoken publicly about
 9 your role in the Prop 8 campaign. But tell me, if
 10 you would, which instances you can recall, sitting
 11 here today.
 12 A Well, certainly during the course of the
 13 campaign, I conducted numerous media interviews,
 14 where I revealed that I was the campaign manager or
 15 co-campaign manager, as the case may be, of the
 16 ProtectMarriage.com Yes on 8 campaign.
 17 In the post-election period I'm aware of
 18 an article that Jeff Flint and I authored for
 19 Politics Magazine and a presentation that we gave to
 20 a meeting of the American Association of Political
 21 Consultants. In both of those cases, we discussed
 22 our role in Proposition 8.
 23 Q And are those the only two instances after
 24 the election, that you can recall?
 25 A I gave a speech in Canada, where I talked

1 given?
 2 A Well, are you asking news interviews
 3 post-election --
 4 Q Post-election?
 5 A -- dealing with our role --
 6 Q Yes.
 7 A -- or just interviews, generally?
 8 Q No. Dealing with your role in the
 9 Proposition 8 campaign.
 10 A I don't know, precisely. I would -- I'm
 11 certainly familiar with an interview that we gave to
 12 the New York Times that discussed the Proposition 8
 13 campaign in some detail, including our role in the
 14 campaign. And there may be other -- others of that
 15 nature.
 16 Q When was The New York Times interview?
 17 A I don't recall the specific time frame.
 18 It was relatively shortly after the campaign, either
 19 in late November or possibly in early December. I
 20 don't recall a specific date.
 21 Q Were any of the interviews that you gave
 22 with television stations?
 23 A I certainly gave interviews with
 24 television stations after the campaign. I don't
 25 recall a specific interview that was focused on our

1 about the process of running campaigns; and in the
 2 course of that, talked about Proposition 8 as one
 3 example.
 4 Q When was that speech, and where, in
 5 Canada?
 6 A It was in Ottawa. I believe it was in
 7 late January or early February, 2009.
 8 Q Was that part of a conference or something
 9 like that?
 10 A I was an invited speaker at a conference.
 11 Q What was the conference?
 12 A The conference was sponsored by the
 13 Manning Centre. I believe it was a conference of
 14 conservative political activists in Canada.
 15 Q Do you know if your remarks at that
 16 conference were recorded?
 17 A I don't.
 18 Q Are there any other instances that
 19 you're -- that you can recall, in which you have
 20 spoken publicly about Schubert Flint's Public
 21 Affairs' role in the campaign?
 22 A I'm aware of news interviews in the
 23 post-election period where we've discussed our role
 24 in Proposition 8.
 25 Q About how many news interviews have you

1 role in the campaign, but there may have been.
 2 MR. GOLDMAN: Let's mark this, if we
 3 could, as Schubert Exhibit 1.
 4 (Schubert Exhibit 1 was marked for
 5 identification.)
 6 MR. TYLER: Marking them 1, No. 1.
 7 BY MR. GOLDMAN:
 8 Q Can you identify this document for me,
 9 Mr. Schubert?
 10 A This appears to be the article that Jeff
 11 Flint and I wrote for Politics Magazine.
 12 Q And what is Politics Magazine?
 13 A Politics Magazine is a publication,
 14 monthly publication, for -- largely aimed at
 15 political professionals, people who are involved in
 16 politics professionally.
 17 Q And why did you write this article for
 18 Politics Magazine?
 19 MR. COOPER: I would like to object to
 20 that question. I believe that it exceeds the scope
 21 of permissible discovery and invades First Amendment
 22 information, privileged information, and I would ask
 23 counsel to...
 24 MR. TYLER: I'll join in that objection as
 25 to his -- that it would invade his first amendment

1 privilege.

2 I'm sorry. Let me restate that to make
3 sure for the record because my microphone was off.

4 I will join in that objection as to my
5 client's First Amendment privilege and instruct him
6 not to answer that question.

7 BY MR. GOLDMAN:

8 Q Well, Mr. Schubert, did you publish this
9 article, in part, to advertise the work that
10 Schubert Flint Public Affairs does?

11 MR. COOPER: Same objection. Same
12 objection.

13 MR. TYLER: I'll assert the same objection
14 and instruct my client not to respond.

15 MR. GOLDMAN: I really don't -- I have to
16 say, I do not understand. I'm asking foundational
17 questions to test the assertion of the First
18 Amendment privilege. And if he was publishing this,
19 in part, for a commercial purpose, that seems highly
20 relevant to the inquiry. And to be told that I
21 can't even ask the foundational questions that would
22 test the assertion of the First Amendment privilege,
23 I will really have to say I don't understand that.

24 MR. TYLER: Mr. Goldman, my response to
25 that is that you can question him with regard to

1 **to ProtectMarriage.com Yes on 8.**

2 Q All right. And if I just say
3 ProtectMarriage or ProtectMarriage.com, will you
4 understand that the entity that I'm referring to is
5 the entity that retained you to manage the
6 Proposition 8 campaign?

7 **A Thank you for that clarification.**

8 Q Did you discuss with ProtectMarriage.com
9 that you were going to publish this article in
10 Politics Magazine?

11 MR. TYLER: Objection. Again, violation
12 of his First Amendment privilege.

13 I'll instruct him not to respond to that
14 question, as to his internal communications with his
15 client.

16 MR. GOLDMAN: And I take it you're going
17 to instruct the witness not to answer any questions
18 he -- answer any questions about communications he
19 had with ProtectMarriage about this article?

20 MR. TYLER: I think I'll let you question
21 him. I'm not going to enter into a stipulation on
22 that, at least at this point in time, until I have a
23 better understanding of the scope of what you're
24 saying.

25 ////

1 whether or not he wrote this document, whether or
2 not it accurately reflects what he wrote, but to
3 dive into the question as to why he wrote it, I
4 think, obviously, violates his First Amendment
5 privilege, when this article is all about
6 Proposition 8.

7 And I believe that it's readily apparent
8 and need not have foundational questions to see that
9 it is readily apparent that it concerns a First
10 Amendment privilege. So I think you can -- you can
11 ask him whether he wrote it and whether these are
12 his words. But going beyond that, into why and his
13 personal mental impression for writing it, certainly
14 violates his First Amendment right.

15 MR. GOLDMAN: Well, we obviously disagree
16 with that, but we will have to take that up with the
17 court at another time.

18 BY MR. GOLDMAN:

19 Q What is the name of the entity that
20 retained you to manage the campaign for
21 Proposition 8?

22 **A The original entity was**
23 **ProtectMarriage.com. That entity's name, I believe,**
24 **changed following the qualification of the**
25 **initiative; and at that time I believe was changed**

1 BY MR. GOLDMAN:

2 Q Did anyone at ProtectMarriage review this
3 article before it was published?

4 MR. TYLER: Objection. Again, concerns
5 internal communications; mental impressions as it
6 relates to the campaign.

7 I would also want to, for foundational
8 purposes here, with regard to this objection, make
9 it clear that there has been widely broadcast
10 information that there are other initiatives to
11 counter Proposition 8 that have been either
12 proposed, approved, that are going to be submitted
13 on upcoming ballots. And as a result, there's an
14 ongoing First Amendment privilege, I believe, as to
15 the associational rights of the Proposition 8
16 campaign and those involved in the campaign,
17 including Mr. Schubert, here today.

18 With that understanding, I'm going to
19 instruct him not to answer as to your last question,
20 based upon the First Amendment privilege.

21 BY MR. GOLDMAN:

22 Q Were you authorized by ProtectMarriage.com
23 to publish this article?

24 MR. TYLER: Objection. I will again
25 assert the First Amendment privilege as to whether

1 or not he was authorized. Again, that would go to
2 the strategy and internal communications.

3 And I'm instructing him not to respond,
4 based upon the First Amendment privilege.

5 BY MR. GOLDMAN:

6 Q Before today, when is the last time that
7 you reviewed this article?

8 A **Last evening.**

9 Q And when you reviewed it last evening, was
10 there anything that you thought you had stated
11 incorrectly in this article?

12 A **There is a statement in the article that**
13 **virtually the entire faith community was on our**
14 **side.**

15 **And upon further reading of the article, I**
16 **believe that statement to be an overstatement.**

17 Q Why do you believe that to be an
18 overstatement?

19 A **Because there were very significant**
20 **elements of the faith community who opposed**
21 **Proposition 8 and who actively campaigned against**
22 **it.**

23 Q What elements of the faith community do
24 you have in mind, by groups who actively opposed
25 Proposition 8?

1 A **There's a reference to the number of media**
2 **calls that we fielded on the day that same-sex**
3 **marriages began to be performed in California. I**
4 **believe that that figure is -- should have been made**
5 **more clear -- was an estimate.**

6 MR. TYLER: I would also like to instruct
7 my client to make sure you take plenty of time at
8 this point in time. If you feel you want to reread
9 this document while we sit here, feel free to do so.
10 You have the time you need to read that to make sure
11 you can accurately respond to the question.

12 THE WITNESS: Okay.

13 MR. GOLDMAN: My question was just
14 whether, when he reviewed it last night, there was
15 anything that struck him as incorrect.

16 MR. TYLER: Well --

17 MR. GOLDMAN: I don't think he needs to
18 read the article now to answer that question.

19 MR. TYLER: I would disagree. If -- what
20 struck him last night, he might not remember this
21 morning, so I think he has the right to be able to
22 look through this document, read it, and see if
23 there's anything that came to his recollection that
24 he even had last night.

25 I'm not trying to play any games here; I

1 MR. TYLER: I want to, I guess, just
2 caution you -- I'm not quite sure how far you're
3 going with this -- but I believe you're treading on
4 First Amendment privilege as well.

5 I'll let him respond to this one question,
6 but I'm not sure I'm going to -- I'm not sure if the
7 next question is going to be one that we would
8 believe is appropriate.

9 THE WITNESS: I would answer the question
10 this way: It's publicly available information,
11 published by the No on 8 Campaign, that a number of
12 faith leaders and faith organizations opposed
13 Proposition 8 and were working in league with the
14 No on 8 Campaign to persuade California voters to
15 reject it.

16 BY MR. GOLDMAN:

17 Q And apart from the one statement that
18 you've just talked about, was there anything else,
19 as you reviewed this article yesterday, that struck
20 you as incorrect?

21 A **In two places in the article, there's a**
22 **reference to the margin of victory being 700,000**
23 **votes. That is an error, I believe. I believe the**
24 **margin was approximately 600,000 votes.**

25 Q Anything else?

1 just think, to be fair, give him an opportunity to
2 review it.

3 THE WITNESS: Following on my earlier
4 answer, there's a statement in the article that
5 would appear to concede that there were 18,000 gay
6 marriages that were performed in California. I
7 believe that that figure is -- has never been
8 substantiated and is an estimate conducted by a
9 third-party group, that has been taken as fact, when
10 there's no foundation for that number that exists.
11 So I do not believe that the 18,000 reference being
12 in -- I don't believe that that reference is
13 particularly accurate.

14 BY MR. GOLDMAN:

15 Q What is your reason for doubting the
16 accuracy of that number?

17 A **The number came, if I recall correctly,**
18 **from a study conducted by the Williams Institute,**
19 **which is a gay think tank, for lack of a better**
20 **term, I believe associated with UCLA.**

21 **My recollection of that study is that they**
22 **took a look at the number of weddings that were**
23 **performed in California in one period of time, prior**
24 **to the Supreme Court's ruling in the marriage cases.**
25 **I believe that number itself was an estimate.**

1 **They then compared the number of marriages**
 2 **performed in a different period of time, a period**
 3 **that included the period following the Supreme**
 4 **Court's ruling in the marriage cases, which I**
 5 **believe was also an estimate. And the difference**
 6 **between those two numbers, they ascribed as being**
 7 **same-sex marriages.**

8 **I do not believe that that methodology at**
 9 **all can be relied upon to provide an accurate number**
 10 **as to the marriages that were performed. And I**
 11 **believe that -- that in point of fact, it's**
 12 **impossible to know how many same-sex marriages were**
 13 **performed because California does not collect the**
 14 **data that would allow us to accurately measure that.**

15 Q Were you aware of the Williams Institute's
 16 methodology at the time you wrote the article?

17 A **I was aware of the methodology, which is**
 18 **why I'm pointing out to you the -- that I believe it**
 19 **was an error to have referenced 18,000 gay**
 20 **marriages.**

21 Q Well, if you were aware of the methodology
 22 at the time, what is it that has caused you to
 23 change your mind about reliability of that number?

24 A **Relative to this article, that number was**
 25 **not a significant factor in the article, so I didn't**

1 THE WITNESS: Sorry.

2 MR. TYLER: And I would also like to get a
 3 clarification from you -- and this is a lengthy
 4 document.

5 And, for example, there's a statement in
 6 here, this is particularly true, "a state with
 7 40 million residents." I think we can all recognize
 8 that there's not exactly 40 million residents here
 9 in this state.

10 I'm not quite sure, when your question is
 11 as to accuracy, whether you're looking at
 12 generalizations like that, or whether you're looking
 13 for something more specific.

14 BY MR. GOLDMAN:

15 Q Right. And to the extent that there was
 16 any confusion about what I'm interested in knowing,
 17 it's whether something strikes you as inaccurate, so
 18 that if you were writing it today, for the same
 19 purposes that you had in writing the original
 20 article in the context in which it was written, is
 21 there anything that, today, you would want to say
 22 differently?

23 A **Well, relative to when I was reading the**
 24 **article last night, as you indicated earlier -- and**
 25 **I do recall the statement on page 46, in the full**

1 **focus on the number, per se.**

2 Q And is there anything else that you recall
 3 reviewing in this article last night that struck you
 4 as incorrect?

5 A **There's a statement, "We organized**
 6 **countless meetings and conference calls of pastors**
 7 **and other campaign leaders."**

8 Q What page are you on?

9 A **I'm on page 45, first full -- excuse me --**
 10 **second full paragraph on that page.**

11 Q Yes. And what's your concern with that
 12 statement?

13 A **I believe the statement, "we organized,"**
 14 **is overly broad. It would have been more accurate**
 15 **to have said, "We participated in countless meetings**
 16 **and conference calls."**

17 Q Anything else?

18 MR. TYLER: Let me quickly -- I want to
 19 instruct Mr. Schubert not to write on the
 20 document --

21 THE WITNESS: I'm sorry.

22 MR. TYLER: -- that you have, unless
 23 you're instructed to do so --

24 THE WITNESS: I apologize.

25 MR. TYLER: -- by me.

1 **paragraph at the bottom of the left-hand column that**
 2 **begins with, "Fundraising was also a critical**
 3 **activity," the statement that, "Leaders of The**
 4 **Church of Jesus Christ of Latter-Day Saints had**
 5 **endorsed Proposition 8 and joined the campaign**
 6 **executive committee," that statement is inaccurate**
 7 **as to the official participation of leaders of The**
 8 **Church of Jesus Christ of Latter-day Saints. They**
 9 **did not join the executive committee, as I stated in**
 10 **the article. And I should have stated that, that**
 11 **they became active in supporting Proposition 8.**

12 Q So your point is that any members of the
 13 LDS church who were on the campaign executive
 14 committee were not leaders of the LDS church. Is
 15 that what you're saying?

16 A **I believe I said that the Church of --**
 17 **leaders of The Church of Jesus Christ of Latter-Day**
 18 **Saints did not join the executive committee at that**
 19 **time.**

20 Q Oh, they joined it subsequently; is that
 21 the distinction you're trying --

22 MR. TYLER: Objection. You're being
 23 somewhat argumentative with the witness. That's not
 24 what he said.

25 MR. GOLDMAN: I'm just trying to

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1 understand his basis for wanting to say this
 2 sentence differently today, what he believes is
 3 inaccurate about it. That's all I'm trying to
 4 understand.
 5 BY MR. GOLDMAN:
 6 Q So if that would help you, can you explain
 7 to me what it is that is inaccurate about this
 8 sentence that would cause you to rewrite it, if you
 9 were going to publish this article today?
 10 A **Leaders of The Church of Jesus Christ of**
 11 **Latter-Day Saints did not join the executive**
 12 **committee.**
 13 Q There were members of that church on the
 14 executive committee; at least one member of that
 15 church was on the executive committee, correct?
 16 A **That's correct.**
 17 Q But none of the members of that church who
 18 were on the executive committee were leaders of that
 19 church. Is that correct?
 20 MR. TYLER: Objection. Vague.
 21 Would you repeat his question for me,
 22 please?
 23 (The question was read as follows:)
 24 "Q But none of the members of that
 25 church who were on the executive

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1 And I think, in addition, it exceeds the
 2 scope of the question that counsel has put, which,
 3 as I heard it is, are there any statements in that
 4 document that you do not believe to be true and
 5 accurate today.
 6 So I would like to put that objection on
 7 the record. And I guess it's up to counsel for the
 8 witness, in terms of whether he allows the witness
 9 to answer that question.
 10 MR. TYLER: I would instruct Mr. Schubert
 11 to just respond to the question and make sure you
 12 don't give a narration.
 13 It might be helpful at this point in time
 14 if you would reread the question, Madam Court
 15 Reporter.
 16 (The question was read as follows:)
 17 "Q All right. Are there any other
 18 sentences that you noticed last
 19 night that, today, if you were
 20 publishing the article, you would
 21 write differently?"
 22 THE WITNESS: Nothing is standing out for
 23 me that stood out last night when I read the
 24 article.
 25 ////

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1 committee were leaders of that
 2 church. Is that correct?"
 3 THE WITNESS: The use of the term "leader"
 4 is a subjective one.
 5 I would answer your question this way:
 6 That there was no member of the LDS hierarchy, as I
 7 understand it to exist, the quorum, first
 8 presidency, or the second quorum, that I would
 9 consider to be within the hierarchy of the LDS
 10 church. None of those individuals were members of
 11 the executive committee.
 12 BY MR. GOLDMAN:
 13 Q All right. Are there any other sentences
 14 that you noticed last night that, today, if you were
 15 publishing the article, you would write differently?
 16 A **Well, as a general matter, that this**
 17 **article was written following Proposition 8 and was**
 18 **written in a manner that was intended to**
 19 **summarize --**
 20 MR. COOPER: I want to object now to any
 21 inquiry or response to an inquiry that would go to
 22 the author's intention or purpose, with respect to
 23 the article. I believe that exceeds the scope of
 24 permissible discovery, and I believe it elicits
 25 information privileged under the First Amendment.

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1 BY MR. GOLDMAN:
 2 Q Okay. Is it fair to say that the general
 3 point of the article is to show how the decisions
 4 you made about how to frame the issue in public
 5 messaging about Prop 8 enabled you to convince a
 6 majority of California voters to support the
 7 measure?
 8 MR. TYLER: Objection. The document
 9 speaks for itself. And you're getting into First
 10 Amendment privileges to his purpose or strategy for
 11 writing this article.
 12 Instruct him not to respond to this
 13 question.
 14 MR. GOLDMAN: I did not ask about his
 15 purpose. I am trying to summarize what I see as the
 16 point of the article, based on my review of it.
 17 BY MR. GOLDMAN:
 18 Q And I simply want to know whether you
 19 would agree with that characterization of the
 20 article.
 21 MR. TYLER: Continued objection.
 22 I'll instruct him not to respond.
 23 Counsel, maybe -- I am not trying to be
 24 difficult, but I do want to make sure his First
 25

1 Amendment privilege is protected. And maybe if
2 you're getting to context, that might be different;
3 but his purpose or his point, because you had asked
4 him for what his point was, effectively, in writing
5 the article, and that goes towards his strategy, his
6 personal mental impression. What's not already
7 public to this document, I think, is protected and
8 privileged.

9 Maybe context, if you were to reframe the
10 question, that might be a possible way to get a
11 response that you're looking for, but I --

12 MR. GOLDMAN: Well, you've already
13 instructed him not to answer any questions about the
14 context of the article. And you're instructing him
15 not to answer any questions about his purpose in
16 writing the article. And you're instructing him not
17 to answer any questions about what I understand to
18 be the point of the article. So it's hard for me to
19 see what is left.

20 Maybe you could tell me what you mean by
21 "context" that you would allow him to answer.

22 MR. TYLER: Time frame of this document,
23 you know, pre- or post-Proposition 8; what type of
24 magazine this is. I think you did get into that.

25 But, you know, I won't go further with

1 BY MR. GOLDMAN:

2 Q If you could look at page 45. In the
3 first column, there's a header that says, "Define
4 the terms; win the debate."

5 Do you see that?

6 A Yes.

7 Q What do you mean by, "Define the terms;
8 win the debate?"

9 MR. TYLER: Objection. Violates his First
10 Amendment privilege with regard to what he means.
11 The document speaks for itself.

12 Instruct him not to respond.

13 BY MR. GOLDMAN:

14 Q What is the Yes on Proposition 8 Campaign?

15 MR. TYLER: Objection.

16 BY MR. GOLDMAN:

17 Q What is your understanding of that phrase?
18 What does that refer to?

19 MR. TYLER: I want to assert an objection.
20 Vague and ambiguous.

21 You can go ahead and respond, to the
22 extent you can.

23 THE WITNESS: It's an interesting
24 question.

25 The ProtectMarriage.com Yes on 8 Campaign

1 regard to instructing you on how to conduct your
2 deposition. So if you don't think there's anything
3 further to ask, then you can move on, I guess.

4 MR. GOLDMAN: I think there's a lot
5 further to ask. I'm just not sure what there is
6 further to ask that you're going to allow him to
7 answer.

8 BY MR. GOLDMAN:

9 Q When was this article published,
10 Mr. Schubert?

11 A By "published," I'm assuming you're asking
12 when it was printed. And it appears to have been
13 printed in February 2009.

14 Q And at the time it was published, you
15 believed the statements in the article were true,
16 correct?

17 A I believed that the statements were true,
18 correct.

19 MR. TYLER: I would want to assert an
20 objection, except he has previously testified as to,
21 already with regard to some of the statements that
22 were generalizations, and, effectively, you know,
23 words of art, as we might say. So I would object to
24 your question to the extent that it mischaracterizes
25 what he previously stated.

1 is an official campaign committee, organized under
2 the law to support Proposition 8. That committee
3 retained our firm to assist them in their work.

4 When you say "Yes on 8," that suggests a
5 much broader campaign. And, in fact, that broad
6 description, Yes on 8, would be reflective of the
7 multitude of voices that voters might hear from
8 during the course of an election campaign.

9 So when you ask me about Yes on 8, there
10 are two components of that. One is the specific
11 voice to protect marriage; and the other is the
12 broad context in which the election occurred, where
13 there were a multitude of voices for and against the
14 initiative.

15 BY MR. GOLDMAN:

16 Q Now, were you retained by anyone, other
17 than ProtectMarriage.com, to work on the Prop 8
18 campaign?

19 MR. TYLER: Let me assert an objection
20 that the question is vague, in light of the last
21 question. And, really, what I would like to do is
22 just get back to your earlier statements as to
23 referencing ProtectMarriage.com.

24 I believe you had entered an agreement
25 with Mr. Schubert that when referencing

1 ProtectMarriage.com, you were talking about the
2 official campaign committee ProtectMarriage.com
3 Yes on 8. Is that right?

4 MR. GOLDMAN: That's -- yes, that's right.

5 MR. TYLER: Then there was -- your last
6 con -- your last question concerned, I think, what
7 does Mr. Schubert believe the campaign references.
8 And then he talked about a much broader subject
9 matter, all the voices he was talking about, all the
10 voices that would talk about Proposition 8 with
11 regard to the campaign.

12 MR. GOLDMAN: Yes.

13 MR. TYLER: I just want to make sure that
14 I understand that so that your -- you know, your
15 words are understood by Mr. Schubert as well, and we
16 have an agreement as to what you're referencing
17 here.

18 So in referencing ProtectMarriage.com,
19 you're talking about the official campaign committee
20 right now?

21 MR. GOLDMAN: Right.

22 MR. TYLER: Okay.

23 MR. GOLDMAN: I think that's clear from
24 the record, and I don't want to waste a lot of time
25 summarizing what has already transpired in the

1 would need to address each particular issue that you
2 would like to know, whether or not it was done on
3 behalf of ProtectMarriage.com; whether he went to
4 lunch with a friend, whether that was part of his
5 work for ProtectMarriage.com. You need to ask him
6 whether having lunch with that friend was part of
7 ProtectMarriage.com.

8 I think you need to be more specific about
9 your examples as to what you want to get at. And an
10 overriding stipulation to that extent, I think,
11 would be overly broad and not representative of the
12 facts, necessarily.

13 MR. GOLDMAN: Is there anything you would
14 like to say about this, Mr. Cooper, at this time?

15 MR. COOPER: I have nothing to contribute
16 to the dialogue here.

17 MR. GOLDMAN: Okay.

18 BY MR. GOLDMAN:

19 Q Mr. Schubert, did you do any work on the
20 Yes on 8 campaign that was not part of your
21 responsibilities as the campaign manager for
22 Yes on 8 retained by ProtectMarriage.com?

23 MR. TYLER: Again, I'll assert an
24 objection as to his First Amendment privilege. If
25 you have some public fact that you want to question

1 deposition. We have a written record for that
2 purpose.

3 BY MR. GOLDMAN:

4 Q So my question is, were you retained by
5 anyone other than ProtectMarriage.com Yes on 8 to do
6 work for the Proposition 8 campaign?

7 A No.

8 Q Did you do any work for the Yes on 8
9 campaign that was not compensated?

10 MR. TYLER: Objection. This, again,
11 violates his First Amendment privilege as to whether
12 or not he was paid, volunteered. It exceeds the
13 scope of permissible discovery here. It's not
14 relevant.

15 I'll instruct him not to respond.

16 MR. GOLDMAN: Well, if Mr. Cooper is
17 willing to stipulate that anything that Mr. Schubert
18 did was done on behalf of ProtectMarriage.com, then
19 maybe we don't need to explore these foundational
20 questions. But I think if we're going to have a
21 dispute about whether what Mr. Schubert did is
22 attributable to the ProtectMarriage.com, then I
23 would think I'm entitled to explore these questions.

24 MR. TYLER: Well, regardless of
25 Mr. Cooper, I would not stipulate to that. You

1 him on about his work, you can question him about
2 specific facts.

3 But I'm going to instruct him not to
4 respond to overgeneralizations of that nature.

5 MR. GOLDMAN: It's a yes-or-no question.

6 MR. TYLER: I assert the same objection.
7 Whether he volunteered or didn't volunteer is
8 privileged information. The fact is, we all know,
9 and it's a matter of public record, he worked on the
10 campaign.

11 MR. GOLDMAN: Yes. And the question is
12 whether Mr. Schubert contends that he did things
13 that were not part of his work on behalf of
14 ProtectMarriage.com as the campaign manager for
15 Yes on 8.

16 MR. TYLER: Same objection. I don't think
17 that it -- you have to provide something more
18 specific. You can't overgeneralize. And, you know,
19 I don't want to have -- I don't want to have an
20 objection here where I'm arguing and you think I'm
21 trying to coach him. But I can leave it at that, or
22 I can explain myself a little bit further, as to
23 what my problem is with your question.

24 I'll leave that up to you, if you want to
25 talk about that further.

1 MR. GOLDMAN: The problem is we cannot
2 speak meaningfully about Mr. Schubert's work if
3 there's a dispute about whether what he did was done
4 on behalf of ProtectMarriage.com. And that's why
5 I'm asking a very simple question, whether there is
6 any work that he did --

7 MR. TYLER: I can understand --

8 MR. GOLDMAN: -- that was not on behalf
9 ProtectMarriage.com.

10 I think that is very clearly relevant to
11 this case, important to the plaintiffs' burden of
12 proof, and would certainly, to the extent that
13 information is protected by the First Amendment,
14 that would certainly satisfy -- a basic foundational
15 question like that would certainly satisfy
16 overriding the First Amendment to the limited
17 purpose of identifying whether what he did was done
18 on behalf of ProtectMarriage.com.

19 MR. TYLER: I understand your objection,
20 or I should say I understand your argument.

21 And my response is this: You're asking
22 him to be overly broad with the question as to
23 whether or not he ever performed any work that was
24 not in -- I think in his role as official campaign
25 manager.

1 MR. TYLER: -- whether or not he paid for
2 his own gas to drive to an event; whether or not he
3 spoke to someone on his own time face-to-face;
4 whether or not that was an official campaign issue
5 or not.

6 These are issues that, I think, go to
7 establish the fact that this is an
8 overgeneralization.

9 MR. GOLDMAN: Counsel, I have a limited
10 amount of time to take this deposition. I am not
11 going to count against my time for the deposition
12 your speeches, just so that is clear.

13 And I'll do my best to get Mr. Schubert
14 out of here because I know he does have commitments,
15 but we will continue this deposition and be back
16 here if you're going to eat up record time by making
17 speeches.

18 MR. TYLER: I'm not making speeches. You
19 asked the question. I responded.

20 Go ahead.

21 And he will need to leave here at an
22 appropriate time.

23 BY MR. GOLDMAN:

24 Q Mr. Schubert, are any of the activities
25 that are described in this article activities that

1 So, for example, you could take the
2 article that we were just talking about that was in
3 Politics Magazine and say, Was this written in your
4 capacity as the campaign manager for
5 ProtectMarriage.com.

6 But you can't ask him an overarching
7 generalized question, whether or not he ever did
8 anything in relation to work on the campaign that
9 was of a volunteer nature.

10 There is -- you know, that just could
11 include a myriad of things.

12 MR. GOLDMAN: Let's just --

13 MR. TYLER: No. No. Let me just give you
14 an example.

15 MR. GOLDMAN: No. This is not helpful.

16 MR. TYLER: I'm going to continue. I am
17 going to make my statement because I want to make
18 sure it's clear for the record.

19 MR. GOLDMAN: No, we're not making
20 statements. This is not a time for speeches.

21 MR. TYLER: The purpose of that is the
22 fact there are many things, such as whether or
23 not --

24 MR. GOLDMAN: Counsel, counsel, please
25 stop wasting -- this is my deposition.

1 you did not do as the campaign manager for Yes on 8?

2 MR. TYLER: Objection. Vague and
3 overbroad.

4 You can go ahead and respond. Take your
5 time to look at it to make sure you look at every
6 specific item mentioned, to ensure that you know
7 whether or not it was or was not part of your work
8 as the official campaign manager for
9 ProtectMarriage.com.

10 Take as much time as you need.

11 MR. GOLDMAN: No.

12 BY MR. GOLDMAN:

13 Q Mr. Schubert you reviewed this article
14 last night. This is ridiculous.

15 MR. TYLER: Counsel, if you want to pull
16 out specific --

17 MR. GOLDMAN: If you had let me ask him
18 the question whether he did anything that was not on
19 behalf of ProtectMarriage.com, the answer may have
20 been no, and then we would not be wasting time by
21 having you ask him to read this article again. You
22 have already asked him to read it once today.

23 MR. TYLER: This is your question.

24 MR. GOLDMAN: After he already said that
25 he read it last night.

1 MR. TYLER: You're not going to -- you're
2 not going to be oppressive upon my client and do
3 this. If he needs to read through it and take the
4 time, he will.

5 MR. GOLDMAN: You will stop coaching the
6 witness to waste time on this record.

7 MR. TYLER: You can consider it coaching
8 to waste time. I don't really care.

9 Read the article to the extent you need
10 to, to make sure you refreshed your recollection as
11 to what is in the article, so that you can respond
12 to his question.

13 THE WITNESS: Based on my reading of it
14 last night, and my cursory review this morning, I
15 don't see anything in the article that discusses our
16 work on the campaign that was not done for
17 ProtectMarriage.com.

18 BY MR. GOLDMAN:

19 Q All right. Did the Yes on 8 campaign
20 build a coalition?

21 A **Again, I just want to make sure I'm clear.**
22 **When you say the Yes on 8 campaign, you are**
23 **referring to ProtectMarriage.com?**

24 Q Yes, I am.

25 A **Okay. Thank you.**

1 are permissible and encroaching on First Amendment
2 internal information.

3 MR. TYLER: I would adopt that objection
4 as well and instruct my client not to respond.

5 BY MR. GOLDMAN:

6 Q Did you publicly disclose that these
7 individuals or these organizations are members of
8 the Yes on 8 coalition?

9 MR. TYLER: Objection. Vague.

10 THE WITNESS: Not to my knowledge.

11 BY MR. GOLDMAN:

12 Q Did the Yes on 8 campaign communicate
13 messages to voters?

14 MR. COOPER: I would like to ask for a
15 clarification for counsel, if I may.

16 You're using the term Yes on 8 campaign,
17 and, earlier, we were using ProtectMarriage.com.
18 And I just want to be clear that counsel's question
19 goes to the client that Mr. Schubert represented, or
20 this broader Yes on 8 campaign that Mr. Schubert
21 previously described.

22 MR. GOLDMAN: Okay. Well, yes. And I
23 think that's a fair clarification.

24 BY MR. GOLDMAN:

25 Q When I say the "Yes on 8 campaign" in this

1 MR. TYLER: I'll object based upon
2 vagueness.

3 Go ahead.

4 THE WITNESS: The Yes on 8 campaign sought
5 to recruit allies and to coalesce individuals and
6 groups that shared a support for Proposition 8, yes.

7 BY MR. GOLDMAN:

8 Q And was there a way in which you
9 identified an entity or individual as an official
10 member of the Yes on 8 coalition, as opposed to
11 someone who just happens to support the Yes on 8
12 campaign?

13 MR. TYLER: Objection. Vague.

14 THE WITNESS: Your use of the term,
15 "official member," would need to be defined, if you
16 would.

17 BY MR. GOLDMAN:

18 Q Well, did you distinguish in any way
19 members of the Yes on 8 coalition from people who
20 just happened to support Proposition 8?

21 MR. TYLER: Objection. Vague.

22 MR. COOPER: I would like to object. I
23 believe this goes to internal campaign strategy,
24 deliberations and information, and that it is,
25 therefore, exceeding the limits of discovery that

1 context, I mean the Yes on 8 campaign that you
2 managed.

3 MR. TYLER: I'm sorry. That doesn't
4 clarify it for me.

5 The Yes on 8 campaign, he previously
6 talked about being a very broad campaign with many
7 voices, voices that he had no control over, voices
8 that he may have had control over, and then there's
9 the ProtectMarriage.com.

10 So which one are we speaking of --

11 MR. GOLDMAN: Well, you were --

12 MR. TYLER: -- the campaign or
13 ProtectMarriage.com.

14 BY MR. GOLDMAN:

15 Q Well, you were hired to run a campaign for
16 ProtectMarriage.com, correct?

17 A **That's correct.**

18 Q And you did that, correct?

19 A **Correct.**

20 Q And you had control over the messages that
21 were disseminated by the campaign that you were
22 retained to run and did run?

23 MR. COOPER: I object to that question --

24 MR. GOLDMAN: Are you instructing the
25 witness not to answer?

1 MR. COOPER: -- on the grounds -- I can't
2 do that, but on the grounds previously stated.
3 MR. TYLER: I'll object on the basis of
4 vagueness to that question.
5 I think it might be helpful if you could
6 define -- when you speak of a campaign, I'm
7 struggling with whether you're talking about --
8 there are many voices out there that he's never
9 spoken to, that he has no control of, and they've
10 never spoken to him, so I'm not sure.
11 You used the word "campaign." I'm not
12 sure if you're speaking of a larger movement or work
13 on behalf of an official campaign committee.
14 MR. COOPER: Counsel, may I offer a
15 friendly suggestion?
16 MR. GOLDMAN: Sure.
17 MR. COOPER: Thank you.
18 At least, to my mind, the definitional
19 issue would be cleared up if you addressed the
20 question I understand you to be asking to
21 Mr. Schubert by referring to the ProtectMarriage.com
22 campaign.
23 MR. GOLDMAN: Let's see if --
24 MR. COOPER: And I think that would
25 coincide with what at least I understand the record

1 **e-mail.**
2 Q But you did send e-mails to people who did
3 not register at the ProtectMarriage.com website. Is
4 that correct?
5 MR. TYLER: Objection. He just responded
6 as to the fact that it could invade his First
7 Amendment privilege with regard to how people came
8 about getting on the list for e-mails.
9 I'll instruct him not to respond.
10 I think what was publicly sent or what was
11 not is relevant, but not to how he came about
12 deciding who to send to.
13 Therefore, on the First Amendment
14 privilege ground, I'll instruct him not to respond
15 to that question.
16 BY MR. GOLDMAN:
17 Q Did the communications also include
18 telephone calls?
19 A Yes.
20 Q And did the communications include
21 posters?
22 A **I don't recall that. It's possible, but I**
23 **don't recall.**
24 Q Did the communications include lawn signs?
25 A Yes.

1 to have been on this.
2 BY MR. GOLDMAN:
3 Q Did the ProtectMarriage.com Yes on 8
4 campaign communicate messages to voters?
5 A Yes.
6 Q Did those communications include
7 television advertising?
8 A Yes.
9 Q Radio advertising?
10 A Yes.
11 Q Mass e-mails?
12 A **That depends on your definition. We**
13 **certainly did distribute large numbers of e-mails to**
14 **people who requested them.**
15 Q You did not distribute any e-mails, send
16 e-mails, to anyone who did not first request it. Is
17 that correct?
18 A **I believe to answer that might implicate a**
19 **privilege, so I would have to ask for counsel's**
20 **guidance because it may get to the process that we**
21 **employed to develop the list.**
22 **But I can tell you, as a general matter,**
23 **people who received our e-mails had gone to our**
24 **website, to the campaign website, and taken some**
25 **action that would result in them receiving an**

1 Q Bumper stickers?
2 A Yes.
3 Q Flyers?
4 A Yes.
5 Q And what kinds of public events did the
6 ProtectMarriage.com campaign stage to disseminate
7 its message?
8 A **The ProtectMarriage campaign organized a**
9 **bus tour in the latter days of the campaign in a**
10 **number of cities -- excuse me. And the campaign**
11 **worked to find locations and encourage supporters of**
12 **Proposition 8 to come to those events.**
13 Q So the bus would come to town, and then
14 there would be a rally? Is that what you would call
15 it?
16 A **That would be a fair characterization of**
17 **it.**
18 Q Is a rally something that is opened to the
19 public?
20 MR. TYLER: Objection. Vague.
21 THE WITNESS: I -- we would have to go
22 through the specifics of each event, which I may or
23 may not be familiar with.
24 The rallies may have occurred, in some
25 cases, on private property. And in other cases,

1 they may have occurred on public property. And that
2 might potentially affect the answer to your
3 question.

4 BY MR. GOLDMAN:

5 Q By "private property," do you have in mind
6 churches?

7 A **That would be one example, yes.**

8 Q Are there any other examples?

9 MR. TYLER: Let me object to vagueness on
10 that question.

11 THE WITNESS: I don't have any specific
12 recollection of other examples, but there
13 certainly -- in the context of how you've asked the
14 question, there would be many potential examples of
15 private property.

16 BY MR. GOLDMAN:

17 Q Were members of the media invited to all
18 of the rallies that were part of the bus tour?

19 A **I believe that they were.**

20 Q Do you have any reason to believe that, at
21 any of the rallies, members of the public who showed
22 up were not admitted if they wanted to attend the
23 rally?

24 A **I don't have any information on whether
25 they were or were not admitted.**

1 part of your responsibilities as the campaign
2 manager for the ProtectMarriage.com campaign, did
3 you retain other vendors to provide services?

4 A **If by "you," you mean Schubert Flint --**

5 Q Yes, I do?

6 A **-- I don't recall any vendor that we
7 retained as a company.**

8 Q Did you develop campaign strategy?

9 MR. COOPER: I would like to object to
10 that question.

11 MR. TYLER: I'll assert the same objection
12 based upon First Amendment privilege and instruct
13 him not to respond.

14 BY MR. GOLDMAN:

15 Q Did you raise money?

16 MR. COOPER: That question also is
17 objectionable.

18 MR. GOLDMAN: Are you going to object and
19 instruct him not to answer any questions about what
20 the responsibilities of Schubert Flint Public
21 Affairs were for the Prop 8 campaign and what they
22 did to satisfy those responsibilities?

23 MR. COOPER: We are concerned that the
24 area that you're probing goes to internal campaign
25 structures and responsibilities that, as we

1 Q Apart from the bus tour, were there any
2 other public events that you can think of that were
3 staged by the ProtectMarriage.com campaign?

4 A **Are you referring to the period prior to
5 the adoption of Proposition 8?**

6 Q Yes, prior to the election.

7 A **I don't recall any other events, but if
8 you are aware of one, I would be happy to address
9 that specifically.**

10 Q Well, how about town halls, does that
11 phrase mean anything to you?

12 A **Only as a general matter. In the context
13 of a candidate campaign, frequently a candidate will
14 sponsor an event and invite people to come and ask
15 questions of the candidate about his or her position
16 on an issue. This, of course, was not a candidate
17 campaign.**

18 Q So as you understand the term, the
19 ProtectMarriage.com campaign did not hold any town
20 halls?

21 A **I don't recall any.**

22 Q Okay. The ProtectMarriage.com campaign
23 did hold numerous press conferences, correct?

24 A **That's correct.**

25 Q You may have already answered this, but as

1 understand the court's previous rulings, are beyond
2 the proper scope of discovery because they're not
3 relevant to the ultimate issues in this case.

4 We also believe they trench on First
5 Amendment values concerning the internal operation
6 and relationships within the political process and
7 campaign that was ProtectMarriage.com.

8 MR. GOLDMAN: Well, as long as we can
9 stipulate that I have preserved my right to pursue
10 this line of questions, should a court rule that I'm
11 entitled to pursue it, then we can move on.

12 MR. COOPER: You certainly have preserved
13 your right with respect to that question. I
14 don't -- I don't -- I certainly can't be certain
15 that there might be questions that you have in mind
16 asking that would not raise these concerns. But to
17 the extent that they probe, Mr. Goldman, the
18 internal campaign structures, organization and
19 responsibilities within this campaign, then -- then
20 the questions would likely invade the concerns that
21 I've articulated.

22 BY MR. GOLDMAN:

23 Q Did Schubert Flint Public Affairs organize
24 and supervise grassroots efforts?

25 MR. COOPER: I make the same objection.

1 MR. TYLER: I'll object on the First
2 Amendment privilege and instruct him not to respond.
3 BY MR. GOLDMAN:
4 Q Did Schubert Flint Public Affairs assist
5 with the preparation of required financial filings
6 for ProtectMarriage.com?
7 MR. TYLER: Objection. First Amendment
8 privilege.
9 Instruct him not to respond.
10 BY MR. GOLDMAN:
11 Q Did Schubert Flint Public Affairs play any
12 role in drafting the arguments in the official voter
13 guide for Proposition 8?
14 MR. TYLER: Same objection.
15 Instruct you not to respond on First
16 Amendment privilege.
17 BY MR. GOLDMAN:
18 Q Did Schubert Flint Public Affairs decide
19 on the content of campaign messages?
20 MR. TYLER: Same objection.
21 Instruct you not to respond.
22 BY MR. GOLDMAN:
23 Q In general, how did you divide
24 responsibility between yourself and Mr. Flint for
25 the ProtectMarriage.com campaign?

1 MR. TYLER: Objection. First Amendment
2 privilege. Document speaks for itself.
3 I'll instruct you not to respond.
4 BY MR. GOLDMAN:
5 Q How did you become aware that supporters
6 wanted to engage in demonstrations against same-sex
7 marriages?
8 MR. TYLER: Objection. Argumentative.
9 Vague. Violates First Amendment privilege. You're
10 assuming facts that are -- have not been testified
11 to. There's no foundation to that statement, that
12 there were any such supporters.
13 Therefore, I'll instruct him not to
14 respond.
15 MR. GOLDMAN: Are you instructing him not
16 to respond on First Amendment grounds?
17 MR. TYLER: I am.
18 BY MR. GOLDMAN:
19 Q Did you become aware that there were
20 supporters who wanted to engage in demonstrations
21 against same-sex marriages?
22 MR. TYLER: Objection. Vague.
23 BY MR. GOLDMAN:
24 Q You can answer the question.
25 A I was not aware of any specific supporter

1 MR. TYLER: Objection. Concerns internal
2 campaign structure. First Amendment privilege.
3 Instruct him not to respond.
4 BY MR. GOLDMAN:
5 Q Did ProtectMarriage.com object to any
6 public statements that you made about your
7 involvement in the Proposition 8 campaign?
8 MR. TYLER: Objection. Vague and
9 ambiguous. Concerns internal campaign
10 communications, mental impressions of the campaign,
11 official campaign itself.
12 Based upon First Amendment privilege,
13 instruct him not to respond.
14 BY MR. GOLDMAN:
15 Q Let me ask you to look at page 44 of this
16 article, the right-hand column, six or seven lines
17 down. Do you see, it says that you decided to --
18 you urged all your supporters to refrain from
19 demonstrations, protests or rallies opposing the
20 marriages. And that's the same-sex couples who were
21 getting married.
22 Do you see that?
23 A I do, yes.
24 Q What did you mean by "supporters," in that
25 sentence?

1 of Proposition 8 who was going to protest marriages.
2 Q Were you aware, in general, that there
3 were supporters who wanted to engage in
4 demonstrations against same-sex marriages?
5 MR. TYLER: Objection. Vague. He's
6 already responded to your question, that he was not
7 aware of anyone.
8 MR. COOPER: I would like to add to that
9 First Amendment objection. Goes to the witness'
10 mental impressions, his internal thought process,
11 and beyond the face of the document, which speaks
12 for itself.
13 MR. TYLER: And I would instruct him not
14 to respond on First Amendment privilege.
15 If you have some specific group that
16 demonstrated, you could ask him whether he was aware
17 of that group, I guess.
18 BY MR. GOLDMAN:
19 Q Let me ask you to look at the next
20 sentence in the article. It begins, "This initial
21 strategic positioning."
22 Do you see that sentence?
23 A I do.
24 Q And when you refer in this article to
25 qualitative and quantitative research, did you --

1 who did you have conduct qualitative or quantitative
2 research that you referred to in this article?

3 MR. TYLER: Objection. First Amendment
4 privilege as to internal campaign structure and the
5 identity of persons involved in that. And your
6 question lacks foundation.

7 Instruct him not to respond to that
8 question.

9 MR. GOLDMAN: Would you agree that he can
10 respond to that question to the extent he's already
11 disclosed the names of these people?

12 MR. TYLER: If you have some public
13 document, some public information as to the
14 disclosure, you can ask him and identify that.

15 MR. COOPER: If -- and I would only add
16 that at least from the standpoint of my
17 representation of my clients, if the witness is
18 aware of a public disclosure that has taken place,
19 of information that is responsive and answers your
20 question, then at least I would not have an
21 objection to interpose.

22 MR. TYLER: That would be fine with me as
23 well.

24 BY MR. GOLDMAN:

25 Q So please answer the question to the

1 extent you are aware of public statements you've
2 already made about the people you retained to
3 conduct this research.

4 **A I am aware of public statements that were
5 made regarding people who conducted this type of
6 research.**

7 Q So please answer the question to that
8 extent, that you -- who did you retain to conduct
9 this research referred to in this statement?

10 MR. TYLER: Limited to those to whom you
11 made public statements regarding that, that
12 established the identity of those third parties.

13 THE WITNESS: It's been publicly reported
14 that Gary Lawrence, Lawrence Research, conducted
15 research for the campaign.

16 I wouldn't agree that we retained him, but
17 he did conduct research for the campaign.

18 BY MR. GOLDMAN:

19 Q And just generally, who is Gary Lawrence?

20 **A Dr. Gary Lawrence is a -- is a public
21 opinion researcher who has worked on issues of
22 importance for many years.**

23 Q And when you say that you didn't retain
24 him, you're referring to Schubert Flint Public
25 Affairs?

1 **A That's correct.**

2 Q Do you know whether ProtectMarriage.com
3 retained Dr. Gary Lawrence?

4 **A I believe they did.**

5 Q Is there anyone else that you discussed
6 publicly who performed research for the
7 ProtectMarriage.com campaign?

8 **A Not to my recollection.**

9 MR. COOPER: Counsel, if I could interrupt
10 you. Maybe -- you're pausing. I wonder if it's
11 appropriate to pause for a break.

12 MR. GOLDMAN: If you would like to take a
13 break, that would be fine.

14 THE VIDEOGRAPHER: Can we change our
15 media, then?

16 MR. GOLDMAN: Sure.

17 THE VIDEOGRAPHER: Okay. This is the end
18 of Tape 1, Volume I, in the deposition of Frank
19 Schubert. The time is approximately 10:20 a.m. We
20 are off the record.

21 (Discussion off the record.)

22 THE VIDEOGRAPHER: This is Tape 2 of
23 Volume I in the deposition of Frank Schubert, in
24 Kristin M. Perry vs Arnold Schwarzenegger, et al.

25 The date is December 17, 2009, and the

1 time is approximately 10:35 a.m. We are on the
2 record.

3 MR. COOPER: Mr. Goldman, before you
4 resume your questioning, I would like to put on the
5 record the following: In your -- one of your very
6 recent exchanges, I thought it was helpful that you
7 asked the question or proposed the proposition that
8 certain information was of public record.

9 And it's not our intention or purpose to
10 preclude the questions with respect to information
11 that is in the public domain, at least not in terms
12 of privilege. And you may certainly ask questions
13 that at least I don't know that the information is
14 in the public record.

15 And what I would suggest is that if you
16 know that or you believe that and can suggest it, or
17 the witness knows it and suggests it, then that
18 would be helpful and could eliminate the privilege
19 objection.

20 So I just want to make clear that it is
21 not our purpose to try to preclude questions as to
22 information that is in the public domain on a
23 privileged basis.

24 MR. GOLDMAN: Thank you for that.

25 Mr. Tyler, do you agree that if I ask a

1 question, and you instruct Mr. Schubert not to
2 answer on First Amendment grounds, that your
3 instruction does not cover public statements that he
4 has already made that contain information that would
5 be responsive to that question?

6 MR. TYLER: I would simply say that I
7 concur with Mr. Cooper's comments, and we are not
8 trying to prohibit information that is in the public
9 domain from being addressed.

10 BY MR. GOLDMAN:

11 Q Mr. Schubert, do you understand the
12 colloquy that I have just had with counsel about
13 what you are permitted to answer on questions that
14 might otherwise intrude on the First Amendment
15 privilege?

16 A I believe I do.

17 Q Okay. And as you sit here right now, are
18 there any questions that I asked you already today
19 that you did not answer, where, in fact, you believe
20 you have publicly disclosed information that is
21 responsive to the question?

22 MR. TYLER: Objection. Overbroad and --

23 THE WITNESS: I would answer only that
24 nothing springs to mind, but I certainly don't have
25 a comprehensive recollection of all your questions.

1 I'm not sure I understood that exchange.
2 Forgive me.

3 BY MR. GOLDMAN:

4 Q I think you just testified that, in fact,
5 ProtectMarriage.com did not coordinate with
6 churches, church leadership, on the messages they
7 disseminated to congregants.

8 That was your testimony, correct?

9 MR. TYLER: I want to object as to
10 vagueness as to the -- this whole line of
11 questioning with regard to -- well, I don't want to
12 coach him, but object to the vagueness.

13 So go ahead and respond.

14 THE WITNESS: I believe that I was
15 responding to the extent that I was aware of public
16 information that the -- that ProtectMarriage would
17 have coordinated on the message that churches
18 delivered to congregants. And my testimony was, I'm
19 not aware of public information to that effect.

20 BY MR. GOLDMAN:

21 Q Do you agree that the messages that were
22 crafted by Schubert Flint Public Affairs on behalf
23 of ProtectMarriage.com were important in convincing
24 California voters to vote for Proposition 8?

25 MR. TYLER: Let me assert an objection,

1 BY MR. GOLDMAN:

2 Q Okay. Did ProtectMarriage.com coordinate
3 with church leaders on the messages that they were
4 disseminating to their congregants?

5 MR. TYLER: Objection. Violates First
6 Amendment privilege.

7 I'm instructing him not to respond as to
8 what he directed, in relation to the internal
9 communications.

10 THE WITNESS: To the extent that there's
11 public information out there on this, I would be
12 happy to respond to anything that you have.

13 BY MR. GOLDMAN:

14 Q Do you know whether you have publicly
15 disclosed that ProtectMarriage.com coordinated with
16 church leaders on the messages that they delivered
17 to their congregants?

18 A I am -- I understand your question to be
19 limited to coordinating regarding the message that
20 churches delivered to their congregants, and I'm not
21 aware of any such coordination.

22 MR. COOPER: I would like to ask for a
23 clarification of the question, and perhaps even
24 answer, in terms of whether the answer relates to
25 whether there is public information to that effect.

1 First Amendment objection as to his personal
2 beliefs. And I'm concerned that you're going into
3 mental impressions, strategic decisions of the
4 campaign.

5 Your question is -- I'll allow him to
6 respond to that one, but I really don't see how you
7 can go much further there. I'm sorry.

8 THE WITNESS: Well, I would respond that
9 there's information in the public domain, including
10 in this article that you're referencing, that speak
11 to the importance of -- of certain messages.

12 BY MR. GOLDMAN:

13 Q And one of the things that you say in this
14 article is that a campaign in favor of traditional
15 marriage would not be enough to prevail.

16 Do you recall that?

17 A Could you point me to the specific quote?

18 Q Page 45. That's in the first column,
19 about halfway down: "We strongly believed that a
20 campaign in favor of traditional marriage would not
21 be enough to prevail."

22 Do you see that?

23 A I do. Thank you.

24 Q And by this, you mean that if the Yes on 8
25 campaign had just affirmed traditional marriage, it

1 would not have gotten more than 50 percent of the
2 vote, correct?

3 MR. TYLER: Objection. I'm going to
4 instruct you not to respond, based on First
5 Amendment privilege.

6 The document speaks for itself.

7 BY MR. GOLDMAN:

8 Q Have you publicly stated that had the
9 Yes on 8 campaigns just affirmed traditional
10 marriage, it would not have gotten more than
11 50 percent of the vote?

12 A **I don't know.**

13 Q Do you agree that that is true?

14 MR. TYLER: Objection.

15 THE WITNESS: I --

16 MR. TYLER: Objection. First Amendment
17 privilege. Instruct him not to respond.

18 It states here, "We strongly believe that
19 a campaign in favor of traditional marriage would
20 not be enough to prevail." The document speaks for
21 itself.

22 MR. GOLDMAN: Counsel, I am quoting from
23 video of Mr. Schubert making that exact statement,
24 and to be told in a deposition that you're going to
25 instruct him not to answer, and you have no idea

1 MR. TYLER: Objection to "this fact." I'm
2 not sure what you're speaking of. Vagueness.

3 THE WITNESS: I believe that there are
4 statements in the public domain that the research
5 that was conducted for the campaign supported the
6 statement in this article.

7 BY MR. GOLDMAN:

8 Q What research did you conduct for the
9 campaign that supported the statement in this
10 article?

11 MR. TYLER: Objection. First Amendment
12 privilege. I'll instruct him not to respond, except
13 to the extent that you can ask him if he's ever
14 publicly made a statement as to the research that
15 was performed.

16 BY MR. GOLDMAN:

17 Q Answer to the extent you believe it's been
18 publicly disclosed, if you would, Mr. Schubert.

19 A **It's been publicly disclosed that we
20 conducted focus groups and surveys of California
21 voters. I'm not clear whether it's been publicly
22 disclosed that that research was specific to the
23 point you're making here.**

24 Q It might have been, is that your
25 understanding?

1 what he said publicly and what he has not, so that
2 it's on me to go out and search the universe and
3 identify everything that he said publicly, and then
4 show it to you here in this deposition before you
5 will allow Mr. Schubert to answer, is simply not
6 appropriate. It is obstructionist to the highest
7 degree.

8 MR. TYLER: If you want to ask a question
9 as to whether or not he ever recalls making that
10 statement publicly, that's an appropriate question,
11 and you can ask it.

12 BY MR. GOLDMAN:

13 Q Did you confirm through research that a
14 campaign in favor of traditional marriage would not
15 be enough to succeed?

16 MR. TYLER: Objection. This calls for
17 information pertaining to strategy, his own research
18 and deliberation, mental impressions. I believe it
19 violates the First Amendment privilege.

20 I'm instructing him not to respond.

21 If you have a public statement you want to
22 direct him to, that would be fine.

23 BY MR. GOLDMAN:

24 Q Do you recall whether you have discussed
25 this fact publicly?

1 MR. TYLER: Objection. Counsel, it's not
2 his burden to prove your case.

3 I'm going to instruct him not to respond
4 based upon First Amendment privilege.

5 This case has tens of thousands of
6 documents, as I understand it, and he cannot be held
7 to know the content of every document and every
8 document that was publicly disseminated.

9 He's not responding to your question at
10 this point, based upon First Amendment privilege.

11 MR. GOLDMAN: Just so we're clear, it's
12 his burden if he wishes to assert a privilege. It
13 is his burden to show that that privilege applies.
14 And if he has publicly disclosed information, the
15 privilege is not going to apply.

16 So I think I'm entitled to ask if he
17 thinks he might actually have disclosed publicly
18 this information.

19 And you're now instructing him not to
20 answer.

21 MR. TYLER: Counsel, counsel, your
22 question --

23 MR. GOLDMAN: And then he can't carry his
24 burden if you're instructing him not to answer that
25 question.

1 MR. TYLER: Counsel, your question is
2 whether he thinks he may have. That is different
3 from, do you recall ever publicly disseminating such
4 information.

5 He can answer whether he recalls or not,
6 not whether he thinks he did. So if you want to
7 restate your question, that will be fine.

8 MR. GOLDMAN: I want to make sure the
9 privilege is being asserted in good faith and that,
10 unless sitting here right now, he can recall a
11 specific instance when he discussed that specific
12 thing publicly -- if the way you're approaching the
13 privilege is that everything is privileged, unless
14 sitting here, he can recall the specific instance
15 when he publicly disclosed that specific thing, when
16 he has grounds to believe that he may very well have
17 disclosed these things publicly in other contexts, I
18 think I'm entitled to explore that with him.

19 MR. TYLER: I disagree, and I'm going to
20 instruct him not to respond.

21 If he recalls whether something was
22 publicly disseminated, he can state that he did
23 publicly disseminate it or that he doesn't recall.
24 And if he doesn't recall, you can produce a document
25 that reflects some public dissemination to refresh

1 same-sex marriage were legalized in California,
2 correct?

3 **A That is in the public domain, as stated in
4 this article.**

5 Q And one of the consequences that you
6 identified was that individual freedom of expression
7 would be eroded, correct?

8 **A Yes, that's in the public domain, that's
9 correct.**

10 Q What did you mean by, "individual freedom
11 of expression would be eroded"?

12 MR. TYLER: Objection. You are going
13 towards his mental impressions. If there is
14 something specific you can point to that was public
15 information, or ask him if he ever stated publicly
16 what he meant, that would be acceptable. But,
17 otherwise, I'm going to object on First Amendment
18 grounds.

19 I'm instructing him not to respond, except
20 to that which was publicly disseminated.

21 BY MR. GOLDMAN:

22 Q With that instruction, can you answer the
23 question, what did you mean when you said that
24 individual freedom of expression would be eroded as
25 a consequence of legalizing same-sex marriage?

1 his recollection. If you don't produce such a
2 document, I'm going to instruct him not to respond
3 to that particular question, as we are sitting right
4 now.

5 I'm not trying to be obstructionist, and
6 I'm not doing it in bad faith. I'm protecting my
7 client's First Amendment rights.

8 THE WITNESS: Counsel, relative to what I
9 might be aware is in the public domain, are we still
10 discussing the sentence, "We strongly believe that a
11 campaign in favor of traditional marriage would not
12 be enough to prevail?" Is that the sentence we're
13 discussing?

14 BY MR. GOLDMAN:

15 Q Yes, and the research you did to support
16 the conclusion expressed in that sentence.

17 **A Relative to the sentence, I do believe
18 that that sentence, or at least that sentiment, is
19 in the public domain and other contexts as well. I
20 am not clear on whether or not any research
21 supporting that is in the public domain.**

22 Q Now, in response to your conclusion that a
23 campaign in favor of a traditional marriage would
24 not be enough to prevail, you decided you needed to
25 convince voters that there would be consequences if

1 **A I can't speak to what I meant, but I can
2 speak to what is in the public domain relative to
3 this point, which was a citation in a television
4 commercial to a case, I believe it's a North Coast
5 women's case, that was cited in that particular ad
6 in support of a similar statement, if not an
7 identical statement, to what you're referring to in
8 this particular article.**

9 Q And a second consequence that you
10 suggested would follow from the legalization of
11 same-sex marriage was that religious freedom would
12 be reduced, correct?

13 MR. TYLER: Objection. Same assertion,
14 based upon First Amendment privilege. I would
15 instruct him not to respond, except to the extent it
16 is identified in the public domain.

17 Limit your response to that which is in
18 the public domain.

19 THE WITNESS: I believe that point is in
20 the public domain in a number of contexts. I
21 believe it is in the ballot argument. I believe it
22 is in the commercial -- first television commercial
23 to ProtectMarriage aired. And I believe it is
24 mentioned in this article and in the AAPC
25 presentation.

1 BY MR. GOLDMAN:

2 Q So that is the answer to my question then,
3 whether that is one of the consequences of same-sex
4 marriage that you identified for California voters
5 is the reduction of religious freedom, correct?

6 A **I don't know if I used the term,**
7 **"reduction of religious freedom." I believe in this**
8 **article, the language is consequences in the area of**
9 **religious freedom, so I can't say that I have used**
10 **that term, "reduction of religious freedom," but I**
11 **can say, generally, that the area of religious**
12 **freedom was a consequence that was discussed**
13 **publicly in the campaign.**

14 Q And what is the consequence for religious
15 freedom from legalized same-sex marriage that you
16 conveyed to California voters?

17 MR. TYLER: I'll assert the objection
18 again on First Amendment privilege and instruct my
19 client to only respond to that which was publicly
20 stated and specifically publicly stated.

21 THE WITNESS: The first television ad
22 referenced this subject generally. This gets to a
23 variety of examples of potential consequences, some
24 of which were outlined in a letter from the
25 campaign's counsel, Andy Pugno, to television

1 present, what the message meant, is a whole
2 different question from what was said.

3 BY MR. GOLDMAN:

4 Q Do you recall that phrase?

5 A **I do recall the phrase. I don't recall**
6 **the context in which it was used.**

7 Q Does the -- if I told you that it was in
8 the arguments in the official voter guide, does that
9 refresh your recollection?

10 A **It does.**

11 Q Is that where you think you've heard the
12 phrase that children in public school would be
13 taught that same-sex marriage is okay?

14 A **It may be. There were a variety of**
15 **variations of that, of expression of that**
16 **consequence in a variety of public forums. And it**
17 **may well be that the ballot arguments had that**
18 **particular variation.**

19 Q And as you sit here right now, can you
20 recall other consequences to children that you
21 portrayed in messages on behalf of the
22 ProtectMarriage.com Yes on 8 campaign?

23 MR. TYLER: Again, I'll assert the
24 objection based on First Amendment privilege, that
25 you only respond to that which was publicly

1 stations. And so I would -- I would point to those
2 as examples.

3 BY MR. GOLDMAN:

4 Q And another consequence is that children
5 would be taught in public schools that same-sex
6 marriage was okay. Is that correct?

7 MR. TYLER: Objection. Same objection as
8 previously. I'm sorry, Mr. Schubert.

9 Based upon First Amendment privilege, I'm
10 instructing you to only respond to that which was
11 publicly disseminated and specifically only comments
12 that were publicly disseminated.

13 THE WITNESS: Yes. The consequence of
14 children being taught about this in public schools
15 was publicly available on a number of contexts,
16 including ballot arguments, various television ads,
17 radio ads, and other public forums.

18 BY MR. GOLDMAN:

19 Q Was the concern specifically that children
20 in public school would be taught that same-sex
21 marriage was okay?

22 MR. TYLER: Objection. Instruct you not
23 to respond, based upon the First Amendment
24 privilege.

25 If you have a document that you want to

1 disseminated.

2 MR. COOPER: I would also like just to ask
3 for a clarification that, with respect to the term
4 "you," whether or not it means ProtectMarriage.com
5 campaign or Mr. Schubert personally, if you don't
6 mind, Counsel.

7 MR. GOLDMAN: Can you read back the
8 question?

9 (The question was read as follows:)

10 "Q And as you sit here right now,
11 can you recall other consequences to
12 children that you portrayed in
13 messages on behalf of the
14 ProtectMarriage.com Yes on 8
15 campaign?"

16 BY MR. GOLDMAN:

17 Q And by "you" in that sentence, I'm
18 referring to you, as the campaign manager for
19 ProtectMarriage.com. And so these would be things
20 that ProtectMarriage.com put in its messages?

21 MR. TYLER: And I'll assert that same
22 objection previously objected to.

23 THE WITNESS: Relative to information
24 that's been publicly disseminated, in a variety of
25 contexts, there was an effort to point people to the

1 argument that children deserve a mother and a
2 father, and that while death and divorce may prevent
3 it, the ideal situation for children is to be raised
4 by a married mother and father. And variations on
5 that message were used in a variety of public
6 contexts.

7 BY MR. GOLDMAN:

8 Q And are there any others that you can
9 recall, as you sit here now?

10 A **Certainly, there were a number of public**
11 **forums in which this issue of how same-sex marriage**
12 **would be treated in the schools was discussed. This**
13 **became a very prominent part of the campaign. And**
14 **so to the extent that your question relates to this**
15 **general category, there was a widespread discussion**
16 **of it.**

17 **In terms of specific elements of it, I**
18 **would have to respond to a specific question.**
19 **(Schubert Exhibit 2 was marked for**
20 **identification.)**

21 THE WITNESS: Thank you. I'll try not to
22 write on this.

23 BY MR. GOLDMAN:

24 Q Can you identify this document for the
25 record?

1 extent that these items in the middle of the page
2 might have similarity to what you were previously
3 discussing.

4 THE WITNESS: If I understand the question
5 correctly, are these the same consequences that we
6 discussed previously, I would say that they are
7 generally in the same area.

8 We certainly discussed the impact on
9 churches, which is the middle box there.

10 We did discuss, as I indicated previously,
11 the impact on personal freedom of expression, as
12 cited in the North Coast case.

13 And we have discussed, at great length in
14 public documents, including television or radio ads,
15 the Massachusetts experience, as set forth in the
16 Parker vs Hurley case, which is cited here.

17 BY MR. GOLDMAN:

18 Q Was this document publicly distributed in
19 California?

20 A **I assume so. I don't know for a fact, but**
21 **I assume it was.**

22 Q As the campaign manager for
23 ProtectMarriage.com, do you believe that it was?

24 A **I believe that it was, yes.**

25 Q Now, you said in the article we were just

1 MR. COOPER: Has this been marked as an
2 exhibit?

3 THE WITNESS: It appears to be.

4 MR. COOPER: Exhibit No. 2?

5 MR. GOLDMAN: Exhibit No. 2.

6 THE WITNESS: This appears to be a direct-
7 mail piece distributed by ProtectMarriage.com.

8 BY MR. GOLDMAN:

9 Q And have you seen this document before?

10 A **I can't say that I've seen it in its**
11 **produced format, but I have certainly seen elements**
12 **of it before.**

13 Q Is it your belief that this is a document
14 that was produced by ProtectMarriage.com for the
15 ProtectMarriage.com Yes on 8 campaign?

16 A **Yes, I would agree to that.**

17 Q Okay. And if you look at the second page
18 of that document, in the middle of the page, are
19 those three of the consequences of legalizing
20 same-sex marriage that we were just talking about
21 before?

22 MR. TYLER: Objection. I want to assert
23 the First Amendment privilege to the extent the
24 document speaks for itself.

25 You can go ahead and respond only to the

1 looking at, the Exhibit 1, that the Yes on 8
2 campaign distributed 1.25 million-yard signs. Is
3 that correct?

4 A **Yes, that's in the article.**

5 Q And the same number of bumper stickers?

6 A **There's information in the public domain**
7 **on both yard signs and bumper strips that are**
8 **different in number. I've seen 1.25 million. I've**
9 **seen 1 million; but certainly in the public domain,**
10 **that a vast number of yard signs and bumper strips**
11 **were distributed in California.**

12 Q How did the number -- that number of yard
13 signs and bumper strips compare to previous ballot
14 campaigns in which your firm has been involved?

15 A **That number is vastly in excess of**
16 **anything that I've been involved in before.**

17 MR. GOLDMAN: We're going to mark the next
18 exhibit as Schubert Exhibit 3.

19 (Schubert Exhibit 3 was marked for
20 identification.)

21 BY MR. GOLDMAN:

22 Q And can you identify this document for the
23 record?

24 A **Is that a question you're asking me?**

25 Q Yes.

1 **A I cannot.**
2 Q Have you seen this document before?
3 **A It's difficult to tell from this document**
4 **what it is. I have seen this image before.**
5 Q Where have you seen this image before?
6 **A I can't say specifically. I can say that**
7 **this is not anything that Schubert Flint put into**
8 **the public domain.**
9 Q Do you know whether this was prepared by
10 ProtectMarriage.com?
11 **A I know it wasn't prepared by Schubert**
12 **Flint on behalf of ProtectMarriage.com.**
13 Q You don't know any more than that?
14 **A I'm not aware of -- I do not believe it**
15 **was prepared by ProtectMarriage.**
16 Q Do you have any belief about who prepared
17 it?
18 **A I don't have any specific knowledge of who**
19 **prepared it.**
20 Q I know you may not have specific
21 knowledge. I'm just asking if you have any belief
22 about who prepared it?
23 **A I don't.**
24 Q Do you know who Damien Dunkley is?
25 **A Not to my knowledge, no.**

1 **A This document would appear to be a**
2 **statement of arguments in favor of Proposition 8.**
3 Q This is a one-page document?
4 **A Well, I don't know that this is a document**
5 **that we prepared. We may have. I don't know that**
6 **we did.**
7 **It certainly contains arguments that were**
8 **utilized in, for example, the ballot arguments that**
9 **ProtectMarriage submitted. But I don't have a**
10 **specific recollection of this document in this form.**
11 Q And by "this document," you mean the first
12 page of this exhibit?
13 **A The first page.**
14 **And I would note that it does not contain**
15 **a disclaimer, so that furthers my inability to**
16 **recall whether it is a campaign document.**
17 Q And what is the next document in this
18 exhibit; and please identify which pages you think
19 constitute that document?
20 **A This appears to be a fact sheet that I do**
21 **recognize.**
22 Q And that's a two-page document?
23 **A It is -- it is in this current format. I**
24 **believe this document exists in different formats,**
25 **but, yes.**

1 MR. TYLER: Do you have a spelling on that
2 last name, Counsel.
3 MR. GOLDMAN: Yes, D-o-n-k-l-e-y.
4 Did I get that right?
5 MR. UNO: No.
6 MR. GOLDMAN: D-u-n-k-l-e-y.
7 Yes, we're going to mark this as Schubert
8 Exhibit 4.
9 (Schubert Exhibit 4 was marked for
10 identification.)
11 BY MR. GOLDMAN:
12 Q And can you identify this document for the
13 record?
14 **A By the term, "this document," are you**
15 **referring to the entirety of the stapled pages?**
16 Q If you believe that this is a compilation
17 of separate documents, it would be helpful to me if
18 you could let me know that. I believe I'm showing
19 it to you in the form we got it, but please let me
20 know if you think that this combined separate
21 documents.
22 **A I believe that this combines a number of**
23 **separate documents.**
24 Q Okay. So what is the first document in
25 this exhibit?

1 Q Was this a document prepared by
2 ProtectMarriage.com for the ProtectMarriage Yes on 8
3 campaign?
4 MR. TYLER: Let me instruct my client that
5 as it pertains to whether or not this -- if this was
6 a document that was publicly distributed, then you
7 can testify to this document from that perspective,
8 but not to the extent that it was prepared for any
9 internal purposes, or even whether it was prepared.
10 Only to the extent that this was a document that was
11 publicly distributed, can you respond.
12 THE WITNESS: This was a document that was
13 widely distributed by ProtectMarriage.com.
14 BY MR. GOLDMAN:
15 Q And it was produced by ProtectMarriage.com
16 for the Yes on 8 campaign, correct?
17 **A That would be correct.**
18 Q What is the next document in this?
19 **A Questions and answers about Proposition 8.**
20 Q Is that a three-page document?
21 **A Yes, in this format it was a three-page**
22 **document.**
23 Q Is this also a document that was created
24 by ProtectMarriage.com for the ProtectMarriage.com
25 Yes on 8 campaign?

1 **A I believe it is, yes.**
2 Q And it was publicly distributed?
3 **A Yes.**
4 Q What is the next document in the exhibit?
5 **A Myths and facts about Proposition 8. And**
6 **this format appears to be a two-page document.**
7 Q Was this document produced by
8 ProtectMarriage.com for the Yes on 8 campaign?
9 **A Yes.**
10 Q And it was publicly distributed in
11 California?
12 **A Yes.**
13 Q What is the next document in the exhibit?
14 **A The next document would be a form.**
15 Q Is it a one-page document, or do the
16 subsequent pages also form part of the document?
17 **A This is a one-page document.**
18 Q Okay. And what is this one-page document?
19 **A This is a document that was publicly**
20 **distributed to allow people to inform**
21 **ProtectMarriage that they were a public supporter of**
22 **Proposition 8.**
23 Q And the document was created by
24 ProtectMarriage.com for the ProtectMarriage Yes on 8
25 campaign?

1 Q And it was publicly distributed in
2 California?
3 **A I believe it was.**
4 Q What is the first television commercial
5 that the ProtectMarriage.com Yes on 8 campaign ran?
6 **A It was a television commercial called**
7 **"Whether You Like It or Not."**
8 Q And did you begin airing that commercial
9 on September 9 -- September 29, 2008?
10 **A Yes.**
11 Q And for how long did that commercial air?
12 **A I believe it aired for approximately eight**
13 **or nine days.**
14 Q And was it aired throughout California?
15 **A I believe it aired in every media market**
16 **in California. I don't know that every media market**
17 **would cover and state in its entirety, but it did**
18 **air, what I would say, statewide.**
19 Q Do you know how many times it aired?
20 **A I do not.**
21 MR. GOLDMAN: We're going to mark this
22 next exhibit Schubert Exhibit 5.
23 (Schubert Exhibit 5 was marked for
24 identification.)
25 ////

1 **A That's correct.**
2 Q What is the next document in this exhibit?
3 **A The next document is entitled**
4 **"Contribution Form."**
5 Q Do you mean donation form?
6 **A Donation form, correct.**
7 Q And is that a two-page document?
8 **A No, this is a one-page document.**
9 Q One page. Okay.
10 Again, the same questions: Was this
11 created by ProtectMarriage.com for the Yes on 8
12 campaign and publicly distributed in California?
13 **A It was -- it was created by -- for the**
14 **ProtectMarriage.com campaign. It was distributed**
15 **publicly, so the answer would be yes.**
16 Q And the final document in this exhibit,
17 could you identify that document?
18 **A This appears to be a document setting**
19 **forth information that would subsequently be printed**
20 **on a contribution envelope that someone might use to**
21 **make a contribution to ProtectMarriage.com.**
22 Q And this was created by
23 ProtectMarriage.com for the purpose of the Yes on 8
24 campaign, correct?
25 **A That's correct.**

1 BY MR. GOLDMAN:
2 Q Can you identify this document for the
3 record?
4 **A This appears to be a press release issued**
5 **by ProtectMarriage on the occasion of the**
6 **introduction of our first television commercial.**
7 Q Okay. And you believe this is a true and
8 correct copy of the press release that
9 ProtectMarriage.com issued on the release of its
10 first television commercial, correct?
11 **A Yes.**
12 MR. GOLDMAN: We are marking as Schubert
13 Exhibit 6.
14 (Schubert Exhibit 6 was marked for
15 identification.)
16 BY MR. GOLDMAN:
17 Q Can you identify this document for the
18 record?
19 MR. TYLER: Let me just insert a caveat
20 briefly, and that is, for my client, if any of these
21 documents are produced to you, and they are not a
22 document that was publicly produced, then please so
23 state before you respond to any questions, before
24 you respond to -- well, I'll leave it at that.
25 THE WITNESS: I believe this is an e-mail

1 blast that was distributed. If I recall correctly,
2 it was distributed the evening before our first
3 television commercial aired.

4 BY MR. GOLDMAN:

5 Q And that was distributed by
6 ProtectMarriage.com, in connection with the
7 ProtectMarriage.com Yes on 8 campaign, correct?

8 **A That's correct.**

9 Q To how many people was this e-mail blast
10 sent, approximately?

11 **A I don't have a precise answer. I can**
12 **estimate that it was sent by ProtectMarriage to**
13 **approximately 90,000 people, 90,000 e-mail**
14 **addresses.**

15 MR. GOLDMAN: Now we're marking as
16 Schubert Exhibit 7.

17 (Schubert Exhibit 7 was marked for
18 identification.)

19 BY MR. GOLDMAN:

20 Q Can you identify this document for the
21 record, please?

22 **A This appears to be a media advisory that**
23 **ProtectMarriage issued to the media, informing them**
24 **of a press conference on September 29th to reveal**
25 **the first Yes on 8 television commercial, the one**

1 **document, the format of the document is not familiar**
2 **to me, but I'm -- which is the basis of my**
3 **hesitation.**

4 Q But at least based on the information
5 here, you do believe that it was a document prepared
6 by ProtectMarriage.com?

7 **A Based on the information that I see here,**
8 **I believe that it is a document, in draft form, that**
9 **may have been an attempt to compile information to**
10 **substantiate the television commercial.**

11 **It is not clear to me that this is a**
12 **document that was publicly distributed. And, again,**
13 **I have no specific familiarity with this document,**
14 **but there are elements of it that suggest to me that**
15 **it was --**

16 MR. COOPER: In light of the testimony
17 thus far, it sounds like the witness is of the
18 opinion that this document is not a publicly
19 distributed document; that is a draft of a document
20 that may or may not have been publicly distributed.

21 We do believe that draft documents are
22 within the First Amendment privilege of
23 ProtectMarriage.com. And I am concerned, in light
24 of what I have just heard, that this may have been
25 inadvertently produced.

1 **we've been discussing.**

2 Q And that was in connection with the
3 Yes on 8 campaign?

4 **A Yes.**

5 MR. GOLDMAN: We are marking now Schubert
6 Exhibit 8.

7 (Schubert Exhibit 8 was marked for
8 identification.)

9 BY MR. GOLDMAN:

10 Q If you would please identify this document
11 for the record.

12 Again, if it's more than one document in
13 this exhibit, let me know that.

14 **A I believe that these are separate**
15 **documents. I believe both are -- I don't -- well,**
16 **relative to the first document.**

17 Q And that's a two-page document?

18 **A It would appear to be a two-page document.**

19 **I cannot confirm that this was prepared by**
20 **ProtectMarriage.com, though it may have been.**

21 Q What is the address at the bottom of the
22 page?

23 **A That is an address used by**
24 **ProtectMarriage.**

25 **I just -- in terms of looking at this**

1 But in the circumstances, I would raise
2 the objection that I previously stated and would
3 look to counsel for the witness to preclude further
4 testimony with respect to this particular document.

5 MR. TYLER: I concur and would instruct
6 Mr. Schubert not to answer any further questions
7 with regard to this document, based upon his
8 testimony that it is a draft.

9 And the first -- as we're reviewing these
10 documents, Mr. Schubert, regardless of the question
11 that is asked of you, the first question that needs
12 to be addressed or first issue that needs to be
13 addressed is whether or not it's a document that has
14 been publicly distributed and consider that first.
15 And I will assert such objections as well.

16 BY MR. GOLDMAN:

17 Q Let me ask you about the next document.
18 That appears to be a three-page document.

19 And could you identify that document for
20 the record?

21 MR. TYLER: Let me assert an objection,
22 and my objection is there's no foundation that this
23 is, first, a document that was publicly distributed;
24 and, second, that it's a document of the campaign.

25 And to the extent that it is not a

1 document publicly distributed, I assert a First
2 Amendment objection to that and instruct him not to
3 respond to that extent.

4 THE WITNESS: I am unclear as to what I'm
5 responding to. If you're asking me, is this a
6 public document --

7 BY MR. GOLDMAN:

8 Q No, that's not my question.

9 A **Okay.**

10 Q My question was whether you could identify
11 this document.

12 MR. TYLER: Objection. Lacks foundation.

13 I think you can respond to that question,
14 though, whether you can identify it or not.

15 THE WITNESS: This appears to be an
16 internal --

17 MR. TYLER: Mr. Schubert, please just
18 respond to the question. He asked whether you can
19 identify it or not.

20 THE WITNESS: Yes.

21 BY MR. GOLDMAN:

22 Q What is the document?

23 A **This appears to be an internal campaign
24 document.**

25 MR. TYLER: Based upon that, I instruct

1 Q Do you have copies of the press conference
2 recorded?

3 A **I do not.**

4 Q Do you know whether anyone does?

5 MR. TYLER: Objection. Vague. Ambiguous.

6 THE WITNESS: I am not aware of any
7 recorded copy of the press conference.

8 MR. GOLDMAN: We're going to mark a DVD --
9 CD as Schubert Exhibit 8 --

10 THE REPORTER: 9.

11 MR. GOLDMAN: 9, sorry.

12 (Schubert Exhibit 9 was marked for
13 identification.)

14 MR. GOLDMAN: We will play the video that
15 is contained on the CD.

16 (Video CD played.)

17 MR. TYLER: As far as I'm concerned, you
18 can identify merely that the CD is being played, as
19 long as the CD is part of the record. It's up to
20 him as to how he wants to handle it.

21 MR. STROUD: Did you hear the question?

22 The court reporter wants to know whether
23 you want her to take down the entirety of the CD or
24 whether to say, "CD plays."

25 MR. GOLDMAN: You don't have to take down

1 you not to respond any further, based upon the First
2 Amendment privilege.

3 BY MR. GOLDMAN:

4 Q Were the remarks reflected in this
5 document remarks that were publicly delivered in the
6 ProtectMarriage.com Yes on 8 campaign?

7 MR. TYLER: I would assert an objection
8 based on First Amendment privilege and instruct you
9 only to respond to whether or not the specific words
10 were publicly distributed in the campaign, as
11 identified in this document, if you can recall.

12 THE WITNESS: Relative to the bulk of the
13 first page of this document that contains
14 information under the heading, Frank Schubert, I
15 can't -- I do not believe that I read this document
16 verbatim; in fact, I'm quite sure I did not.

17 But I do believe that the public domain
18 will show coverage of that press conference that
19 reflects the sentiments, at least, in the bullet
20 points in the middle of this document.

21 BY MR. GOLDMAN:

22 Q Was the press conference recorded, to your
23 knowledge?

24 A **It was -- it may have been recorded by
25 media. I don't know.**

1 the context.

2 MR. STROUD: As long as we're off the
3 record, if you look carefully, you'll see a very
4 handsome man.

5 Oh, off the record.

6 THE VIDEOGRAPHER: We're not off the
7 record. We're still on video record, just to let
8 you know.

9 MR. TYLER: We'll look closely for you.

10 MR. STROUD: Exactly. I'm in the
11 commercial.

12 That's not me.

13 (Video CD played.)

14 BY MR. GOLDMAN:

15 Q Could you identify the video that we just
16 watched?

17 A **I believe I've seen it before. That is
18 the first television commercial ProtectMarriage.com
19 aired.**

20 Q Was there also a version of this ad
21 prepared for radio?

22 A **There was a radio ad that was prepared and
23 distributed publicly, that included Mayor Newsom's
24 comments, yes.**

25 Q Do you know when that radio ad began to

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1 air?

2 **A I believe, though I'm not certain, I**

3 **believe it began airing on September 29th.**

4 MR. GOLDMAN: We're going to mark that as

5 Schubert Exhibit 10.

6 (Schubert Exhibit 10 was marked for

7 identification.)

8 MR. TYLER: I would like to assert an

9 objection real quick to the extent that he's

10 testifying to an exhibit -- is it the audio of the

11 radio?

12 MR. GOLDMAN: Well, hopefully, that's what

13 he'll be able to tell us.

14 MR. TYLER: Okay. I'm sorry.

15 So you're going to identify Exhibit 10

16 here?

17 MR. GOLDMAN: Yes.

18 MR. TYLER: Okay. Thank you.

19 (Video CD played.)

20 BY MR. GOLDMAN:

21 Q And can you identify the audio file that

22 we just listened to?

23 **A Yes, that's a 60-second radio commercial,**

24 **produced by ProtectMarriage.com.**

25 Q And was that publicly disseminated within

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1 BY MR. GOLDMAN:

2 Q I was asking a slightly different

3 question. And feel free to look back at Exhibit 1,

4 if you want to, on page 46.

5 And my question was whether, after

6 blanketing California with "Whether You Like It Or

7 Not," ProtectMarriage.com focused its message on

8 education?

9 MR. TYLER: Can you identify, Counsel,

10 where on Exhibit 1 it addresses --

11 THE WITNESS: In the right-hand column,

12 under the heading, "The Response Period," about just

13 over half of the way down.

14 MR. TYLER: On page 46?

15 MR. GOLDMAN: Page 46, yeah.

16 MR. TYLER: Of Exhibit 1?

17 MR. GOLDMAN: Yes.

18 THE WITNESS: I would answer that question

19 in the following way: The statement in the article

20 speaks for itself. The ads that aired following the

21 "Whether You Like It Or Not" ad speak for

22 themselves. Many of them, though not all of them,

23 deal with education.

24 BY MR. GOLDMAN:

25 Q Well, what is the title of the next ad

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1 California?

2 **A Yes, it was.**

3 Q Was it played in -- statewide in

4 California?

5 **A I don't know. I don't know. It certainly**

6 **was played in the major media markets. I don't**

7 **recall if it ran statewide or not.**

8 Q Do you recall for how long you ran that

9 ad, the duration?

10 **A I don't specifically. I believe it ran**

11 **for a period of time longer than the television**

12 **commercial that I previously testified to, but I**

13 **don't know the specific time frame.**

14 Q After blanketing California with the

15 "Whether You Like It Or Not" ad, did the Yes on 8

16 campaign focus its message on education?

17 MR. TYLER: Objection. Based on First

18 Amendment privilege, to the extent of whatever you

19 focused on, you can testify only to whether or not

20 something was made public.

21 THE WITNESS: The second television ad

22 that ProtectMarriage.com ran was an ad titled "It's

23 Already Happened." And it discussed the experience

24 of a Massachusetts couple. And so that -- it

25 certainly touched on the public schools.

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1 that you aired, after "Whether You Like It Or Not"?

2 **A I believe the title was "It's Already**

3 **Happened."**

4 MR. GOLDMAN: We will mark a CD as

5 Schubert Exhibit 11.

6 (Schubert Exhibit 11 was marked for

7 identification.)

8 (Video CD played.)

9 BY MR. GOLDMAN:

10 Q And can you identify the video that we

11 just reviewed for the record?

12 **A Yes, that's a 30-second television**

13 **commercial that was produced by ProtectMarriage.com.**

14 Q And was that publicly aired throughout

15 California in connection with the Yes on 8 campaign?

16 **A I believe the ad did air in all media**

17 **markets, yes.**

18 MR. TYLER: I'm sorry, Mr. Goldman. What

19 exhibit was that?

20 MR. GOLDMAN: 11.

21 MR. UNO: 11.

22 BY MR. GOLDMAN:

23 Q Oh, and do you remember the date on which

24 that ad started to air, approximately?

25 **A I don't, but it would have aired**

1 **following -- well, I don't remember specifically.**
 2 Q Do you know for approximately how long
 3 that commercial was aired in California?
 4 **A Approximately a week, seven to eight days,**
 5 **somewhere in that time frame.**
 6 Q Was there also a radio ad that was based
 7 on that commercial?
 8 **A I don't think so. I don't recall one.**
 9 MR. GOLDMAN: We're going to mark another
 10 video, Schubert Exhibit 12.
 11 (Schubert Exhibit 12 was marked for
 12 identification.)
 13 (Video CD played.)
 14 BY MR. GOLDMAN:
 15 Q And can you identify this video for the
 16 record?
 17 **A Yes, this is a 30-second television**
 18 **commercial, entitled "Everything To Do With**
 19 **Schools," produced by ProtectMarriage.com.**
 20 Q And when did that commercial start to air
 21 in California?
 22 **A My recollection is that it began airing**
 23 **the 20th of October, 2008.**
 24 Q And for how long was that commercial aired
 25 in California?

1 with respect to a lunch break?
 2 MR. GOLDMAN: I see it's eight minutes to
 3 12:00.
 4 THE VIDEOGRAPHER: We are going off the
 5 record. The time is approximately 11:51 a.m.
 6 (At the hour of 11:51 p.m., the
 7 luncheon recess was taken; the
 8 proceedings scheduled to resume at
 9 12:30 p.m.)

10 ///
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 12 ///

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1 **A I believe it aired for one week,**
 2 **approximately.**
 3 Q And were these commercials also available
 4 online for people who wanted to view them?
 5 **A Yes, they were available through the**
 6 **ProtectMarriage website, and also through YouTube.**
 7 Q And they were available from the time they
 8 were first aired on television, through the duration
 9 of the campaign. Is that correct?
 10 **A I don't know. I don't know specifically**
 11 **how long they were available for. They may very**
 12 **well have been. They certainly would have been**
 13 **available on YouTube for -- and may still be. I**
 14 **don't know.**
 15 Q They were uploaded to YouTube by
 16 ProtectMarriage.com?
 17 **A I believe so, yes.**
 18 Q As you sit here today, do you recall ever
 19 removing one of the commercials that were available
 20 through the ProtectMarriage.com website, from that
 21 website?
 22 **A I don't have any recollection of that, no.**
 23 Q Why don't we take a short break since we
 24 have been going for a while?
 25 MR. COOPER: Counsel, what are your plans

1 (At the hour of 12:37 p.m., the
 2 following proceedings were had at
 3 the same place with the same persons
 4 present.)
 5 THE VIDEOGRAPHER: We are going back on
 6 the record. The time is approximately 12:37 a.m.
 7 MR. GOLDMAN: Let's mark the next document
 8 as Schubert Exhibit 13.
 9 (Schubert Exhibit 13 was marked for
 10 identification.)

11
 12 FRANK SCHUBERT,
 13 having previously been duly sworn,
 14 testified further as follows:
 15 EXAMINATION (RESUMED)

16 BY MR. GOLDMAN:

17 Q And, Mr. Schubert, can you identify this
 18 document for the record?

19 **A I cannot.**

20 Q You have not seen this document before?

21 **A I don't recall seeing this, no.**

22 Q And does seeing this document refresh your
 23 recollection about whether ProtectMarriage.com
 24 hosted any town halls?

25 **A No, it does not.**

1 MR. GOLDMAN: And the next document is
2 being marked as Schubert Exhibit 14.
3 (Schubert Exhibit 14 was marked for
4 identification.)

5 BY MR. GOLDMAN:

6 Q Can you identify this document for the
7 record?

8 A **No, I cannot.**

9 Q You have never seen this before?

10 A **I don't recall seeing this, no.**

11 Q Do you recall whether ProtectMarriage.com
12 ever made official spokespersons from the ballot
13 initiative available for media comment at a town
14 hall meeting hosted by the San Diego County
15 Republican party?

16 A **I previously testified that I don't recall
17 any town halls hosted by ProtectMarriage. I do
18 recall a meeting of the Republican party in
19 San Diego, but I don't recall that meeting being
20 described as a town hall.**

21 Q Okay. And at that meeting that you recall
22 of the San Diego Republican party, did
23 ProtectMarriage.com make official spokespersons
24 available at that meeting for media comment?

25 A **I don't know. I don't recall who attended**

1 your work on the ProtectMarriage campaign?

2 MR. TYLER: Objection. First Amendment
3 privilege. He's already testified he knows
4 Mr. Franklin. Whether or not it's through the
5 campaign or not is privileged information; to whom
6 he associates with concerning the campaign.

7 BY MR. GOLDMAN:

8 Q When did you first come to know Jim
9 Franklin?

10 A **I can't say specifically. I can't say
11 specifically, but in rough terms, it would have been
12 sometime after June 2008.**

13 MR. GOLDMAN: Okay. We're going to mark a
14 CD this time as Schubert Exhibit 15.

15 (Schubert Exhibit 15 was marked for
16 identification.)

17 (Video CD played.)

18 BY MR. GOLDMAN:

19 Q Can you identify that video for the
20 record?

21 A **Yes, it's a 30-second television
22 commercial, produced for ProtectMarriage.com. It's
23 a Spanish-language version of "It's Already
24 Happened."**

25 Q Now, did you air television commercials in

1 **that meeting; whether or not they were there on
2 behalf of ProtectMarriage or not.**

3 Q Do you recall the names of the people who
4 were there?

5 A **I do not.**

6 Q Can you look back at the previous exhibit
7 I showed you, which is Exhibit 13, and just look at
8 the names that appear next to the word "who"?

9 And my question is, are any of the people
10 you see listed there official spokespersons for
11 ProtectMarriage.com?

12 A **The only one I see is Ron Prentice, who is
13 chairman of ProtectMarriage.com.**

14 Q Are you familiar with the other people
15 listed in that paragraph?

16 A **I'm only familiar with Ron Prentice and
17 Jim Franklin.**

18 Q And how do you know Jim Franklin?

19 A **Jim Franklin is a pastor in Fresno,
20 California.**

21 Q And how is it that you know Jim Franklin?

22 A **I have been on conference calls with
23 Pastor Franklin, and that's primarily how I know
24 him.**

25 Q Is it fair to say you know him through

1 languages other than English and Spanish?

2 A **There was an Asian television commercial
3 that was aired.**

4 Q What language was that aired in?

5 A **I believe it was Chinese.**

6 Q And was that a translation of an ad that
7 was aired in English?

8 A **I don't recall the source material for
9 that ad.**

10 Q Do you recall the title of that ad?

11 A **I do not.**

12 Q Is it fair to say, in some cases, you
13 simply translated some materials that were in
14 English into other languages, but, in other cases,
15 you created ads or materials in a different language
16 that did not have an English counterpart in the
17 campaign?

18 MR. TYLER: Objection. Vague. Overbroad.

19 THE WITNESS: We produced ads -- we
20 produced radio ads and television ads in Spanish
21 that did not have an English counterpart.

22 BY MR. GOLDMAN:

23 Q Do you still have copies of all of the ads
24 that ProtectMarriage.com aired?

25 A **Yes.**

1 **If I may just clarify, I believe we do. I**
2 **don't know if we have the Chinese ad. I don't know**
3 **that.**

4 Q Do you know who would have that ad?

5 A **I don't.**

6 Q Who produced that ad?

7 A **I don't know. It was -- my recollection**
8 **is it was --**

9 MR. TYLER: I'm sorry. Let me assert an
10 objection, based upon First Amendment privilege, and
11 instruct you not to respond.

12 MR. GOLDMAN: My question is just for the
13 purpose of tracking down the material, to the extent
14 we don't already have it.

15 MR. TYLER: To the extent that the
16 information was ever made public previously, you can
17 testify as to who you might know would have that, if
18 something was made public.

19 THE WITNESS: I'm not aware of any public
20 disclosure of that information.

21 BY MR. GOLDMAN:

22 Q Do you have nonpublic information -- just
23 yes or no, do you have nonpublic information about
24 who produced that video?

25 A **I don't.**

1 **recall seeing it.**

2 MR. COOPER: Counsel, my version has a
3 blank page as page 3. Is that inadvertent, or is
4 that actually part of the exhibit?

5 MR. GOLDMAN: I think that's how it was
6 produced to us.

7 MR. COOPER: Okay.

8 MR. GOLDMAN: The next document is being
9 marked as Schubert Exhibit 18.

10 (Schubert Exhibit 18 was marked for
11 identification.)

12 BY MR. GOLDMAN:

13 Q If you can identify this document for the
14 record.

15 A **An e-mail blast distributed by**
16 **ProtectMarriage.com, I believe either the night**
17 **before or the morning of the airing of the**
18 **television ad featuring the Wirthlin couple.**
19 **"Everything To Do With Schools," I believe is the**
20 **name of it.**

21 Q And did this ad -- sorry.

22 Yes, did this ad, did that coincide with
23 the start of the Yes on 8 bus tour that you
24 previously testified about?

25 A **Yes, it did.**

1 MR. GOLDMAN: Let's mark the next document
2 as Schubert Exhibit 16.

3 (Schubert Exhibit 16 was marked for
4 identification.)

5 BY MR. GOLDMAN:

6 Q If you can, I would like you to identify
7 this document for the record.

8 A **This was an e-mail blast that was sent to**
9 **our e-mail distribution list.**

10 Q And it was created by ProtectMarriage.com
11 for use in the Yes on 8 campaign, correct?

12 A **Yes.**

13 MR. GOLDMAN: The next document is
14 Schubert Exhibit 17.

15 (Schubert Exhibit 17 was marked for
16 identification.)

17 BY MR. GOLDMAN:

18 Q Again, I would like you to identify this
19 document for the record.

20 A **I don't have any specific recollection of**
21 **this document.**

22 Q Do you have a belief about what this
23 document is?

24 A **It appears to be a press release, but I**
25 **don't recall seeing it previously. I just don't**

1 Q And I think you testified that was a
2 week-long bus tour. Is that correct?

3 A **I don't think I testified to the duration**
4 **at all, but it was in that range, seven, eight,**
5 **days, something like that.**

6 MR. GOLDMAN: Next document we are marking
7 as Schubert Exhibit 19.

8 (Schubert Exhibit 19 was marked for
9 identification.)

10 BY MR. GOLDMAN:

11 Q Can you identify this document for the
12 record?

13 A **Yes, it's a press release produced by**
14 **ProtectMarriage.com on the occasion of the statewide**
15 **bus tour and the airing of the television**
16 **commercial, "Everything To Do With Schools."**

17 Q And do you see, in the second paragraph of
18 this document, it refers to a press conference?

19 Do you see that?

20 A **Yes. First three words?**

21 Q Yes.

22 Do you know if that press conference was
23 recorded?

24 A **I do not.**

25 Q You can see it also refers in the first

1 paragraph to a rally.

2 Do you have an understanding about whether
3 the rally is something different from the press
4 conference? Are those two separate events or the
5 same event?

6 **A They were separate events.**

7 **Q** And do you know if the rally was recorded?

8 **A I do not.**

9 **Q** You -- well, there's a Frank Schubert
10 quoted in the second paragraph of this document. Do
11 you know whether that refers to you?

12 **A Yes.**

13 **Q** Do you have any reason to doubt that you
14 made the statement attributed to you in that
15 paragraph?

16 **A No, I have no reason to doubt that.**

17 **MR. GOLDMAN:** Let's mark the next exhibit
18 as Schubert Exhibit 20.

19 (Schubert Exhibit 20 was marked for
20 identification.)

21 **MR. TYLER:** I want to first assert an
22 objection before any questions are asked concerning
23 this document. To the extent that this document is
24 a -- was not publicly distributed and is an internal
25 communication or draft or otherwise internally

1 **MR. GOLDMAN:** Yes, that's what I'm trying
2 to establish.

3 **MR. COOPER:** You might ask the witness if
4 he knows the answer to that question, just to
5 clarify.

6 **THE WITNESS:** The answer to the question
7 is, it depends on one's understanding of
8 "distributed to the public at large," to use your
9 quote.

10 **BY MR. GOLDMAN:**

11 **Q** Is this the text for robocalls?

12 **A To --**

13 **MR. TYLER:** Well, let me assert an
14 objection, based upon the First Amendment privilege,
15 that I would instruct you that you can only
16 respond -- at least by my instruction, that you
17 would only respond as to whether or not this is the
18 exact text that was used, or if any was used for
19 purposes of robocalls, that were made publicly
20 available.

21 **THE WITNESS:** This appears to be the text
22 of calls that were recorded and delivered
23 automatically to certain individuals. I would not
24 characterize them as counsel did, as the public at
25 large.

1 confidential to the campaign, I would instruct you
2 not to respond to any questions concerning the
3 content.

4 **THE WITNESS:** This was an internal
5 document.

6 **BY MR. GOLDMAN:**

7 **Q** Well, was it a script for robocalls?

8 **MR. TYLER:** I would instruct you not to
9 respond to that question, based upon the First
10 Amendment privilege. So I assert my objection on
11 that basis.

12 **BY MR. GOLDMAN:**

13 **Q** Do you know if the words in this document
14 were read to members of the public at large?

15 **MR. TYLER:** I continue my objection and
16 instruct you not to respond to this question with
17 regard to this internal document.

18 The robocalls have been produced, and the
19 robocalls speak for themselves.

20 **MR. GOLDMAN:** On what basis --

21 **MR. COOPER:** Might these be the robocalls
22 themselves, is that counsel's inquiry?

23 **MR. GOLDMAN:** Yes.

24 **MR. COOPER:** The actual text of the
25 robocalls?

1 **BY MR. GOLDMAN:**

2 **Q** Well, what are robocalls?

3 **A Well, the term "robocall" is an automated
4 telephone call.**

5 **Q** And these are recordings -- the words on
6 this page are what was read in the robocalls. Is
7 that correct?

8 **A Yes.**

9 **Q** And those robocalls --

10 **A Certain robocalls.**

11 **Q** Right.

12 And those robot calls -- robocalls were
13 produced by ProtectMarriage.com on the Yes on 8
14 campaign, correct?

15 **A The robocalls were produced by the Yes on
16 8 campaign for use with selected people. You began
17 this discussion in the context of the public at
18 large, and I'm attempting to differentiate between
19 the public at large and those who received these
20 robocalls.**

21 **Q** They were targeted groups of voters who
22 received these robocalls, correct?

23 **A That's not the description that I have
24 used. These particular calls were targeted to
25 specific individuals for reasons of strategic value**

1 **in the campaign.**

2 Q And they are ProtectMarriage.com
3 robocalls, correct?

4 **A They are, correct.**

5 Q Does this document, which has 15 events
6 listed, to your knowledge, is this a complete list
7 of the rallies that were held as part of the
8 Yes on 8 bus tour?

9 **A Yes, as far as I know.**

10 Q Do you know whether any of these rallies
11 were recorded?

12 **A I do not.**

13 Q Were these rallies referred to as marriage
14 pledge rallies?

15 MR. TYLER: Objection. Vague. Ambiguous.

16 THE WITNESS: I can't testify as to how
17 they were referred to. I can testify that it's
18 publicly known that people attending the rallies had
19 an opportunity to take a marriage pledge.

20 BY MR. GOLDMAN:

21 Q And what is a marriage pledge?

22 **A In the context of the Proposition 8**
23 **campaign, it was an opportunity for people to affirm**
24 **their support for traditional marriage and affirm**
25 **their support, their recognition of it, as a**

1 Amendment privilege, to the extent that he's
2 participated in this campaign.

3 MR. GOLDMAN: So you are asserting his
4 First Amendment privilege as the paid campaign
5 manager to protect ProtectMarriage.com. Is that
6 correct, just so I understand?

7 MR. TYLER: Yes, as well as being an
8 individual.

9 MR. COOPER: And I would add, as well,
10 that ProtectMarriage.com would assert its privilege,
11 with respect to the document that the witness has
12 now described as an internal campaign document.

13 I don't know the circumstances under which
14 this was produced. I suspect this may have been
15 produced inadvertently. But given the character of
16 the document the witness has just described,
17 ProtectMarriage.com also would assert an objection
18 and...

19 MR. GOLDMAN: I don't believe it is
20 inadvertently produced. I believe that the request
21 called for materials that were prepared to guide
22 people who were making public statements; that they
23 would use in order to make public statements.

24 This is the best we have, short of a
25 recording, of the public statements that were

1 **foundation of society; affirm their commitment to**
2 **restore marriage to California law; and to -- and**
3 **affirm their commitment to support Proposition 8,**
4 **among other matters.**

5 MR. GOLDMAN: Let's mark the next document
6 as Schubert Exhibit 21.

7 (Schubert Exhibit 21 was marked for
8 identification.)

9 BY MR. GOLDMAN:

10 Q And if you would please identify this
11 document for the record?

12 MR. TYLER: Again, before you respond to
13 this question, I would like to assert an objection,
14 on the basis of First Amendment privilege, to the
15 extent that this is not a document that has been
16 publicly disseminated, and that to the extent it is
17 nonpublic and reflects internal communication, I'll
18 instruct you not to respond to any questions
19 concerning content of this document.

20 THE WITNESS: This is a nonpublic internal
21 campaign document.

22 MR. GOLDMAN: And if I could ask,
23 Mr. Tyler, a question of clarification. Whose First
24 Amendment privilege are you asserting?

25 MR. TYLER: I'm asserting he has a First

1 actually made. These were remarks prepared for
2 public distribution and dissemination.

3 MR. COOPER: And we --

4 MR. GOLDMAN: Are you now asserting that
5 remarks that were prepared to be delivered to the
6 public are protected by the First Amendment and not
7 discoverable in this lawsuit?

8 MR. COOPER: We have asserted from the
9 beginning that internal documents that are in the
10 nature of talking points for public events and,
11 therefore, are distinguishable from, for example,
12 the scripts of robocalls that we previously
13 discussed, would be different in nature and would be
14 internal, would be confidential.

15 They might or might not have been uttered
16 at the public event, and like any other internal
17 notes that relate to a possible public discussion.
18 So, yes, we have always maintained that documents of
19 this kind would be internal and confidential and
20 privileged.

21 MR. GOLDMAN: Well, if you're going to
22 instruct the witness not to answer any questions
23 about it and without -- if you want to decide you
24 want to recall this document as inadvertently
25 produced, that's a decision you can make.

1 And without prejudice to your ability to
2 do that, are you prepared to stipulate, nonetheless,
3 to the authenticity of this document, in the event
4 that you decide not to assert a First Amendment
5 privilege over it?

6 MR. COOPER: If we decide not to do so,
7 assert a First Amendment privilege?

8 MR. GOLDMAN: Yes, if you decide not to
9 recall the document as inadvertently produced.

10 MR. COOPER: And I appreciate that,
11 counsel, because I don't know how we're going to
12 decide that issue until we've inquired into the
13 nature of the production. But at that time, we
14 would be happy to pursue potentially stipulating to
15 its authenticity with you.

16 MR. GOLDMAN: Right. The difficulty I
17 have, as you understand, is witnesses who are
18 knowledgeable about the document are being
19 instructed not to answer any questions about the
20 document.

21 MR. COOPER: Yes. And if this document is
22 ultimately discoverable, either because we withdraw
23 our claim of privilege or it ultimately is not
24 sustained, then we will not put you to the trouble
25 of recalling this witness in order to authenticate

1 MR. COOPER: Which number was this one?
2 I'm sorry.

3 MR. UNO: 22.

4 MR. TYLER: Thank you.
5 (Schubert Exhibit 23 was marked for
6 identification.)

7 BY MR. GOLDMAN:

8 Q Can you identify this document for the
9 record, Mr. Schubert?

10 MR. TYLER: Let me, for the record, state
11 for the record he has been handed a document marked
12 as Exhibit 23. And as well, to the extent this
13 document is a nonpublic document pertaining to the
14 campaign, I would instruct my client, based upon the
15 First Amendment privilege, not to respond to any
16 questions concerning the content of this particular
17 document.

18 (Schubert Exhibit 24 was marked for
19 identification.)

20 THE WITNESS: This is a nonpublic internal
21 document.

22 MR. GOLDMAN: And, Mr. Cooper, do we have
23 the same agreement at this time?

24 MR. COOPER: We do.

25 MR. GOLDMAN: The next document being

1 it.

2 Is that a fair enough approach?

3 MR. GOLDMAN: Yes. Thank you for that,
4 Mr. Cooper.

5 The next document is being marked as
6 Schubert Exhibit 22.

7 (Schubert Exhibit 22 was marked for
8 identification.)

9 MR. TYLER: I'll assert an objection to
10 this Exhibit 22.

11 Instruct my client not to respond to the
12 extent that this document is a nonpublic document
13 that reflects internal communications or impressions
14 or strategy.

15 To the extent that the First Amendment
16 applies, I would instruct my client not to respond
17 to any questions concerning its content.

18 THE WITNESS: This is a nonpublic internal
19 document.

20 MR. COOPER: I would add, as well, my
21 objection to counsel for the witness.

22 MR. GOLDMAN: Then may we have the same
23 agreement with respect to this document?

24 MR. COOPER: Certainly.

25 MR. GOLDMAN: Thank you.

1 marked is Schubert Exhibit 24.

2 MR. TYLER: With regard to Exhibit 24, I
3 assert the same objections previously identified
4 concerning nonpublic documents.

5 Is that acceptable to you, Mr. Goldman,
6 and we'll proceed in this fashion, or do you want me
7 to restate the objection.

8 MR. GOLDMAN: No, that's fine.

9 And I assume Mr. Cooper has the same
10 agreement with respect to this document.

11 MR. COOPER: We do. We do.

12 BY MR. GOLDMAN:

13 Q Did you attend --

14 MR. TYLER: I'm sorry, Mr. Goldman. You
15 might want to ask him whether that is a public or
16 nonpublic document.

17 MR. GOLDMAN: Sure.

18 BY MR. GOLDMAN:

19 Q Is the document marked as Schubert
20 Exhibit 24 a public document?

21 A **It's a nonpublic internal document.**

22 Q Did you attend any of the rallies as part
23 of the bus tour?

24 A **Yes.**

25 Q Did you attend all of them?

1 **A No.**
2 **Q** Did you attend any at which Jim Garlow
3 served as the rally leader?
4 **A No.**
5 **Q** Did you attend any rally at which Bishop
6 Cordileone spoke?
7 **A No.**
8 **Q** Did you attend any rally at which Pastor
9 Chris Clark spoke?
10 **A Your question is in reference to a rally,**
11 **along the lines we've been discussing, and the**
12 **answer would be no.**
13 **Q** Did you attend any rally at which Ned --
14 is it Dolejsi?
15 **A Dolejsi?**
16 **Q** -- Dolejsi spoke?
17 **A I don't believe so, no.**
18 MR. GOLDMAN: I think we need to just
19 change the tape, so why don't we take a short break.
20 THE WITNESS: Okay.
21 THE VIDEOGRAPHER: This the end of Tape 2,
22 Volume I, in the deposition of Frank Schubert.
23 The time is approximately 1:15 p.m. We
24 are off the record.
25 (Discussion off the record.)

1 document, at least at this point in time, based upon
2 my belief it is not a public document.
3 There's no question pending.
4 BY MR. GOLDMAN:
5 **Q** There is a question pending.
6 The question pending is, can you identify
7 this document for the record, please?
8 MR. TYLER: Same objection.
9 THE WITNESS: These are separate
10 documents. Both of them are public -- were publicly
11 distributed by ProtectMarriage.com.
12 BY MR. GOLDMAN:
13 **Q** They were produced by ProtectMarriage.com
14 and used in the Yes on 8 campaign. Is that correct?
15 **A Yes.**
16 MR. GOLDMAN: We're marking the next
17 document as Schubert Exhibit 26?
18 MR. UNO: I'm sorry. I gave you --
19 MR. TYLER: Oh.
20 MR. STROUD: We're one short.
21 MR. COOPER: You only got one?
22 MR. TYLER: I only got one here.
23 THE WITNESS: Here's an extra one.
24 MR. TYLER: One attached to the bottom.
25 ////

1 THE VIDEOGRAPHER: This is Tape 3 of
2 Volume I in the deposition of Frank Schubert, in
3 Kristin M. Perry vs Arnold Schwarzenegger, et al.
4 The date is December 17, 2009, and the
5 time is approximately 1:25 p.m. We are on the
6 record.
7 MR. GOLDMAN: We're going to mark the next
8 document as Schubert Exhibit 25.
9 (Schubert Exhibit 25 was marked for
10 identification.)
11 MR. TYLER: I'm going to assert an
12 objection with regard to this Exhibit 25, to the
13 extent it is a nonpublic document. And if I may,
14 can it be agreed that my prior objection, based upon
15 our earlier conversation just before the break, is
16 the same, continuing objection?
17 MR. GOLDMAN: I'm sorry. I think I'm not
18 understanding what you're saying.
19 MR. TYLER: I'm sorry. Maybe I'm not
20 clear. That's okay.
21 Let me just assert an objection to this
22 document. To the extent it is nonpublic, to the
23 extent that it is protected by the First Amendment
24 privilege, I will instruct my client not to respond
25 to any questions concerning the content of this

1 (Schubert Exhibit 26 was marked for
2 identification.)
3 BY MR. GOLDMAN:
4 **Q** And could you identify this document for
5 the record, please.
6 **A I cannot.**
7 **Q** You have never seen this document before.
8 Is that correct?
9 **A I don't recall seeing this document, no.**
10 MR. GOLDMAN: The next document we're
11 going to mark as Schubert Exhibit 27 is a CD with a
12 video.
13 (Schubert Exhibit 27 was marked for
14 identification.)
15 (Video CD played.)
16 BY MR. GOLDMAN:
17 **Q** Can you identify that video for the
18 record?
19 **A I cannot.**
20 **Q** Have you ever seen that video before?
21 **A Yes, I have.**
22 **Q** When have you seen that video?
23 **A I don't know specifically when I saw it,**
24 **other than late in the campaign, prior to the**
25 **adoption of Proposition 8.**

1 Q Do you know who produced that video?

2 A I do not.

3 Q Do you know whether ProtectMarriage.com
4 provided a link to that video?

5 A I do not.

6 Q Why don't you turn back to Schubert
7 Exhibit 1.

8 Look at page 47, the paragraph at the
9 bottom of the left-hand column and continuing to the
10 top of the right-hand column.

11 A Yes.

12 Q Do you understand that paragraph to refer
13 to this video?

14 A I do not.

15 Q Is there a video that you believe this
16 paragraph refers to?

17 A I'm unaware of any reference to a video in
18 the paragraph, Counsel.

19 Q It says, "We highlighted other examples
20 where gays had forced their agenda into the public
21 schools, including an episode in Hayward where a
22 school celebrated coming out, while urging
23 kindergarteners to sign pledge cards, promising to
24 be an ally of gay students."

25 Do you see that?

1 ProtectMarriage.com on October 31, 2008?

2 A Yes.

3 Q Do you have any reason to doubt that this
4 was a media advisory released by
5 ProtectMarriage.com, linking to the YouTube video
6 that we just watched?

7 MR. COOPER: Counsel, I would object to
8 the question. The witness has already testified he
9 doesn't have any knowledge of this document, and he
10 can't -- he obviously won't be in a position to
11 authenticate it as a ProtectMarriage.com document.

12 There may be other witnesses who can
13 provide authentication of this document, and I, and
14 we, my clients, are willing to work with you in
15 terms of attempting to assist in authentication if,
16 in fact, that ultimately becomes necessary. But the
17 witness is not -- is not able to do it, according to
18 the testimony that I've heard.

19 BY MR. GOLDMAN:

20 Q Well, let me ask if you supervised Chip
21 White.

22 MR. TYLER: Objection. Based upon First
23 Amendment privilege as it pertains to campaign
24 structure and internal communications and internal
25 relationships concerning the management of the

1 A I do.

2 Q What did you do to highlight those
3 examples; and by "you," I mean, ProtectMarriage.com?

4 MR. TYLER: Objection, based upon the
5 First Amendment privilege, with regard to anything
6 that was performed on behalf of the campaign in a
7 nonpublic fashion.

8 I would advise my client to respond to
9 this question only to the extent that the
10 information is publicly available.

11 THE WITNESS: My recollection is that
12 there are newspaper articles of this incident that
13 include comments from representatives of
14 ProtectMarriage.com.

15 BY MR. GOLDMAN:

16 Q Are you saying that members of
17 ProtectMarriage.com spoke to the press about these
18 incidents?

19 A That's my recollection.

20 Q If you could just look back at Exhibit 26?

21 A Yes.

22 Q Who is Chip White?

23 A Chip White was the communications director
24 for a period of time for ProtectMarriage.com.

25 Q Was he the communications director for

1 campaign and strategy, I instruct you not to respond
2 to that question.

3 Q Did you review messages before they were
4 distributed to the media or members to the public?

5 MR. TYLER: Objection. Vague.

6 THE WITNESS: If your question is related
7 to Exhibit 26, I believe I've testified I don't
8 recall this document.

9 BY MR. GOLDMAN:

10 Q And I'm just asking, in general, whether,
11 in your role as campaign manager for
12 ProtectMarriage.com, did you review materials before
13 they were distributed to the public or members of
14 the media?

15 A As a general matter, our -- our firm would
16 have liked to have reviewed documents before they
17 were publicly disseminated.

18 MR. GOLDMAN: Let's mark the next document
19 as Schubert Exhibit 28.

20 (Schubert Exhibit 28 was marked for
21 identification.)

22 MR. TYLER: I'm going to assert an
23 objection to any testimony concerning this document,
24 Exhibit 28, to the extent it is a nonpublic
25 document, and instruct my client not to testify as

1 to the content of this document, should it not be a
2 public document.

3 BY MR. GOLDMAN:

4 Q Can you identify this document for the
5 record, Mr. Schubert?

6 A I cannot.

7 Q What was ProtectMarriageCA?

8 A **ProtectMarriageCA is a separate
9 organization from ProtectMarriage.com.**

10 Q What is it, to the extent you know?

11 A **I don't know. I don't know its legal
12 construction. I only know it is not
13 ProtectMarriage.com.**

14 Q Did ProtectMarriage.com pay any money to
15 ProtectMarriageCA?

16 MR. TYLER: Objection. Assert a First
17 Amendment privilege to the extent that this would
18 address internal communications of the campaign
19 strategies, and will instruct my client not to
20 testify to the extent that this information is not
21 publicly available.

22 THE WITNESS: Your question is whether
23 ProtectMarriage.com paid any money to
24 ProtectMarriageCA.

25 And my answer is, I don't know.

1 think I'm entitled to explore the connections and
2 coordination between ProtectMarriage.com and
3 ProtectMarriageCA.

4 MR. TYLER: I think you can find your
5 information pretty easily by simply asking whether
6 or not the communications of ProtectMarriage.CA, I
7 think it was, is -- are messages adopted by
8 ProtectMarriage.com, or however you want to put it.
9 But if that is what you're getting at, I think you
10 can ask that question.

11 MR. GOLDMAN: Well, that will get me an
12 assertion. I then need to test that assertion.

13 MR. TYLER: Not necessarily. You can go
14 ahead and ask that question, and we'll determine
15 whether or not you can test that or not.

16 BY MR. GOLDMAN:

17 Q All right. Mr. Schubert, are messages
18 that were disseminated to the public regarding
19 Proposition 8 by ProtectMarriageCA messages of
20 ProtectMarriage.com?

21 A No.

22 MR. GOLDMAN: Now, will you instruct the
23 witness not to answer any questions that are
24 designed to test the answer I just received.

25 MR. TYLER: It depends what your question

1 BY MR. GOLDMAN:

2 Q Did ProtectMarriage.com coordinate with
3 ProtectMarriageCA on messaging related to
4 Proposition 8?

5 MR. TYLER: Objection. I'm going to
6 insert -- assert another objection, based upon the
7 First Amendment, that, in fact, I believe that the
8 judge, Judge Walker, in one of his rulings,
9 determined that it would be irrelevant to even
10 understand or to obtain documents concerning
11 volunteer coordination and organization. And I
12 believe that's applicable here to your question,
13 and, therefore, not only is it irrelevant, but
14 violates the First Amendment privilege.

15 MR. GOLDMAN: The information is plainly
16 relevant to the extent that the defendant
17 intervenors are claiming that any messages delivered
18 by ProtectMarriageCA are not attributable to
19 ProtectMarriage.com.

20 And very clearly, if that is the assertion
21 of defendant intervenors, and if Mr. Cooper wants to
22 stipulate that all ProtectMarriageCA messages are
23 ProtectMarriage.com messages, we can avoid this.

24 But if the assertion is that these message
25 are not attributable to ProtectMarriage.com, then I

1 is.

2 MR. GOLDMAN: Well, I've already asked
3 some.

4 MR. TYLER: Well, I encourage you to go
5 ahead and begin your inquiry, and we'll see where it
6 goes.

7 MR. COOPER: We do assert that questions
8 relating to associational relationships of
9 ProtectMarriage.com and its -- and its individuals
10 managing that campaign are privileged and that this
11 inquiry goes beyond the scope of permissible
12 discovery, as outlined in the discovery orders of
13 the court.

14 MR. GOLDMAN: And with that, then, are you
15 willing to stipulate that I have preserved my right,
16 should the court allow it, to ask questions about
17 the relationship between ProtectMarriage.com and
18 ProtectMarriageCA?

19 MR. COOPER: Certainly.

20 BY MR. GOLDMAN:

21 Q I think you said you didn't know, as a
22 legal matter, what ProtectMarriageCA was. Do you
23 have any understanding of what ProtectMarriageCA is?

24 A Yeah. Yes.

25 Q What is your understanding of what

1 ProtectMarriageCA is?
 2 **A Well, as a general matter, my**
 3 **understanding is that ProtectMarriageCA was an**
 4 **organization led by Dr. Jim Garlow.**
 5 Q When did that organization come into
 6 being, if you know?
 7 **A I don't know.**
 8 MR. GOLDMAN: Let's mark as Schubert
 9 Exhibit 29 another CD with a video file on it.
 10 (Schubert Exhibit 29 was marked for
 11 identification.)
 12 (Video CD played.)
 13 BY MR. GOLDMAN:
 14 Q Have you seen that video before,
 15 Mr. Schubert?
 16 **A I have.**
 17 Q When did you see that video before today?
 18 **A I can't recall specifically, but at some**
 19 **point during the Proposition 8 campaign.**
 20 Q Was that video produced by
 21 ProtectMarriage.com?
 22 **A No, it was not.**
 23 Q Do you know who produced that video?
 24 **A I don't -- I don't know specifically, but**
 25 **it's been my impression that it was produced by the**

1 MR. GOLDMAN: All right. I think Schubert
 2 Exhibit 30 is another video.
 3 (Schubert Exhibit 30 was marked for
 4 identification.)
 5 MR. TYLER: Just for the record,
 6 gentlemen, the log of documents that I e-mailed to
 7 someone here to print out, I spoke to Donna.
 8 Hopefully, she was able to print it out for us and
 9 get it to us on the next break.
 10 MR. GOLDMAN: Okay. Thank you.
 11 (Video CD played.)
 12 BY MR. GOLDMAN:
 13 Q Can you identify this video, for the
 14 record?
 15 **A Yes, I can. It's a video produced by**
 16 **ProtectMarriage.com for use in the Proposition 8**
 17 **campaign.**
 18 Q And how was this video distributed or made
 19 available to the public?
 20 **A The video was posted on**
 21 **ProtectMarriage.com website, and I believe it was**
 22 **uploaded to YouTube.**
 23 Q Do you know whether the
 24 ProtectMarriage.com website, during the campaign,
 25 had a link to the ProtectMarriageCA.com website?

1 **Family Research Council.**
 2 Q And what is the Family Research Council?
 3 **A My understanding is that the Family**
 4 **Research Council is a nonprofit organization, based**
 5 **in Washington, focused on pro-family issues.**
 6 Q And, to your knowledge, was that video
 7 publicly distributed?
 8 **A I don't know the method of distribution of**
 9 **the video.**
 10 Q What was the context in which you reviewed
 11 the video?
 12 **A I reviewed the video online, I believe.**
 13 Q So that was something, you heard about it
 14 and you wanted to check it out, is that the context?
 15 MR. TYLER: Objection. First Amendment
 16 privilege, I think, applies. And Mr. Schubert
 17 testified that he viewed it online. Why he viewed
 18 it or how he heard about it is irrelevant and
 19 subject to the First Amendment privilege.
 20 I instruct you not to respond to that.
 21 BY MR. GOLDMAN:
 22 Q Let's see if we can ask this: Did you
 23 review that video in your capacity as campaign
 24 manager for ProtectMarriage.com?
 25 **A Yes.**

1 **A I don't know specifically. The website**
 2 **was a dynamic communication tool, so it changed**
 3 **frequently throughout the campaign.**
 4 Q Do you believe that, at some point, it
 5 linked to the ProtectMarriageCA.com website?
 6 **A It may have, but I don't have a specific**
 7 **reference point.**
 8 Q I think in one of your public statements,
 9 you've talked about working with about 7,500
 10 pastors.
 11 Do you recall, generally, those
 12 statements?
 13 **A Yes.**
 14 Q Were those pastors part of
 15 ProtectMarriageCA?
 16 **A That --**
 17 MR. TYLER: Objection. Let me assert an
 18 objection based upon First Amendment privilege to
 19 whom you would associate.
 20 I instruct you not to respond to that
 21 question.
 22 BY MR. GOLDMAN:
 23 Q Did ProtectMarriage.com spend almost a
 24 million dollars on pastor involvement?
 25 MR. TYLER: Objection. I would assert an

1 objection, based on First Amendment privilege.
 2 Instruct you not to respond to that
 3 question, as it pertains to internal campaign
 4 strategies.
 5 BY MR. GOLDMAN:
 6 Q Unless, of course, you've already spoken
 7 about it publicly.
 8 MR. TYLER: And my same objection applies.
 9 And if you recall speaking about something publicly,
 10 you can testify as to whether you said something
 11 publicly or not.
 12 THE WITNESS: I don't recall any public
 13 statements regarding how much money was spent on
 14 pastor involvement.
 15 MR. GOLDMAN: The next document is being
 16 marked as Schubert Exhibit 32.
 17 THE VIDEOGRAPHER: Isn't that 31?
 18 MR. GOLDMAN: 31.
 19 (Schubert Exhibit 31 was marked for
 20 identification.)
 21 BY MR. GOLDMAN:
 22 Q Do you have Exhibit 31 in front of you
 23 now?
 24 A Yes.
 25 Q And can you identify this document for the

1 A **Not to my knowledge, no.**
 2 MR. GOLDMAN: The next document, we're
 3 going to mark as Schubert Exhibit 32.
 4 (Schubert Exhibit 32 was marked for
 5 identification.)
 6 BY MR. GOLDMAN:
 7 Q Have you seen this before?
 8 A I have not.
 9 Q Do you have any understanding of what this
 10 is, as you sit here today, looking at it?
 11 A **It would appear to be a ProtectMarriageCA**
 12 **document. To the best of my knowledge, it is not a**
 13 **ProtectMarriage.com document.**
 14 Q Do you know what ProtectMarriageSD is?
 15 A **No, I do not.**
 16 Q You never heard of ProtectMarriageSD?
 17 A **I've heard of it. I don't know what it**
 18 **is.**
 19 Q If I could ask you just to look back at
 20 Exhibit 28.
 21 A **(Witness complies.)**
 22 Q Do you see some links down at the bottom
 23 of the page?
 24 A Yes.
 25 Q The last one listed there is

1 record?
 2 A **It appears to be a screen shot of the**
 3 **ProtectMarriage home page at some point after the**
 4 **passage of Proposition 8.**
 5 Q And do you see, in the upper right-hand
 6 corner, where it says, "Not receiving
 7 ProtectMarriage.com e-mails, sign up"?
 8 Do you see that?
 9 A **I do.**
 10 Q Was that something that was there during
 11 the campaign that visitors to the website could use
 12 to register and then receive e-mails from
 13 ProtectMarriage.com?
 14 A **I don't know that.**
 15 Q Do you see, further down near the bottom
 16 on the right, it says, "Proposition 8 resources for
 17 churches and supporters"?
 18 Do you see that?
 19 A **Yes.**
 20 Q Do you know what clicking on that button
 21 does? Do you know where it takes the person who
 22 clicks on that button?
 23 A **No, I don't know specifically, other than**
 24 **a general description on the home page.**
 25 Q Have you ever clicked on this button?

1 iProtectMarriage.com.
 2 Do you see that?
 3 A **Yes.**
 4 MR. TYLER: Objection. I'm going to
 5 assert the First Amendment privilege, again, as to
 6 this document. I believe Mr. Schubert testified
 7 previously that this document is a nonpublic
 8 document. And to the extent this is a nonpublic
 9 document, I'm going to instruct him not to respond
 10 to its content.
 11 If I'm mistaken as to his previous
 12 testimony, I'm happy to be corrected.
 13 MR. GOLDMAN: Yes, I think he testified it
 14 wasn't a ProtectMarriage.com document; not that it
 15 was an internal ProtectMarriage.com document.
 16 BY MR. GOLDMAN:
 17 Q But correct me if I'm wrong, Mr. Schubert.
 18 A **That's correct. I could not authenticate**
 19 **the document.**
 20 Q So do you see where it says
 21 iProtectMarriage.com, down at the bottom?
 22 A **Yes.**
 23 Q Do you know what iProtectMarriage.com is?
 24 A **Yes, iProtectMarriage.com --**
 25 MR. TYLER: I'm sorry, Mr. Schubert.

1 There's no question pending.
 2 BY MR. GOLDMAN:
 3 Q What is iProtectMarriage.com?
 4 **A IProtectMarriage.com is a website that was**
 5 **created by supporters of Proposition 8 that was**
 6 **developed with a particular point of view, aimed at**
 7 **young people.**
 8 Q And was iProtectMarriage.com part of
 9 ProtectMarriage.com?
 10 MR. TYLER: Objection. Vague.
 11 BY MR. GOLDMAN:
 12 Q You can answer the question.
 13 **A IProtectMarriage.com is a separate**
 14 **organization from ProtectMarriage.com.**
 15 Q Did ProtectMarriage.com coordinate with
 16 iProtectMarriage.com on messaging?
 17 MR. TYLER: Object to First Amendment
 18 privilege. We previously brought this up. And as I
 19 recall, again, Judge Walker's previous instructions,
 20 to my understanding, protects, or at least
 21 recognized the protection of, volunteer coordination
 22 and organization as being not relevant and protected
 23 by the First Amendment, or at least, at a bare
 24 minimum, not relevant to this case.
 25 So I would instruct him not to respond to

1 THE WITNESS: I believe there may be
 2 public documents, whereby ProtectMarriage.com made
 3 the public aware of the existence of
 4 iProtectMarriage.com.
 5 MR. GOLDMAN: Let's mark the next document
 6 as Schubert Exhibit 33.
 7 (Schubert Exhibit 33 was marked for
 8 identification.)
 9 BY MR. GOLDMAN:
 10 Q And can you identify this document, for
 11 the record?
 12 **A I believe this is a press release from**
 13 **ProtectMarriage.com.**
 14 Q And this press release from
 15 ProtectMarriage.com directs people towards
 16 iProtectMarriage.com at the site that targets the
 17 youth vote. Is that correct?
 18 MR. TYLER: Objection. The document
 19 speaks for itself.
 20 BY MR. GOLDMAN:
 21 Q You can answer the question.
 22 **A Well, this is consistent with my prior**
 23 **testimony that ProtectMarriage.com issued a --**
 24 **public steps to inform the public about the**
 25 **existence of iProtectMarriage.com.**

1 coordination with this organization, based upon his
 2 association -- based upon the association rights of
 3 my client.
 4 BY MR. GOLDMAN:
 5 Q Did ProtectMarriage.com pay money to
 6 iProtectMarriage.com?
 7 MR. TYLER: I will make the same
 8 objection, based on the First Amendment privilege.
 9 To the extent that any information is publicly
 10 available, or I should say that such information was
 11 made publicly available, I would instruct you not to
 12 respond, except to that extent.
 13 THE WITNESS: I don't know what public
 14 information is available on that, in response to
 15 that question.
 16 MR. GOLDMAN: Just so I'm clear, you will
 17 not allow him to answer yes or no whether
 18 ProtectMarriage.com paid money to
 19 iProtectMarriage.com. Is that correct?
 20 MR. TYLER: That's correct, yeah.
 21 BY MR. GOLDMAN:
 22 Q Did ProtectMarriage.com direct members of
 23 the public to the iProtectMarriage.com website or
 24 other materials prepared by iProtectMarriage.com?
 25 MR. TYLER: Objection. Vague.

1 Q Who is Miles McPherson?
 2 **A Miles McPherson is a pastor with the Rock**
 3 **Church of San Diego.**
 4 Q And is it your understanding that Miles
 5 McPherson is responsible for the content of
 6 iProtectMarriage.com?
 7 **A It's my understanding that Miles McPherson**
 8 **had overall responsibility for iProtectMarriage.com.**
 9 **I don't -- I can't testify as to his role and the**
 10 **content of the website.**
 11 Q Was he a leader in the Yes on 8 campaign?
 12 MR. TYLER: Objection. Assert the First
 13 Amendment privilege, based on associational rights,
 14 and instruct my client not to respond to that
 15 question.
 16 MR. GOLDMAN: We're going to mark the next
 17 exhibit as Schubert Exhibit 34.
 18 (Schubert Exhibit 34 was marked for
 19 identification.)
 20 MR. TYLER: You gave us an extra one. Is
 21 this yours?
 22 We got them. We just have an extra.
 23 MR. UNO: Thank you.
 24 MR. TYLER: I thought it might be yours.
 25 ///

1 BY MR. GOLDMAN:
 2 Q Have you seen this document before?
 3 A **No, I have not.**
 4 Q Do you have an understanding of what this
 5 document is, as you sit here today?
 6 A **I believe this is a screen shot of the**
 7 **iProtectMarriage.com website, at some point after**
 8 **the passage of Proposition 8.**
 9 Q And at the bottom, there are some links.
 10 Do you see that?
 11 A **Yes.**
 12 Q And the first link is to
 13 ProtectMarriage.com. Is that the website for
 14 ProtectMarriage.com Yes on 8?
 15 MR. TYLER: Objection. That lacks
 16 foundation that actually links to
 17 ProtectMarriage.com. I just want to make -- I
 18 object on the basis that it could say
 19 ProtectMarriage.com, but be linked to something
 20 else. And he's testified he has never seen this
 21 document before. Therefore, there is no foundation.
 22 You can go ahead and respond, if you want.
 23 BY MR. GOLDMAN:
 24 Q I'm just asking if that is the website
 25 address.

1 side there?
 2 A **Yes, I do.**
 3 Q Do you recall whether you ever clicked on
 4 that link to see what video that was?
 5 A **I have no recollection of doing that.**
 6 Q And do you have an understanding right now
 7 of what video that is?
 8 A **My understanding right now, based on**
 9 **looking at this, is it's the --**
 10 MR. TYLER: Let me first assert an
 11 objection.
 12 Vague and ambiguous and instruct you not
 13 to guess as to what that might be. If you have
 14 personal knowledge as to what video link that is,
 15 you can testify to that. If you do not have
 16 personal knowledge, so state.
 17 THE WITNESS: The document says the Parker
 18 family, and I recognize the scene as being contained
 19 in the video that you previously showed.
 20 MR. GOLDMAN: With the Parker family.
 21 Okay.
 22 Thank you.
 23 Next we're going to mark another video as
 24 Schubert Exhibit 35.
 25 ////

1 A **ProtectMarriage.com is the website address**
 2 **for ProtectMarriage.com.**
 3 Q And do you know what -- what is
 4 Prop 8.com? Do you know what that website is?
 5 A **I do not.**
 6 Q And I believe you already testified you
 7 don't know what ProtectMarriageSD.com is. Is that
 8 correct?
 9 A **That's correct.**
 10 Q Have you ever been to the
 11 iProtectMarriage.com website?
 12 A **I believe I visited the website at some**
 13 **point in the campaign.**
 14 Q And you visited that website in your
 15 official capacity as the campaign manager for
 16 ProtectMarriage.com. Is that correct?
 17 MR. TYLER: Objection. Vague.
 18 I'm going to instruct him not to answer,
 19 based on First Amendment privilege. No basis for
 20 him to respond to what he viewed, regardless of
 21 whether it was in his capacity or not, as the
 22 official campaign manager.
 23 BY MR. GOLDMAN:
 24 Q Do you see, there's what looks to be a
 25 link to a video in the middle, on the right-hand

1 (Schubert Exhibit 35 was marked for
 2 identification.)
 3 (Video CD played.)
 4 BY MR. GOLDMAN:
 5 Q Can you identify this, for the record?
 6 A **This is a 30-second television commercial,**
 7 **produced by ProtectMarriage.com.**
 8 Q And when was this television commercial
 9 released, if you recall?
 10 A **I don't recall a specific date, but it**
 11 **would have been late in the campaign, in the last**
 12 **week of the campaign.**
 13 Q And do you recall whether there were radio
 14 ads also based on this commercial that were released
 15 around that time?
 16 A **I do not believe there was.**
 17 Q And this commercial was aired statewide in
 18 California. Is that correct?
 19 A **That's correct.**
 20 MR. GOLDMAN: I think the next exhibit we
 21 have, Schubert Exhibit 36, is another video.
 22 (Schubert Exhibit 36 was marked for
 23 identification.)
 24 (Video CD played.)
 25 ////

1 BY MR. GOLDMAN:
 2 Q Can you identify this video for the
 3 record?
 4 A **Yes, this was a 30-second television**
 5 **commercial, produced by ProtectMarriage.com.**
 6 Q And when did that commercial begin to air?
 7 A **I don't recall specifically. It would**
 8 **have been in the October period, though.**
 9 Q Did that air in the major media markets in
 10 California?
 11 A **It aired selectively. It did not air**
 12 **statewide.**
 13 Q Do you recall where that ad aired, in
 14 which markets?
 15 A **I don't recall specifically, but my**
 16 **recollection is that it aired in Los Angeles,**
 17 **Fresno, for sure. And, beyond that, I would be**
 18 **speculating.**
 19 Q What was the English title of that
 20 commercial, if you know?
 21 A **I don't know.**
 22 Q Do you know whether there was an English
 23 version of the video we just saw?
 24 A **There was not.**
 25 MR. GOLDMAN: Okay. The next video will

1 record?
 2 A **Yes, it's a 30-second television**
 3 **commercial, produced by ProtectMarriage.com.**
 4 Q Was the title of that video "Finally The
 5 Truth"?
 6 A **Yes, it was.**
 7 Q And when did that video air?
 8 A **That video aired late in the campaign, I**
 9 **believe starting on the 27th of October, on or about**
 10 **then.**
 11 Q And did that video air statewide in
 12 California?
 13 A **Yes.**
 14 MR. GOLDMAN: The next video is Schubert
 15 Exhibit 39.
 16 (Schubert Exhibit 39 was marked for
 17 identification.)
 18 (Video CD played.)
 19 BY MR. GOLDMAN:
 20 Q Can you identify this video for the
 21 record, Mr. Schubert?
 22 A **I cannot.**
 23 Q Have you ever seen this video before?
 24 A **No.**
 25 Q It doesn't have the production values you

1 be Schubert Exhibit 37.
 2 (Schubert Exhibit 37 was marked for
 3 identification.)
 4 (Video CD played.)
 5 BY MR. GOLDMAN:
 6 Q Can you identify that video for the
 7 record, please?
 8 A **Yes, it's a 30-second television**
 9 **commercial, produced for ProtectMarriage.com.**
 10 Q And when did this video air?
 11 A **I don't know the specific dates, but late**
 12 **in the campaign, late in October.**
 13 Q Which media markets did the video air, if
 14 you recall?
 15 A **I don't recall the specific details, other**
 16 **than I know it aired in Los Angeles and Fresno.**
 17 **Beyond that, I would be speculating.**
 18 Q (By Mr. Goldman)
 19 MR. GOLDMAN: Okay. I think the next
 20 video, we'll be marking as Schubert Exhibit 38.
 21 (Schubert Exhibit 38 was marked for
 22 identification.)
 23 (Video CD played.)
 24 BY MR. GOLDMAN:
 25 Q Can you identify that video for the

1 would expect?
 2 A **I have not seen the video prior to now.**
 3 MR. STROUD: P-a-l-l-i-n.
 4 MR. GOLDMAN: The next video, we're going
 5 to mark as Schubert Exhibit 40.
 6 (Schubert Exhibit 40 was marked for
 7 identification.)
 8 (Video CD played.)
 9 BY MR. GOLDMAN:
 10 Q Have you ever seen this video before,
 11 Mr. Schubert?
 12 A **I have.**
 13 Q When did you see that video?
 14 A **At some point during the Proposition 8**
 15 **campaign.**
 16 Q Was this video produced by
 17 ProtectMarriage.com?
 18 A **No.**
 19 Q Do you know who produced that video?
 20 A **No.**
 21 **Can I ask if we're approaching a natural**
 22 **breaking point --**
 23 MR. GOLDMAN: Absolutely. That would be
 24 fine.
 25 THE WITNESS: -- for using the restroom.

1 MR. GOLDMAN: Fine. Let's take a break.
 2 MR. STROUD: Like a film festival.
 3 THE VIDEOGRAPHER: We're going off the
 4 record. The time is approximately 2:36 p.m.
 5 (Discussion off the record.)
 6 THE VIDEOGRAPHER: We are going back on
 7 the record. The time is approximately 2:46 p.m.
 8 MR. GOLDMAN: And we're going to mark
 9 another video, now, as Schubert Exhibit 42.
 10 THE REPORTER: 41.
 11 MR. GOLDMAN: 41. No problem.
 12 (Schubert Exhibit 41 was marked for
 13 identification.)
 14 (Video CD played.)
 15 BY MR. GOLDMAN:
 16 Q Have you seen this video before,
 17 Mr. Schubert?
 18 A **Yes, I have.**
 19 Q Was this video produced by
 20 ProtectMarriage.com?
 21 A **No, it's not.**
 22 Q Do you know who produced this video?
 23 A **No, I do not.**
 24 Q When have you seen this video before?
 25 A **My recollection is seeing it online during**

1 instruct him not to answer that question.
 2 BY MR. GOLDMAN:
 3 Q I'm sure your lawyer will instruct you not
 4 to answer, but did any other groups donate videos to
 5 ProtectMarriage.com for its use?
 6 MR. TYLER: Same objection. Same
 7 instruction.
 8 Do not answer that question, based upon
 9 the First Amendment privilege.
 10 BY MR. GOLDMAN:
 11 Q Did ProtectMarriage.com distribute or link
 12 to or notify the media or members of the public
 13 about videos that it received from other groups?
 14 MR. TYLER: I'll make an objection, based
 15 on the First Amendment privilege. Also, object on
 16 the basis of relevancy.
 17 However, to the extent that you can recall
 18 making a public statement, you can testify as to
 19 that public statement only.
 20 THE WITNESS: I'm aware of no public
 21 statement on this subject.
 22 BY MR. GOLDMAN:
 23 Q Well, a public statement would be anything
 24 from ProtectMarriage.com directing members of the
 25 public or the media to a particular video, correct?

1 **the course of the Proposition 8 campaign.**
 2 MR. GOLDMAN: The next video will be
 3 marked as Schubert Exhibit 42.
 4 (Schubert Exhibit 42 was marked for
 5 identification.)
 6 (Video CD played.)
 7 BY MR. GOLDMAN:
 8 Q Have you seen this video before,
 9 Mr. Schubert?
 10 A **Yes, I have.**
 11 Q Was this video produced by
 12 ProtectMarriage.com?
 13 A **No, it was not.**
 14 Q Do you know who produced this video?
 15 A **I do not.**
 16 Q When did you first see this video?
 17 A **I saw it during the course of the**
 18 **Proposition 8 campaign. I can't say specifically**
 19 **when.**
 20 Q Was this video donated to
 21 ProtectMarriage.com for its use?
 22 MR. TYLER: Objection. First Amendment
 23 privilege. The relationships with volunteers or
 24 other persons or receipt of donations is
 25 confidential and protected information. I'll

1 MR. TYLER: Objection. Calls for, you
 2 know, speculation as to what others might think,
 3 No. 1.
 4 No. 2, it's vague and ambiguous. And if
 5 there's a matter of public record, it will speak for
 6 itself. Whether you want to characterize link as a
 7 public statement, that's your prerogative. He's
 8 already testified he's not aware of any public
 9 statements.
 10 MR. GOLDMAN: Right. And I was just
 11 trying to clarify whether that meant he is not aware
 12 of any instances in which ProtectMarriage.com
 13 publicized, in some way, a video produced by a group
 14 other than ProtectMarriage.com.
 15 MR. TYLER: I do want to make a further
 16 objection. Your question is vague. It's overbroad,
 17 to the extent that there's thousands and thousands
 18 of pages, and you know that fact, of documents that
 19 relate to this case, whether it be on television,
 20 Internet, printed materials. And I believe he's
 21 already testified.
 22 But to the extent you can answer, go
 23 ahead.
 24 THE WITNESS: Well, just point of
 25 clarification, I understood your initial question to

1 be, was I aware of ProtectMarriage receiving a
 2 donation of a video.
 3 Your current question appears to be
 4 different.
 5 BY MR. GOLDMAN:
 6 Q That's correct.
 7 Would you like the question read back, or
 8 do you have the question in mind?
 9 **A If I understand it correctly, you're**
 10 **asking am I aware of ProtectMarriage doing anything**
 11 **publicly to publicize the existence of another**
 12 **video. Is that correct?**
 13 Q A video created by a group other than
 14 ProtectMarriage.com?
 15 **A Other than ProtectMarriage.**
 16 **I am aware of public -- information in the**
 17 **public domain about publicizing the existence of**
 18 **other videos, yes.**
 19 Q What videos do you recall
 20 ProtectMarriage.com publicized that were created by
 21 other groups, other than ProtectMarriage.com?
 22 **A I don't recall the specific content of the**
 23 **other videos. I recall e-mail blasts that made**
 24 **reference to other videos. I recall one of them**
 25 **being a humorous video. I don't recall the content**

1 BY MR. GOLDMAN:
 2 Q Can you identify that audio file for the
 3 record?
 4 **A I cannot.**
 5 Q Do you know whether Ron Prentice recorded
 6 any robocalls for ProtectMarriage.com?
 7 **A I believe he did.**
 8 Q Do you understand the audio file we just
 9 listened to to be a robocall?
 10 **A Yes, I do.**
 11 Q And did you hear, at the end of the audio
 12 file, there were a series of disclosures about who
 13 paid for the recording?
 14 Do you recall that?
 15 **A I do.**
 16 Q Is that something that ProtectMarriage
 17 included at the end of any audio files that it
 18 produced?
 19 MR. TYLER: Objection. Vague.
 20 THE WITNESS: California law requires
 21 robocalls in a political campaign to include a
 22 disclaimer as to who paid for the call and the top
 23 two major funders of the campaign. And so
 24 ProtectMarriage, when it engaged in activities
 25 requiring a disclaimer, included the appropriate

1 **of the other.**
 2 Q Do you recall what groups created any of
 3 the videos that ProtectMarriage.com publicized?
 4 **A I do not.**
 5 MR. GOLDMAN: Exhibit 43, Schubert
 6 Exhibit 43.
 7 (Schubert Exhibit 43 was marked for
 8 identification.)
 9 (Audio CD played.)
 10 BY MR. GOLDMAN:
 11 Q Can you identify that audio file that we
 12 just listened to?
 13 **A I cannot.**
 14 Q Have you ever heard that before?
 15 **A I have not.**
 16 Q Do you know whether ProtectMarriage.com
 17 retained Dee Garrett to do a robocall?
 18 **A I do not know that, no.**
 19 MR. GOLDMAN: The next exhibit, I believe,
 20 is another audio file, and it will be Schubert
 21 Exhibit 44.
 22 (Schubert Exhibit 44 was marked for
 23 identification.)
 24 (Audio CD played.)
 25 ////

1 legal disclaimer.
 2 BY MR. GOLDMAN:
 3 Q And is that -- is the disclaimer that was
 4 at the end of the audio file we just listened to,
 5 was that the disclaimer that ProtectMarriage.com
 6 used during the campaign?
 7 **A It was a disclaimer that was used at one**
 8 **point in the campaign.**
 9 Q Did ProtectMarriage.com ever produce any
 10 videos that it did not distribute but gave to other
 11 organizations to distribute?
 12 MR. TYLER: I'm sorry. Can you repeat
 13 that question?
 14 (The question was read as follows:)
 15 "Q Did ProtectMarriage.com ever
 16 produce any videos that it did not
 17 distribute, but gave to other
 18 organizations to distribute?"
 19 MR. TYLER: Objection. First amendment
 20 privilege. Those are drafts we've asserted
 21 protection to -- I'm sorry -- to communications that
 22 have been preserved internally. Unless a
 23 document -- or excuse me -- unless a recording has
 24 been publicly distributed, I would instruct you not
 25 to respond.

1 THE WITNESS: If I understand the question
2 correctly, it is -- to my knowledge,
3 ProtectMarriage.com produced videos that were
4 publicly distributed by others.
5 BY MR. GOLDMAN:
6 Q That's correct.
7 A **To my knowledge, the answer is no.**
8 Q And how about audio?
9 A **Same category?**
10 MR. TYLER: Same objection.
11 THE WITNESS: To my knowledge, the answer
12 is no.
13 BY MR. GOLDMAN:
14 Q How about documents?
15 MR. TYLER: Same objection.
16 THE WITNESS: ProtectMarriage produced a
17 variety of documents, some of which you've flagged
18 as an exhibit, whatever it was, early on, that were
19 publicly displayed for members of the public to
20 review and to consider, and in that context, it is
21 entirely possible that groups may have used those
22 documents in other context.
23 BY MR. GOLDMAN:
24 Q Did you give the documents to specific
25 groups, with the intent that they would distribute

1 **received an e-mail such as this, and they numbered**
2 **in the thousands, yes.**
3 Q And let me ask you to look at page 3 of
4 this document.
5 A **(Witness complies.)**
6 Q What is the pastors committee?
7 A **My belief is this is a reference to the**
8 **group of pastors that Jim Garlow organized and**
9 **communicated with.**
10 Q And is that group of pastors
11 ProtectMarriageCA?
12 MR. TYLER: Objection to the extent that
13 it calls for speculation.
14 If you have personal knowledge, you can
15 testify.
16 THE WITNESS: I believe it's been publicly
17 disclosed that Jim Garlow regularly organized
18 meetings, calls of pastors, for the purpose of
19 discussing Proposition 8, and that may have been
20 done under the auspices of ProtectMarriageCA.
21 BY MR. GOLDMAN:
22 Q Did you participate in any of the pastor
23 conference calls referred to in this document?
24 MR. TYLER: Objection. Based on personal
25 privilege and First Amendment associational

1 them more broadly?
2 MR. COOPER: I'm going to object to that
3 question as going beyond the scope of permissible
4 discovery and calling for information that is
5 protected under the First Amendment.
6 MR. TYLER: I concur with the objection,
7 and, likewise, assert that for the record and
8 instruct Mr. Schubert not to respond to that
9 question.
10 MR. GOLDMAN: We're now going to mark a
11 document as Schubert Exhibit 45.
12 (Schubert Exhibit 45 was marked for
13 identification.)
14 BY MR. GOLDMAN:
15 Q Can you identify this document for the
16 record?
17 A **Yes, this is an e-mail blast from**
18 **ProtectMarriage.com.**
19 Q By "e-mail blast," again, that was
20 something that was sent to thousands of recipients.
21 Is that correct?
22 A **This is a same circumstance that we**
23 **discussed some hours ago, in terms of people who**
24 **signed up on the website requesting information or**
25 **to be kept informed. Those people would have**

1 privilege, I will instruct him not to respond to
2 that question.
3 BY MR. GOLDMAN:
4 Q Do you know if any of the pastor
5 conference calls were recorded?
6 A **I do not.**
7 Q Do you know if any of the pastor
8 conference calls were transcribed?
9 A **I don't know.**
10 MR. TYLER: Objection. Again, calls for
11 First Amendment privilege. To the extent you're
12 aware of public information concerning whether or
13 not it was transcribed, you can respond.
14 Otherwise, I'll instruct you not to
15 answer.
16 THE WITNESS: I'm aware of no public
17 information on that subject.
18 BY MR. GOLDMAN:
19 Q Did any representative of
20 ProtectMarriage.com participate in any pastor
21 conference calls?
22 MR. TYLER: Objection. First Amendment
23 privilege. Rights of association implicated.
24 Instruct you not to answer that question.
25 ////

1 BY MR. GOLDMAN:
 2 Q Did ProtectMarriage.com prepare any
 3 materials for the pastor conference calls?
 4 MR. TYLER: Objection. First Amendment
 5 privilege applies.
 6 I'll instruct you not to answer that
 7 question, except to the extent that there may be
 8 some public documents that you're aware of that
 9 would have been distributed.
 10 THE WITNESS: I don't recall any public
 11 documents discussing that.
 12 BY MR. GOLDMAN:
 13 Q It says here that a total of 1,700
 14 pastors, based in 101 locations across the state,
 15 participated in this first call. Is that
 16 information correct?
 17 MR. TYLER: Objection. Vague.
 18 Are you questioning whether or not the --
 19 whether that, in fact, happened or whether -- I'm
 20 sorry.
 21 I'll just assert my objection based upon
 22 vagueness.
 23 You can respond.
 24 THE WITNESS: I believe that there were
 25 one or more newspaper articles published concerning

1 And is ProtectMarriage.com asserting a
 2 First Amendment privilege over these conference
 3 calls?
 4 MR. COOPER: No, it's not. It is
 5 asserting a First Amendment privilege over whether
 6 or not Mr. Schubert, as the campaign manager,
 7 listened in on that conference call, if that was the
 8 question that was asked --
 9 MR. GOLDMAN: I asked whether --
 10 MR. COOPER: -- except to the extent it is
 11 already in the public domain, whether the answer to
 12 that question is already in the public domain.
 13 MR. GOLDMAN: Well, if the First Amendment
 14 privilege is not asserted over the call itself, then
 15 to the extent that Mr. Schubert spoke on the call,
 16 or anyone from ProtectMarriage.com spoke on the
 17 call, then that information is in the public domain
 18 by virtue of the fact that it happened.
 19 MR. COOPER: If the call itself and
 20 content of the call is in the public domain or was
 21 available publicly in the same way that a rally is,
 22 then -- then I would see no objection to the
 23 question.
 24 BY MR. GOLDMAN:
 25 Q Mr. Schubert, did you speak on any pastor

1 the initial pastor call that Pastor Garlow
 2 organized. I don't recall the details of those
 3 articles, but they may have reported on a number of
 4 pastors who participated.
 5 BY MR. GOLDMAN:
 6 Q Did any members of the media listen to a
 7 pastor conference call?
 8 MR. TYLER: Objection. Calls for
 9 speculation. To the extent you're aware of some
 10 public information identifying that fact, you can
 11 respond.
 12 Otherwise, First Amendment privilege
 13 applies, and you do not need to respond to that
 14 question.
 15 THE WITNESS: I would only respond that
 16 newspaper articles were written by reporters. I
 17 can't comment on whether or not they listened or
 18 recorded the call.
 19 MR. GOLDMAN: Maybe I could just -- if I
 20 could understand the position of the defendant
 21 intervenors. We have here a conference call that
 22 was -- that had 1,700 people in it around the state.
 23 We have a public announcement about it in an e-mail
 24 blast to tens of thousands of people. And we have
 25 reporters writing about the conference calls.

1 conference calls?
 2 MR. TYLER: I'm going to assert an
 3 objection on the basis of First Amendment privilege.
 4 And I will instruct you only to respond to
 5 that question to the extent that you made public
 6 statements, or you -- if there were conference calls
 7 with pastors opened to the public, wherein you made
 8 statements, you could respond to that.
 9 Otherwise, if they were not
 10 public-oriented conference calls, based upon the
 11 First Amendment privilege, you're not obligated to
 12 respond.
 13 MR. GOLDMAN: Now, Mr. Tyler, you're
 14 asserting Mr. Schubert's personal First Amendment
 15 privilege here?
 16 MR. TYLER: As well as on behalf of
 17 Schubert Flint, as the official campaign manager.
 18 MR. GOLDMAN: Do the defendant intervenors
 19 assert a First Amendment privilege over any comments
 20 that Mr. Schubert may have made to a call of 1,700
 21 people, reported in an e-mail sent to tens of
 22 thousands of people, and reported by members of the
 23 media?
 24 MR. COOPER: To the extent that that call
 25 was, notwithstanding the number of people who are on

1 it, not a public call, but was a call with invited
2 members, then, yes, we do assert that would be
3 privileged.

4 If the witness knows that that call was
5 one that was not private in the fashion I've
6 described, but, rather, was more in the nature of a
7 rally, that was available to any -- let's say any
8 member of the public or any pastor, for that matter,
9 then I would not consider that to be privileged, but
10 more in the nature of a rally.

11 MR. GOLDMAN: Let's see if we can find
12 out, then.

13 BY MR. GOLDMAN:

14 Q Were the pastor conference calls open to
15 any pastor who wanted to participate?

16 **A Dr. Garlow organized the pastor calls. My**
17 **understanding is that he invited people to**
18 **participate. I am not aware that they were open to**
19 **anybody, other than those who were invited, but I**
20 **have no direct knowledge of the process that he**
21 **utilized to invite pastors to participate.**

22 MR. GOLDMAN: Let's mark the next document
23 as Schubert Exhibit 46.

24 ////

25 ////

1 document, distributed by e-mail, in the same process
2 we've discussed with prior documents.

3 BY MR. GOLDMAN:

4 Q And is it describing one of the other --
5 another pastor conference call of the kind that
6 we've been discussing?

7 **A Yes.**

8 Q And you -- this e-mail indicates it was
9 sent by you and Jeff Flint. Is that correct?

10 **A That's what's indicated, yes.**

11 Q Did you send this e-mail?

12 **A Certainly the contents of the e-mail look**
13 **familiar. The format you're presenting it is**
14 **unfamiliar, but the contents are familiar.**

15 Q And did you send it?

16 **A I believe we did, yes.**

17 Q Did you participate on the call described
18 in this e-mail?

19 MR. TYLER: Just a minute, Frank.

20 MR. COOPER: In the light of -- I have
21 tried to quickly read this. And in the light of the
22 context that it provides for the call, at least that
23 it is describing a general invitation that appears
24 to go in a general way to all recipients of a blast
25 e-mail, invite them to participate on this on the

1 (Schubert Exhibit 46 was marked for
2 identification.)

3 MR. TYLER: I'll insert an objection to
4 this document, on the basis that it does appear to
5 be an internal communication now. If I'm mistaken,
6 and it is a document that was publicly distributed,
7 then that objection is -- doesn't necessarily stand,
8 but to the extent that this is a nonpublic document,
9 I would instruct you not to respond, on the basis of
10 First Amendment privilege.

11 Additionally, it would appear to me that
12 the attorney-client privilege may also be
13 applicable, due to the fact that Andrew Pugno, who
14 you were speaking with, was and is general counsel
15 for the Proposition 8 campaign.

16 So with that caveat, you can begin your
17 questioning on that document.

18 BY MR. GOLDMAN:

19 Q Can you identify this document for the
20 record, please?

21 MR. TYLER: I'll assert that objection
22 again.

23 And I would instruct you to consider,
24 first, whether it's a public or nonpublic document.

25 THE WITNESS: I believe this is a public

1 Web or by telephone, to the extent I'm understanding
2 it correctly, I withdraw my objection to the
3 question.

4 MR. GOLDMAN: Okay. Thank you.

5 MR. TYLER: Just a second, Frank.

6 I maintain my objection on the basis of
7 the First Amendment. But I will instruct you that
8 it is permissible for you to respond to any public
9 statements you made within phone calls, where
10 invitations were sent out via massive e-mail in this
11 fashion.

12 THE WITNESS: I'm not quite sure I
13 understand the character of the question, so perhaps
14 you could repeat it.

15 BY MR. GOLDMAN:

16 Q Did you speak on the pastor conference
17 call referred to in this e-mail blast, or on other
18 similar pastor conference calls?

19 MR. TYLER: I want to object.

20 MR. COOPER: Similar pastor conference
21 calls that were organized in the fashion suggested
22 by this e-mail, if you please.

23 MR. GOLDMAN: That's fine, with that
24 qualification.

25 THE WITNESS: I don't know if I spoke on

1 this particular call or not.
 2 BY MR. GOLDMAN:
 3 Q But you did speak on some pastor
 4 conference calls that were organized in this
 5 fashion?
 6 A **Yes, I did.**
 7 Q Did any other representatives of
 8 ProtectMarriage.com speak on any of the pastor
 9 conference calls that were organized in this
 10 fashion?
 11 A **Yes.**
 12 Q Who spoke?
 13 A **My recollection is that Jeff Flint spoke**
 14 **and that Ron Prentice spoke.**
 15 Q Anyone else that you recall?
 16 A **No.**
 17 Q Do you see in the third paragraph here, it
 18 states, "If you are interested in joining the
 19 call/webinar, or having your church serve as a host
 20 site, please visit www.ProtectMarriageCA.com"?
 21 Do you see that?
 22 A **I do.**
 23 Q That was the organization we were
 24 discussing earlier, ProtectMarriageCA?
 25 A **Correct.**

1 this document, as far as it being something publicly
 2 produced, then that's acceptable, but I think you
 3 have to make that determination first.
 4 THE WITNESS: I don't know if the document
 5 was produced publicly or not.
 6 BY MR. GOLDMAN:
 7 Q Do you understand this to be an internal
 8 ProtectMarriage.com campaign document?
 9 A **No.**
 10 Q Then when have you seen this document
 11 before?
 12 A **I don't have a specific recollection of**
 13 **when I have seen it, but I have seen it.**
 14 Q In just reviewing briefly the information
 15 on the first page, the California Timeline, is there
 16 anything you see on here that is inaccurate?
 17 MR. TYLER: Objection. There's no
 18 foundation for him to be able to testify whether
 19 this information is accurate or inaccurate there.
 20 He's not testifying as to whether or not he produced
 21 it, whether or not the information in here is
 22 information he even has knowledge of concerning
 23 dates and conferences, et cetera. Therefore, I
 24 object on the basis of vagueness, speculation.
 25 MR. GOLDMAN: He sent an e-mail about

1 MR. GOLDMAN: The next document, we're
 2 going to mark as Schubert Exhibit 47.
 3 (Schubert Exhibit 47 was marked for
 4 identification.)
 5 MR. TYLER: With regard to Exhibit 47,
 6 again, I will assert an objection on the basis of
 7 the First Amendment privilege that if this document
 8 is a nonpublic document that was prepared for
 9 internal purposes regarding your campaign, I would
 10 instruct you not to respond to the con -- any
 11 questions concerning the content of this letter, of
 12 this document.
 13 BY MR. GOLDMAN:
 14 Q Can you identify this document for the
 15 record, Mr. Schubert?
 16 A **Is your question, Can I identify it or can**
 17 **I authenticate it as a ProtectMarriage.com document?**
 18 Q Well, have you seen this document before?
 19 A **Yes, I have.**
 20 Q In what context have you seen this
 21 document?
 22 MR. TYLER: Objection. I'll assert the
 23 First Amendment privilege on this document, so long
 24 as this document has not been publicly produced.
 25 And to the extent you can testify about

1 pastor conference calls. This timeline refers to
 2 pastor conference calls. The fact that he sent an
 3 e-mail announcing pastor conference calls
 4 establishes a foundation for my question.
 5 MR. TYLER: You could ask him whether or
 6 not this timeline is referenced in his prior e-mail.
 7 MR. GOLDMAN: No. I will ask the question
 8 that I asked.
 9 Do you need to have it read back,
 10 Mr. Schubert?
 11 THE WITNESS: Please.
 12 (The question was read as follows:)
 13 "Q In just reviewing briefly the
 14 information on the first page, the
 15 California Timeline, is there
 16 anything you see on here that is
 17 inaccurate?"
 18 MR. TYLER: I'll object, again, on the
 19 basis of First Amendment privilege. It lacks
 20 foundation.
 21 And only to the extent that you're aware,
 22 Mr. Schubert, of the contents of this, and you're
 23 aware of the public nature of this document, would I
 24 instruct you to respond.
 25 THE WITNESS: I would only reiterate my

1 testimony that this is not a ProtectMarriage.com
2 document, and I have no information as to whether it
3 was publicly distributed or not.

4 BY MR. GOLDMAN:

5 Q That wasn't my question.

6 My question was whether there is
7 information on this page that you believe to be
8 inaccurate?

9 MR. TYLER: Objection. Vague as to the
10 accuracy of something he didn't prepare. I don't
11 understand how you can be asking that question, when
12 you don't even know if he was involved in -- this
13 talks about events, and I have no idea whether he
14 was participating in these events. He hasn't
15 testified to whether or not he even has information
16 to know whether it's accurate or not.

17 MR. GOLDMAN: Your objection is on the
18 record.

19 BY MR. GOLDMAN:

20 Q Would you please answer my question,
21 Mr. Schubert?

22 **A I can't testify to the accuracy or**
23 **inaccuracy of this document.**

24 Q So as you sit here today, you are not
25 aware of any information on this timeline that is

1 taking place at Qualcomm Stadium on Saturday,
2 November 1st?

3 **A I am aware of the event that occurred on**
4 **Saturday, the 1st of November, called the call, yes.**

5 Q And what was that event?

6 **A That was a public event that Dr. Garlow**
7 **and others organized for the purpose of bringing**
8 **people together to pray for marriage, and it**
9 **occurred in San Diego.**

10 Q And did representatives of
11 ProtectMarriage.com participate in that event?

12 **A Not to my knowledge.**

13 MR. GOLDMAN: I think we need to take a
14 break to change the media.

15 THE WITNESS: Okay.

16 THE VIDEOGRAPHER: This is the end of
17 Tape 3, Volume I, in the deposition of Frank
18 Schubert.

19 The time is approximately 3:32 p.m. We
20 are off the record.

21 (Discussion off the record.)

22 THE VIDEOGRAPHER: This is Tape 4 of
23 Volume I in the deposition of Frank Schubert, in
24 Kristin M Perry vs Arnold Schwarzenegger, et al.

25 The date is December 17, 2004. The time

1 inaccurate?

2 MR. TYLER: Objection. It's
3 argumentative. It misstates the witness.

4 THE WITNESS: I believe my testimony was
5 that I can't testify as to the accuracy or
6 inaccuracy of this document.

7 BY MR. GOLDMAN:

8 Q Focusing just on the pastors' conference
9 call, are the dates and locations and numbers of
10 participants consistent with your understanding of
11 the pastors' conference calls that you have already
12 testified about and that you sent e-mails about?

13 MR. TYLER: I will instruct my client only
14 to respond to the extent that those pastors calls,
15 those pastors' conference calls, were calls that
16 were of a public nature, by virtue of invitation,
17 such as the invitation identified in Exhibit 46.

18 THE WITNESS: I can't personally testify
19 as to the accuracy of the detail in the document.

20 BY MR. GOLDMAN:

21 Q Okay. Do you know what the iProtect Youth
22 rally is that is indicated here as taking place on
23 October 1st?

24 **A I do not.**

25 Q How about the call, which is indicated as

1 is approximately 3:46 p.m. We are on the record.

2 MR. TYLER: Okay. As a matter of a little
3 administration, would you mind marking that
4 document?

5 MR. LIPTON: As what? An exhibit?

6 MR. GOLDMAN: As an exhibit?

7 MR. TYLER: As an exhibit. What would we
8 mark it, as Exhibit 48?

9 What I have done here is produced a log of
10 documents. And, Mr. Goldman, I don't know if you
11 were on that phone call, or Mr. Uno, that I had with
12 someone early on in your office. I think Ethan
13 Dettmer may have been involved in that conversation.

14 It was in relation to the production of
15 documents requested of Schubert Flint Public
16 Affairs, Inc. So what we've done here is -- we
17 asserted -- we asserted objections. And the
18 objections came back with a response from your
19 office.

20 There were questions concerning whether or
21 not -- one of the objections was, effectively, that
22 all of these public documents had already been
23 produced to the campaign. It was our understanding
24 that they had already been produced to yourselves.

25 Now, I was asked to identify the documents

1 that were produced and whether or not -- that were
2 produced to the campaign, and then, in turn, whether
3 I had could confirm that those documents were
4 produced to your offices.

5 Therefore, what this is, this is a
6 document that has numerous pages. The first section
7 is --

8 MR. GOLDMAN: Can I interrupt you?

9 I don't want to take up time, my record
10 time, to discuss this document.

11 If you -- and I don't think we need to do
12 this on the record. I don't think we need to
13 discuss the document on the record.

14 But if you would like to, we can do that
15 after I finish my questioning, but I would rather
16 not take up time discussing this log.

17 MR. TYLER: Well, that's fine. No
18 problem. We can talk about it after the fact.

19 I think it's self-explanatory, with the
20 exception of some question marks, but you can ask
21 about that later. I would like it to be part of the
22 record.

23 MR. GOLDMAN: And, again, I don't think we
24 need to mark it as an exhibit now. But if you want
25 to mark it as an exhibit after I'm finished, that's

1 BY MR. GOLDMAN:

2 Q He received payments from
3 ProtectMarriage.com. Is that correct?

4 A **I believe that's correct.**

5 Q And he was paid for services that he
6 rendered to ProtectMarriage.com, correct?

7 A **I don't believe that's a correct
8 characterization. I believe he was paid. Those
9 could be for a variety of things. It could be for
10 reimbursement of expenses.**

11 **It could be for compensation of time that
12 he spent, though not on behalf of
13 ProtectMarriage.com, but, nonetheless, time that was
14 valuable to the broader cause of Proposition 8, but
15 I cannot characterize those as payment for services
16 rendered to ProtectMarriage.com.**

17 Q Did ProtectMarriage.com pay people for
18 services that they did not render for or on behalf
19 of ProtectMarriage.com?

20 MR. TYLER: Objection. We'll assert the
21 First Amendment privilege. Overbroad.

22 Object on relevancy and instruct you not
23 to respond to that question.

24 MR. GOLDMAN: Well, the payments are
25 publicly disclosed. And Mr. Schubert just testified

1 fine as well.

2 MR. TYLER: So be it.

3 BY MR. GOLDMAN:

4 Q Mr. Schubert, was Jim Garlow a part of
5 ProtectMarriage.com?

6 MR. TYLER: Objection. Again, First
7 Amendment privilege. Vague. Ambiguous as to your
8 question.

9 But you can go ahead and respond.

10 THE WITNESS: No.

11 BY MR. GOLDMAN:

12 Q Was Jim Garlow paid professional service
13 fees by ProtectMarriage.com?

14 MR. TYLER: Objection. That's definitely
15 a First Amendment privileged issue.

16 And I'll instruct him not to respond to
17 that, to the extent that the information is not
18 publicly available. If there is information
19 publicly available that he was paid, then you can
20 respond to that.

21 THE WITNESS: My understanding is that
22 there is public information indicating that
23 Dr. Garlow received payments. I can't testify as to
24 whether or not those were personal service contract
25 payments or however you phrased it in your question.

1 that those payments may not have been for services
2 that Mr. Garlow rendered to ProtectMarriage.com.

3 I think I'm entitled to explore that
4 assertion with my question, whether
5 ProtectMarriage.com paid people for services that
6 they did not render to ProtectMarriage.com.

7 MR. TYLER: Okay. Let me instruct you,
8 Mr. Schubert, I think you can respond only to the
9 extent that the information is available that
10 individuals were paid, that is public information.

11 If it's not public information, I instruct
12 you not to respond to that. And only respond to his
13 question as to whether that event occurred of people
14 being paid for services rendered that were not
15 actually rendered to ProtectMarriage.com as the
16 official committee.

17 THE WITNESS: I believe the campaign
18 finance reports that are public information do show
19 payments to people, but those payments do not
20 necessarily mean that they provided services to
21 ProtectMarriage.com as an organization.

22 BY MR. GOLDMAN:

23 Q Why not?

24 A **Well, as I indicated in my answer to your
25 last question, there could be a variety of**

1 **circumstances that would exist, including**
 2 **reimbursing someone for expenses; compensating them**
 3 **or an organization for time and energy spent in the**
 4 **broader pursuit of Proposition 8 that would not**
 5 **necessarily be directly related to services that**
 6 **they performed for ProtectMarriage.com.**

7 Q Did ProtectMarriage.com reimburse expenses
 8 that were not incurred in work for or on behalf of
 9 ProtectMarriage.com?

10 A Well, as I indicated, ProtectMarriage.com
 11 made payments to a variety of people. And in some
 12 cases, those payments were for reimbursement of
 13 expenses and to compensate individuals and
 14 organizations for time that they spent in the
 15 broader pursuit of Proposition 8.

16 Those services were not necessarily
 17 performed directly for ProtectMarriage.com.

18 Q Were they performed indirectly for
 19 ProtectMarriage.com?

20 A I believe my testimony has been that they
 21 were performed for the broader pursuit of
 22 Proposition 8.

23 Q How did ProtectMarriage.com decide whether
 24 to pay someone for work that was not performed for
 25 ProtectMarriage.com?

1 Counsel, I think you're going too far with
 2 this. If you have public records and want to
 3 question him on matters of public record, that's one
 4 thing, but to -- this was a multi-million-dollar
 5 campaign, with millions of dollars of expenditures.

6 I'm not going to subject my client to that
 7 kind of -- I think it's bordering on harassment on
 8 expecting him to be able to respond to that
 9 question.

10 And based upon the First Amendment
 11 privilege, I'm going to instruct him not to respond.

12 MR. GOLDMAN: Well, Mr. Tyler, it is
 13 obviously important and relevant to this case what
 14 activities and messages are attributable to
 15 ProtectMarriage.com. And if, as Mr. Schubert has
 16 testified, ProtectMarriage.com was paying people to
 17 do things that it is for some reason not calling on
 18 behalf of ProtectMarriage.com, then we are entitled
 19 to explore the factual basis to determine whether,
 20 in fact, those activities and messages should be
 21 attributed to ProtectMarriage.com, notwithstanding
 22 Mr. Schubert's disclaimer that, for whatever
 23 unexplained reason, the work was not on behalf of
 24 ProtectMarriage.com.

25 MR. TYLER: And to the extent you want to

1 MR. TYLER: Objection. It's a First
 2 Amendment privilege. I'll instruct you not to
 3 respond.

4 It concerns your mental impressions, your
 5 strategy, and how decisions were made internally, so
 6 do not respond to that question.

7 BY MR. GOLDMAN:

8 Q How many people did ProtectMarriage.com
 9 pay for work that was not on behalf of
 10 ProtectMarriage.com?

11 MR. TYLER: Objection. If it is a matter
 12 of public record, you can testify to that, to the
 13 extent that I believe you could respond because it
 14 already is in the public domain.

15 If it is not in the public domain already,
 16 I would instruct you not to answer, based upon the
 17 First Amendment privilege.

18 THE WITNESS: I'm not aware of any
 19 information in the public domain on this subject.

20 BY MR. GOLDMAN:

21 Q How much money did ProtectMarriage.com
 22 spend that was done on behalf of
 23 ProtectMarriage.com?

24 MR. TYLER: Objection. I'm going to
 25 assert the First Amendment privilege.

1 produce documents that are publicly available that
 2 address this, that's fine, you can question him on
 3 that, but I'm not going to instruct him to respond
 4 to overbroad, vague questions on a campaign that
 5 spent millions of dollars with countless people, as
 6 far as I know, and I don't know, but countless
 7 vendors and persons who have been paid for various
 8 things, such as services and reimbursement of costs
 9 and whatever it might be.

10 So to ask him today, without having a
 11 computer in front of him that identifies every
 12 potential person that has written a check, I think
 13 it's completely unreasonable, and I'm going to
 14 object because I think the First Amendment applies,
 15 the privilege applies here. And I think that you --
 16 by asking him that overbroad question, he may not --
 17 he may tread upon the First Amendment issues because
 18 how is he going to know whether or not something was
 19 publicly -- something was made public.

20 MR. GOLDMAN: Thank you. I understand
 21 your objection. Your objection is on the record.

22 I think that it is interfering with our
 23 right to discover what messages were disseminated by
 24 ProtectMarriage.com. But, you know, we don't need
 25 to debate that here. We will take this up at the

1 appropriate time, but I think it's clearly relevant
2 information.

3 Why don't we mark this as Exhibit 46 --

4 THE VIDEOGRAPHER: 48.

5 MR. GOLDMAN: 48.

6 THE VIDEOGRAPHER: Good.

7 (Schubert Exhibit 48 was marked for
8 identification.)

9 BY MR. GOLDMAN:

10 Q I'm going to represent to you that this is
11 a portion of ProtectMarriage.com's financial
12 disclosure, sorted by payee. And I'll ask you to
13 look at page 8 of this document.

14 MR. TYLER: I will assert a First
15 Amendment privilege, first, with regard to this
16 document, unless Mr. Schubert can testify that he
17 recognizes this as being a document that was
18 submitted with the public disclosure.

19 BY MR. GOLDMAN:

20 Q Do you see four payments to Mr. Garlow at
21 the bottom of this page, Mr. Schubert?

22 A **Yes, I do.**

23 Q And tell me, if you would, what Mr. Garlow
24 was paid for?

25 MR. TYLER: Objection. I'm going to

1 A **(Witness complies.)**

2 Q Did ProtectMarriage.com pay Christopher
3 Clark?

4 A **Yes.**

5 Q Were those payments for work that
6 Mr. Clark did for or on behalf of
7 ProtectMarriage.com?

8 MR. TYLER: Objection. I'll assert the
9 First Amendment privilege. The document speaks for
10 itself.

11 This is a campaign disclosure. It
12 identifies services that were performed. And I do
13 not believe that he, Mr. Schubert, has an obligation
14 to disclose anything beyond what is already
15 disclosed in this campaign disclosure.

16 BY MR. GOLDMAN:

17 Q And were the payments to Mr. Garlow that
18 we looked at earlier for work that he performed for
19 or on behalf of ProtectMarriage.com?

20 MR. TYLER: Assert the same objection.
21 The payments are public record, and they're
22 identified.

23 Based upon the First Amendment, I'll
24 instruct you not to respond.

25 ////

1 assert a First Amendment privilege as well. He's
2 already testified to what Mr. Garlow has done; what
3 is publicly available here, there is an explanation.
4 And beyond that, he does not need to testify to
5 specifics. It invades his First Amendment
6 privilege.

7 I'm going to instruct him not to respond.

8 MR. GOLDMAN: You objected to the general
9 questions. Then you told me to show him specifics
10 and ask him about specifics, so I did that. And
11 you're also instructing him not to respond as to
12 specifics.

13 MR. TYLER: Well, the information that is
14 made public here, such as on October 7, 2008, James
15 Garlow, appears he provided professional services.
16 It says legal and accounting.

17 And with that, I think that's all of the
18 public information that's required to be disclosed.
19 And I don't believe you're entitled to any further
20 information.

21 BY MR. GOLDMAN:

22 Q Who is Christopher Clark?

23 A **Christopher Clark is a pastor.**

24 Q And let me direct your attention to page 4
25 of the exhibit.

1 BY MR. GOLDMAN:

2 Q Let me ask you to look back at Exhibit 47,
3 which is this California timeline.

4 And I want to ask you, the three items at
5 the bottom are simulcast rallies. Do you see those
6 three items?

7 A **Yes, I do.**

8 Q Can you tell me what a simulcast rally is?
9 MR. COOPER: What page are we on? I'm
10 sorry.

11 MR. TYLER: Document 47.

12 MR. COOPER: Oh.

13 MR. TYLER: First, I'm going to assert an
14 objection on the basis that he is not -- he's
15 previously testified this is not his document; that
16 he can not testify to the accuracy.

17 And I object to vagueness, to the extent
18 you're asking for him to identify what a simulcast
19 is. I think he can testify to what he understands a
20 simulcast to be, but not necessarily what is or has
21 occurred in this document.

22 MR. GOLDMAN: I didn't ask him about the
23 document.

24 MR. TYLER: You're referring to the
25 document, Counselor, please.

1 BY MR. GOLDMAN:
 2 Q What is a simulcast rally, Mr. Schubert?
 3 A **My understanding is a simulcast is a**
 4 **production technique whereby activities at one**
 5 **location are made available by satellite to other**
 6 **locations.**
 7 Q And did ProtectMarriage.com promote or
 8 publicize the three simulcast rallies referred to on
 9 this document?
 10 A **I don't know.**
 11 Q Did ProtectMarriage.com help to develop
 12 the content of the three simulcast rallies referred
 13 to on this page?
 14 MR. TYLER: Objection. Violates First
 15 Amendment privilege.
 16 I'll instruct you not to respond.
 17 BY MR. GOLDMAN:
 18 Q Were members of the press encouraged to
 19 attend the simulcast rallies?
 20 MR. TYLER: I'll object on the basis of
 21 First Amendment privilege and instruct you not to
 22 respond, except to the extent that you can -- except
 23 to the extent that you have knowledge that press was
 24 publicly invited through a press release or
 25 something of that nature.

1 was an individual e-mail to a reporter. And I just
 2 had to clarify, I don't believe that's an
 3 appropriate instruction.
 4 I think an individual e-mail to a reporter
 5 still counts as inviting a member of the press to
 6 join, view, hear the simulcast rally. And if the
 7 answer to my question is, yes, because those e-mails
 8 were sent, I think I'm entitled to that answer.
 9 MR. TYLER: That's okay. I think
 10 Mr. Cooper is correct, and you're correct as well,
 11 so I'll allow him to respond to that.
 12 THE WITNESS: Could you repeat the
 13 question, please?
 14 BY MR. GOLDMAN:
 15 Q Were members of the press encouraged or
 16 invited to attend the simulcast rallies?
 17 A **I don't know.**
 18 MR. GOLDMAN: We are marking the next
 19 document as Schubert Exhibit 49.
 20 (Schubert Exhibit 49 was marked for
 21 identification.)
 22 THE WITNESS: Thank you.
 23 BY MR. GOLDMAN:
 24 Q Have you ever seen this document before,
 25 Mr. Schubert?

1 THE WITNESS: I don't know if there's
 2 information in the public domain related to that or
 3 not.
 4 MR. GOLDMAN: Well, just so I understand,
 5 is it your contention that an e-mail to a reporter
 6 or a news organization, a private individual e-mail
 7 to a reporter, saying, "Please join the simulcast
 8 rally; please listen to it; you may want to write
 9 about it for your newspaper," is that e-mail from
 10 ProtectMarriage.com to the reporter covered by the
 11 First Amendment privilege?
 12 MR. COOPER: No.
 13 And is that the question that you're going
 14 to put to the witness, and are you asking if the
 15 witness extended an invitation of that kind to the
 16 media --
 17 MR. GOLDMAN: My question --
 18 MR. COOPER: -- with respect to an event
 19 that wasn't a ProtectMarriage event, unless I
 20 misunderstood the testimony?
 21 MR. GOLDMAN: My question was whether
 22 Mr. Schubert knows whether members of the media were
 23 invited or encouraged to attend these simulcast
 24 rallies.
 25 The instruction was not to answer if it

1 **A No, I have not.**
 2 Q Do you see at the top, where it says,
 3 "ProtectMarriage.com presents protecting marriage
 4 Vote Yes on Prop 8 rallies"?
 5 Do you see that?
 6 **A Yes, I do see that.**
 7 Q Is it your testimony that those rallies
 8 were not, in fact, presented by ProtectMarriage.com?
 9 **A I believe my testimony was I had not seen**
 10 **the document.**
 11 Q Were these rallies presented by
 12 ProtectMarriage.com?
 13 **A No.**
 14 Q Do you see the Web address at the bottom
 15 of this document?
 16 **A I do.**
 17 **Are you speaking of the footer at the**
 18 **bottom?**
 19 Q Yes.
 20 **A Where it says CCN?**
 21 Q Yes, ccnet.tv.
 22 **A Yes.**
 23 Q Do you know what that is?
 24 **A I believe this is a Web address,**
 25 **associated with the company CCN, which, I believe,**

1 **is a company that specializes in the production of**
2 **simulcasts.**

3 Q Have you seen any of these simulcast
4 rallies?

5 MR. TYLER: Objection. Vague.
6 You're speaking of these particular
7 simulcasts identified in Exhibit 49?

8 MR. GOLDMAN: Yes.

9 THE WITNESS: Are you -- is there a
10 question pending for me?

11 BY MR. GOLDMAN:

12 Q Yes. Have you seen any of these simulcast
13 rallies?

14 **A Not to my knowledge.**

15 Q Did ProtectMarriage.com pay for any
16 expenses related to these simulcast rallies?

17 MR. TYLER: Objection. If that
18 information is not publicly disclosed, I'll instruct
19 you not to respond, based upon the First Amendment
20 privilege.

21 THE WITNESS: I believe that the public
22 information that has been disclosed would reflect
23 payments for the costs of these simulcast rallies.

24 BY MR. GOLDMAN:

25 Q If I can ask you to look back at

1 Q And given that fact, were any of the
2 expenses associated with the three simulcasts
3 treated as a donation to ProtectMarriage.com?

4 MR. TYLER: I'll instruct my client to
5 respond only to the extent that the information is
6 publicly available.

7 Otherwise, I assert a First Amendment
8 privilege on his behalf and instruct him not to
9 respond.

10 THE WITNESS: I am not aware of
11 information in the public domain relative to
12 donations associated with the simulcast.

13 BY MR. GOLDMAN:

14 Q Was one of the simulcasts called "The Fine
15 Line"?

16 **A I don't know.**

17 Q Well, if you look at Exhibit 49, the
18 second simulcast there --

19 **A Yes.**

20 Q -- do you see the words, "The Fine Line"?
21 Does that refresh your recollection as to
22 whether one of the simulcasts was called "The Fine
23 Line"?

24 **A Well, as I just testified, I don't know**
25 **whether the simulcast was called a "Fine Line" or**

1 Exhibit 48, on page 4.

2 Just around the middle of the page, there
3 are three payments to the Church Communication
4 Network?

5 **A Yes.**

6 Q Do you understand these to be the payments
7 that relate to the simulcast rallies?

8 **A Yes.**

9 Q Do you know if any of the expenses
10 associated with the simulcast rallies were treated
11 as a donation to ProtectMarriage.com?

12 MR. TYLER: Objection. I'm going to
13 assert the First Amendment privilege as to services
14 provided via donation are not discoverable and
15 instruct my client not to respond to that question.

16 BY MR. GOLDMAN:

17 Q Well, ProtectMarriage.com is required to
18 report donations, isn't it?

19 **A Certainly.**

20 Q So that information would be publicly
21 available, correct?

22 **A The existence of a donation, the amount of**
23 **the donation, and certain legal information required**
24 **of the entity that made the donation would be**
25 **publicly disclosed.**

1 **not because I am not familiar with the simulcast at**
2 **all.**

3 **If you're asking me, as a matter of the**
4 **record, that the simulcast identified in the middle**
5 **is, according to this document, called "The Fine**
6 **Line," then I would say the document calls it "The**
7 **Fine Line."**

8 MR. GOLDMAN: Can we take a short break,
9 please?

10 MR. TYLER: Okay.

11 THE VIDEOGRAPHER: We are going off the
12 record. The time is approximately 4:19 p.m.
13 (Discussion off the record.)

14 THE VIDEOGRAPHER: We are going back on
15 the record. The time is approximately 4:24 p.m.

16 MR. GOLDMAN: Let's mark as the next
17 document, Schubert Exhibit 50.

18 (Schubert Exhibit 50 was marked for
19 identification.)

20 BY MR. GOLDMAN:

21 Q Just tell me whether or not you have ever
22 seen this document before?

23 **A I don't believe so, no.**

24 Q And if you would look at page 5 of 6?

25 **A (Witness complies.)**

1 Q Down at the bottom, do you see the
2 disclaimer there, ProtectMarriage.com?
3 A Yes, I do.
4 Q Is that the disclaimer that
5 ProtectMarriage.com used in its materials?
6 A This is a disclaimer that was used at some
7 point during the campaign.
8 Q And I take it you do not know why that
9 disclaimer appears at the end of this document.
10 A I don't recall seeing this document before
11 now.
12 Q Does the appearance of the disclaimer at
13 the end of the document suggest to you anything
14 about the document?
15 A In the normal course of events, if the
16 campaign produced a document by which the terms of
17 the disclosure laws would require it to post a
18 disclaimer, then the campaign would have done that.
19 Q But you don't know whether this document
20 was produced or paid for by ProtectMarriage.com. Is
21 that correct?
22 A That's correct.
23 MR. GOLDMAN: The next document will be
24 Schubert Exhibit 51.
25 ////

1 A Yes, I do.
2 Q I take it you have no knowledge whether,
3 in fact, this document was paid for by
4 ProtectMarriage.com?
5 A That's correct.
6 MR. GOLDMAN: We'll mark the next document
7 as Schubert Exhibit 53.
8 (Schubert Exhibit 53 was marked for
9 identification.)
10 THE WITNESS: Thank you.
11 BY MR. GOLDMAN:
12 Q Can you identify this document for me?
13 A This appears to be a press release issued
14 by ProtectMarriage.com, upon occasion of the
15 endorsement of the California Catholic Conference in
16 support of Proposition 8.
17 Q And I take it that the name on here,
18 Jennifer Kerns, that was someone who was a member of
19 ProtectMarriage.com?
20 A Jennifer Kerns was a vendor retained by
21 ProtectMarriage.com for the purpose of serving as
22 communications director.
23 MR. GOLDMAN: The next document is being
24 marked as Schubert Exhibit 54.
25 ////

1 (Schubert Exhibit 51 was marked for
2 identification.)
3 BY MR. GOLDMAN:
4 Q And let me ask whether you have ever seen
5 this document before.
6 A No, I have not.
7 Q Do you see, towards the bottom of the
8 document, where it says, "Paid for by
9 ProtectMarriage.com"?
10 A I do.
11 Q I take it you do not know whether, in
12 fact, this document was paid for by
13 ProtectMarriage.com.
14 A That's correct.
15 MR. GOLDMAN: We're marking as Exhibit
16 Schubert 52 the next document.
17 (Schubert Exhibit 52 was marked for
18 identification.)
19 BY MR. GOLDMAN:
20 Q Let me ask whether you have seen this
21 document before.
22 A No, not to my knowledge.
23 Q Do you see at the end, towards the end of
24 document, where it says, "Paid for by
25 ProtectMarriage.com"?

1 (Schubert Exhibit 54 was marked for
2 identification.)
3 BY MR. GOLDMAN:
4 Q And can you identify this document, for
5 the record?
6 A This appears to be a press release from
7 ProtectMarriage.com on occasion of a donation from
8 the Knights of Columbus.
9 Q In fact, ProtectMarriage.com did receive a
10 \$1 million donation from the Knights of Columbus.
11 Is that correct?
12 A Yes, it is.
13 MR. GOLDMAN: We are marking the next
14 exhibit as Schubert Exhibit 55.
15 (Schubert Exhibit 55 was marked for
16 identification.)
17 THE WITNESS: Thank you.
18 BY MR. GOLDMAN:
19 Q If you could identify this document for
20 the record, Mr. Schubert.
21 A Is the question, can I identify the
22 document?
23 Q Yes.
24 A I believe this is a document prepared by a
25 supporter, supporting group, a group supporting

Proposition 8.

Q And at the bottom of the document, it indicates that it was paid for by ProtectMarriage.com.

Do you see that?

A Yes, I do.

Q And was this document paid for by ProtectMarriage.com?

A I don't know.

Q Do you have any reason to doubt it was paid for by ProtectMarriage.com?

A I have no information on the document.

MR. GOLDMAN: The next document will be marked as Schubert Exhibit 56.

(Schubert Exhibit 56 was marked for identification.)

THE VIDEOGRAPHER: Six and a half hours right now, about six and a half, approximately.

MR. TYLER: For the record, so we're not arguing over it, ma'am, could you give us the specific time when seven hours is up?

THE VIDEOGRAPHER: I'll figure it out for you right now.

MR. TYLER: Thank you.

That assumes we continue from this point

THE WITNESS: I believe the public documents, campaign reports, will show payments to Bill May.

BY MR. GOLDMAN:

Q And was he paid for work that he did for or on behalf of ProtectMarriage.com?

MR. TYLER: Objection. The campaign disclosures will identify what he was paid for. And as a result, I would instruct my client not to respond on the basis of the First Amendment, looking at Exhibit 48 that identifies specific items for which Bill May was paid by the campaign.

MR. GOLDMAN: But I understood from Mr. Schubert's testimony, that would not identify whether what he did was for or on behalf of ProtectMarriage.com, and that's why I asked that question.

Are you instructing him not to answer that question.

MR. TYLER: I think I understand your question whether or not it was for the greater Proposition 8 cause or whether it was -- whether he was speaking on behalf of Prop 8 ProtectMarriage.com, right?

MR. GOLDMAN: My question was whether he

forward without a break.

BY MR. GOLDMAN:

Q Can you identify this document for the record, please?

A This appears to be a press release from ProtectMarriage.com, announcing the support of Proposition 8 by another organization.

Q And that other organization is CatholicsForProtectMarriage.com?

A That's what is indicated on the document.

Q And was the website, CatholicsForProtectMarriage.com paid for or supported by ProtectMarriage.com?

A I don't know.

Q Now, Bill May was the chairman for CatholicsForProtectMarriage.com. Is that right?

A Bill May was an active participant in the campaign. And he's listed in this document as chairman for CatholicsForProtectMarriage.com.

Q And was he paid by ProtectMarriage.com?

MR. TYLER: Objection. Except to the extent that it is identified as a matter of public record on the campaign disclosures, or otherwise made public, I would instruct you not to answer that question on the basis of the First Amendment.

was paid for work that he did for or on behalf of ProtectMarriage.com.

THE WITNESS: I believe the public campaign reports reflect payments to Mr. May from ProtectMarriage.com. Those payments could reflect work done in pursuit of the broader support of Proposition 8. It could reflect expense reimbursements. It could reflect a number of things.

BY MR. GOLDMAN:

Q And my question is whether you know whether the work he was paid for was work done for or on behalf the ProtectMarriage.com?

MR. TYLER: Objection. First Amendment. Instruct him not to respond.

THE VIDEOGRAPHER: Approximately 26 minutes.

MR. TYLER: Can you identify, is it --

THE VIDEOGRAPHER: I can identify it through my tape right here, so 26 minutes will be right when it gets to one hour, 16 minutes, on my tape, that will be seven hours.

THE WITNESS: Ten after 5:00?

THE VIDEOGRAPHER: Approximately.

MR. GOLDMAN: We are going to mark the

1 next document as Schubert Exhibit 57.
 2 (Schubert Exhibit 57 was marked for
 3 identification.)
 4 BY MR. GOLDMAN:
 5 Q Can you identify this document for the
 6 record, please?
 7 **A I cannot identify the document, other than**
 8 **to acknowledge that it appears, on the face of the**
 9 **document, to come from a third-party organization in**
 10 **support of Proposition 8.**
 11 Q And do you have any reason to doubt that
 12 it was paid for by ProtectMarriage.com, as indicated
 13 at the bottom of the document?
 14 **A I have no information on that either way.**
 15 MR. GOLDMAN: The next document is being
 16 marked as Schubert Exhibit 58.
 17 (Schubert Exhibit 58 was marked for
 18 identification.)
 19 BY MR. GOLDMAN:
 20 Q Can you identify this document for the
 21 record?
 22 **A This appears to be an ad in a print**
 23 **publication.**
 24 Q Is it an ad that was paid for by
 25 ProtectMarriage.com?

1 MR. GOLDMAN: We will mark the next
 2 document as Schubert Exhibit 61.
 3 (Schubert Exhibit 61 was marked for
 4 identification.)
 5 BY MR. GOLDMAN:
 6 Q Have you seen this document before?
 7 **A No, I have not.**
 8 Q Do you see that the Web address at the
 9 bottom is indicated as www.preservingmarriage.org?
 10 **A Yes, I see that.**
 11 Q Do you have any familiarity with that
 12 website?
 13 **A No.**
 14 Q You've never been to that website before?
 15 **A Not to my knowledge.**
 16 Q Did ProtectMarriage.com coordinate at all
 17 with the content -- regarding the content of this
 18 website?
 19 MR. TYLER: Objection. First Amendment
 20 privilege as testified earlier -- or as I objected
 21 earlier. Judge Walker has identified that as
 22 protected information and irrelevant.
 23 I'm going to instruct my client not to
 24 respond to that question.
 25 MR. GOLDMAN: That's fine, but it's

1 **A I believe it was.**
 2 Q Do you know where this ad was published?
 3 **A Not specifically, no.**
 4 MR. GOLDMAN: We're marking the next
 5 document as Schubert Exhibit 59.
 6 (Schubert Exhibit 59 was marked for
 7 identification.)
 8 THE WITNESS: Thank you.
 9 BY MR. GOLDMAN:
 10 Q And if you could identify this document
 11 for the record, please?
 12 **A This is a print ad for**
 13 **ProtectMarriage.com.**
 14 Q And this was paid for by
 15 ProtectMarriage.com?
 16 **A Yes, as far as I know.**
 17 MR. GOLDMAN: We will mark the next
 18 document as Schubert Exhibit 60.
 19 (Schubert Exhibit 60 was marked for
 20 identification.)
 21 BY MR. GOLDMAN:
 22 Q And could you identify this document for
 23 the record, please?
 24 **A I believe this is a newspaper ad produced**
 25 **by ProtectMarriage.com.**

1 obviously not irrelevant, if the answer to the
 2 question is yes, but...
 3 I understand you have instructed your
 4 client not to answer.
 5 BY MR. GOLDMAN:
 6 Q And my question is whether you have ever
 7 seen this document before.
 8 THE VIDEOGRAPHER: Exhibit 62.
 9 MR. GOLDMAN: Did I fail to say that?
 10 THE VIDEOGRAPHER: Yes.
 11 MR. GOLDMAN: We have marked this as
 12 Schubert Exhibit 62.
 13 (Schubert Exhibit 62 was marked for
 14 identification.)
 15 THE WITNESS: I believe I have seen this
 16 document.
 17 BY MR. GOLDMAN:
 18 Q When have you seen this document before?
 19 **A It would have been during the course of**
 20 **the Proposition 8 campaign.**
 21 Q Did ProtectMarriage.com play any role in
 22 developing or approving the content of this website?
 23 MR. TYLER: Objection. First Amendment
 24 privilege as it pertains to work that was done on
 25 this. I think you can ask him if this is a

1 publication of ProtectMarriage.com.

2 But I would instruct my client not to
3 respond to the question pending.

4 BY MR. GOLDMAN:

5 Q Well, it's not a publication -- it's not
6 identified as a publication of ProtectMarriage.com,
7 correct?

8 **A That's correct. It appears to be a**
9 **publication of The Church of Jesus Christ of**
10 **Latter-Day Saints.**

11 Q That's why I asked whether
12 ProtectMarriage.com had any input in the content of
13 this website.

14 MR. TYLER: Object, again, based upon the
15 First Amendment privilege. This goes to strategy
16 and coordination of efforts, if any.

17 BY MR. GOLDMAN:

18 Q Did Focus on the Family -- well, let me
19 ask the preliminary question. What is Focus On the
20 Family?

21 **A Focus On the Family, to my understanding,**
22 **is a national pro-family organization, based in**
23 **Colorado.**

24 Q And did Focus On the Family send out mass
25 e-mails on behalf of ProtectMarriage.com?

1 the Family, you could present them and ask him if
2 that represents a statement of the campaign, but I'm
3 not going to allow you to inquire into the
4 relationship.

5 BY MR. GOLDMAN:

6 Q If Focus On the Family were to distribute
7 an e-mail on behalf of ProtectMarriage.com, that
8 would be recorded as a nonmonetary donation to
9 ProtectMarriage.com, correct, and publicly
10 disclosed?

11 MR. TYLER: Objection. Vague. Incomplete
12 hypothetical.

13 MR. COOPER: Calls for a legal conclusion
14 as well.

15 MR. TYLER: If you know.

16 BY MR. GOLDMAN:

17 Q You can answer the question.

18 **A There would be circumstances under**
19 **California's campaign finance laws that would**
20 **require ProtectMarriage.com to report a known**
21 **contribution of an in-kind nature, that's correct.**

22 Q All right. Given that, let me ask, did
23 Focus On the Family send out mass e-mails on behalf
24 of ProtectMarriage.com?

25 MR. TYLER: Objection. Same objection

1 MR. TYLER: Objection. Vague. Also
2 assert the First Amendment privilege as to any
3 internal communications and/or coordination between
4 Focus On the Family and ProtectMarriage.com, if any
5 actually did occur.

6 Based on the associational rights of my
7 client, I'll instruct him not to respond to the
8 question.

9 MR. GOLDMAN: If Focus On the Family sent
10 out a mass e-mail on behalf of ProtectMarriage.com,
11 that's not -- that's not private. That would be a
12 mass communication on behalf of ProtectMarriage.com,
13 done by Focus On the Family?

14 MR. TYLER: I'm not concerned about the --
15 about whether or not the communication was issued.
16 I'm concerned about your attempt to get to the
17 relationship, if any, between Focus On the Family
18 and ProtectMarriage.com.

19 And that relationship is protected by the
20 First Amendment as confidential, and it has a
21 privilege based upon the association of the two
22 organizations, if any actually did exist.

23 Therefore, I'm instructing my client not
24 to respond to your question.

25 If you have documents produced by Focus On

1 previously asserted. This goes to the associational
2 rights between the two organizations, if any
3 relationship did occur.

4 And, again, you can question him and
5 present a document to him. If some public document
6 reflects a communication, you can question him as to
7 that communication.

8 But I'll instruct him not to respond,
9 based upon the First Amendment privilege.

10 MR. GOLDMAN: All right. Let's mark this
11 document as Schubert Exhibit 63.

12 MR. UNO: Unfortunately, we only have two
13 copies of this particular one. You're giving your
14 copy away.

15 MR. GOLDMAN: We have a...

16 THE WITNESS: Thank you.

17 (Schubert Exhibit 63 was marked for
18 identification.)

19 BY MR. GOLDMAN:

20 Q Can you identify this document for the
21 record?

22 MR. TYLER: I'm sorry. One moment. We
23 have to finish looking at this document, briefly.

24 MR. GOLDMAN: I think we're up to 63.

25 MR. COOPER: 63.

1 THE WITNESS: This appears to be pages
2 from the nonmonetary contribution report, filed for
3 the period ending September 30, 2008, by
4 ProtectMarriage.com.

5 BY MR. GOLDMAN:

6 Q Does that document reflect a nonmonetary
7 contribution to ProtectMarriage.com by Focus On the
8 Family for mass mail?

9 **A The document reflects, I believe, two --**
10 **if I'm reading this correctly -- two nonmonetary**
11 **contributions for mass mail.**

12 **That description "mass mail" is a**
13 **description that may or may not relate to e-mails**
14 **along the lines that you have previously asked**
15 **about.**

16 Q What else might it refer to?

17 MR. TYLER: Objection. Calls for
18 speculation. The document speaks for itself.

19 MR. GOLDMAN: I'm just following up on the
20 testimony he just gave me.

21 (The answer was read as follows:)

22 "A The document reflects, I
23 believe, two -- if I'm reading this
24 correctly -- two nonmonetary
25 contributions for mass mail.

1 Focus On the Family?

2 **A That's correct.**

3 Q And do you understand that to refer to
4 mass e-mails that were sent by Focus On the Family
5 on behalf of ProtectMarriage.com?

6 **A I understand that to refer to an in-kind**
7 **contribution from Focus On the Family on these two**
8 **dates and these two amounts that are recorded as**
9 **broadcast e-mail.**

10 Q Have you ever heard of a company called
11 Coyote Films?

12 **A Yes.**

13 Q What do you know about that company?

14 **A Coyote Films is in the broadcast business.**

15 Q Did Coyote Films create anything for or on
16 behalf of ProtectMarriage.com?

17 **A Coyote Films was, on occasion, part of a**
18 **broadcast production effort and provided services**
19 **related to the production of broadcast materials**
20 **used by ProtectMarriage.com.**

21 Q And I'm just not sure what you mean by
22 "broadcast materials."

23 **A Coyote Films specializes in producing**
24 **material for -- to be shown in a visual form,**
25 **television, video, that sort of a thing.**

1 That description 'mass mail' is a
2 description that may or may not
3 relate to e-mails along the lines
4 that you have previously asked
5 about."

6 MR. TYLER: What was the -- what was the
7 follow-up question?

8 (The question was read as follows:)

9 "Q What else might it refer to?"

10 MR. TYLER: I stand with the objection.
11 He never referenced in his response that it might
12 refer to something else, just simply that it may or
13 may not.

14 BY MR. GOLDMAN:

15 Q Do you see the page numbers at the top,
16 out of the 5102 is the total?

17 **A I do, yes.**

18 Q Do you have page 4923?

19 **A Yes, I do.**

20 Q And do you see the last two entries on
21 that page?

22 **A Yes, I do.**

23 Q Those say "broadcast e-mail"?

24 **A They do.**

25 Q And that's a nonmonetary contribution from

1 Q Okay. And right now, as you sit here, do
2 you recall specifically what Coyote Films did?

3 **A As I sit here, I can testify, as I just**
4 **did, that from time to time Coyote Films was part of**
5 **a production effort that resulted in broadcast**
6 **material produced for ProtectMarriage.com.**

7 Q We have one more exhibit here, and that
8 takes us up to -- what Schubert exhibit?

9 MR. LIPTON: 64.

10 MR. GOLDMAN: 64.

11 (Schubert Exhibit 64 was marked for
12 identification.)

13 BY MR. GOLDMAN:

14 Q And can you identify this document for me,
15 Mr. Schubert?

16 **A Yes. This appears to be a statement of**
17 **nonmonetary contributions, filed by**
18 **ProtectMarriage.com, for the period of October 1**
19 **through October 18.**

20 Q Let me ask you to turn to the second page
21 of the exhibit, page 1191 of 1295 at the top.

22 **A (Witness complies.)**

23 Q Do you see the last entry on that page, a
24 donation from The Church of Jesus Christ of
25 Latter-Day Saints, and the description is a video

1 production?

2 **A I do see the entry.**

3 Q What does "video production" refer to?

4 **A By the terms of the report, I would say it**
5 **refers to a video production, production of video.**

6 Q Does that mean creation of a video?

7 **A I am not familiar with the specifics of**
8 **this, other than to say that they appear to have**
9 **donated in-kind services in the amount of \$8,325 for**
10 **video production.**

11 Q The same is true, there's another entry on
12 the next page for travel and video production.

13 Do you see that?

14 **A I do. The second entry?**

15 Q Yes.

16 **A Yes.**

17 Q Do you know whether The Church of Jesus
18 Christ of Latter-Day Saints produced any videos for
19 ProtectMarriage.com?

20 MR. TYLER: Objection. Vague. And I
21 believe you're approaching a First Amendment
22 privilege.

23 However, to the extent it is publicly --
24 the information is publicly available, you can
25 respond.

1 what is in this report, whether The Church of Jesus
2 Christ of Latter-Day Saints produced a video for
3 ProtectMarriage.com?

4 **A No.**

5 Q You don't know what video, if any, the
6 church produced for ProtectMarriage.com, correct?

7 MR. TYLER: Objection. Argumentative. He
8 already testified that he has no knowledge, outside
9 this report.

10 THE WITNESS: No.

11 MR. GOLDMAN: I think I have no further
12 questions for today. Thank you.

13 MR. TYLER: Thank you very much.

14 MR. COOPER: You ran right up to 6:59.

15 THE WITNESS: Thank you.

16 THE VIDEOGRAPHER: Are we ready to go off
17 the record? Are we all in agreement?

18 MR. TYLER: No. We need to -- I just want
19 to address this briefly, and I would like to
20 identify the fact that we are producing a log, based
21 upon my previous conversations with counsel for the
22 plaintiffs and the plaintiff intervenors, concerning
23 documents that have been produced.

24 There are question marks here for some
25 documents that we are -- I'm still trying to

1 THE WITNESS: Well, the schedule C
2 nonmonetary contribution report is a public
3 document, and that document reflects that the
4 committee reported an in-kind contribution from The
5 Church of Jesus Christ of Latter-Day Saints for
6 travel and video production in the amount of
7 \$6,875/\$6,849.

8 BY MR. GOLDMAN:

9 Q My question was whether you know whether
10 The Church of Jesus Christ of Latter-Day Saints
11 produced a video for ProtectMarriage.com.

12 **A I know what is described here.**

13 **Are you asking me whether or not this is**
14 **an accurate report?**

15 Q No. I'm simply asking you whether The
16 Church of Jesus Christ of Latter-Day Saints produced
17 a video for ProtectMarriage.com.

18 **A And my response is that by the plain**
19 **reading of this report, The Church of Jesus Christ**
20 **of Latter-Day Saints appears to have caused some --**
21 **appears to have undertaken some activity that**
22 **require ProtectMarriage.com to report an in-kind**
23 **contribution of travel and video production in the**
24 **amount of \$6,875.**

25 Q Do you have any knowledge, independent of

1 determine from the defendant intervenors whether
2 they produced those documents.

3 Under the notes, it will say either
4 produced, there will be a question mark. And then
5 there's also another category of documents that we
6 know have not been produced, and they're pending
7 review; and then documents that are privileged
8 communications that we have not produced and will
9 assert, continue to assert, a privilege.

10 And I would like to just attach it and
11 make it a part of this deposition, as Exhibit 63.

12 THE VIDEOGRAPHER: You mean 65?

13 THE REPORTER: 65.

14 MR. TYLER: I'm sorry. I missed those
15 two.

16 THE VIDEOGRAPHER: We're all in sync, 65.

17 THE REPORTER: I need it.

18 MR. GOLDMAN: It may make more sense to
19 mark it as Defendants' Exhibit 1, rather than
20 plaintiff's exhibit, so that we're clear that it's
21 being introduced by you.

22 MR. TYLER: That's fine. However you want
23 to mark it, that's fine, as long as it's attached.

24 THE REPORTER: I need it to mark it.

25 ////

1 (Defendants' Exhibit 1 was marked
 2 for identification.)
 3 THE REPORTER: Anything else?
 4 MR. TYLER: That's it. Go off the record.
 5 Thank you very much.
 6 THE VIDEOGRAPHER: Let me announce you
 7 off. Just one second. I'll do this with you.
 8 We are completing Volume I in the
 9 deposition of Frank Schubert.
 10 The total number of tapes will be retained
 11 by Now and Forever Video, at 5633 Country Club
 12 Drive, Oakland, California 94618. The time is now
 13 approximately 5:13 p.m. We are going off the
 14 record.
 15 (END TIME: 5:13 p.m.)
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1 I declare under penalty of perjury
 2 under the laws of the State of California
 3 that the foregoing is true and correct.
 4 Executed on _____, 2010,
 5 at _____, _____.
 6
 7
 8
 9
 10 _____
 11 SIGNATURE OF THE WITNESS
 12
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1 STATE OF CALIFORNIA)
 2 ss:
 3 COUNTY OF SAN FRANCISCO)
 4
 5 I, LANA L. LOPER, RMR, CRR, CCP, CME, CLR, CCR,
 6 CSR No. 9667, do hereby certify:
 7
 8 That the foregoing deposition of FRANK SCHUBERT
 9 was taken before me at the time and place therein
 10 set forth, at which time the witness was placed
 11 under oath and was sworn by me to tell the truth,
 12 the whole truth, and nothing but the truth;
 13 That the testimony of the witness and all
 14 objections made by counsel at the time of the
 15 examination were recorded stenographically by me,
 16 and were thereafter transcribed under my direction
 17 and supervision, and that the foregoing pages
 18 contain a full, true and accurate record of all
 19 proceedings and testimony to the best of my skill
 20 and ability.
 21 I further certify that I am neither related to
 22 counsel for any party to said action, nor am I
 23 related to any party to said action, nor am I in any
 24 way interested in the outcome thereof.
 25

1 IN WITNESS WHEREOF, I have subscribed my name
 2 this 22nd day of December, 2009.
 3
 4 _____
 5 LANA L. LOPER, RMR, CRR, CCP, CME, CLR CCR CSR 9667
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1	E X H I B I T S	1	E X H I B I T S
2	FRANK SCHUBERT	2	FRANK SCHUBERT
3	EXHIBIT PAGE	3	EXHIBIT PAGE
4	1 Politics Magazine article 36	4	5 Protect Marriage/Yes on 111
5	Passing Prop 8, Smart	5	Prop 8 Campaign Releases
6	Timing and Messaging	6	First Television
7	Convinced California	7	Commercial: "Whether You
8	Voters to Support	8	Like It Or Not"
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