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 16 and PROTECTMARRIAGE.COM – YES ON 8, A  
 PROJECT OF CALIFORNIA RENEWAL

17 \* Admitted *pro hac vice*

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

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

22 Plaintiffs,

23 CITY AND COUNTY OF SAN FRANCISCO,

24 Plaintiff-Intervenor,

25 v.

26 ARNOLD SCHWARZENEGGER, in his official  
 27 capacity as Governor of California; EDMUND G.  
 BROWN, JR., in his official capacity as Attorney  
 28 General of California; MARK B. HORTON, in his

CASE NO. 09-CV-2292 VRW

**DEFENDANT-INTERVENORS’  
 PROPOSED FINDINGS OF FACT  
 (INCLUDING CITATIONS)**

1 official capacity as Director of the California  
2 Department of Public Health and State Registrar of  
3 Vital Statistics; LINETTE SCOTT, in her official  
4 capacity as Deputy Director of Health Information  
5 & Strategic Planning for the California Department  
6 of Public Health; PATRICK O'CONNELL, in his  
7 official capacity as Clerk-Recorder for the County  
8 of Alameda; and DEAN C. LOGAN, in his official  
9 capacity as Registrar-Recorder/County Clerk for  
10 the County of Los Angeles,

11  
12 Defendants,

13 and

14  
15 PROPOSITION 8 OFFICIAL PROPONENTS  
16 DENNIS HOLLINGSWORTH, GAIL J.  
17 KNIGHT, MARTIN F. GUTIERREZ, HAK-  
18 SHING WILLIAM TAM, and MARK A.  
19 JANSSON; and PROTECTMARRIAGE.COM –  
20 YES ON 8, A PROJECT OF CALIFORNIA  
21 RENEWAL,

22  
23 Defendant-Intervenors.

24  
25 Additional Counsel for Defendant-Intervenors

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**Proposed Findings of Fact<sup>1</sup>**

**The Institution of Marriage**

1. Marriage is a complex social institution. *See* Jan. 26, 2010 Tr. of Hr'g at 2773:4-9 (Blankenhorn); Jan. 12, 2010 Tr. of Hr'g at 268:11-12 (Cott); DIX1028 at 320, Monte N. Stewart, *Marriage Facts*, 31 HARV. J.L. & PUB. POL'Y 313 (2008).
2. Marriage forms the foundation of the family and society. *See* *Maynard v. Hill*, 125 U.S. 190, 211 (1888); *see also* DIX63 at 44, Claude Levi-Strauss, *The View From Afar* (1985).
3. Marriage has its roots in pair bonding between men and women that emerged early in our evolution as a species. *See* Jan. 26, 2010 Tr. of Hr'g at 2744:4-12 (Blankenhorn); DIX89 at 45-46, PIERRE VAN DEN BERGHE, *HUMAN FAMILY SYSTEMS* (1979); DIX956 at 4, 23, DAVID BLANKENHORN, *THE FUTURE OF MARRIAGE* (2007).
4. Every society has had some form of the institution of marriage. *See* DIX79 at 2, Robina G. Quale, *A History of Marriage Systems* (1988); DIX50 at 5, KINGSLEY DAVIS, *THE MEANING & SIGNIFICANCE OF MARRIAGE IN CONTEMPORARY SOCIETY* (1985); DIX89 at 45; DIX63 at 40, 44, LEVI-STRAUSS, *THE VIEW FROM AFAR*; Jan 26, 2010 Tr. of Hr'g at 2754:1-18 (Blankenhorn); DIX956 at 11, DAVID BLANKENHORN, *THE FUTURE OF MARRIAGE* (2007); PX781 at 15, *WHY MARRIAGE MATTERS* (W. Bradford Wilcox, *et al.*, ed. 2d ed. 2005).
5. Throughout history and across societies, marriage has always been defined, in both law and language, as the union of a man and a woman. *See* DIX79 at 2, Robina Quale, *A History of Marriage*; DIX73 at 71, Comm. of Royal Anthropological Inst., *Notes & Queries on Anthropology* (1951); Jan. 26, 2010 Tr. of Hr'g at 2750:16-2751:12, 2764:14-20 (Blankenhorn); DIX1032 at 140, *SAME SEX MARRIAGE: PRO AND CON, A READER* (Andrew Sullivan, ed., 1997).
6. Marriage is a relationship within which a group socially approves and encourages sexual

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<sup>1</sup> In proposing these findings of fact, Defendant-Intervenors reserve the right to argue legal theories that, if adopted by the court, would result in some of the proposed findings being irrelevant to the outcome of this case. By proposing these findings in other words, they do not concede their relevance. Nor do they concede that they constitute adjudicative, as opposed to legislative facts.

1 intercourse and the birth of children. *See* PX1626 at 248, Suzanne Frayser, Varieties of  
 2 Sexual Experience; Jan. 26, 2010 Tr. of Hr’g at 2746:22-2747:21 (Blankenhorn); *see also*  
 3 Jan. 26, 2010 Tr. of Hr’g at 2742:9-10, 2749:17-2750:8 (Blankenhorn); DIX50 at 5, Kingsley  
 4 Davis, The Meaning & Significance of Marriage in Contemporary Society (1985); DIX1028  
 5 at 327, Monte Neil Stewart, Marriage Facts (2008); DIX1475, David Blankenhorn, Protecting  
 6 Marriage to Protect Children; Jan. 12, 2010 Tr. of Hr’g at 301:19-20 (Cott); DIX1032 at 135,  
 7 140, SAME SEX MARRIAGE: PRO AND CON, A READER (Andrew Sullivan, ed., 1997); PX781 at  
 8 15, WHY MARRIAGE MATTERS (W. Bradford Wilcox, *et al.*, ed. 2d ed. 2005).

9 7. A core purpose of marriage is to guarantee that, insofar as possible, each child is emotionally,  
 10 morally, practically, and legally affiliated with the woman and the man whose sexual union  
 11 brought the child into the world. *See* Jan. 26, 2010 Tr. of Hr’g at 2744:19-2745:9, 2752:20-  
 12 2753:17 (Blankenhorn); DIX79 at 2, Quale, A History of Marriage Systems; DIX73 at 71,  
 13 Comm. of Royal Anthropological Inst.; DIX66 at 11, Bronislaw Malinowski, Sex, Culture,  
 14 and Myth (1962); PX749, Demo & Cox, Families with Young Children (2000); DIX60 at 26,  
 15 Norval D. Glen, The Struggle for Same-Sex Marriage (2004); Jan 12, 2010 Tr. of Hr’g at  
 16 260:13-261:17 (Cott); DIX 1028 at 321-25, 327, Stewart, Marriage Facts; DIX956 at 91, 100,  
 17 116, DAVID BLANKENHORN, THE FUTURE OF MARRIAGE (2007); DIX1032 at 191-92, 274-75,  
 18 SAME SEX MARRIAGE: PRO AND CON, A READER (Andrew Sullivan, ed., 1997); DIX81 at 18,  
 19 JONATHAN RAUCH, GAY MARRIAGE.

20 8. As a matter of biological reality, societies must develop a method to bind men to their  
 21 offspring. *See* DIX50 at 8, Davis, The Meaning & Significance of Marriage in Contemporary  
 22 Marriage; Jan. 26, 2010, Tr. of Hr’g at 2771:18-2772:1 (Blankenhorn); DIX108 at 3; PX781  
 23 at 6, WHY MARRIAGE MATTERS (W. Bradford Wilcox, *et al.*, ed. 2d ed. 2005).

24 9. Although certain aspects of the institution of marriage have varied from society to society, it  
 25 has *universal functions*. These universal functions are:

- 26 a. Complementing nature with culture to ensure the reproductive cycle;
- 27 b. Providing children with both a mother and a father whenever possible;

- c. Providing children with their biological parents whenever possible;
- d. Bringing men and women together for both practical and symbolic purposes; and
- e. Providing men with a stake in family and society.

*See* National Organization for Marriage Amicus Brief at 3-4 and note 2; DIX956 at 24, 91, 99-100, 116, 196-97, DAVID BLANKENHORN, THE FUTURE OF MARRIAGE (2007).

10. In light of its universal functions, the institution of marriage has been marked by *universal features*. These universal features include:

- a. High social and legal authority and attractive incentives supporting the institution;
- b. Maleness and femaleness;
- c. A definition of eligible partners;
- d. A public dimension;
- e. Encouragement of procreation under specific conditions;
- f. Mutual support between men and women and duties toward children; and
- g. An emphasis on durable parental relationships.

DIX956 at 4, 24, 91, 99, 100, 116, 175, DAVID BLANKENHORN, THE FUTURE OF MARRIAGE (2007); DIX79 at 2, Robina Quale, *A History of Marriage System*; *see* Jan. 26, 2010 Tr. of Hr’g 2744:4-12 (Blankenhorn); DIX89 at 45-46, Pierre L. Van den Berghe, *Human Family Systems: An Evolutionary View* (1979).

11. Mutual affection and companionship between partners is a common, although not universal, feature of marriage. *See* Jan. 26, 2010 Tr. of Hr’g at 2761:3-24 (Blankenhorn); DIX1032 at 287, SAME-SEX MARRIAGE: PRO & CON, A READER (Andrew Sullivan, ed., 1st ed. 1997); Jan. 12, 2010, Tr. of Hr’g at 310:21-311:2 (Cott); DIX81 at 17-18, JONATHAN RAUCH, GAY MARRIAGE.

12. The doctrine of coverture is not, and has never been, a universal feature of marriage. Jan. 12, 2010, Tr. of Hr’g at 240:6-9, 307:5-13 (Cott); PX1746 at 8, 11-12, 28, 158, 210, NANCY COTT, PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION (2000).

13. The doctrine of coverture is not, and has never been, a definitional feature of marriage. Jan.

1 12, 2010, Tr. of Hr'g at 240:6-9, 307:5-12 (Cott); PX1746 at 8, 11-12, 28, 158, 210 NANCY  
2 COTT, PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION (2000).

3 14. Restrictions based on the race of the partners are not, and have never been, a universal feature  
4 of marriage. Jan 12, 2010 Tr. of Hr'g at 263:23-264:3, 300:12-23 (Cott); PX1746 at 27-28,  
5 40-45, 98-103, 145, 163-64, NANCY F. COTT, PUBLIC VOWS: A HISTORY OF MARRIAGE AND  
6 THE NATION (2000).

7 15. Restrictions based on the race of the partners are not, and have never been, a definitional  
8 feature of marriage. Jan 12, 2010 Tr. of Hr'g at 261:14-24, 263:23-264:3, 300:12-23; PX1746  
9 at 27-28, 40-45, 98-103, 145, 163-64, NANCY F. COTT, PUBLIC VOWS: A HISTORY OF  
10 MARRIAGE AND THE NATION (2000).

11 16. Different rules have governed divorce at different times and in different places. Jan. 12, 2010,  
12 Tr. of Hr'g at 261:14-24 , 338:1-340:3 (Cott); PX1746 at 106-11, 205-07, NANCY F. COTT,  
13 PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION (2000).

14 17. A particular set of rules governing divorce is not, and has never been, a universal feature of  
15 marriage. Jan. 12, 2010, Tr. of Hr'g at 338:1-340:3 (Cott); PX1746 at 106-11, 205-07,  
16 NANCY F. COTT, PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION (2000).

17 18. A particular set of rules governing divorce is not, and has never been, a definitional feature of  
18 marriage. Jan. 12, 2010, Tr. of Hr'g at 338:1-340:3 (Cott); PX1746 at 47-53, 106-11, 205-07,  
19 NANCY F. COTT, PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION (2000).

20 19. No society has established same-sex marriage as a cultural norm. Leading linguists, lawyers,  
21 philosophers, and social scientists have always understood marriage to be uniquely concerned  
22 with regulating naturally procreative relationships between men and women and providing for  
23 the nurture and care of the children who result from those relationships. *See* DIX66 at 11,  
24 Malinowski, *Sex, Culture, & Myth*; Jan. 26, 2010 Tr. of Hr'g at 2752:20-2753:17  
25 (Blankenhorn); DIX1032 at 3-5, *SAME-SEX MARRIAGE: PRO & CON, A READER* (Andrew  
26 Sullivan, ed., 1997); DIX81 at 18, JONATHAN RAUCH, *GAY MARRIAGE; Skinner v. Oklahoma*,  
27 316 U.S. 535, 541 (1942); *Meyer v. Neb.*, 262 U.S. 390, 399 (U.S. 1923); *Maynard v. Hill*,  
28

1 125 U.S. 190, 211 (U.S. 1888); Blackstone, 1 Commentaries \*435 ; Noah Webster, An  
2 American Dictionary of the English Language (1828).

- 3 20. The institution of marriage has always been indifferent to sexual orientation. *See* Jan. 26,  
4 2010 Tr. of Hr'g at 2765:7-25 (Blankenhorn); Jan. 12, 2010 Tr. of Hr'g 304:24-306:15 (Cott);  
5 Jan. 12, 2010 Tr. of Hr'g at 446:16-447:21 (Chauncey).
- 6 21. Extending marriage to same-sex couples would result in a profound change to the definition,  
7 structure, and public meaning of marriage. *See* DIX1020 at 7, Jeffrey Redding, Proposition 8  
8 and the Future of American Same-Sex Marriage Activism (2009); DIX1444 at 23, Joseph  
9 Raz, Ethics in the Public Domain (1994); DIX1028 at 319-27, Monte Neil Stewart, *Marriage*  
10 *Facts*, 31 HARV. J.L. & PUB. POL'Y 313 (2008).
- 11 22. Advocates for extending marriage to same-sex couples recognize (and many celebrate) that  
12 doing so would radically alter the institution of marriage. *See* DIX1434 at 1536-37, Nancy D.  
13 Polikoff, *We Will Get What We Asked For* (1993); DIX1445 at 12, E.J. Graff, *Retying the*  
14 *Knot* (1996); DIX1033 at 155, Judith Stacey, *Gay & Lesbian Families: Queer Like Us* (1998);  
15 DIX1020, Redding; Jan. 12, 2010 Tr. of Hr'g at 275:11-12, 277:11-13 (Cott); PX1273 at 6,  
16 M.V. LEE BADGETT, *WHEN GAY PEOPLE GET MARRIED: WHAT HAPPENS WHEN SOCIETIES*  
17 *LEGALIZE SAME-SEX MARRIAGE* (2009); PX2342 at 19, WILLIAM N. ESKRIDGE & DARREN R.  
18 SPEDALE, *GAY MARRIAGE: FOR BETTER OR FOR WORSE? WHAT WE'VE LEARNED FROM THE*  
19 *EVIDENCE* (2006).
- 20 23. Many advocates for extending marriage to same-sex couples recognize the wisdom in taking a  
21 cautious approach to making such a significant change to the institution of marriage. *See*  
22 DIX1035 at 3, David Masci, *An Argument for Same-Sex Marriage* (2008); *Cf.* Jan. 19, 2010  
23 Tr. of Hr'g at 1369:21-24 , 1456:23-1457:4 (Badgett); DIX81 at 159-71, JONATHAN RAUCH,  
24 *GAY MARRIAGE*; PX2342 at 233, WILLIAM N. ESKRIDGE & DARREN R. SPEDALE, *GAY*  
25 *MARRIAGE: FOR BETTER OR FOR WORSE? WHAT WE'VE LEARNED FROM THE EVIDENCE*  
26 (2006).
- 27 24. Many gays and lesbians recognize that same-sex relationships and opposite-sex relationships  
28

1 differ in important ways. See Scott James, *Many Successful Gay Marriages Share and Open*  
 2 *Secret*, N.Y. Times, Jan. 28, 2010, available at  
 3 <http://www.nytimes.com/2010/01/29/us/29sfmetro.html?ref=us>; DIX1032 at 121, 133, 140,  
 4 281, 289-91 SAME SEX MARRIAGE: PRO AND CON, A READER (Andrew Sullivan, ed., 1997);  
 5 PX1273 at 16, 95, M.V. LEE BADGETT, WHEN GAY PEOPLE GET MARRIED: WHAT HAPPENS  
 6 WHEN SOCIETIES LEGALIZE SAME-SEX MARRIAGE (2009); PX2342 at 128, WILLIAM N.  
 7 ESKRIDGE & DARREN R. SPEDALE, GAY MARRIAGE: FOR BETTER OR FOR WORSE? WHAT  
 8 WE'VE LEARNED FROM THE EVIDENCE (2006).

- 9 25. Prominent public figures, including President Obama, support the traditional definition of  
 10 marriage, and oppose extending marriage to same-sex couples. Jan. 21, 2010 Tr. of Hr'g  
 11 1748:7-15 (Segura); PX0025, Yes on 8 Brochure Featuring Obama; Def.-Int. Summ. Jgmt.  
 12 Br. Doc. # 172-1 at 91-92; DIX1086 at xvi-xvii, GEORGE CHAUNCEY, WHY MARRIAGE?: THE  
 13 HISTORY SHAPING TODAY'S DEBATE OVER GAY EQUALITY (2004).
- 14 26. Numerous individuals, including prominent supporters of gay and lesbian rights, and even  
 15 many gay and lesbian individuals, oppose recognizing same-sex relationships as marriages in  
 16 good faith for legitimate reasons that have nothing to do with animus against gays and  
 17 lesbians. National Organization for Marriage Amicus at 12 n.24; see Jan. 19, 2010 Tr. of Hr'g  
 18 at 1456:8-1457:4 (Badgett); DIX1020 at 4, 6, 7-8, Jeffrey A. Redding, Proposition 8 and the  
 19 Future of American Same-Sex Marriage Activism, 14 Nexis J. Op. 4 (2009); DIX 1032 at  
 20 xxvi, 52-54, 119-21, 132-34, 140-41, 153-54, SAME SEX MARRIAGE: PRO AND CON, A  
 21 READER (Andrew Sullivan, ed., 1997); Jan. 15, 2010 Tr. of Hr'g at 1246:13-15, 1246:19-24  
 22 (Zia); Jan. 19, 2010 Tr. of Hr'g at 1298:12-1299:5, 1300:16-17, 1301:5-10 (Sanders); cf. Jan.  
 23 19, 2010 Tr. of Hr'g at 1270:23-1271:3; 1271:13-14, 1280:1-2, 1280:1-6; 1297:17-23;  
 24 1298:3-11 (Sanders); see Jan. 19, 2010 Tr. of Hr'g at 1293:15-17, 1293:24-1294:7-18,  
 25 1295:22-1296:7, 1296:11-1297:6 (Sanders); PX1273 at 10, 47, 130, 142 M.V. LEE BADGETT,  
 26 WHEN GAY PEOPLE GET MARRIED: WHAT HAPPENS WHEN SOCIETIES LEGALIZE SAME-SEX  
 27 MARRIAGE (2009); Jan 13, 2010 Tr. of Hr'g at 506:14-17 (Chauncey); DIX1475, David  
 28



1 Blankenhorn, *Protecting Marriage to Protect Children*, L.A. Times, Sept. 19, 2008, at A27;  
 2 DIX956 at 2, DAVID BLANKENHORN, *THE FUTURE OF MARRIAGE* (2007); DIX 81 at 7,  
 3 JONATHAN RAUCH, *GAY MARRIAGE: WHY IT IS GOOD FOR GAYS, GOOD FOR STRAIGHTS, AND*  
 4 *GOOD FOR AMERICA* (2004); PX2342 at 233, WILLIAM N. ESKRIDGE & DARREN R. SPEDALE,  
 5 *GAY MARRIAGE: FOR BETTER OR FOR WORSE? WHAT WE'VE LEARNED FROM THE EVIDENCE*  
 6 (2006); PX 1168 at 618, Gregory M. Herek, *Legal Recognition of Same-Sex Relationships in the*  
 7 *United States: A Social Science Perspective*, *American Psychologist*, September 2006.

- 8 27. Historically and today, many societies and governments that embrace same-sex relationships  
 9 and/or strongly affirm gay and lesbian rights have nevertheless determined that same-sex  
 10 relationships should not be recognized as marriages. *See* National Organization for Marriage  
 11 Amicus at 9-10; DIX1032 at 3-5, *SAME-SEX MARRIAGE: PRO & CON, A READER* (Andrew  
 12 Sullivan, ed., 1st ed. 1997); PX1273 at 8-9, fig. 1.1, M.V. LEE BADGETT, *WHEN GAY PEOPLE*  
 13 *GET MARRIED: WHAT HAPPENS WHEN SOCIETIES LEGALIZE SAME-SEX MARRIAGE* (2009).

14 **Marriage in the United States and Across the Globe**

- 15 28. Massachusetts was the first state to extend marriage to same-sex couples. Massachusetts  
 16 licensed its first same-sex marriages in 2004. PX847 at 135, GEORGE CHAUNCEY, *WHY*  
 17 *MARRIAGE? THE HISTORY SHAPING TODAY'S DEBATE OVER GAY EQUALITY* (2004);  
 18 *Goodridge v. Dep't. of Public Health*, 440 Mass. 309 (2003).  
 19 29. Until 2004, marriage in the United States had always been limited to opposite-sex couples.  
 20 *Goodridge v. Dep't. of Public Health*, 440 Mass. 309 (2003); *In Re Marriage Cases*, 43 Cal.  
 21 4th 757, 853 (2008).  
 22 30. In addition to Massachusetts, Connecticut, Iowa, and Vermont are the only other states that  
 23 currently license same-sex marriages. New Hampshire will also begin licensing same-sex  
 24 marriages in January 2010. In three of these States—Massachusetts, Connecticut, and Iowa—  
 25 same-sex marriage was imposed by judicial decision. *Goodridge v. Dep't. of Public Health*,  
 26 440 Mass. 309, 343 (2003); *Kerrigan v. Comm'r of Pub. Health*, 289 Conn. 135, 263 (2008);  
 27 *Varnum v. Brien*, 763 N.W. 2d 862, 907 (2009); 15 V.S.A. § 8 (2010); New Hampshire RSA  
 28

1 457:1-a (2010).

2 31. The overwhelming majority of states continue to limit marriage to opposite-sex unions. *In Re*  
 3 *Marriage Cases*, 43 Cal. 4th 757, 853 n.70 (2008); *see* ALA. CONST. art. I, § 36.03 (2006);  
 4 ALASKA CONST. art. 1, § 25 (1998); ARIZ. CONST. art. XXX, § 1 (2008); ARK. CONST.  
 5 amend. 83, § 1-3 (2004); CAL. CONST. art. I, § 7.5 (2008); COLO. CONST. art. II, § 31  
 6 (2006); FLA. CONST. art. I § 27 (2008); GA. CONST. art. I, §IV, I (2004); IDAHO CONST.  
 7 art. III, § 28 (2006); KAN. CONST. art. XV, § 16 (2005); KY. CONST. § 233a (2004); LA.  
 8 CONST. art. XII, § 15 (2004); MICH. CONST. art. I, § 25 (2004); MISS. CONST. art. XIV, §  
 9 263A (2004); MO. CONST. art. I, § 33 (2004); MONT. CONST. art. XIII, § 7 (2004); NEB.  
 10 CONST. art. I, § 29 (2000); NEV. CONST. art. I, § 21 (2002); N.D. CONST. art. XI, § 28  
 11 (2004); OHIO CONST. art. XV, § 11 (2004); OKLA. CONST. art. II, § 35 (2004); OR.  
 12 CONST. art. XV, § 5a (2004); S.C. CONST. art. XVII, § 15 (2006); S.D. CONST. art. XXI, §  
 13 9 (2006); TENN. CONST. art. XI, § 18 (2006); TEX. CONST. art. I, § 32 (2005); UTAH  
 14 CONST. art. I, § 29 (2004); VA. CONST. art. I, § 15-A (2006); WIS. CONST. art. XIII, § 13  
 15 (2006); DEL. CODE ANN. tit. 13, § 101; HAW. REV. STAT. § 572-1; HAW. REV. STAT. §  
 16 572-3; 750 ILL. COMP. STAT. 5/212; IND. CODE § 31-11-1-1; MD. CODE ANN., FAM.  
 17 LAW § 2-201; MINN. STAT. § 517.01; N.J. STAT. § 37:1-1; N.M. STAT. §§ 40-1-1 – 40-1-  
 18 7; N.Y. DOM. REL. LAW §§ 5-7; N.C. GEN. STAT. § 51-1.2; 23 PA. CONS. STAT. § 1704;  
 19 R.I. GEN.LAWS §§ 15-1-1 – 15-1-5; WASH. REV. CODE § 26.04.010-20; W. VA. CODE §  
 20 48-2-603; WYO. STAT. ANN. § 20-1-101.

21 32. Twenty-nine states including California have Constitutional provisions defining marriage as  
 22 the union of a man and a woman. These amendments have all been enacted since 1998;  
 23 twenty-six of them have been enacted since 2004; ALA. CONST. art. I, § 36.03 (2006);  
 24 ALASKA CONST. art. 1, § 25 (1998); ARIZ. CONST. art. XXX, § 1 (2008); ARK. CONST.  
 25 amend. 83, § 1-3 (2004); CAL. CONST. art. I, § 7.5 (2008); COLO. CONST. art. II, § 31  
 26 (2006); FLA. CONST. art. I § 27 (2008); GA. CONST. art. I, §IV, I (2004); IDAHO CONST.  
 27 art. III, § 28 (2006); KAN. CONST. art. XV, § 16 (2005); KY. CONST. § 233a (2004); LA.  
 28

1 CONST. art. XII, § 15 (2004); MICH. CONST. art. I, § 25 (2004); MISS. CONST. art. XIV, §  
2 263A (2004); MO. CONST. art. I, § 33 (2004); MONT. CONST. art. XIII, § 7 (2004); NEB.  
3 CONST. art. I, § 29 (2000); NEV. CONST. art. I, § 21 (2002); N.D. CONST. art. XI, § 28  
4 (2004); OHIO CONST. art. XV, § 11 (2004); OKLA. CONST. art. II, § 35 (2004); OR.  
5 CONST. art. XV, § 5a (2004); S.C. CONST. art. XVII, § 15 (2006); S.D. CONST. art. XXI, §  
6 9 (2006); TENN. CONST. art. XI, § 18 (2006); TEX. CONST. art. I, § 32 (2005); UTAH  
7 CONST. art. I, § 29 (2004); VA. CONST. art. I, § 15-A (2006); WIS. CONST. art. XIII, § 13  
8 (2006).

9 33. Under federal law, the Defense of Marriage Act provides that only the union of a man and a  
10 woman is recognized as marriage. 1 U.S.C.S § 7 (1996).

11 34. In 2001, the Netherlands became the first nation to license same-sex marriages. Since 2001,  
12 only Belgium, Spain, Canada, South Africa, Norway, and Sweden have extended marriage to  
13 same-sex couples. *See* PX1303 at 572, Waaldijk, *Others May Follow: The Introduction of*  
14 *Marriage, Quasi-Marriage, and Semi-Marriage for Same-Sex Couples in European Countries*  
15 (2004); PX1273 at 9, fig 1.1, M.V. LEE BADGETT, *WHEN GAY PEOPLE GET MARRIED: WHAT*  
16 *HAPPENS WHEN SOCIETIES LEGALIZE SAME-SEX MARRIAGE* (2009).

17 35. The overwhelming majority of nations continue to limit marriage to opposite-sex unions.  
18 PX1273 at 9, fig. 1.1, M.V. LEE BADGETT, *WHEN GAY PEOPLE GET MARRIED: WHAT*  
19 *HAPPENS WHEN SOCIETIES LEGALIZE SAME-SEX MARRIAGE* (2009).

20 36. Many countries throughout the world have declined to recognize same-sex relationships as  
21 marriages. National Organization for Marriage Amicus at 9-10; PX1273 at 9, fig. 1.1, M.V.  
22 LEE BADGETT, *WHEN GAY PEOPLE GET MARRIED: WHAT HAPPENS WHEN SOCIETIES*  
23 *LEGALIZE SAME-SEX MARRIAGE* (2009); DIX1032 at 42-45, *SAME SEX MARRIAGE: PRO AND*  
24 *CON, A READER* (Andrew Sullivan, ed., 1997).

25 37. Where same-sex marriage is legal, the proportion of the gay and lesbian population that  
26 chooses to marry is significantly lower than the proportion of the heterosexual population that  
27 chooses to marry. *See* DIX2427, 2427a; DIX2644, 2644a, *Statistics Belgium and English*  
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1 Translations; Jan. 13, 2010 Tr. of Hr'g at 625:19-637:19; DIX2430; DIX1887, Statistics  
2 Netherlands; Jan. 13, 2010 Tr. of Hr'g at 638:4-639:13; PX1273 at 16-17, M.V. LEE  
3 BADGETT, WHEN GAY PEOPLE GET MARRIED: WHAT HAPPENS WHEN SOCIETIES LEGALIZE  
4 SAME-SEX MARRIAGE (2009).

5 **Marriage in California**

- 6 38. From the beginning of California statehood, the legal institution of civil marriage has been  
7 understood to refer to the relationship of a man and a woman. Jan 12, 2010 Tr. of Hr'g at  
8 306:21-23 (Cott).
- 9 39. In 2000, 61.4% of the people of California voted to approve Proposition 22, a citizen-initiated  
10 statutory measure providing that "Only marriage between a man and a woman is valid or  
11 recognized in California." *In Re Marriage Cases*, 43 Cal. 4th 757, 865 (2008).
- 12 40. Notwithstanding Proposition 22, the City and County of San Francisco, at the direction of  
13 Mayor Gavin Newsom, began issuing civil marriage licenses to same-sex couples in February  
14 2004. PX0847 at 137, GEORGE CHAUNCEY, WHY MARRIAGE? THE HISTORY SHAPING  
15 TODAY'S DEBATE OVER GAY EQUALITY (2004).
- 16 41. In August 2004, the California Supreme Court held that the City and County of San Francisco  
17 had exceeded its authority by issuing marriage licenses to same-sex couples and declared  
18 those marriages a legal nullity. *Lockyear v. City and County of San Francisco*, 33 Cal. 4th  
19 1055, 1120 (2004).
- 20 42. Despite not having the authority to repeal Proposition 22, in 2005 the California Legislature,  
21 supported by gay rights activists and groups, civil rights groups, labor unions, local  
22 governments, professional organizations, and religious organizations, passed a bill purporting  
23 to extend marriage to same-sex couples. Governor Schwarzenegger vetoed the bill in light of  
24 Proposition 22. Jan. 25, 2010, Tr. of Hr'g 2472:22-2473:9, 2474:12-15 (Miller).
- 25 43. In 2007, the California Legislature again passed a bill purporting to extend marriage to same-  
26 sex couples, and Governor Schwarzenegger again vetoed the bill. In vetoing the bill,  
27 Governor Schwarzenegger noted that a legal challenge to Proposition 22 under the California  
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1 Constitution was pending before the California Supreme Court. Assembly Bill No. 43,  
2 California Legislature (2007); Jan. 25, 2010, Tr. of Hr'g 2474:17-18 (Miller).

- 3 44. Legal actions challenging the traditional definition of marriage, including one filed by the  
4 City and County of San Francisco, were joined in a single proceeding titled *In re Marriage*  
5 *Cases*. *In Re Marriage Cases*, 43 Cal. 4th 757 (2008).
- 6 45. Amici supporting the challenge to Proposition 22 included gay and lesbian rights  
7 organizations; local governments; state legislators; hundreds of local faith communities;  
8 rabbis, and ministers; and numerous professional and other associations; Brief for American  
9 Academy of Matrimonial Lawyers, et al. as Amici Curiae Supporting Respondents, *In re*  
10 *Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief for American Psychoanalytic  
11 Association, et al. as Amici Curiae Supporting Respondents, *In re Marriage Cases*, 43 Cal.4th  
12 757 (2008) (No. 147999); Brief for American Psychological Association, et al. as Amici  
13 Curiae Supporting Respondents, *In re Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999);  
14 Brief for Anti-Defamation League, et al. as Amici Curiae Supporting Respondents, *In re*  
15 *Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief for Asian American Bar  
16 Association, et al. as Amici Curiae Supporting Respondents, *In re Marriage Cases*, 43 Cal.4th  
17 757 (2008) (No. 147999); Brief for Bar Association of San Francisco as Amici Curiae  
18 Supporting Respondents, *In re Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief  
19 for Bay Area Lawyers for Individual Freedom, et al. as Amici Curiae Supporting  
20 Respondents, *In re Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief for Beverly  
21 Hills Bar Association, et al. as Amici Curiae Supporting Respondents, *In re Marriage Cases*,  
22 43 Cal.4th 757 (2008) (No. 147999); Brief for California State Conference of the National  
23 Association for the Advancement of Colored People as Amici Curiae Supporting  
24 Respondents, *In re Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief for California  
25 Women's Law Center, et al. as Amici Curiae Supporting Respondents, *In re Marriage Cases*,  
26 43 Cal.4th 757 (2008) (No. 147999); Brief for City of Los Angeles, et al. as Amici Curiae  
27 Supporting Respondents, *In re Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief  
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1 for Council for Secular Humanism as Amici Curiae Supporting Respondents, *In re Marriage*  
2 *Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief for Equal Justice Society as Amici Curiae  
3 Supporting Respondents, *In re Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief  
4 for Equality Federation & Gay and Lesbian Advocates & Defenders as Amici Curiae  
5 Supporting Respondents, *In re Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief  
6 for Howard University School of Law Civil Rights Clinic as Amici Curiae Supporting  
7 Respondents, *In re Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief for Joseph R.  
8 Grodin as Amici Curiae Supporting Respondents, *In re Marriage Cases*, 43 Cal.4th 757  
9 (2008) (No. 147999); Brief for Legislators Senator Elaine Alquist, et al. as Amici Curiae  
10 Supporting Respondents, *In re Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief  
11 for M.V. Lee Badgett & Gary J. Gates as Amici Curiae Supporting Respondents, *In re*  
12 *Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief for Mexican American Legal  
13 Defense and Educational Fund, et al. as Amici Curiae Supporting Respondents, *In re*  
14 *Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief for NAACP Legal Defense and  
15 Educational Fund as Amici Curiae Supporting Respondents, *In re Marriage Cases*, 43 Cal.4th  
16 757 (2008) (No. 147999); Brief for National Gay and Lesbian Task Force as Amici Curiae  
17 Supporting Respondents, *In re Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief  
18 for Out & Equal Workplace Advocates and Levi Strauss & Co. as Amici Curiae Supporting  
19 Respondents, *In re Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief for Pacific  
20 Justice Institute and Capitol Resource Institute as Amici Curiae Supporting Respondents, *In re*  
21 *Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief for Professors of Constitutional  
22 Law Pamela S. Karlan, et al. as Amici Curiae Supporting Respondents, *In re Marriage Cases*,  
23 43 Cal.4th 757 (2008) (No. 147999); Brief for Professors of Family Law as Amici Curiae  
24 Supporting Respondents, *In re Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief  
25 for Professors of International Law, et al. as Amici Curiae Supporting Respondents, *In re*  
26 *Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief for Santa Clara Bar Association,  
27 et al. as Amici Curiae Supporting Respondents, *In re Marriage Cases*, 43 Cal.4th 757 (2008)  
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1 (No. 147999); Brief for Southern Poverty Law Center as Amici Curiae Supporting  
2 Respondents, *In re Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief for Unitarian  
3 Universalist Association of Congregations, et al. as Amici Curiae Supporting Respondents, *In*  
4 *re Marriage Cases*, 43 Cal.4th 757 (2008) (No. 147999); Brief for William N. Eskridge, Jr., et  
5 al. as Amici Curiae Supporting Respondents, *In re Marriage Cases*, 43 Cal.4th 757 (2008)  
6 (No. 147999).

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8 46. While the challenge to the traditional definition of marriage was pending in State court,  
9 Proponents worked to obtain the signatures necessary to place an initiative measure before the  
10 State's voters that would place the traditional definition of marriage in the California  
11 Constitution. *Strauss v. Horton*, 46 Cal. 4th 364, 409 (2009).
- 12 47. The initiative appeared on the November 4, 2008 ballot as Proposition 8, and proposed adding  
13 a provision to the California Constitution providing that "Only marriage between a man and a  
14 woman is valid or recognized in California." *Strauss v. Horton*, 46 Cal. 4th 364, 395 (2009).
- 15 48. On May 15, 2008, a bare majority of a divided California Supreme Court held that reserving  
16 marriage for opposite-sex couples violated the State Constitution. *In Re Marriage Cases*, 43  
17 Cal. 4th 757 (2008).
- 18 49. The campaign for and against Proposition 8 was the most expensive ever for a social issue.  
19 According to reports maintained by the California Secretary of State, the Yes-on-8 campaign  
20 raised approximately \$40 million, while the No-on-8 campaign raised more than \$43 million.  
21 DIX350, Cal. Sec'y of State, Campaign Finance: ProtectMarriage.com-Yes on 8: A Project of  
22 California Renewal; DIX176, Cal. Sec'y of State, Campaign Finance: No on 8 Equality for  
23 All; Jan. 25, 2010 Tr. of Hr'g 10, 2438:21-22 (Miller).
- 24 50. On November 4, 2008, 52.3% of California's voters—over seven million people—voted to  
25 approve Proposition 8. *Strauss v. Horton*, 46 Cal. 4th 364, 398 (Cal. 2009).
- 26 51. After the vote, both chambers of the California Legislature passed resolutions opposing  
27 Proposition 8. S. Res. 7, 2007-2008 Sess. (Ca. 2008); Assemb. Res. 5 2007-2008 Sess. (Ca.  
28 2008).

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52. Opponents of Proposition 8 also sought to invalidate it in State court, arguing that Proposition 8 was an improper “revision” to the California Constitution. Amici supporting this suit included dozens of current and former California legislators, labor organizations representing approximately 2.5 million workers in the state, bar associations and other professional organizations, and local governments. In May 2009, the California Supreme Court held that Proposition 8 was a valid amendment to the California Constitution. *Strauss v. Horton*, 46 Cal. 4th 364 (2009).
53. Supporters of extending marriage to same-sex couples are currently mobilizing to repeal Proposition 8 through the ballot box. Jan. 25, 2010 Tr. of Hr’g 2447:1-19 (Miller).
54. California’s laws continue to reflect the understanding that marriage is uniquely concerned with regulating naturally procreative relationships between men and women and providing for the nurture and care of the children who result from those relationships. CAL. FAM. CODE §§ 2201, 310, 2200, 2210, 2400(a)(3), 2330(b)(4), (5) 2010(b), (c), 2040(a)(1), 2336, 7540, 3020(b), 3080, 3081, 3040, 3085, 3024, 3100(a), 3101(c), 3103(e), 3104(g), 3900, 3910, 1839, 4322, 4321(b), 1801, 1831, 1832; *In re Marriage of Meagher & Maleki*, 131 Cal. App. 4th 1 (2005); *Millar v. Millar*, 167 P. 394 (Cal. 1917); *Aufort v. Aufort*, 9 Cal. App. 2d 310, 311 (1935); *In re Marriage of Ramirez*, 165 Cal. App. 4th 751 (2008); *Marshall v. Marshall*, 300 P. 817, 818 (Cal. 1931).
55. California’s marriage laws, including Proposition 8, do not reflect or promote improper gender stereotypes or the supremacy of one sex over the other. *In re Marriage Cases*, 43 Cal. 4th 757, 838 n.58; CAL. FAM. CODE §§ 3040(a)(1), 3900, 3910, 1839, 760, 2550.
56. Proposition 8 was not designed to reflect or promote improper gender stereotypes or the supremacy of one sex over the other. *In re Marriage Cases*, 43 Cal. 4th 757, 838 n.58.

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**Domestic Partnerships in California**

57. Through its domestic partnership laws, California currently makes available to same-sex couples virtually all of the state-level rights and benefits provided by marriage; Jan 13, 2010 Tr. of Hr’g at 468:6-9 (Chauncey); PX847 at xvii, GEORGE CHAUNCEY, WHY MARRIAGE? THE



1 HISTORY SHAPING TODAY'S DEBATE OVER GAY EQUALITY (2004).

- 2 58. California's domestic partnerships have developed to their present status over the past 25  
3 years; Jan 25, 2010 Tr. of Hr'g at 2420:5-12, 2451:1-9, 2473:13-2474:18, 2475:8-20(Miller).
- 4 59. California's domestic partnerships have developed without pressure from the courts and have  
5 not faced repeal through ballot initiatives or referenda; Jan 25, 2010 Tr. of Hr'g at 2475:17-  
6 2478:5 (Miller).
- 7 60. California's domestic partnerships have developed with the support and sponsorship of gay  
8 and lesbian rights groups. *See* DIX1068, EQCA Press Release; DIX1453, NCLR Press  
9 Release; DIX1068 at 1-2, Press Release, Equality Cal., Governor Davis Makes History with  
10 Signature on Domestic Partner Rights & Responsibilities Act of 2003 (Sept. 19, 2003);  
11 DIX1453 at 1-2, Press Release, Nat'l Ctr. For Lesbian Rights, The National Center for  
12 Lesbian Rights Hails Signing of California's Historic Domestic Partnership Bill (Sept. 19,  
13 2003).
- 14 61. In 1984, the City of Berkeley adopted a law extending employee benefits to same-sex partners  
15 of city employees. The next year, 1985, the City of West Hollywood provided legal  
16 recognition to same-sex couples in the general public through a domestic partnership  
17 ordinance; DIX1068 at 1-2, Press Release, Equality Cal., Governor Davis Makes History with  
18 Signature on Domestic Partner Rights & Responsibilities Act of 2003 (Sept. 19, 2003);  
19 DIX1453 at 1-2, Press Release, Nat'l Ctr. For Lesbian Rights, The National Center for  
20 Lesbian Rights Hails Signing of California's Historic Domestic Partnership Bill (Sept. 19,  
21 2003).
- 22 62. Over the next 15 years, 18 local governments in California established domestic partnership  
23 registries that provided legal recognition to same-sex couples; Jan 25, 2010 Tr. of Hr'g at  
24 2473:20-2474:1 (Miller).
- 25 63. In 1995, the California Legislature first considered a bill that would establish a state-wide  
26 domestic partnership registry; AB 2810, 1993-1994 Sess. (Ca. 1994); AB 627, 1995-1996  
27 Sess. (Ca. 1995).
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64. In 1999, the California Legislature passed and Governor Davis signed into law a bill establishing a statewide domestic partnership registry; 1999 Cal. Adv. Legis. Serv. 588 (Deering. 2010).
65. In 2003, the California Legislature passed and Governor Davis signed into law a bill, the Domestic Partner Rights and Responsibilities Act of 2003, granting domestic partners essentially the same state-level rights and obligations as spouses. The law became fully operative on January 1, 2005; Jan 13, 2010 Tr. of Hr'g at 468:6-9 (Chauncey); PX847 at xvii, GEORGE CHAUNCEY, WHY MARRIAGE? THE HISTORY SHAPING TODAY'S DEBATE OVER GAY EQUALITY (2004); 2003 Cal. Adv. Legis. Serv. 421 (Deering. 2010); DIX1068 at 1-2, Press Release, Equality Cal., Governor Davis Makes History with Signature on Domestic Partner Rights & Responsibilities Act of 2003 (Sept. 19, 2003); DIX1453 at 1-2, Press Release, Nat'l Ctr. For Lesbian Rights, The National Center for Lesbian Rights Hails Signing of California's Historic Domestic Partnership Bill (Sept. 19, 2003).
66. The Domestic Partner Rights and Responsibilities Act of 2003 garnered broad support from California's state and local public officials, civil rights organizations, labor unions, and religious congregations; DIX1068 at 1-2, Press Release, Equality Cal., Governor Davis Makes History with Signature on Domestic Partner Rights & Responsibilities Act of 2003 (Sept. 19, 2003); DIX1453 at 1-2, Press Release, Nat'l Ctr. For Lesbian Rights, The National Center for Lesbian Rights Hails Signing of California's Historic Domestic Partnership Bill (Sept. 19, 2003); Jan 25, 2010 Tr. of Hr'g at 2451:1-16; (Miller); *Bill Analysis*, S. Rules Comm.(Ca. 2003), available at, [http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab\\_0201-0250/ab\\_205\\_cfa\\_20030827\\_132305\\_sen\\_floor.html](http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_0201-0250/ab_205_cfa_20030827_132305_sen_floor.html).
67. Equality California, a group that champions gay and lesbian interests, sponsored the Domestic Partner Rights and Responsibilities Act of 2003. That group, along with the Lambda Legal Defense Fund and the National Center for Lesbian Rights, helped draft the legislation. See PX1266 at 3, John C. Gonsiorek, *Definition and Measurement of Sexual Orientation* (1995); DIX1067 at 4, EQCA Fact Sheet; see also DIX147 at 1, About EQCA.

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68. Dozens of gay and lesbian groups across the state mobilized their supporters to advocate for the Domestic Partner Rights and Responsibilities Act of 2003. *See* DIX1068 at 2, EQCA Press Release.
69. Equality California hailed the enactment of the Domestic Partner Rights and Responsibilities Act of 2003 as “a tremendous civil rights victory for LGBT people” and “an incredible personal victory for those of us who will now have the kind of legal recognition that we have spent a lifetime dreaming about.” *See* DIX1068 at 1.
70. From January 2005 through September 2009, over 23,000 domestic partnerships were registered in California. The highest one-month total for domestic partnership registrations during that time was about 600; the lowest just below 300. *See* DIX2647.
71. California’s domestic partnerships do not stigmatize gays and lesbians. *See* DIX2647; *see also* DIX1020 at 6, Jeffrey A. Redding, Proposition 8 and the Future of American Same-Sex Marriage Activism (2009); *see also* citations for Defendant-Intervenors’ Proposed Findings of Fact 67-69; *cf.* Jan. 19, 2010 Tr. of Hr’g at 1388:25-1389:7 (Badgett); Jan. 19, 2010 Tr. of Hr’g at 1300:23-1301:4 (Sanders); PX2342 at 95, WILLIAM N. ESKRIDGE & DARREN R. SPEDALE, GAY MARRIAGE: FOR BETTER OR FOR WORSE? WHAT WE’VE LEARNED FROM THE EVIDENCE (2006); PX1273 at 19, 58 M.V. LEE BADGETT, WHEN GAY PEOPLE GET MARRIED: WHAT HAPPENS WHEN SOCIETIES LEGALIZE SAME-SEX MARRIAGE (2009).
72. Gays and lesbians in other countries regularly embrace alternative statuses to marriage. Jan. 19, 2010 Tr. of Hr’g at 1380:7:1381:11, 1384:14-20, 1386:24-1387:1, 1388:20-24 (Badgett); PX2342 at 175, WILLIAM N. ESKRIDGE & DARREN R. SPEDALE, GAY MARRIAGE: FOR BETTER OR FOR WORSE? WHAT WE’VE LEARNED FROM THE EVIDENCE (2006).
73. Where same-sex marriage and alternative institutions such as domestic partnerships or civil unions are both available, a significant number of same-sex couples choose to enter the alternative institution. *See* DIX2647, California domestic partnership stats; DIX2430 at 200, Netherlands data; Jan. 19, 2010 Tr. of Hr’g at 1380:7:1381:11 (Badgett); *see also* Jan. 19, 2010 Tr. of Hr’g at 1384:14-20, 1386:24-1387-1, 1388:20-24 (Badgett); PX2342 at 175,

1 WILLIAM N. ESKRIDGE & DARREN R. SPEDALE, *GAY MARRIAGE: FOR BETTER OR FOR WORSE?*  
 2 *WHAT WE'VE LEARNED FROM THE EVIDENCE* (2006).

3 **Child Well-Being**

4 74. Social science research indicates that, on average, the ideal family structure for a child is a  
 5 family headed by two biological parents in a low-conflict marriage. Amicus Brief of the  
 6 College of American Pediatricians; *See* Jan. 26, 2010 Tr. of Hr'g at 2767:11-2768:23  
 7 (Blankenhorn); DIX26 at 1-2, 6, Kristen Anderson Moore, *Child Trends* (2002); Jan. 26, 2010  
 8 Tr. of Hr'g at 2769:2-2770:10, 2769:2-2770:10 (Blankenhorn); DIX124 at 1, 4, McLanahan &  
 9 Sandefur, *Growing up with a Single Parent: What Hurts, What Helps* (1994); Jan. 15, 2010  
 10 Tr. of Hr'g at 1057-58:22-19, 1064: 24-6, 1065: 20-24, 1068:15-21, 1071: 7-10, 1074: 7-9,  
 11 1074: 18-19, 1074: 21-24, 1074-75: 25-3, 1075:12-15, 1075: 16-18, 1076: 12-15, 1077: 13-18,  
 12 1077: 20-25, 1078: 3-8, 1080-81: 23-5, 1082: 8-24, 1098 3-8, 14-16, 1102: 1-7, 1102-03:23-4,  
 13 1106:9-1107:18, 1108:13-1109:16, 1073: 6-9, 1079: 17-21 (Lamb); PX1305 at 5, 19, Shelly  
 14 Lundberg, et. al, *The American Family & Family Economics* (2007); PX2299 at 2, M.J.  
 15 Rosenfeld, *Nontraditional-Families and Childhood Progress through School* (2009); DIX2 at  
 16 89, Paul R. Amato, *The Impact of Family formation Change on the Cognitive, Social, and*  
 17 *emotional well-being of the Next generation*; DIX121 at 2, Kamarck & Galston, *Putting*  
 18 *Children First: A Progressive Family Policy for the 1990s*; DIX21 at 890 , Manning & Lamb,  
 19 *Adolescent Well-Being in Cohabitation, Marries, & Single-Parent Families* (2003); DIX107 at  
 20 54, Lorraine Blackmon, *The Consequences of Marriage for African Americans* (2005); Jan  
 21 12, 2010 Tr. of Hr'g at 287:10-288:13 (Cott); PX781 at 13, 32 *WHY MARRIAGE MATTERS* (W.  
 22 Bradford Wilcox, *et al.*, ed. 2d ed. 2005).

23 75. Social science research indicates that, on average, children who grow up with one biological  
 24 parent and one step-parent experience worse outcomes than children who grow up with both  
 25 of their biological parents. Amicus Brief of the College of American Pediatricians. *See*  
 26 DIX26 at 6, Kristen Anderson Moore, *Child Trends, Marriage from a Child's Perspective*  
 27 (2002); DIX124 at 1, 4, McLanahan & Sandefur, *Growing Up with a Single Parent* (1994);  
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1 DIX21 at 890, Manning & Lamb; Jan. 15, 2010 Tr. of Hr'g at 1108:13-1110:8, 1114:22-  
2 1115:10, 1063:18-20, 1063:24-1045:1 (Lamb); DIX116 at 369, 392, Harper & McLanahan,  
3 Father Absence & youth Incarceration (2004); DIX133 at 15, Diana Russell, The Prevalence  
4 & Seriousness of Incestuous Abuse: Stepfathers vs. Biological Fathers (1984);PX781 at 14,  
5 20, 29, 31-32 WHY MARRIAGE MATTERS (W. Bradford Wilcox, *et al.*, ed. 2d ed. 2005).

6 76. Social science research indicates that, on average, children who grow up with one parent  
7 experience worse outcomes than children who grow up with both of their biological parents.  
8 Amicus Brief of the College of American Pediatricians. *See* DIX26 at 6, Moore, Marriage  
9 from a Child's Perspective; DIX124 at 1, 4, McLanahan & Sandefur, Growing Up with a  
10 Single Parent; DIX21 at 890, Manning & Lamb, Adolescent Well-Being; Jan. 15, 2010 Tr. of  
11 Hr'g at 1108:13-1109:16, 1109:15-1110:8, 1112:1-11 (Lamb); DIX116 at 369, Father  
12 Absence & Youth Incarceration; DIX103 at 543, 547, Amato, Parental Absence During  
13 Childhood and Depression in Later Life (1991); PX781 at 19, 29 WHY MARRIAGE MATTERS  
14 (W. Bradford Wilcox, *et al.*, ed. 2d ed. 2005); Jan 15, 2010 Tr. of Hr'g at 1077: 10-11; 1082:  
15 9-16; 1098: 3-8, 14-6; 1102: 1-7; 1102:23-1103:4; 1105:16-1106:3; 1107: 3-11; 1108: 15-22  
16 (Lamb).

17 77. Social science research indicates that children who do not live with their married, biological  
18 parents are at a heightened risk for health problems, mortality, and suicide. Amicus Brief of  
19 the College of American Pediatricians. PX781 at 23-24, 27, 32-33, W. BRADFORD WILCOX,  
20 ET AL., WHY MARRIAGE MATTERS: 26 CONCLUSIONS FROM THE SOCIAL SCIENCES (2d ed.  
21 2005).

22 78. Social science research indicates that children who do not live with their married, biological  
23 parents are at a heightened risk for problems related to drug and alcohol abuse. Amicus Brief  
24 of the College of American Pediatricians. DIX38 at 24-25, 27, 32-33, W. BRADFORD  
25 WILCOX, ET AL., WHY MARRIAGE MATTERS: 26 CONCLUSIONS FROM THE SOCIAL SCIENCES (2d  
26 ed. 2005).

27 79. Social science research indicates that children who do not live with their married, biological  
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1 parents are at a heightened risk for criminal behavior and incarceration. Amicus Brief of the  
2 College of American Pediatricians. *See* DIX116 at 369, 392, Harper & McLanahan, Father  
3 Abuse & Youth Incarceration; Tr. 1109:15-1110:8; DIX108 at 26-32; PX781 at 29, 32-33  
4 WHY MARRIAGE MATTERS (W. Bradford Wilcox, *et al.*, ed. 2d ed. 2005).

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6 80. Social science research indicates that children who do not live with their married, biological  
7 parents are at a heightened risk for intergenerational poverty. Amicus Brief of the College of  
8 American Pediatricians. DIX108 at 42-45, BLANKENHORN, FATHERLESS AMERICA; PX781 at  
9 19, WHY MARRIAGE MATTERS (W. Bradford Wilcox, *et al.*, ed. 2d ed. 2005).

10 81. Social science research indicates that children who do not live with their married, biological  
11 parents are at a heightened risk for problems in education and/or labor force contribution.  
12 Amicus Brief of the College of American Pediatricians. *See* Jan. 26, 2010 Tr. of Hr'g at  
13 2768:9-23 (Blankenhorn); DIX21 at 885, Manning & Lamb, Adolescent Well-Being in Co-  
14 Habiting, Married, & Single-Parent Families (2003); PX781 at 22, 32-33 WHY MARRIAGE  
15 MATTERS (W. Bradford Wilcox, *et al.*, ed. 2d ed. 2005).

16 82. Social science research indicates that children who do not live with their married, biological  
17 parents are at a heightened risk for sexual activity and early childbearing. Amicus Brief of the  
18 College of American Pediatricians. *See* DIX114 at 818, Bruce Ellis, Does Father Absence  
19 Place Daughters at Special Risk for Early Sexual Activity & Teen Pregnancy?; DIX108 at 45-  
20 48, FATHERLESS AMERICA; PX781 at 14, 17-18 WHY MARRIAGE MATTERS (W. Bradford  
21 Wilcox, *et al.*, ed. 2d ed. 2005).

22 83. Many of the negative outcomes associated with not being raised by married, biological  
23 parents become more pronounced (or at least more measurable) in adolescence or early  
24 adulthood. Amicus Brief of the College of American Pediatricians. *See* DIX108 at 47.

25 84. No meaningful conclusions can be drawn from social science research into the effect that  
26 being raised by same-sex parents has on children because of methodological flaws in the  
27 research. Amicus Brief of the College of American Pediatricians. *See* DIX131, Nock  
28 Affidavit; DIX734, Robert Lerner, et al, No Basis (2001); DIX779 at 423, Walter Schumm,

1 What was Really Learned from Tasker & Golombok's (1995) Study of Lesbian & Single  
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3 PX2299 at 4-5, M.J. Rosenfeld, Nontraditional Families and Childhood Progress Through  
4 School (2009); PX1394 at 168 & n.9, Stacey & Biblarz, (How) Does Sexual Orientation of  
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6 (Lamb); PX810 at 261, Steven Russell, The Economic Costs of Bullying at School ("Due to  
7 the closeted nature of this population, it is virtually impossible to attain a random sample.");  
8 *see also* DIX775 at 30, Sotirios Sarantakos, Children in Three Contexts (1996); PX778 at 526,  
9 528 Table 1, 529, J. Wainright, Delinquency, Victimization and Substance Use Among  
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13 PX1116 at 1189, 1895-97, Jennifer Wainright, Psychosocial Adjustment School Outcomes  
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15 68, Henry Bos et al, Child Adjustment and Parenting in Planned Lesbian-Led Families (2007);  
16 PX1101 at 1409, 1415, Children Raised in Fatherless Families From Infancy: a Follow-Up of  
17 Children in Lesbian and Single Heterosexual Mothers at Early Adolescence (2004); PX1115  
18 at 443, 445, 455, Psychosocial Adjustment Among Children Conceived via Donor  
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22 Infancy; PX1072 at 402, 407, 417, Chan et al., Division of Labor Among Lesbian and  
23 Heterosexual Parents (1998); PX1073, Golombok & Tasker, Do Parents Influence the Sexual  
24 Orientation of their Children? (1996); PX1061 at 554, Golombok et al., Children in Lesbian &  
25 Single-Parent Households: Psychosexual and Psychiatric Appraisal (1983); PX1075 at 1351,  
26 1357, Hall & Golombok, Donor Insemination: Child Development and Family Functioning in  
27 Lesbian Mother Families (1997); PX1060 at 784-85, 787, 788, 789, Golombok et al., Children  
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 2 Patterson, Families of the Lesbian Baby Boom (1995); PX1092 at 422, 434, Charlotte  
 3 Patterson, Lesbian Mothers and Their Children; PX1428 at 95, 105, Charlotte Patterson,  
 4 Families of the Lesbian Baby Boom (2001); PX1427 at 249-251, 264, 269, Charlotte  
 5 Patterson, Children of Lesbian and Gay Parents (1997); PX1079 at 391-92, 398, Patterson,  
 6 Families of the Lesbian Baby Boom (1998); PX2299 at 6, M.J. Rosenfeld, Nontraditional  
 7 Families and Childhood Progress Through School (2009); *see also* Jan. 15, 2010 Tr. of Hr'g  
 8 at 1181:20-1183:7, 1184:5-11 (Lamb); DIX1028 at 354-55, Monte N. Stewart, *Marriage*  
 9 *Facts*, 31 HARV. J.L. & PUB. POL'Y 313 (2008); DIX1032 at 255, SAME SEX MARRIAGE: PRO  
 10 AND CON, A READER (Andrew Sullivan, ed., 1997); PX2342 at 217, WILLIAM N. ESKRIDGE &  
 11 DARREN R. SPEDALE, GAY MARRIAGE: FOR BETTER OR FOR WORSE? WHAT WE'VE LEARNED  
 12 FROM THE EVIDENCE (2006).

- 13 85. The rarity and novelty of same-sex parenting means social scientists are currently unable to  
 14 draw meaningful conclusions about its impact on children. *See* DIX131, Nock Affidavit;  
 15 DIX734, Robert Lerner, et al, No Basis (2001); DIX779 at 423, Schumm, What Was Really  
 16 Learned From Tasker & Golombok's (1995) Study of Lesbian & Single Parent Mothers?  
 17 (2004); DIX749 at 876, 889, Demo & Cox, Families with young Children: A Review of  
 18 Research in the 1990s (2000); DIX1028 at 354-55, Monte N. Stewart, *Marriage Facts*, 31  
 19 HARV. J.L. & PUB. POL'Y 313 (2008).

20 **Effects of Extending Marriage to Same-Sex Couples**

- 21 86. Although it is impossible at this time to identify with absolute certainty all the negative  
 22 consequences that will flow from redefining marriage to include same sex couples, it is likely  
 23 that such a redefinition would harm the institution and the vital interests it serves. *See* Jan. 26,  
 24 2010 Tr. of Hr'g at 2780:16-2781:18 (Blankenhorn); *see also* Scott James, *Many Successful*  
 25 *Gay Marriages Share and Open Secret*, N.Y. Times, Jan. 28, 2010, available at  
 26 <http://www.nytimes.com/2010/01/29/us/29sfmetro.html?ref=us>; Jan. 13, 2010 Tr. of Hr'g at  
 27 616:22-617:13, 617:22-618:11, 622:9-19 (Peplau); DIX1233 at 396; PX1260 at 8, Badgett &  
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1 Sears, Putting a Price on Equality? The Impact of Allowing Same-Sex Couples to Marry on  
 2 California's Budget (2005); PX894 at 587, Carpenter & Gates, Gay and Lesbian Partnership:  
 3 Evidence from California (2008); DIX2558 at 4, U.S. Census Bureau, San Francisco County  
 4 2005-2008; DIX1287 at 2, Williams Institute Census Snapshot (2008); PX817 at 1, U.S.  
 5 Census Bureau American Communities Survey, 2005-2007; *see generally* citations for  
 6 Defendant-Intervenors' Proposed Finding of Fact Nos. 37, 87-115; Jan. 12, 2010 Tr. of Hr'g  
 7 254:17-22 (Cott); DIX1028 at 351, Monte N. Stewart, *Marriage Facts*, 31 HARV. J.L. & PUB.  
 8 POL'Y 313 (2008); DIX1032 at 171, SAME SEX MARRIAGE: PRO AND CON, A READER  
 9 (Andrew Sullivan, ed., 1997); DIX 81 at 172; DIX81 at 84, Jonathan Rauch, Gay Marriage;  
 10 PX1273 at 16-17, 42, 45, 132 M.V. LEE BADGETT, WHEN GAY PEOPLE GET MARRIED: WHAT  
 11 HAPPENS WHEN SOCIETIES LEGALIZE SAME-SEX MARRIAGE (2009).

12 87. Extending marriage to same-sex couples would change the public meaning of the institution  
 13 of marriage. *See* DIX1444 at 23, Joseph Raz, *Ethics in the Public Domain* (1994); DIX1434,  
 14 Nancy Polikoff, *We Will Get What We Asked For* (1993); DIX1020, Jeffrey Redding,  
 15 Proposition 8 and the Future of American Same-Sex Marriage Activism (2009); DIX1033,  
 16 Judith Stacey, *Gay and Lesbian Families: Queer Like Us* (1998); DIX1445, E.J. Graff,  
 17 *Retying the Knot* (1996); DIX1032 at 135, 191-92, 274-75, SAME SEX MARRIAGE: PRO AND  
 18 CON, A READER (Andrew Sullivan, ed., 1997); DIX1028 at 319-27, Monte N. Stewart,  
 19 *Marriage Facts*, 31 HARV. J.L. & PUB. POL'Y 313 (2008); Jan 12, 2010 Tr. of Hr'g at 313:2-4  
 20 (Cott).

21 88. The public meaning of the institution of marriage is important to society. DIX956 at 4, 175,  
 22 DAVID BLANKENHORN, *THE FUTURE OF MARRIAGE* (2007); PX1746 at 3, NANCY F. COTT,  
 23 *PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION* (2002); DIX1028 at 320-323, 366,  
 24 Monte N. Stewart, *Marriage Facts*, 31 HARV. J.L. & PUB. POL'Y 313 (2008); PX781 at 9,  
 25 WHY MARRIAGE MATTERS (W. Bradford Wilcox, *et al.*, ed. 2d ed. 2005); Jan 12, 2010 Tr. of  
 26 Hr'g at 311:24-312:2 (Cott); PX1273 at 7, M.V. LEE BADGETT, WHEN GAY PEOPLE GET  
 27 MARRIED: WHAT HAPPENS WHEN SOCIETIES LEGALIZE SAME-SEX MARRIAGE (2009).  
 28

- 1 89. A change in the public meaning of marriage will have real world consequences for society.  
2 See Jan. 26, 2010 Tr. of Hr'g at 2777:9-15 (Blankenhorn); Jan. 12, 2010 Tr. of Hr'g at  
3 287:10-288: 13, 311:24-312:2 (Cott); DIX1028 at 320-23, Monte N. Stewart, *Marriage Facts*,  
4 31 HARV. J.L. & PUB. POL'Y 313 (2008).
- 5 90. It will take many years, and possibly decades, for all of the consequences of a change in the  
6 public meaning of marriage to manifest themselves.” Jan. 26, 2010 Tr. of Hr'g 2780:16-  
7 2781:18 (Blankenhorn); DIX956 at 199, DAVID BLANKENHORN, THE FUTURE OF MARRIAGE  
8 (2007); DIX81 at 84, Rauch, Gay Marriage.
- 9 91. Because marriage is a complex institution, it may never be possible to isolate the causal  
10 consequences of same sex marriage on marriage rates, out of wedlock birth rates, divorce  
11 rates, and other aspects of family relations that are of vital importance to society. See, e.g.,  
12 Jan. 12, 2010 Tr. of Hr'g at 311:7-313:4 (Cott); cf. *id.* at 327:12-14; 337:21-25; PX1308 at 3,  
13 22, STEVENSON & WOLFERS, MARRIAGE & DIVORCE: CHANGES AND THEIR DRIVING FORCES  
14 (2007); DIX956 at 232-34, DAVID BLANKENHORN, THE FUTURE OF MARRIAGE (2007); Jan 12,  
15 2010 Tr. of Hr'g at 221:2-3; 268:11-12 (Cott); PX1273 at 77, 80, 82, M.V. LEE BADGETT,  
16 WHEN GAY PEOPLE GET MARRIED: WHAT HAPPENS WHEN SOCIETIES LEGALIZE SAME-SEX  
17 MARRIAGE (2009).
- 18 92. Extending marriage to same-sex couples would entail the further, and in some respects full,  
19 deinstitutionalization of marriage. See Jan. 26, 2010 Tr. of Hr'g at 2773:10-2774:19, 2776:7-  
20 10, 2776:16-19, 2777:22-2778:10, 2778:20-2779:13, 2780:16-2781:18 (Blankenhorn);  
21 PX2936, David Blankenhorn, *Defining Marriage Down* (2007); DIX49 at 850, Andrew J.  
22 Cherlin, *The Deinstitutionalization of American Marriage* (2004); DIX60 at 26, Norval D.  
23 Glenn, *The Struggle for Same-Sex Marriage* (2004); DIX49 at 848; Jan. 12, 1010 Tr. of Hr'g  
24 at 288:14-299, 315:11-318: 2 (Cott); DIX1028 at 351, Monte N. Stewart, *Marriage Facts*, 31  
25 HARV. J.L. & PUB. POL'Y 313 (2008); DIX1032 at 281, 306 SAME SEX MARRIAGE: PRO AND  
26 CON, A READER (Andrew Sullivan, ed., 1997); PX1273 at 4, M.V. LEE BADGETT, WHEN GAY  
27 PEOPLE GET MARRIED: WHAT HAPPENS WHEN SOCIETIES LEGALIZE SAME-SEX MARRIAGE  
28

1 (2009).

- 2 93. Extending marriage to same-sex couples would contribute to significantly changing the legal  
3 and public meaning of marriage from an institution with defined legal and social structure and  
4 purposes to a right of personal expression. DIX956 at 141, 205, DAVID BLANKENHORN, THE  
5 FUTURE OF MARRIAGE (2007); DIX60 at 26, Norval D. Glen, *The Struggle for Same-Sex*  
6 *Marriage*, 41 SOC'Y 25 (2004); DIX1444 at 23, Joseph Raz, *Duties of Well-Being*, in ETHICS  
7 IN THE PUBLIC DOMAIN: ESSAYS IN THE MORALITY OF LAW AND POLITICS (Joseph Raz ed.,  
8 1994); DIX1033 at 155, Judith Stacey, *Gay and Lesbian Families: Queer Like Us*, in ALL  
9 OUR FAMILIES: NEW POLICIES FOR A NEW CENTURY (Mary Ann Mason et al., eds., 2003);  
10 DIX1032 at 55, SAME SEX MARRIAGE: PRO AND CON, A READER (Andrew Sullivan, ed.,  
11 1997); PX1273 at 31, 88, 93, 113-14 M.V. LEE BADGETT, WHEN GAY PEOPLE GET MARRIED:  
12 WHAT HAPPENS WHEN SOCIETIES LEGALIZE SAME-SEX MARRIAGE (2009).
- 13 94. Extending marriage to same-sex couples would likely lead to the further erosion of the  
14 institution of marriage, as reflected primarily in lower marriage rates, higher rates of divorce  
15 and non-marital cohabitation, and more children raised outside of marriage and separated  
16 from at least one natural parent. *See* Jan. 26, 2010 Tr. of Hr'g at 2782:7-20 (Blankenhorn);  
17 *see also* DIX1887, Netherlands marriage rate data; Jan. 19, 2010 Tr. of Hr'g at 1381:23-24,  
18 1384:2-7, 1443:24-1444:14, 1448:2-17, 1450:12-1451:2 (Badgett); DIX2639, Netherlands  
19 unmarried households with children data; DIX2426, Netherlands single-parent family data;  
20 PX805; Office of the County Clerk, Marriage Licenses and Ceremony Appointments; Jan. 14,  
21 2010 Tr. of Hr'g at 789:18-22 (Egan); DIX956 at 3, 152, 205, DAVID BLANKENHORN, THE  
22 FUTURE OF MARRIAGE (2007); DIX1032 at 181, SAME SEX MARRIAGE: PRO AND CON, A  
23 READER (Andrew Sullivan, ed., 1997); Finding of Fact 24; PX2866, Statistics Netherlands,  
24 Size and composition of household, position in the household, 1 January.
- 25 95. Extending marriage to same-sex couples would result in explicit public endorsement of the  
26 idea that a child does not need both a mother and a father. This would likely result in fewer  
27 children growing up with fathers. *See* Jan. 26, 2010 Tr. of Hr'g at 2782:21-2783:20  
28

1 (Blankenhorn); DIX956 at 205, DAVID BLANKENHORN, THE FUTURE OF MARRIAGE (2007).

- 2 96. Extending marriage to same-sex couples would weaken in the culture and eradicate in the law  
3 the idea that a natural mother married to a natural father is generally the best environment for  
4 raising a child. This would likely result in fewer children being raised by their own married  
5 parents. DIX956 at 3, 152, 205-06 DAVID BLANKENHORN, THE FUTURE OF MARRIAGE (2007).
- 6 97. Extending marriage to same-sex couples would weaken the idea that each parent—both  
7 mother and father—makes a unique contribution to parenting. This would likely result in  
8 fewer men believing it is important for them to be active, hands-on parents of their children.  
9 DIX956 at 196-97, 206, DAVID BLANKENHORN, THE FUTURE OF MARRIAGE (2007); Jan 15,  
10 2010 Tr. of Hr’g at 1057:22-1058:19; 1064: 24-6; 1065: 20-24; 1068:15-21; 1071: 7-10;  
11 1073: 6-9; 1074: 7-9; 1074: 18-19; 1074: 21-1075: 3; 1075:12-18; 1076: 12-15; 1077: 13-18;  
12 1077: 20-25; 1078: 3-8; 1079: 17-21; 1080:23-1081: 5; 1082: 8-24; 1098 3-8, 14-16; 1102: 1-  
13 7; 1102:23-1103:4 (Lamb).
- 14 98. Extending marriage to same-sex couples would contribute to replacing the norm of the natural  
15 parent with that of the legal parent, likely increasing the disjuncture between the biological  
16 and legal-social dimensions of parenthood and increasing the power of the state to determine  
17 who is entitled to parental rights. *See* Jan. 26, 2010 Tr. of Hr’g at 2784:12-16 (Blankenhorn);  
18 DIX956 at 206, DAVID BLANKENHORN, THE FUTURE OF MARRIAGE (2007).
- 19 99. Extending marriage to same-sex couples could increase the social acceptability of other  
20 alternative forms of intimate relationships, such as polygamy and polyamory. National  
21 Organization for Marriage at 14. National Organization for Marriage at 14. *See* Jan. 26, 2010  
22 Tr. of Hr’g at 2784:5-2785:20 (Blankenhorn); Jan 12, 2010 Tr. of Hr’g at 320:8-11 (Cott);  
23 PX1746 at 213, NANCY COTT, PUBLIC VOWS (2000); PX2342 at 17, WILLIAM N. ESKRIDGE &  
24 DARREN R. SPEDALE, GAY MARRIAGE: FOR BETTER OR FOR WORSE? WHAT WE’VE LEARNED  
25 FROM THE EVIDENCE (2006).
- 26 100. Extending marriage to same-sex couples would increase the likelihood that the recognition as  
27 marriages of other alternative forms of intimate relationships, such as polyamory and  
28

1 polygamy, will become a judicially enforceable legal entitlement. DIX956 at 3, 138, DAVID  
2 BLANKENHORN, THE FUTURE OF MARRIAGE (2007).

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4 101. Extending marriage to same-sex couples would legally enshrine the principle that sexual  
5 orientation, as opposed to sexual embodiment is a valid determinant of the structure and  
6 meaning of marriage. DIX956 at 150, 207 DAVID BLANKENHORN, THE FUTURE OF MARRIAGE  
7 (2007).
- 8 102. Extending marriage to same-sex couples would increase the likelihood that bisexual  
9 orientation could form a basis for a legal entitlement to group marriage. DIX956 at 178, 207,  
10 DAVID BLANKENHORN, THE FUTURE OF MARRIAGE (2007).
- 11 103. Extending marriage to same-sex couples would likely result in all relevant branches and  
12 agencies of government formally replacing the idea that marriage centers on opposite-sex  
13 bonding and male-female procreation with the idea that marriage is merely a private  
14 relationship between consenting adults. DIX956 at 207, DAVID BLANKENHORN, THE FUTURE  
15 OF MARRIAGE (2007).
- 16 104. Extending marriage to same-sex couples could end or significantly dilute the public  
17 socialization of heterosexual young people into a marriage culture. DIX956 at 207, DAVID  
18 BLANKENHORN, THE FUTURE OF MARRIAGE (2007); DIX81 at 81-82, Rauch, Gay Marriage  
19 (2004).
- 20 105. Extending marriage to same-sex couples could cause many Americans opposed to same-sex  
21 marriage to abandon the public institutions that promote it, possibly resulting in the  
22 weakening of those institutions and further rending our common culture. Jan. 12, 2010 Tr. of  
23 Hr'g at 287:2-3 (Cott); DIX956 at 207, DAVID BLANKENHORN, THE FUTURE OF MARRIAGE  
24 (2007).
- 25 106. Extending marriage to same-sex couples would render the traditional definition of marriage  
26 embraced by millions of Christian, Jewish, and Muslim Americans no longer legally or  
27 socially acceptable, thereby forcing many of these Americans to choose between being a  
28 believer and being a good citizen. DIX956 at 207-8, DAVID BLANKENHORN, THE FUTURE OF

1 MARRIAGE (2007).

- 2 107. Extending marriage to same-sex couples could lead to new state-imposed restrictions of First  
3 Amendment freedoms. Beckett Fund Amicus Brief. DIX956 at 208, DAVID BLANKENHORN,  
4 THE FUTURE OF MARRIAGE (2007).
- 5 108. Extending marriage to same-sex couples could curtail the religious liberty of citizens whose  
6 religious beliefs lead them to support the traditional definition of marriage. Beckett Fund  
7 Amicus Brief. PX0055 at 1-2, ProtectMarriage.com press release re launch of first television  
8 commercial "Whether You Like It or Not,,"; PX0123 at 2, ProtectMarriage.com press release:  
9 "Claims By No On Prop 8 Grow More Desperate As Polling Numbers Sink," October 30,  
10 2008; PX2342 at 122-28, WILLIAM N. ESKRIDGE & DARREN R. SPEDALE, GAY MARRIAGE:  
11 FOR BETTER OR FOR WORSE? WHAT WE'VE LEARNED FROM THE EVIDENCE (2006).
- 12 109. Extending marriage to same-sex couples could force some religious organizations that  
13 currently receive public support to cease providing charitable services to the poor and others.  
14 Beckett Fund Amicus Brief. DIX956 at 208, DAVID BLANKENHORN, THE FUTURE OF  
15 MARRIAGE (2007) ("Adopting same-sex marriage might mean that some religion  
16 organizations now receiving public support to provide services to the poor and to others  
17 would no longer provide them, due to state disqualification over refusing programmatically to  
18 endorse same-sex marriage.").
- 19 110. Extending marriage to same-sex couples could contribute to the public belief that marriage is  
20 politicized. DIX956 at 208, DAVID BLANKENHORN, THE FUTURE OF MARRIAGE (2007); Jan  
21 15, 2010 Tr. of Hr'g at 1247:9-13 (Zia); PX1273 at 31, 42, 93 M.V. LEE BADGETT, WHEN  
22 GAY PEOPLE GET MARRIED: WHAT HAPPENS WHEN SOCIETIES LEGALIZE SAME-SEX  
23 MARRIAGE (2009).
- 24 111. Extending marriage to same-sex couples could lead unmarried people to increasingly—and  
25 logically—complain that the legal and practical benefits currently attached to marriage  
26 properly belong to everyone. DIX956 at 208, DAVID BLANKENHORN, THE FUTURE OF  
27 MARRIAGE (2007).
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112. Extending marriage to same-sex couples would seriously threaten the functions and symbolism of marriage, thereby posing a risk to children and the demographic continuity of society. DIX1046, Joseph Chamie, *Can Government's Make a Difference?* (2004); DIX956 at 197, DAVID BLANKENHORN, *THE FUTURE OF MARRIAGE* (2007).
113. Extending marriage to same-sex couples would send a message to men that they have no significant place in family life, weakening the connection of fathers to their children. DIX956 at 196, DAVID BLANKENHORN, *THE FUTURE OF MARRIAGE* (2007).
114. Extending marriage to same-sex couples would move marriage further away from its grounding in reproduction and the intergenerational cycle. Jan. 12, 1010 Tr. of Hr'g at 310:2-6 (Cott); DIX956 at 168-69, DAVID BLANKENHORN, *THE FUTURE OF MARRIAGE* (2007); DIX1032 at 274-75, *SAME SEX MARRIAGE: PRO AND CON, A READER* (Andrew Sullivan, ed., 1997).
115. Extending marriage to same-sex couples would likely lead to changes in the laws governing marriage and parallel institutions in a manner that undercuts the effectiveness of marriage in achieving its traditional purposes. DIX956 at 196, 201 DAVID BLANKENHORN, *THE FUTURE OF MARRIAGE* (2007).

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**Motivations for Supporting and Opposing Proposition 8**

116. Californians voted for Proposition 8 because they thought it would strengthen the institution of marriage. DX1475, David Blankenhorn, *Protecting Marriage to Protect Children*; Jan. 13, 2010 Tr. of Hr'g at 509:12-510:12 (Chauncey); DIX 81 at 7, JONATHAN RAUCH, *GAY MARRIAGE: WHY IT IS GOOD FOR GAYS, GOOD FOR STRAIGHTS, & GOOD FOR AMERICA* (2004); PX0001 at 56-57, *Voter Information Guide*; DIX1496, "Voting Yes on 8 Restores Traditional Marriage" (Radio Ad); PX0097, "Letter to Supporters" (Video ad); Findings of Fact 21, 22, 26, 86-94.
117. Californians voted Proposition 8 because they thought it would strengthen traditional families. DX1475, David Blankenhorn, *Protecting Marriage to Protect Children*; Jan. 12, 2010 Tr. of Hr'g at 319: 4-10 (Cott); DIX1412 at 1, *61 Percent Brochure - Protectmarriage.com*; PX0079,

1 ProtectMarriage.com Asian American Community newsletter & Voter Guide.

2 118. Californians voted for Proposition 8 because they thought it would benefit children. DX1475,  
3 David Blankenhorn, Protecting Marriage to Protect Children; DIX81 at 7, RAUCH, GAY  
4 MARRIAGE; Jan. 12, 2010 Tr. of Hr'g at 509:12-510:12 (Chauncey); PX0001 at 56, Voter  
5 Information Guide; DIX1495, "Everything to do with Schools" MP3 (Radio Ad); DIX1494,  
6 "Whether You Like It or Not" MP3 file (Radio Ad); PX0091, "Everything to do with  
7 Schools" (TV ad); PX0095, "Finally the Truth" (TV ad); PX0097, "Letter to Supporters"  
8 (Video Ad); DIX1412 at 1, 61 Percent Brochure - Protectmarriage.com; DIX1495,  
9 "Everything to do with Schools" MP3 (Radio Ad); DIX1494, "Whether You Like It or Not"  
10 MP3 file (Radio Ad); PX0091, "Everything to do with Schools" (TV ad); PX0095, "Finally  
11 the Truth" (TV ad); PX0097, "Letter to Supporters" (Video Ad); PX0098,  
12 ProtectMarriage.com Television Ad entitled "Same-Sex Marriage, Have You Really Thought  
13 About It?"; PX0129, Letter from Andrew Pugno re substantiation of "Everything to Do With  
14 Schools" ad, October 17, 2008; PX0131, Letter from Andrew Pugno re substantiation of  
15 "Have You Thought About It?" ad, October 27, 2008; PX0130, Letter from Andrew Pugno re  
16 substantiation of "Finally, the Truth" ad, October 24, 2008; PX0132, Letter from Andrew  
17 Pugno re substantiation of "It's Already Happened," ad, October 8, 2008; PX0133, Letter from  
18 Pugno re substantiation of "Whether You Like it Or Not," ad, September 28, 2008; PX0118,  
19 ProtectMarriage.com video showing Wirthlin parents from Massachusetts opposing same-sex  
20 marriage on YouTube; PX0079, ProtectMarriage.com Asian American Community newsletter  
21 & Voter Guide; PX0080, ProtectMarriage.com Asian American Community newsletter &  
22 Voter Guide; PX0082, California Republican Assembly newsletter re its support of Prop 8,  
23 November 2008; PX0102, ProtectMarriage.com flyer "Famous Lies,"; PX0136,  
24 ProtectMarriage.com flyer showing Massachusetts couple against teaching same-sex marriage  
25 in schools; PX0138, ProtectMarriage.com flyer: "Restoring and Protecting Marriage: Yes on  
26 Prop 8,"; PX0562, ProtectMarriage.com, "Honest Answers to Questions Many Californians  
27 Are Asking About Proposition 8"; PX1529, ProtectMarriage.com Prop 8 Flyer; PX0012,  
28



1 Church Bulletin Pamphlet re Yes on 8; PX2151, Restoring and Protecting Marriage (African  
 2 American); PX0027, ProtectMarriage.com, Prop 8 FAQs; PX0119, ProtectMarriage.com Fact  
 3 Sheet; Jan. 19, 2010 Tr. of Hr'g 1302:4-17 (Sanders); Jan. 21, 2010 Tr. of Hr'g 1780:24-  
 4 1781:3 (Segura).

5 119. Californians voted for Proposition 8 because they thought the issue of extending marriage to  
 6 same-sex couples should be decided by the people, not by the courts; Jan. 13, 2010 Tr. of Hr'g  
 7 at 509:12-510:12 (Chauncey); DIX81 at 7, RAUCH, GAY MARRIAGE; PX0001 at 56-57, Voter  
 8 Information Guide; DIX1494, "Whether You Like It or Not" MP3 file (Radio Ad); PX0098,  
 9 ProtectMarriage.com Television Ad entitled "Same-Sex Marriage, Have You Really Thought  
 10 About It?"; PX0563 at 2, ProtectMarriage.com, "Myths and Facts about Proposition 8,";  
 11 DIX1412, 61 Percent Brochure - Protectmarriage.com; PX0063 at 1, ProtectMarriage.com  
 12 media advisory: "Nationally Acclaimed Pastor Rick Warren Announces Support For Prop. 8,"  
 13 October 24, 2008; PX0069 at 1, ProtectMarriage.com press release: "Ron Prentice, Chairman  
 14 of ProtectMarriage.com, Says California Voters Will Decide to Reaffirm Traditional  
 15 Definition of Marriage in California,"; PX1565 at 1, News Release, "First Graders Taken To  
 16 San Francisco City Hall For Gay Wedding"; DIX1494, "Whether You Like It or Not" MP3  
 17 file (Radio Ad); PX0098, ProtectMarriage.com Television Ad entitled "Same-Sex Marriage,  
 18 Have You Really Thought About It?"; PX0079, ProtectMarriage.com Asian American  
 19 Community newsletter & Voter Guide; PX0082, California Republican Assembly newsletter  
 20 re its support of Prop 8, November 2008; PX0562, ProtectMarriage.com, "Honest Answers to  
 21 Questions Many Californians Are Asking About Proposition 8"; PX1529,  
 22 ProtectMarriage.com Prop 8 Flyer; PX0012, Church Bulletin Pamphlet re Yes on 8; PX2151,  
 23 Restoring and Protecting Marriage (African American); PX0027, ProtectMarriage.com, Prop  
 24 8 FAQs; PX0119, ProtectMarriage.com Fact Sheet; PX1557 at 1, Protect Marriage Campaign  
 25 Update (Oct. 8, 2008); Jan. 21, 2010 Tr. of Hr'g 1773:10-13 (Segura).

26 120. Californians voted for Proposition 8 because they thought it would further the interests that  
 27 have been identified by Proponents in this litigation. DX1475, David Blankenhorn, Protecting  
 28

1 Marriage to Protect Children; Jan. 13, 2010 Tr. of Hr'g at 509:12-510:12 (Chauncey); DIX 81  
2 at 7, RAUCH, GAY MARRIAGE; PX0001 at 56, Voter Information Guide; PX0563,  
3 ProtectMarriage.com, "Myths and Facts about Proposition 8,,"; DIX1494, "Whether You Like  
4 It or Not" MP3 file (Radio Ad); DIX1495 (Yes on 8 "Everything to do with Schools" radio  
5 ad); DIX1496 (Yes on 8 "Voting Yes on 8 Restores Traditional Marriage" radio ad); PX0097,  
6 "Letter to Supporters" (Video Ad); PX0095, "Finally the Truth" (TV ad); PX0563 at 2,  
7 ProtectMarriage.com, "Myths and Facts about Proposition 8,,"; PX0063, ProtectMarriage.com  
8 media advisory: "Nationally Acclaimed Pastor Rick Warren Announces Support For Prop. 8,"  
9 October 24, 2008; PX1555 at 1, Campaign Update 8/1/08; DIX1494, "Whether You Like It or  
10 Not" MP3 file (Radio Ad); DIX1495 (Yes on 8 "Everything to do with Schools" radio ad);  
11 DIX1494 (Yes on 8 "Whether You Like It or Not" radio ad); DIX1496, Yes on 8 "Voting Yes  
12 on 8 Restores Traditional Marriage" radio ad; PX0097, "Letter to Supporters" (Video Ad);  
13 PX0095, "Finally the Truth" (TV ad); PX0098, ProtectMarriage.com Television Ad entitled  
14 "Same-Sex Marriage, Have You Really Thought About It?"; PX0129, Letter from Andrew  
15 Pugno re substantiation of "Everything to Do With Schools" ad, October 17, 2008; PX0131,  
16 Letter from Andrew Pugno re substantiation of "Have You Thought About It?" ad, October  
17 27, 2008; PX0130, Letter from Andrew Pugno re substantiation of "Finally, the Truth" ad,  
18 October 24, 2008; PX0132, Letter from Andrew re substantiation of "It's Already Happened,"  
19 ad, October 8, 2008; PX0133, Letter from Pugno re substantiation of "Whether You Like it Or  
20 Not," ad, September 28, 2008; PX0025, Yes on 8 Brochure Featuring Obama; PX0079,  
21 ProtectMarriage.com Asian American Community newsletter & Voter Guide; PX0080,  
22 ProtectMarriage.com Asian American Community newsletter & Voter Guide; PX0082,  
23 California Republican Assembly newsletter re its support of Prop 8, November 2008;  
24 PX0088, CaliforniaVotebyMail.com: Voter Guide for Police; PX0087,  
25 CaliforniaVotebyMail.com: Voter Guide for Police; PX0102, ProtectMarriage.com flyer  
26 "Famous Lies,,"; PX0136, ProtectMarriage.com flyer showing Massachusetts couple against  
27 teaching same-sex marriage in schools; PX0138, ProtectMarriage.com flyer: "Restoring and  
28

1 Protecting Marriage: Yes on Prop 8,"; PX0562, ProtectMarriage.com, "Honest Answers to  
 2 Questions Many Californians Are Asking About Proposition 8"; PX1529,  
 3 ProtectMarriage.com Prop 8 Flyer; PX0012, Church Bulletin Pamphlet re Yes on 8; PX2151,  
 4 Restoring and Protecting Marriage (African American); PX0027, ProtectMarriage.com, Prop  
 5 8 FAQs; PX0119, ProtectMarriage.com Fact Sheet; Jan. 19, 2010 Tr. of Hr'g 1302:4-17,  
 6 1303:21-25, 1304:3-7 (Sanders); Jan. 13, 2010 Tr. of Hr'g at 522:21-25; 523-525:3  
 7 (Chauncey); PX1557 at 1; Protect Marriage Campaign Update (Oct. 8, 2008); Jan. 21, 2010  
 8 Tr. of Hr'g at 1780:24-1781:3 (Segura).

9  
 10 121. Californians who voted on Proposition 8 were aware of the vital interests furthered by the  
 11 traditional definition of marriage. DX1475, David Blankenhorn, Protecting Marriage to  
 12 Protect Children; Jan. 12, 2010 Tr. of Hr'g at 318:12-14 (Cott); Jan. 13, 2010 Tr. of Hr'g at  
 13 509:12-510:12 (Chauncey); DIX 81 at 7, RAUCH, GAY MARRIAGE; PX0001 at 56, Voter  
 14 Information Guide; DIX1494, "Whether You Like it Or Not" MP3 file (Radio Ad); DIX1496  
 15 (Yes on 8 "Voting Yes on 8 Restores Traditional Marriage" radio ad); PX0097, "Letter to  
 16 Supporters" (Video Ad); PX0095, "Finally the Truth" (TV ad); DIX1494, "Whether You Like  
 17 it Or Not" MP3 file (Radio Ad); PX0098, ProtectMarriage.com Television Ad entitled "Same-  
 18 Sex Marriage, Have You Really Thought About It?"; PX0025, Yes on 8 Brochure Featuring  
 19 Obama; PX0079, ProtectMarriage.com Asian American Community newsletter & Voter  
 20 Guide; PX0082, California Republican Assembly newsletter re its support of Prop 8,  
 21 November 2008; PX0087, CaliforniaVotebyMail.com: Voter Guide for Police; PX0088,  
 22 CaliforniaVotebyMail.com: Voter Guide for Police; PX0138, ProtectMarriage.com flyer:  
 23 "Restoring and Protecting Marriage: Yes on Prop 8,"; PX0562, ProtectMarriage.com, "Honest  
 24 Answers to Questions Many Californians Are Asking About Proposition 8"; PX1529,  
 25 ProtectMarriage.com Prop 8 Flyer; PX0012, Church Bulletin Pamphlet re Yes on 8; PX2151,  
 26 Restoring and Protecting Marriage (African American); PX0027, ProtectMarriage.com, Prop  
 27 8 FAQs; PX0119, ProtectMarriage.com Fact Sheet; PX9 at 1-2; Letter from Dennis  
 28 Hollingsworth, Official Proponent of Proposition 8, re "Restore Traditional Marriage – Yes on

1 8" (Oct. 9, 2008); PX75 at 1-2; Letter from Dennis Hollingsworth, Official Proponent of  
 2 Proposition 8, re Help needed by the Prop. 8 campaign to restore traditional marriage (Sept.  
 3 2008); PX323 at 1-2; Susan Jones, *Summary of California Marriage Amendment 'Unfair'*,  
 4 CNSNews.com, July 20, 2008.

5 122. Californians voted for Proposition 8 in reaction against the tactics—including violence and  
 6 intimidation—engaged in by Proposition 8 opponents. DIX1636, Barbara Giasoni, Anti-Prop  
 7 8 Graffiti Painted in Fullerton; DIX1609, Prop 8 Supporter Violently Attacked for  
 8 Distributing Lawn Signs, Int'l Business Times; PX0097, "Letter to Supporters" (Video Ad);  
 9 PX1567, News Release, "Opponents Of Traditional Marriage Engage In Dirty Tricks";  
 10 DIX1523, Press Release - Condemnation Grows for Offensive No on 8 TV Ad,  
 11 Protectmarriage.com (November 4, 2008); DIX1524, Press Release - Outrageous No on 8 TV  
 12 Ad is Slammed for Religious Bigotry and Intolerance, Protectmarriage.com (November 4,  
 13 2008); DIX1525, Press Release - Catholic Conference Criticizes Outrageous No on 8 TV  
 14 Commercial, Protectmarriage.com (November 3, 2008); DIX1541, Press Release - Opponents  
 15 Of Traditional Marriage Engage In More Dirty Tricks; Supporters Create A YouTube Video,  
 16 Protectmarriage.com (October 17, 2008); DIX1542, Press Release - PROP. 8 SUPPORTER  
 17 VIOLENTLY ATTACKED FOR DISTRIBUTING LAWN SIGNS, Protectmarriage.com  
 18 (October 13, 2008); PX0097, "Letter to Supporters" (Video Ad); Jan. 19, 2010 Tr. of Hr'g at  
 19 1309:22-1310:5 (Sanders); Jan. 21, 2010 Tr. of Hr'g at 1793:4-18, 1800:16-24 (Segura);  
 20 DIX458; Thomas M. Messner, Heritage Found., *The Price of Prop 8* (2009).

21 123. Californians voted for Proposition 8 because they thought it would protect the ability of  
 22 parents to direct the education and upbringing of their children; PX0001 at 56, 57 Voter  
 23 Information Guide; PX0563, ProtectMarriage.com, "Myths and Facts about Proposition 8,";  
 24 DIX1412, 61 Percent Brochure - Protectmarriage.com; PX0008 at 1, Media Advisory, "New  
 25 YouTube Video Clarifies Yes on 8 Proponents' Concerns,"; PX0055, ProtectMarriage.com  
 26 press release re launch of first television commercial "Whether You Like It or Not,"; PX0056  
 27 at 2, ProtectMarriage.com press release: Text of Yes on 8's TV Ad Which Began Airing  
 28

1 Wednesday: "It's Already Happened," October 9, 2008; PX0123 at 1, ProtectMarriage.com  
2 press release: "Claims By No On Prop 8 Grow More Desperate As Polling Numbers Sink,"  
3 October 30, 2008; PX1565, News Release, "First Graders Taken To San Francisco City Hall  
4 For Gay Wedding"; PX1570, News Release, "Protect Marriage – Yes on Prop. 8 Launches  
5 Campaign Theme for Latinos: Family is Sacred – Protect Children’s Education"; PX0040,  
6 ProjectMarriage.com: "Watch Our New Ad," October 7, 2008; PX0041, ProjectMarriage.com:  
7 School-sponsored field trip to gay wedding, October 11, 2008; PX0042, ProjectMarriage.com:  
8 New ad featuring Massachusetts couple who don't want children to be taught about gay  
9 marriage, October 21, 2008; DIX1495, "Everything to do with Schools" MP3 (Radio Ad);  
10 DIX1494, "Whether You Like It or Not" MP3 file (Radio Ad); PX0091, "Everything to do  
11 with Schools" (TV ad); PX0095, "Finally the Truth" (TV ad) (discussing how legalizing  
12 same-sex marriage will affect public school curriculum); PX0097, "Letter to Supporters"  
13 (Video Ad); PX0098, ProtectMarriage.com Television Ad entitled "Same-Sex Marriage, Have  
14 You Really Thought About It?"; PX0129, Letter from Andrew Pugno re substantiation of  
15 "Everything to Do With Schools" ad, October 17, 2008; PX0131, Letter from Andrew Pugno  
16 re substantiation of "Have You Thought About It?" ad, October 27, 2008; PX0130, Letter  
17 from Andrew Pugno re substantiation of "Finally, the Truth" ad, October 24, 2008; PX0132,  
18 Letter from Andrew Pugno re substantiation of "It's Already Happened," ad, October 8, 2008;  
19 PX0133, Letter from Pugno re substantiation of "Whether You Like it Or Not," ad, September  
20 28, 2008; PX0118, ProtectMarriage.com video showing Wirthlin parents from Massachusetts  
21 opposing same-sex marriage on YouTube; PX0080, ProtectMarriage.com Asian American  
22 Community newsletter & Voter Guide; PX0082, California Republican Assembly newsletter  
23 re its support of Prop 8, November 2008; PX0102, ProtectMarriage.com flyer "Famous Lies,";  
24 PX0126, ProtectMarriage.com flyer calling Jack O'Connell a liar, 2008; PX0136,  
25 ProtectMarriage.com flyer showing Massachusetts couple against teaching same-sex marriage  
26 in schools; PX0138, ProtectMarriage.com flyer: "Restoring and Protecting Marriage: Yes on  
27 Prop 8,"; PX0562, ProtectMarriage.com, "Honest Answers to Questions Many Californians  
28

1 Are Asking About Proposition 8”; PX1529, ProtectMarriage.com Prop 8 Flyer; PX0012,  
 2 Church Bulletin Pamphlet re Yes on 8; PX2151, Restoring and Protecting Marriage (African  
 3 American); PX0027, ProtectMarriage.com, Prop 8 FAQs; PX0119, ProtectMarriage.com Fact  
 4 Sheet; PX15, Video: Finally the Truth; Jan. 19, 2010 Tr. of Hr’g at 1306:11-15, 1306:20-22  
 5 (Sanders); PX1558 at 1; News Release: Protect Marriage - Yes on Prop 8 Campaign Releases  
 6 Second Television Commercial: “Its Already Happened” (Oct. 8, 2008); PX323 at 1-2; Susan  
 7 Joines, *Summary of California Marriage Amendment 'Unfair'*, CNSNews.com, July 20,  
 8 2008; PX9 at 1-2; Letter from Dennis Hollingsworth, Official Proponent of Proposition 8, re  
 9 "Restore Traditional Marriage – Yes on 8" (Oct. 9, 2008); PX49 at 1; Email from Ron  
 10 Prentice to Prop. 8 supporters and link to Bella Verastegui's video endorsing Prop 8 (Nov. 3,  
 11 2008); PX1557, Protect Marriage Campaign Update (Oct. 8, 2008); Jan. 13, 2010 Tr. of Hr’g  
 12 at 526:4-528:19, 530:4-6 (Chauncey).

- 13 124. Californians voted for Proposition 8 because they thought it would protect their religious  
 14 liberty and other First Amendment rights. *See* Amicus Brief of the Beckett Fund. PX0139,  
 15 ProtectMarriage.com sign; DIX1494, “Whether You Like it Or Not” MP3 file (Radio Ad);  
 16 PX0098, ProtectMarriage.com Television Ad entitled “Same-Sex Marriage, Have You Really  
 17 Thought About It?”; PX0129, Letter from Andrew Pugno re substantiation of "Everything to  
 18 Do With Schools" ad, October 17, 2008; PX0131, Letter from Andrew Pugno re  
 19 substantiation of "Have You Thought About It?" ad, October 27, 2008; PX0133, Letter from  
 20 Pugno re substantiation of "Whether You Like it Or Not," ad, September 28, 2008; PX0082,  
 21 California Republican Assembly newsletter re its support of Prop 8, November 2008; PX15,  
 22 Video: Finally the Truth; Jan. 19, 2010 Tr. of Hr’g at 1306:11-15, 1306:20-22 (Sanders); PX9  
 23 at 1-2; Letter from Dennis Hollingsworth, Official Proponent of Proposition 8, re "Restore  
 24 Traditional Marriage – Yes on 8" (Oct. 9, 2008); PX1557; Protect Marriage Campaign Update  
 25 (Oct. 8, 2008); Jan. 21, 2010 Tr. of Hr’g at 1772:15-20 (Segura); *See Senator Mark Leno*  
 26 *Introduces Bill to Protect Religious Freedom in Prop 8 Controversy – No Clergy would be*  
 27 *Required to Solemnize Same-Sex Unions*, S.F. Sentinel, Feb. 1, 2010, available at  
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1 <http://www.sanfranciscosentinel.com/?p=58533>; Jan. 12, 2010 Tr. of Hr'g at 318:15-18  
2 (Cott).

- 3 125. Gays and lesbians voted for Proposition 8. DIX2649, Ken Cimino & Gary M. Segura, *From*  
4 *Radical to Conservative*.
- 5 126. Californians voted against Proposition 8 out of animus towards Mormons and the Catholic  
6 Church. PX0065 at 1, ProtectMarriage.com memo asking TV stations not to run ad: "No on 8  
7 Television Ad From 'Courage Campaign Issues Committee,'" DIX1609 at 1-2; *Prop. 8*  
8 *Supporter Violently Attacked for Distributing Law Signs*, International Business Times,  
9 October 13, 2008; DIX2308; Campaign video commercial: "Home Invasion,"  
10 CourageCampaign.org (2008).
- 11 127. Californians voted against Proposition 8 out of animus towards organizations, individuals, and  
12 groups who embrace traditional values; DIX458; Thomas M. Messner, Heritage Found., *The*  
13 *Price of Prop 8* (2009); DIX1673; *Action News ABC 30: Vandals Target Downtown Fresno*  
14 *Church* (ABC television broadcast Oct. 28, 2008); DIX2308; Campaign video commercial:  
15 "Home Invasion," CourageCampaign.org (2008); DIX1725 at 1; *Scuffles Over Gay-Marriage*  
16 *Ballot Measure Lead to Injuries*, San Diego 6 News, Nov. 4, 2009; DIX2616; *No on 8 man*  
17 *beats elderly couple*, CBS8 television broadcast; DIX 1792 at 1-2; Mark Gomez, *Vandals Hit*  
18 *Prop. 8 Supporters*, San Jose Mercury News, Oct. 28, 2008; DIX2533, Gail Holland, *L.A.*  
19 *College is Sued Over Speech on Gay Marriage*; PX97, ProtectMarriage.com: video on  
20 YouTube.
- 21 128. Californians voted against Proposition 8 out of animus towards its supporters. DIX2308,  
22 Campaign video commercial: "Home Invasion," CourageCampaign.org (2008); DIX1798 at  
23 1-2; Mark Gomez, *Vandals Hit Prop. 8 Supporters*, San Jose Mercury News (Oct. 28, 2008);  
24 DIX1673; *Action News ABC 30: Vandals Target Downtown Fresno Church* (ABC television  
25 broadcast Oct. 28, 2008); PX97, ProtectMarriage.com: video on YouTube; DIX458, Thomas  
26 M. Messner, Heritage Found., *The Price of Prop. 8* (2009).
- 27 129. Californians voted against Proposition 8 on moral grounds. DIX366, Council of Churches,  
28

1 Council of Churches Urges No on Prop 8; DIX245, Duke Elfand, *Clergy on both sides of*  
2 *Proposition 8 Speak Out*; Jan. 25, 2010 Tr. of Hr'g at 2467:2-12 (Miller); DIX342 at 1-2;  
3 Press Release, NO on Prop 8, Faith Leaders Across State to Speak Out Against Proposition 8  
4 (Oct. 31, 2008); DIX587 at 1-2; Lavender Newswire, Saturday NO ON 8 Faith Events  
5 Throughout California (Nov. 1, 2008); DIX 524 at 1, Jennifer Garza, *Faith leaders make final*  
6 *appeal on gay marriage*.

7  
8 130. Californians voted against Proposition 8 for religious reasons. Council of Churches, Council  
9 of Churches Urges No on Prop 8; DIX245, Duke Elfand, *Clergy on both sides of Proposition*  
10 *8 Speak Out*; DIX143, California Council of Churches Amicus Brief; DIX170, California  
11 Council of Churches, *The Mission of Council and Impact*; DIX447 at 22, Equality California,  
12 *Winning Back Marriage Equality in California*; Jan. 25, 2010 Tr. of Hr'g at 2463:11–2465:19  
13 (Miller).

14 131. Both supporters and opponents of Proposition 8 (and same-sex marriage in general) have  
15 voiced their opinions forcefully, passionately, and sometimes intemperately. PX0097,  
16 ProtectMarriage.com: video on YouTube; DIX458, Thomas M. Messner, Heritage Found.,  
17 *The Price of Prop. 8* (2009); DIX2308, Campaign video commercial: "Home Invasion,"  
18 CourageCampaign.org (2008); DIX2525, Brad Stone, Disclosure, Magnified On the Web,  
19 N.Y. Times, Feb. 8, 2009.

20 132. Gay rights organizations such as the National Gay and Lesbian Task Force actively promote  
21 support for gay marriage in religious communities. DIX428, *A Time to Build Up: Analysis of*  
22 *the No on Proposition 8 Campaign & Its Implications for Future Pro-LGBTQQA Religious*  
23 *Organizing* (2009).

24 133. Interfaith groups in California, such as California Faith for Equality, support extending  
25 marriage to same-sex couples and thus opposed Proposition 8. DIX366, California Council of  
26 Churches; DIX325, Unitarian Universalist Annual Meeting; DIX343, Press Release  
27 Regarding Methodist Church Meeting; DIX428 at 11, 13, *A Time to Build Up*; DIX573,  
28 California Council of Churches, Religious Leaders, Faith Organizations to Court: Invalidate



1 Prop 8; DIX143, California Council of Churches Amicus Brief; DIX145, Dr. Frank Alton, *et*  
2 *al* Amicus Brief.

3 134. The United Church of Christ supports extending marriage to same-sex couples and thus  
4 opposed Proposition 8. DIX417, Called Out eNews; DIX366 at 3, "Council of Churches  
5 Urges NO on Proposition 8."

6 135. The Metropolitan Church supports extending marriage to same-sex marriage and thus opposed  
7 Proposition 8. DIX366 at 3, "Council of Churches Urges NO on Proposition 8"; PX0847 at  
8 77-78, GEORGE CHAUNCEY, WHY MARRIAGE? THE HISTORY SHAPING TODAY'S DEBATE OVER  
9 GAY EQUALITY (2004).

10 136. The Unitarian Universalist Association supports extending marriage to same-sex couples and  
11 thus opposed Proposition 8. DIX312, Neighborhood Unitarian Universalist Church of  
12 Pasadena Newsletter (No on 8 rally); DIX366 at 3, "Council of Churches Urges NO on  
13 Proposition 8"; PX0847 at 77-78, GEORGE CHAUNCEY, WHY MARRIAGE? THE HISTORY  
14 SHAPING TODAY'S DEBATE OVER GAY EQUALITY (2004).

15 137. Reform Judaism supports extending marriage to same-sex couples and thus opposed  
16 Proposition 8. DIX366 at 3, "Council of Churches Urges NO on Proposition 8"; PX0847 at  
17 77-78, GEORGE CHAUNCEY, WHY MARRIAGE? THE HISTORY SHAPING TODAY'S DEBATE OVER  
18 GAY EQUALITY (2004).

19 138. Reconstructionist Judaism supports extending marriage to same-sex couples and thus opposed  
20 Proposition 8. DIX366 at 3, "Council of Churches Urges NO on Proposition 8"; PX0847 at  
21 77-78, GEORGE CHAUNCEY, WHY MARRIAGE? THE HISTORY SHAPING TODAY'S DEBATE OVER  
22 GAY EQUALITY (2004).

23 139. The six main Episcopal bishops in California opposed Proposition 8. DIX366 at 2, "Council  
24 of Churches Urges NO on Proposition 8."

25 140. Many California Presbyterians opposed Proposition 8; PX 2582 at 13, Segura Rebuttal Report  
26 Tables.

27 141. Many individual Catholics, Mormons, Evangelical Christians, and Orthodox Jews support  
28

1 extending marriage to same-sex couples and thus opposed Proposition 8. PX 2582 at 12-13,  
2 Segura Rebuttal Report Tables.

- 3  
4 142. Many religious people who oppose extending marriage to same-sex couples support their  
5 position with secular arguments made in good faith. DIX1032 at 55, SAME-SEX MARRIAGE:  
6 PRO & CON, A READER (Andrew Sullivan, ed., 1997); PX0063 at 1, ProtectMarriage.com  
7 media advisory: "Nationally Acclaimed Pastor Rick Warren Announces Support For Prop. 8,"  
8 October 24, 2008; PX0052 at 2-3, ProtectMarriage.com press release: "Ballot Initiative to  
9 Protect Marriage Receives Endorsement of California Catholic Conference," August 4, 2008;  
10 Jan. 21, 2010 Tr. of Hr'g at 1780:24-1781:3 (Segura).
- 11 143. The sincerely held moral and religious beliefs of many people require them to love and accept  
12 gays and lesbians despite disapproving certain aspects of their conduct. DIX1032 at 53, 56,  
13 SAME-SEX MARRIAGE: PRO & CON, A READER (Andrew Sullivan, ed., 1997); PX0005 at 1,  
14 James L. Garlow, "The Ten Declarations For Protecting Biblical Marriage,"

#### 15 **Sexual Orientation**

- 16 144. There is no consensus definition of "sexual orientation" in the general public, the scientific  
17 community, among elected officials, and among academics who study sexual orientation. *See*  
18 DIX934 at 102, Diamond & Savin-Williams, *Gender & Sexual Identity* (2002); Jan. 22, 2010  
19 Tr. of Hr'g at 2181:14-2182:3 (Herek); DIX1248 at 135, Dean & Meyer, *Lesbian, Gay,*  
20 *Bisexual, and Transgender Health*; PX912 at 1, Gonslorck & Weinrich, *The Definition and*  
21 *Scope of Sexual Orientation* (1991); PX943 at 290, Laumann, *The Social Organization of*  
22 *Sexuality*; DIX950 at 29-30, Badgett, *Money, Myths, and Change* (2001); DIX 950, Badgett,  
23 *Money, Myths, & Change*; DIX1265, Klein et al., *Sexual Orientation: A Multi-Variable*  
24 *Dynamic Process* (1985); DIX1249 at 23, Meyer & Wilson, *Sampling Lesbian, Gay, and*  
25 *Bisexual Populations* (2009); DIX1248, Dean & Meyer, *Lesbian, Gay, Bisexual, and*  
26 *Transgender Health* (2000); DIX 1266, John Gonsiorek, *Definition & Measurement of Sexual*  
27 *Orientation* (1995); DIX131 at 10-11, Nock Affidavit.
- 28 145. Sexual orientation is a complex and amorphous phenomenon that defies consistent and

1 uniform definition. *See* DIX1248 at 102; Jan. 22, 2010 Tr. of Hr'g at 2116:21-2117:12  
2 (Herek); DIX935 at 13, Janis Bohan, *Psychology & Sexual Orientation: Coming to Terms*  
3 (1996); DIX2654 at 21, Badgett, *Sexual Orientation Discrimination: An International*  
4 *Perspective* (2007); DIX1249 at 29, Meyer & Wilson, *Sampling Lesbian, Gay, and Bisexual*  
5 *Populations* (2009); DIX1108 at 6, The Williams Institute, *Best Practices for Asking*  
6 *Questions about Sexual Orientation on Surveys* (2009); PX911 at 120, J.C. Gonsiorek, *The*  
7 *Definition and Scope of Sexual Orientation* (1991); Jan. 20, 2010 Tr. of Hr'g at 1658:14-  
8 1659:10 (Segura); Jan 22, 2010 Tr. of Hr'g at 2066:5-6 (Herek); DIX950 at 47, Badgett,  
9 *Money, Myths, & Change*; PX912 at 9, Gonsiorek & Weinrich, *The Definition and Scope of*  
10 *Sexual Orientation* (1991); PX912 at 2-3, Gonsiorek, et al, *Definition and Scope of Sexual*  
11 *Orientation*; PX917 at 201, G. M. Herek, *Why Tell if you're Not Asked?* (1996); DIX1235 at  
12 337, Peplau & Garnets, *A New Paradigm for Understanding Women's Sexuality and Sexual*  
13 *Orientation* (2000); DIX1268 at 23, *Lesbian Health: Current Assessment & Directions for the*  
14 *Future* (1999); Jan. 12, 2010 Tr. of Hr'g at 446:8-448:3 (Chauncey); DIX1265 at 39-40,  
15 Klein, *Sexual Orientation: A Multi-Variable Dynamic Process* (1985); PX940 at 638, Kinsey  
16 et al., *Sexual Behavior in the Human Male* (1948); DIX1235 at 342, Tbl. 1, Peplau & Garnets,  
17 *A New Paradigm for Understanding Women's Sexuality and Sexual Orientation*; DIX1272 at  
18 45-46, Shively & Dececco, *Components of Sexual Identity* (1977); DIX1266 at 7, Gonsiorek,  
19 *Definition & Measurement of Sexual Orientation* (1995); PX918 at 151, Herek,  
20 *Homosexuality* (2000); Jan. 22, 2010 Tr. of Hr'g at 2264:11-15, 2267:19-2268:2 (Herek);  
21 DIX1010 at 4, Garnets & Peplau, *A New Look at Women's Sexuality & Sexual Orientation*  
22 (2006); *see also* Jan. 13, 2010 Tr. of Hr'g at 487:14-17 (Chauncey); Jan. 20, 2010 Tr. of Hr'g  
23 1709:2-9 (Segura); Jan. 13, 2010 Tr. of Hr'g at 629:23-630:1 (Peplau); DIX950, Badgett,  
24 *Money, Myths & Change*; DIX1265, Klein et al., *Sexual Orientation: A Multi-Variable*  
25 *Dynamic Process* (1985); DIX1249, Meyer & Wilson, *Sampling Lesbian, Gay, and Bisexual*  
26 *Populations*; DIX2654 at 20-21, Badgett, *Sexual Orientation Discrimination: An International*  
27 *Perspective*; DIX1248, Dean & Meyer, *Lesbian, Gay, Bisexual, and Transgender Health*:  
28

1 Findings and Concerns (2000); DIX1254 at 163-164, Lewin & Meyer, Torture and Ill-  
2 Treatment Based on Sexual Identity (2002).

3 146. The literature uses three basic definitions of sexual orientation. Amicus of Dr. Paul McHugh  
4 at 2; *see* Jan. 19, 2010 Tr. of Hr'g at 1371:13-22 (Badgett); DIX1108, Williams Institute, Best  
5 Practices; Jan. 22, 2010 Tr. of Hr'g at 2025:5-12 (Herek); DIX950, Badgett, Money, Myths,  
6 & Change; DIX1249 at 24, Meyer & Wilson, Sampling Lesbian, Gay, and Bisexual  
7 Populations (2009); DIX1248 at 135, Dean & Meyer, Lesbian, Gay, Bisexual, and  
8 Transgender Health: Findings and Concerns (2000); DIX1248, Dean & Meyer, Lesbian, Gay,  
9 Bisexual, and Transgender Health; DIX1270, Kauth & Kallchman, Sexual Orientation &  
10 Development: An Interactive Approach (1995).

11 147. One definition of sexual orientation is based on sexual attraction. *See* citations for Defendant-  
12 Intervenors' Proposed Finding of Fact No. 146; *see also* Jan. 12, 2010 Tr. of Hr'g at 444:11-  
13 17 (Chauncey); DIX1108, Williams Institute, Best Practices; DIX950, Badgett, Money,  
14 Myths, & Change; DIX1248, Dean & Meyer, Lesbian, Gay, Bisexual, and Transgender  
15 Health.

16 148. One definition of sexual orientation is based on sexual behavior. *See* citations for Defendant-  
17 Intervenors' Proposed Finding of Fact No. 146; DIX1108, Williams Institute, Best Practices;  
18 DIX950, Badgett, Money, Myths, & Change; DIX1248, Dean & Meyer, Lesbian, Gay,  
19 Bisexual, and Transgender Health.

20 149. One definition of sexual orientation is based on self-ascribed sexual identity. *See* citations for  
21 Defendant-Intervenors' Proposed Finding of Fact No. 146; DIX1108, Williams Institute, Best  
22 Practices; DIX950, Badgett, Money, Myths, & Change; DIX1248, Dean & Meyer, Lesbian,  
23 Gay, Bisexual, and Transgender Health.

24 150. Within each of these definitions of sexual orientation, distinctions between different sexual  
25 orientations are arguable. *See* DIX1249 at 24, Meyer & Wilson, Sampling Lesbian, Gay, and  
26 Bisexual Populations; DIX1248 at 135, Dean & Meyer, Lesbian, Gay, Bisexual, and  
27 Transgender Health; *see also* PX917 at 201, Herek, Why Tell if You're Not Asked?; PX940 at  
28

1 639, Sexual Behavior in the Human Male; DIX950 at 30, Money, Myths & Change; Jan. 22,  
2 2010 Tr. of Hr'g at 2061:17-2062:3 (Herek); DIX 1265, Klein et al., Sexual Orientation: A  
3 Multi-Variable Dynamic Process; PX940 at 638-639, Kinsey, Sexual Behavior in the Human  
4 Male.

5 151. A given individual's sexual orientation may not be consistent across the three basic  
6 definitions. *See* PX943 at 299, Laumann et al., The Social Organization of Sexuality; Jan. 22,  
7 2010 Tr. of Hr'g at 2141:7-14 (Herek); DIX1249 at 24, Meyer & Wilson, Sampling Lesbian,  
8 Gay, and Bisexual Populations; DIX1108 at 6, Williams Institute, Best Practices; Jan. 19,  
9 2010 Tr. of Hr'g at 1373:8-23 (Badgett); DIX2654 at 21, Badgett, Sexual Orientation  
10 Discrimination: An International Perspective; DIX1235 at 342, Tbl. 1, Peplau & Garnets, A  
11 New Paradigm for Understanding Women's Sexuality & Sexual Orientation; PX912 at 8,  
12 Gonsiorek & Weinrich, Homosexuality: Research Implications for Public Policy (1991);  
13 PX918 at 149, Herek, Homosexuality in Encyclopedia of Psychology (2000); PX926 at 362-  
14 63, Herek & Garnets, Sexual Orientation and Mental health (2007); DIX1248 at 135, Dean &  
15 Meyer, Lesbian, Gay, Bisexual, and Transgender Health; DIX1239 at 83, Peplau, The  
16 Development of Sexual Orientation in Women; DIX1235 at 334, A New Paradigm for  
17 Understanding Women's Sexuality and Sexual Orientation; DIX1268 at 25, Lesbian Health:  
18 Current Assessment & Directions for the Future (1999); DIX658 at 719, Gary Remafedi,  
19 Demography of Sexual Orientation in Adolescents (1992); Jan. 12, 2010 Tr. of Hr'g at 446:4-  
20 7 (Chauncey); PX894 at 574, Carpenter & Gates, Gay and Lesbian Partnership: Evidence  
21 from California; DIX1239 at 83, Peplau, The Development of Sexual Orientation in Women.

22 152. Researchers have concluded that homosexuality is fundamentally a multidimensional  
23 phenomenon that has manifold meanings and interpretations, depending on context and  
24 purpose. *See* PX943 at 301, Laumann et al., the Social Organization of Sexuality: Sexual  
25 Practices in the United States; Jan. 22, 2010 Tr. of Hr'g at 2060:3-6, 2151:21-2152:1 (Herek);  
26 *see also* DIX1249 at 24, Meyer & Wilson, Sampling Lesbian, Gay, and Bisexual Populations;  
27 Jan. 19, 2010 Tr. of Hr'g at 1373:24-1374:3, 1379:7-9 (Badgett); PX918 at 149, Herek,  
28

1 Homosexuality, Encyclopedia of Psychology; PX919 at 683, 686, Herek, Homosexuality, The  
2 Corsini Encyclopedia of Psychology and Behavioral Science (2001); DIX1108 at 28, The  
3 Williams Institute, Best Practices; DIX1248 at 136, Dean & Meyer, Lesbian, Gay, Bisexual,  
4 and transgender Health: Findings and Concerns; DIX1266 at 5, Gonsiorek, Definition &  
5 Measurement of Sexual Orientation; DIX934 at 102, Diamond & Savin-Williams, Gender &  
6 Sexual Identity (2002); DIX1268 at 33, Lesbian Health: Current Assessment & Directions for  
7 the Future; DIX1265, Klein et al., Sexual Orientation: A Multi-Variable Dynamic Process;  
8 DIX 1266, Gonsiorek, Definition and Measurement of Sexual Orientation; DIX2654, Badgett,  
9 Sexual Orientation Discrimination: An International Perspective.

- 10 153. Psychologists' views about homosexuality, including whether it can be changed and whether  
11 it is a "disorder" or a normal variant of human sexuality, have varied over time. PX918 at  
12 151, Herek, Homosexuality, Encyclopedia of Psychology; Jan. 22, 2010 Tr. of Hr'g at  
13 2028:14-25 (Herek).
- 14 154. Variations in psychologists' views about homosexuality are not attributable to new factual  
15 discoveries or scientific investigation, but rather to changed perspectives. *See* PX848 at 13,  
16 Chauncy, Gay New York (1994); *cf.* PX1026, American Academy of Child & Adolescent  
17 Psychiatry's Policy Statement on Gay, Lesbian, Bisexual, or Transgender Patients; Jan. 15,  
18 2010 Tr. of Hr'g at 1053:18-24 (Lamb).
- 19 155. Legislatures have defined sexual orientation in law in a variety of ways, looking to factors  
20 such as attraction, external perception, social identity, behavior, and relationships; *See* Hate  
21 Crime Statistics Act, Act, P.L. 101-275, 104 Stat. 140 (April 23, 1990); Employment Non-  
22 Discrimination Act, H.R. 3017 § 3(a) (2009); Cal Civil Code § 51.7; Cal Ed Code §§ 212.6,  
23 66262.7; Cal Gov Code § 12926(q); Cal Pen Code §§ 422.55-56, 422.55, 422.56(c); Cal Ed  
24 Code § 219; Cal Ed Code § 66269; Cal Gov Code §§ 11135, 12926(m), 12955(m); Cal. Gov.  
25 Code §§ 11135, 12926(m), 12955(m); A.R.S. § 41-1750(Y)(13); § 41-1822(E) (Ariz.); C.R.S.  
26 2-4-401(13.5), 24-34-401(7.5) (Colo.); C.R.S. 18-9-121(5)(b), Conn. Gen. Stat. § 46a-81a; 11  
27 Del. C. § 1304(a)(2); D.C. Code § 2-1401.02; HRS §§ 378-1, 489-2 (Haw.); Ill. Compiled  
28

1 Stat. § 5/1-103; Ill. Compiled Stat. § 5/5-5-3.2; 6/12-7.1; Iowa Code § 216.2(14); 5 M.R.S. §  
 2 4553 (9-C) (Maine); Mass. Gen. Laws ch. 151B, § 3(6), (9); Md. Criminal Law Code Ann. §  
 3 10-301; Md. Ann. Code art. 49B, §§ 5(a), 20; Minn. Stat. § 363A.03(44); Nev. Rev. Stat.  
 4 Ann. §§ 233.020(5), 281.370(3)(b), 338.125(4), 610.010(5), 613.310(6); RSA 21:49, 354-  
 5 A:2(XIV-c) (New Hampshire); N.J. Stat. § 10:5-5(hh); N.M. Stat. Ann. §§ 28-1-2(P), 31-18B-  
 6 2(E); NY CLS Exec § 292(27); ORS §§ 166.155(3)(b), 236.380(1) (Oregon); ORS §  
 7 174.100(6); R.I. Gen. Laws §§ 11-24-2.1(k), 28-5-6(15), 34-37-3(16); 1 V.S.A. § 143  
 8 (Vermont); Rev. Code Wash. (ARCW) § 49.60.040(15); Wis. Stat. § 111.32(13m); San  
 9 Francisco Admin. Code § 12A.3; San Francisco Admin. Code §§ 12B.1(d), 12C.2; San  
 10 Francisco Admin. Code § 12E.3; San Francisco Admin. Code §§ 12A.3, 12C.2.

- 11 156. Homosexuality is not genetically determined. Amicus of Dr. Paul McHugh at 5-7. *See*  
 12 DIX1278 at 2, American Psychiatric Association, *Gay/Lesbian/Bisexuals* (2009); *see also*  
 13 DIX1235 at 332, Peplau & Garnets, *A New Paradigm for Understanding Women's Sexuality*  
 14 *& Sexual Orientation*; DIX1239 at 81, Peplau, *The Development of sexual Orientation in*  
 15 *Women*; Jan. 22, 2010 Tr. of Hr'g at 2284:15-2285:13 (Herek); DIX1239 at 87; DIX642 at  
 16 392, 393, Jorm, *Cohort Difference in Sexual Orientation* (2003); DIX1278; DIX1239 at 87.
- 17 157. No aspect of sexual orientation has been shown to be immutable. *See* PX912 at 8, Gonsioreck  
 18 & Weinrich, *the Definition and Scope of Sexual Orientation*; Jan. 22, 2010 Tr. of Hr'g at  
 19 2271:6-8 (Herek); DIX2654 at 23, Badgett, *Sexual Orientation Discrimination: An*  
 20 *International Perspective*; DIX1010 at 4, Garnets & Peplau, *A New Look at Women's*  
 21 *Sexuality & Sexual Orientation*; DIX1235 at 332, *A New Paradigm for Understanding*  
 22 *Women's Sexuality & Sexual Orientation*; *see also* citations for Defendant-Intervenors'  
 23 Proposed Finding of Fact No. 158.
- 24 158. An individual's sexual orientation can change over the course of a lifetime. PX940, *Sexual*  
 25 *Behavior in the Human Male* at 633; Amicus of Dr. Paul McHugh at 3-4; DIX1265 at 38,  
 26 Klein et al, *Sexual Orientation: A Multi-Variable Dynamic Process*; DIX1270 at 82, Kauth &  
 27 Kalichman, *Sexual Orientation & Development: An Interactive Approach*; Jan. 22, 2010 Tr.  
 28

1 of Hr'g at 2234:24-2235:3 (Herek); DIX1108 at 6, Williams Institute, Best Practices; *see also*  
2 DIX1010 at 5, Garnets & Peplau, A New Look at Women's Sexuality & Sexual Orientation;  
3 DIX1235 at 333, A New Paradigm for Understanding Women's Sexuality & Sexual  
4 Orientation; *see also* Stier Dep. 198:24-199:3; Jan. 11, 2010 Tr. of Hr'g at 161:22-25, 165:13-  
5 14,172:24, 162:4-6, 161:17-21.

6 159. Research shows that many individuals' sexual orientation does change over the course of a  
7 lifetime. PX940 at 638-639; Amicus of Dr. Paul McHugh at 3-4; *see* PX918 at 149, Herek,  
8 Homosexuality, Encyclopedia of Psychology; Jan. 22, 2010 Tr. of Hr'g at 2212:21-24  
9 (Herek); *see also* DIX856 at 7, 9, Diamond, Female Bisexuality from Adolescence to  
10 Adulthood: Results from a 10-Year Longitudinal Study (2008); PX943 at 310-11, Laumann et  
11 al., The Social Organization of Sexuality; DIX626 at 1611, 1612, Dickson, Same Sex  
12 Attraction in a Birth Cohort (2003); DIX666 at 307, 308, Stokes, Predictors of Movement  
13 Toward Homosexuality (1997).

14 160. Women's sexual orientation tends to be particularly fluid, malleable, shaped by life  
15 experiences, and capable of change over time. *See* DIX1010 at 5, Garnets & Peplau, A New  
16 Look at Women's Sexuality and Sexual Orientation; DIX1235 at 332, Peplau & Garnets, A  
17 New Paradigm for Understanding Women's Sexuality and Sexual Orientation; *see also*  
18 DIX1229 at 5, 12-13, Peplau, Rethinking Women's Sexual Orientation; DIX1235 at 329, 336,  
19 345, Peplau & Garnets, A New Paradigm for Understanding Women's Sexuality & Sexual  
20 Orientation; Jan. 22, 2010 Tr. of Hr'g at 2208:6-13 (Herek); *see also* DIX1268 at 23, Lesbian  
21 Health: Current Assessment & Directions for the Future; DIX1239 at 90, 93, Peplau et al.,  
22 The Development of Sexual Orientation in Women; PX909, Badgett et al., Marriage  
23 Registration and Dissolution by Same-Sex Couples in the U.S. (2008).

24 161. For many people, adopting a particular sexual orientation is a conscious choice. *See* PX912 at  
25 8, Gonsiorek & Weinrich, The Definition and Scope of Sexual Orientation (1991); PX918 at  
26 150, Encyclopedia of Psychology; DIX1239 at 92, The Development of Sexual Orientation in  
27 Women; *see also* PX928 at 39, Table 5, Herek et al., Internalized Stigma Among Sexual  
28



1 Minority Adults (2009); PX930 at 27, Table 3, Herek et al., Demographic, Psychological, and  
 2 Social Characteristics of Self-Identified Lesbian, Gay, and Bisexual Adults in a U.S.

3 Probability Sample; *see also* Perry Dep. 151:24-152:15.

- 4  
 5 162. Many gays and lesbians have at one time been married to individuals of the opposite sex.  
 6 PX1263 at 2, 10, Gates et al., Marriage, Registration and Dissolution by Same-Sex Couples in  
 7 the U.S. (2008); PX959 at 3, Williams Institute, The Effects of Marriage Equality in  
 8 Massachusetts (2009); *see also* Stier Dep. 22:11-15, 24:5-11; Jan. 22, 2010 Tr. of Hr'g at  
 9 2221:1-4 (Herek); Jan. 11, 2010 Tr. of Hr'g at 161:22-25 (Stier); *id.* at 165:13-14; *id.* at  
 10 172:24; *id.* at 162:4-6.

### 11 **Political Power**

- 12 163. Gays and lesbians have substantial political power. DIX1330 at 4, Human Rights Campaign  
 13 Annual Report (2007). This political power manifests itself in numerous ways: the ability to  
 14 force lawmakers to take actions against their will, the ability to achieve legislative and  
 15 regulatory victories, Jan. 20, 2010 Tr. of Hr'g at 1657: 8-13 (Segura); *id.* at 1663:13-1664:4;  
 16 *id.* at 1665:25-1666:3; *id.* at 1668:1-15; *id.* at 1722:11-22, the powerful and reliable political  
 17 allies of the LGBT community (including leading professional organizations, labor unions, the  
 18 Democratic party, *id.* at 1686:10-19 (Segura); *id.* at 1687:1-24; *id.* at 1696:3-3-14; *id.* at  
 19 1698:14-21; DIX2502, EQCA Press Release, the elite media, DIX296, Zahler, The Nature &  
 20 Origins of Mass Opinions (1992); DIX1102, Haider-Markel, Minority Group Interests &  
 21 Political Representation (2000); DIX1327, Human Rights Campaign Annual Report (2005);  
 22 DIX1323, Human Rights Campaign Annual report (2000); Jan. 20, 2010 Tr. of Hr'g at  
 23 1702:15-23 (Segura); *id.* at 1705:4-13; *id.* at 1706:3-7; traditional civil rights organizations,  
 24 Hollywood, and numerous politicians), DIX2500, EQCA Press Release; DIX2472, EQCA  
 25 Press Release; DIX388, St. Francis Times; DIX417, Called out eNews; DIX312,  
 26 Neighborhood Unitarian Universalist Church of Pasadena Newsletter (Oct. 2008); DIX366;  
 27 DIX325; DIX343, Pacific S.W. Dist. of Unitarian Universalist Association 2009 Annual  
 28 Meeting, and the ability to attract the attention of lawmakers. DIX1330 at 4, Human Rights

1 Campaign Annual Report (2007); DIX2554, McKinley, Gay Candidates Get Support that  
 2 Causes May Not, N.Y. Times; DIX466, EQCA Press Release; DIX254, Human Rights  
 3 Campaign, Congressional Scorecard; DIX253, Human Rights Campaign, Corporate Equality  
 4 Index; DIX321, The Official Google Blog; DIX1973, Press Release, No on Prop 8, Silicon  
 5 Valley Leaders to Denounce Prop 8 in Newspaper Ad; DIX213, Equality California,  
 6 Sponsors; DIX245, Duke Helfand, *Board of Rabbis Opposes California Anti-Gay-Marriage*  
 7 *Initiative*, L.A. Now, Sept. 26, 2008; DIX462, EQCA Press Release; Jan. 25, 2010 Tr. of Hr'g  
 8 at 2437 19–2438:15 (Miller); *id.* at 2439:8–Tr. 2440:19; *id.* at 2442:2–2468:23; *id.* at 2470:8–  
 9 2471:9; *id.* at 2471:20–2474:18.

10 164. Many heterosexuals are reliable political allies of gays and lesbians. *See, e.g.*, DIX254, Hum.  
 11 Rts. Campaign, Congressional Scorecard: Measuring Support for Equality in the 110th  
 12 Congress; DIX463, California Ripple Effect, Jerry Brown Supports Federal Case Against  
 13 Proposition 8 (June 12, 2009); DIX450, Letter from Debra Bowen, Cal. Sec'y of State, 2007  
 14 Pride Celebrations; DIX464, Lockyer for Treasurer, Leading LGBT Groups Support Lockyer  
 15 in Treasurer's Race; DIX465, Press Release, Nat'l Gay & Lesbian Task Force, Task Force  
 16 Honors California Statewide Leaders for their Contributions to LGBT Equality (Nov. 6,  
 17 2009); DIX1973, Press Release, No on Prop 8, Silicon Valley Leaders to Denounce Prop 8 in  
 18 Newspaper Ad; Jan. 19, 2010 Tr. of Hr'g at 1292:14-21 (Sanders); *id.* at 1292:22-25.

19 165. Gays and lesbians are able to mobilize significant financial resources in support of their  
 20 political agenda. DIX176, California Secretary of State; DIX1331, Human Rights Campaign  
 21 Annual Report (2009), at 14; DIX1329, Human Rights Campaign Annual Report (2008); Jan.  
 22 20, 2010 Tr. of Hr'g at 1676:2-6 (Segura); *id.* at 1677:11-20; DIX1330 at 28, Human Rights  
 23 Campaign Annual Report (2007); DIX1323, Human Rights Campaign Annual Report (2000);  
 24 Jan. 25, 2010 Tr. of Hr'g 2437:19–2438:15 (Miller); DIX350, Cal. Sec'y of State, Campaign  
 25 Finance: ProtectMarriage.com – Yes on 8, A Project of California Renewal.

26 166. Gays and lesbians in 31 states and the District of Columbia have secured legislation punishing  
 27 hate crimes based on sexual orientation. Jan. 25, 2010 Tr. of Hr'g at 2478:8-14 (Miller).  
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167. Gays and lesbians in 21 states and the District of Columbia have secured legislation prohibiting employment discrimination on the basis of sexual orientation. Jan. 25, 2010 Tr. of Hr'g at 2478:15-2479:19 (Miller).
168. Gays and lesbians in 22 states and the District of Columbia have secured domestic partnership benefits for state employees. Jan. 25, 2010 Tr. of Hr'g at 2479:20-23 (Miller).
169. Gays and lesbians in 9 states and the District of Columbia have secured legislation adopting civil unions or domestic partnerships. 1999 CAL. ADV. LEGIS. SERV. 588 (Deering 2010); ME. REV. STAT. ANN. 22 § 2710 (2009); N.J. REV. STAT. § 37:1-31 (2010); WASH. REV. CODE § 26.60.030 (2009); OR. REV. STAT. § 106.340 (2009); Nevada Domestic Partnership Act, 2009 Nev. Stat. 2183-2187; Colorado Designated Beneficiary Agreement Act, 2009 Colo. Sess. Laws. 428; D.C. CODE § 7-201 *et seq.* (2009); Reciprocal Beneficiaries Act, 1997 Haw. Sess. Laws 1211; 2008 Md. Laws. 4597; WIS. STAT. § 770.01 *et seq.* (2009).
170. Gays and lesbians have had increasing success securing election to public office. According to the Gay and Lesbian Victory Fund, in 1991 fewer than 50 served as elected officials, whereas today more than 440 do. *See* DIX2554, Gay Candidates Get Support that Causes May Not; Jan. 19, 2010 Tr. of Hr'g at 1286:20-23 (Sanders); *id.* at 1287:2-6; *id.* at 1288:9-14.
171. In 2008, the Victory Fund endorsed 111 openly LGBT candidates; 80 won their elections. In 2009, 49 out of 79 such candidates won their elections. DIX1331, Human Rights Campaign Annual report (2009). Jan. 25, 2010 Tr. of Hr'g at 2479: 2–2480:12 (Miller).
172. Gays and lesbians have achieved significant political power at the national level. DIX1331, Human Rights Campaign Annual report (2009); Jan. 25, 2010 Tr. of Hr'g at 2482:4–2483:14 (Miller); DIX2586, Howard Fineman, *Marching to the Mainstream*, Newsweek, May 3, 1993.
173. The Democratic Party is closely aligned with the gay and lesbian rights movement. DIX358 at 36, 51, 52, 2008 Democratic National Convention Committee; PX847 at xvi-xvii, Chauncey, *Why Marriage?* (2009); DIX1331, Human Rights Campaign Annual Report (2009); Jan. 20, 2010 Tr. of Hr'g at 1712:12-25 (Segura); *id.* at 1723:9-1724:12; DIX 372, Cal. Democratic Party, 2008 Platform at 7; Jan. 25, 2010 Tr. of Hr'g at 2442:2-11 (Miller);

1 DIX 171, Support Same-Sex Couples in Their Right to Marry by Repealing Proposition 8,  
 2 Res. SAC 09.20A, Cal. Democratic Party (2009); DIX358, Platform Standing Comm., 2008  
 3 Democratic Nat'l Convention Comm., Renewing America's Promise at 50-51 (2008);  
 4 DIX449, Press Release, Office of the Lt. Gov., Cal. Lieutenant Governor John Garamendi's  
 5 Statement on the California Supreme Court's Ruling on Proposition 8 (May 26, 2009);  
 6 DIX463, California Ripple Effect, Jerry Brown Supports Federal Case Against Proposition 8  
 7 (June 12, 2009); DIX450, Letter from Debra Bowen, Cal. Sec'y of State, 2007 Pride  
 8 Celebrations; DIX464, Lockyer for Treasurer, Leading LGBT Groups Support Lockyer in  
 9 Treasurer's Race; DIX465, Press Release, Nat'l Gay & Lesbian Task Force, Task Force  
 10 Honors California Statewide Leaders for their Contributions to LGBT Equality (Nov. 6,  
 11 2009); DIX172, California Legislative LGBT Caucus, California Assembly.

12 174. President Obama is a strong advocate for expanding the rights of gays and lesbians. DIX1331  
 13 at 5, Human Rights Campaign Annual Report (2009); Jan. 20, 2010 Tr. of Hr'g at 1691:3-17  
 14 (Segura); *id.* at 1695:8-25; DIX434, Memorandum from Pres. Barack Obama to the Heads of  
 15 Exec. Dep't & Agencies (June 17, 2009); DIX433, Press Release, The White House, Lesbian,  
 16 Gay, Bisexual & Transgender Pride Month, 2009; DIX455, Barack Obama, Pres. of the U.S.,  
 17 Remarks at the Human Rights Campaign Dinner; DIX456, Barack Obama, Pres. of the U.S.,  
 18 Remarks at the Reception Commemorating the Enactment of the Matthew Shepard and James  
 19 Byrd, Jr. Hate Crimes Prevention Act; Jan. 25, 2010 Tr. of Hr'g at 2483:15-2484:11 (Miller).

20 175. Gays and lesbians have significant influence in Congress. DIX1331, Human Rights  
 21 Campaign Annual Report (2009); Jan. 20, 2010 Tr. of Hr'g at 1683:4-10 (Segura); *id.* at  
 22 1684:10-14; *id.* at 1684:15-16; Jan. 25, 2010 Tr. of Hr'g at 2442:2-11 (Miller); DIX1337,  
 23 Cong. Res. Serv., AIDS Funding for Federal Government Programs: FY1981-FY2006.

24 176. Gays and lesbians have secured national legislation extending hate crimes protection to LGBT  
 25 people. Jan. 25, 2010 Tr. of Hr'g at 2482:11-16 (Miller).

26 177. Gays and lesbians have gained significant Congressional support for repealing the military's  
 27 Don't Ask, Don't Tell policy, repealing the Defense of Marriage Act, prohibiting employment  
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1 discrimination on the basis of sexual orientation, and providing domestic partnership benefits  
2 to federal employees. Jan. 25, 2010 Tr. of Hr'g at 2482:4-2483:14 (Miller).

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4 178. Gays and lesbians in California, in other states, and at the national level have demonstrated  
5 the ability to attract the attention of lawmakers. Jan. 20, 2010 Tr. of Hr'g at 1662:8-19  
6 (Segura); *id.* at 1681:23-1682:16; Jan. 25, 2010 Tr. of Hr'g at 2482:4-2483:14 (Miller); *id.* at  
7 2484:14-18; DIX466, Press Release, Equality Cal., Record 11 Bills, Resolutions Sponsored  
8 by Equality California Pass Legislature (Sept. 14, 2009); DIX2587, Bettina Boxall, *L.A.'s*  
9 *New Gay Muscle*, L.A. Times Mag., Mar. 28, 1993; DIX2590, John Cloud, *The New Face of*  
10 *Gay Power*, Time, Oct. 13, 2003; DIX2586, Howard Fineman, *Marching to the Mainstream*,  
11 Newsweek, May 3, 1993; Jan 19, 2010 Tr. of Hr'g at 1292:14-21 (Sanders); *id.* at 1292:22-25;  
12 *id.* at 1288:2-8; *id.* at 1293:24-1294:7; *id.* at 1294:8-13; Jan. 21, 2009 Tr. of Hr'g at 1747:6-8  
13 (Segura); *id.* at 1747:15-16; *id.* at 1747:17-18; *id.* at 1748:7-15; *id.* at 1749:9-11.

14 179. Gays and lesbians have achieved the power they need to effectively pursue their goals through  
15 democratic institutions. DIX147, About EQCA – Equality California; DIX466, Press Release,  
16 Equality Cal., Record 11 Bills, Resolutions Sponsored by Equality California Pass Legislature  
17 (Sept. 14, 2009).

18 180. Gays and lesbians in California have the power to extract favorable policy outcomes from the  
19 political system. DIX147, About EQCA – Equality California; DIX466, Press Release,  
20 Equality Cal., Record 11 Bills, Resolutions Sponsored by Equality California Pass Legislature  
21 (Sept. 14, 2009).

22 181. California provides gays and lesbians some of the most comprehensive civil rights protections  
23 in the nation. *See* DIX147 at 1, About EQCA; Jan. 20, 2010 Tr. of Hr'g at 1665:10-12  
24 (Segura); DIX147, About EQCA – Equality California; DIX466, Press Release, Equality Cal.,  
25 Record 11 Bills, Resolutions Sponsored by Equality California Pass Legislature (Sept. 14,  
26 2009); Jan. 21, 2010 Tr. of Hr'g at 1763:23-1764:2 (Segura).

27 182. With the exception of extending marriage to same-sex couples, virtually every policy  
28 supported by the gay and lesbian lobby in California has been enacted into California law,

1 including enhanced punishment for crimes committed on the basis of the victim's sexual  
2 orientation, and prohibitions on sexual-orientation discrimination in public and private  
3 employment, business services, education, housing, insurance, medical care, publicly funded  
4 programs and activities, public contracting, and a wide array of other contexts. Jan. 13, 2010  
5 Tr. of Hr'g at 504:23-505:15 (Chauncey); DIX147, About EQCA – Equality California; *cf.*  
6 Jan. 21, 2010 Tr. of Hr'g at 1772:1-3 (Segura).

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8 183. The political power of gays and lesbians in California is reflected by the refusal of the State  
9 Defendants, including the Governor, to support Proposition 8. *See, e.g.*, DIX463, California  
10 Ripple Effect, Jerry Brown Supports Federal Case Against Prop. 8 (June 12, 2009).

11 184. The Attorney General has taken the position that Proposition 8 is unconstitutional. DIX463,  
12 California Ripple Effect, Jerry Brown Supports Federal Case Against Prop. 8 (June 12, 2009).

13 185. The City and County of San Francisco displayed its active commitment to the interests of the  
14 gay and lesbian lobby by intervening in this lawsuit to challenge Proposition 8. Notice of  
15 Motion and Motion to Intervene as Party Plaintiff; Memorandum of Points and Authorities,  
16 Doc # 109.

17 186. The political coalition supporting gay and lesbian rights in California includes leading labor  
18 unions, leading corporations, the California Democratic Party, the state's Republican  
19 Governor, other statewide elected officials including the Attorney General, stable legislative  
20 majorities, local governments including the City and County of San Francisco, local elected  
21 officials, the state's largest media outlets, private foundations, bar associations and other  
22 professional organizations, and many churches and other faith-based organizations. Jan 25,  
23 2010 Tr. of Hr'g at 2442:2–2468:23 (Miller); Jan. 19, 2010 Tr. of Hr'g at 1292:14-21  
24 (Sanders); *id.* at 1311:15-21, 1312:23-1313:9; Jan. 21, 2010 Tr. of Hr'g at 1747:6-8 (Segura);  
25 *id.* at 1747:15-16; *id.* at 1747:17-18; *id.* at 1747:6-8; *id.* at 1747:15-16; *id.* at 1747:17-18.

26 187. Other than Propositions 22 and 8, Californians have not used the initiative and referendum  
27 processes to establish the state's public policy respecting gay and lesbian rights. Jan. 25, 2010  
28 Tr. of Hr'g at 2474:19–2478:5.

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188. The coalition that opposed Proposition 8 raised and spent more money than the proposition's proponents; DIX176, Cal. Sec'y of State, Campaign Finance: No on 8, Equality for All, <http://cal-access.sos.ca.gov>; DIX350, Cal. Sec'y of State, Campaign Finance: ProtectMarriage.com - Yes on 8, A Project of California Renewal, <http://cal-access.sos.ca.gov>.
189. The public is increasingly accepting of gays and lesbians and increasingly supportive of rights for gay and lesbian individuals and same-sex couples. PX847 at xvi-xx, Chauncey, *Why Marriage?*; *id.* at 1; *id.* at 14; *id.* 54-56; *id.* at 150-51; *id.* at 166; Jan. 13, 2010 Tr. of Hr'g at 470-11-24 (Chauncey); *id.* at 783:17-25; Jan. 20, 2010 Tr. of Hr'g at 1685:3-15 (Segura); DIX461, Press Release, Pew Forum on Religion & Pub. Life, Most Still Oppose Same-Sex Marriage, Majority Continues to Support Civil Unions (Oct. 9, 2009); DIX469, Patrick J. Egan & Kenneth Sherrill, *Neither an In-Law nor an Outlaw Be: Trends in Americans' Attitudes Toward Gay People*, Pub. Opinion Pros, Feb. 2005; DIX470, Alan S. Yang, Pol'y Inst., Nat'l Gay & Lesbian Task Force Found., The 2000 National Election Study and Gay and Lesbian Rights: Support for Equality Grows; Jan. 25, 2010 Tr. of Hr'g at 2484:19-2486:21 (Miller); DIX2649, Ken Cimino & Gary M. Segura, *From Radical to Conservative: Civil Unions, Same-sex Marriage, and the Structure of Public Attitudes* (2005); Jan 19, 2010 Tr. of Hr'g at 1311:15-21, 1312:23-1313:9 (Sanders); PX2342 at 205, William N. Eskridge & Darren R. Spedale, *Gay Marriage: For Better or For Worse? What We've Learned from the Evidence* (2006); PX1168 at 618, Gregory M. Herek, *Legal Recognition of Same-Sex Relationships in the United States: A Social Science Perspective*, *American Psychologist*, September 2006.
190. To the extent the LGBT community sometimes exercises less political power than some might desire, the tactics and statements of members of this community play a contributing role. Jan. 20, 2010 Tr. of Hr'g at 1713:1-1719:9 (Segura); Jan. 25, 2010 Tr. of Hr'g at 2469:3-2470:7 (Miller); DIX458, Thomas M. Messner, Heritage Found., *The Price of Prop 8* (2009); DIX1725 at 1; *Scuffles Over Gay-Marriage Ballot Measure Lead to Injuries*, *San Diego* 6

1 News, Nov. 4, 2009; DIX 1792 at 1-2; Mark Gomez, *Vandals Hit Prop. 8 Supporters*, San  
 2 Jose Mercury News, Oct. 28, 2008; DIX2525, Brad Stone, *Disclosure, Magnified On the*  
 3 *Web*, N.Y. Times, Feb. 8, 2009; DIX2528 Steve Lopez, *A Life Thrown in Turmoil by \$100*  
 4 *Donation for Prop 8*, L.A. Times, Dec. 14, 2008; DIX2533, Gale Holland, *L.A. College is*  
 5 *Sued Over Speech on Gay Marriage; Student Opposed to the Unions Says Teacher Reacted*  
 6 *Improperly*, L.A. Times, Feb. 16, 2009, at B3; DIX2531, Alison Stateman, *What Happens if*  
 7 *You're On Gay Rights' 'Enemies List'*, Time, Nov. 15, 2008; DIX2544, The O'Reilly Factor:  
 8 *Gay Activist Attacks Female Christian Missionary in SF* (Fox News television broadcast);  
 9 Jan. 19, 2010 Tr. of Hr'g at 1306:11-15 (Sanders); *id.* at 1306:20-22; *id.* at 1309:22-1310:1;  
 10 *id.* at 1310:2-5; Jan. 21, 2010 Tr. of Hr'g at 1810:25-1811:15 (Segura); PX97.

### 11 **History of Discrimination**

- 12 191. At present, discrimination against gays and lesbians is far less severe and common than in  
 13 times past, and is growing increasingly rare. DIX2554, *Gay Candidates Get Support that*  
 14 *Causes May Not*, N.Y. Times; Jan. 12, 2010 Tr. of Hr'g at 325:21-24 (Cott); Jan. 13, 2010 Tr.  
 15 of Hr'g at 548:17-23 (Chauncey); Jan 19, 2010 Tr. of Hr'g at 1286:8-11 (Sanders); *id.* at  
 16 1285:16-20; *id.* at 1286:2-7.
- 17 192. Gays and lesbians are not subject to official discrimination by the state of California; Cal. Civ.  
 18 Code §§ 51(b), 51.5, 51.7, 200, 220, 231.5; Cal. Educ. Code §§ 51500, 66251, 66270,  
 19 66301(e), 67380, 94367(f), 32228(b), 49091.24, 51933(b)(4); Cal. Gov't Code §§ 12930(i),  
 20 12931, 12935(g), 50264(c), 50265(a); 8299.01(b)(2)(F), 11135(a), 12920, 12921, 12940,  
 21 12944, 12955, 12955.8, 18500(c)(5); Cal. Health & Safety Code §§ 1365.5, 1257.5,  
 22 1522.41(c)(1)(H), 1563(c)(5), 1586.7, 33050(a), 120292(a)(1), 151002(a)(6); Cal. Ins. Code  
 23 §§ 676.10, 10140(a), (e), 10141, 12693.28; Cal. Lab. Code § 4600.6(g)(3); Cal. Penal Code  
 24 §§ 186.21, 11410, 422.55(a)(6), 422.6, 422.7, 422.75, 422.85, 422.865, 1127h, 3053.4,  
 25 13519.6, 13519.4; Cal. Pub. Cont. Code § 6108(g)(9); Cal. Welf. & Inst. Code §§ 224.71(i),  
 26 224.73, 707(d)(2)(C)(iii), 9103.1(a), (c), (d), 14504.1(c), 16003(a)(1).
- 27 193. While gays and lesbians continue to experience private discrimination to some degree,  
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1 instances of such discrimination are increasingly rare, and gays and lesbians in California  
2 have secured comprehensive legal protection from such discrimination through the political  
3 process. Jan. 13, 2010 Tr. of Hr'g at 503:20-23 (Chauncey); Jan 21, 2010 Tr. of Hr'g at  
4 1763:23-1764:2 (Segura).

5 194. California is one of the most gay-friendly states in the United States. PX894 at 588,  
6 Carpenter & Gates, Gay and Lesbian Partnership: Evidence from California; Jan. 13 Tr. of  
7 Hr'g at 503:13-19 (Chauncey); Jan 21, 2010 Tr. of Hr'g at 1763:12-16 (Segura); *id.* at  
8 1763:23-1764:2; PX2342 at 245, William N. Eskridge & Darren R. Spedale, Gay Marriage:  
9 For Better or For Worse? What We've Learned from the Evidence (2006).

10 195. California is a popular destination for gay and lesbian tourists. Jan. 14, 2010 Tr. of Hr'g at  
11 784:11-15 (Egan).

12 **Marriage, Procreation, and the Distinct Contribution of Opposite-Sex Couples**

13 196. Same-sex couples are different than opposite-sex couples in that only opposite-sex couples  
14 have the capacity to procreate naturally; same-sex couples are inherently incapable of doing  
15 so. DIX956 at 184, DAVID BLANKENHORN, THE FUTURE OF MARRIAGE (2007).

16 197. Only opposite-sex couples have the capacity to raise children that are emotionally, naturally,  
17 practically, and legally affiliated with the woman and the man whose sexual union brought the  
18 child into the world. DIX956 at 91, DAVID BLANKENHORN, THE FUTURE OF MARRIAGE  
19 (2007); *id.* at 100; *id.* at 116.

20 198. Only opposite-sex couples have the capacity to raise children with both a mother and a father.  
21 DIX956 at 183, DAVID BLANKENHORN, THE FUTURE OF MARRIAGE (2007); *id.* at 195; *id.* at  
22 196.

23 199. Society's continued survival depends upon opposite-sex couples having and raising children.  
24 DIX50 at 19-20, Kingsley Davis, The Meaning and Significance of Marriage in  
25 Contemporary Society (1985).

26 200. Unintended pregnancies, which can only occur in opposite-sex relationships, present society  
27 with unique challenges. Jan. 13, 2010 Tr. of Hr'g at 640:13-641:6 (Peplau); PX2299 at 2-3,  
28

- 1 Rosenfeld, *Nontraditional Families and Childhood Progress Through School* (2009);  
2 DIX1028 at 326, Monte N. Stewart, *Marriage Facts*, 31 HARV. J.L. & PUB. POL'Y 313 (2008).
- 3 201. Society is harmed when mothers and fathers do not take responsibility for raising their  
4 children. Jan. 26, 2010 Tr. of Hr'g at 2771:20-2772:6 (Blankenhorn); DIX1028 at 327, Monte  
5 N. Stewart, *Marriage Facts*, 31 HARV. J.L. & PUB. POL'Y 313 (2008).
- 6 202. Because they lack the natural procreative capacity of opposite-sex relationships, same-sex  
7 relationships do not pose the unique benefits and challenges to society that follow from the  
8 natural procreative capacity of opposite-sex relationships. DIX956 at 100, DAVID  
9 BLANKENHORN, *THE FUTURE OF MARRIAGE* (2007).
- 10 203. Many developed nations are facing low and declining birthrates inadequate to maintain their  
11 populations. DIX50 at 19-20, *The Meaning and Significance of Marriage in Contemporary*  
12 *Society*.
- 13 204. The fertility rate in the United States is barely at replacement level. DIX1046 at 1; Joseph  
14 Chamie, Pop. Div., U.N., *Low Fertility: Can Governments Make a Difference?* (2004); Jan.  
15 12, 2010 Tr. of Hr'g at 284:21-25, 285:1-24 (Cott).
- 16 205. Nations view their low and declining birthrates as a serious crisis that could jeopardize their  
17 basic societal foundations and threaten their survival as nations. DIX1046 at 2, Joseph  
18 Chamine, *Low Fertility: Can Governments Make a Difference?*
- 19 206. The traditional institution of marriage promotes formation of naturally procreative  
20 relationships. Jan. 12, 2010 Tr. of Hr'g at 315:11-14 (Cott).
- 21 207. The traditional institution of marriage promotes stability in naturally procreative relationships.  
22 DIX956 at 99, DAVID BLANKENHORN, *THE FUTURE OF MARRIAGE* (2007); *id.* at 24.
- 23 208. The traditional institution of marriage promotes enduring and stable family structures for the  
24 responsible raising and care of children by their biological parents. DIX50 at 7-8, *The*  
25 *Meaning and Significance of Marriage in Contemporary Society*.
- 26 209. Traditional marriage promotes procreation by encouraging stability and commitment in  
27 opposite-sex relationships conducive to undertaking the responsibilities associated with  
28

1 raising children. DIX956 at 99, DAVID BLANKENHORN, *THE FUTURE OF MARRIAGE* (2007);  
2 DIX79 at 2, Robina Quale, *A History of Marriage Systems*.

- 3  
4 210. Married opposite-sex couples tend to have more children than non-married opposite-sex  
5 couples. PX1236 at 9 (Tbl. 4), Tavia Simmons and Martin O'Connell, *Married-Couple and*  
6 *Unmarried- Partners Households: 2000*, Census 2000 Special Reports (Feb. 2003).
- 7 211. Opposite-sex couples are more likely to raise children than same-sex couples. *See* PX1271,  
8 Appendix Table 1, Gates, Same-Sex Spouses and Unmarried Partners in the American  
9 Community Survey, 2008; PX2096 at 3, Table 2, Williams Institute Census Snapshot, 2008;  
10 PX1273 at 47, M.V. LEE BADGETT, *WHEN GAY PEOPLE GET MARRIED: WHAT HAPPENS WHEN*  
11 *SOCIETIES LEGALIZE SAME-SEX MARRIAGE* (2009).
- 12 212. Opposite-sex couples with children raise, on average, more children than same-sex couples  
13 who raise children. PX2096 at 3, Table 3, Williams Institute Census Snapshot, 2008.
- 14 213. The relationships of married, opposite-sex couples are, on average, more stable than the  
15 relationships of unmarried, opposite-sex couples. DIX956 at 193, DAVID BLANKENHORN, *THE*  
16 *FUTURE OF MARRIAGE* (2007); PX781 at 13, *WHY MARRIAGE MATTERS* (W. Bradford Wilcox,  
17 *et al.*, ed. 2d ed. 2005).
- 18 214. There is a natural and mutually beneficial bond between children and their biological parents.  
19 Jan. 26, 2010 Tr. of Hr'g at 2766:7-2767:8 (Blankenhorn); DIX 108 at 40, Blankenhorn,  
20 *Fatherless America*.
- 21 215. Children desire to know and have a relationship with their biological parents. CAL. FAM.  
22 CODE § 8616.5; Jan. 15, 2010 Tr. of Hr'g at 1127:11-18 (Lamb); United Nations Convention  
23 on the Rights of the Child, art. 7, Nov. 20, 1989, 28 I.L.M. 1456, 1460; Jan. 26, 2010 Tr. of  
24 Hr'g at 2766:7-2767:8 (Blankenhorn).
- 25 216. The traditional institution of marriage nurtures and promotes the bond between children and  
26 their biological parents. Jan. 12, 2010 Tr. of Hr'g at 310:2-6 (Cott); *see also* citations for  
27 Defendant-Intervenors' Proposed Finding of Fact No. 7.
- 28 217. The traditional institution of marriage increases the probability that natural procreation will

1 occur within stable, enduring, and supporting family structures. *See* citations for Defendant-  
2 Intervenor's Proposed Finding of Fact No. 7.

3 218. The traditional institution of marriage increases the probability that each child will be raised  
4 by both of his or her biological parents. *See* citations for Defendant-Intervenor's Proposed  
5 Finding of Fact No. 7.

6 219. The traditional institution of marriage increases the probability that each child will be raised  
7 by both a mother and a father. DIX113 at 286, William Doherty et al., *Responsible Fathering:  
8 An Overview & Conceptual Framework* (1998).

9 220. The traditional institution of marriage increases the probability that each child will have a  
10 legally recognized mother and father. *See* citations for Defendant-Intervenor's Proposed  
11 Finding of Fact No. 7.

12 221. Allowing all opposite-sex couples to marry promotes a stable framework for raising any  
13 children that might result when a couple that does not intend to have children has an  
14 accidental or intentional change in plans. DIX1028 at 344-45, Monte Neil Stewart, *Marriage  
15 Facts*, 31 Harv. J.L. & Pub. Pol'y 313 (2008).

16 222. Allowing all opposite-sex couples to marry discourages the fertile partner of a sterile spouse  
17 from engaging in irresponsible, potentially procreative activity with other individuals.  
18 DIX956 at 98, DAVID BLANKENHORN, *THE FUTURE OF MARRIAGE* (2007).

19 223. Allowing all opposite-sex couples to marry reinforces cultural norms that heterosexual  
20 relationships—which generally are potentially procreative—should take place within the  
21 framework of marriage. DIX956 at 99, DAVID BLANKENHORN, *THE FUTURE OF MARRIAGE*  
22 (2007); DIX79 at 2, Robina Quale, *A History of Marriage Systems*; DIX1028 at 344-46,  
23 Monte N. Stewart, *Marriage Facts*, 31 HARV. J.L. & PUB. POL'Y 313 (2008).

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26 Dated: February 26, 2010

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OF CALIFORNIA RENEWAL

By: /s/Charles J. Cooper  
Charles J. Cooper

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