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 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
 DENNIS HOLLINGSWORTH, GAIL
 J. KNIGHT, MARTIN F. GUTIERREZ,
 MARK A. JANSSON,
 AND PROTECTMARRIAGE.COM'S
 AMENDED MOTION TO
 SUPPLEMENT THE RECORD**

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
13 Defendants,

14 and

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.
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1 **TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that pursuant to the Court’s Civil Minute Order of April 28, 2010,
3 Doc # 650, Defendant-Intervenors Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Mark
4 A. Jansson, and ProtectMarriage.com (“Proponents”) will and hereby do move this Court to
5 supplement the evidentiary record with exhibits produced pursuant to this Court’s March 5 and
6 March 22, 2010 orders, *see* Doc ## 610, 623, by nonparties No on Proposition 8, Campaign for
7 Marriage Equality, A Project of the American Civil Liberties Union and Equality California
8 (together, “No-on-8 Groups”).

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 On the last day of trial, this Court granted Proponents’ request to hold the evidentiary record
11 open pending the resolution of Proponents’ motions to compel discovery against No-on-8 Groups.
12 *See* Trial Tr. at 2941:19-2942:3. In light of the resolution of those motions, this Court on April 28,
13 2010 ordered that Proponents “shall serve and file any supplement to the evidentiary record not later
14 than May 5, 2010 at 5 PM PDT.” Doc # 650 at 1.¹ Accordingly, Proponents hereby submit for
15 admission into the evidentiary record the following exhibits produced by the No-on-8 Groups.²

16 The exhibits we hereby submit for the evidentiary record are relevant to “the relative political
17 power of gays and lesbians”; “the history of discrimination gays and lesbians have faced”; the
18 “actual practice” of the gay and lesbian community with respect to domestic partnership and
19 marriage; and “the voters’ motivation or motivations for supporting Prop 8, including
20 advertisements and ballot literature considered by California voters”; all matters the Court has
21 deemed relevant to resolving this case. *See* June 30, 2009 Order, Doc # 76 at 7, 9. For purposes of
22 this filing, we have adhered to the relevance determinations made by the Court during the course of
23

24
25

26 ¹ On May 5, Proponents lodged their motion to supplement the record under seal.
27 We have amended this motion to remove information that remains subject to
28 confidentiality designations and to correct clerical errors. The substance of our proffer has
29 not changed.

30 ² Along with this motion, Proponents are lodging with the Court and serving on
31 Plaintiffs and Plaintiff-Intervenor the relevant exhibits.

1 the proceedings, but we continue to maintain that the relevance standards outlined in our summary
2 judgment motion and trial memorandum should govern.³

3 1. The exhibits related to political power go to show that gays and lesbians are not a politically
4 powerless minority. Under controlling Supreme Court precedent, a group is politically powerless if
5 it has “no ability to attract the attention of the lawmakers.” *Cleburne v. Cleburne Living Center,*
6 *Inc.*, 473 U.S. 432, 445 (1985). In light of this test, the first group of exhibits we submit for the
7 evidentiary record supports the proposition that gays and lesbians attracted the attention of the
8 people of California, the lawmakers who enacted Proposition 8:

- 9
- 10 • DIX3100 at 1 (MoveOn.org election day message stating that “MoveOn members
11 overwhelmingly oppose California’s Proposition 8” and imploring voters to “vote NO on
12 Prop 8.” MoveOn aimed “to get [the message] out to 200,000 voters by 10 a.m.” and
13 requested that recipients “forward this email on to everyone you know.”)
- 14 • DIX3115 at 2 (November 3, 2008 Prop 8 update from ACLU’s Matt Coles, stating that “the
15 No on 8 channel on YouTube passed the Obama channel in Youtube’s rankings. Over 3
16 million people have watched.”)⁴
- 17 • DIX3116 (October 31, 2008 ACLU of Northern California press release describing recorded
18 phone calls from President Clinton opposing Prop 8; stating that the calls “went to millions
19 of registered California voters.”)
- 20 • DIX3117 at 1 (November 2, 2008 No on 8 press release demonstrating reach of No on 8
21 message. For example, “[t]he NO on 8 Facebook page now has more than 129,000
22 supporters over the course of less than a month when it was launched,” “[t]here have been
23 more than three million views of NO on 8 videos online,” and “[m]ore than 60% of [the
24 campaign’s] 96,000-plus online contributions have been \$100 or less.”).

25
26 ³ We also preserve our continuing First Amendment and relevance objections,
stated in our Objections to Evidence, Doc # 294, and reiterated by counsel at trial.

27 ⁴ See Doc # 597 at 2 (declaration identifying Matthew Coles as an “employee[] at
28 the ACLU who worked to defeat Proposition 8 between June 2008 and November 2008”).

1
2 The second group of exhibits that Proponents submit for the evidentiary record relates to the
3 political allies supporting the gay and lesbian community. Both Professor Miller, testifying for
4 Proponents, and Professor Segura, testifying for Plaintiffs, identified the importance of political
5 allies to assessing a group's political power. *See* Trial Tr. at 2437:7-14 (Miller); Trial Tr. at 1686:7-
6 9 (Segura). The following exhibits tend to show the breadth and depth of the coalition supporting
7 gays and lesbians in opposing Proposition 8.

8 As an initial matter, we offer the following exhibits showing that gays and lesbians have a
9 broad-based coalition of political allies:

- 10
- 11 • DIX3101 at 4 (November 3, 2008 email from Matt Coles of the ACLU describing “the
12 strong backing we have from people of color, labor, business and the state’s newspapers.”)
 - 13 • DIX3117 at 1 (November 2, 2008 No on 8 press release demonstrating broad-based
14 opposition to Prop 8. For example, “[t]he NO on 8 Facebook page now has more than
15 129,000 supporters over the course of less than a month when it was launched” and “[m]ore
16 than 60% of [the campaign’s] 96,000-plus online contributions have been \$100 or less.”)
 - 17 • DIX3118 (Overview of No on 8 campaign structure listing broad array of campaign
18 committee members: “A campaign committee of 70+ member organizations facilitates the
19 mobilization of hundreds of thousands of supporters to engage in this campaign as donors,
20 volunteers, and spokespersons.”)
 - 21 • DIX3119 (September 5, 2008 No on 8 endorsement list including civil rights organizations,
22 labor organizations, faith based organizations, community based organizations, statewide
23 organizations, national organizations, political groups and organizations, and elected
24 officials.)
 - 25 • DIX3529 (October 18, 2008 email with draft script for Equality California event attached.
26 Executive Director Geoff Kors’ prepared remarks refer to the “coalition of LGBT and allied
27 organizations” that is working to defeat Prop 8.)
- 28

1
2 Furthermore, we offer the following exhibits demonstrating the support allied groups offered
3 gays and lesbians in their fight against Prop 8:
4

5 • Media

- 6 ○ DIX3101 at 3 (November 3, 2008 email from Matt Coles of the ACLU stating that,
7 “Today, the *Los Angeles Times* released a powerful editorial saying the campaign for
8 Prop. 8 has been based on misleading half truths and calling on Californians to reject
9 it. At this point, we have the support of virtually every major newspaper in the
10 state.”)
- 11 ○ DIX3103 at 1 (August 11, 2008 email from No on 8 campaign to potential donors
12 emphasizing “big victor[y]” that happened when “the *Los Angeles Times* endorsed
13 our campaign.”)
- 14 ○ DIX3120 (October 15, 2008 email forwarding “[a]n amazing endorsement from the
15 Stockton Record” opposing Prop 8)
- 16 ○ DIX3121 (Email chain spanning October 7-9, 2008, forwarding and discussing No-
17 on-8 op-ed that ran in the Monterey Herald.)
- 18 ○ DIX3122 (No on 8 ad listing over twenty California newspapers opposed to Prop 8)
- 19 ○ DIX3123 (Equality California statement identifying Dear Abby as winner of Equality
20 Advocate Award)
- 21 ○ DIX3602 at EQTY004729 (Overview of No on 8 Campaign & Media Strategy;
22 campaign has seen “overwhelmingly positive editorials.”).

23 • Public Officials and other Prominent Citizens

- 24 ○ DIX3101 at 3 (November 3, 2008 email from Matt Coles of the ACLU stating that, in
25 response to Yes-on-8 mailer targeted at African-American voters, “Within a day [of
26 when the mailer was put out], we had a statement from the Obama campaign
27 reaffirming the ticket’s opposition to 8.”)
28

- 1 ○ DIX3102 at 1 (August 14, 2008 email from Field Organizer, ACLU of Northern
2 California, stating that Proposition 8 opponents “won a great victory when the courts
3 upheld Jerry Brown’s new language on the initiative.”)
- 4 ○ DIX3106 at 3-4 (October 24, 2008 No on 8 campaign press release announcing
5 former Republican Congressman Tom Campbell’s opposition to Prop 8. The press
6 release also states that “[o]ther prominent California Republican elected officials
7 opposed to Prop. 8 include Governor Arnold Schwarzenegger, San Diego Mayor
8 Jerry Sanders, San Diego County District Attorney Bonnie Dumanis, San Diego
9 Councilmember Jim Madaffer, Redondo Beach Mayor Mike Gin, Laguna Beach
10 Mayor Pro Tempore Cheryl Kinsman, Los Angeles City Councilman Dennis Zine,
11 Laguna Beach Councilman Kelly Boyd, Laguna Beach Councilwoman Elizabeth
12 Pearson, Cathedral City Councilman Chuck Vazquez, former Assemblyman Jim
13 Cunneen and Los Angeles Businessman Steve Soboroff.”)
- 14 ○ DIX3107 at 1 (October 24, 2008 ACLU of Northern California media advisory
15 announcing San Jose No on Prop 8 rally, at which “[l]ocal elected officials and other
16 community leaders will come together to express their shared opposition to
17 Proposition 8.” Participants include Congresswoman Zoe Lofgren,
18 Assemblymember Sally Lieber, San Jose City Councilmembers Kansen Chu and
19 Forest Williams. In addition, the advisory states that former U.S. Secretary of
20 Transportation Norman Mineta would be sending a statement.)
- 21 ○ DIX3108 at 1 (October 20, 2008 ACLU of Northern California Media Advisory
22 announcing Oakland rally against Proposition 8. Participants include
23 Assemblymember Sandre Swanson and Oakland Mayor Ron Dellums)
- 24 ○ DIX3124 at 1 (November 2, 2008 email to donors explaining that a “bi-partisan
25 group of leaders from across the state and country have joined our fight against
26 Proposition 8. Senators Obama and Feinstein are joined by Governor
27
28

1 Schwarzenegger and Maria Shriver in saying No to Proposition 8. President Clinton
2 and Magic Johnson have called voters to tell them to vote down 8.”)

- 3 ○ DIX3125 (October 28, 2008 message from No on Prop 8 Executive Committee
4 Member Geoff Kors describing ad featuring Senator Feinstein and stating that she “is
5 a trusted and respected voice that will resonate with voters.”)
- 6 ○ DIX3126 (October 28, 2008 No on 8 press release describing No on 8 television ad
7 featuring Senator Feinstein.)
- 8 ○ DIX3127 (September 12, 2008 email from the ACLU’s Matt Coles, stating that
9 Senator Feinstein “not only came out against 8, but she made a pretty strong
10 statement in favor of marriage. I guess my hat is off to her.”)
- 11 ○ DIX3128 (October 28, 2008 press release: “‘We are so moved to have the strong,
12 trusted and independent voice of Senator Feinstein joining the chorus of those voting
13 NO on 8,’ said Patrick Guerriero, Campaign Director for NO on Prop 8.”)
- 14 ○ DIX3603 (October 29, 2008 email from Alice Kessler, Equality California
15 Government Affairs Director: thinks Feinstein ad “will have a big impact.”)
- 16 ○ DIX3116 (October 31, 2008 ACLU of Northern California press release describing
17 recorded phone calls from President Clinton opposing Prop 8; stating that the calls
18 “went to millions of registered California voters.”)
- 19 ○ DIX3129 at ACLU-NC000212 (No on 8 campaign message listing among recent
20 accomplishments: “Garnered the support of Governor Schwarzenegger and the
21 mayors of all three major California metropolitan areas to demonstrate strong bi-
22 partisan opposition to Prop 8.”)
- 23 ○ DIX3131 (October 29, 2008 No on 8 Press Release: “Congresswoman Hilda Solis,
24 Los Angeles City Councilwoman Jan Perry” and others to kick off event “aimed at
25 rallying Democratic women to actively work to defeat Prop 8.”)
- 26 ○ DIX3132 (No on 8 document explaining that “education leaders across the state have
27 endorsed the NO on Prop. 8 campaign, including Los Angeles Unified School
28

1 District Board of Education President Monica Garcia, Davis Joint Unified School
2 Board President Sheila Allen and San Francisco Board of Education Vice-President
3 Kim-Shree Maufas.”)

- 4 ○ DIX3133 (October 29, 2008 No on 8 press release: “Mayor Heather Fargo and
5 Board of Supervisors member Mariko Yamada” to kick off event “aimed at rallying
6 Democratic women to actively defeat Prop 8, in Sacramento tomorrow.”)
- 7 ○ DIX3134 (October 23, 2008 No on 8 press release: Los Angeles Mayor Antonio
8 Villaraigosa opposes Prop 8.)
- 9 ○ DIX3135 (October 9, 2008 article stating that San Diego Mayor Jerry Sanders and his
10 family “will receive EQCA’s Equality Leadership Award in recognition of their
11 decision to stand up for marriage equality for all Californians.”)
- 12 ○ DIX3136 (October 18, 2008 statement of Palm Springs Mayor Steve Pougnet
13 welcoming guests to Palm Springs Equality Awards event and exhorting listeners to
14 vote No on Prop 8.)
- 15 ○ DIX3137 (October 10, 2008 press release: “California’s Asian Pacific American
16 state elected leaders jointly urge Asian Pacific American voters to vote no on
17 Proposition 8.”)
- 18 ○ DIX3138 at EQTY0004305-4306 (August 13, 2008 email from member of PFLAG
19 to Geoff Kors stating that several PFLAG members had a meeting with California
20 Congresswoman Linda Sanchez’s Chief of Staff “that included a discussion of her
21 efforts to mobilize the large [L]atino community in her district against Prop 8” and
22 that Congresswoman Loretta Sanchez “would be similarly inclined” to oppose Prop
23 8.)
- 24 ○ DIX3139 (October 29, 2008 FW: message/script for turning out volunteers:
25 “Congresswoman Barbara Lee, Senator Barbara Boxer, Assemblymember Loni
26 Hancock and other Democratic leaders invite Democratic women to join them ... in
27 Oakland for a rally to defeat Proposition 8.”)

- 1 ○ DIX3502 (October 23, 2008 No on Prop 8 press release: “Today, Assemblymember
2 Dave Jones (D – Sacramento) attacked the continuous failed strategies of lies and
3 misrepresentation that the Proposition 8 campaign continues to push to the public.”)
- 4 ○ DIX3503 at EQTY000404 (October 23, 2008 email identifying Assemblymember
5 Dave Jones as an education leader)
- 6 ○ DIX3505 (Draft No on 8 ad listing elected officials and civil rights leaders opposed
7 to Prop 8)
- 8 ○ DIX3513 (July 23, 2008 email to Staff@eqca.org forwarding L.A. Times Article:
9 “LAPD Chief Bratton backs gay marriage with checkbook.”)
- 10 • Faith Community
- 11 ○ DIX3101 at 3 (November 3, 2008 email from Matt Coles of the ACLU stating that,
12 “On Saturday [November 1, 2008], there were major interfaith services in opposition
13 to 8 in Los Angeles, San Diego, and San Francisco.”)
- 14 ○ DIX3105 at 1-2 (October 30, 2008 email from Rabbi to Shayna Gelender of the
15 ACLU relating “what I shared with my congregation...in my weekly message,”
16 including that “I support equal rights for gays and lesbians, including the right to
17 marry. I have joyfully officiated at the marriage between two Jewish women. ... I
18 urge you to vote NO on Proposition 8. In doing so, you will be endorsing the
19 position taken by the Central Conference of American Rabbis, as well as our local
20 Jewish Community Relations Council, and the Progressive Jewish Alliance.”)⁵
- 21 ○ DIX3109 at 1 (October 20, 2008 email describing No on Proposition 8 press
22 conference to be held at Trinity Episcopal Cathedral in Sacramento)
- 23 ○ DIX3110 at 2 (October 16, 2008 Campaign Committee Update describing event in
24 Monterey that included “several clergy,” and also relating that the day’s “Clergy
25 phonebanks were a great success. Not only were our spiritual leaders moving voters
26

27 ⁵ See Doc # 597 at 2 (declaration identifying Shayna Gelender as an “employee[] at
28 the ACLU who worked to defeat Proposition 8 between June 2008 and November 2008”).

1 by phone, television viewers saw them in action as well. San Francisco, Los
2 Angeles, San Diego and Berkeley had news crews on-hand. National CBS News
3 showed up at one as well; our Clergy Call will appear on the Katie Couric Show
4 before Election Day. An Earned Media High Five!” Finally, states that “a supportive
5 MCC minister gave us the current California Council of Churches newsletter that is
6 sent to over 4,000 churches. In strong words the newsletter urges clergy to OPPOSE
7 Proposition 8. Their website includes an education page on marriage equality. It’s
8 awesome.”)

- 9 ○ DIX3112 at 3 (October 22, 2008 message to campaign committee stating that “every
10 part of this campaign has played a key role in our recent success,” including “our
11 faith organizers.”)
- 12 ○ DIX3113 at 2 (October 19, 2008 Campaign Committee Update stating that “A
13 recently married lesbian couple who are leaders of the local Unitarian Universalist
14 Church phone banked (with 73 other vols!) at San Diego HQ yesterday.” The
15 Unitarian Universalist Congregation “also distributed 200 No on 8 yard signs.”)
- 16 ○ DIX3114 at 1-2 (October 15, 2008 Campaign Committee Update stating that “[i]n
17 nine cities across the state there are clergy-organized phonebanks.” Also, “[t]he San
18 Mateo County News reported today on how both sides are working in a balanced
19 article entitled, ‘Same-Sex Marriage Measure Mobilizes Congregations.’ Congrats to
20 our Unitarian Universalists of San Mateo and our San Jose/Peninsula PFLAGers for
21 being mentioned in the story.”)
- 22 ○ DIX3140 (October 16, 2008 email forwarding sermon given at Unitarian Universalist
23 church.)
- 24 ○ DIX3141 at 2 (October 14, 2008 message to campaign committee members,
25 identifying organizations committed to email campaign, including the “UU
26 [Unitarian Universalist] Legislative Ministry Action Network PAC.”)

- 1 ○ DIX3142 (October 20, 2008 ACLU of Northern California Media Advisory
2 announcing event to be held at Sacramento’s Trinity Cathedral that will include
3 “[l]ocal clergy” and others coming “together to express their shared opposition to
4 Proposition 8.”)
- 5 ○ DIX3143 (October 21, 2008 ACLU of Northern California Media Advisory
6 announcing rally at Oakland City Hall to include “a number of religious and
7 community leaders.”)
- 8 ○ DIX3144 (October 21, 2008 ACLU of Northern California Media Advisory
9 announcing that local clergy and others in Contra Costa county would be coming
10 “together to express their shared opposition to Proposition 8.”)
- 11 ○ DIX3145 (October 15, 2008 ACLU of Northern California Media Advisory
12 announcing that local clergy and others in San Mateo county would be coming
13 “together to express their shared opposition to Proposition 8.”)
- 14 ○ DIX3146 (October 15, 2008 ACLU of Northern California Media Advisory
15 announcing that local clergy and others in Monterey county would be coming
16 “together to express their shared opposition to Proposition 8.”)
- 17 ○ DIX3147 at 1 (October 17, 2008 email stating that the sender had “sent an email blast
18 to about 55 LGBT faith leaders a couple days ago and to about 50+ lay leaders in
19 their congregations today.”)
- 20 ○ DIX3148 (October 31, 2008 No on 8 advisory announcing that “a coalition of Los
21 Angeles area clergy members and worshipers from diverse faiths will hold a rally to
22 speak out against Proposition 8.”)
- 23 ○ DIX3149 (October 31, 2008 No on 8 advisory: “This Saturday, a coalition of Bay
24 Area clergy members and worshipers from diverse faiths will hold a rally to speak
25 out against Proposition 8. This event will show the broad opposition to Proposition 8
26 by people of faith, faith leaders, and others.”)

- 1 ○ DIX3150 (October 31, 2008 No on 8 advisory: “This Saturday, a coalition of
2 California clergy members and worshipers from diverse faiths will hold rallies to
3 speak out against Proposition 8.” Events will take place in Los Angeles, San
4 Francisco, San Diego, Long Beach, Sacramento, Redlands and Modesto and will be
5 “followed by phone banks, Election Day trainings, and visibility efforts.”
6 Participants in the events include a Muslim leader, Mormon filmmaker, and Buddhist
7 actor, and clergy from the Episcopal, Methodist, Unitarian Universalist, First
8 Congregational, Samoan Congregational, Presbyterian, and Lutheran churches.)
- 9 ○ DIX3151 (September 19, 2008 Press Release of the Unitarian Universalists of San
10 Mateo: “This weekend, the Unitarian Universalists of San Mateo are working to
11 defeat Proposition 8 by staffing phone banks and waving signs to highlight the
12 growing coalition of Californians who don’t want to eliminate rights for anyone.”)
- 13 ○ DIX 3152 (November 2, 2008 campaign update: “Today in Oakland and San
14 Francisco we visited 11 churches whose parishioners are mainly African American
15 and distributed flyers with quotes against Prop 8 from leading African Americans.
16 Our volunteers came back exhilarated by the support they received.”)
- 17 ○ DIX3153 at 1-2 (October 30, 2008 campaign update, listing interfaith services to be
18 held in cities across California.)
- 19 ○ DIX 3154 (October 3, 2008 Update for Faith Leaders Supporting No on Prop 8,
20 stating that a member of the “Progressive Jewish Alliance has faith-based No on Prop
21 8 lawn signs.”)
- 22 ○ DIX3155 at 2 (September 15, 2008 message re Interfaith No on Prop 8 Training:
23 “Next Tuesday evening, we will be hosting an important training for faith based
24 organizers. The training, developed by California Faith for Equality, enables
25 congregations to self-assess their support/involvement in the campaign ... and
26 identify concrete steps to take between now and Election Day.”)
- 27
28

- 1 ○ DIX3167 (No on 8 media advisory announcing October 21, 2008 event: Los Angeles
2 No on 8 event to include President of the Southern Christian Leadership Council of
3 Los Angeles and reverends from the United Church of Christ and the Church of the
4 Advent.)
- 5 ○ DIX3157 (June 25, 2008 email stating that “I have faxed the organizational
6 endorsement form” to Equality for All; forwarding statement from church supporting
7 same-sex marriage.)
- 8 ○ DIX3158 (October 6, 2008 article about Catholic priest who preached from the pulpit
9 against Prop 8.)
- 10 ○ DIX3159 (Equality California scheduling document listing phone bank and signing
11 shifts at Church of Long Beach, Central United Methodist Church, and Irvine United
12 Congregational Church)
- 13 ○ DIX3118 (Overview of No on 8 campaign structure listing California Faith for
14 Equality as member organization of campaign committee.)
- 15 ○ DIX3507 at EQTY000368 (November 1, 2008 campaign committee update:
16 “Today’s Interfaith Call to Action Services were a success. Over 2,000 attended one
17 of the three masses in LA, San Diego, or San Francisco. Mayor Newsom attended
18 the SF event at Glide Memorial Church; many parishioners wept as Reverend Dorsey
19 Blake spoke about our country’s painful history of discrimination and connected it to
20 the discrimination on the ballot on Tuesday.”)
- 21 ○ DIX3510 (No on 8 message announcing October 6, 2008 “Interfaith Community
22 Celebration of Love and Commitment,” to be held at Trinity Episcopal Cathedral in
23 Sacramento. Event is an “Interfaith Gathering of clergy, married couples and all
24 supportive people of faith – Light dinner following the service and an opportunity to
25 engage in a volunteer action.”)

- 1 ○ DIX3511 (October 9, 2008 message forwarding text of “Fresno Priest’s sermon last
2 Sunday.” Catholic priest states in sermon that “[p]ersonally, I am morally compelled
3 to vote ‘NO’ on Proposition 8.”)
- 4 ○ DIX3512 (November 2, 2008 press release: “members of Hollywood United
5 Methodist Church will form a human billboard on All Saints Sunday to call
6 Californians to vote ‘No on Proposition 8’ in Tuesday’s election.”)
- 7 ○ DIX3515 at EQTY000431 (September 2008 publication of Congregation Bet
8 Haverim, Davis, CA: “Our congregation and the rabbis of the Pacific Northwest
9 Region have taken strong stands to oppose Proposition 8.”)
- 10 ○ DIX3516 (September 12, 2008 email re: Prop 8 podcast: “Our Proposition 8 Podcast
11 provides some fascinating insights: Mark Bollwinkel, Senior Pastor from the Los
12 Angeles United Methodist Church ... speak[s] on why [he] oppose[s] Proposition
13 8.”)
- 14 ○ DIX3517 (September 2, 2008 to Shayna Gelender and others from the Director of
15 Outreach for the Center for Jewish Living and Learning in Oakland asking for review
16 of ad opposing Prop 8.)
- 17 ○ DIX3518 (Email chain including announcement of October 5, 2008 “No on Prop 8
18 Jewish Mobilization Event” to be held at the Congregation Shomrei Torah in Santa
19 Rosa, Ca.)
- 20 ○ DIX3519 (Email chain including September 10, 2008 email from Shayna Gelender,
21 Field Organizer for the ACLU of Northern California, to individuals she “met at the
22 marriage equality program earlier this week at Sherith Israel” and had asked her “to
23 email you a message you can forward on to your friends and family in California.”)
- 24 ○ DIX3539 (Document entitled “Marriage responsibility – for everyone” by the
25 Reverend Bruce W. Gray. States that “many people of faith strongly support
26 marriage equality and will vote no on Proposition 8.”)
- 27
- 28

- 1 ○ DIX3548 (September 19, 2008 article reporting poll showing that a majority of
2 Catholics support same-sex marriage.)
- 3 • Legal Scholars
- 4 ○ DIX3160 (October 29, 2008 No on 8 press release: “Today the NO on Prop 8
5 campaign released a rare joint statement signed by 59 distinguished law professors”
6 including “Erwin Chemerinsky, the Founding Dean of the University of California
7 School of Law; Kathleen Sullivan, Former Dean of Stanford Law School; and Paul
8 Brest, Dean Emeritus of Stanford Law School.”)
- 9 • Asian and Pacific Islander Community
- 10 ○ DIX3161 (October 22, 2008 No on Prop 8 Media Advisory announcing that, “Across
11 the State, Key [Asian and Pacific Islander] Community Leaders Unite to Oppose
12 Prop 8.”)
- 13 ○ DIX3162 (No on Prop 8 media advisory announcing October 23, 2008 Los Angeles
14 event that will “convene a Broad Alliance of Asian/Pacific Islander community
15 groups and leaders united to oppose Proposition 8.”)
- 16 ○ DIX3163 (No on 8 media advisory announcing October 23, 2008 San Francisco
17 event in which “Asian and Pacific Islander American Leaders in San Francisco Urge
18 NO on Prop 8.”)
- 19 • Latino Community
- 20 ○ DIX3164 (October 7, 2008 ACLU of Northern California Media Advisory
21 announcing rally; “Latino communities across the state are coming together to stand
22 against Proposition 8.”)
- 23 ○ DIX3165 (No on 8 media advisory announcing October 8, 2008 Los Angeles event:
24 “Latino Leaders Across California Urge NO on Prop 8.”)
- 25 • African-American Community
- 26 ○ DIX3166 (No on 8 media advisory announcing October 21, 2008 event in which
27 “San Diego African-American Leaders Encourage a NO Vote on Prop 8.”)
- 28

1 ○ DIX3167 (No on 8 media advisory announcing October 21, 2008 event in which
2 “African American Leaders in Los Angeles Urge NO on Prop 8.”)

3 ○ DIX3168 (No on 8 media advisory announcing October 21, 2008 event in which
4 “African American Leaders in Bay Area Urge NO on Prop 8.”)

5 • College Students

6 ○ DIX3169 at 8 (November 1, 2008 campaign update stating that “[t]he student body
7 president of Stanford asked campus program director Lilia what the largest phone
8 bank had been in the state. When he found out that it was 130 people in SF, he
9 decided that it would be Stanford’s mission to put together the biggest phone bank of
10 the campaign. Today, Lilia received this message: We just had a rush from two
11 dorms [that] hit 190! There are more than 100 in the building right now!”)

12 • Hollywood

13 ○ DIX3170 at 2 (October 17, 2008 Campaign Committee Update stating that “[t]he
14 stars are coming out to Campuses: Rob Schneider held a rally to fight Props 4 and 8
15 on UCI yesterday in front of hundreds of students. We have the cast of Tru Loved,
16 including Alexandra Paul from Baywatch, and Bruce Vilanch of Hollywood Squares
17 fame coming to campuses all over the state next week.”).

18 ○ DIX3601 at 1 (October 11, 2008 message to campaign committee stating that
19 “[w]e’ve finally confirmed our fabulous L.A. fundraising event for No on 8 with the
20 royalty of Hollywood.”)

21 ○ DIX3171 (October 14, 2008 No on 8 press release describing video message of Ellen
22 DeGeneres opposition Prop 8.)

23 ○ DIX3172 (October 25, 2008 No on 8 Press Release: “Today the NO on Prop 8
24 campaign launched a powerful new Spanish language television ad featuring America
25 Ferrara, Tony Plana and Ana Ortiz, three prominent actors currently starring in the hit
26 television show ‘Ugly Betty.’”)

- 1 ○ DIX3173 (October 24, 2008 No on 8 press release: “MTV Networks/Viacom today
- 2 joined the growing number of leading California businesses ... show[ing] their
- 3 opposition to Proposition 8.”)
- 4 ○ DIX3174 (October 16, 2008 Reuters story: “California gay rights backers are turning
- 5 to Hollywood celebrities for help at a major fundraiser. Actress and singer Barbara
- 6 Streisand is expected at the event on Tuesday and singers Melissa Etheridge and
- 7 Mary J. Blige will perform.”)
- 8 ○ DIX3175 (September 22, 2008 email from C.E.O., L.A. Gay & Lesbian Center:
- 9 “Spielbergs Donate \$100,000 to Gay Marriage Fight.”)
- 10 ○ DIX3176 (October 1, 2008 press release for “Star Studded Event” put on in part by
- 11 Equality California that will honor “the Heroes and History Makers who are working
- 12 to defeat Proposition 8.”)
- 13 ○ DIX3504 (October 30, 2008 message stating that “[w]e also got actor John Cho, who
- 14 is very popular with 20-somethings, to oppose Prop 8 last week.”)
- 15 • National Organizations
- 16 ○ DIX3100 at 1 (MoveOn.org election day message stating that “MoveOn members
- 17 overwhelmingly oppose California’s Proposition 8” and imploring voters to “vote
- 18 NO on Prop 8.” MoveOn aimed “to get [the message] out to 200,000 voters by 10
- 19 a.m.” and requested that recipients “forward this email on to everyone you know.”)
- 20 ○ DIX3177 (Draft message from Anthony D. Romero, Executive Director stating that
- 21 “the ACLU is going all-out to defeat Prop 8. We’re funding television ads,
- 22 organizing grassroots voter contact efforts, and working hard to educate the more
- 23 than 5 million newly-registered California voters who could decide the outcome of
- 24 this critical vote for freedom.”)
- 25 ○ DIX3178 (No on 8 ad identifying the League of Women Voters as opponent to Prop
- 26 8)
- 27
- 28

- 1 ○ DIX3508 (October 30, 2008 National Asian and Pacific American Bar Association
2 Action Alert: “Vote NO for Proposition 8”)
- 3 ○ DIX3509 (Email chain including June 8, 2008 message from “one of our leaders in
4 the field of LGBT health,” stating that “National experts in mental health, child
5 health, & family have ... endorsed same-sex civil marriage in a published policy
6 statement”; organizations supporting same-sex marriage include the American
7 Academy of Pediatrics, the American Psychiatric Association, the American
8 Association of Child and Adolescent Psychiatrists, the American Psychoanalytic
9 Association, and the American Psychological Association.)

10 • **Businesses**

- 11 ○ DIX3173 (October 24, 2008 No on 8 press release: “MTV Networks/Viacom today
12 joined the growing number of leading California businesses ... show[ing] their
13 opposition to Proposition 8. ... Other business leaders within the Equality Business
14 Advisory Council include PG&E, Levi Strauss & Co., Sweet, the Morgan Hotel
15 Group, San Francisco Chamber of Commerce, California Black Chamber of
16 Commerce, San Luis Obispo Chamber of Commerce, Valley Industry and Commerce
17 Association, and the Oakland Metropolitan Chamber of Commerce.”)
- 18 ○ DIX3179 (October 30, 2008 No on 8 press release: “The leadership of the nation’s
19 high-tech industry feels so strongly that Prop 8 is wrong and unfair, that a coalition of
20 key leaders is running a full page advertisement in a major daily newspaper urging
21 Californians to vote NO on Prop 8.” Supporters included “the founders and CEOs of
22 Google, Yahoo!, Adobe Systems and Cisco Systems.”)
- 23 ○ DIX3180 (October 30, 2008 No on 8 press release: “Live Nation, the world’s largest
24 live music company, donated \$50,000 to the NO on Prop. 8 campaign today.”)
- 25 ○ DIX3181 at EQTY000687 (September 24, 2008 Equality California press release:
26 lead sponsors for EQCA 10th anniversary celebration event include AT&T and Wells
27 Fargo.)

- 1 ○ DIX3500 (September 29, 2008 email re “Vote No on Prop. 8, says Google”)
- 2 ○ DIX3514 (August 4, 2008 Equality California press release: “businesses made
- 3 significant contributions to NO on 8 – Equality California on Saturday. ... Ken
- 4 McNeely, president of AT&T California, presented a donation of \$25,000 from the
- 5 telecommunications corporation.”)
- 6 • Unions
- 7 ○ DIX3182 at 3 (October 17, 2008 email from Rebecca Farmer of ACLU Northern
- 8 California, noting fantastic speakers at a Redwood City event including the Executive
- 9 Treasurer of the San Mateo Central Labor Council and Mark Leach of the
- 10 International Brotherhood of Electrical Workers 672)⁶
- 11 ○ DIX3183 at 2 (October 15, 2008 email Equality for All Interfaith Organizer, stating
- 12 that upcoming No on 8 press conference will include participants from the
- 13 Firefighters Association, CA Nurses Association, and other labor organizations.)
- 14 ○ DIX3129 at ACLU-NC000212 (No on 8 campaign message listing among recent
- 15 accomplishments: “Secured endorsements from the statewide labor federation,
- 16 League of Women Voters, California Teachers Association, SEIU, and AFSCME.”)
- 17 ○ DIX3184 (October 27, 2008 No on 8 press release announcing No on 8 Working
- 18 People Press Conference, with participants including several labor leaders.)
- 19 ○ DIX3178 (No on 8 ad identifying the California Nurses Association as opponent of
- 20 Prop 8)
- 21 ○ DIX3167 (No on 8 media advisory announcing October 21, 2008 event: Los Angeles
- 22 No on 8 event to include Assistant Director of Political Action for AFSCME
- 23 International.)

24

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27 ⁶ See Doc # 597 at 2 (declaration identifying Rebecca Farmer as an “employee[] at

28 the ACLU who worked to defeat Proposition 8 between June 2008 and November 2008”).

- 1 ○ DIX3185 (October 7, 2008 Equality California statement: “the Unite Here
2 International Union on Saturday made a \$100,000 [donation] to Equality California’s
3 NO on Proposition 8 campaign committee and announced its opposition to Prop 8.”)
- 4 ○ DIX3602 at EQTY004730 (Overview of No on 8 Campaign & Media Strategy: “The
5 California Federation of Labor will target approximately 1,000,000 labor union
6 households for two pieces of mail and two phone calls. [Equality for All] plans to
7 participate in this effort by having a labor union supporter to subsidize the
8 expenditure.”; “Organizational endorsements are very helpful so that key
9 organizations can educate their memberships and communicate their endorsement. ...
10 We have already secured endorsements from the ... State Federation of Labor and the
11 California Teachers Association. These organizations conduct extensive member
12 voter programs. Based on polling data, the CTA and Federation of Labor programs
13 could deliver as many as 257,000 additional ‘no’ votes.”)
- 14 ○ DIX3514 (August 4, 2008 Equality California press release: “labor organizations ...
15 made significant contributions to NO on 8 – Equality California on Saturday. The
16 Service Employees International Union (SEIU-California) made a contribution of
17 \$500,000 David Sanchez, president of the California Teacher’s Association,
18 announced a contribution of \$250,000 on behalf of CTA.”)
- 19 • Political Parties
- 20 ○ DIX3602 at EQTY004730 (Overview of No on 8 Campaign & Media Strategy: “The
21 California Democratic Party will identify over 3,000,000 households for slate mailers
22 and volunteer door-to-door campaigns.” “Organizational endorsements are very
23 helpful so that key organizations can educate their memberships and communicate
24 their endorsement. ... We have already secured endorsements from the California
25 Democratic Party.”)
- 26 ○ DIX3112 at 1-2 (October 21, 2008 Campaign Committee Update stating that “[t]he
27 California Democratic Party is raising funds for our campaign. In a fundraising letter
28

1 sent to Democrats and signed by Party Chair Art Torres, he states: ‘Barack Obama is
2 against Prop 8. If you believe in Barack Obama’s call for a new type of politics, then
3 it’s time to put it into practice right here in California and stand up to fight Prop 8.’
4 He then asks for contributions to Equality for All. Thank you, California
5 Democrats.”).

6
7 In the third category Proponents submit for the evidentiary record an exhibit that supports the
8 position that the ability to raise money in support of political goals is an important metric for
9 assessing a group’s political power. *See* Trial Tr. 2437:21-22 (Miller: “I think any political scientist
10 would tell you that money is a critical asset for achieving political power.”):

- 11
- 12 • DIX3186 at 2 (September 30, 2008 fundraising message from National Gay and Lesbian
13 Task Force Action Fund explaining that “money will be a major factor in whether we win or
14 lose – because this election will be decided on the airwaves. Whoever has more to spend –
15 and is most effective in their ads – is more likely to win. It is that simple.”)

16
17 The fourth group of exhibits Proponents submit for the evidentiary record contains evidence
18 demonstrating recent legislative victories gays and lesbians have achieved. *See* June 30, 2009
19 Order, Doc # 76 at 7 (identifying as relevant to political power “successes of ... pro-gay ...
20 legislation”):

- 21
- 22 • DIX3187 (October 8, 2008 article: “Gov. Arnold Schwarzenegger signed a bill Sept. 28 to
23 help prevent anti-gay bias in senior-care facilities and nursing homes.” Equality California
24 Executive Director Kors praised the Governor and the legislature for approving the
25 measure.)

- 1 • DIX3188 (September 29, 2008 Equality California press release: “Governor approves bill
2 protecting foster youth. Brownley Bill, Co-sponsored by EQCA, ... helps protect foster
3 youth from bias at school.”)

4
5 Finally with respect to political power, Proponents submit for the evidentiary record exhibits
6 tending to show that “[t]o the extent the LGBT community sometimes exercises less political power
7 than some might desire, the tactics and statements of members of this community play a contributing
8 role.” Proponents’ Proposed Finding of Fact, 190, Doc # 290 at 18:

- 9
10 • DIX3189 (October 30, 2008 message from the Legislative & Field Director for the ACLU’s
11 Lesbian, Gay, Bisexual & Transgender Project quoting language from No on 8 site stating
12 that people supporting Prop 8 “are fanatical, intolerant and willing to do and say anything to
13 eliminate our rights.”)
- 14 • DIX3544 (October 28, 2008 email from ACLU’s Matt Coles: “when we use [the word hate]
15 they beat us up as intolerant.”)

16
17 2. In addition to political powerlessness, another factor required for suspect classification status
18 is that a group has suffered “a history of discrimination.” *High Tech Gays v. Defense Indus.*
19 *Security Clearance Off.*, 895 F.2d 563, 573 (9th Circuit 1990). While noting that discrimination has
20 occurred in the past, Proponents have consistently argued that “[a]t present, discrimination against
21 gays and lesbians is far less severe and common than in times past, and is growing increasingly
22 rare.” Proponents’ Proposed Finding of Fact No. 191, Doc # 290 at 19. Proponents hereby offer for
23 the evidentiary record the following exhibits that support this argument:

- 24
25 • DIX3529 (October 18, 2008 email with draft script for Equality California event attached.
26 Executive Director Geoff Kors’ prepared remarks emphasize the progress gays and lesbians
27
28

1 made in California over the past ten years, and state that “[w]e have truly changed the
2 world.”)

- 3 • DIX3551 (September 4, 2008 Zogby poll finding that “sixty-five percent of Americans could
4 support an openly gay candidate for president.”)

5
6 3. Plaintiffs have consistently asserted that Prop 8 stigmatizes gays and lesbians and their
7 relationships. *See, e.g.*, Plaintiffs’ Amended Proposed Finding of Fact 121, Doc # 608 at 20-21.
8 The following exhibits that Proponents offer for the evidentiary record undercut this assertion by
9 demonstrating that the No on 8 campaign encountered difficulty getting gays and lesbians to engage
10 in fighting against Prop 8, and that many are happy with domestic partnerships. Support for
11 Proposition 8 among gays and lesbians and their apathy on the outcome of the ballot measure are
12 impossible to square with plaintiffs’ claims relating to the stigma of domestic partnerships.

- 13
14 • DIX3600 (Email of October 14, 2008 at 14:29:43 from the ACLU’s Paul Cates, stating that
15 “[a]pparently those ads our opponents are pushing are effective among young gay men.”)
- 16 • DIX3535 (October 2008 email exchange including Equality California board member
17 Brandon Brawner. Sender complains that “Each and every member of our community
18 should either contribute financially or their time, not just their vote. I can’t tell you how
19 many people in our community tell me they’re either not voting, or just voting.”)
- 20 • DIX3536 (October 16, 2008 email from Kelly Dermody (former board member of National
21 Center for Lesbian Rights, *see* National Center for Lesbian Rights, 2006 Annual Report, at
22 http://www.nclrights.org/site/DocServer/2006NCLR_AnnualReport.pdf?docID=1461),
23 stating that there is “a lot of apathy in the community” about same-sex marriage and many
24 “don’t feel very strongly about marriage.”)
- 25 • DIX3552 (October 3, 2008 email from Mary Breslauer to Patrick Guerriero, Maggie Linden,
26 and Steve Smith explains that “I feel we have a need – in an ideal world – to be ready with
27
28

1 some bad DP stories, personal stories, when they inevitably unload their DP is as good as
2 marriage barrage. The truth is, as you well know, no one has them.”)

3
4 4. Finally, this Court has deemed potential voter motivations for Prop 8 relevant to deciding the
5 issues in this case. *See, e.g.*, Doc # 76 at 9. There were a cacophony of voices heard in the Prop 8
6 campaign, and a correspondingly large number of potential voter motivations. We submit the
7 following exhibits for admission into evidence, which demonstrate that opponents to Proposition 8
8 were aware of and recognized the force of pro-Proposition 8 arguments:

- 9
- 10 • DIX3543 at 2 (October 21, 2008 email to ACLU’s Matt Coles stating that “Kids are a loser
11 for us. The more I’ve thought about this the less comfortable I am fighting on their turf.
12 I’m not sure we can win.”)
 - 13 • DIX3553 at 1, 4 (October 27, 2008 message from ACLU’s Matt Coles recognizing that “a
14 lot of voters are angry about the California Supreme Court decision, especially since the
15 people voted six years ago to restrict marriage to men and women.”)

16
17 The evidence also shows that the issue of the education of children, specifically that same-sex
18 marriage would be taught to young children, was a prominent feature of the public debate
19 surrounding Proposition 8. We submit the following exhibit demonstrating that this was no idle
20 concern:

- 21
- 22 • DIX3545 at 3 (November 3, 2008 Huffington Post entry stating that “the Friday before our
23 [California same-sex] wedding, [daughter] Norrie’s preschool teacher held a special
24 celebration for us. She read the kids King and King, then presented us with paper flowers
25 decorated by all Norrie’s classmates.”)

26
27 The evidence also shows that plaintiffs experts are politically active advocates of Proposition 8.
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- DIX3555 (November 4, 2008 email from Greg Herek to the ACLU's Matt Coles forwarding text of Yes-on-8 Obama robocall).

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CONCLUSION

Proponents hereby submit the foregoing exhibits for the evidentiary record. Having done so, Proponents formally rest their case.

Dated: June 2, 2010

COOPER AND KIRK, PLLC
ATTORNEYS FOR DEFENDANTS-INTERVENORS
DENNIS HOLLINGSWORTH, GAIL J. KNIGHT,
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OF CALIFORNIA RENEWAL

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