

1 David L. Llewellyn, Jr., SBN 71706
Llewellyn † Spann
2 5530 Birdcage Street, Suite 210
Citrus Heights, California 95610
3 916.966-9036
916.966-9036 fax
4 DLlewellyn@LS4law.com

5 William C. Duncan
6 Marriage Law Foundation
1868 N 800 E
7 Lehi, Utah 84043
801-367-4570
8 duncanw@marriagelawfoundation.org

9 Attorneys for *Amicus Curiae*
10 Ethics and Religious Liberty Commission
of the Southern Baptist Convention

11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 KRISTIN M. PERRY, SANDRA B.)
STIER, PAUL T. KATAMI, and)
15 JEFFREY J. ZARRILLO,)

16 Plaintiffs,)

17 v.)

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

27 Defendants.)
28

Case no. 09-CV-2292 VRW

**MEMORANDUM OF LAW,
BRIEF *AMICUS CURIAE*,
OF THE ETHICS AND RELIGIOUS
LIBERTY COMMISSION OF THE
SOUTHERN BAPTIST CONVENTION**

Chief Judge Vaughn R. Walker
Courtroom 6

Hearing: No hearing set

1 Proposition 8 Official Proponents,)
DENNIS HOLLINGSWORTH, GAIL J.)
2 KNIGHT, MARTIN F. GUTIERREZ,)
HAK-SHING WILLIAM TAM,)
3 MARK A. JANSSON; and)
PROTECTMARRIAGE.COM-YES ON 8,)
4 A PROJECT OF CALIFORNIA)
RENEWAL,)
5)
6 Defendants-Intervenors.)
_____)

7
8 The Ethics and Religious Liberty Commission of the Southern Baptist
9 Convention submits this memorandum of law as a brief *amicus curiae* in support of the
10 Defendants-Intervenors in this action.

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1 **INTEREST OF *AMICUS CURIAE***

2 The Ethics and Religious Liberty Commission (ERLC) of the Southern Baptist
3 Convention works to address the social and moral concerns of Southern Baptists and
4 the implications of these concerns for public policy at the local, state and national levels
5 with particular attention to their impact on American families and their faith. The
6 Southern Baptist Convention is the largest non-Catholic denomination in the nation with
7 over 16 million members.

8 The ERLC believes that an order by this court that California's constitutional
9 definition of marriage violates the guarantees of the United States Constitution would
10 undermine the critical contributions marriage has always made to society. The ERLC is
11 particularly concerned that acceptance of plaintiffs' argument in this case, that support
12 for traditional marriage stems necessarily from animus, unfairly represents the
13 reasonable and loving Christian understanding of marriage and sexuality.

14 Plaintiffs make the implausible charge that voter approval of Proposition 8,
15 California's constitutional definition of marriage, can only be explained by motives of
16 animus. Defendants-Intervenors have effectively demonstrated that this is not the case
17 as a factual matter. In this memorandum, the ERLC will explain why the charge of
18 animus is particularly inappropriate when leveled at mainstream religious faiths, many
19 of whose members supported Proposition 8.
20

21 **ARGUMENT**

22 **I. RELIGIOUS COMMUNITIES HAVE LONG SUPPORTED**
23 **MARRIAGE AS A SACRED INSTITUTION THAT**
24 **PROTECTS IMPORTANT POLICY INTERESTS.**

25 For the Southern Baptist Convention, as for most mainstream faith traditions,
26 marriage between a man and a woman is sacred. Our commitment to marriage is
27 motivated by this core understanding of marriage as a sacred institution designed by
28 God. The Bible declares, "Marriage is to be held in honor among all." Hebrews 13:4

1 (New American Standard Bible). Southern Baptists' confessional statement, The
2 Baptist Faith and Message, affirms: "Marriage is the uniting of one man and one woman
3 in covenant commitment for a lifetime. It is God's unique gift to reveal the union
4 between Christ and His church and to provide for the man and the woman in marriage
5 the framework for intimate companionship, the channel of sexual expression according
6 to Biblical standards, and the means for procreation of the human race." Article XVIII,
7 "The Family," at <http://www.sbc.net/BFM/bfm2000.asp>.

8
9 One reason religious people desire to protect the sacred institution of marriage is
10 that it uniquely promotes important social interests. The sexual relationship between a
11 man and a woman is the only relationship that can naturally result in the birth of
12 children. When that relationship takes place within marriage, children who are born to
13 that married couple are guaranteed an opportunity to know and be raised by their own
14 mother and father who are bound to one another and to the children their relationship
15 creates. When that ideal is not possible for a child or when a married couple cannot
16 have children, they can still promote marriage's childrearing purpose by providing a
17 mother and father for a child who would otherwise be deprived of that opportunity.
18 Marriage creates unity out of two corresponding genders. See Genesis 2:23-24. Thus,
19 it also promotes a setting for childbirth and childrearing in which children will be
20 provided role models and companionship from both sexes and ensured the unique
21 contributions both men and women make to child well being. See David Popenoe, *Life*
22 *Without Father* (1996) (sociological studies confirming these principles).

23 A recent statement signed by Dr. Richard Land, president of the ERLC,
24 effectively explains the nature of our concern with the institution of marriage:

25
26 Vast human experience confirms that marriage is the original and
27 most important institution for sustaining the health, education, and welfare
28 of all persons in a society. Where marriage is honored, and where there
is a flourishing marriage culture, everyone benefits -- the spouses
themselves, their children, the communities and societies in which they
live. Where the marriage culture begins to erode, social pathologies of

1 every sort quickly manifest themselves. Unfortunately, we have witnessed
2 over the course of the past several decades a serious erosion of the
3 marriage culture in our own country. Perhaps the most telling -- and
4 alarming -- indicator is the out-of-wedlock birth rate. Less than fifty years
5 ago, it was under 5 percent. Today it is over 40 percent. Our society --
6 and particularly its poorest and most vulnerable sectors, where the
7 out-of-wedlock birth rate is much higher even than the national average --
8 is paying a huge price in delinquency, drug abuse, crime, incarceration,
9 hopelessness, and despair. Other indicators are widespread non-marital
10 sexual cohabitation and a devastatingly high rate of divorce.

11 "Manhattan Declaration: A Call of Christian Conscience" (see
12 <http://www.manhattandeclaration.org/the-declaration>).

13 A desire to protect the sacred institution of marriage and the social goods it
14 promotes is the source of religious opposition to redefining marriage as the union of any
15 two people. Such a redefinition would send the message that marriage is about nothing
16 more than adult desires. As the Manhattan Declaration explains, redefining marriage to
17 include same-sex couples "would lock into place the false and destructive belief that
18 marriage is all about romance and other adult satisfactions, and not, in any intrinsic
19 way, about procreation and the unique character and value of acts and relationships
20 whose meaning is shaped by their aptness for the generation, promotion and protection
21 of life." Redefining marriage sends a message that men and women are fungible and
22 that children do not need both a mother and a father. Christians deplore this and other
23 threats to the meaning and significance of marriage such as divorce, cohabitation, and
24 unwed childbearing.

25 As an aside, some commentators and critics of religious opposition to redefining
26 marriage have suggested that our opposition to same-sex marriage is somehow
27 disingenuous because Christians do not adhere to every Biblical injunction (such as
28 dietary restrictions) in the Old Testament. The implication of this charge is that our
opposition to same-sex sexual behavior is premised on bad faith. This is a distortion of
Christian teachings. Christians recognize themselves as having been freed from the

1 strictures of the ceremonial and civil laws God gave to Moses recorded in the Old
2 Testament. Many of the moral laws followed by those who lived before Christ,
3 however, are still in force. These include the disapproval of same-sex sexual behavior
4 (Leviticus 18:22; Romans 1:24-27) and other non-marital sexual behavior (Exodus
5 20:14; 1 Corinthians 6:9-10), and the affirmation of the sacred nature of marriage
6 between a man and a woman (Genesis 2:23-25; Matthew 19:1-6).

7
8 **II. RELIGIOUS SUPPORT FOR MARRIAGE AND**
9 **OPPOSITION TO NONMARITAL SEXUALITY IS**
10 **MOTIVATED BY LOVE.**

11 Our love for God and our love for all people, not atavistic hatred of difference,
12 motivates our opposition to all forms of non-marital sexual union, including between
13 persons of the same sex. We believe that any sexual conduct outside the bond of
14 marriage, the union of one man and one woman, is contrary to the will of God because
15 God has designed marriage as the only appropriate context in which sexual relations
16 should occur. Genesis 1:26-28; 2:18-25.

17 Engaging in sexual conduct outside the bond of marriage demeans the dignity of
18 the individual, ignores God's full plan for marriage, and interferes with a person's
19 relationship with God. Sexual activity within God's design is good. Hebrews 13:4.
20 When one engages in sexual activity outside of God's design, that person demeans his
21 or her dignity as God's creation in His image. Genesis 1:27; Romans 1:24-27;
22 1 Corinthians 6:18.

23 The Baptist Faith and Message affirms that marriage provides for a man and a
24 woman "the framework for intimate companionship, the channel of sexual expression
25 according to biblical standards, and the means for procreation of the human race."
26 Article XVIII, "The Family." Genesis 1:26-28; 2:15-25; 3:1-20; Exodus 20:12;
27 Deuteronomy 6:4-9; Proverb 22:6; Malachi 2:14-16; Matthew 19:3-9; Ephesians
28

1 5:21-33; 6:1-4; Colossians 3:18-21. Any sexual activity in which all of these
2 fundamental purposes are not represented ignores God's design for marriage.

3 Our beliefs about marriage and human sexuality must also be understood in the
4 context of our love for all people. Matthew 22:39. There is no authority in Biblical
5 teachings for hatred of any people including those who identify as gay or lesbian. Of
6 course, sinful behavior cannot be approved or promoted, but we believe that all people
7 are sinners. Romans 3:23. There are many forms of sin, including dishonesty, gossip,
8 lust, envy, jealousy, love of money, and all sexual impurity (sexual relations outside the
9 marital union of a husband and wife). We invite all sinners (or in other words all people)
10 to develop a relationship with Jesus Christ.

11
12 Southern Baptists must, and do, pray that all people, including those who
13 experience same-sex attraction, come to know and love Jesus Christ and keep His
14 commandments. We aspire to follow the example of Jesus Christ who loves all people
15 and who extends the possibility of forgiveness and freedom from sin to all who seek
16 Him.

17
18 **III. TO CHARACTERIZE RELIGIOUS SUPPORT FOR**
19 **MARRIAGE AS UNCONSTITUTIONAL ANIMUS**
20 **THREATENS THE ABILITY OF RELIGIOUS PEOPLE TO**
21 **PARTICIPATE IN PUBLIC DEBATE.**

22 While Christians reach out in love to all who engage in sinful behavior of any
23 kind, they continue to affirm the nature of marriage as a sacred institution and strongly
24 oppose any attempt to redefine marriage as something other than the union of a man
25 and a woman. This concern with marriage is in line with other teachings on religious
26 issues like abortion, assisted suicide and attempts to banish religious influence and
27 expression from the public square. In all of these matters, religious people can and
28 should seek to influence public policy in the way they believe will be most beneficial to
society. The salutary effect of religious influence in public issues is manifest in our

1 nation's Civil Rights Movement which was led by religious persons including pastors.
2 Like all citizens, Christians should be able to express their views and cast their votes on
3 these kinds of significant public matters. A faithful Christian will vote according to his or
4 her faith, whatever the matter being considered and a just society will never seek to
5 force a religious believer to vote or participate in the political process without reference
6 to her or his faith.

7 When that faith is treated as bigotry, however, the participation of Christians in
8 public life is threatened. The U.S. Supreme Court has noted that "churches as much
9 as secular bodies and private citizens" have the right to "take strong positions on public
10 issues." *Walz v. Tax Commission of City of New York* (1970) 397 U.S. 664, 670.

11 Professor Richard Garnett has recently explained that our Constitution does not
12 "require us to privatize our faith -- to disintegrate our lives -- before entering into the
13 public square or taking up the responsibilities of citizenship." Richard W. Garnett,
14 "Freedom for Faith, Freedom for All," *First Things* (December 2009) (see
15 <http://www.firstthings.com/article/2009/11/freedom-for-faith-freedom-for-all>).

16 As Justice Thomas has noted, it would be "most bizarre" for our courts to
17 "reserve special hostility for those who take their religion seriously, who think their
18 religion should affect the whole of their lives." *Mitchell v. Helms* (2000) 530 U.S. 793,
19 827-828 (plurality). Treating religious views about marriage as nothing more than
20 irrational hatred expresses just such hostility for those who believe religion should affect
21 their voting and participation in the political process.

22 We must underscore a point demonstrated above-to portray religious support for
23 marriage (and, by extension, support for California's Proposition 8) as rooted in
24 anti-homosexual animus is grossly inaccurate and deeply offensive.
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CONCLUSION

For the foregoing reasons, the Ethics and Religious Liberty Commission of the Southern Baptist Convention, as *amicus curiae*, respectfully requests that this Honorable Court uphold the constitutionality of Proposition 8.

Respectfully submitted,

/s/ _____
David L. Llewellyn, Jr.
Attorney for *Amicus Curiae*,
Ethics and Religious Liberty Commission
of the Southern Baptist Convention

ATTESTATION PURSUANT TO GENERAL ORDER NO. 45

Pursuant to General Order No. 45 of the Northern District of California, I attest that concurrence in the filing of the document has been obtained from each of the other signatories to this document.

/s/ _____
David L. Llewellyn, Jr.
Attorney for *Amicus Curiae*

1
2
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PROOF OF ELECTRONIC SERVICE

I am over the age of 18 and not a party to this action. I am a resident of or employed in the county where the document(s) described below were served. My business address is 5530 Birdcage Street, Suite 210, Citrus Heights, California 95610. I served the document(s) described below on the interested parties in this action by filing them electronically with the United States District Court for the Northern District of California using the Electronic Court Filing (ECF) system.

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Location of service: Citrus Heights, California

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Addressee(s): See attached Service List.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Citrus Heights, California, January 8, 2010.

/s/ _____
David L. Llewellyn, Jr.

SERVICE LIST

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27
28

Rosanne C. Baxter
Boies Schiller & Flexner LLP
333 Main Street
Armonk, NY 10504
914-749-8200
914-749-8300 (fax)
rbaxter@bsfllp.com
PRO HAC VICE
ATTORNEY TO BE NOTICED representing Kristin M. Perry (Plaintiff)

Erin Brianna Bernstein
Office of the City Attorney of San Francisco
1390 Market Street, 7th Floor
San Francisco, CA 94102
(415) 554-3975
Erin.Bernstein@sfgov.org
ATTORNEY TO BE NOTICED representing City and County of San Francisco Amicus)

Richard J. Bettan
Boies Schiller & Flexner LLP
575 Lexington Avenue
7th Floor
New York, NY 10022
212-446-2300
212-446-2350 (fax)
rbettan@bsfllp.com
PRO HAC VICE
ATTORNEY TO BE NOTICED representing Jeffrey J. Zarrillo (Plaintiff), Paul T. Katami (Plaintiff), Sandra B. Stier (Plaintiff)

David Boies
Boies Schiller & Flexner LLP
333 Main Street
Armonk, NY 10504
914-749-8200
914-749-8300 (fax)
PRO HAC VICE
ATTORNEY TO BE NOTICED representing Jeffrey J. Zarrillo (Plaintiff), Kristin M. Perry (Plaintiff), Sandra B. Stier (Plaintiff), Paul T. Katami (Plaintiff)

Tara Lynn Borelli
Lambda Legal Defense & Education Fund
3325 Wilshire Blvd #1300
Los Angeles, CA 90010
213-382-7600
tborelli@lambdalegal.org
ATTORNEY TO BE NOTICED representing Lavender Seniors of the East Bay (Intervenor Plaintiff), Our Family Coalition (Intervenor Plaintiff), Parents, Families, and Friends of Lesbians and Gays (Intervenor Plaintiff)

1 Theodore J. Boutrous, Jr.
2 Gibson Dunn & Crutcher LLP
3 333 South Grand Avenue
4 Los Angeles, CA 90071-3197
5 213-229-7804
6 213-229-7520 (fax)
7 tboutrous@gibsondunn.com
8 ATTORNEY TO BE NOTICED representing Jeffrey J. Zarrillo (Plaintiff), Kristin M. Perry
9 (Plaintiff), Paul T. Katami (Plaintiff), Sandra B. Stier (Plaintiff)

6 James J. Brosnahan
7 Morrison & Foerster LLP
8 425 Market Street
9 San Francisco, CA 94105
10 415-268-7000
11 415-268-7522 (fax)
12 jbroshnan@mof.com
13 ATTORNEY TO BE NOTICED representing Equality California (Amicus)

11 David E. Bunim
12 Haas & Najarian
13 58 Maiden Lane
14 Second Floor
15 San Francisco, CA 94108
16 415-788-6330
17 415-391-0555 (fax)
18 DBunim@haasnaja.com
19 LEAD ATTORNEY
20 ATTORNEY TO BE NOTICED representing William T. Criswell (Respondent)

17 Thomas R. Burke
18 Davis Wright Tremaine LLP
19 505 Montgomery Street, Suite 800
20 San Francisco, CA 94111-6533
21 415/276-6500
22 415/276-6599 (fax)
23 thomasburke@dwt.com
24 ATTORNEY TO BE NOTICED representing Media Coalition (Interested Party)

22 Gordon Bruce Burns
23 Attorney Generals Office, Dept. of Justice
24 1300 I Street, 17th Floor
25 Sacramento, CA 95814
26 916-324-3081
27 Gordon.Burns@doj.ca.gov
28 LEAD ATTORNEY
ATTORNEY TO BE NOTICED representing Edmund G. Brown, Jr. (Defendant)

1 James A Campbell
15100 N. 90th Street
2 Scottsdale, AZ 85260
(480)444-0020
3 480-444-0028 (fax)
4 jcampbell@telladf.org
PRO HAC VICE
5 ATTORNEY TO BE NOTICED representing Proposition 8 Official Proponents
(Intervenor Defendant), ProtectMarriage.com - Yes on 8, A Project of California
6 Renewal (Intervenor Defendant), Dennis Hollingsworth (Intervenor Defendant), Gail J.
Knight (Intervenor Defendant), Hak-Shing William Tam Intervenor Defendant), Mark A.
7 Jansson (Intervenor Defendant), Martin F. Gutierrez (Intervenor Defendant)

8 Timothy D Chandler
Alliance Defense Fund
9 101 Parkshore Dr., Suite 100
Folsom, CA 95630
10 916-932-2850
tchandler@telladf.org
11 ATTORNEY TO BE NOTICED representing ProtectMarriage.com - Yes on 8, A Project
12 of California Renewal (Intervenor Defendant), Dennis Hollingsworth (Intervenor
Defendant), Gail J. Knight (Intervenor Defendant), Hak-Shing William Tam Intervenor
13 Defendant), Mark A. Jansson (Intervenor Defendant), Martin F. Gutierrez (Intervenor
Defendant)

14 Danny Yeh Chou
15 San Francisco City Attorney's Office
1 Dr. Carlton B. Goodlett Place
16 San Francisco, CA 94102
415-554-4655
17 danny.chou@sfgov.org
18 ATTORNEY TO BE NOTICED representing City and County of San Francisco (Amicus)

19 Matthew Albert Coles
ACLU LGBT & AIDS Project
125 Broad St.
20 New York, NY 10004
21 212-549-2624
mcoles@aclu.org
22 ATTORNEY TO BE NOTICED representing Lavender Seniors of the East Bay
(Intervenor Plaintiff), Our Family Coalition (Intervenor Plaintiff), Parents, Families, and
23 Friends of Lesbians and Gays (Intervenor Plaintiff)

24

25

26

27

28

1 Charles J. Cooper
2 Cooper & Kirk
3 1523 New Hampshire Ave, N.W.
4 Washington, DC 20036
5 202-220-9600
6 ccooper@cooperkirk.com
7 PRO HAC VICE
8 ATTORNEY TO BE NOTICED representing Proposition 8 Official Proponents
9 (Intervenor Defendant), ProtectMarriage.com - Yes on 8, A Project of California
10 Renewal (Intervenor Defendant), Dennis Hollingsworth (Intervenor Defendant), Gail J.
11 Knight (Intervenor Defendant), Hak-Shing William Tam Intervenor Defendant), Mark A.
12 Jansson (Intervenor Defendant), Martin F. Gutierrez (Intervenor Defendant)

8 Jon Warren Davidson
9 Lambda Legal Defense and Education Fund
10 3325 Wilshire Blvd Ste 1300
11 Los Angeles, CA 90010
12 (213) 382-7600, ext. 229
13 j davidson@lambdalegal.org
14 ATTORNEY TO BE NOTICED representing Our Family Coalition (Intervenor Plaintiff),
15 Parents, Families, and Friends of Lesbians and Gays (Intervenor Plaintiff), Lavender
16 Seniors of the East Bay (Intervenor Plaintiff)

13 Ethan D. Dettmer
14 Gibson Dunn & Crutcher LLP
15 333 South Grand Avenue
16 Los Angeles, CA 90071
17 213-229-7804
18 edettmer@gibsondunn.com
19 ATTORNEY TO BE NOTICED representing Jeffrey J. Zarrillo (Plaintiff), Kristin M. Perry
20 (Plaintiff), Sandra B. Stier (Plaintiff), Paul T. Katami (Plaintiff)

18 Christopher Dean Dusseault
19 Gibson Dunn & Crutcher LLP
20 333 S Grand Ave
21 Los Angeles, CA 90071
22 213-229-7855
23 cdusseault@gibsondunn.com
24 ATTORNEY TO BE NOTICED representing Jeffrey J. Zarrillo (Plaintiff), Kristin M. Perry
25 (Plaintiff), Paul T. Katami (Plaintiff), Sandra B. Stier (Plaintiff)

23 James Dixon Esseks
24 ACLU Foundation
25 2 Charlton St #14H
26 New York, NY 10014
27 212-549-2623
28 jesseks@aclu.org
29 ATTORNEY TO BE NOTICED representing Lavender Seniors of the East Bay
30 (Intervenor Plaintiff), Our Family Coalition (Intervenor Plaintiff), Parents, Families, and
31 Friends of Lesbians and Gays (Intervenor Plaintiff)

1 Ronald P. Flynn
Office of the City Attorney
2 1390 Market Street, Seventh Floor
San Francisco, CA 94102
3 415 554-3901
4 415 554-3985 (fax)
ronald.flynn@sfgov.org
5 ATTORNEY TO BE NOTICED representing City and County of San Francisco (Amicus)

6 Elizabeth O. Gill
American Civil Liberties Union of No. Calif.
7 39 Drumm Street
San Francisco, CA 94111
8 415-621-2493
415-255-8437 (fax)
9 egill@aclunc.org
10 ATTORNEY TO BE NOTICED representing ACLU Foundation of Northern California
(Amicus)

11 Jeremy Michael Goldman
Boies, Schiller & Flexner LLP
12 1999 Harrison Street
Suite 900
13 Oakland, CA 94612
14 510-874-1000
510-874-1460 (fax)
15 jgoldman@bsflp.com
16 ATTORNEY TO BE NOTICED representing Jeffrey J. Zarrillo (Plaintiff), Kristin M. Perry
(Plaintiff), Paul T. Katami (Plaintiff), Sandra B. Stier (Plaintiff)

17 Patrick John Gorman
Wild, Carter & Tipton
18 246 West Shaw Avenue
Fresno, CA 93704
19 559-224-2131
559-229-7295 (fax)
20 pgorman@wctlaw.com
21 LEAD ATTORNEY
ATTORNEY TO BE NOTICED representing The Family Research Council (Amicus)

22 Eric Grant
Hicks Thomas LLP
23 8001 Folsom Blvd., Ste. 100
24 Sacramento, CA 95826
(916) 388-0833
25 (916) 691-3261 (fax)
grant@hicks-thomas.com
26 LEAD ATTORNEY
ATTORNEY TO BE NOTICED representing Doug Swardstrom (Objector)

27
28

1 Theane Evangelis Kapur
2 Gibson Dunn & Crutcher LLP
3 333 South Grand Avenue
4 Los Angeles, CA 90071
5 213-229-7804
6 ATTORNEY TO BE NOTICED representing Jeffrey J. Zarrillo (Plaintiff), Kristin M. Perry
7 (Plaintiff), Paul T. Katami (Plaintiff), Sandra B. Stier (Plaintiff)

8 Michael W. Kirk
9 Cooper & Kirk, PLLC
10 1523 New Hampshire Avenue, NW
11 Washington, DC 2003
12 202.220.9600
13 PRO HAC VICE
14 ATTORNEY TO BE NOTICED representing Proposition 8 Official Proponents
15 (Intervenor Defendant)

16 Claude Franklin Kolm
17 County of Alameda
18 1221 Oak Street, Suite 450
19 Oakland, CA 94612-4296
20 510-272-6710
21 claud.kolm@acgov.org
22 LEAD ATTORNEY
23 ATTORNEY TO BE NOTICED representing Patrick O'Connell (Defendant)

24 Charles Salvatore LiMandri
25 Law Offices of Charles S. LiMandri
26 P.O. Box 9120
27 Rancho Santa Fe, CA 92067
28 (858) 759-9930
(858) 759-9938 (fax)
cslimandri@limandri.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED representing Attorney Charles S LiMandri (Plaintiff)

29 Rena M Lindevaldsen
30 Liberty Counsel
31 100 Mountainview Rd, Ste 2775
32 Lynchburg, VA 24502
33 434-592-7000
34 PRO HAC VICE
35 ATTORNEY TO BE NOTICED representing Campaign for California Families
36 (Intervenor Defendant)

37
38
39
40
41
42
43
44
45
46
47
48

1 Jordan W. Lorence
2 Alliance Defense Fund
3 801 G Street NW
4 Washington, DC 20001
5 (202) 393-8690
6 jlorencetelladf.org
7 ATTORNEY TO BE NOTICED representing Hak-Shing William Tam (Intervenor
8 Defendant), Proposition 8 Official Proponents (Intervenor Defendant),
9 ProtectMarriage.com - Yes on 8, A Project of California Renewal (Intervenor
10 Defendant), Gail J. Knight (Intervenor Defendant), Dennis Hollingsworth (Intervenor
11 Defendant), Mark A. Jansson (Intervenor Defendant), Martin F. Gutierrez (Intervenor
12 Defendant)

13 Manuel Francisco Martinez
14 Office of the County Counsel, County of Alameda
15 1221 Oak Street, Suite 450
16 Oakland, CA 94612
17 510-891-3306
18 510-272-5020 (fax)
19 manuel.martinez@acgov.org
20 ATTORNEY TO BE NOTICED representing Patrick O'Connell (Defendant)

21 Mary Elizabeth McAlister
22 Liberty Counsel
23 100 Mountain View Rd Ste 2775
24 Lynchburg, VA 24502
25 434-592-7000
26 court@lc.org
27 ATTORNEY TO BE NOTICED representing Campaign for California Families
28 (Intervenor Defendant)

29 Matthew Dempsey McGill
30 Gibson Dunn & Crutcher LLP
31 1050 Connecticut Ave., NW
32 Washington, DC 20036-5306
33 202-955-8668
34 mmcgrill@gibsondunn.com
35 PRO HAC VICE
36 ATTORNEY TO BE NOTICED representing Jeffrey J. Zarrillo (Plaintiff), Kristin M. Perry
37 (Plaintiff), Paul T. Katami (Plaintiff), Sandra B. Stier (Plaintiff)

38 Kenneth C. Mennemeier
39 Mennemeier Glassman & Stroud LLP
40 980 9th St, Ste 1700
41 Sacramento, CA 95814
42 916-553-4000
43 916-553-4011 (fax)
44 kcm@mgslaw.com
45 LEAD ATTORNEY
46 ATTORNEY TO BE NOTICED representing Arnold Schwarzenegger (Defendant),
47 Linette Scott (Defendant), Mark B. Horton (Defendant)

1 Shannon Minter
National Center For Lesbian Rights
2 870 Market St, Ste 570
San Francisco, CA 94102
3 415-392-6257
sminter@nclrights.org
4 LEAD ATTORNEY
5 ATTORNEY TO BE NOTICED representing National Center for Lesbian Rights
(Amicus), Lavender Seniors of the East Bay (Intervenor Plaintiff), Parents, Families,
6 and Friends of Lesbians and Gays (Intervenor Plaintiff), Our Family Coalition
(Intervenor Plaintiff)
7
8 Enrique Antonio Monagas
Gibson Dunn & Crutcher LLP
333 South Grand Avenue
9 Los Angeles, CA 90071
213-229-7804
10 emonagas@gibsondunn.com
11 ATTORNEY TO BE NOTICED representing Jeffrey J. Zarrillo (Plaintiff), Kristin M. Perry
(Plaintiff), Sandra B. Stier (Plaintiff), Paul T. Katami (Plaintiff),
12 Jennifer Lynn Monk
Advocates for Faith and Freedom
13 24910 Las Brisas Road
Suite 110
14 Murrieta, CA 92562
951-304-7583
15 951-600-4996 (fax)
16 jmonk@faith-freedom.com
LEAD ATTORNEY
17 ATTORNEY TO BE NOTICED representing Board of Supervisors of Imperial County
(Intervenor Defendant), County of Imperial of the State of California (Intervenor
18 Defendant), Isabel Vargas (Intervenor Defendant)
19
20 Howard C. Nielson, Jr.
Cooper & Kirk PLLC
1523 New Hampshire Ave NW
21 Washington, DC 20036
202-220-9600
22 hnielson@cooperkirk.com
PRO HAC VICE
23 ATTORNEY TO BE NOTICED representing Proposition 8 Official Proponents
(Intervenor Defendant), ProtectMarriage.com - Yes on 8, A Project of California
24 Renewal (Intervenor Defendant), Dennis Hollingsworth (Intervenor Defendant), Gail J.
Knight (Intervenor Defendant), Hak-Shing William Tam (Intervenor Defendant), Mark A.
25 Jansson (Intervenor Defendant), Martin F. Gutierrez (Intervenor Defendant)
26
27
28

1 Austin R. Nimocks
2 Alliance Defense Fund
3 801 G Street NW
4 Washington, DC 20001
5 (202) 393-8690
6 animocks@telladf.org
7 ATTORNEY TO BE NOTICED representing ProtectMarriage.com - Yes on 8, A Project
8 of California Renewal (Intervenor Defendant), Hak-Shing William Tam Intervenor
9 Defendant), Proposition 8 Official Proponents (Intervenor Defendant), Gail J. Knight
10 (Intervenor Defendant), Martin F. Gutierrez (Intervenor Defendant), Dennis
11 Hollingsworth (Intervenor Defendant), Mark A. Jansson (Intervenor Defendant)

12 Theodore B Olson
13 Gibson Dunn & Crutcher LLP
14 1050 Connecticut Ave, N.W.
15 Washington, DC 20036-5306
16 202-955-8668
17 202-467-0539 (fax)
18 toolson@gibsondunn.com
19 LEAD ATTORNEY
20 PRO HAC VICE
21 ATTORNEY TO BE NOTICED representing Kristin M. Perry (Plaintiff), Paul T. Katami
22 (Plaintiff), Jeffrey J. Zarrillo (Plaintiff), Sandra B. Stier (Plaintiff)

23 Tamar Pachter
24 Office of the California Attorney General
25 455 Golden Gate Ave, Suite 11000
26 San Francisco, CA 94102-7004
27 415-703-5970
28 415-703-1234 (fax)
Tamar.Pachter@doj.ca.gov
ATTORNEY TO BE NOTICED representing Edmund G. Brown, Jr. (Defendant)

Jesse Panuccio
Cooper & Kirk PLLC
1523 New Hampshire Avenue, N.W.
Washington, DC 20036
202-220-9600
PRO HAC VICE
ATTORNEY TO BE NOTICED representing Campaign for California Families
(Intervenor Defendant), Proposition 8 Official Proponents (Intervenor Defendant),
Dennis Hollingsworth (Intervenor Defendant), Gail J. Knight (Intervenor Defendant),
Hak-Shing William Tam (Intervenor Defendant), Mark A. Jansson (Intervenor
Defendant), Martin F. Gutierrez (Intervenor Defendant)

25
26
27
28

1 Peter A. Patterson
2 Cooper & Kirk PLLC
3 1523 New Hampshire Ave NW
4 Washington, DC 20036
5 202-220-9600
6 ppatterson@cooperkirk.com
7 PRO HAC VICE
8 ATTORNEY TO BE NOTICED representing Proposition 8 Official Proponents
9 (Intervenor Defendant), ProtectMarriage.com - Yes on 8, A Project of California
10 Renewal (Intervenor Defendant), Gail J. Knight (Intervenor Defendant), Hak-Shing
11 William Tam (Intervenor Defendant), Mark A. Jansson (Intervenor Defendant), Martin F.
12 Gutierrez (Intervenor Defendant), Dennis Hollingsworth (Intervenor Defendant)

8 Sarah Elizabeth Piepmeier
9 Gibson, Dunn & Crutcher LLP
10 555 Mission Street
11 Suite 3000
12 San Francisco, CA 94105
13 (415) 393-8200
14 (415) 374-8404 (fax)
15 spiepmeier@gibsondunn.com
16 ATTORNEY TO BE NOTICED representing Jeffrey J. Zarrillo (Plaintiff), Kristin M. Perry
17 (Plaintiff), Paul T. Katami (Plaintiff), Sandra B. Stier (Plaintiff)

14 Jennifer Carol Pizer
15 Lambda Legal Defense and Education Fund, Inc.
16 3325 Wilshire Blvd. Suite 1300
17 Los Angeles, CA 90010-1729
18 213-382-7600
19 jpizer@lambdalegal.org
20 ATTORNEY TO BE NOTICED representing Parents, Families, and Friends of Lesbians
21 and Gays (Intervenor Plaintiff), Lavender Seniors of the East Bay (Intervenor Plaintiff),
22 Our Family Coalition (Intervenor Plaintiff)

19 Andrew Perry Pugno
20 Law Offices of Andrew P Pugno
21 101 Parkshore Dr #100
22 Folsom, CA 95630-4726
23 andrew@pugnolaw.com
24 ATTORNEY TO BE NOTICED representing ProtectMarriage.com - Yes on 8, A Project
25 of California Renewal (Intervenor Defendant), Dennis Hollingsworth (Intervenor
26 Defendant), Gail J. Knight (Intervenor Defendant), Hak-Shing William Tam (Intervenor
27 Defendant), Mark A. Jansson (Intervenor Defendant), Martin F. Gutierrez (Intervenor
28 Defendant)

25
26
27
28

1 Brian W Raum
2 Alliance Defense Fund
3 15100 N. 90th Street
4 Scottsdale, AZ 85260
5 480-444-0020
6 braum@telladf.org
7 ATTORNEY TO BE NOTICED representing Proposition 8 Official Proponents
8 (Intervenor Defendant), ProtectMarriage.com - Yes on 8, A Project of California
9 Renewal (Intervenor Defendant), Gail J. Knight (Intervenor Defendant), Hak-Shing
10 William Tam (Intervenor Defendant), Mark A. Jansson (Intervenor Defendant), Dennis
11 Hollingsworth (Intervenor Defendant), Martin F. Gutierrez (Intervenor Defendant)

12 Josh Schiller
13 Boies Schiller & Flexner LLP
14 575 Lexington Avenue
15 7th Floor
16 New York, NY 10022
17 212-446-2300
18 212-446-2350 (fax)
19 jjschiller@bsflp.com
20 PRO HAC VICE
21 ATTORNEY TO BE NOTICED representing Jeffrey J. Zarrillo (Plaintiff), Paul T. Katami
22 (Plaintiff), Sandra B. Stier (Plaintiff)

23 Alan Lawrence Schlosser
24 ACLU Foundation of Northern California, Inc.
25 39 Drumm Street
26 San Francisco, CA 94111
27 415-621-2493
28 415-255-8437 (fax)
29 aschlosser@aclunc.org
30 ATTORNEY TO BE NOTICED representing ACLU Foundation of Northern California
31 (Amicus), Lavender Seniors of the East Bay (Intervenor Plaintiff), Our Family Coalition
32 (Intervenor Plaintiff), Parents, Families, and Friends of Lesbians and Gays (Intervenor
33 Plaintiff)

34 Christopher Francis Stoll
35 National Center for Lesbian Rights
36 870 Market St, Suite 370
37 San Francisco, CA 94102
38 415-392-6257
39 cstoll@nclrights.org
40 ATTORNEY TO BE NOTICED representing National Center for Lesbian Rights
41 (Amicus), Parents, Families, and Friends of Lesbians and Gays (Intervenor Plaintiff),
42 Lavender Seniors of the East Bay (Intervenor Plaintiff), Our Family Coalition
43 (Intervenor Plaintiff)

44
45
46
47
48

1 Andrew Walter Stroud
2 Mennemeie Glassman & Stroud
3 980 9th Street, Suite 1700
4 Sacramento, CA 95814-2736
5 (916)553-4000
6 stroud@mgslaw.com
7 ATTORNEY TO BE NOTICED representing Arnold Schwarzenegger (Defendant),
8 Linette Scott (Defendant), Mark B. Horton (Defendant)

9 Amir Cameron Tayrani
10 Gibson Dunn & Crutcher LLP
11 1050 Connecticut Ave NW, Ste 900
12 Washington, DC 20036
13 202-887-3692
14 ATayrani@gibsondunn.com
15 PRO HAC VICE
16 ATTORNEY TO BE NOTICED representing Jeffrey J. Zarrillo (Plaintiff), Kristin M. Perry
17 (Plaintiff), Paul T. Katami (Plaintiff), Sandra B. Stier (Plaintiff)

18 David H. Thompson
19 Cooper & Kirk PLLC
20 1523 New Hampshire Ave NW
21 Washington, DC 20036
22 (202) 220-9600
23 dthompson@cooperkirk.com
24 ATTORNEY TO BE NOTICED representing Proposition 8 Official Proponents
25 (Intervenor Defendant), ProtectMarriage.com - Yes on 8, A Project of California
26 Renewal (Intervenor Defendant), Dennis Hollingsworth (Intervenor Defendant), Gail J.
27 Knight (Intervenor Defendant), Hak-Shing William Tam (Intervenor Defendant), Mark A.
28 Jansson (Intervenor Defendant), Martin F. Gutierrez (Intervenor Defendant)

Terry Lee Thompson
Terry L. Thompson, Attorney at Law
P.O. Box 1346
Alamo, CA 94507
925/855-1507
tl_thompson@earthlink.net
ATTORNEY TO BE NOTICED representing Hak-Shing William Tam (Intervenor
Defendant)

Ilona Margaret Turner
National Ctr for Lesbian Rights
870 Market St
Suite 370
San Francisco, CA 94102
415-392-6257
iturner@nclrights.org
ATTORNEY TO BE NOTICED representing National Center for Lesbian Rights
(Amicus), Lavender Seniors of the East Bay (Intervenor Plaintiff), Our Family Coalition
(Intervenor Plaintiff), Parents, Families, and Friends of Lesbians and Gays (Intervenor
Plaintiff)

1 Robert Henry Tyler
Advocates for Faith & Freedom
2 24910 Las Brisas Road
Suite 110
3 Murrieta, CA 92562
951-304-7583
4 951-600-4996 (fax)
rtyler@faith-freedom.com
5 ATTORNEY TO BE NOTICED representing Board of Supervisors of Imperial County
6 (Intervenor Defendant), County of Imperial of the State of California (Intervenor
Defendant), Isabel Vargas (Intervenor Defendant)

7 Theodore Hideyuki Uno
8 Boies Schiller & Flexner LLP
1999 Harrison St, Ste 900
9 Oakland, CA 94612
510-874-1000
10 tuno@bsfllp.com
PRO HAC VICE
11 ATTORNEY TO BE NOTICED representing Kristin M. Perry (Plaintiff), Paul T. Katami
12 (Plaintiff), Jeffrey J. Zarrillo (Plaintiff), Sandra B. Stier (Plaintiff)

13 Christine Van Aken
Office of the City Attorney
14 1390 Market St, 7th Floor
San Francisco, CA 94102
15 415-554-3875
415-554-3985 (fax)
16 christine.van.aken@sfgov.org
ATTORNEY TO BE NOTICED representing City and County of San Francisco
17 (Amicus)

18 Judy Whitehurst
Office of County Counsel, County of Los Angeles
19 500 West Temple St
Los Angeles, CA 90012
20 (213) 974-1845
JWhitehurst@counsel.lacounty.gov
21 LEAD ATTORNEY
22 ATTORNEY TO BE NOTICED representing Dean C. Logan (Defendant)

23 Tobias Barrington Wolff
University of Pennsylvania Law School
24 3400 Chestnut Street
Philadelphia, PA 19104-6204
25 (215) 898-7471
PRO HAC VICE
26 ATTORNEY TO BE NOTICED representing Equality California (Amicus)

27
28