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

* Admitted *pro hac vice*

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

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

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, in his official
 capacity as Governor of California; EDMUND
 G. BROWN, JR., in his official capacity as
 Attorney General of California; MARK B.
 HORTON, in his official capacity as Director of
 the California Department of Public Health and
 State Registrar of Vital Statistics; LINETTE
 SCOTT, in her official capacity as Deputy
 Director of Health Information & Strategic

CASE NO. 09-CV-2292 VRW

**DEFENDANTS-INTERVENORS
 PROPOSITION 8 PROPONENTS AND
 PROTECTMARRIAGE.COM'S
 SUPPLEMENTAL CASE
 MANAGEMENT STATEMENT**

Date: August 19, 2009

Time: 10:00 a.m.

Judge: Chief Judge Vaughn R. Walker

Location: Courtroom 6, 17th Floor

1 Planning for the California Department of Public
2 Health; PATRICK O'CONNELL, in his official
3 capacity as Clerk-Recorder for the County of
4 Alameda; and DEAN C. LOGAN, in his official
capacity as Registrar-Recorder/County Clerk for
the County of Los Angeles,

5 Defendants,

6 and

7 PROPOSITION 8 OFFICIAL PROPONENTS
8 DENNIS HOLLINGSWORTH, GAIL J.
9 KNIGHT, MARTIN F. GUTIERREZ, HAK-
SHING WILLIAM TAM, and MARK A.
10 JANSSON; and PROTECTMARRIAGE.COM –
YES ON 8, A PROJECT OF CALIFORNIA
RENEWAL,

11 Defendant-Intervenors.

12
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21 * Admitted *pro hac vice*
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In accordance with the Court's August 12, 2009 Order, *see* Doc. # 141, the Defendants-Intervenors ("Proposition 8 Proponents" or "Proponents") respectfully submit this supplemental case management statement. The Court has ordered all parties to provide responses to the following questions:

1. The specific elements of the claims plaintiffs assert and the defenses, if any, intervenors contend apply.

Plaintiffs assert claims grounded in the Due Process and Equal Protection Clauses of the Fourteenth Amendment. These claims are foreclosed by the Supreme Court's decision in *Baker v. Nelson*, 409 U.S. 810 (1972). *Baker* notwithstanding, Plaintiffs' claims fail for the following reasons.¹

a. Fundamental liberty interest under the Due Process Clause

To establish a fundamental liberty interest protected by the Due Process Clause, Plaintiffs must offer a "careful description" of their asserted interest and show that it is "objectively, deeply rooted in this nation's history and tradition." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (quotation marks omitted).

Carefully described, Plaintiffs assert a fundamental liberty interest in extending the civil status of "marriage" to same-sex relationships. This asserted interest is not objectively, deeply rooted in this nation's history and tradition. As for plaintiffs' claims that Proposition 8 infringes upon their sexual autonomy, Proposition 8 does not criminalize or in any way punish private sexual behavior, and thus it does not implicate the liberty interest identified in *Lawrence v. Texas*, 539 U.S. 558 (2003). Significantly, both the majority opinion and the separate concurrence of Justice O'Connor in *Lawrence* made clear that the liberty interest upheld in that case did not entail a right to same-sex marriage. *See id.* at 578 (majority); *id.* at 585 (O'Connor, J., concurring in

¹ Proponents do not dispute that in implementing and enforcing Proposition 8, Defendants have acted under the color of state law. But Proponents do not concede that Plaintiffs have (Continued)

judgment).

b. Standard of review under the Equal Protection Clause for sexual orientation discrimination

Plaintiffs claim that discrimination based on sexual orientation should be subject to heightened scrutiny under the Equal Protection Clause. This claim must be rejected under binding Ninth Circuit precedent. *See High Tech Gays v. Defense Indus. Sec. Clearance Office*, 895 F.2d 563, 574 (9th Cir. 1990); *see also See Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1137 (9th Cir. 2003); *Holmes v. California Army Nat'l Guard*, 124 F.3d 1126, 1132 (9th Cir. 1997); *Philips v. Perry*, 106 F.3d 1420, 1425 (9th Cir. 1997). Every other federal circuit that has considered the matter has reached the same conclusion. *See Cook v. Gates*, 528 F.3d 42, 61 (1st Cir. 2008); *Veney v. Wyche*, 293 F.3d 726, 731-32 (4th Cir. 2002); *Johnson v. Johnson*, 385 F.3d 503, 532 (5th Cir. 2004); *Scarborough v. Morgan County Bd. of Educ.*, 470 F.3d 250, 261 (6th Cir. 2006); *Ben-Shalom v. Marsh*, 881 F.2d 454, 464 (7th Cir. 1989); *Citizens for Equal Prot. v. Bruning*, 455 F.3d 859, 866 (8th Cir. 2006); *Rich v. Sec'y of the Army*, 735 F.2d 1220, 1229 (10th Cir. 1984); *Lofton v. Sec'y of Dep't of Children and Family Servs.*, 358 F.3d 804, 818 (11th Cir. 2004); *Steffan v. Perry*, 41 F.3d 677, 684 n.3 (D.C. Cir. 1994); *Woodward v. United States*, 871 F.2d 1068, 1076 (Fed. Cir. 1989).

If the court nevertheless determines that this is an open question, Plaintiffs' claim fails nonetheless for several independent reasons.

i. Whether Proposition 8 discriminates on the basis of sexual orientation

At the outset, Plaintiffs must show that Proposition 8 discriminates on the basis of sexual orientation. *See Aleman v. Glickman*, 217 F.3d 1191, 1195 (9th Cir. 2000) ("In resolving [an] equal protection challenge, we must first determine what classification has been created by the [challenged] provision.").

(Cont'd)
satisfied the other elements of their claims that Plaintiffs' have identified.

1 Plaintiffs cannot make this showing. Proposition 8, by limiting civil marriage to the union
2 of a man and a woman, does not classify individuals on the basis of their sexual orientation.

3 **ii. Whether same-sex and opposite-sex couples are similarly situated for**
4 **purposes of civil marriage recognition**

5 Plaintiffs must demonstrate that same-sex couples and opposite-sex couples are similarly
6 situated with respect to marriage. *See Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992); *Rostker v.*
7 *Goldberg*, 453 U.S. 57, 79 (1981).

8 Plaintiffs cannot make this threshold showing. Marriage has always been limited to
9 opposite sex relationships because of the naturally procreative nature of the male-female
10 relationship. Same-sex relationships are different in this relevant respect.

11 **iii. Whether sexual orientation is a suspect or quasi-suspect classification**

12 As we have explained, rational basis scrutiny applies to laws that classify on the basis of
13 sexual orientation as a matter of binding precedent and is therefore not an open question.
14 Heightened scrutiny, moreover, is reserved for classifications affecting groups that require
15 extraordinary protection from the political process. *See, e.g., United States v. Carolene Products*,
16 304 U.S. 144, 152 n.4 (1938). To demonstrate that they require this “extraordinary protection,”
17 Plaintiffs must show, among other things, that gays and lesbians (1) are “politically powerless,”
18 *see, e.g., Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 445 (1985); and (2) are defined by an
19 “immutable” characteristic, *see, e.g. Frontiero v. Richardson*, 411 U.S. 677, 686 (1973)
20 (plurality). *See also High Tech Gays*, 895 F.2d at 573.

21 Plaintiffs cannot show that gays and lesbians meet the requirements for receiving
22 heightened equal protection scrutiny.

23 **c. Sex Discrimination**

24 To demonstrate that Proposition 8 merits heightened scrutiny as a sex-based classification,
25 Plaintiffs must show that it classifies on the basis of sex. *See Aleman*, 217 F.3d at 1195.
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1 Plaintiffs cannot make this showing, as the overwhelming weight of authority, including
 2 every federal court to have addressed this issue, establishes that the traditional definition of
 3 marriage does not classify on the basis of sex.

4 **d. Rational basis review**

5 Because Proposition 8 is not, as a matter of law, subject to heightened review under the
 6 Due Process Clause or the Equal Protection Clause, it is constitutional if it passes rational basis
 7 review. Under this standard, Proposition 8 is presumed to be constitutional and Plaintiffs bear the
 8 burden “to negative any reasonably conceivable state of facts that could provide a rational basis”
 9 for the law. *Bd. of Trs. of the University of Alabama v. Garrett*, 531 U.S. 356, 367 (2001)
 10 (quotation marks omitted).

11 Plaintiffs cannot meet this standard, as Proposition 8 is rationally related to several
 12 legitimate government interests, including, among others:

- 13 • Preserving the traditional definition of marriage as the union of a man and a woman.
- 14 • Promoting the formation of naturally procreative unions.
- 15 • Promoting stability and responsible behavior in naturally procreative relationships.
- 16 • Promoting enduring and stable family structures for the responsible raising and care of
- 17 children by their biological parents.
- 18 • Promoting the natural and mutually beneficial bond between parents and their biological
- 19 children by encouraging parents to raise their biological children.
- 20 • Acting incrementally and with caution when considering radical change to the fundamental
- 21 nature of a bedrock social institution.

22 **e. Heightened review**

23 In the alternative, if the Court determines that either strict or intermediate scrutiny applies,
 24 the burden shifts to the defenders of Proposition 8. To satisfy the strict scrutiny standard, a law
 25

1 must be “narrowly tailored to serve a compelling state interest.” *Glucksberg*, 521 U.S. at 721
 2 (quotation marks omitted). A law satisfies the intermediate scrutiny standard when it is
 3 “substantially related” to an “important” government interest. *United States v. Virginia*, 518 U.S.
 4 515, 533 (1996) (quotation marks omitted).

5 If necessary, the Proponents will show that Proposition 8 meets these standards.

6 **f. Affirmative defenses**

7 The Proponents continue to maintain the affirmative defenses that (1) Plaintiffs have failed
 8 to state a claim upon which relief can be granted; and (2) neither the challenged provision nor
 9 Defendants have deprived Plaintiffs of any right or privilege guaranteed by the United States
 10 Constitution.
 11

12 These defenses will rise or fall with our legal arguments in response to Plaintiffs’ claims.

13 **2. Admissions and stipulations that Proponents are prepared to enter with respect to**
 14 **the forgoing elements and applicable defenses at issue**

15 Proponents’ response to the stipulations proposed by the Plaintiffs are attached as Exhibit
 16 B. In addition, Proponents now propose additional stipulations that Proponents are prepared to
 17 enter, which are attached as Exhibit A. The parties are unlikely to agree whether or not these
 18 stipulations, if entered, suffice to resolve any of the elements identified above.
 19

20 **3. Proponents’ discovery plans**

21 Set forth below are Proponents’ current intentions with respect to discovery. We wish to
 22 emphasize that our thinking continues to evolve on these subjects, especially as Plaintiffs’ trial
 23 and discovery strategy emerges, and we may pursue additional lines of discovery or decide not to
 24 pursue issues identified below. Of course, we may also take discovery of plaintiffs.
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1 **a. Level of scrutiny relevant to Plaintiffs' claims**

2 **i. The history of discrimination against gays and lesbians**

3 Depending upon the nature of the evidence adduced by Plaintiffs on this issue, the
4 Proposition 8 Proponents may present evidence (including expert opinion) on the discrimination
5 that gays and lesbians have experienced in the past. Also, we plan to present evidence
6 demonstrating that such discrimination has decreased significantly in recent years, both in
7 governmental and non-governmental contexts. We do not anticipate fact discovery on this issue.

8 **ii. Whether the characteristics defining gays and lesbians as a class might**
9 **in any way affect their ability to contribute to society**

10 Because of their natural and spontaneous ability to create children, opposite-sex
11 relationships have a different impact on society, for good and for ill, than same-sex relationships.
12 We do not dispute that, with the exception of certain matters relating to procreation, the ability of
13 individuals to contribute to society is not affected by the fact that they are gay or lesbian.
14 Plaintiffs, however, have not agreed to resolve this issue by stipulation. The nature of the
15 evidence presented by Plaintiffs may therefore make it necessary for the Proposition 8 Proponents
16 to present evidence on this matter as well. We do not anticipate fact discovery on this issue.

17 **iii. Immutability**

18 The Ninth Circuit has held that homosexuality is not an immutable characteristic. To the
19 extent the Court nonetheless desires to receive evidence on this matter, we will dispute Plaintiffs'
20 claim that homosexuality is immutable. The precise contours of our argument will depend upon
21 the definition of sexual orientation adopted by the Court, but we plan to present evidence in the
22 form of references to scientific and other scholarly literature, and if Plaintiffs seek to introduce
23 expert opinion on this issue, we may do so as well.

24 We will also develop evidence that homosexuality is not immutable by analyzing marriage
25 and domestic partnership records from California. We will obtain this data by issuing subpoenas
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1 to government agencies that maintain these records. In California, we understand that the Office
 2 of Vital Records, a branch of the Department of Public Health, maintains statewide marriage
 3 records and that the Secretary of State's Office maintains statewide domestic partnership records.

4 From the domestic partnership records, we will compile a list of all the individuals in
 5 California who have entered a same-sex domestic partnership. We will then cross-reference these
 6 names with the marriage records to identify individuals were previously or subsequently married
 7 to a member of the opposite sex. We may also obtain additional data by issuing subpoenas to
 8 relevant government agencies in other states that recognize same-sex relationships.
 9

10 **iv. The relative political power of gays and lesbians**

11 We will present evidence that gays and lesbians wield substantial political power. Many
 12 underlying facts relevant to gauging the political power of gays and lesbians are not subject to
 13 dispute as reflected in the detailed stipulations we have drafted on this issue. Those stipulations
 14 cover the extensive legal rights that gays and lesbians have attained under state and local law in
 15 California. The stipulations also cover the gay and lesbian community's success in blocking state
 16 laws that were perceived as adverse to its interests. In addition to this undisputed evidence
 17 supporting our proposed stipulations, if Plaintiffs seek to introduce expert evidence on this
 18 subject, we may do so as well.
 19

20 We do not anticipate any fact discovery on this issue.

21 **b. The campaign by which Proposition 8 was adopted**

22 The Proposition 8 Proponents believe that the subjective motivations of voters and other
 23 political participants for supporting Proposition 8 are both legally irrelevant and are protected
 24 from discovery by the First Amendment. It is therefore inappropriate to inquire into such matters.
 25 The Court should ascertain the Proposition's purpose by reference to the text of the law and its
 26 necessary legal implications. If it is appropriate to consider any other evidence, the Court should
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limit its inquiry to objective matters such as official statements and information presented to the voters. Nevertheless, if Plaintiffs are permitted to take discovery into the subjective motivations and strategies of Proponents and other supporters of Proposition 8, then we will likewise take extensive fact discovery into the motivations and strategies of the individuals and organizations that opposed Proposition 8, possibly including the following individuals and groups:

- Courage Campaign
 - Founder and Chair: Rick Jacobs
 - Chief Operating Officer: Sarah Callahan
 - Advertising/Media Director: Billy Pollina
- No on 8: Equality for All
 - Treasurer: Steven Mele, West Hollywood, CA
 - Other Principal Officers (as listed on Statement of Organization):
 - Heather Carrigan, Los Angeles, CA, Chief Operating Officer, ACLU of Southern California
 - Oscar De La O, Los Angeles, CA, President and CEO, Bienestar Health Services
 - Sue Dunlop, Los Angeles, CA
 - Michael Fleming, Beverly Hills, CA, Executive Director, David Bohnett Foundation
 - Maya Harris, San Francisco, CA
 - Dan Hawes, Los Angeles, CA, Director of Organizing and Training, National Gay and Lesbian Task Force
 - Dennis Herrera, San Francisco, CA, City Attorney of San Francisco
 - Delores Jacobs, San Diego, CA, CEO, San Diego LGBT Community

Center

- Lorri Jean, Los Angeles, CA, CEO, Los Angeles Gay and Lesbian Center
- Kate Kendall, San Francisco, CA, Executive Director, National Center for Lesbian Rights
- Geoff Kors, Sacramento, CA, Executive Director, Equality California
- Joyce Newstat, San Francisco, CA
- Tawal Panyacosit, San Francisco, CA, Director, Asian and Pacific Islander Equality in San Francisco
- Rashad Robinson, Los Angeles, CA
- Marty Rouse, Washington, DC, National Field Director, Human Rights Campaign
- Kevin Tilden, San Diego, CA

○ Political Consultants

- Mark Armour, Armour Griffin Media Group
- Chad Griffin, Armour Griffin Media Group
- Steve Smith, Dewey Square Group
- Maggie Linden, Ogilvy Public Relations

● Win Marriage Back

- Treasurer: Timothy Hohmeier, San Francisco, CA
- Assistant Treasurer: Steven Mele, West Hollywood, CA

● Human Rights Campaign California Marriage PAC

- Treasurer: James Rinefierd, Washington, DC
- Assistant Treasurer: Andrea Green, Washington, DC

● No on Proposition 8, Campaign for Marriage Equality

- Treasurer: Bonnie Anderson
- Californians Against Eliminating Basic Rights
 - Treasurer: Daralyn Reed, Ykrea, CA
 - Consultants:
 - Kristina Schake, Los Angeles, CA
 - Chad Griffin, Beverly Hills, CA
- The Field Poll, San Francisco, CA
 - Mark DiCamillo
 - Mervin Field
- Public Policy Institute of California
 - Mark Baldassare, Survey Director
- *Los Angeles Times* Poll
 - Susan Pinkus, Director

c. Character of the rights plaintiffs contend are infringed or violated

Plaintiffs assert a constitutional right to State recognition of same-sex unions as marriages. This claim is not “objectively, deeply rooted in this Nation’s history and tradition.” As the stipulations referenced above reflect, no state recognized same-sex marriage at the time of the Founding, nor at the time of the ratification of the Fourteenth Amendment, nor at any other time prior to 2003. We do not anticipate factual discovery on this issue. But to the extent Plaintiffs seek to introduce an expert opinion on this issue, we may do so as well.

d. Effect of Proposition 8 upon Plaintiffs and similarly situated individuals

As our proposed stipulations reflect, the parties should be able to agree that California affords to domestic partnerships the same “core set of basic *substantive* legal rights and attributes” afforded to married couples. *Strauss v. Horton*, 46 Cal. 4th 364, 411 (Cal. 2009) (quotation marks

omitted, emphases in original).

With respect to the effects of same-sex marriage in the non-governmental context, we plan to take discovery to develop evidence showing substantial equality in non-governmental treatment of same-sex couples regardless of the label the government affixes to their relationships. We also plan to take discovery of the state agencies in California and other states that track the number of couples electing domestic partnerships and the number of couples choosing same sex marriage in various jurisdictions throughout the country. In California, the Office of Vital Records, a branch of the Department of Public Health, maintains statewide marriage records and the Secretary of State's Office maintains statewide domestic partnership records.

e. Effect of Proposition 8 on opposite-sex couples and others not in same-sex relationships in California

Although the Proposition 8 Proponents do not at this time know whether, or the precise effect that, permitting same sex couples to marry would have on traditional marriage, we intend to inquire into and develop evidence on this issue, by, among other things, seeking records relating to the formation and dissolution of marriages and domestic partnerships from relevant agencies in states that recognize same-sex relationships. In California, the Secretary of State's Office maintains domestic partnership records and domestic partnership dissolution records.

f. Other issues pertinent to the parties' claims or defenses

As indicated above, Proposition 8 rationally serves a number of legitimate governmental interests. At this time, however, we do not plan on requiring fact discovery to develop evidence related to these interests, with one exception. Proposition 8 promotes the natural and mutually beneficial bond between parents and their biological children by encouraging parents to raise their biological children. We plan to develop evidence that many gay and lesbian individuals desire to have biological rather than adopted or foster children, and that many satisfy these desires with the assistance of technology or by other means. We will seek discovery of the names of Californians

1 in registered domestic partnerships with the parents listed on birth records from the Department of
 2 Health's Office of Vital Records (which maintains birth records) and the Secretary of State's
 3 Office (which maintains domestic partnership records). We may also seek discovery from
 4 companies and organizations that offer assisted reproductive technology and services to develop
 5 evidence on this issue.

6 **4. Expert Testimony**

7 Proponents have not finalized the areas as to which they will submit expert evidence
 8 testimony. As previously discussed, much of our need for expert testimony will turn upon the
 9 nature of the expert testimony plaintiffs offer. In addition to the foregoing discussion, we set forth
 10 below our current views on expert testimony that may be necessary:
 11

- 12 • If the Court asks for evidence on the immutability of sexual orientation, we will present
 13 evidence demonstrating that homosexuality is not immutable. This evidence may include
 14 expert evidence. Proponents' experts will have experience in the field of psychology.
- 15 • Proponents may present expert opinion on the nature of discrimination that gays and
 16 lesbians experienced in the past.
- 17 • Proponents may present expert evidence on the political power of gays and lesbians. The
 18 expert(s) would have substantial knowledge of California's political landscape. Such an
 19 expert would be a political consultant or a professor of political science, or both.
- 20 • Proponents may submit an expert opinion that marriage has always been defined as the
 21 union of a man and a woman. Proponents' expert would have extensive knowledge of the
 22 institution of marriage.
- 23 • Proponents may submit expert opinion that a child's biological parents provide the optimal
 24 environment for raising that child. Proponents' expert will have significant experience in
 25 psychology, biology, and/or the analysis of family structures.
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- 1 • Proponents may present expert evidence demonstrating substantial equality in non-
2 governmental treatment of same-sex couples regardless of the label the government affixes
3 to their relationships. Proponents' expert will have knowledge as to the factors that
4 influence non-governmental views towards same-sex relationships.
- 5 • As noted above, although the Proposition 8 Proponents do not at this time know whether,
6 or the precise effect that, permitting same sex couples to marry would have on traditional
7 marriage, we may present an expert opinion analyzing the data we acquire regarding the
8 formation and dissolution of domestic partnerships, civil unions, and marriages. Our
9 expert would have extensive knowledge about the institution of marriage and may well
10 have a political science background.
- 11 • We may also present an expert opinion analyzing the evidence we discover regarding gay
12 and lesbian individuals' desire to have biological rather than adopted or foster children,
13 and the number of gays and lesbians who satisfy these desires with the assistance of
14 technology or by other means. Proponents' expert will have significant experience in
15 psychology, biology, and/or the analysis of family structures.
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17
18

19 Dated: August 17, 2009

20 COOPER AND KIRK, PLLC
21 ATTORNEYS FOR DEFENDANTS-INTERVENORS
22 DENNIS HOLLINGSWORTH, GAIL J. KNIGHT,
23 MARTIN F. GUTIERREZ, HAK-SHING WILLIAM TAM,
24 MARK A. JANSSON, AND PROTECTMARRIAGE.COM
25 – YES ON 8, A PROJECT OF CALIFORNIA RENEWAL

26 By: /s/ Charles J. Cooper
27 Charles J. Cooper
28

Proposed Perry Stipulations

High Level Stipulations:

Political Power

1. Gays and lesbians are not politically powerless in the sense that they have no ability to attract the attention of the lawmakers.
2. Gays and lesbians exercise political power far in excess of their numbers in the population.
3. In California in recent years, the gay and lesbian community has been successful in obtaining the enactment of virtually every legislative policy it has desired, including obtaining domestic partnerships offering essentially the same benefits as marriage. The only significant policy supported by many gay and lesbians that has not been adopted is the extension of the official status of marriage to include same sex couples.

History of Discrimination

4. As a matter of history, individuals practicing a homosexual lifestyle have experienced discrimination.
5. At present, discrimination against individuals practicing a homosexual lifestyle is increasingly rare.
6. The parties dispute whether California's traditional definition of marriage discriminates against gay and lesbians. With the possible (and disputed) exception of that policy, the parties agree that public discrimination by state and local governments in California is virtually non-existent. In addition, homosexual lifestyles are widely accepted in California and, with the possible (and disputed) exception discussed above, private discrimination against gay and lesbians in California is increasingly rare.

Ability to Contribute to Society

7. With the exception of certain matters relating to procreation, an individual's ability to contribute to society is not affected by whether the individual is a gay or lesbian.
8. The only type of relationship that is capable of producing biological offspring is that between a man and a woman.

The Definition of Marriage in California

9. From the beginning of California's statehood, the legal institution of civil marriage has been understood to refer to a relationship between a man and a woman, excepting the brief period of time between the California Supreme Court's decision in the *Marriage Cases* and the passage of Proposition 8.

The Restrictive Effect of Proposition 8

10. Opposite-sex marriage is not a meaningful option for many gay and lesbian individuals.

11. Proposition 8 does not meaningfully restrict the options available to those in heterosexual relationships.

Historical Understanding of Marriage

12. The framers and ratifiers of the 14th Amendment did not intend to require states to extend the institution of marriage to same-sex relationships, nor did they understand the 14th Amendment to do so.

13. At the time of the framing and ratification of the Fourteenth Amendment, civil marriage was uniformly understood by the public to be encompass only opposite-sex relationships.

14. Dictionaries from the time of the framing and ratification of the 14th Amendment defined marriage as the union of a man and a woman. No dictionary definition of marriage from that time included same-sex relationships.

15. At the time of the framing and ratification of the 14th Amendment, not a single State recognized same-sex relationships as marriages.

16. The debates accompanying the framing and ratification of the 14th Amendment contain no discussion of extending marriage to include same-sex relationships.

Biological parenting

17. Many gays and lesbians desire to have biological children.

18. By taking advantage of technological advancements and through other means, many gay and lesbian individuals are fulfilling their desires to have biological children.

More Specific Stipulations:

History of Discrimination

1. Many openly gay and lesbian individuals have served in California politics and government, including: former San Francisco Board of Supervisors Member Roberta Achtenberg; California Assemblyman Tom Ammiano; West Sacramento Mayor Christopher Cabaldon; former U.S. Ambassador to Luxembourg James Hormel; California State Senator Christine Kehoe; Susan Kennedy, chief of staff to Gov. Arnold Schwarzenegger; State Senator Mark Leno; former State Senator Carole Migden; former San Francisco Board of Supervisors Member Harvey Milk; Daniel Zingale, chief of staff for Maria Shriver.
2. Many openly gay and lesbian individuals have been active in California's arts and cultural community.
3. Many openly gay and lesbian individuals have been active in California athletics.

4. Many openly gay and lesbian individuals have worked at California media organizations.
5. Many openly gay and lesbian individuals have worked in California's entertainment industry.
6. Many openly gay and lesbian individuals have been leaders in California's business community.
7. Many openly gay and lesbian individuals have been leaders at California universities.
8. Many openly gay and lesbian individuals have been leaders in California's legal profession.
9. With the exception of the denomination "marriage," under California law "same-sex couples retain the same substantive protections embodied in the state constitutional rights of privacy and due process as those accorded to opposite-sex couples and the same broad protections under the state equal protection clause that are set forth in the majority opinion in the *Marriage Cases*." *Strauss v. Horton*, 46 Cal. 4th 364, 412. (Cal. 2009).
10. The California Registered Domestic Partner Rights and Responsibilities Act of 2003, Stats. 2003, ch. 421, gives to domestic partners "the full range of legal rights, protections and benefits, as well as all of the responsibilities, obligations, and duties to each other, to their children, to third parties and to the state, as the laws of California extend to and impose upon spouses." Stats. 2003, ch. 421, § 15.
11. California law puts domestic partners on an equal footing with married spouses with respect to inheritance and intestacy, *id.* sec. 297.5(c).
12. California law puts domestic partners on an equal footing with married spouses with respect to property, *id.* sec. 297.5(k)(1).
13. California law puts domestic partners on an equal footing with married spouses with respect to insurance coverage, Cal. Ins. Code sec. 381.5.
14. California law puts domestic partners on an equal footing with married spouses with respect to state tax treatment, Cal. Rev. & Tax Code secs. 17024.5(h)(2)(B), 18521(d).
15. California is one of "[t]wenty states and the District of Columbia [with] laws that explicitly prohibit sexual orientation discrimination in private employment." Preventing Sexual Orientation Discrimination in the Workplace, Nolo, <http://www.nolo.com/article.cfm/objectID/E76BEBE6-E194-46C1-983629F17557E86D/111/259/283/ART/> (listing California, Colorado, Connecticut,

Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin).

16. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in businesses' provision of services, Cal. Civil Code § 51.5.
17. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in the peremptory challenges of jurors, Cal. Code of Civil Procedure § 231.5.
18. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in public education, Cal. Ed. Code § 200.
19. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in state-funded educational programs, id. § 220, Cal. Wel. & Inst. Code § 14504.1(c).
20. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in secondary education, Cal. Ed. Code § 66251.
21. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in post-secondary education, id. § 66270.
22. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in any state-funded program or activity, Cal. Gov. Code § 11135(a).
23. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in employment, id. §§ 12920, 12921, 12940.
24. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in housing, id. §§ 12921, 12955, 12955.8.
25. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in labor organizations, id. § 12940(b).
26. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in apprenticeships, id. § 12940(c).
27. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in licensing boards, id. § 12944.

28. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in civil service, id. § 18500.
29. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in health insurance, Cal. Health & Saf. Code § 1365.5.
30. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in certification of administrators of group home facilities, id. § 1522.41.
31. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in adult day health care centers, id. § 1586.7.
32. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in community redevelopment projects, id. § 33050(a).
33. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in court-ordered HIV-status disclosure of criminal defendants, id. § 120292.
34. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in sexual health education programs, id. § 151002(a)(6).
35. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in insurance, Cal. Ins. Code §§ 10140(a), (e), 10141.
36. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in children's public health insurance, id. § 12693.28.
37. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in health care organizations, Cal. Lab Code § 4600.6(g)(3).
38. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in public contractors, Cal. Pub. Contract Code § 6108(g)(9).
39. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in juvenile detention, Cal. Wel. & Inst. Code § 224.73.
40. California's elected legislature has passed laws prohibiting discrimination on the basis of sexual orientation in access to elder services, Cal. Wel. & Inst. Code § 9103.1(a), (c), (d).
41. California has acted to protect and advance gay and lesbian rights by combating bias on the basis of sexual orientation in public schools, Cal. Ed. Code § 32228.

42. California has acted to protect and advance gay and lesbian rights by providing sexual orientation-sensitive sex education materials, id. § 51933(b)(4).
43. California has acted to protect and advance gay and lesbian rights by protecting privacy interests in sexual orientation for teachers. id. § 49091.24.
44. California has acted to protect and advance gay and lesbian rights by providing training for domestic abuse evaluators in the relationship of sexual orientation to domestic violence, Cal. Fam. Code § 1816.
45. California has acted to protect and advance gay and lesbian rights by facilitating communication on sexual orientation in disability communities, Cal. Gov. Code § 8299.01(b)(2)(F).
46. California has acted to protect and advance gay and lesbian rights by issuing publications to minimize housing discrimination on the basis of sexual orientation, id. § 12930(i).
47. California has acted to protect and advance gay and lesbian rights by providing assistance in resolving disputes relating to discrimination on the basis of sexual orientation, id. § 12931.
48. California has acted to protect and advance gay and lesbian rights by funding advisory and conciliation councils to study sexual orientation discrimination generally and in housing and employment, id. § 12935(g).
49. California has acted to protect and advance gay and lesbian rights by empowering local commissions on human relations to study and resolve tensions between people subject to prejudice on the basis of sexual orientation, id. §§ 50264(c), 50265(a).
50. California has acted to protect and advance gay and lesbian rights by training medical personnel in sexual orientation discrimination prevention, Cal. Health & Saf. Code § 1257.5.
51. California has acted to protect and advance gay and lesbian rights by training foster parents and group home and foster family agency licensing personnel in sexual orientation discrimination and harassment prevention, id. §§ 1522.41(b)(3)(F), (b)(4)(E), § 1563(c)(5), Cal. Wel. & Inst. Code § 16003(a)(1).
52. California has acted to protect and advance gay and lesbian rights by training law enforcement personnel about crimes committed on the basis of the sexual orientation of the victim, Cal. Pen Code §§ 13023, 13519.6.

53. California has acted to protect and advance gay and lesbian rights by training law enforcement personnel about sensitivity to sexual orientation, id. §§ 13023, 13519.4.
54. California has acted to protect and advance gay and lesbian rights by recognizing the right of children to be free from sexual orientation discrimination, Cal. Wel. & Inst. Code § 224.71.
55. California has acted to protect and advance gay and lesbian rights by codifying protections against hate crimes committed on the basis of sexual orientation, Cal. Pen Code §§ 422.55(a)(6), 422.6, 422.7, 422.75, 422.7, 422.85, 422.865, § 3053.4, Cal. Ed. Code §§ 66301, 67380, 94367, Cal. Wel. & Inst. Code § 707(d)(2)(C)(iii).
56. California has acted to protect and advance gay and lesbian rights by protecting against harmful insurance premium adjustment following hate crime-related claims, Cal. Ins. Code § 676.10.
57. California has acted to protect and advance gay and lesbian rights by recognizing the right of persons of any sexual orientation to be free from fear and harm by gangs, Cal. Pen Code §§ 186.21, 11410.
58. California has acted to protect and advance gay and lesbian rights by providing for jury instructions prohibiting bias on the basis of sexual orientation, Cal. Pen Code § 1127h.
59. California municipalities provide additional protections and benefits to same-sex partners.
60. California employers are required by law to grant healthcare benefits to same-sex domestic partners on equal footing with employees' spouses. Cal. Ins. Code sec. 381.5.
61. Today California is one of sixteen states that mandate health insurance coverage for domestic partners. Council for Affordable Health Insurance, Health Insurance Mandates in the States 2009 at 7, 19, http://www.cahi.org/cahi_contents/resources/pdf/HealthInsuranceMandates2009.pdf.
62. Even before they were legally obligated to do so, many major California employers granted benefits to same-sex partners and registered domestic partners.
63. Today a majority of Fortune 500 companies offer same-sex domestic partner benefits.

Ability to Contribute to Society

64. Less than 40% of same-sex couples in the United States aged 22-55 have children under 18 in the home. R. Bradley Sears, et al., *Same-Sex Couples and Same-Sex Couples Raising Children in the United States: Data from Census 2000* at 11 [hereinafter Sears, *Same-Sex Couples in the United States*].
65. Sixty-eight percent of married couples aged 22-55 have children under 18 in the home. *Id.*
66. Children of same-sex couples are never biologically related to both of their parents.
67. Children of same-sex couples are less likely to be biologically related to any of their parents.

Political Power of Homosexuals

68. President Barack Obama proclaimed June 2009 to be “Lesbian, Gay, Bisexual, and Transgender Pride Month.”
(http://www.whitehouse.gov/the_press_office/Presidential-Proclamation-LGBT-Pride-Month/)
69. President Obama awarded the 2009 Presidential Medal of Freedom to former San Francisco Supervisor Harvey Milk and Billie Jean King, “the first openly lesbian major sports figure in America.” (http://www.whitehouse.gov/the_press_office/President-Obama-Names-Medal-of-Freedom-Recipients/)
70. The 2008 national platform of the Democratic Party contained the following statements on gay rights: “We support the repeal of ‘Don’t Ask Don’t Tell’ and the implementation of policies to allow qualified men and women to serve openly regardless of sexual orientation. . . . We support the full inclusion of all families, including same-sex couples, in the life of our nation, and support equal responsibility, benefits, and protections. We will enact a comprehensive bipartisan employment non-discrimination act. We oppose the Defense of Marriage Act and all attempts to use this issue to divide us. . . . Democrats will fight to end discrimination based on race, sex, ethnicity, national origin, language, religion, sexual orientation, gender identity, age, and disability in every corner of our country, because that’s the America we believe in.” (<http://www.presidency.ucsb.edu/ws/index.php?pid=78283>)

71. The 2004 national platform of the Democratic Party contained the following statements on gay rights: “We support full inclusion of gay and lesbian families in the life of our nation and seek equal responsibilities, benefits, and protections for these families. In our country, marriage has been defined at the state level for 200 years, and we believe it should continue to be defined there. We repudiate President Bush's divisive effort to politicize the Constitution by pursuing a ‘Federal Marriage Amendment.’ Our goal is to bring Americans together, not drive them apart. . . . We will enact the bipartisan legislation barring workplace discrimination based on sexual orientation. We are committed to equal treatment of all service members and believe all patriotic Americans should be allowed to serve our country without discrimination, persecution, or violence.” (<http://www.presidency.ucsb.edu/ws/index.php?pid=29613>)
72. The 2000 national platform of the Democratic Party contained the following statements on gay rights: “We will enact the bipartisan legislation barring workplace discrimination based on sexual orientation. We are committed to equal treatment of all service members and believe all patriotic Americans should be allowed to serve our country without discrimination, persecution, or violence. . . . We continue to lead the fight to end discrimination on the basis of race, gender, religion, age, ethnicity, disability, and sexual orientation. . . . We support continued efforts, like the Employment Non-Discrimination Act, to end workplace discrimination against gay men and lesbians. We support the full inclusion of gay and lesbian families in the life of the nation. This would include an equitable alignment of benefits.” (<http://www.presidency.ucsb.edu/ws/index.php?pid=29612>)
73. The 1996 national platform of the Democratic Party contained the following statements on gay rights: “We continue to lead the fight to end discrimination on the basis of race, gender, religion, age, ethnicity, disability, and sexual orientation. . . . We support continued efforts, like the Employment Non-Discrimination Act, to end discrimination against gay men and lesbians and further their full inclusion in the life of the nation.” (<http://www.presidency.ucsb.edu/ws/index.php?pid=29611>)
74. The 1992 national platform of the Democratic Party contained the following statements on gay rights: “Democrats will continue to lead the fight to ensure that no Americans suffer discrimination or deprivation of rights on the basis of race, gender, language, national origin, religion, age, disability, sexual orientation, or other characteristics irrelevant to ability. . . . We will . . . provide civil rights protection for gay men and lesbians and an end to Defense Department discrimination” (<http://www.presidency.ucsb.edu/ws/index.php?pid=29610>)
75. The 1988 national platform of the Democratic Party contained the following statement on gay rights: “WE BELIEVE that we honor our multicultural heritage by assuring

equal access to government services, employment, housing, business enterprise and education to every citizen regardless of race, sex, national origin, religion, age, handicapping condition or sexual orientation”

(<http://www.presidency.ucsb.edu/ws/index.php?pid=29609>)

76. The 1984 national platform of the Democratic Party contained the following statement on gay rights: “Government has a special responsibility to those whom society has historically prevented from enjoying the benefits of full citizenship for reasons of race, religion, sex, age, national origin and ethnic heritage, sexual orientation, or disability.” (<http://www.presidency.ucsb.edu/ws/index.php?pid=29608>)
77. The 1980 national platform of the Democratic Party contained the following statement on gay rights: “All groups must be protected from discrimination based on race, color, religion, national origin, language, age, sex or sexual orientation.” (<http://www.presidency.ucsb.edu/ws/index.php?pid=29607>)
78. Democratic Party rules for selecting delegates to the national party convention mandate that state parties "develop and submit Party outreach programs, including recruitment, education and training, in order to achieve full participation" of "groups historically under- represented in the Democratic Party’s affairs, by virtue of race, ethnicity, age, sexual orientation or disability" (Rule 5(c)), and obligate state parties to "adopt and implement Inclusion Programs in order to achieve the full participation" of LGBT individuals in "the delegate selection process and in all party affairs, as indicated by their presence in the Democratic electorate." (Rule 7). (http://s3.amazonaws.com/apache.3cdn.net/de68e7b6dfa0743217_hwm6bhyc4.pdf)
79. The Employee Nondiscrimination Act of 2007, which would have prohibited employment discrimination on the basis of sexual orientation, passed the House by a 235 to 184 vote, with 200 Democrats and 35 Republicans voting in favor. (House Roll Call Vote No. 1057, 110th Cong., Nov. 7, 2007).
80. According to the National Gay and Lesbian Task Force, more than half the U.S. population lived in jurisdictions covered by laws banning discrimination on the basis of sexual orientation. (http://www.thetaskforce.org/reports_and_research/fact_sheets/family_nondiscrimination_05_07)
81. 31 senators and 128 congressmen were awarded a 90% or better rating for the 110th Congress (2007 to 2008) by the Human Rights Campaign. HRC Congressional Scorecard, http://www.hrc.org/documents/Congress_Scorecard-110th.pdf

82. In its 2008 platform, the California Democratic Party stated that it “support[s] nondiscrimination and equality for Lesbian, Gay, Bisexual, and Transgender people in all aspects of their lives” and “support[s] the LGBT Community in its quest for the right to legal marriage.” (<http://www.cadem.org/atf/cf/{BF9D7366-E5A7-41C3-8E3F-E06FB835FCCE}/2008%20Platform%20Combined%20Final.pdf>)
83. In its 2008 platform, the Green Party of California stated that “We support the freedom to marry, and all the rights, benefits, and responsibilities thereof, without discrimination based on sex, gender, or sexual orientation” and that “We support state and federal legislation (including constitutional amendments) to ban discrimination based on sex, gender, and sexual orientation. We oppose measures that restrict rights or create unequal treatment based on sex, gender, or sexual orientation.” (http://www.cagreens.org/platform/platform_justice.shtml#sogige).
84. California Governor Arnold Schwarzenegger, Lt. Governor John Garamendi, Senator Barbara Boxer, Senator Dianne Feinstein, Attorney General Edmund G. Brown, Secretary of State Debra Bowen, State Treasurer Bill Lockyer, State Controller John Chiang, State Superintendent of Public Instruction Jack O'Connell all sent official greeting messages to California's 2009 Lesbian, Gay, Bisexual and Transgender Pride Celebrations. (http://www.capride.org/proc_all.htm).
85. Four openly gay or lesbian individuals serve in the California legislature: State Sen. Mark Leno (D, San Francisco), State Sen. Christine Kehoe (D, San Diego), State Assemblyman Tom Ammiano (D, San Francisco), and State Assemblyman John Perez (D, Los Angeles).
86. California's political branches passed the state's first domestic partnership statute in 1999, and expanded domestic partnerships' rights and benefits in 2001, 2002, 2003, 2004, 2005, 2006, and 2007. *See* 2007 Cal. Stat. ch. 567; 2006 Cal. Stat. ch. 802; 2005 Cal. Stat. ch. 416; 2004 Cal. Stat. ch. 488; 2003 Cal. Stat. ch. 421; 2002 Cal. Stat. ch. 447; 2001 Cal. Stat. ch. 893; 1999 Cal. Stat. ch. 588.
87. In 1978, California voters rejected Proposition 6, also known as the “Briggs Initiative,” which would have allowed school systems to fire any teacher found to be “advocating, imposing, encouraging or promoting” homosexual activity by a 58% to 41% margin.
88. In the 2008 election cycle, the “No on 8: Equality for All” campaign committee raised and spent more than \$43.0 million to defeat Proposition 8.
89. In the 2008 election cycle, the “Win Marriage Back” campaign committee raised and spent more than \$12.5 million to defeat Proposition 8.

90. In the 2008 election cycle, the “Human Rights Campaign California Marriage PAC” campaign committee raised and spent more than \$3.6 million to defeat Proposition 8.
91. In the 2008 election cycle, the “No on Proposition 8, Campaign for Marriage Equality” campaign committee raised and spent more than \$2.0 million to defeat Proposition 8.
92. In the 2008 election cycle, the “Californians Against Eliminating Basic Rights” campaign committee raised and spent more than \$1.1 million to defeat Proposition 8.
93. California universities host 22 gay and lesbian student centers, the most of any state in the nation. 2008 Annual Report, Consortium of Higher Education LGBT Resource Professionals, available at <http://www.lgbtcampus.org/about/files/2009AnnualReport.pdf>
94. On average, same-sex couples in California are more affluent than heterosexual married couples, The median income of same-sex couples in California is \$103,030 for male couples and \$86,000 for female couples, significantly higher than the median household income of opposite-sex married couples in California, \$76,500. *Census Snapshot: California Lesbian, Gay, And Bisexual Population*, The Williams Institute at UCLA Law School, (<http://www.law.ucla.edu/williamsinstitute/publications/CA%20Snapshot%202008.pdf>)
95. The Los Angeles Gay and Lesbian Center: received \$11.1 million in government grants in 2008 (http://www.lagaycenter.org/site/DocServer/AR08_r1.pdf?docID=6921) and \$10.5 million in government grants in 2006. (2006 IRS Form 990, available at www.guidestar.org).
96. The San Diego LGBT Community Center received \$1.8 million in government grants in 2007 (2007 IRS Form 990, available at www.guidestar.org).
97. The San Francisco LGBT Community Center received \$986,722 in government grants in 2008. (<http://www.scribd.com/doc/13974216/San-Francisco-LGBT-Community-Center-Annual-Report-200708>)
98. The Gay and Lesbian Community Services Center of Orange County received \$344,404 in government grants in 2007 (2007 IRS Form 990, available at www.guidestar.org).
99. The One National Gay and Lesbian Archives in Los Angeles received \$90,728 in government grants in 2007 (2007 IRS Form 990, available at www.guidestar.org).

100. The San Francisco LGBT Parade Committee received \$77,200 in government grants in 2006 (2006 IRS Form 990, available at www.guidestar.org).
101. The GLBT Historical Society of California in San Francisco received \$234,781 in government grants in 2007 (2007 IRS Form 990, available at www.guidestar.org).
102. The Queer Cultural Center in San Francisco received \$263,646 in government grants in 2007 (2007 IRS Form 990, available at www.guidestar.org).
103. Gay and Lesbian Adolescent Social Services of Burbank received \$10.4 million in government grants in 2007 (2007 IRS Form 990, available at www.guidestar.org).
104. The Lavender Youth Recreation and Information Center in San Francisco received \$725,902 in government grants in 2006 (2006 IRS Form 990, available at www.guidestar.org).
105. The group Community United Against Violence of San Francisco received \$966,958 in government grants in 2007 (2007 IRS Form 990, available at www.guidestar.org).
106. The Pacific Pride Foundation in Santa Barbara received \$1.2 million in government grants in 2007 (2007 IRS Form 990, available at www.guidestar.org).
107. The Our Family Coalition organization of San Francisco received \$471,757 in government grants in 2007 (2007 IRS Form 990, available at www.guidestar.org).
108. The Stepping Stone of San Diego organization received \$1.5 million in government grants in 2007 (2007 IRS Form 990, available at www.guidestar.org).

History of Prop. 8

109. The proponents of Proposition 8 submitted 1,120,801 signatures to the Secretary of State on April 24, 2008 to qualify the initiative for the fall general election ballot.
110. On May 15, 2008, the California Supreme Court decided *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008).
111. The California Secretary of State certified Proposition 8 for the November 4, 2008 general election ballot on June 2, 2008.

Importance of Marriage

1. The “freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.” Loving v. Virginia, 388 U.S. 1, 12 (1967).

Proponents’ Response: Proponents agree to this stipulation.

2. Civil marriage is deeply meaningful to individuals, families, communities, and the State of California.

Proponents’ Response: Proponents agree to this stipulation.

3. Marriage is a public expression of love and long-term commitment.

Proponents’ Response: Proponents do not agree to this stipulation.

4. No other designation offers the same meaning, obligations, rights and benefits except marriage itself.

Proponents’ Response: Proponents anticipate that they will be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

5. Marriage brings with it many tangible legal rights, privileges, benefits and obligations to the married individuals and also confers significant intangible benefits.

Proponents’ Response: Proponents anticipate that they will be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

6. The tangible and intangible benefits of marriage flow to the married couple’s children. Marriage legitimizes children born to the couple and provides a sense of security and support for the family.

Proponents’ Response: Proponents agree to this stipulation.

7. Marriage legitimizes children and provides them a sense of security.

Proponents’ Response: Proponents do not agree to this stipulation because it is duplicative.

8. Plaintiffs desire to marry their partners.

Proponents’ Response: Proponents agree to this stipulation.

9. For gay and lesbian individuals, such as Plaintiffs, marriage to an individual of the opposite sex is not a meaningful alternative, because such marriage would force them to negate their sexual orientation and identity.

Proponents' Response: Proponents anticipate that they may be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

History of Marriage

10. Civil marriage has never been a static institution. Historically, it has changed, sometimes dramatically, to reflect the changing needs, values and understanding of our evolving society.

Proponents' Response:

Counter — Civil marriage has been a remarkably static institution. It has rarely changed throughout history, and then only in minor ways. Despite any changes in its precise contours, it always has been and nearly always still is limited to the union of a man and a woman.

11. California banned interracial marriage from the founding of the State until the California Supreme Court invalidated the prohibition in *Perez v. Sharp*, 32 Cal. 2d 711 (1948).

Proponents' Response: Proponents anticipate that they will be able to agree to some form of this stipulation.

12. The doctrine of coverture, under which women, once married, lost their independent legal identity and became the property of their husbands, was once viewed as a central component of the civil institution of marriage.

Proponents' Response: Proponents do not agree to this stipulation.

13. Neither the race- nor gender-based reforms in civil marriage law deprived marriage of its vitality and importance as social institution.

Proponents' Response: Proponents anticipate that they will be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

History of Discrimination

14. The persecution suffered by gays and lesbian individuals in the United States has been severe.

Proponents' Response: Proponents anticipate that they will be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

15. Gay and lesbian individuals have been subjected to and stigmatized by a long history of purposeful and invidious discrimination that continues to this day.

Proponents' Response: Proponents do not agree to this stipulation.

16. Gay and lesbian individuals are still among the most stigmatized groups in the country.

Proponents' Response: Proponents do not agree to this stipulation.

17. Hate crimes against gay and lesbian individuals remain prevalent.

Proponents' Response: Proponents do not agree to this stipulation.

18. Although social antipathy toward gay and lesbian individuals has moderated, these groups suffer from continuing political disabilities and discrimination.

Proponents' Response: Proponents do not agree to this stipulation.

Impact on Ability to Contribute to Society

19. Sexual orientation bears no relation to a person's ability to perform or contribute to society.

Proponents' Response:

Counter – With the exception of certain matters related to procreation, individuals' ability to perform or contribute to society is not affected by whether they are gay or lesbian.

20. The medical and psychiatric communities do not consider sexual orientation is no longer considered an illness or disorder.

Proponents' Response: Proponents anticipate that they will be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

21. Same-sex sexual orientation does not result in any impairment in judgment or general social and vocational capabilities.

Proponents' Response: Proponents agree to this stipulation.

22. It is the policy of the State of California that sexual orientation bears no relation to an individual's ability to raise children, to an individual's capacity to enter into a relationship that is analogous to marriage, or otherwise to participate fully in all economic and social institutions.

Proponents' Response: Proponents do not agree to this stipulation.

Whether Sexual Orientation Can Be Changed, and If So, Whether Gay and Lesbian Individuals Should be Encouraged to Change It

23. "Sexual orientation and sexual identity is so fundamental to one's identity that a person should not be required to abandon them." *Hernandez-Montiel v. I.N.S.*, 225 F.3d 1084, 1093 (9th Cir. 2000).

Proponents' Response: Proponents do not agree to this stipulation because it is a legal conclusion and thus not the proper subject of a stipulation.

24. Sexual orientation is fundamental to a person's identity.

Proponents' Response: Proponents anticipate that they may be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

25. There is no credible evidence that sexual orientation can or should be changed.

Proponents' Response: Proponents do not agree to this stipulation.

26. It can be harmful to an individual to attempt to change his or her sexual orientation.

Proponents' Response: Proponents anticipate that they may be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

27. Forcing an individual to change his or her sexual orientation would infringe on "the protected right of homosexual adults to engage in intimate, consensual conduct," which is "an integral part of human freedom." *Lawrence v. Texas*, 539 U.S. 558, 576-77 (2003).

Proponents' Response: Proponents do not agree to this stipulation because it is a legal conclusion and thus not the proper subject of a stipulation.

28. Sexual orientation is the kind of distinguishing characteristic that defines gay and lesbian individuals as a discrete group.

Proponents' Response: Proponents anticipate that they may be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

Relative Political Power

29. Discrimination against gay and lesbian individuals, including through hate crimes, exists to this day.

Proponents' Response: Proponents anticipate that they will be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

30. There are only three openly gay members of the U.S. House of Representatives and no openly gay Senators.

Proponents' Response: Proponents are unable to stipulate at this time due to a lack of sufficient information.

31. There are no openly gay governors.

Proponents' Response: Proponents are unable to stipulate at this time due to a lack of sufficient information.

32. No openly gay person has ever been appointed to a Cabinet Secretary position.

Proponents' Response: Proponents are unable to stipulate at this time due to a lack of sufficient information.

33. Fifty-two percent of California voters voted in favor of Prop. 8, which denied gay and lesbian individuals the right to marry.

Proponents' Response: Proponents anticipate that they will be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

34. Fewer than half of the States ban sexual orientation discrimination in employment, housing, and/or accommodations.

Proponents' Response: Proponents anticipate that they will be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

35. Lesbians and gay men have been unable to secure national legislation to protect them from hate crimes.

Proponents' Response: Proponents agree to this stipulation.

36. Lesbians and gay men have been unable to secure national legislation to protect them from discrimination in housing, employment, or public accommodations.

Proponents' Response: Proponents agree to this stipulation.

Stigma of Domestic Partnership

37. Establishing a separate legal institution for State recognition and support of lesbian and gay families, even if well-intentioned, marginalizes and stigmatizes gay families.

Proponents' Response: Proponents do not agree to this stipulation.

38. There is a significant symbolic disparity between domestic partnership and marriage.

Proponents' Response: Proponents agree to this stipulation.

39. Denying same-sex couples and their families access to the familiar and favorable official designation "marriage" harms them by denying their family relationships them the same dignity and respect afforded to opposite-sex couples and their families.

Proponents' Response: Proponents do not agree to this stipulation.

40. The inability to marry relegates gay and lesbian relationships to second-class status.

Proponents' Response: Proponents do not agree to this stipulation.

41. Because two types of relationships—one for same-sex couples and one for opposite-sex couples—exist in California, a gay or lesbian individual is forced to disclose his or her sexual orientation when asked about his or her marital status.

Proponents' Response: Proponents do not agree to this stipulation.

42. In light of the history of discrimination that gay and lesbian individuals have faced, the creation of the alternative regime of domestic partnership reinforces anti-gay prejudice, which has the potential to escalate into violence.

Proponents' Response: Proponents do not agree to this stipulation.

43. The stigma associated with discrimination and second-class treatment takes a toll on the well-being of gay men and lesbians and their families.

Proponents' Response: Proponents do not agree to this stipulation.

44. Private, consensual, sexual relations between gay and lesbian couples are protected by the Due Process Clause of the Fourteenth Amendment.

Proponents' Response: Proponents do not agree to this stipulation because it is a legal conclusion and thus not the proper subject of a stipulation.

Whether Prop. 8 Promotes Stereotypical Gender Roles

45. Notions that marriage should be limited to opposite-sex couples reinforces harmful stereotypes regarding innate gender characteristics, and the roles of men and women in child rearing and family responsibilities.

Proponents' Response: Proponents do not agree to this stipulation.

Voter Motivations

46. Gay and lesbian individuals had a constitutional right to marry before Prop. 8.

Proponents' Response:

Counter – Except for a brief six-month period between the California Supreme Court's decision in the *Marriage Cases* and the adoption of Proposition 8, marriage in California was always been limited to the union of a man and a woman.

47. Proposition 8 eliminated the right of gay and lesbian individuals to marry.

Proponents' Response:

Counter – Proposition 8 restored the traditional definition of marriage.

48. Prop. 8 was intended to strip the designation "marriage" from officially sanctioned relationships of same-sex couples.

Proponents' Response:

Counter – Prop. 8 was intended to restore the traditional definition of marriage.

49. According to the official General Election Voter Information Guide, Prop. 8 "[c]hange[d] the California Constitution to eliminate the right of same-sex couples to

marry in California.” *Strauss v. Horton*, 207 P.3d 48, 77 (Cal. 2009) (internal quotation marks omitted).

Proponents’ Response: Proponents anticipate that they will be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

50. Prop. 8 was driven by moral disapproval of gay and lesbian individuals.

Proponents’ Response: Proponents do not agree to this stipulation.

51. The advertising campaign in favor of Prop. 8 demonstrates that its supporters drew on the fears and irrational prejudices of voters.

Proponents’ Response: Proponents do not agree to this stipulation.

Facts Relating to Lack of Rational Basis

52. Heterosexual individuals with no children and/or no intent to have children, who are incarcerated for serious crimes, who have failed to pay child support obligations or who are adulterers are all permitted to marry.

Proponents’ Response: Proponents anticipate that they may be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

53. Allowing gay and lesbian individuals to marry will not destabilize marriages of heterosexual individuals.

Proponents’ Response: Proponents do not agree to this stipulation.

54. Allowing gay and lesbian individuals to marry will not deprive heterosexual individuals of any rights or benefits they currently enjoy.

Proponents’ Response: Proponents do not agree to this stipulation.

55. It is the policy of the State of California that sexual orientation bears no relation to an individual’s ability to raise children, to an individual’s capacity to enter into a relationship that is analogous to marriage, or otherwise to participate fully in all economic and social institutions.

Proponents’ Response: Proponents do not agree to this stipulation.

56. The State of California has declared an interest in promoting lesbian and gay family relationships and protecting lesbian and gay family members during life crises, and reducing discrimination on the bases of sex and sexual orientation.

Proponents' Response: Proponents are unable to stipulate at this time due to a lack of sufficient information. Proponents anticipate that they will be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

57. The State of California allows gay men and lesbians in same-sex relationships to serve as foster parents and to adopt children.

Proponents' Response: Proponents agree to this stipulation.

58. An individual's capacity to establish a loving and long-term committed relationship with another person does not depend on the individual's sexual orientation.

Proponents' Response: Proponents anticipate that they will be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

59. An individual's capacity to raise children does not depend on the individual's sexual orientation.

Proponents' Response: Proponents anticipate that they may be able to agree to some form of this stipulation but cannot agree to the formulation offered by plaintiffs.

60. The best interests of a child are equally served by being raised by same-sex parents.

Proponents' Response: Proponents do not agree to this stipulation.

61. Lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for children.

Proponents' Response: Proponents do not agree to this stipulation.

62. The State of California allows same-sex couples married before Prop. 8 was enacted to remain married.

Proponents' Response: Proponents agree to this stipulation.

63. Approximately 18,000 same-sex couples currently are recognized by the State of California as married. However, if any of those marriages end by reason of death or

divorce, the gay and lesbian individuals in those marriages would not be allowed to remarry.

Proponents' Response: Proponents are unable to stipulate at this time due to a lack of sufficient information.

64. Gay and lesbian individuals, including Plaintiffs, have formed lasting, committed, and caring relationships with persons of the same sex, and same-sex couples share their lives and participate in their communities together.

Proponents' Response: Proponents agree to this stipulation.

65. Gay and lesbian individuals, including Plaintiffs Perry and Stier, raise children together.

Proponents' Response: Proponents agree to this stipulation.

66. Prohibiting marriage by same-sex couples hurts the State of California financially.

Proponents' Response: Proponents are unable to stipulate at this time due to a lack of sufficient information.

67. Prohibiting marriage by same-sex couples limits the State of California's ability to ensure that its citizens are treated equally regardless of sexual orientation.

Proponents' Response: Proponents do not agree to this stipulation.