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CITY AND COUNTY OF SAN FRANCISCO

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

20 KRISTIN M. PERRY, *et al.*,
21 Plaintiffs,
22 and
23 CITY AND COUNTY OF SAN FRANCISCO,
Plaintiff-Intervenor,

24 v.
25 ARNOLD SCHWARZENEGGER, *et al.*,
Defendants,

26 and
27 PROPOSITION 8 OFFICIAL PROPONENTS
DENNIS HOLLINGSWORTH, *et al.*,
28 Defendant-Intervenors.

CASE NO. 09-CV-2292 VRW

**PLAINTIFFS' AND PLAINTIFF-
INTERVENOR'S ANNOTATED
AMENDED PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

Trial Dates: January 11 – January 27, 2010
Judge: Chief Judge Walker
Location: Courtroom 6, 17th Floor

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1 **I. The Parties**

2 **A. Plaintiffs**

3 PFF 1. Plaintiffs Kristin M. Perry (“Perry”) and Sandra B. Stier (“Stier”) reside in Alameda
4 County and are raising children together. They are lesbian individuals in a committed
5 relationship who wish to be married.

- 6 • Tr. 140:6 (Perry: “I am a lesbian.”).¹
- 7 • Tr. 161:18 (Stier: “I’m gay.”).
- 8 • Tr. 161:9-12 (Stier: Perry and Stier live with their four boys; two are Perry’s
9 biological sons, and two are Stier’s biological sons.).
- 10 • Tr. 141:22 (Perry: “I want to marry Sandy.”).
- 11 • Tr. 167:11-15 (Stier: “I would like to marry the person that I choose and that
12 is Kris Perry.”).
- 13 • PX0707 at RFA No. 66 (Proponents admit “that gay and lesbian individuals,
14 including Plaintiffs Perry and Stier, raise children together.”).
- 15 • PX0707 at RFA No. 8 (Proponents admit “that Plaintiffs desire to marry their
16 partners.”).

17 PFF 2. In May 2009, Perry and Stier applied for a marriage license from Defendant
18 O’Connell, the Alameda County Clerk-Registrar, but were denied because they are a
19 same-sex couple.

- 20 • Tr. 157:9-158:5 (Perry: Describing Perry and Stier’s attempts to obtain a
21 marriage license from the Alameda County Recorder’s Office in May, 2009).

22 PFF 3. As a result of Proposition 8 (“Prop. 8”), Perry and Stier are barred from marrying the
23 individual they wish to marry.

24
25
26 ¹ Cites to the trial transcript are abbreviated “Tr.” and include the page and line cited. The
27 parentheticals following cites to the transcript include the witness and a description of and/or
28 quote from the witness’s testimony. Cites to trial exhibits include the exhibit number, along
with a parenthetical that identifies the exhibit and includes a quote from and/or a description
of the exhibit.

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- Cal. Const. art. I, § 7.5 (Proposition 8: Amending California Constitution to provide that “[o]nly marriage between a man and a woman is valid or recognized in California.”).
- Tr. 157:9-158:5 (Perry: When Perry and Stier attempted to marry, the Alameda County clerk stated that he could not provide a license.).
- Tr. 167:11-15 (Stier: “I would like to marry the person that I choose and that is Kris Perry. She is a woman. And according to California law right now, we can’t get married, and I want to get married.”).

PFF 4. Plaintiff Paul T. Katami (“Katami”) and Plaintiff Jeffrey J. Zarrillo (“Zarrillo”) are gay Californians in a committed relationship who wish to be married.

- Tr. 77:2-5 (Zarrillo: He is gay.).
- Tr. 91:15-17 (Katami: He has been gay “[a]s long as [he] can remember[.]”).
- Tr. 80:2-3 (Zarrillo: He and Katami have been in a committed relationship for approximately nine years.).
- Tr. 79:16-80:1 (Zarrillo: Katami is “the love of my life. I love him probably more than I love myself. I would do anything for him. . . . And I want nothing more than to marry him.”).
- Tr. 88:15-18 (Katami: “There are many reasons [why I want to get married]. . . . [T]he primary reason for me is because I have found someone that I love and that I know I can dedicate the rest of my life to.”); 107:24 (Katami: Stating that he wants to marry Zarrillo).
- PX0707 at RFA No. 8 (Proponents admit “that Plaintiffs desire to marry their partners.”).

PFF 5. In May 2009, Katami and Zarrillo applied for a marriage license from the State of California but were denied because they are a same-sex couple.

- Tr. 88:9-14 (Katami: Explaining that he and Zarrillo applied for a marriage license and were denied in May 2009).

PFF 6. As a result of Prop. 8, Katami and Zarrillo are barred from marrying the individual they wish to marry.

- Cal. Const. art. I, § 7.5 (Proposition 8: Amending California Constitution to provide that “[o]nly marriage between a man and a woman is valid or recognized in California.”).

- Tr. 88:11-14 (Katami: Describing denial of marriage license in May 2009).

B. City and County of San Francisco

PFF 7. Plaintiff-Intervenor the City and County of San Francisco (“CCSF”) is a charter city and county organized and existing under the Constitution and laws of the State of California.

- Cal. Const. art. XI, § 5(a) (granting cities the authority to govern municipal affairs under a city charter).
- S.F. Charter § 1.101 (setting forth the City and County of San Francisco’s rights and powers under the city charter).

PFF 8. Plaintiff-Intervenor is responsible for issuing marriage licenses, performing civil marriage ceremonies, and maintaining vital records of marriages.

- Cal. Fam. Code § 350(a) (providing that parties seeking to marry “shall first obtain a marriage license from a county clerk”).
- Cal. Fam. Code § 401(a) (“For each county, the county clerk is designated as a commissioner of civil marriage.”).
- Cal. Fam. Code § 400(b) (providing that a commissioner of civil marriage may perform marriages).

PFF 9. In February 2004, San Francisco Mayor Gavin Newsom instructed county officials to issue marriage licenses to same-sex couples. The California Supreme Court ordered the city to stop doing so the following month, and it later nullified the marriages that had been performed. *Lockyer v. City & County of San Francisco*, 95 P.3d 459 (Cal. 2004).

- *Lockyer v. City & County of San Francisco*, 95 P.3d 459, 464-67 (Cal. 2004) (describing the procedural background of the litigation).
- Tr. 145:1-9 (Perry: Describing marriage to Stier in 2004).
- Tr. 1227:8-1229:21 (Zia: Describing marriage to same-sex spouse in 2004).

PFF 10. In March 2004, CCSF filed a separate state court action challenging the California marriage statutes’ exclusion of same-sex couples under the State Constitution, and in

1 May 2008 the California Supreme Court ruled in favor of CCSF and held that counties
 2 including CCSF were entitled and indeed required to issue marriage licenses to same-
 3 sex couples. From June 17, 2008 until the passage of Prop. 8, Plaintiff-Intervenor
 4 issued thousands of marriage licenses to same-sex couples who applied for them
 5 during that period.

- 6 • *In re Marriage Cases*, 183 P.3d 384, 402-05 (Cal. 2008) (discussing the
 7 procedural background of CCSF’s court action).
- 8 • Tr. 708:25-709:1 (Egan: Approximately 5,100 marriages licenses were issued
 9 to same-sex couples in San Francisco in 2008.).
- 10 • Tr. 725:13-18 (Egan: Marriage licenses were issued to same-sex couples from
 11 June 17, 2008 through November 4, 2008).
- 12 • PX0805 (Summary of marriage license appointments and actual marriage
 13 licenses issued by the San Francisco County Clerk: 5,153 marriage licenses to
 14 same-sex couples in 2008).
- 15 • Tr. 1232:6-10 (Zia: Describing marriage to same-sex spouse in June 2008
 16 after the California Supreme Court decision.).

17 PFF 11. Prop. 8 requires Plaintiff-Intervenor to violate the federal constitutional rights of
 18 lesbians and gay men by denying them the marriage licenses that it daily issues to
 19 heterosexual couples.

- 20 • Cal. Const. art. I, § 7.5 (Proposition 8: Amending California Constitution to
 21 provide that “[o]nly marriage between a man and a woman is valid or
 22 recognized in California.”).
- 23 • PX0728 at 2 and ¶¶ 1, 7, 36-43 (Attorney General’s Answer: Admits that
 24 Prop. 8 violates the Fourteenth Amendment to the U.S. Constitution).
- 25 • *See also* evidence cited in support of PFF 8.

26 **C. Defendants and Their Role in Enforcing Prop. 8 and Denying Marriage Licenses**

27 PFF 12. Arnold Schwarzenegger (“Schwarzenegger”) is the Governor of the State of
 28 California.

- PX0729 at ¶ 13; PX0726 at ¶ 13 (Administration’s Answer: Admits
 “Defendant Arnold Schwarzenegger is the Governor of the State of California.

1 In his official capacity, the Governor is the chief executive officer of the State
2 of California. It is his responsibility to ensure that the laws of the State are
3 properly enforced.”).

4 PFF 13. Edmund G. Brown, Jr. (“Brown”) is the Attorney General of the State of California.

- 5 • PX0728 at ¶ 14 (Attorney General’s Answer: “[A]dmits that he [Brown] is the
6 Attorney General of the State of California; that in his official capacity he is
7 the chief law officer of the state; [and] that it is his duty to see that the laws of
8 the state are uniformly and adequately enforced[.]”).

9 PFF 14. Mark B. Horton (“Horton”) is the Director of the California Department of Public
10 Health and the State Registrar of Vital Statistics of the State of California. In his
11 official capacity, Horton is responsible for prescribing and furnishing the forms for the
12 application for license to marry, the certificate of registry of marriage, including the
13 license to marry, and the marriage certificate.

- 14 • PX0729 at ¶ 15; PX0726 at ¶ 15 (Administration’s Answer: Admits PFF 14 in
15 its entirety).

16 PFF 15. Linette Scott (“Scott”) is the Deputy Director of Health Information & Strategic
17 Planning for the California Department of Public Health. Scott reports to Defendant
18 Horton and is the California Department of Public Health official responsible for
19 prescribing and furnishing the forms for the application for license to marry, the
20 certificate of registry of marriage, including the license to marry, and the marriage
21 certificate.

- 22 • PX0729 at ¶ 16; PX0726 at ¶ 16 (Administration’s Answer: Admits PFF 15 in
23 its entirety).

24 PFF 16. Patrick O’Connell (“O’Connell”) is the Clerk-Registrar for the County of Alameda
25 and is responsible for maintaining vital records of marriages, issuing marriage
26 licenses, and performing civil marriage ceremonies.

- 27 • PX0731 at ¶ 17; PX0726 at ¶ 17 (O’Connell’s Answer: Admits PFF 16 in its
28 entirety).

1 PFF 17. Dean C. Logan (“Logan”) is the Registrar-Recorder/County Clerk for the County of
 2 Los Angeles and is responsible for maintaining vital records of marriages, issuing
 3 marriage licenses, and performing civil marriage ceremonies.

- 4 • PX0730 at ¶ 13 (Logan’s Answer: Admits PFF 17 in its entirety).

5 **D. Proponents and Their Role in the Prop. 8 Campaign**

6 PFF 18. Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Hak-Shing William Tam,
 7 and Mark A. Jansson are the “Official Proponents” of Prop. 8.

- 8 • PX0693 at ¶ 19 (Decl. of D. Bauer in Supp. of Proponents’ Mot. to Intervene: Identifies the five “Official Proponents” of Prop. 8).
- 9 • Tr. 1886:25-1887:2 (Tam: Tam was an official proponent of Prop. 8.); *see*
 10 *also* Tr. 1910:1-8.

11
 12 PFF 19. By approving the language and submitting the forms, Proponents became the “Official
 13 Proponents” of Prop. 8 within the meaning of California law.

- 14 • PX0507 at ¶¶ 6, 7-9 (Decl. of Hak-Shing William Tam in Supp. of Proposed
 15 Intervenors’ Mot. to Intervene: “I supervised the preparation of the
 16 appropriate language for Proposition 8. At that time, I also executed the forms
 17 and documents prescribed by the California Elections Code, and presented
 18 them to the California Attorney General so that he would prepare a Title and
 19 Summary of the chief purpose and points of Proposition 8.” (at ¶ 6);
 20 description of meeting the requirements of California Elections Code Sections
 21 342, 9608, and 9004 (at ¶¶ 7-9)).

22 PFF 20. Proponents dedicated substantial time, effort, reputation, and personal resources in
 23 campaigning for Prop. 8.

- 24 • PX0693 at ¶¶ 9, 11 (Decl. of D. Bauer in Supp. of Proponents’ Mot. to
 25 Intervene: ProtectMarriage received over \$39 million and spent over \$37
 26 million in its successful effort to enact Proposition 8.).
- 27 • Tr. 1889:23-1893:15 (Tam: Tam invested substantial time, effort, and personal
 28 resources in campaigning for Proposition 8. He spent the majority of his
 working hours between January and November of 2008 towards qualifying
 Prop. 8 for the ballot and campaigning for its enactment; he organized several
 rallies in support of Prop. 8; he invited Ron Prentice, Chairman of
 ProtectMarriage.com—Yes on 8, to speak at the rallies; he participated in
 televised debates in support of Prop. 8 at the direction of ProtectMarriage.com;

1 he communicated with church leaders at the direction of ProtectMarriage.com;
 2 and he organized the collection of signatures to get Prop. 8 on the ballot.);
 3 PX0507 at ¶ 27 (Decl. of Hak-Shing William Tam in Supp. of Proposed
 4 Intervenors' Mot. to Intervene: outlining Tam's organizing and fundraising
 5 efforts in support of Proposition 8); *see also* Tr. 1910:9-12.

- 6 • PX2609 (Email from Tam to "pastors and church leaders" on Apr. 15, 2008:
 7 "I served as one of the proponents of this initiative and worked closely with
 8 ProtectMarriage.com to collect 1,050,000 signatures.").
- 9 • PX2185 (Traditional Family Coalition Newsletter: Explaining that "[a]s a
 10 leader in the Prop. 8 campaign, Dr. Bill Tam worked with
 11 ProtectMarriage.com to motivate grassroots effort in the Asian community.").
- 12 • PX2538 (Email from Tam to "pastors and ministry leaders" sent in May 2008
 13 after the *In re Marriage Cases* decision: "I stood with the lawyers from
 14 Protectmarriage.com, Alliance Defense Fund and some Catholics when we
 15 received the rulings.").
- 16 • PX2343B (Essay by Tam that was sent to Chinese-speaking voters and
 17 sponsored by "ProtectMarriage.com—Yes on 8, a Project of California
 18 Renewal" with major funding provided by "Knights of Columbus, National
 19 Organization for Marriage California, and Focus on the Family.").
- 20 • PX2599 at 2-3 (Protect Marriage Grassroots Meeting Minutes from Aug. 21,
 21 2008 list "Bill Tam" as the person responsible for the "Asian/Pacific Islander
 22 Outreach" team report. Tam's report mentions that "Chinese radio ads
 23 starting," the distribution of a "Chinese language Prop. 8 flyer," the creation of
 24 the website "1manand1woman.com," working on "dispelling the notion that
 25 same-sex marriage is a like a civil rights issue," and efforts to find an Asian
 26 spokesperson and Asian speaking people for the Pastor Rapid Response
 27 Team.").
- 28 • PX2620 (Peter Henderson, who describes himself as Chairman of
 Protectmarriage.com in July of 2007 states in an email to members of the
 Executive Committee, among others: "The Chinese coalition with Bill Tam
 remains strong.").

PFF 21. Near the beginning of this initiative process, the Official Proponents helped to
 establish ProtectMarriage.com—Yes on 8, a Project of California Renewal
 ("ProtectMarriage") as a "primarily formed ballot measure committee" under the
 California Political Reform Act.

- PX0693 at ¶¶ 3-4 (Decl. of D. Bauer in Supp. of Proponents' Mot. to
 Intervene: ProtectMarriage is a "primarily formed ballot measure committee"

1 under the California Political Reform Act and that the Committee exists
2 primarily to support Prop. 8.).

- 3 • PX0507 at ¶ 13 (Decl. of Hak-Shing William Tam in Supp. of Proposed
4 Intervenors' Motion to Intervene: "As an Official proponent, I endorsed
5 ProtectMarriage.com—Yes on 8, A Project of California Renewal (a 'primarily
6 formed ballot measure committee' under California law registered with the
California Secretary of State) to conduct a petition-gathering campaign for the
purpose of qualifying Proposition 8 for the ballot.").

7 PFF 22. ProtectMarriage exists with one purpose: to support Prop. 8. It was directly
8 responsible for all aspects of the campaign to qualify Prop. 8 for the ballot and enact it
9 into law.

- 10 • PX0693 at ¶¶ 4, 6, 10 (Decl. of D. Bauer in Supp. of Proponents' Mot. to
11 Intervene: ProtectMarriage "exists primarily to support just one ballot
12 measure—Proposition 8" and was "responsible for receiving all contributions
and making all expenditures in the campaign to qualify Proposition 8 for the
ballot and to pass it into law at the November 2008 General Election.").
- 13 • PX2403 at 1 (Email from Kenyn Cureton, Vice President for Church
14 Ministries with the Family Research Council, to Ron Prentice, Chairman of
15 ProtectMarriage.com—Yes on 8, in August of 2008: Attaching a kit to be
distributed to Christian voters through churches to better help them promote
16 Prop. 8. Cureton explains to Prentice that FRC found out from
ProtectMarriage.com—Yes on 8's lawyer, Andy Pugno, that FRC "need[s] to
17 take FRC logos off of the CA version of the videos (legal issues) and just put
ProtectMarriage.com on everything" and FRC is "making those changes.").
- 18 • PX2640 at 2 (Email from Pugno to Tam: "I do not think it is likely, but in the
19 event you are contacted by the media or anyone else regarding the Marriage
20 Amendment, I would encourage you to please refer all calls to the campaign
phone number It is crucial that our public message be very specific.").
- 21 • PX2640 at 2 (Emails between Tam and Mr. Pugno in which Tam asks if there
22 is anything he should not say or disclose in response to questions from the
Chinese press; Mr. Pugno responds that Tam was an "exception" and should
23 speak on behalf of the campaign to the Chinese press.); *see also* Tr. 1906:9-12.
- 24 • Tr. 1892:9-12 (Tam: In October of 2007, Tam was waiting for instructions
25 from ProtectMarriage.com of when he would start collecting those signatures.).
- 26 • Tr. 1904:3-5 (Tam: Tam participated in a debate because he was told to
27 participate by ProtectMarriage.com.).

- Tr. 1998:23-1999:11 (Tam: ProtectMarriage.com reimbursed individuals that ran print and television ads in support of Prop. 8.).
- Tr. 1965:15-1966:4 (Tam: Tam signed “a Statement of Unity with respect to the Proposition 8 campaign” both “[o]n behalf of [him]self and on behalf of the Traditional Family Coalition.”).
- PX2476 (Email from Tam to his listserv: “I’m still waiting for HYPERLINK “http://protectmarriage.com\” /nProtectMarriage.com for instructions of when we would start the signature collection for California’s Marriage Amendment Initiative.”).
- PX2599 at 2-3 (ProtectMarriage.com Grassroots Meeting Minutes from Aug. 21, 2008 list “Bill Tam” as the person responsible for the “Asian/Pacific Islander Outreach” team report. Tam’s report mentions “Chinese radio ads starting,” the distribution of a “Chinese language Prop. 8 flyer,” the creation of the website “1manand1woman.com,” working on “dispelling the notion that same-sex marriage is a like a civil rights issue,” and efforts to find an Asian spokesperson and Asian speaking people for the Pastor Rapid Response Team.”).

PFF 23. The ProtectMarriage executive committee has included at least the following individuals: Ron Prentice, Yes on Prop. 8 Campaign Chairman; Edward Dolejsi, Executive Director, California Catholic Conference; Mark A. Jansson; and Andrew Pugno, General Counsel. In addition, David Bauer is the Treasurer and officer of record for ProtectMarriage.

- Tr. 1890:24-1891:1 (Tam: Mr. Prentice was the chief executive office of ProtectMarriage.com.).
- PX2187 (Rally flier lists Ron Prentice as “President, ProtectMarriage.com”).
- PX0209 (Oct. 20, 2008 letter to a business who donated money to Equality California demanding “a donation of a like amount” to Yes on 8: Signed by Ron Prentice, ProtectMarriage.com Chairman; Andrew Pugno, ProtectMarriage.com General Counsel; Edward Dolejsi, Executive Director, California Catholic Conference; and Mark Jansson, a ProtectMarriage.com Executive Committee Member).
- PX0693 at ¶ 1 (Decl. of D. Bauer in Supp. of Proponents’ Mot. to Intervene: David Bauer identified as Treasurer).

PFF 24. ProtectMarriage is a “broad coalition” of individuals and organizations, including the

1 Church of Jesus Christ of Latter-Day Saints, the California Catholic Conference, a
 2 large number of evangelical churches, and many powerful national political
 3 organizations. These coalition members often made their own statements and efforts
 4 in support of Prop. 8, but most of their campaign activity and messaging were
 5 coordinated through the sophisticated campaign structure of ProtectMarriage.

- 6 • See evidence cited in support of PFFs 25 to 30.

7 PFF 25. The Yes on 8 campaign comprised national and state coalition members working in
 8 concert to pass Prop. 8.

- 9 • PX2310 (Screenshot of the www.ProtectMarriage.com “About” page: ProtectMarriage.com, is a “broad-based coalition of families, community
 10 leaders, religious leaders, pro-family organizations and individuals from all
 11 walks of life who have joined together to support Proposition 8.”).
- 12 • PX0577 at 47 (Article by Frank Schubert and Jeff Flint in *Politics* magazine:
 13 “We had the support of virtually the entire faith community in California.”).
- 14 • PX0035 (ProtectMarriage.com e-mail blast sent 61 days before election:
 15 Stating that “[t]he Yes On Proposition 8 Campaign has already built the largest
 16 grassroots effort in California history”).
- 17 • Tr. 1585:20-1646:21 (Segura: Describing the degree of well-organized
 18 opposition that gay men and lesbians faced during the Prop. 8 campaign).
- 19 • Tr. 1589:25-1590:2 (Segura: “[W]hat takes me back here is . . . the sheer
 20 breadth of the organization and its level of coordination with Protect
 21 Marriage.”).
- 22 • Tr. 1590:23-1591:12 (Segura: Describing the “organized effort” and “formal
 23 association” of groups forming the “broad-based coalition” of
 24 ProtectMarriage.com).
- 25 • Tr. 1609:12-1610:6 (Segura: The coalition between the Catholic Church and
 26 the LDS Church against a minority group was “unprecedented.”).
- 27 • Tr. 1614:5-9 (Segura: “Apart from [the Pro-Choice abortion rights position], I
 28 can’t think of a minority group against whom such a coalition has been
 raised.”).
- PX0796 at 55-56 (Article by Proponents’ expert Miller: “Churches and
 religious organizations supplied most of Proposition 8’s institutional support”;
 “While Mormons are only about 2% of California’s population, members of

1 the church (both from California and from other states) provided critical
 2 financial contributions and volunteer support”; “[R]eligion was critical in
 determining voter attitudes towards Proposition 8.”).

- 3 • PX2660 (Report sent on Aug. 27, 2008 to Evangelical Christian Credit Union
 4 from Ron Prentice, Chairman of ProtectMarriage.com—Yes on 8: Explaining
 5 that they had created “[t]he strongest grassroots response in the history of a
 6 California initiative” and listing the contributions of various religious groups:
 7 “Evangelicals—400,000 signatures; 3,000 pastors, special church offerings”;
 8 Catholics—Endorsed by Bishops grassroots activity”; Latter-day Saints—Salt
 Lake City endorsement; money, canvassing, phoning Orthodox Jewish
 communities—grassroots and fundraising”; The Arlington Group—60+
 organizational networks; special offerings nationally”).
- 9 • PX2597 (Email from Ron Prentice, Chairman of ProtectMarriage.com—Yes
 10 on 8, on June 19, 2008: Summarizing the ProtectMarriage.com “efforts since
 11 ‘05:” “From the initial efforts in 1998 for the eventual success of Prop 22 in
 12 2000, a coalition of many organizations has existed, including evangelical,
 Catholic and Mormon groups”; a “trio of evangelical pastors took ownership of
 13 the development of a statewide effort to inform and motivate pastors to get
 14 involved. From their efforts came over 300 churches serving as distribution
 15 and drop-off centers for petitions”; the signature gathering effort received
 \$900,000 from Catholic organizations and donors and an “additional \$1.1
 million came to the qualification effort from the evangelical community, with
 major donations from Focus on the Family and other private sources.”).
- 16 • PX0480 at 6:27-44 (American Family Association video with Ron Prentice,
 17 Chairman of ProtectMarriage.com—Yes on 8: Explaining that “[s]ince 1998,
 18 the Protect Marriage Coalition has been together, and it was in ‘05 when, uh,
 the coalition came back together. And a few of us decided that now’s the time.
 19 Now’s the time to, um, move towards a constitutional amendment to take it out
 of the hands of the courts.”).
- 20 • PX0390 at 1:50-4:00 (ProtectMarriage.com—Yes on 8 Chairman, Ron
 21 Prentice, tells people at a religious rally that in early 2005 after Judge Kramer
 22 of the San Francisco Superior Court struck down Proposition 22, the coalition
 that passed Proposition 22 in 1998-2000 came back together and since then
 23 there has been nothing but activity; 2500 pastors in California have come out
 on a monthly basis.).
- 24 • PX0021 (California Family Council brochure: Stating that San Diego’s
 25 submission of an amicus brief “in support of homosexual ‘marriage’” to the
 26 California Supreme Court moved the “evangelical Christian and Catholic
 27 communities” to action; that a “coordinated, strategic response must take
 place;” discussing steps to qualify constitutional amendment to define marriage
 as the union of one man and one woman.”)

- 1 • PX0577 at 45-47 (Article by Frank Schubert and Jeff Flint in *Politics*

2 magazine explaining the success of Prop. 8: “We organized countless

3 meetings and conference calls of pastors and other campaign leaders.” (at 45);

4 “Our ability to organize a massive volunteer effort through religious

5 denominations gave us a huge advantage, and we set ambitious goals. . . . All

6 of these goals, and more, were achieved.” (at 45); “We built a campaign

7 volunteer structure around both time-honored grassroots tactics of organizing

8 in churches . . . and the latest Internet and web-based grassroots tools.” (at 45);

9 “Even though LDS members were the last major denomination to join the

10 campaign, their members were immensely helpful in early fundraising,

11 providing much-needed early contributions while we were busy organizing

12 Catholic and Evangelical fundraising efforts. Ultimately, we raised \$22

13 million from July through September with upwards of 40 percent coming from

14 members of the LDS Church.” (at 46); “Members of the Mormon faith played

15 an important part of the Yes On 8 coalition, but were only a part of our

16 winning coalition. We had the support of virtually the entire faith community

17 in California.” (at 47).).
- 18 • PX2630 at 2-4 (ProtectMarriage.com’s Grassroots Meeting Minutes from Aug.

19 7, 2008: Explaining that they are working with LDS, Catholics and

20 Evangelicals regarding financing (at 2); LDS canvassing efforts used 64,000

21 volunteers for the first phase of canvassing (at 3-4); each month they are

22 holding conference calls attended by about 3,300 pastors, (at 4); and they are

23 working on getting endorsements from Catholic organizations (at 4).).
- 24 • PX2599 at 1-4 (Email attaching ProtectMarriage.com Grassroots Meeting

25 Minutes from Aug. 21, 2008: Explaining that on one Saturday, 15,000 people

26 canvassed in support of Prop. 8 (at 1); the following Saturday, the number

27 should be higher (at 1); there are separate teams to handle African American

28 Outreach, Asian/Pacific Islander Outreach, Catholic Outreach, Latino

Outreach, Pastor Outreach and Youth Activities (at 2-4)).
- PX2187 (Rally flier listing “Dr. Tony Perkins: President, Family Research

Council/ Rev. Won-Bae Son: Sr. Pastor, Emanuel Korean Presbyterian

Church/ Dr. David Cannistraci: Sr. Pastor, San Jose Gateway City Church” and

“Dr. Ron Prentice: CEO, California Family Council, President,

ProtectMarriage.com” as speakers at a rally to “Restore Marriage Protect

Children.”); *see also* PX2203 (Press release regarding the same rally: Listing

“Thomas Wang, President of America Return to God Prayer Movement” as a

speaker); PX2204 (Press release regarding the same event: Listing “American

Return to God Prayer Movement and 5 Christian Organizations” as sponsors).

PFF 26. The LDS Church was part of the Yes on 8 campaign and provided extensive grassroots and monetary support.

- 1 • PX2561 at 1 (Email from Prentice: “The giving from the state’s Mormons is
2 topping \$6 million right now with no signs of slowing down.”; “You may
3 know that the Mormons have been out walking neighborhoods the past 2
4 Saturdays with about 20,000 total volunteers.”).
- 5 • PX2555 at 2-3 (LDS Meeting Minutes from July 2008: “Salt Lake City”
6 conducted a teleconference with 159 of 161 Stake Presidents, telling them to
7 join in the coalition with ProtectMarriage.com. “We were asked to wait
8 patiently for talking points from the Coalition.”).
- 9 • Tr. 1636:1-1637:9 (Segura: PX2555, LDS Meeting Minutes from July 2008,
10 “makes it clear that there was a sort of two-way flow of information, where
11 strategic talking points were being provided to religious leaders by the
12 campaign. And, in turn, the religious leaders were providing volunteers to the
13 campaign. But there was this cautious strategic not-to-take-the-lead notion so
14 as to provide . . . plausible deniability or respectable distance between the
15 church organization per se and the actual campaign.”).
- 16 • PX2554 at 1 (Email from Joseph Bentley to the LDS leadership: “[T]his
17 campaign is entirely under priesthood direction.”).
- 18 • PX0390 at 4:06-4:38 (Video, ProtectMarriage.com—Yes on 8 Chairman, Ron
19 Prentice: Describing a meeting with the leadership of the LDS church: “One
20 day members of the leadership from Salt Lake City of LDS said that they
21 wanted to meet with us . . . and we said, well, now, if we have the Catholic
22 participation we might be able to bring in this money and if we have the
23 evangelical participation we might be able to bring in this money, and if we
24 have the LDS participation, and he interrupted me. Oh, Ron we’re here to tell
25 you today we’re on board.”).
- 26 • PX1550 at 2-3 (ProtectMarriage.com email: The First Presidency of the LDS
27 Church has taken an official position in favor of Proposition 8 and “[a] total of
28 1700 pastors based in 101 locations across the state participated” in a June
2008 teleconference).
- Tr. 1628:12-15 (Segura: “[I]t appears that there was an LDS volunteer in
every zip code, to coordinate those activities. Which is, once again, a very
enviable political organization. I think any political candidate would be
pleased to have such a thing.”).
- PX2688 (E-mail from Holland to Jansson: Noting that the National
Organization for Marriage’s founder, Robert George, has been speaking about
the campaign with Matthew Holland of Brigham Young University. Holland
reports back to Mark Jansson, a member of ProtectMarriage’s Executive
Committee, about the conversation and George’s intent to smooth over any
“friction between NOM and PM [ProtectMarriage]”).

- PX0391 at 2:22-3:42 (ProtectMarriage.com—Yes on 8 Chairman, Ron Prentice, tells people at a religious rally that in 1999 the LDS Church got involved in Proposition 22 and that “with a capital ‘S’ they were significant in the battle, both in finances and foot soldiers, and it has been no less true this time around.” He describes a group of evangelical pastors and Catholic Bishop who decided to take Prop. 8 forward, and his call to Focus On The Family to obtain funds to print the petitions).

PFF 27. Catholic organizations were part of the Yes on 8 campaign and provided extensive grassroots and monetary support.

- Tr. 1609:12-15 (Segura: “[T]he fairly substantial monetary resources of the Roman Catholic Church and its faithful were mobilized in substantial portion on behalf of the Yes on 8 campaign.”).
- PX0101 (ProtectMarriage.com—Yes on 8 News Release: Announcing receipt of \$1 million contribution from “the Knights of Columbus, the world’s largest Catholic family fraternal service organization” with “more than 1.7 million members”; stating “[w]e are proud to join the Catholic bishops and priests of California”; and encouraging “other groups and individuals of all faiths to lend their support.” The release also quotes ProtectMarriage.com Executive Committee member Ned Dolejsi stating this contribution “shows the broad base of support that Protect Marriage is receiving from a variety of faith-based organizations.”).
- PX2341 at 40-47 (Email from Bill May of Catholics for the Common Good to Ned Dolejsi, a member of the ProtectMarriage.com—Yes on 8 executive committee, in June 2008 attaching an agenda for a “Protect Marriage Meeting For Pastors and Christian Leaders” at which the following people spoke: Ron Prentice, then CEO of the California Family Council, also Chairman of ProtectMarriage.com—Yes on 8; Frank Schubert, Campaign Manager of ProtectMarriage.com—Yes on 8; Tony Perkins, President of the Family Research Council; James Dobson, Founder and Chairman of Focus on the Family; Jim Garlow, Lead Pastor of Skyline Church; Bishop Salvatore Cordileone; Miles McPherson, Lead Pastor of the Rock Church; Charles LiMandri, General Counsel for National Organization for Marriage; Brad Dacus, President of the Pacific Justice Institute; Chris Clark, Lead Pastor of East Clairemont Southern Baptist Church; Dean Broyles and James Griffiths of the Western Center for Law and Policy; and others.).
- PX0052 (Aug. 4, 2008 e-mail blast from ProtectMarriage.com: Announcing California Catholic Conference’s endorsement of Proposition 8 and the support of Catholic Archdioceses across the state, and enclosing “A Statement of Catholic Bishops of California in support of Proposition 8” strongly urging California Catholics to support the measure both financially and as volunteers. Message states: “Paid for by ProtectMarriage.com Yes on 8, a Project of

1 California Renewal. . . . Major funding by National Organization for Marriage
2 California Committee, Fieldstead & Co., and Focus on the Family”).

- 3 • PX0291 (ProtectMarriage.com—Yes on 8 Press Release: Announcing
4 “Catholics for ProtectMarriage.com, led by the Knights of Columbus,
5 California Catholic Conference and Catholics for the Common Good, has been
6 established as the official Catholic grassroots effort dedicated to passing
7 Proposition 8”; inviting all “lay Catholic organizations and individuals” to
8 join; stating “Catholics for ProtectMarriage.com supports a wide variety of
9 volunteer activities in parishes and surrounding communities including
10 distribution of literature and phoning”; listing website for Catholics for
11 ProtectMarriage.com and other Catholic organizations supporting Proposition
12 8 and for Protect Marriage.com, which is described as “a broad-based coalition
13 of California families, community leaders, religious leaders, pro-family
14 organizations and individuals from all walks of life who have joined together
15 to support Proposition 8”).
- 16 • PX0301 (Catholics for the Common Good webpage: “There are absolutely no
17 grounds for considering homosexual unions to be in any way similar or even
18 remotely analogous to God’s plan for marriage and family. Marriage is holy,
19 while homosexual acts go against the natural moral law. Homosexual acts
20 close the sexual act to the gift of life. They do not proceed from a genuine
21 affective and sexual complementarity. Under no circumstances can they be
22 approved. . . . The homosexual inclination is however objectively disordered
23 and homosexual practices are sins gravely contrary to chastity. . . . Allowing
24 children to be adopted by persons living in such unions would actually mean
25 doing violence to these children, in the sense that their condition of
26 dependency would be used to place them in an environment that is not
27 conducive to their full human development. . . . Legal recognition of
28 homosexual unions or placing them on the same level as marriage would mean
not only the approval of deviant behaviour, with the consequence of making it
a model in present-day society, but would also obscure basic values which
belong to the common inheritance of humanity.”).

PFF 28. Evangelical Pastors, under the name of ProtectMarriageCA and led by The Pastor’s
Rapid Response Team, were a part of the Yes on 8 campaign and produced three
simulcasts, funded and supported by ProtectMarriage.com, that used discriminatory
statements to motivate voters to support Prop. 8.

- PX2314 (Website describing the “Pastors Rapid Response Team,” headed by
Jim Garlow: “With a network of churches across California, the PRRT was
actively involved in the successful battle to protect marriage in California.”).
- PX2552 at 2 (Email from Prentice: “More than 2,000 pastors have been
addressed at events, and 300 churches have offered their staff and facilities as

1 distribution centers for petitions.” The email notes that \$1.25 million had been
 2 raised primarily from the Catholic community of San Diego, Fieldstead and
 3 Company, Focus on the Family, and small gifts.).

- 4 • PX2562 at 2 (Email from Prentice describing a teleconferences with 1,700
 5 participants in June and 3,000 in July, as well as a \$500,000 gift from the
 6 American Family Association).
- 7 • Tr. 1644:1-1644:10 (Segura: Describing the increase in campaign activity
 8 when there were 1,700 pastor participants in a teleconference in June, and
 9 3,000 in July, with a goal of having 5,000 pastors involved in the
 10 teleconferences).
- 11 • PX0421 (Website announcement: “ProtectMarriage.com presents Protecting
 12 Marriage: Vote Yes on Prop. 8 Rallies Three Simulcast Events for Church
 13 Leaders, Young People and Congregations”: Providing dates and description
 14 and information on hosting and attending the simulcast events, and links to
 15 order DVDs of same. Contains links to www.protectmarriage.com,
 16 www.protectmarriageca.com, and www.iprotectmarriage.com for “more
 17 information about Proposition 8.”).
- 18 • PX0503, PX0504, PX0504A, PX0505, PX0506, PX1867, and PX1868 (Videos
 19 and transcripts of simulcast events and excerpts from same: Showing
 20 evangelical pastors rallies simulcast to hundreds of churches in support of
 21 Prop. 8).
- 22 • PX2655 (Email from Jim Garlow’s Executive Assistant to Ron Prentice,
 23 Chairman of ProtectMarriage.com—Yes on 8, sent on Sept. 23, 2008:
 24 Attaching an agenda for the simulcasts and a webinar to be held on Sept. 24,
 25 2008).
- 26 • PX2773 (Email from Ron Prentice, Chairman of ProtectMarriage.com—Yes
 27 on 8, to Jim Garlow, copying Frank Schubert and Jeff Flint,
 28 ProtectMarriage.com’s Campaign Managers, and Andrew Pugno,
 ProtectMarriage.com’s General Counsel: Reminding Garlow that “[w]e
 MUST control the message from the simulcasts”).
- PX2656 (Email from Andy Pugno: Insisting that advertising for the simulcasts
 “should read ‘ProtectMarriage.com presents’ . . . and ‘Paid for by
 ProtectMarriage.com—Yes on 8, a Project of California Renewal. Major
 funding by Knights of Columbus, National Organization for Marriage
 California, and Focus on the Family”).
- PX1868 at 87:18-20 (At a Sept. 25, 2008 simulcast, Pastor Chris Clark
 explains that “[w]e have had, for the last month, about 25,000 people a week
 going out knocking on doors, Saturday after Saturday, just asking people, how
 are you voting for Prop. 8.”); *see also* PX0504 (video of same).

- 1 • PX2075 (Blast e-mail from Frank Schubert & Jeff Flint, Campaign Managers, ProtectMarriage.Com, Yes on 8, Stating: “Subject: Campaign Update 8/27/08,” stating “Protect Marriage Pastor Calls Continue to be a Resounding Success [¶] This morning approximately 2,500 pastors and church leaders gathered at 170 sites statewide to participate in a Protect Marriage conference call/Webinar. The call marked the third in a series of energizing calls dedicated to passing Proposition 8. . . . On www.ProtectMarriageCA.com, you will also find information on three upcoming live video conference rallies”).
- 2
- 3
- 4
- 5
- 6 • Tr. 1589:2-8 (Segura: “[S]o in going through these documents, Reverend Garlow’s name appears frequently and he ends up organizing this team, and it goes on to become . . . Protect Marriage CA. And they were very instrumental in trying to involve the Evangelical community in supporting the proposition. And I was particularly taken aback by the notion of 1700 pastors. That is a profound network of influence.”).
- 7
- 8
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- 10 • *See also* evidence cited in support of PFFs 285 to 296.

11 PFF 29. Other powerful national organizations were a part of the Yes on 8 campaign.

- 12 • PX2598 at 2 (Fundraising email from Steve Linder of Sterling Corporation: “We have the political and financial support of groups such as Focus on the Family, Family Research Council, American Family Association, the Arlington Group, and many others.”).
- 13
- 14
- 15 • PX0021 (California Family Council brochure: Stating that San Diego’s submission of an amicus brief “in support of homosexual ‘marriage’” to the California Supreme Court moved the “evangelical Christian and Catholic communities” to action; that a “coordinated, strategic response must take place;” discussing steps to qualify a constitutional amendment to define “marriage as ‘the union of one man and one woman’”; and listing organizations that are part of the “ProtectMarriage.com Coalition” including the California Family Council, Focus on the Family, Family Research Council, Concerned Women for America, Eagle Forum of California, Alliance Defense Fund, Pacific Justice Institute and others).
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- 20
- 21 • PX2156 (ProtectMarriage.com—Yes on 8 handout entitled “Myths and Facts about Proposition 8”: Stating that “Proposition 8 is supported by a broad range of organizations and individuals, including faith leaders representing virtually every faith in California” and is “Paid for by ProtectMarriage.com—Yes on 8, a Project of California Renewal. . . . Major funding by American Family Association, National Organization for Marriage California, and Focus on the Family”).
- 22
- 23
- 24
- 25
- 26 • PX2385 (Email from Steve Linder, coordinator of the Michigan campaign against allowing gay and lesbian couples to marry, to members of the ProtectMarriage.com executive committee: Confirming that the Arlington
- 27
- 28

1 Group, an umbrella organization for over sixty organizations of the religious
2 right such as Focus on the Family, Family Research Council, and American
3 Family Association, will be working to support ProtectMarriage.com and Prop.
4 8).

- 5 • PX2403 at 1 (Email from Kenyn Cureton, Vice President for Church
6 Ministries with the Family Research Council, to Ron Prentice, Chairman of
7 ProtectMarriage.com—Yes on 8, in August of 2008 attaching a kit to be
8 distributed to Christian voters through churches to better help them promote
9 Proposition 8. Cureton explains to Prentice that FRC found out from
10 ProtectMarriage.com—Yes on 8’s lawyer, Andy Pugno, that FRC “need[s] to
11 take FRC logos off of the CA version of the videos (legal issues) and just put
12 ProtectMarriage.com on everything” and FRC is “making those changes.”).
- 13 • PX1765 (Letter from Ron Prentice, Chairman, ProtectMarriage.com—Yes on
14 8: Thanking “Concerned Voter[s]” for their help with circulating petitions and
15 seeking additional support “[o]n behalf of Focus on the Family, Senator
16 Hollingsworth and the rest of the ProtectMarriage.com Coalition” and referring
17 to himself as “Coalition Chairman”).
- 18 • PX2455 (Email from Maggie Gallagher of National Organization for Marriage:
19 Asking Frank Schubert, campaign manager of ProtectMarriage.com—Yes on 8,
20 to approve a NOM press release as required by an agreement NOM had with
21 ProtectMarriage.com—Yes on 8).
- 22 • PX0480 (Video from American Family Association website: “Prop. 8 and The
23 Case for Traditional Marriage,” featuring Chairman of ProtectMarriage.com—
24 Yes on 8, Ron Prentice).

25 PFF 30. The Traditional Family Coalition, Bill Tam’s group, was a member of the Yes on 8
26 campaign and frequently used discriminatory statements to motivate voters to support
27 Prop. 8.

- 28 • Tr. 1965:15-1966:4 (Tam: Tam signed “a Statement of Unity with respect to
the Proposition 8 campaign” both “[o]n behalf of [him]self and on behalf of the
Traditional Family Coalition.”).
- PX2185 (Traditional Family Coalition Newsletter: Explaining that “[a]s a
leader in the Proposition 8 campaign, Dr. Bill Tam worked with
ProtectMarriage.com to motivate grassroots effort in the Asian community.”).
- Tr. 1946:24-1947:11 (Tam: Prentice appeared at a rally organized by
1man1woman.net sponsored by ProtectMarriage.com and Traditional Family
Coalition.).

- 1 • PX2599 at 2-3 (Protect Marriage Grassroots Meeting Minutes from Aug. 21,
2 2008 list “Bill Tam” as the person responsible for the “Asian/Pacific Islander
3 Outreach” team report. Tam’s report mentions that “Chinese radio ads
4 starting,” the distribution of a “Chinese language Prop. 8 flyer,” the creation of
5 the website “1manand1woman.com,” working on “dispelling the notion that
6 same-sex marriage is a like a civil rights issue,” and efforts to find an Asian
7 spokesperson and Asian speaking people for the Pastor Rapid Response
8 Team.”).
- 9 • Tr. 1898:4-10 (Tam: Tam identified Focus on the Family, Family Research
10 Council, California Family Council, Values Advocacy Council, and
11 Traditional Family Coalition as “part of the coalition working with
12 ProtectMarriage.com in support of Proposition 8.”).
- 13 • Tr. 1904:9-22 (Tam: Concerned Women of America was one of the “many
14 Christian groups . . . joining forces to launch Proposition 8”); *see also* Tr.
15 1912:11-15.
- 16 • PX2612 (Email from Tam to his listserv on Jan.10, 2008: “Right now, many
17 Christian groups are joining forces to launch this project, they include: Focus
18 on the Family, ProtectMarriage.com, California Family Council, TFC,
19 Concerned Women of America, Values Advocacy Council, etc.”).
- 20 • PX2343B (Essay by Tam that was sent to Chinese-speaking voters: The essay
21 was sponsored by “ProtectMarriage.com—Yes on 8, a Project of California
22 Renewal” with major funding provided by “Knights of Columbus, National
23 Organization for Marriage California, and Focus on the Family.”).
- 24 • Tr. 1976:10-15 (Tam: Tam attended weekly grassroots meetings with
25 members of different grassroots teams and led the Asian American team.).
- 26 • Tr. 1910:9-12 (Tam: “I spent a lot of time sending out petitions and collecting
27 them, and worked closely with all the mechanics, with Protect Marriage, to,
28 you know, get the petitions off to the Chinese churches.”).
- PX2620 (Email from Peter Henderson, who describes himself as Chairman of
Protectmarriage.com in July of 2007, to members of the Executive Committee,
among others: “The Chinese coalition with Bill Tam remains strong.”).
- *See also* evidence cited in support of PFFs 285 to 296.

1 **II. The Meaning of Marriage, “The Most Important Relation in Life”**

2 **A. Supreme Court Holdings Regarding the Fundamental Right to Marry**

3 PFF 31. The right to marry is a fundamental right protected by the due process clause. *Loving*
4 *v. Virginia*, 388 U.S. 1, 12 (1967). The fundamental right at stake is properly
5 characterized as the “right to marry.”

- 6
- 7 • *Loving v. Virginia*, 388 U.S. 1, 12 (1967).
 - 8 • *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978).
 - 9 • *Turner v. Safley*, 482 U.S. 78, 99 (1987).

10 PFF 32. The U.S. Supreme Court has repeatedly described the right to marriage as “one of the
11 vital personal rights essential to the orderly pursuit of happiness by free men”; a “basic
12 civil right”; a component of the constitutional rights to liberty, privacy, association,
13 and intimate choice; an expression of emotional support and public commitment; the
14 exercise of spiritual unity; and a fulfillment of one’s self.

- 15
- 16 • *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (“The freedom to marry has long
17 been recognized as one of the vital personal rights essential to the orderly
18 pursuit of happiness by free men.”); *see also id.* (“Marriage is one of the ‘basic
19 civil rights of man,’ fundamental to our very existence and survival.”) (quoting
20 *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942)).
 - 21 • *Meyer v. Nebraska*, 262 U.S. 390, 399 (The right “to marry, establish a home
22 and bring up children” is a central part of the liberty protected by the Due
23 Process Clause).
 - 24 • *Zablocki v. Redhail*, 434 U.S. 374, 383 (1978) (“[Th]e right to marry is part of
25 the fundamental ‘right of privacy’ implicit in the Fourteenth Amendment’s
26 Due Process Clause”).

27 PFF 33. “The Supreme Court cases discussing the right to marry do not define the right at stake
28 in those cases as a subset of the right to marry depending on the factual context in
which the issue presented itself. For example, *Loving* addressed marriage; not
interracial or opposite-race marriage. . . . *Turner v. Safley* discusses marriage; not
marriage involving inmates in penal institutions.” (Doc # 228 at 79-80.)

- 1 • Tr. 574:24-575:2 (Peplau: “Americans are very enthusiastic about marriage. Most Americans view marriage as one of the most important relationships in their life. Many people view getting married as a very important life goal.”).
- 2
- 3 • Tr. 196:22-197:2 (Cott: The colonists viewed marriage as important, and every single colony moved to adopt marriage laws.).
- 4
- 5 • Tr. 1962:17-1963:2 (Tam: “Because the name of ‘marriage’ is so important, especially for us parents to teach our kid[s] Everyone fantasize whom they will marry when they grow up.”).
- 6
- 7 • Tr. 2003:17-2004:3 (Tam: There were periods of American history when the law limited who Asian-Americans could marry, and he would feel very aggrieved if he couldn’t marry the person he loved.).
- 8
- 9 • PX1316 at 101 (Laura F. Edwards, *The Politics of Slave Marriages in North Carolina After Emancipation*: “Explaining to his troops the implications of Virginia’s 1866 act legitimating slave marriages, [a black corporal in the U.S. Colored Troops] maintained: ‘The Marriage Covenant is at the foundation of all our rights. In slavery we could not have legalised marriage: now we have it . . . and we shall be established as a people.’”).
- 10
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- 13
- 14 PFF 35. The right of two consenting adults to marry is deeply rooted in the history and tradition of this Nation, and the right to marry is a significant liberty interest.
- 15
- 16 • *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (“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.”).
- 17
- 18 • Tr. 201:3-18 (Cott: A core feature of marriage in the U.S. is that it is based on “a couple’s choice to live with each other, to remain committed to one another, and to form a household based on their own feelings about one another, and their agreement to join in an economic partnership and support one another.”); *see also* Tr. 209:4-210:9, 251:13-252.
- 19
- 20
- 21 • Tr. 205:13-206:7 (Cott: “It is only those who cannot marry the partner of their choice, or who cannot marry at all, who are aware of the extent to which . . . the ability to marry is an expression of one’s freedom.”).
- 22
- 23 • Tr. 202:10-15 (Cott: Slaves could not marry because they “lacked that very basic liberty of person, control over their own actions that enabled them to say, ‘I do,’ with the force that ‘I do’ has to have.”).
- 24
- 25 • *See also* evidence cited in support of PFF 34.
- 26
- 27 • Tr. 1962:17-1963:2 (Tam: “[T]he name of ‘marriage’ is so important”).
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1 PFF 36. The right to privacy and personal autonomy is also a fundamental right. *Lawrence v.*
 2 *Texas*, 539 U.S. 558, 578 (2003). Similarly, the freedom of personal choice in matters
 3 of marriage and family life is one of the liberties protected by the Due Process Clause.
 4

- 5 • *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639-40 (1974) (“This Court
 6 has long recognized that freedom of personal choice in matters of marriage and
 7 family life is one of the liberties protected by the Due Process Clause of the
 8 Fourteenth Amendment.”).
- 9 • *See also* evidence cited in support of PFF 35.

8 **B. The Changing Institution of Marriage**

9 PFF 37. Civil marriage has never been a static institution. Historically, it has changed,
 10 sometimes dramatically, to reflect the changing needs, values, and understanding of
 11 our evolving society.

- 12 • PX0710 at RFA No. 10 (Attorney General admits PFF 37 in its entirety.).
- 13 • PX0707 at RFA No. 10 (Proponents “admit that historically, civil marriage has
 14 changed in certain respects.”).
- 15 • Tr. 190:24-191:1 (Cott: “Human cultures in different places and over time
 16 have formulated many different forms of . . . the marriage institution.”).
- 17 • Tr. 331:3-17 (Cott: Marriage is not a “static” institution; it has “shed its
 18 attributes of inequality and it has shed most [of its] restrictions [I]t has
 19 been altered to adjust to changing circumstances so that it remains a very alive
 20 and vigorous institution today.”).
- 21 • Tr. 653:13-22 (Peplau: Scholars have suggested that “in earlier times”
 22 marriage was an “economic unit in which two people came together as a way .
 23 . . to meet basic needs for survival” but “over time we have come to expect
 24 personal fulfillment through marriage.”).
- 25 • PX2877 at 1 (Pew Research Center, *Women, Men and the New Economics of*
 26 *Marriage*: “The institution of marriage has undergone significant changes in
 27 recent decades[.]”).
- 28 • PX1308 at 1 (Study by Betsey Stevenson & Justin Wolfers: Discussing trends
 in marriage in recent decades, including the effects of birth control and
 changes in wage structure. “The family is not a static institution.”).
- PX0754 at 1 (Am. Anthropological Ass’n, *Policy Statement on Marriage and*
the Family: “[A]nthropological research supports the conclusion that a vast

1 array of family types, including families built upon same-sex partnerships, can
2 contribute to stable and humane societies.”).

3 PFF 38. Proponents’ experts, Mr. Blankenhorn and Dr. Young, agreed that “the institution of
4 marriage is constantly evolving” and “always changing.”

- 5 • DIX0956 at 11 (Blankenhorn, *The Future of Marriage*: “But there is no single
6 universally accepted definition of marriage—partly because the institution is
7 constantly evolving, and partly because many of its features vary across groups
8 and cultures.”); *see also* Tr. 2933:7-11 (Blankenhorn: Agreeing that “the
9 institution of marriage is constantly evolving” and “always changing”); Tr.
10 2933:12-14 (Blankenhorn: Agreeing that there is “no single universally
11 accepted definition of marriage”); PX0749 (*Protecting Marriage to Protect*
12 *Children*, L.A. Times: “Marriage as a human institution is constantly
13 evolving.”).
- 14 • PX2545 (Young Nov. 13, 2009 Dep. Tr. 102:1-14, 233:3-6: Noting that
15 arranged marriages have declined over time and stating that U.S. law is no
16 longer based on religion “because you have the doctrine of the separation of
17 church and state”).

18 PFF 39. The institution of marriage has served numerous purposes. Among the purposes that
19 marriage and its regulation by civil authorities have served over this county’s history
20 are facilitating governance, creating public order and economic benefit, creating stable
21 households, legitimating children, assigning care-providers and thus limiting the
22 public’s liability to care for the vulnerable, and facilitating property ownership and
23 inheritance.

- 24 • Tr. 188:4-189:15, 219:21-222:21, 223:23-224:22, 225:16-227:4, 260:13-
25 261:17, 353:2-21 (Cott: Historically, marriage has served many purposes,
26 including facilitating governance, creating public order and economic benefit,
27 creating stable households, legitimating children, assigning care-providers and
28 thus limiting the public’s liability to care for the vulnerable, and facilitating
property ownership and inheritance.).
- Tr. 252:4-23 (Cott: Allowing couples of the same-sex to marry is consistent
with the state’s interests in marriage.).
- Tr. 2839:4-10 (Blankenhorn: Marriage is a “public good” that “serves
important public purposes, and marriage makes a distinctive contribution to
society.”); *see also* DIX0956 at 203 (Blankenhorn, *The Future of Marriage*).

- 1 • Tr. 2839:11-15 (Blankenhorn: Agreeing that “marriage is something that
2 benefits both the participants in the marriage, the couple that are married, as
3 well as any children that the couple may raise”); *see also* DIX0956 at 203
4 (Blankenhorn, *The Future of Marriage*).
- 5 • PX2879 at 8 (*The Marriage Movement: A Statement of Principles*: “Though
6 marriage is intimate and personal, marriage also has an inherently public side.
7 Marriage is what lovers do when they want to bring their relationship out of
8 the private realm of personal emotions and make it a social fact, visible to and
9 recognized not only by the couple, but also by friends, family, church,
10 government, and the rest of society. Good marriages are made, not born, and
11 they are most likely to be made in a society that understands and values
12 marriage as a shared aspiration and key social institution, not just a private
13 affair of the heart.”).
- 14 • PX2879 at 9 (*The Marriage Movement: A Statement of Principles*: “The
15 public, legal side of marriage increases couples’ confidence that their
16 partnerships will last.”).
- 17 • PX2879 at 12 (*The Marriage Movement: A Statement of Principles*: “Married
18 adults live longer, healthier, happier and more affluent lives than adults who
19 don’t marry or don’t stay married. This phenomenon is not simply an artifact
20 of selection; marriage itself makes adults better off, by offering them greater
21 emotional and financial support, wide and more integrated social networks,
22 important economies of scale, and productive boosts in earnings, parenting
23 capacity, and life management.”).
- 24 • PX2879 at 12 (*The Marriage Movement: A Statement of Principles*:
25 “Marriage also helps to conserve wealth and expand social capital. At any
26 given level of income, married adults are less likely to experience financial
27 hardship. The longer people stay married, the more wealth they accumulate,
28 whereas length of cohabitation has no relationship to wealth accumulation.
Informal partners—who are not held by the wider society to be financially
responsible to one another—do not reap the same benefits as the legally
married.”).

PFF 40. Marriage serves at least one purpose today that it did not serve at the founding of the country in 1789: It serves to create a private arena—a zone of liberty, privacy, and intimacy for the partners within it.

- Tr. 227:25-228:8 (Cott: Historical restrictions on marriage have been in tension with marriage as a “zone of liberty for the partners within it,” which is the emphasis of modern marriage.).
- Tr. 247:4-248:3 (Cott: Over time, there has been a shift in marriage laws towards liberty and the “zone of privacy and intimacy.”).

- DIX0093 at xviii (Report from the Law Commission of Canada: “The state’s objectives underlying contemporary regulation of marriage relate essentially to the facilitation of private ordering: providing an orderly framework in which people can express their commitment to each other, receive public recognition and support, and voluntarily assume a range of legal rights and obligations.”).

PFF 41.

In the United States, the institution of marriage has evolved to reflect changing attitudes towards sex discrimination, including sex-role stereotyping. For example, the marital doctrine of *coverture*, by which a married woman lost her independent legal status and vanished into the authority of her husband, has been eliminated. The inequality between men and women under *coverture* was once seen as essential to marriage, but it was eliminated in response to the demands of economic modernization and changing values.

- PX0710 at RFA No. 12 (Attorney General admits “that 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.”).
- Tr. 239:25-245:8, 307:14-308:9, 340:14-342:12 (Cott: Discussing how marriage laws historically have been used to dictate the roles of spouses; how, under *coverture*, a wife’s legal and economic identity was merged into that of her husband’s; and how the *coverture* system was based on assumptions of what was then considered a natural division of labor between men and women).
- PX1746 at 11-12 (Nancy Cott, *Public Vows*: Discussing *coverture*).
- PX2547 (Nathanson Nov. 12, 2009 Dep. Tr. 108:24-109:9: Agreeing that defenders of prejudice or stereotypes against women argued that such discrimination was somehow protective of the family); *see also* PX2545 (Young Nov. 13, 2009 Dep. Tr. 214:19-215:13: Same).
- PX1319 at 101, 128-29 (Hendrik Hartog, *Marital Exits and Marital Expectations in Nineteenth Century America*: In nineteenth century America, “[e]ven in equity, a wife could not usually sue under her own name.” And “the most important feature of marriage was the public assumption of a relationship of rights and duties, of men acting as husbands and women acting as wives.”).
- PX1326 at 996-98 (Rebecca M. Ryan, *The Sex Right: A Legal History of the Marital Rape Exemption*: Arguing that “the meanings of ‘rape’ and ‘marriage’ changed” with the elimination of the marital rape exemption).

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- PX1328 at 858 (Paul Sayre, *Duties of Husband and Wife*: “Marriage deprived [the wife] of her legal capacity in most matters affecting property.”).
- PX1334 (Joseph Warren, *Husband’s Right to Wife’s Services*: Discussing that at common law the husband had a right to his wife’s services, including wages she earned when employed by a third-party, and the then-modern statutes that allowed married women greater control over their own earnings).
- Tr. 241:19-23 (Cott: “[A]ssumptions were, at the time, that men were suited to be providers . . . whereas, women, the weaker sex, were suited to be dependent.”).
- PX1245 at 408 (Review by Anne Peplau and Adam Fingerhut: “Traditional heterosexual marriage is organized around two basic principles: a division of labor based on gender and a norm of greater male power and decision-making authority.”).
- Tr. 241:19-242:4 (Cott: Until the 20th century “the sexes were seen as so unsuited to the same type of work.”).

PFF 42. For couples who consent to marry today, marriage has been transformed from an institution rooted in gender inequality and gender-based prescribed roles to one in which the contracting parties decide on appropriate behavior toward one another, and the sex of the spouses is immaterial to their legal obligations and benefits. Put another way, marriage has changed significantly to meet ethical needs of sex equity, in that it is no longer marked by gender asymmetry.

- Tr. 243:5-244:10, 244:21-25 (Cott: Discussing changes in our society that over time have led spousal roles to become more gender-neutral, and changes in the law that have ended gender-determined roles for spouses).
- PX1328 at 875 (Paul Sayre, *Duties of Husband and Wife*: “The common-law presupposition not of family but of the husband, and the existence of the family expressed in law through service of the wife and children to the husband—that pattern, or presupposition or postulate is now contrary to both law and fact.”).

PFF 43. In the United States, the institution of marriage has also evolved to reflect changing attitudes toward race discrimination. During the slave-holding era, slaves had no right to marry, and laws restricting marriage between whites and persons of color were passed by several of the original colonies and by as many as 41 states and territories.

1 Now, citizens enjoy full civil rights regardless of race, and legal restrictions on racial
2 intermarriage have been struck down as unconstitutional.

- 3 • Tr. 262:14-21 (Cott: In colonial Chesapeake in 1667, a law was passed that
4 punished “shameful matches” between “free white women and negroes.”).
- 5 • Tr. 201:25-203:12, 204:13-25 (Cott: During the slave-holding era, slaves
6 could not consent to get married and they lacked the basic liberty to enter into
7 a marriage. Slaves formed their own informal couple relationships, yet state
8 authorities did not give “any protection or credence to these relationships
9 whatsoever” and families were “[b]roken up all the time.”).
- 10 • Tr. 228:9-231:3 (Cott: Discussing laws in “[a]s many as 41 states and
11 territories” that placed restrictions on “marriage between a white person and a
12 person of color.” These laws were justified on the ground that the races should
13 not mix and that certain marriages were not within nature’s and “God’s plan.”).
- 14 • Tr. 231:12-235:18 (Cott: Discussing a federal policy that treated Chinese
15 immigrants as “aliens ineligible for citizenship.” Additionally, any American
16 woman who married a Chinese man would lose her American citizenship and
17 never be able to regain it unless she divorced him or he died.).
- 18 • Tr. 236:17-238:23 (Cott: Discussing the abolition of racial restrictions).
- 19 • Tr. 440:9-13 (Chauncey: Jerry Falwell criticized *Brown v. Board of*
20 *Education*, because it could “lead to interracial marriage, which was then sort
21 of the ultimate sign of black and white equality.”).
- 22 • PX2547 (Nathanson Nov. 12, 2009 Dep. Tr. 108:12-23: Agreeing that
23 defenders of prejudice or stereotypes against African-Americans argued that
24 such discrimination was somehow protective of the family).
- 25 • Tr. 2003:19-22 (Tam: There were periods of American history when the law
26 limited who Asian Americans could marry.).
- 27 • PX1746 (Nancy Cott, *Public Vows*: Extensive discussion of racial restrictions
28 throughout American history).
- PX1314 at 189 (Margaret A. Burnham, *An Impossible Marriage: Slave Law
and Family Law*: Since “tenets of family law held that marriage and family
were natural, sacred, and morally compelled,” courts rationalized the denial of
marriage rights to slaves by categorizing slaves as a “different kind of human
being.”).
- PX1322, PX1324, PX1325, PX1327, PX1335 (Articles concerning
miscegenation laws and the Acts of 1855 and 1907, which expatriated women
who married aliens.).

1 PFF 44. California enacted the nation's first complete no-fault divorce law, removing
 2 consideration of marital fault from the grounds for divorce, awards of spousal support,
 3 and division of property. The enactment of no-fault divorce was quickly embraced
 4 nationally as a means of dealing honestly with marital breakdowns, achieving greater
 5 equality between men and women within marriage, and advancing further the notion
 6 of consent and choice as to one's spouse. This sweeping change reflected
 7 contemporary views that continuing consent to marriage was essential.

- 8 • Tr. 338:5-340:3 (Cott: Discussing the history of no-fault divorce).
- 9 • PX1319 at 121 (Hendrik Hartog, *Marital Exits and Marital Expectations in*
 10 *Nineteenth Century America*: In nineteenth century America, divorce
 11 "punished the guilty for criminal conduct" and "provided a form of public
 12 punishment for a spouse who had knowingly and criminally violated his or her
 public vows of marriage.").

13 PFF 45. As two economists have definitively shown, extrapolating from the rate at which
 14 divorce incidence rose during the century 1860-1960, the annual divorce rate in 2005
 15 was approximately the same as it would have been in the absence of the no-fault
 16 system.

- 17 • PX1308 at 2-3 and Fig. 1 (Article by Betsey Stevenson and Justin Wolfers:
 18 Discussing trends in marriage and divorce over the last 150 years).

19 PFF 46. Eliminating racial restrictions on marriage and the doctrine of *coverture* have not
 20 deprived marriage of its vitality and importance as a social institution.

- 21 • PX0707 at RFA No. 13 (Proponents admit PFF 46 in its entirety.).
- 22 • PX0710 at RFA No. 13 (Attorney General admits "that neither the race- nor
 23 gender-based reforms in civil marriage law deprived marriage of its vitality
 and importance as a social institution.").
- 24 • Tr. 206:14-207:8, 331:18-333:1 (Cott: Elimination of restrictions on marriage
 25 has strengthened the institution.).
- 26 • Tr. 237:12-239:24 (Cott: When racial restrictions on marriage across color
 27 lines were abolished, there was alarm and many people worried that the
 institution of marriage would be degraded and devalued. But "there has been
 28

1 no evidence that the institution of marriage has become less popular because . .
 2 . white people can marry whoever they want.”).

- 3 • Tr. 245:9-247:3 (Cott: The notion that the husband is the “legal and economic
 4 representative of the couple, and the protector and provider for his wife, was
 5 [once] seen as absolutely essential to what marriage was.” Notwithstanding
 6 concerns raised by many to changes in the coverture laws, gender inequality in
 marriage “has been removed to no apparent damage to the institution. And, in
 fact, I think to the benefit of the institution.”).

7 PFF 47. “The argument that recognition of same-sex marriage simply opens the door to
 8 incestuous or polygamous marriage ignores that there may well be compelling state
 9 interests against recognizing these other forms of relationships, including preventing
 10 exploitation and abuse. Nor is it clear why . . . same-sex marriage (and not, for
 11 example, infertile marriage) opens the door to require state recognition of polygamy
 12 and incest. Whatever prevents California now from recognizing the marriage of a
 13 brother and a sister would likewise stop it from recognizing the marriage of two sisters
 14 in the absence of Proposition 8.” (Doc # 228 at 81.)

- 15 • Tr. 194:7-14 (Cott: The Founders of the American Republic “were very aware
 16 that most of the peoples in the globe, at that time, practiced polygamy or group
 17 marriage, or as they saw among Native Americans, other forms of marriage
 quite different from their own.”).
- 18 • Tr. 345:11-347:18 (Cott: A historical theme in the U.S. equates polygamy
 19 with “despotism” and monogamy with “consent and free choice.” Further,
 20 there is a hygienic basis for incest laws.); *see also* PX1746 at 22-23 (Nancy
 Cott, *Public Vows: Same*).

21 PFF 48. Marriage has also had different or evolving meanings in other societies. For example,
 22 in Indian society, a group known as the Hijras had a tradition of marriages by same-
 23 sex couples for at least two centuries. Similarly, Native American tribes had a
 24 tradition of such marriages among those known as the berdache. And lesbian
 25 marriages have been documented in West Africa and in China among silk workers in
 26 the nineteenth century. In addition, marriages by same-sex couples were documented
 27 among the Roman emperors.

- PX2545 (Young Nov. 13, 2009 Dep. Tr. 43:21-44:10, 46:10-21, 47:13-18, 51:11-53:6, 53:12-53:19, 54:1-17: Homosexuality was tolerated historically among the Hijras, berdache, West African societies, Chinese silk workers, and Roman emperors.).
- PX2876 at 377-78 (Nancy E. Levine, *Alternative Kinship, Marriage, and Reproduction*: Article relied upon by Blankenhorn that identifies alternative kin and marital relationships in Africa, China, Tibet, India, and among the American Indians.).

C. Marriage Restrictions Historically Have Been Discriminatory

PFF 49. Under the marital doctrine of *coverture*, a married woman lost her independent legal status and vanished into the authority of her husband. The inequality between men and women under *coverture* was once seen as essential to marriage.

- PX0710 at RFA No. 12 (Attorney General admits “that 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.”).
- Tr. 239:25-245:8, 307:14-308:9, 340:14-342:12 (Cott: Discussing how marriage laws historically have been used to dictate the roles of spouses; how, under *coverture*, a wife’s legal and economic identity was merged into that of her husband’s; and how the *coverture* system was based on assumptions of what was then considered a natural division of labor between men and women).
- PX1746 at 11-12 (Nancy Cott, *Public Vows: Discussing coverture*).
- PX2547 (Nathanson Nov. 12, 2009 Dep. Tr. 108:24-109:9: Agreeing that defenders of prejudice or stereotypes against women argued that such discrimination was somehow protective of the family); *see also* PX2545 (Young Nov. 13, 2009 Dep. Tr. 214:19-215:13: Same).
- PX1319 at 101, 128-29 (Hendrik Hartog, *Marital Exits and Marital Expectations in Nineteenth Century America*: In nineteenth century America, “[e]ven in equity, a wife could not usually sue under her own name.” And “the most important feature of marriage was the public assumption of a relationship of rights and duties, of men acting as husbands and women acting as wives.”).
- PX1328 at 858 (Paul Sayre, *Duties of Husband and Wife*: “Marriage deprived [the wife] of her legal capacity in most matters affecting property.”).
- PX1334 (Joseph Warren, *Husband’s Right to Wife’s Services*: Discussing that at common law the husband had a right to his wife’s services, including wages

1 she earned when employed by a third-party, and the then-modern statutes that
2 allowed married women greater control over their own earnings).

3 PFF 50. Slaves had no right to marry, and laws restricting marriage between whites and
4 persons of color were passed by several of the original colonies and by as many as 41
5 states and territories. Supporters of such racial restrictions, including courts in the late
6 nineteenth century, usually responded when such laws were challenged by saying that
7 there was no discrimination involved: both blacks and whites were equally forbidden
8 from marrying each other. Such restrictions on racial intermarriage have been struck
9 down as unconstitutional. These developments in the institution of marriage
10 paralleled larger social changes that eliminated slavery and recognized racial equality.

- 11 • *Pace v. State*, 106 U.S. 583, 585 (1883) (justifying anti-miscegenation laws on
12 the grounds that they are facially neutral with respect to race (or, rather,
13 discriminate equally against both African-Americans and whites)).
- 14 • Tr. 262:14-21 (Cott: In colonial Chesapeake in 1667, a law was passed that
15 punished “shameful matches” between “free white women and negroes.”).
- 16 • Tr. 201:25-203:12, 204:13-25 (Cott: During the slave-holding era, slaves
17 could not consent to get married and they lacked the basic liberty to enter into
18 a marriage. Slaves formed their own informal couple relationships, yet state
19 authorities did not give “any protection or credence to these relationships
20 whatsoever” and families were “[b]roken up all the time.”).
- 21 • Tr. 228:9-231:3 (Cott: Discussing laws in “[a]s many as 41 states and
22 territories” that placed restrictions on “marriage between a white person and a
23 person of color.” These laws were justified on the ground that the races should
24 not mix and that certain marriages were not within nature’s and “God’s plan.”).
- 25 • Tr. 231:12-235:18 (Cott: Discussing a federal policy that treated Chinese
26 immigrants as “aliens ineligible for citizenship.” Additionally, any American
27 woman who married a Chinese man would lose her American citizenship and
28 never be able to regain it unless she divorced him or he died.).
- Tr. 236:17-238:23 (Cott: Discussing the abolition of racial restrictions).
- Tr. 440:9-13 (Chauncey: Jerry Falwell criticized *Brown v. Board of
Education*, because it could “lead to interracial marriage, which was then sort
of the ultimate sign of black and white equality.”).

- 1 • PX2547 (Nathanson Nov. 12, 2009 Dep. Tr. 108:12-23: Agreeing that
- 2 defenders of prejudice or stereotypes against African-Americans argued that
- 3 such discrimination was somehow protective of the family).
- 4 • Tr. 2003:19-22 (Tam: There were periods of American history when the law
- 5 limited who Asian Americans could marry.).
- 6 • PX1746 (Nancy Cott, *Public Vows*: Extensive discussion of racial restrictions
- 7 throughout American history).
- 8 • PX1314 at 189 (Margaret A. Burnham, *An Impossible Marriage: Slave Law*
- 9 *and Family Law*: Since “tenets of family law held that marriage and family
- 10 were natural, sacred, and morally compelled,” courts rationalized the denial of
- 11 marriage rights to slaves by categorizing slaves as a “different kind of human
- 12 being.”).
- 13 • PX1322, PX1324, PX1325, PX1327, PX1335 (Articles concerning
- 14 miscegenation laws and the Acts of 1855 and 1907, which expatriated women
- 15 who married aliens.).
- 16 • *Loving v. Virginia*, 388 U.S. 1 (1967).

17 PFF 51. California was the first state to strike down racial restrictions on marriage as
 18 unconstitutional in *Perez v. Sharp*, 198 P.2d 17 (1948). The United States Supreme
 19 Court in *Loving v. Virginia*, 388 U.S. 1 (1967), ended the nearly 300-year history of
 20 race-based legislation on marriage by declaring racial restrictions on marriage
 21 unconstitutional.

- 22 • *Perez v. Sharp*, 198 P.2d 17 (Cal. 1948).
- 23 • *Loving v. Virginia*, 388 U.S. 1 (1967).
- 24 • PX0710 at RFA No. 11 (Attorney General admits that California law barred
- 25 interracial couples from civil marriage until the California Supreme Court
- 26 invalidated the prohibition in *Perez v. Sharp*, 198 P.2d 17 (Cal. 1948).).

27 PFF 52. Limiting marriage to opposite-sex couples could promote gender stereotypes that in
 28 other contexts have long been rejected as an illegitimate basis for legal classifications.

- PX0710 at RFA No. 45 (Attorney General admits “that in California,
 restricting the access of same-sex couples to civil marriage may reinforce
 gender stereotypes and traditional gender roles of men and women in child
 rearing and family responsibilities.”).

- 1 • PX 2545 (Young 11/13/09 Dep. Tr. 197:12-24: “Just because something is a
2 norm, it doesn’t necessarily mean it is an appropriate norm, and it has to then
3 be reassessed in the contemporary context to see if there are good reasons why
4 that norm should remain.”).
- 5 • Tr. 248:11-14 (Cott: “[I]f gender symmetry and equality and the couple’s own
6 definition of spousal roles are characteristic of marriage, then same-sex
7 couples seem perfectly able to fulfill those roles.”).
- 8 • PX1245 at 415 (Review by Anne Peplau and Adam Fingerhut: Research
9 shows that same-sex couples tend to be more egalitarian in the division of
10 household labor than heterosexual couples.).
- 11 • *See also* evidence cited in support of PFFs 53-58.

12 PFF 53. Heterosexual marriage was traditionally organized around a gender-based division of
13 labor, with the husband as the primary earner and the wife as the primary homemaker
14 and caregiver for children.

- 15 • Tr. 241:19-23 (Cott: “[A]ssumptions were, at the time, that men were suited to
16 be providers . . . whereas, women, the weaker sex, were suited to be
17 dependent.”).
- 18 • PX1245 at 408 (Review by Anne Peplau and Adam Fingerhut: “Traditional
19 heterosexual marriage is organized around two basic principles: a division of
20 labor based on gender and a norm of greater male power and decision-making
21 authority.”).

22 PFF 54. Early American marriage was founded on presumptions of a so-called “natural”
23 division of labor along gender lines—notions that men alone were suited for certain
24 types of work, women alone for other types of work, and that the household needed
25 both to ensure both kinds of work could be done—that are not relevant to today’s
26 society.

- 27 • Tr. 242:19-243:4 (Cott: “[F]rom the state’s point of view,” it was “extremely
28 important” to “credit and create incentives for the formation of marital
households” based on the assumed natural division of labor because the work
of both sexes was “seen as crucial to human survival.”).
- Tr. 241:19-242:4 (Cott: Until the 20th century “the sexes were seen as so
unsuited to the same type of work.”).

1 PFF 55. Notions of “traditional marriage” are based upon the idea that women can and should
 2 play distinct roles in the marital relationship and/or in raising children that cannot be
 3 performed by men and vice versa.

- 4 • Tr. 1087:5-18 (Lamb: The “traditional family” refers to a family with a
 5 married mother and father who are both biologically related to their children
 6 where the mother stays at home and the father is the bread winner.).
- 7 • PX0506 at 13 (Transcript of Simulcast conducted by Miles McPherson called
 8 “The Fine Line” and directed at younger voters: “Children need a loving
 9 family and yes they need a mother and father. Now going on what Sean was
 10 saying here about the consequences of this, if Prop. 8 doesn’t pass then it will
 11 be illegal to distinguish between heterosexual and same sex couples when it
 12 comes to adoption. Um Yvette just mentioned some statistics about growing
 13 up in families without a mother and father at home. How important it is to
 14 have that kind of thing. I’m not a sociologist. I’m not a psychologist. I’m just
 15 a human being but you don’t need to be wearing a white coat to know that kids
 16 need a mom and dad. (clapping) I’m a dad and I know that I provide something
 17 different than my wife does in our family and my wife provides something
 18 entirely different than I do in our family and both are vital.”); *see also* PX0505
 19 (video of same).
- 20 • PX0506 at 6 (Transcript of Simulcast conducted by Miles McPherson called
 21 “The Fine Line” and directed at younger voters: “When moms are in the park
 22 taking care of their kids they always know where those kids are. They have
 23 like a, like a radar around them. They know where those kids are and there’s
 24 just a, there’s a bond between a mom and a kid different from a dad. I’m not
 25 saying dads don’t have that bond but they don’t. It’s just different. You know
 26 middle of the night mom will wake up. Dad will just sleep you know if there’s
 27 a little noise in the room. And, and when kids get scared they run to mommy.
 28 Why? They spent 9 months in mommy. They go back to where they came.”);
see also PX0505 (video of same).
- PX0390 at 5:25-6:04 (Protect Marriage – Yes On 8 Chairman, Ron Prentice –
 Yes on 8, tells people at a religious rally that marriage is not about love, its
 about women civilizing men: “Again, because its not about two people in
 love, its about men becoming civilized frankly, and I can tell you this from
 personal experience and every man in this audience can do the same if they’ve
 chosen to marry, because when you do find the woman that you love you are
 compelled to listen to her, and when the woman that I love prior to my
 marrying her told me that my table manners were less than adequate I became
 more civilized; when she told me that my rust colored corduroy were never
 again to be worn, I became more civilized.”).
- PX0506 at 15 (Transcript of Simulcast conducted by Miles McPherson called
 “The Fine Line” and directed at younger voters: “Skin color is morally trivial

1 as you pointed out but sex is fundamental to everything. There is no difference
2 between a white or a black human being but there's a big difference between a
man and a woman."); *see also* PX0505 (video of same).

- 3 • PX1867 at 27:6-9 (At a simulcast entitled "ABCs of Protecting Marriage" held
4 15 days before the election, Dr. Jennifer Roback Morse states that "[t]he
5 function of marriage is to attach mothers and fathers to one another and
6 mothers and fathers to their children, especially fathers to children."); *see also*
PX0503 (video of same).
- 7 • PX0480 at 16:58-17:20 (In a video posted on the American Family
8 Association's website entitled "Proposition 8 and the Case for Traditional
9 Marriage," Ron Prentice, Chairman of ProtectMarriage.com – Yes on 8, states
10 that "[c]hildren need the chance to have both mother love and father love. And
11 that moms and dads, male and female, complement each other. They don't
bring to a marriage and to a family the same natural set of skills and talents and
abilities. They bring to children the blessing of both masculinity and
femininity.").
- 12 • PX2403 at 3 (Email from Kenyn Cureton, Vice President for Church
13 Ministries with the Family Research Council, to Ron Prentice, Chairman of
14 ProtectMarriage.com – Yes on 8, in August of 2008: Attaching a kit to be
15 distributed to Christian voters through churches to better help them promote
16 Proposition 8 which states: "Thank God for the difference between men and
17 women. In fact, the two genders were meant to complete each other
physically, emotionally, and in every other way. Also, both genders are
needed for a healthy home. As Dr. James Dobson notes, 'More than ten
thousand studies have concluded that kids do best when they are raised by
mothers and fathers.'").

18 PFF 56. These notions are grounded, in part, on the discriminatory belief that marriage is
19 dependent on gender role stereotypes, suggesting that men and women should play
20 different and gender-based roles in marriage and child rearing.

- 21 • PX0480 at 8:47-48 (In a video posted on the American Family Association's
22 website entitled "Proposition 8 and the Case for Traditional Marriage," Chuck
23 Colson, founder of the Prison Fellowship Ministries and leader of the Christian
24 conservative movement explains that he thought the physical differences
between men and women make heterosexual marriage the only appropriate
union and constitute "the natural moral order of things.").
- 25 • PX1868 at 43:19-24 (At a Sept. 25, 2008 simulcast entitled "Love, Power and
26 a Sound Mind," Glen Stanton states that "[s]ame sex marriage, it will unravel
27 that in a significant way and say that really male and female, mother and
28 father, husband and wife are just really optional for the family, not necessary.

1 And that is a radically anti-human thing to say.”); *see also* PX0504 (video of
2 same).

- 3 • PX1867 at 28:18-23 (At a simulcast entitled “ABCs of Protecting Marriage”
4 held 15 days before the election, Glen Stanton states “And we know that
5 fatherlessness has caused significant problems for a whole generation of
6 children and same-sex marriage would send us more in that direction of
7 intentionally fatherless homes.”); *see also* PX0503 (video of same).
- 8 • PX0506 at 5 (Transcript of Simulcast conducted by Miles McPherson called
9 “The Fine Line” and directed at younger voters: McPherson states that it is a
10 truth “that God created the woman bride as the groom’s compatible marriage
11 companion.”); *see also* PX0505 (video of same).
- 12 • *See also* evidence cited in support of PFF 294.

13 PFF 57. Proponents’ arguments for Prop. 8 include that allowing gay and lesbian couples to
14 marry will lead to confusion about gender identity, suggesting that Proponents
15 associate homosexuality with a disruption of traditional gender roles, and that denying
16 gay and lesbian couples the right to marry is based in certain beliefs about sex.

- 17 • PX0480 at 20:21-21:3 (In a video posted on the American Family
18 Association’s website entitled “Proposition 8 and the Case for Traditional
19 Marriage,” Ron Prentice, Chairman of ProtectMarriage.com – Yes on 8, states
20 that “Children need the chance to have both mother love and father love. And
21 that moms and dads, male and female, complement each other. They don’t
22 bring to a marriage and to a family the same natural set of skills and talents and
23 abilities. They bring to children the blessing of both masculinity and
24 femininity.”).
- 25 • PX2341 at 40 (Email from Bill May of Catholics for the Common Good to
26 Ned Dolejsi, a member of the ProtectMarriage.com – Yes on 8 executive
27 committee, in June 2008: Attaching a document written by Jim Garlow
28 entitled “The Ten Declarations Protecting Biblical Marriage” and presented at
a “Protect Marriage Meeting For Pastors and Christian Leaders” that states:
“maximal sexual fulfillment occurs within one man-one woman monogamous,
covenantal relationships”; “the sustaining of the human race, occurs
exclusively within male-female union”; “boys and girls need and deserve to
have a daddy and a mommy who love each other and are committed to each
other in marriage”).
- PX2403 at 6 (Email from Kenyn Cureton, Vice President for Church
Ministries with the Family Research Council, to Ron Prentice, Chairman of
ProtectMarriage.com – Yes on 8, in August of 2008: Attaching a kit to be
distributed to Christian voters through churches to better help them promote

1 Proposition 8 which states: “School children as young as kindergarten-age can
2 now be forced to learn about and support homosexuality, bisexuality, and
3 trans-sexuality. School-sponsored activities, textbooks, and instructional
4 material could require a positive portrayal of homosexual ‘marriages,’ cross-
5 dressing, sex-change operations, and all aspects of homosexuality and
6 bisexuality.”).

- See also evidence cited in support of PFF 55.

6 PFF 58.

7 Similarly Proponents’ arguments for Prop. 8 include that children need both a father
8 and a mother, indicating that Proponents believe women and men should or
9 necessarily do perform different parental roles based on their gender.

- PX2589 (Email from Ron Prentice, Chairman of ProtectMarriage.com – Yes on 8: Explaining that he attached “the messages that have come from the research” and attaching a document entitled “Top Proposition 8 Arguments.” They include: “3. . . . the ideal situation is for a child to be raised by a married mother and father in the bond of marriage. . . . 5. . . . every child desires to have a mother and a father who are married to each other. . . . 8. California should do more to encourage families to stay together so that more children have both a mother and a father in the home. Reaffirming marriage as between a man and a woman is a positive step in that direction.”).
- PX0052 (Aug. 4, 2008 blast e-mail from ProtectMarriage.com: Enclosing “A Statement of Catholic Bishops of California in support of Proposition 8”: Explaining that if Proposition 8 did not pass “Children—if there are any—are no longer a primary societal rationale for the institution [of marriage]. . . . The marriage of a man and a woman embraces not only their sexual complementarity [sic] as designed by nature but includes their ability to procreate. The ideal for the well being of children is to be born into a traditional marriage and to be raised by both a mother and a father.”).
- PX0506 at 13 (Transcript of Simulcast conducted by Miles McPherson called “The Fine Line” and directed at younger voters: “Buy [sic] why would we want to engineer that on purpose and make it the law of the land that we can deprive a child of a mother or a father. This doesn’t make any sense. They deserve better. (clapping)”); see also PX0505 (video of same).
- PX0480 at 16:25-32 (In a video posted on the American Family Association’s website entitled “Proposition 8 and the Case for Traditional Marriage,” the video’s host, Natalie Thomas, states that “the specter of children being raised in same-sex homes also turns nature on its head.”).
- PX1867 at 26:19-21 (At a simulcast entitled “ABCs of Protecting Marriage” held 15 days before the election, Pastor Jim Garlow tells audience members

1 that “Every little boy and little girl deserves a daddy and a mommy.”); *see also*
2 PX0503 (video of same).

- 3 • PX2595 (Flier urging voters to “Vote Yes on Prop. 8” included the following
4 reasons for supporting Proposition 8: “Proposition 8 protects the right of
5 children to have both father and mother as role models,” and “children need
6 parents of both genders.”).
- *See also* evidence cited in support of PFF 55, 57.

7 **D. Marriage Has Never Been Limited to Procreative Unions in California**

8 PFF 59. The ability or willingness of married couples to produce progeny has never been
9 necessary for marriage validity in American law.

- 10 • Cal. Fam. Code § 300 *et seq.*
- 11 • *In re Marriage Cases*, 183 P.3d 384, 431 (Cal. 2008) (“This contention [that
12 because only a man and a woman can produce children biologically with one
13 another, the constitutional right to marry necessarily is limited to opposite-sex
14 couples] is fundamentally flawed for a number of reasons.”).
- 15 • *Lawrence v. Texas*, 539 U.S. 558, 604-05 (2003) (Scalia, J., dissenting) (“If
16 moral disapprobation of homosexual conduct is ‘no legitimate state interest’
17 for purposes of proscribing that conduct . . . what justification could there
18 possibly be for denying the benefits of marriage to homosexual couples
19 exercising ‘the liberty protected by the Constitution’? Surely not the
20 encouragement of procreation, since the sterile and the elderly are allowed to
21 marry.”).
- Tr. 222:22-223:22 (Cott: “There has never been a requirement that a couple
produce children in order to have a valid marriage. . . . Nor has [the inability
to have children] been a ground . . . for divorce.”).

21 PFF 60. Proponents’ expert, Mr. Blankenhorn, admitted that a couple who does not wish to
22 have sex may marry, and that an incarcerated man may marry even if he is not allowed
23 to consummate the relationship.

- 24 • Tr. 2902:7-16 (Blankenhorn: Acknowledging that a couple who does not wish
25 to have sex may marry).
- 26 • Tr. 2901:13-2902:6 (Blankenhorn: Acknowledging that an incarcerated man
27 may get married even if he is not allowed to consummate the relationship);
28 *see also* Tr. 2905:4-14; Tr. 2907:20-2908:5.

1 PFF 61. Marriage is not now, and has never in this State been, limited to those who are capable
 2 of procreating. The State has never established as a legal requirement for marriage
 3 that the members of the couple be fertile, of child-bearing age, physically or mentally
 4 healthy, or intent on having or raising children. In addition, Proponents' expert, Mr.
 5 Blankenhorn, testified that approximately 38 percent of children in the United States
 6 are born to unmarried parents. In short, procreation does not require marriage, and
 7 marriage does not require procreation.

- 8 • PX0709 at RFA No. 52 (Administration admits "that California law does not
 9 restrict heterosexual individuals with no children and/or no intent to have
 10 children from marrying on the basis of their status as a heterosexual individual
 11 with no children and/or no intent to have children.").
- 12 • Tr. 335:22-24 (Cott: Noting that since the 1960's, "there has been an increase
 13 in births out of wedlock.").
- 14 • Tr. 2274:24-2775:4 (Blankenhorn: Noting that statistics reveal "that today
 15 about 38 percent of children in the U.S. are born to unmarried parents.").
- 16 • *See also* evidence cited in support of PFF 59.

17 **E. There Are No Marriage Exclusions Based on Past Conduct**

18 PFF 62. Under California law, murderers, child molesters, rapists, serial divorcers, spousal
 19 abusers, and philanderers are permitted to marry.

- 20 • Cal. Fam. Code § 300 *et seq.* (No prohibition against murderers, child
 21 molesters, rapists, serial divorcers, spousal abusers, and philanderers from
 22 marrying).
- 23 • Cal. Penal Code § 2601(e) (Guaranteeing the right of incarcerated inmates to
 24 marry).
- 25 • PX0710 at RFA No. 52 (Attorney General admits "that heterosexual
 26 individuals with no children and/or no intent to have children, who are
 27 incarcerated for serious crimes, who have failed to pay child support
 28 obligations or who are adulterers are all permitted to marry.").

PFF 63. The United States Supreme Court has recognized that the right to marry extends to
 convicted criminals in prison and rejected as unconstitutional a law that prevented
 prison inmates from getting married. *See Turner v. Safley*, 482 U.S. 78, 99 (1987).

- Tr. 2901:13-2902:6 (Blankenhorn: Acknowledging that an incarcerated man may get married even if he is not allowed to consummate the relationship); *see also* Tr. 2905:4-14; Tr. 2907:20-2908:5.

III. The Exclusion of Gay and Lesbian People from Marriage in California

A. California Marriage Law Before *In re Marriage Cases*

PFF 64. Proposition 22 was enacted by California voters in 2000. It added section 308.5, which stated “Only marriage between a man and a woman is valid or recognized in California,” to the Family Code.

- *In re Marriage Cases*, 183 P.3d 384, 409 (Cal. 2008) (Discussing the passage of Proposition 22 and its addition of statutory language to the Family Code).

B. Rights Afforded to Gay and Lesbian Individuals in California

1. Domestic Partnership Confers Many of the Same Substantive Benefits as Marriage

PFF 65. Since 1999, California has permitted same-sex couples to register as Domestic Partners.

- Cal. Fam. Code §§ 297, 297.5 (Setting forth the definition and entrance requirements for domestic partnerships and the rights of domestic partners).

PFF 66. The State of California has, at times, expanded the rights and responsibilities of Registered Domestic Partners.

- Cal. Fam. Code §§ 297, 297.5 (Setting forth the definition and entrance requirements for domestic partnerships and the rights of domestic partners).
- *In re Marriage Cases*, 183 P.3d 384, 414-15 (Cal. 2008) (Discussing the incremental expansion of rights in 2001 and 2003).

PFF 67. The California Legislature has found that lesbians and gay men have faced, many lesbian and gay couples “have formed lasting, committed, and caring relationships” and, like heterosexual couples, same-sex couples “share lives together, participate in their communities together, and many raise children and care for other dependent family members together.” The Legislature also has found that “expanding the rights

1 and creating responsibilities of registered domestic partners would further California's
 2 interests in promoting family relationships and protecting family members during life
 3 crises." 2003 Cal. Stats. ch. 421, § 1(b).

- 4 • 2003 Cal. Stats. Ch. 421, § 1(b) ("The Legislature hereby finds and declares
 5 that despite longstanding social and economic discrimination, many lesbian,
 6 gay, and bisexual Californians have formed lasting, committed, and caring
 7 relationships with persons of the same sex. These couples share lives together,
 8 participate in their communities together, and many raise children and care for
 9 other dependent family members together. Many of these couples have sought
 10 to protect each other and their family members by registering as domestic
 11 partners with the State of California and, as a result, have received certain
 basic legal rights. Expanding the rights and creating responsibilities of
 registered domestic partners would further California's interests in promoting
 family relationships and protecting family members during life crises, and
 would reduce discrimination on the bases of sex and sexual orientation in a
 manner consistent with the requirements of the California Constitution.").

12 PFF 68. A couple who registers as domestic partners is not married under California law, and
 13 registered domestic partners in the State of California are not recognized as married by
 14 the United States government. Registered domestic partners are denied numerous
 15 federal marriage benefits

- 16 • *In re Marriage Cases*, 183 P.3d 384, 416-17 & n.24 (Cal. 2008) (Discussing
 17 the various differences between domestic partnerships and marriages, and
 18 observing the lack of federal recognition of domestic partnerships).
- 19 • Cal. Fam. Code § 297.5 (Setting out a separate statutory provision for domestic
 20 partnerships).
- 21 • 1 U.S.C. § 7 ("[T]he word 'marriage' means only a legal union between one
 22 man and one woman as husband and wife, and the word 'spouse' refers only to
 a person of the opposite sex who is a husband or a wife.").
- 23 • 28 U.S.C. § 1738C ("No State, territory, or possession of the United States, or
 24 Indian tribe, shall be required to give effect to any public act, record, or
 25 judicial proceeding of any other State, territory, possession, or tribe respecting
 a relationship between persons of the same sex that is treated as a marriage
 26 under the laws of such other State, territory, possession, or tribe, or a right or
 claim arising from such relationship.").
- 27 • Tr. 1963:3-8 (Tam: "If 'domestic partner' is defined as it is now, then we can
 28 explain to our children that, yeah, there are some same-sex person wants to

1 have a lifetime together as committed partners, and that is called ‘domestic
2 partner,’ but it is not ‘marriage.’”).

- 3 • Tr. 712:5-12, 712:23-713:9 (Egan: Estimating that same-sex couples would
4 realize an income tax savings, on average, of \$440 a year, if allowed to marry).

5 PFF 69.

The qualifications and requirements for entering into or dissolving domestic
6 partnership differ from the qualifications and requirements for entering into or
7 dissolving a marriage.

- 8 • Cal. Fam. Code § 297 (setting forth multiple, specific entrance requirements
9 for domestic partnerships).
- 10 • Cal. Fam. Code § 299(a) (allowing domestic partners to terminate their
11 partnership without having to file a proceeding for dissolution of domestic
12 partnership if certain circumstances are met).
- 13 • Cal. Fam. Code § 299(d) (providing that, in other respects, the dissolution of a
14 domestic partnership will mirror the dissolution of marriages under Family
15 Code §§ 2300 *et seq.* (statutory provisions governing dissolution procedures)).
- 16 • Cal. Fam. Code § 300 (setting forth the requirements for entering into a
17 marriage, which constitute only consent and the issuance of a marriage
18 license).

19 **2. Gay and Lesbian People Can Have, Adopt, and Parent Children**

20 PFF 70.

Same-sex couples are legally permitted to have and raise children through assisted
21 reproduction, adoption, and foster parenting in the State of California.

- 22 • PX0709 at RFA No. 22 (Administration admits “that California law does not
23 prohibit individuals from raising children on the basis of sexual orientation”).
- 24 • PX0710 at RFA No. 57 (Attorney General admits “that the law of the State of
25 California protects the right of gay men and lesbians in same sex relationships
26 to be foster parents and to adopt children by forbidding discrimination on the
27 basis of sexual orientation.”).
- 28 • Cal. Welf. & Inst. Code § 16013(a) (“It is the policy of this state that all
persons engaged in providing care and services to foster children . . . shall have
fair and equal access to all available programs, services, benefits, and licensing
processes, and shall not be subjected to discrimination or harassment on the
basis of their clients’ or their own actual or perceived . . . sexual orientation.”).

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- Cal. Fam. Code § 297.5(d) (“The rights and obligations of registered domestic partners with respect to a child of either of them shall be the same as those of spouses.”).

- *Elisa B. v. Superior Court*, 117 P.3d 660, 670 (Cal. 2005) (holding that under the Uniform Parentage Act, a parent may have two parents of the same sex).

PFF 71. California law expressly authorizes adoption by unmarried same-sex couples.

- PX0710 at RFA No. 57 (Attorney General admits “that the law of the State of California protects the right of gay men and lesbians in same sex relationships to be foster parents and to adopt children by forbidding discrimination on the basis of sexual orientation.”).

- Cal. Fam. Code § 297.5(d) (making the rights of registered domestic partners with respect to the child of either partner the same as spouses); Cal. Fam. Code § 9000(b) (allowing a domestic partner to adopt the other partner’s child).

- *Sharon S. v. Superior Court*, 73 P.3d 554, 569 (Cal. 2003) (“Unmarried persons always have been permitted to adopt children.”).

PFF 72. Many same-sex couples in California are raising children. Many of California’s adopted children live with a lesbian or gay parent, and as of the 2000 census, approximately 18 percent of same-sex couples in California were raising approximately 37,300 children under the age of 18. This was so despite the absence of any legal recognition of same-sex relationships by the State of California until 1999.

- PX0707 at RFA No. 66 (Proponents admit that gay and lesbian individuals raise children together.).

- PX2096 at 2 (Williams Institute, Census Snapshot: California (Aug. 2008): “18% of same-sex couples in California are raising children under the age of 18” and “[a]s of 2005, an estimated 37,311 of California’s children are living in households headed by same-sex couples.”).

- Tr. 1348:23-1350:2 (Badgett: Same-sex couples in California are raising 37,300 children under the age of 18.).

- PX1264 at 8 (Report by Gary J. Gates, et al.: “More than 16,000 adopted children are living with lesbian and gay parents in California, the highest number among the states.”).

- Assem. B. No. 26, Act of Oct. 2, 1999, ch. 588, 1999 Cal. Legis. Serv. 3372 (West) (adding, *inter alia*, Cal. Health & Safety Code § 1261, which provided visitation rights for domestic partners).

PFF 73.

California freely permits and encourages gay and lesbian individuals to have children through laws that allow such methods of reproduction and permit lesbians and gay men to be foster parents and to adopt children. In these respects, same-sex couples are indistinguishable from the many opposite-sex couples in California who use these same methods to bring children into their lives to love and raise as their own. The only difference between these couples is that same-sex couples cannot marry, and they and their children therefore do not enjoy all the social and other benefits that the title and stature of marriage bring; whereas, opposite-sex couples can marry, and they and their children can enjoy these benefits.

- PX0709 at RFA No. 22 (Administration admits “that California law does not prohibit individuals from raising children on the basis of sexual orientation[.]”).
- PX0710 at RFA No. 57 (Attorney General admits “that the law of the State of California protects the right of gay men and lesbians in same sex relationships to be foster parents and to adopt children by forbidding discrimination on the basis of sexual orientation.”).
- Tr. 640:16-19 (Peplau: “[E]xcept in places like Massachusetts, all children born to lesbians or gay men or raised by lesbians or gay men are out of wedlock, because the government doesn’t permit their parents to marry.”).
- PX1245 at 414 (Review by Letitia Anne Peplau & Adam W. Fingerhut: Discussing the various ways in which gay and lesbian parents have children).
- Tr. 583:12-585:21 (Peplau: Discussing a large and well-respected body of research that shows same-sex relationships are similar to opposite-sex relationships. The research shows “great similarity across couples, both same-sex and heterosexual.”).
- Tr. 592:4-593:9 (Peplau: Explaining that the same processes or dynamics at work in heterosexual relationships are also at work in same-sex relationships).
- Tr. 579:21-582:2 (Peplau: Describing the various ways in which the marriage relationship has a protection effect that benefits a family’s physical and psychological health).

- 1 • PX0781, PX0913, PX0937, PX0964, PX1171, PX1173, PX1250, PX1254,
2 PX1474 (Examples of studies and reports showing that there are physical and
3 psychological benefits associated with marriage for couples and their children).
- 4 • Tr. 594:13-20 (Peplau: “My opinion, based on the great similarities that have
5 been documented between same-sex and heterosexual couples, is th[at] if
6 same-sex couples were permitted to marry, that they also would enjoy the same
7 benefits.”).
- 8 • Tr. 599:12-19 (Peplau: Discussing the result of a survey of same-sex couples
9 who married in Massachusetts showing that 95 percent of same-sex couples
10 raising children thought that children had benefitted from the fact that their
11 parents were able to marry).
- 12 • PX1267 at 1 (Report on a survey of the experiences and impact of marriage on
13 same-sex couples in Massachusetts by Christopher Ramos, et al.: “Of those
14 [respondents] with children, nearly all respondents (93%) agreed or somewhat
15 agreed that their children are happier and better off as a result of their
16 marriage.”).
- 17 • Tr. 1331:3-5 (Badgett: “[M]y opinion is that same-sex couples are very similar
18 to different-sex couples in most economic and demographic characteristics.”).
- 19 • Tr. 1332:19-1337:25 (Badgett: Same-sex couples and their children are denied
20 all of the economic benefits of marriage that are available to different-sex
21 couples.).
- 22 • Tr. 1964:17-1965:2 (Tam: It is important to children of same-sex couples that
23 their parents be able to marry.).
- 24 • *See also* evidence cited in support of PFFs 145, 260, 269, 278.

25 **3. Gay and Lesbian Californians Are Entitled to Equal Treatment in the 26 Workplace, Housing, and Public Accommodations**

27 PFF 74. The California Supreme Court has found that California’s “current policies and
28 conduct regarding homosexuality recognize that gay individuals are entitled to the
same legal rights and the same respect and dignity afforded all other individuals and
are protected from discrimination on the basis of their sexual orientation.” *In re
Marriage Cases*, 183 P.3d 384, 428 (Cal. 2008).

- *In re Marriage Cases*, 183 P.3d 384, 428 (Cal. 2008).

1 PFF 75. The Unruh Civil Rights Act prohibits discrimination on the basis of sexual orientation
2 in the provision of services by any business establishment.

- 3 • Cal. Civ. Code § 51 (prohibiting discrimination based on sexual orientation).
- 4 • *In re Marriage Cases*, 183 P.3d 384, 428 n.46 (Cal. 2008) (discussing state
5 antidiscrimination provisions applicable to sexual orientation).

6 PFF 76. The California Government Code prohibits sexual orientation discrimination in
7 employment and housing. The California Government Code also prohibits
8 discrimination on the basis of sexual orientation in any program or activity that is
9 conducted, operated, or administered by the State or receives financial assistance from
10 the State.

- 11 • PX0710 at RFA No. 56 (Attorney General admits “that the law of the State of
12 California . . . forbids discrimination in, among other things, employment,
13 housing, education, and public accommodations on the basis of sex and sexual
14 orientation.”).
- 15 • Cal. Gov’t Code § 11135 (prohibiting discrimination by any program or
16 activity conducted, operated by, administered, or funded by the state or a state
17 agency on the grounds of, inter alia, sexual orientation); § 12920 (prohibiting
18 employment discrimination on the grounds of, inter alia, sexual orientation); §
19 12955 (prohibiting discrimination in housing accommodations).
- 20 • *In re Marriage Cases*, 183 P.3d 384, 428 n.46 (Cal. 2008) (discussing state
21 antidiscrimination provisions applicable to sexual orientation).

22 **C. *In re Marriage Cases***

23 PFF 77. On May 15, 2008, the California Supreme Court decided *In re Marriage Cases*, which
24 held that Family Code sections 300 and 308.5 were unconstitutional under the privacy,
25 due process, and equal protection guarantees of the California Constitution.

- 26 • *In re Marriage Cases*, 183 P.3d 384, 433-34, 452 (Cal. 2008) (holding that
27 same-sex couples have the right to marry under article I, sections 1 and 7 of the
28 California Constitution and under the state’s equal protection clause).

PFF 78. The California Supreme Court found that “[t]he ability of an individual to join in a
committed, long-term, officially recognized family relationship with the person of his

1 or her choice is often of crucial significance to the individual's happiness and well-
2 being." *In re Marriage Cases*, 183 P.3d 384, 424 (Cal. 2008).

3 • *In re Marriage Cases*, 183 P.3d 384, 424 (Cal. 2008).

4 PFF 79. The California Supreme Court also found that "[t]he state's current policies and
5 conduct regarding homosexuality recognize that gay individuals are entitled to the
6 same legal rights and the same respect and dignity afforded all other individuals and
7 are protected from discrimination on the basis of their sexual orientation, and, more
8 specifically, recognize that gay individuals are fully capable of entering into the kind
9 of loving and enduring committed relationships that may serve as the foundation of a
10 family and of responsibly caring for and raising children." *In re Marriage Cases*, 183
11 P.3d 384, 428 (Cal. 2008).

12 • *In re Marriage Cases*, 183 P.3d 384, 428 (Cal. 2008).

13 • PX0707 at RFA No. 58 (Proponents admit "that many gay men and lesbians
14 have established loving and committed relationships.").

15 PFF 80. The California Supreme Court further found that "[i]n light of the fundamental nature
16 of the substantive rights embodied in the right to marry—and their central importance
17 to an individual's opportunity to live a happy, meaningful, and satisfying life as a full
18 member of society—the California Constitution properly must be interpreted to
19 guarantee this basic civil right to *all* individuals and couples, without regard to their
20 sexual orientation." *In re Marriage Cases*, 183 P.3d 384, 427 (Cal. 2008) (emphasis
21 in original).

22 • *In re Marriage Cases*, 183 P.3d 384, 427 (Cal. 2008).

23 PFF 81. The California Supreme Court similarly found that "[b]ecause a person's sexual
24 orientation is so integral an aspect of one's identity, it is not appropriate to require a
25 person to repudiate or change his or her sexual orientation in order to avoid
26 discriminatory treatment." *In re Marriage Cases*, 183 P.3d 384, 442 (Cal. 2008).

- *In re Marriage Cases*, 183 P.3d 384, 442 (Cal. 2008).

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2 PFF 82. The California Supreme Court also found that “because of the long and celebrated
3 history of the term ‘marriage’ and the widespread understanding that this term
4 describes a union unreservedly approved and favored by the community, there clearly
5 is a considerable and undeniable symbolic importance to this designation.” *In re*
6 *Marriage Cases*, 183 P.3d 384, 445 (Cal. 2008).

- *In re Marriage Cases*, 183 P.3d 384, 445 (Cal. 2008).

7
8 PFF 83. In addition, the California Supreme Court found that creating a separate domestic
9 partnership regime for same-sex couples “perpetuat[ed] a more general premise . . .
10 that gay individuals and same-sex couples are in some respects ‘second-class citizens’
11 who may, under the law, be treated differently from, and less favorably than,
12 heterosexual individuals or opposite-sex couples.” *In re Marriage Cases*, 183 P.3d
13 384, 402 (Cal. 2008).

- *In re Marriage Cases*, 183 P.3d 384, 402 (Cal. 2008).

14
15 PFF 84. The California Supreme Court also found that classifications based on sexual
16 orientation are entitled to heightened scrutiny under California law. *In re Marriage*
17 *Cases*, 183 P.3d 384, 442 (Cal. 2008).

- *In re Marriage Cases*, 183 P.3d 384, 442 (Cal. 2008).

18
19 PFF 85. As a result of the *In re Marriage Cases* ruling, California’s statutory exclusion of gay
20 and lesbian individuals from civil marriage was invalidated, same-sex couples were
21 permitted to marry in the State, and marriages of same-sex couples began on or about
22 June 16, 2008. Approximately 18,000 marriages of same-sex couples were performed
23 prior to November 5, 2008.

- PX0710 at RFA No. 46 (Attorney General admits “that under California law, before the adoption of Proposition 8, gay men and lesbians had a constitutional right to civil marriage.”).

- PX0710 at RFA No. 63 (Attorney General admits “that approximately 18,000 same-sex civil marriages were solemnized in California between May 15 and November 5, 2008.”).
- *Strauss v. Horton*, 207 P.3d 48, 59 (Cal. 2009) (Noting that the California Supreme Court would have to consider, in part, what effect Proposition 8 had on the approximately 18,000 marriages performed during the period in which marriage between people of the same sex was legal).
- *Strauss v. Horton*, 207 P.3d 48, 122 (Cal. 2009) (Upholding the existing 18,000 marriages by gay and lesbian couples and thereby creating three classes of citizens in California).
- Tr. 1338:20-22; 1469:10-17; PX 1271 at app. tbl. 2 (Report by Gary J. Gates: Stating that approximately 18,000 same-sex couples have gotten married in California).
- PX0710 at RFA No. 62 (Attorney General admits “that neither Proposition 8 nor any other law changed the legal legitimacy or status of same-sex civil marriages that were solemnized in California between May 15, 2008 and November 5, 2008.”).
- Cal. Fam. Code § 308 (providing for the recognition of marriages by gay and lesbian couples contracted outside California under certain circumstances).

D. The Prop. 8 Campaign and Passage

PFF 86. On June 2, 2008, the Secretary of State declared that Prop. 8 could be placed on the ballot.

- *Strauss v. Horton*, 207 P.3d 48, 68 (Cal. 2009) (“On June 2, 2008, the Secretary of State certified that Proposition 8 had obtained a sufficient number of valid signatures to appear on the November 4, 2008 general election ballot.”).
- PX0507 at ¶ 21 (Decl. of Hak-Shing William Tam in Supp. of Proposed Intervenor’s Mot. to Intervene: “On June 2, 2008, because of my capacity as an Official Proponent, the Secretary of State notified me that the county-elections officials had verified the requisite number of voter signatures and that Proposition 8 qualified for inclusion on the November 2008 ballot.”).

PFF 87. The Prop. 8 measure was titled: “Eliminates Rights of Same-Sex Couples to Marry. Initiative Constitutional Amendment.”

- PX0001 at 9 (California Voter Guide).

- 1 PFF 88. The General Election Voter Information Guide stated that Prop. 8 would “[c]hange[]
2 the California Constitution to eliminate the right of same-sex couples to marry in
3 California.”
- 4 • PX0001 at 9 (California Voter Information Guide: “Changes California
5 Constitution to eliminate the right of same-sex couples to marry.”).
 - 6 • PX0710 at RFA No. 49 (Attorney General admits that according to the official
7 General Election Voter Information Guide, Prop. 8 “[c]hange[d] the California
8 Constitution to eliminate the right of same-sex couples to marry in
9 California.”).
- 9 PFF 89. On November 4, 2008, California voters passed Prop. 8 by a margin of approximately
10 52.3% to 47.7%.
- 11 • Cal. Sec’y of State, Votes For and Against November 4, 2008 State Ballot
12 Measures, *available at*
13 http://www.sos.ca.gov/elections/sov/2008_general/7_votes_for_against.pdf
(7,001,084 people voted for Prop. 8, and 6,401,482 voted against).
 - 14 • *Strauss v. Horton*, 207 P.3d 48, 68 (Cal. 2009) (“At that election, Proposition 8
15 was approved by a majority (52.3 percent) of the voters casting votes on the
16 proposition.”).
 - 17 • PX0707 at RFA No. 33, PX0710 at RFA No. 33, PX0709 at RFA No. 33
(Proponents, Attorney General, and Administrations admissions that Prop. 8
18 was approved by 52.3% of the voters casting votes on the proposition).
- 19 PFF 90. Prop. 8 does not purport to, and does not, change or alter any holding in *In re*
20 *Marriage Cases* that heightened scrutiny applies to classifications based on sexual
21 orientation.
- 22 • *Strauss v. Horton*, 207 P.3d 48, 61 (Cal. 2009) (holding that Proposition 8 did
23 not “fundamentally alter the meaning and substance of state constitutional
24 equal protection principles” but rather “carve[d] out a narrow and limited
25 exception”) (italics omitted).
- 26 PFF 91. Prop. 8 added the following text to the Constitution of California: “Only marriage
27 between a man and a woman is valid or recognized in California.”
- 28 • Cal. Const. art. I, § 7.5 (“Only marriage between a man and a woman is valid
or recognized in California.”).

1 PFF 92. In their Politics Magazine article, Frank Schubert and Jeff Flint attributed the success
 2 of their campaign to their message that marriage between individuals of the same sex
 3 would threaten “religious freedom” and “individual freedom of expression,” and
 4 would result in the forced teaching of gay marriage in public schools. They also
 5 claimed that their “ability to organize a massive volunteer effort through religious
 6 denominations gave [them] a huge advantage.”

- 7 • PX0577 at 45-56 (Article by Frank Schubert and Jeff Flint in *Politics*
 8 *Magazine*: “We settled on three broad areas where this conflict of rights was
 9 most likely to occur: in the area of religious freedom, in the area of individual
 10 freedom of expression, and in how this new ‘fundamental right’ would be
 11 inculcated in young children through public schools.” “After blanketing the
 12 state with ‘Whether You Like It or Not,’ we focused our message on
 13 education.”); *see also id.* at 47 (Discussing the support of the religious
 14 community).

15 PFF 93. Prop. 8 went into effect on November 5, 2008, and since that date, same-sex couples
 16 have been denied marriage licenses.

- 17 • PX0710 at RFA No. 47 (Attorney General admits “that Proposition 8
 18 eliminated the right of same sex couples to marry.”).
- 19 • PX0728 at ¶ 36 (Attorney General’s Answer: “[A]dmits that absent an adverse
 20 judgment or entry of an injunction in this case, the Defendants (excepting the
 21 Attorney General) will have a legal obligation to enforce Proposition 8 to the
 22 extent that Proposition 8 is subject to enforcement by them, see Cal. Const.,
 23 art. III, § 3.5 [and] that the passage of Proposition 8 was in violation of the
 24 Fourteenth Amendment to the United States Constitution[.]”).
- 25 • PX0710 at RFA No. 64 (Attorney General admits “that if any of the same-sex
 26 civil marriages solemnized in California between May 15 and November 5,
 27 2008 end by reason of death or divorce, the individuals formerly in those
 28 marriages would not have the legal right to enter into another same sex civil
 marriage in California.”).
- Tr. 88:6-14 (Katami: Explaining that he and Zarrillo applied for a marriage
 license and were denied in May 2009).
- Tr. 157:9-158:5 (Perry: Describing their unsuccessful attempt to obtain a
 marriage license from the Alameda County Recorder’s Office in May, 2009).

1 PFF 94. To the extent that opponents of Prop. 8 used boycotts, protests, and picketing to
 2 express their opposition, such tactics are an acceptable exercise of their First
 3 Amendment rights and are often used by groups who lack power in the political
 4 process.

- 5 • *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 907 (1982) (“The boycott
 6 of white merchants at issue in this case took many forms. The boycott was
 7 launched at a meeting of a local branch of the NAACP attended by several
 8 hundred persons. Its acknowledged purpose was to secure compliance by both
 9 civic and business leaders with a lengthy list of demands for equality and racial
 10 justice. The boycott was supported by speeches and nonviolent picketing.
 11 Participants repeatedly encouraged others to join in its cause.”).
- 12 • *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 909 (1982) (“Speech itself
 13 also was used to further the aims of the boycott. Nonparticipants repeatedly
 14 were urged to join the common cause, both through public address and through
 15 personal solicitation. These elements of the boycott involve speech in its most
 16 direct form. In addition, names of boycott violators were read aloud at
 17 meetings at the First Baptist Church and published in a local black newspaper.
 18 Petitioners admittedly sought to persuade others to join the boycott through
 19 social pressure and the ‘threat’ of social ostracism. Speech does not lose its
 20 protected character, however, simply because it may embarrass others or
 21 coerce them into action.”).
- 22 • Tr. 1839:24-1840:2 (Segura: “[B]oycotts, protests, picketing are strategies
 23 used by people who are less powerful in the political systems, for whom
 24 traditional means of political action are less productive.”).

18 PFF 95. Supporters of Prop. 8 used threats and intimidation against opponents of Prop. 8, and
 19 credible witnesses testified to such incidents.

- 20 • Tr. 1219:24-1220:3, 1220:14-20 (Zia: “And when we would be out on the
 21 streets of San Francisco or in Oakland, handing out fliers, people would just
 22 come up to us and say, you know, ‘You dike.’ And excuse my language, Your
 23 Honor, but, ‘You fucking dike.’ Or, ‘You’re going to die and burn in hell.
 24 You’re an abomination.’ . . . And while we were handing out fliers, dozens of
 25 people, separate people in separate locations, separate times in different cities,
 26 would look at the flier, laugh, or just look at us, or say something with a—the
 27 most derisive kind of expression, and say, ‘No more people. With this, no
 28 more people. No more human race.’ That we, such abominations, would be
 the cause of the end of the human race.”).

- Tr. 1317:21-1318:6 (Sanders: “[S]omebody wrote [in] chalk, in front of my house, because we had a No On 8 sign out. That said, ‘God’s law. Vote Yes On 8.’”).

E. After Prop. 8, Whether Two People Can Marry Turns Entirely on Their Sex

PFF 96. Marrying a person of the opposite sex is not a realistic option for gay and lesbian individuals.

- PX0707 at RFA No. 9 (Proponents “admit that for many gay and lesbian individuals, marriage to an individual of the opposite sex is not a meaningful alternative.”).
- PX0710 at RFA No. 9 (Attorney General “admits that for gay men and lesbians, opposite sex marriage may not be a meaningful alternative to same-sex marriage to the extent that it would compel them to negate their sexual orientation and identity.”).
- Tr. 85:9-21 (Zarrillo: Explaining that he would not marry a person of the opposite sex: “I have no attraction, desire, to be with a member of the opposite sex.”).
- Tr. 2042:14-25 (Herek: While gay men and lesbians in California are permitted to marry, they are only permitted to marry a member of the opposite sex. For the vast majority of gay men and lesbians, that is not a realistic option. This is true because sexual orientation is about the relationships people form—it defines the universe of people with whom one is able to form the sort of intimate, committed relationship that would be the basis for marriage.).
- Tr. 2043:1-2044:10 (Herek: Some gay men and lesbians have married members of the opposite sex, but many of those marriages dissolve, and some of them experience considerable problems simply because one of the partners is gay or lesbian. A gay or lesbian person marrying a person of the opposite sex is likely to create a great deal of conflict and tension in the relationship.).

PFF 97. Prop. 8 discriminates against gay and lesbian individuals on the basis of their sex.

- Tr. 244:21-25 (Cott: “[T]he more symmetrical and gender-neutral spousal roles have become in fact, I would say, in the social world and certainly in the law, the more that the marriage between couples of the same sex seems perfectly capable of fulfilling the purposes of marriage.”).
- Tr. 248:15-19 (Cott: “There is no longer an expectation that the man-woman difference need found household, given that the sexual division of labor is no longer so pronounced in our society and isn’t, I hope, a founding feature of our economy and how economic benefit is created.”).

- Cal. Const. Art. I, § 7.5 (Proposition 8: Amending California Constitution to provide that “[o]nly marriage between a man and a woman is valid or recognized in California,” thereby prohibiting a man from marrying a person that a woman would be free to marry, and vice-versa).

- *See also* evidence cited in support of PFFs 52-58.

PFF 98. Under Prop. 8, whether two individuals can marry is directly based on the sex of those individuals involved. Under Prop. 8, a man is permitted to marry a woman where a woman would be prohibited from doing so, and vice-versa. The distinguishing characteristic is the sex of the people involved.

- Tr. 167:12-15 (Stier: “I would like to marry the person that I choose and that is Kris Perry. She is a woman. And according to California law right now, we can’t get married, and I want to get married.”).
- Cal. Const. Art. I, § 7.5 (Proposition 8).
- *See also* evidence cited in support of PFF 97.

F. *Strauss v. Horton*

PFF 99. On November 5, 2008, three separate suits were filed to invalidate Prop. 8, and they were consolidated into *Strauss v. Horton*, Nos. S168047, S168066, S168078. The main issue raised in *Strauss* was whether Prop. 8 constituted a revision to the California Constitution, as opposed to an amendment.

- *Strauss v. Horton*, 207 P.3d 48, 68-69 (Cal. 2009) (discussing procedural background and consolidation of the lawsuits); *id.* at 59 (discussing issues presented).

PFF 100. The California Supreme Court heard oral argument in *Strauss v. Horton* on March 5, 2009 and issued its ruling on May 26, 2009. That ruling upheld Prop. 8, but also upheld the 18,000 marriages of same-sex couples performed in California prior to the enactment of Prop. 8.

- *Strauss v. Horton*, 207 P.3d 48, 69 (Cal. 2009) (providing date of oral argument); *id.* at 122 (upholding the 18,000 marriages performed in California prior to the enactment of Prop. 8).

1 PFF 101. Proponents admit that if any marriages of same-sex couples currently recognized by
 2 the State of California as married end by reason of death or divorce, the gay and
 3 lesbian individuals in those marriages would not be allowed to remarry. The ruling in
 4 *Strauss v. Horton* therefore created a patchwork regulatory regime with respect to
 5 marriage in California that involves at least *five* categories of individuals: Those in
 6 opposite-sex couples, who are permitted to marry, and to remarry upon divorce; those
 7 who comprise the 18,000 same-sex couples who were married after the California
 8 Supreme Court’s decision in the *Marriage Cases* but before the enactment of Prop. 8,
 9 whose marriages remain valid but who are not permitted to remarry upon divorce; and
 10 those who are in unmarried same-sex couples, who are prohibited by Prop. 8 from
 11 marrying and restricted to the status of domestic partnership. In addition, California
 12 Family Code §§ 308(b) and (c), signed into law in 2009, creates two additional
 13 categories of individuals: those same-sex couples who entered into a valid marriage
 14 outside of California *before* November 5, 2008 are treated as married under California
 15 law, but are not permitted to remarry within the state upon divorce; and those same-
 16 sex couples who entered into a valid marriage outside of California *on or after*
 17 November 5, 2008 are granted the rights and responsibilities of marriage, but not the
 18 designation of “marriage” itself. In effect, there are now five types of relationships—
 19 and five classes of individuals—recognized under California law.

- 20 • PX0710 at RFA No. 47 (Attorney General admits “that Proposition 8
 21 eliminated the right of same sex couples to marry.”).
- 22 • *Strauss v. Horton*, 207 P.3d 48, 122 (Cal. 2009) (Upholding the 18,000
 23 marriages performed in California prior to the enactment of Proposition 8).
- 24 • PX0707 at RFA No. 64 (Proponents admit “that if the marriages of any of
 25 approximately 18,000 same-sex couples currently recognized by the State of
 26 California as married end by reason of death or divorce, the gay and lesbian
 27 individuals in those marriages would not be allowed to remarry.”).
- 28 • Cal. Fam. Code § 308 (Providing the legal designation of “marriage” for
 marriages by gay and lesbian couples contracted outside California prior to
 November 5, 2008, and all the rights and responsibilities—but not the

1 designation of marriage—for such marriages contracted outside California
2 *after* November 5, 2008).

3 **G. *Perry v. Schwarzenegger***

4 PFF 102. Plaintiffs filed their Complaint on May 22, 2009 and a Motion for Preliminary
5 Injunction on May 27, 2009. The Court denied Plaintiffs' Motion for Preliminary
6 Injunction on July 2, 2009.

- 7 • Doc # 1 (Complaint); Doc # 7 (Motion for Preliminary Injunction); Doc # 77
8 (Minute Entry describing motion hearing held on July 2, 2009).

9 PFF 103. Defendant-Intervenors Proposition 8 Proponents and ProtectMarriage filed a Motion
10 to Intervene on May 28, 2009, which was granted on July 2, 2009.

- 11 • Doc # 8 (Proponents' Motion to Intervene); Doc # 76 (Order granting same).

12 PFF 104. Plaintiff-Intervenor City and County of San Francisco filed a Motion to Intervene on
13 July 23, 2009, which was granted on August 19, 2009.

- 14 • Doc # 109 (City and County of San Francisco's Motion to Intervene); Doc #
15 160 (Minute Entry describing motion hearing held on August 19, 2009).

16 PFF 105. Proponents filed a Motion for Protective Order on September 15, 2009. The Court
17 denied, in part, Proponents' Motion for Protective Order on October 1, 2009 and
18 ordered Proponents to produce certain non-public documents relating to the Yes on 8
19 campaign.

- 20 • Doc # 187 (Proponents' Motion for Protective Order); Doc # 214 (Order
21 granting in part and denying in part same).

22 PFF 106. Proponents filed a Motion for Summary Judgment on September 9, 2009. The Court
23 denied the Motion on October 14, 2009.

- 24 • Doc # 172 (Proponents' Motion for Summary Judgment); Doc # 226 (Minute
25 Entry describing motion hearing held on October 14, 2009, reflecting the
26 denial of Proponents' Motion for Summary Judgment).

1 PFF 107. Proponents filed a Motion to Realign Defendant Edmund G. Brown, Jr., Attorney
 2 General of California, as a Plaintiff in this matter on October 2, 2009. The Court
 3 denied Proponents' Motion on December 23, 2009.

- 4 • Doc # 216 (Proponents' Motion to Realign Defendant Attorney General
 5 Edmund G. Brown); Doc # 319 (Order denying same).

6 **IV. The Denial of Marriage Rights Causes Plaintiffs and Other Gay and Lesbian Individuals
 7 Grievous Injuries and Drains the Public Fisc**

8 **A. Stigmatic Harm and Related Health Effects from Denial of Marriage to Same-
 9 Sex Couples**

10 PFF 108. Civil marriage is a deeply meaningful institution to individuals, families, communities,
 11 and the State of California. Enhanced by government recognition for so long, legal
 12 marriage is a symbol of privilege. The idea that marriage was a happy ending, the
 13 ultimate reward, the sign of adult belonging, and the definitive expression of love and
 14 commitment is deeply engrained in our society. Nothing has the same meaning,
 15 obligations, rights, and benefits except marriage itself. Moreover, marriage is a
 16 primary source of well-being for adults in the United States.

- 17 • DIX0956 at 6 (Blankenhorn, *Future of Marriage*): “*Marriage matters. It significantly influences individual and societal well-being.*”)
- 18 • Tr. 2790:5-9 (Blankenhorn: “When we say the word ‘marriage,’ it’s a big
 19 institution that performs a very large contribution to society and it’s much
 20 bigger, much more powerful and potent as a role in society than merely or only
 21 the enumeration of its legal incidents.”).
- 22 • Tr. 2839:4-10 (Blankenhorn: Characterizing marriage as a “public good” that
 23 “serves important public purposes, and marriage makes a distinctive
 24 contribution to society.”); *see also* DIX0956 at 203 (Blankenhorn, *Future of
 25 Marriage*).
- 26 • Tr. 2839:11-15 (Blankenhorn: Agreeing that “marriage is something that
 27 benefits both the participants in the marriage, the couple that are married, as
 28 well as any children that the couple may raise”); *see also* DIX0956 at 203
 (Blankenhorn, *Future of Marriage*).
- Tr. 202:2-203:0 (Cott: The ability to marry is a “basic civil right.” “[A]n ex-
 slave who had also been a Union soldier . . . declared, ‘The marriage covenant
 is the foundation of all our rights.’”).

- 1 • Tr. 207:9-208:6 (Cott: Describing the social meaning of marriage in our
2 culture; marriage has been the “happy ending to the romance.” Marriage “is
3 the principal happy ending in all of our romantic tales”; the “cultural polish on
4 marriage” is “as a destination to be gained by any couple who love one
5 another.”).
- 6 • Tr. 208:9-17 (Cott: “Q. Let me ask you this. How does the cultural value and
7 the meaning, social meaning of marriage, in your view, compare with the
8 social meaning of domestic partnerships and civil unions? A. I appreciate the
9 fact that several states have extended—maybe it’s many states now, have
10 extended most of the material rights and benefits of marriage to people who
11 have civil unions or domestic partnerships. But there really is no comparison,
12 in my historical view, because there is nothing that is like marriage except
13 marriage.”).
- 14 • Tr. 579:23-580:1 (Peplau: Marriage has a protective effect. “[T]here are
15 things associated with marriage that actually enhance and contribute to health;
16 things that people didn’t bring into the relationship, that they experience as a
17 result of being married.”).
- 18 • Tr. 580:20 (Peplau: “Marriage is a valued status in society.”).
- 19 • Tr. 580:6-581:6 (Peplau: Getting married signals a change in a person’s
20 identity that often leads to changes in a person’s behavior that can benefit
21 one’s physical and psychological health.).
- 22 • Tr. 581:7-11 (Peplau: “[T]here are often important ways in which spouses . . .
23 help each other, try to encourage each other to lead healthy lifestyles.”).
- 24 • Tr. 581:12-22 (Peplau: Getting married expands a person’s social networks to
25 his or her spouses’ family and friends who can assist the couple “through tough
26 times.”).
- 27 • Tr. 611:1-7 (Peplau: “I have great confidence that some of the things that
28 come from marriage, believing that you are part of the first class kind of
relationship in this country, that you are . . . in the status of relationships that
this society most values, most esteems, considers the most legitimate and the
most appropriate, undoubtedly has benefits that are not part of domestic
partnerships.”).
- Tr. 1342:14-1343:12 (Badgett: Some same-sex couples who might marry
would not register as domestic partners because they see domestic partnership
as second class status, value marriage because it is socially validated by the
community and dislike domestic partnership because it sounds too clinical.).
- Tr. 1471:1-1472:8 (Badgett: Same-sex couples value the social recognition of
marriage, and believe that the alternative status conveys a message of
inferiority.).

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- Tr. 1344:3-1348:13; PX1267 at 1 (Badgett: A study of married same-sex couples in Massachusetts, PX1267, indicated that almost 70% felt more accepted by their communities as a result of marriage.).
- Tr. 79:20-80:13 (Zarrillo: “[Paul Katami] is the love of my life. I love him probably more than I love myself. . . . And I want nothing more than to marry him. . . . The word ‘marriage’ has a special meaning. . . . I want to be able to share the joy and the happiness that my parents felt, my brother felt, my friends, my co-workers, my neighbors, of having the opportunity to be married. It’s the logical next step for us.”).
- Tr. 89:17-90:3 (Katami: “[M]arriage is so important because it solidifies the relationship”; “[H]aving a marriage would grow our relationship. It represents us to our community and to society.”).
- Tr. 1962:17-24 (Tam: “Because the name of ‘marriage’ is so important, especially for us parents to teach our kid kids, all right? . . . Everyone fantasize whom they will marry when they grow up.”).
- Tr. 2003:19-2004:3 (Tam: There were periods of American history when the law limited who Asian Americans could marry and that he would feel very aggrieved if he couldn’t marry the person he loved.).
- Tr. 1960:1-9 (Tam: Tam knows that “domestic partnerships are the same as marriage, except for the name,” but he still thinks that “just changing the name of domestic partnerships to marriage will have this enormous moral decay.”).
- PX0767, at 5 (Am. Psychol. Ass’n, Professional Association Policies: “[M]arriage is a basic human right and an individual personal choice.”).

PFF 109. Marriage brings with it many tangible legal rights, privileges, benefits, and obligations to the married individuals, and that it also confers significant intangible benefits to the married individuals.

- PX0707 at RFA Nos. 5, 6 (Proponents admit PFF 109 in its entirety).
- PX0710 at RFA Nos. 5, 6 (Attorney General admits PFF 109 in its entirety).
- PX0709 at RFA No. 5 (Administration admits “that California law confers certain legal rights, privileges, benefits, and obligations to married individuals”).
- PX0760 at 1 (Am. Psychoanalytic Ass’n. Position Paper on Gay Marriage: “Civil marriage provides a legal framework for the creation and dissolution of committed relationships; it socially sanctions a relationship, defining its legal

1 rights, benefits and responsibilities. Marriage thus functions as a stabilizing
2 force.”).

- 3 • Tr. 2839:4-10 (Blankenhorn: Marriage is a “public good” that “serves
4 important public purposes, and marriage makes a distinctive contribution to
5 society.”); *see also* DIX0956 at 203 (Blankenhorn, *Future of Marriage*).
- 6 • Tr. 2839:11-15 (Blankenhorn: Agreeing that “marriage is something that
7 benefits both the participants in the marriage, the couple that are married, as
8 well as any children that the couple may raise”); *see also* DIX0956 at 203
9 (Blankenhorn, *Future of Marriage*).
- 10 • Tr. 2790:5-9 (Blankenhorn: “When we say the word ‘marriage,’ it’s a big
11 institution that performs a very large contribution to society and it’s much
12 bigger, much more powerful and potent as a role in society than merely or only
13 the enumeration of its legal incidents.”).
- 14 • DIX0956 at 6 (Blankenhorn, *Future of Marriage*): “*Marriage matters*. It
15 significantly influences individual and societal well-being.”).
- 16 • PX2879 at 9 (*The Marriage Movement: A Statement of Principles* (2000):
17 “The public, legal side of marriage increases couples’ confidence that their
18 partnerships will last.”).
- 19 • PX2879 at 12 (*The Marriage Movement: A Statement of Principles* (2000):
20 “Married adults live longer, healthier, happier and more affluent lives than
21 adults who don’t marry or don’t stay married. This phenomenon is not simply
22 an artifact of selection; marriage itself makes adults better off, by offering
23 them greater emotional and financial support, wider and more integrated social
24 networks, important economies of scale, and productive boosts in earnings,
25 parenting capacity, and life management.”).
- 26 • PX2879 at 12 (*The Marriage Movement: A Statement of Principles* (2000):
27 “Marriage also helps to conserve wealth and expand social capital. At any
28 given level of income, married adults are less likely to experience financial
hardship. The longer people stay married, the more wealth they accumulate,
whereas length of cohabitation has no relationship to wealth accumulation.
Informal partners—who are not held by the wider society to be financially
responsible to one another—do not reap the same benefits as the legally
married.”).
- PX0886 (Am. Psychiatric Ass’n, Position Statement: Noting the benefits of
marriage for married adults and their children).
- PX1397 at 1 (U.S. General Accounting Office Report, Jan. 23, 2004:
Identifies “a total of 1,138 federal statutory provisions classified in the United
States Code in which marital status is a factor in determining or receiving
benefits, rights, and privileges”).

- 1 • Tr. 235:19-236:16 (Cott: “[I]n the 20th century, the federal government has
2 tended to use the institution of marriage and the marriage-based family as the
3 conduit for benefits of many sorts.”).
- 4 • PX1746 throughout, including at 2 (Nancy Cott, *Public Vows*: “Marriage
5 prescribes duties and dispenses privileges.”).
- 6 • Tr. 581:23-582:2 (Peplau: “[M]arriage can also lead to various kinds of
7 supports from government, to beneficial laws or being eligible for programs or
8 for health insurance through an employer.”).
- 9 • Tr. 1331:12-1337:2 (Badgett: Marriage confers numerous economic benefits
10 including greater specialization of labor, reduced transaction costs, health and
11 insurance benefits, stronger statement of commitment, greater validation and
12 social acceptance of the relationship and more positive workplace outcomes.
13 Some costs are not quantifiable, but are nevertheless substantial.).
- 14 • Tr. 1341:2-1342:13 (Badgett: Couples that would marry but would not enter
15 into a domestic partnership suffer tangible economic harm such as higher taxes
16 and limited access to health insurance. Not all of these costs are quantifiable,
17 but across the state there are millions of dollars of quantifiable costs to same-
18 sex couples that cannot marry.).
- 19 • PX2876 at 381 (Levine, *Alternative Kinship, Marriage, and Reproduction*,
20 Annual Review of Anthropology (2008): “[I]t is already clear that many gay
21 men and lesbian women are seeking formal recognition of their relationships as
22 marriages, and not only for pragmatic reasons, such as access to employer-paid
23 health care, rights to inheritance, or designations as next of kin in case of an
24 emergency. Hull (2006) argued that same-sex couples do so because marriage
25 is a powerful relationship model in American culture and because of the power
26 of law in American society to validate relationships—and thus to offer
27 recognition and social legitimacy to homosexual relationships.”).
- 28 • Tr. 1232:11-1237:22 (Zia: Zia explained that getting married has “made
changes in so many multitude of ways, tangible and intangible.” One of the
main benefits of her marriage is the way her family is relating to her and Lia.
Zia recounted that after her wedding ceremony, her niece said “Auntie Lia,
now you’re really my auntie.” And suddenly Lia’s family was able to say,
“Helen is my daughter-in-law.” To Zia, “in those most important moments in
our lives, marriage made it very clear that I was family, that we were family,
and where we stand.”).
- Tr. 179:5-18 (Stier: Explaining that being able to marry Perry would: “change
my life dramatically . . . I would feel more secure. I would feel more accepted.
I would feel more pride.”).

1 PFF 110. The word “marriage” has a unique meaning, and there is a significant symbolic
2 disparity between domestic partnership and marriage.

- 3 • PX0707 at RFA Nos. 4, 38 (Proponents admit PFF 110 in its entirety).
- 4 • PX0710 at RFA No. 38 (Attorney General admits “that there is a significant
5 symbolic disparity between domestic partnership and marriage.”).
- 6 • PX0767, at 6 (Am. Psychol. Ass’n, Professional Association Policies:
7 “[S]ame-sex couples who enter into a civil union are denied equal access to all
8 the benefits, rights, and privileges provided by federal law to married couples .
9 . . the benefits, rights, and privileges associated with domestic partnerships are
10 not universally available, are not equal to those associated with marriage, and
11 are rarely portable[.]”).
- 12 • DIX0956 at 6 (Blankenhorn, *Future of Marriage*): “*Marriage matters*. It
13 significantly influences individual and societal well-being.”).
- 14 • Tr. 2790:5-9 (Blankenhorn: “When we say the word ‘marriage,’ it’s a big
15 institution that performs a very large contribution to society and it’s much
16 bigger, much more powerful and potent as a role in society than merely or only
17 the enumeration of its legal incidents.”).
- 18 • Tr. 2839:4-10 (Blankenhorn: Characterizing marriage as a “public good” that
19 “serves important public purposes, and marriage makes a distinctive
20 contribution to society.”); *see also* DIX0956 at 203 (Blankenhorn, *Future of
21 Marriage*).
- 22 • Tr. 2839:11-15 (Blankenhorn: Agreeing that “marriage is something that
23 benefits both the participants in the marriage, the couple that are married, as
24 well as any children that the couple may raise”); *see also* DIX0956 at 203
25 (Blankenhorn, *Future of Marriage*).
- 26 • Tr. 2850:4-9 (Blankenhorn: Agreeing that “Same-sex marriage would signify
27 greater social acceptance of homosexual love and the worth and validity of
28 same-sex intimate relationships.”); *see also* DIX0956 at 203 (Blankenhorn,
Future of Marriage).
- PX2876 at 381 (Levine, *Alternative Kinship, Marriage, and Reproduction*,
Annual Review of Anthropology (2008): “[I]t is already clear that many gay
men and lesbian women are seeking formal recognition of their relationships as
marriages, and not only for pragmatic reasons, such as access to employer-paid
health care, rights to inheritance, or designations as next of kin in case of an
emergency. Hull (2006) argued that same-sex couples do so because marriage
is a powerful relationship model in American culture and because of the power
of law in American society to validate relationships—and thus to offer
recognition and social legitimacy to homosexual relationships.”).

- 1 • Tr. 208:9-209:3 (Cott: Explaining that, from a historical perspective, “[t]here
- 2 is nothing that is like marriage except marriage”).
- 3 • Tr. 225:4-7 (Cott: “[T]he fact that the state is involved in granting these kinds
- 4 of benefits and legitimacy to the marital family tends to lend a prestige, a status
- 5 to that institution that no informal marriage has ever approximated.”).
- 6 • Tr. 612:6-612:18 (Peplau: Scholars have suggested that marriage is an
- 7 enforceable trust; that is, “it enhances the likelihood that . . . commitments
- 8 will, in fact, be acted upon and be enforceable. . . . [P]eople associate with
- 9 marriage a degree of seriousness and sort of gravitas that leads them to take
- 10 those obligations seriously.”).
- 11 • Tr. 613:23-614:12 (Peplau: Discussing the symbolic disparity between
- 12 marriage and domestic partnerships; a domestic partnership is “not something
- 13 that is necessarily understood or recognized by other people in your
- 14 environment”).
- 15 • Tr. 659:8-15 (Peplau: As a result of the different social meanings of a
- 16 marriage and a domestic partnership, there is a greater degree of an enforceable
- 17 trust in a marriage than a domestic partnership.).
- 18 • Tr. 1225-1227:7 (Zia: Zia and her wife were registered as domestic partners in
- 19 San Francisco in 1993. Zia described the process as “anticlimactic. . . . It
- 20 didn’t feel like much at all. It wasn’t the kind of thing we sent notice out to
- 21 friends about, or sent invitations to a party or anything.”).
- 22 • Tr. 1233:11-25 (Zia: When Zia and her wife were just domestic partners,
- 23 nobody understood what it meant. They would tell people they were partners,
- 24 and people would ask them, “Partner in what business?” Even after they
- 25 explained that they were “partners in life,” people would still be bewildered
- 26 and ask “Do you mean life insurance?”).
- 27 • Tr. 1234:2-22 (Zia: When Zia and her wife were just domestic partners, her
- 28 family would struggle to describe their relationship. For example, Zia’s mom
- would just call Shigemura, “Helen’s friend.”).
- Tr. 1234:23-1237:22 (Zia: After they got married, people, including her
- family, now understood their relationship. Her mom now refers to Shigemura
- as her “daughter-in-law” and “people understand that.” Nobody has to ask for
- clarification.).
- PX0186 (YouTube Video of Sanders Support for Gay Marriage
- Announcement: Sanders said he signed a San Diego resolution supporting gay
- marriage because “I just could not bring myself to tell an entire group of
- people, in our community, they were less important, less worthy, or less
- deserving of the rights and responsibilities of marriage than anyone else,
- simply because of their sexual orientation.”).

- 1 • PX0186 (YouTube Video of Sanders Support for Gay Marriage
2 Announcement: “In the end, I couldn’t look any of them in the face and tell
3 them that their relationship, their very lives were any less meaningful than the
4 marriage I share with my wife Rana.”).
- 5 • Tr. 1281:1-1282:3 (Sanders: Sanders’ daughter Lisa entered into a domestic
6 partnership with her partner Meagan in July of 2009. Sanders said that there
7 was no celebration and that there was no notice that they were going to do so.
8 He just received a text from Lisa telling him that “they had got the DP taken
9 care of.”).
- 10 • Tr. 142:2-13 (Perry: When you are married, “you are honored and respected
11 by your family. Your children know what your relationship is. And when you
12 leave home and you go to work or you go out in the world, people know what
13 your relationship means.”).
- 14 • Tr. 153:4-155:5 (Perry: Stier and Perry completed documents to register as
15 domestic partners and mailed them in to the State. Perry views domestic
16 partnership as an agreement; it is not the same as marriage, which symbolizes
17 “maybe the most important decision you make an adult, who you choose [as
18 your spouse].”).
- 19 • Tr. 170:12-171:14 (Stier: To Stier, domestic partnership feels like a legal
20 agreement between two parties that spells out responsibilities and duties.
21 Nothing about domestic partnership indicates the love and commitment that
22 are inherent in marriage, and for Stier and Perry, “it doesn’t have anything to
23 do . . . with the nature of our relationship and the type of enduring relationship
24 we want it to be. It’s just a legal document.”).
- 25 • Tr. 172:6-21 (Stier: Marriage is about making a public commitment to the
26 world and to your spouse, to your family, parents, society, and community. It
27 is the way we tell them and each other that this is a lifetime commitment.
28 “And I have to say, having been married for 12 years and been in a domestic
partnership for 10 years, it’s different. It’s not the same. I want—I don’t want
to have to explain myself.”).
- Tr. 82:9-83:1 (Zarrillo: “Domestic partnership would relegate me to a level of
second class citizenship It’s giving me part of the pie, but not the whole
thing . . . [I]t doesn’t give due respect to the relationship that we have had for
almost nine years.”).
- Tr. 115:3-116:1 (Katami: Domestic partnerships “make[] you into a second,
third, and . . . fourth class citizen now that we actually recognize marriages
from other states. . . . None of our friends have ever said, ‘Hey, this is my
domestic partner.’”).

- Tr. 1960:1-9 (Tam: Knows that “domestic partnerships are the same as marriage, except for the name,” but he still thinks that “just changing the name of domestic partnerships to marriage will have this enormous moral decay.”).

PFF 111. Indeed, children aspire to be married, not to be domestic partners.

- Tr. 826:21-828:4 (Meyer: Domestic partnership does not eliminate the structural stigma of Prop. 8 because it does not provide the symbolic meaning or social meaning of marriage. Young children, for example, do not aspire to be domestic partners, but the word “marriage” is something that people aspire to. Marriage is a desirable and respected goal that, if you attain it, gives you pride and respect. Not only does domestic partnership not have a similar symbolic and social meaning, but Dr. Meyer does not know that it has any social meaning.).
- Tr. 1962:17-1963:8 (Tam: Tam gets “very very upset” about the idea of children fantasizing about marrying people of the same sex, but he is reassured by knowing that gay couples are not allowed to get married. This allows parents to explain to their children that gay couples can enter domestic partnerships, “but it is not ‘marriage.’” He is comforted because this difference is “something that is very easy for our children to understand.”).

PFF 112. There are meaningful differences in the actual practice of registered domestic partnerships, civil unions, and marriage. Marriage is a valued social institution, and married couples are treated differently than unmarried couples. Creating a separate institution of domestic partnership stigmatizes same-sex couples and sends a message of inferiority to these couples, their children, and lesbian and gay men generally. This stigma increases the likelihood that lesbians and gay men will experience discrimination and harassment in schools, employment, and other settings.

- Tr. 611:13-19 (Peplau: “[B]eing prevented by the government from being married is no different than other kinds of stigma and discrimination that have been studied, in terms of their impact on relationships.”).
- Tr. 1251:8-1252:6 (Zia: Although her 2004 marriage to Lia had been invalidated, Zia still believed that the marriage, as opposed to a domestic partnership, was significant: “it was really the difference, night and day, between being domestic partners and being married.” She explained that “we—for a brief moment in time we experienced a feeling of . . . what equality is, what—instead of having to go to the fountain that is just for gay and lesbian people, here we could go to the fountain that formerly said heterosexuals only. And we tasted the water that was sweeter there. And our families experienced that.”).

- 1 • Tr. 2058:2-24 (Herek: Ms. Zia’s testimony highlights that there is this sense of
2 feeling different. And one of the leading writers in the area of stigma has
3 characterized it as an “undesired differentness.” Ms. Zia’s testimony is an
4 illustration of how someone who is in a stigmatized group has that feeling of
5 being different in an undesired way. What she seems to be experiencing here
6 is that there was a brief time, in 2004, when she felt that difference had been
7 removed.).
- 8 • Tr. 1252:7-11 (Zia: Marriage brought their families together in a away “that
9 did not happen in the prior 11 years that we had been domestic partners.”).
- 10 • PX0186 (YouTube Video of Sanders Support for Gay Marriage
11 Announcement: “Two years ago I believed that civil unions were a fair
12 alternative, those beliefs, in my case, have changed. The concept of . . . a
13 separate but equal institution is not something I can support.”).
- 14 • Tr. 1280:24-1283:19 (Sanders: Describing how he learned of his daughter’s
15 domestic partnership when she texted him that “they had got the DP taken care
16 of” and how he had to ask her “What in the world is a DP?” He did not attend
17 because “I don’t think that’s really an exciting thing to do . . . to go to a state
18 or county building and watch someone fill out forms.” His daughter and her
19 partner did not send out announcements of their domestic partnership, and no
20 one congratulated him about it. When they later married in Vermont while on
21 a trip to the East Coast, he felt bad that it could not be in front of family and
22 friends, but even the attorney who took his deposition in this case
23 congratulated him when he told him his daughter had married. Sanders
24 testified that he did not feel domestic partnership was sufficient for his
25 daughter because she “deserves the same opportunity to have a wedding in
26 front of family and friends and co-workers. I believe she has—she should
27 have the same opportunity to have that recognized lawfully.”)
- 28 • Tr. 1276:10-13 (Sanders: One of reasons he signed resolution in support of
right to marry for same-sex couples in 2007 is that it was in the interest of
government. At the police department, he attempted to treat all communities
equally, and this was difficult for people who could not marry and could not
talk about their relationships and their families at work. On his view, “[a]ll of
those things . . . are important on the government’s side, because if government
tolerates discrimination against anyone for any reason, it becomes an excuse
for the public to do exactly the same thing.”).
- Tr. 1277:5-1279:7 (Sanders: Governmental discrimination can foster private
discrimination. With respect to the history of and recent anti-gay hate crimes
in San Diego: “I think that when a city, when leadership talks in disparaging
terms about people, or denies the rights that everybody else have, the
fundamental rights, then I think some people in the community feel
empowered to take action in hate crimes and in other ways.”).

- 1 • Tr. 82:16-83:1 (Zarrillo: “Domestic partnership would relegate me to a level
2 of second class citizenship It’s *giving* me part of the pie, but not the whole
3 thing. . . . [I]t doesn’t give due respect to the relationship that we have had for
4 almost nine years.”).
- 5 • Tr. 115:3-116:1 (Katami: Domestic partnerships “make[] you into a second,
6 third, and . . . fourth class citizen now that we actually recognize marriages
7 from other states. . . . None of our friends have ever said, ‘Hey, this is my
8 domestic partner.’”).
- 9 • Tr. 1962:17-1963:8 (Tam: Tam gets “very very upset” about the idea of
10 children fantasizing about marrying people of the same sex, but he is reassured
11 by knowing that gay couples are not allowed to get married. This allows
12 parents to explain to their children that gay couples can enter domestic
13 partnerships, “but it is not ‘marriage.’” He is comforted because this
14 difference is “something that is very easy for our children to understand.”).
- 15 • Tr. 1960:1-9 (Tam: Knows that “domestic partnerships are the same as
16 marriage, except for the name,” but he still thinks that “just changing the name
17 of domestic partnerships to marriage will have this enormous moral decay.”).
- 18 • Tr. 1964:17-1965:2 (Tam: It is important to children of same-sex couples that
19 their parents be able to marry.).
- 20 • Tr. 966:6-8 (Meyer: Domestic partnerships stigmatize gay and lesbian
21 individuals.).
- 22 • Tr. 964:1-3 (Meyer: Domestic partnerships reduce the value of same-sex
23 relationships.).
- 24 • Tr. 2044:11-19 (Herek: Gay men and lesbians can enter into same-sex
25 domestic partnerships, and domestic partnerships have virtually all of the same
26 rights and privileges as married couples.).
- 27 • Tr. 2044:20-2045:22 (Herek: But the difference between domestic
28 partnerships and marriage is more than simply a word. “[J]ust the fact that
we’re here today suggests that this is more than a word . . . clearly, [there is] a
great deal of strong feeling and emotion about the difference between marriage
and domestic partnerships.”).
- Tr. 2047:13-2048:13 (Herek: In 2004, California legislature enacted
legislation that increased the benefits and responsibilities associated with
domestic partnership, which would be effective in 2005. In the second-half of
2004, the California Secretary of State mailed a letter to all registered domestic
partners advising them of the changes and telling recipients to consider
whether to dissolve the partnership. Dr. Herek “find[s] it difficult to imagine
that if there were changes in tax laws that were going to affect married couples,
that you would have the state government sending letters to people suggesting

1 that they consider whether or not they want to get divorced before this new law
2 goes into effect. I think that—that letter just illustrates the way in which
3 domestic partnerships are viewed differently than marriage.”).

- 4 • PX2265 (Letter from Secretary of State, State of California to Registered
5 Domestic Partners: Explaining changes in law and suggesting that domestic
6 partners dissolve their partnership if they do not wish to be bound by the new
7 rights and responsibilities.).
- 8 • Tr. 2048:19-2049:8 (Herek: In fact, it appears that domestic partnerships in
9 California were dissolved after this letter was received. There was an increase
10 in dissolution of domestic partnerships in the end of 2004, and in December,
11 2004, just before the new law was set to take effect, “there was a huge spike in
12 the number of domestic partnerships that were dissolved in California,
13 presumably in anticipation of this new law, and perhaps in response to this
14 letter that was sent from the Secretary of State.”).
- 15 • PX0909/PX1263 at 15 (Study by Gary Gates, Lee Badgett and Deborah Ho:
16 Showing a dramatic spike in the number of dissolutions of domestic
17 partnerships in California in late 2004, going from 68 in May, to 99 in June, to
18 1188 in December 2004.).

19 PFF 113. The California Supreme Court has noted at least nine ways in which statutes
20 concerning marriage differ from corresponding statutes concerning domestic
21 partnerships.

- 22 • *In re Marriage Cases*, 183 P.3d 384, 416, n.24 (Cal. 2008).
- 23 • PX0710 at RFA No. 4 (Attorney General admits “that under California law, no
24 legal institution, legal status, or legal relationship offers the same meaning,
25 obligations, rights, and benefits as civil marriage”).

26 PFF 114. The public recognition that attends marriage, the legal obligations created by marriage,
27 and the emotional and tangible investments that spouses make in their joint
28 relationship serve as deterrents to relationship dissolution.

- 29 • Tr. 613:9-614:12 (Peplau: Marriage is an important barrier to the dissolution
30 of a relationship.).
- 31 • PX1245 at 413 (Review by Anne Peplau and Adam Fingerhut: “Marriage
32 would help couples feel closer and strengthen their relationships, in part by
33 creating structural barriers to relationship dissolution.”).

- 1 • Tr. 2045:23-2047:12 (Herek: Marriage encourages the stability of a
2 relationship, both in terms of the rewards offered, and also in terms of the
3 barriers to dissolution. When people are married, there are a number of
4 barriers that make it not an easy thing to dissolve the marriage. These are both
5 legal and social barriers. Domestic partnerships are not perceived the way that
6 marriage is in terms of those barriers.).
- 7 • PX0708 at RFA No. 87 (Proponents admit “that marriage between a man and a
8 woman can be a source of relationship stability and commitment, including by
9 creating barriers and constraints on dissolving the relationship”).
- 10 • PX0708 at RFA No. 85 (Proponents admit “that societal support is central to
11 the institution of marriage, and that marital relationships are typically entered
12 in the presence of family members, friends, and civil or religious authorities”).
- 13 • PX0710 at RFA No. 3 (Attorney General admits “that marriage is a public
14 expression of love and long-term commitment”).
- 15 • Tr. 2839:4-10 (Blankenhorn: Characterizing marriage as a “public good” that
16 “serves important public purposes, and marriage makes a distinctive
17 contribution to society”); *see also* DIX0956 at 203 (Blankenhorn, *Future of*
18 *Marriage*).
- 19 • Tr. 2839:11-15 (Blankenhorn: Agreeing that “marriage is something that
20 benefits both the participants in the marriage, the couple that are married, as
21 well as any children that the couple may raise”); *see also* DIX0956 at 203
22 (Blankenhorn, *Future of Marriage*).
- 23 • Tr. 2914:10-23 (Blankenhorn: Agreeing that one of the six dimensions of
24 marriage as described in *The Marriage Movement: A Statement of Principles*
25 (2000) [PX2879] is that “Marriage is a legal contract” and that this dimension
26 of marriage applies equally to marriage between a heterosexual couple or a gay
27 or lesbian couple).
- 28 • Tr. 2914:24-2915:5 (Blankenhorn: Agreeing that one of the six dimensions of
marriage as described in *The Marriage Movement: A Statement of Principles*
(2000) [PX2879] is that “Marriage is a financial partnership” and that this
dimension of marriage applies equally to marriage between a heterosexual
couple or a gay or lesbian couple).

PFF 115. Mr. Blankenhorn, one of Proponents’ experts, agreed that many positive outcomes would probably flow from allowing same-sex couples to marry, including that “a higher proportion of gays and lesbians would choose to enter into committed

relationships,” “more stability and . . . longer-lasting relationships for committed same-sex couples.”

- Tr. 2846:17-2853:10 (Blankenhorn: Listing possible positive consequences of permitting marriage by same-sex couples); *see also* DIX0956 at 203 (Blankenhorn, *Future of Marriage*).
- Tr. 2849:12-17 (Blankenhorn: Agreeing that “[e]xtending the right to marry to same-sex couples would probably mean that a higher proportion of gays and lesbians would choose to enter into committed relationships.”); *see also* DIX0956 at 203 (Blankenhorn, *Future of Marriage*).
- Tr. 2849:18-23 (Blankenhorn: Agreeing that “[s]ame-sex marriage would likely contribute to more stability and to longer-lasting relationships for committed same-sex couples.”); *see also* DIX0956 at 203 (Blankenhorn, *Future of Marriage*).
- Tr. 2849:24-2850:3 (Blankenhorn: Agreeing that “[s]ame-sex marriage might lead to less sexual promiscuity among lesbians and (perhaps especially) gay men.”); *see also* DIX0956 at 203 (Blankenhorn, *Future of Marriage*).
- Tr. 2850:4-9 (Blankenhorn: Agreeing that “[s]ame-sex marriage would signify greater social acceptance of homosexual love and the worth and validity of same-sex intimate relationships.”); *see also* DIX0956 at 203 (Blankenhorn, *Future of Marriage*).
- *See also* evidence cited in support of PFFs 109, 119.

PFF 116. Civil unions and domestic partnerships are not equivalent to the well-established and highly valued institution of marriage, and same-sex couples show a clear preference for marriage over civil unions and domestic partnerships. In California, same-sex couples are significantly less likely to enter into domestic partnerships than to enter into marriages because domestic partnerships do not offer the same dignity, respect, and stature as marriage.

- PX0909/PX1263 at 2 (Study by Gary Gates, Lee Badgett and Deborah Ho: “Same-sex couples prefer marriage over civil unions or domestic partnerships: While 37% of same-sex couples in Massachusetts married during the first year that marriage was offered, only 12% of same-sex couples have entered civil unions and 10% have entered domestic partnerships during the first year in which states have offered these forms of recognition.”).

- 1 • Tr. 1338:15-1338:25; 1469:10-1470:6 (Badgett: During the six months when
2 same-sex couples were permitted to marry in California, approximately 18,000
3 same-sex couples chose marriage, whereas only 2,000 same-sex couples chose
4 domestic partnerships.).
- 5 • Tr. 1339:9-1340:15; PX1263 (Badgett: Data of the take-up rate in states that
6 allow same-sex couples to marry and have a civil union or have a domestic
7 partnership indicate a clear preference for marriage.).
- 8 • Tr. 1342:14-1343:12 (Badgett: Some same-sex couples who might marry
9 would not register as domestic partners because they see domestic partnership
10 as second class status, value marriage because it is socially validated by the
11 community and dislike domestic partnership because it sounds too clinical.).
- 12 • PX0909/PX1263 at 1 (Study by Gary Gates, Lee Badgett and Deborah Ho:
13 “The data show that same-sex couples prefer marriage over civil unions or
14 domestic partnerships.”).
- 15 • Tr. 576:15-577:14 (Peplau: Discussing study by Gary Gates, Lee Badgett, and
16 Deborah Ho that found same-sex couples are “three times more likely to get
17 married than to enter into” domestic partnerships or civil unions).
- 18 • PX1273 at 58, 59, 60 (Badgett, *When Gay People Get Married: What Happens
19 When Societies Legalize Same-Sex Marriage*: “Many Dutch couples saw
20 marriage as better because it had an additional social meaning that registered
21 partnership, as a recent political invention, lacked.”; “In some places, the
22 cultural and political trappings of statuses that are not marriage send a very
23 clear message of difference and inferiority to gay and lesbian couples.” As the
24 California Supreme Court noted about the deficiencies in domestic partnership
25 in 2008: “when compared to marriage, domestic partnerships may become a
26 mark of second-class citizenship and are less understood socially. In practice,
27 these legal alternatives to marriage are limited because they do not map onto a
28 well-developed social institution that gives the act of marrying its social and
cultural meaning.”).
- PX1273 at 63 (Badgett, *When Gay People Get Married: What Happens When
Societies Legalize Same-Sex Marriage*: “Same-sex couples want their
relationships to be legally recognized and prefer the option closest to marriage.
Both same-sex couples and different-sex couples prefer marriage over other
legal forms.”).
- Tr. 82:9-85:8 (Zarrillo: “Domestic partnership would relegate me to a level of
second class citizenship . . . It’s giving me part of the pie, but not the whole
thing. . . . [I]t doesn’t give due respect to the relationship that we have had for
almost nine years.”).
- Tr. 115:3-116:1 (Katami: Domestic partnerships “make[] you into a second,
third, and . . . fourth class citizen now that we actually recognize marriages

1 from other states. . . . None of our friends have ever said, ‘Hey, this is my
2 domestic partner.’”).

- 3 • Tr. 2044:20-2045:22 (Herek: The difference between domestic partnerships
4 and marriage is more than simply a word. If we look at public opinion data,
5 for example, there is a sizable proportion of the public, both in California and
6 in the United States, who say that they are willing to let same-sex couples have
7 domestic partnerships or civil unions, but not marriage. This suggests a
8 distinction in the minds of a large number of Americans—it is not simply a
9 word. In addition, looking at the recent history of California, when it became
10 possible for same-sex couples to marry, thousands of them did. And many of
11 those were domestic partners. So, clearly, they thought there was something
12 different about being married. And “just the fact that we’re here today
13 suggests that this is more than a word . . . clearly, [there is] a great deal of
14 strong feeling and emotion about the difference between marriage and
15 domestic partnerships.”).
- 16 • Tr. 224:23-225:7 (Cott: “[T]he fact that the state is involved in granting these
17 kinds of benefits and legitimacy to the marital family tends to lend prestige, a
18 status to that institution that no informal marriage has ever approximated.”).
- 19 • PX1397 at 1 (U.S. General Accounting Office Report, Jan. 23, 2004:
20 Identifies “a total of 1,138 federal statutory provisions classified in the United
21 States Code in which marital status is a factor in determining or receiving
22 benefits, rights, and privileges”).
- 23 • PX0707 at RFA No. 4 (Proponents admit “that the word ‘marriage’ has a
24 unique meaning”).
- 25 • PX0707 at RFA No. 38 (Proponents admit “that there is a significant symbolic
26 disparity between domestic partnership and marriage”).
- 27 • PX0708 at RFA No. 86 (Proponents admit “that marriage and domestic
28 partnerships do not have identical social meaning”).
- PX0708 at RFA No. 100 (Proponents admit “that, for each year that marriage
and domestic partnership were available in the Netherlands, more same-sex
couples married than entered registered domestic partnerships”).
- PX0710 at RFA No. 4 (Attorney General admits “that under California law, no
legal institution, legal status, or legal relationship offers the same meaning,
obligations, rights, and benefits as civil marriage”).

PFF 117. Thousands of same-sex couples—including many who were already registered as
domestic partners—married in California during the months in 2008 when marriage
was a legal option for them, and many same-sex couples have traveled long distances

1 across state and national borders to legally marry. Survey data show that large
2 numbers of lesbian, gay, and bisexual Americans want to marry.

- 3 • Tr. 708:21-709:9 (Egan: “[A]round 5,100” marriage licenses issued to same-
4 sex couples in San Francisco during 2008 with some of those issued to couples
5 from other states and countries).
- 6 • PX0805 (Summary of marriage license appointments and actual marriage
7 licenses issued by the San Francisco County Clerk: 5,153 marriage licenses
8 issued to same-sex couples in 2008).
- 9 • PX1734 and PX1735 (List of marriage licenses issued to same-sex couples by
10 San Francisco County Clerk showing residence of each couple).
- 11 • PX0938 at 4 (Kaiser Fam. Found. Report: “More than one quarter (28%) of
12 lesbians, gays, and bisexuals report living with a partner as if they were
13 married, and almost three quarters (74%) say they would like to marry legally
14 someday.”).
- 15 • Tr. 575:10-22 (Peplau: Many lesbians and gay men feel the same way about
16 marriage as heterosexuals.).
- 17 • Tr. 602:22-603:3 (Peplau: If gays and lesbians were permitted to marry,
18 approximately 1-3% of all married couples in the U.S. would likely be same-
19 sex couples.).
- 20 • Tr. 1338:15-1338:25; 1469:10-1470:6 (Badgett: During the six months when
21 same-sex couples were permitted to marry in California, approximately 18,000
22 same-sex couples chose marriage whereas only 2,000 same-sex couples chose
23 domestic partnerships.).
- 24 • Tr. 1423:19-1424:4 (Badgett: Badgett used the data from the San Francisco
25 Clerk’s Office to estimate how many out of state couples travelled to
26 California to get married and estimated that there 3,746 out-of-state couples
27 married in California.).
- 28 • PX0909/PX1263 at 1 (Study by Gary Gates, Lee Badgett and Deborah Ho:
“The data show that same-sex couples prefer marriage over civil unions or
domestic partnerships.”).
- PX0909/PX1263 at 2 (Study by Gary Gates, Lee Badgett and Deborah Ho:
“While 37% of same-sex couples in Massachusetts married during the first
year that marriage was offered, only 12% of same-sex couples have entered
civil unions and 10% have entered domestic partnerships during the first year
in which states have offered these forms of recognition.”).

- 1 • PX1273 at 59, 60 (Badgett, *When Gay People Get Married: What Happens*
2 *When Societies Legalize Same-Sex Marriage*: “In some places, the cultural
3 and political trappings of statuses that are not marriage send a very clear
4 message of difference and inferiority to gay and lesbian couples.”; As the
5 California Supreme Court noted about the deficiencies in domestic partnership
6 in 2008: “when compared to marriage, domestic partnerships may become a
7 mark of second-class citizenship and are less understood socially. In practice,
8 these legal alternatives to marriage are limited because they do not map onto a
9 well-developed social institution that gives the act of marrying its social and
10 cultural meaning.”).
- 11 • PX1273 at 63 (Badgett, *When Gay People Get Married: What Happens When*
12 *Societies Legalize Same-Sex Marriage*: “Same-sex couples want their
13 relationships to be legally recognized and prefer the option closest to marriage.
14 Both same-sex couples and different-sex couples prefer marriage over other
15 legal forms.”).
- 16 • Tr. 1232:6-10 (Zia: Zia and Shigemura got married in June 2008 after the
17 California Supreme Court decision.).
- 18 • Tr. 1282:14-1283:14 (Sanders: Describing how his daughter and daughter in
19 law married in Vermont in December 2009 while on a trip to the East Coast,
20 and how he felt bad that it could not be in front of family and friends).
- 21 • Tr. 141:21-142:1 (Perry: Describing the reasons that she wants to marry
22 Sandy).
- 23 • Tr. 143:8-144:2 (Perry: Describing proposing to Sandy).
- 24 • Tr. 2044:20-2045:22 (Herek: The difference between domestic partnerships
25 and marriage is more than simply a word. Looking at the recent history of
26 California, when it became possible for same-sex couples to marry, thousands
27 of them did. And many of those were domestic partners. So, clearly, they
28 thought there was something different about being married.).
- DIX2647 (Proponents introduced DIX2647, which purports to contain data
reflecting monthly domestic partnership registrations in California for January
2000 through November 2009. During cross-examination of Badgett,
Proponents sought to elicit testimony that the fact that same-sex couples
registered partnerships during 20008, when they could marry, reflects that
same-sex couples do not necessarily prefer marriage (*see* Tr. 1393:2-1397:1),
but Badgett rejected that assumption, stating “I don’t know that some of those
of 18,000 couples who marriage didn’t also register a domestic partnership in
order to hedge their bets against the outcome of the election.” (Tr. 1396:15-
24.) Given Badgett’s testimony, and the reasonable possibility that many
same-sex couples were both marrying and registering as domestic partners
simultaneously, DIX2647 can in no way be read to establish that gays and
lesbians do not prefer marriage over domestic partnership.).

1 PFF 118. Marriage has considerable social meaning. Getting married has been seen as reaching
2 adulthood, as having grown up, and it is a very esteemed status. Indeed, the
3 individual's ability to consent to marriage is the mark of the free person and
4 possession of basic civil rights.

- 5 • PX0708 at RFA No. 86 (Proponents admit “that marriage and domestic
6 partnerships do not have identical social meaning”).
- 7 • PX0752 at 1 (Am. Psychoanalytic Ass’n, Position Statement: “[T]he
8 milestone of marriage moves a couple and its children into full citizenship in
9 American society.”).
- 10 • Tr. 2839:4-10 (Blankenhorn: Characterizing marriage as a “public good” that
11 “serves important public purposes, and marriage makes a distinctive
12 contribution to society.”); *see also* DIX0956 at 203 (Blankenhorn, *Future of*
13 *Marriage*).
- 14 • Tr. 2839:11-15 (Blankenhorn: Agreeing that “marriage is something that
15 benefits both the participants in the marriage, the couple that are married, as
16 well as any children that the couple may raise”); *see also* DIX0956 at 203
17 (Blankenhorn, *Future of Marriage*).
- 18 • Tr. 2790:5-9 (Blankenhorn: “When we say the word ‘marriage,’ it’s a big
19 institution that performs a very large contribution to society and it’s much
20 bigger, much more powerful and potent as a role in society than merely or only
21 the enumeration of its legal incidents.”).
- 22 • PX2876 at 381 (Levine, *Alternative Kinship, Marriage, and Reproduction*,
23 Annual Review of Anthropology (2008): “[I]t is already clear that many gay
24 men and lesbian women are seeking formal recognition of their relationships as
25 marriages, and not only for pragmatic reasons, such as access to employer-paid
26 health care, rights to inheritance, or designations as next of kin in case of an
27 emergency. Hull (2006) argued that same-sex couples do so because marriage
28 is a powerful relationship model in American culture and because of the power
of law in American society to validate relationships—and thus to offer
recognition and social legitimacy to homosexual relationships.”).
- Tr. 200:10-210:9 (Cott: Discusses the social meaning of marriage in our
nation).
- Tr. 205:1-12 (Cott: Emancipated slaves viewed marriage as a basic civil right
and assumed “that once they were legally married, that they could make valid
claims about their family rights.”).
- Tr. 311:3-6 (Cott: Marriage is “seen as a mark of adulthood, settling down.”).

- 1 • Tr. 202:2-203:9 (Cott: The ability to marry is a “basic civil right.” “[A]n ex-
2 slave who had also been a Union soldier . . . declared, “The marriage covenant
3 is the foundation of all our rights.””).
- 4 • PX1316 at 100 (Article by Laura F. Edwards: “Explaining to his troops the
5 implications of Virginia’s 1866 act legitimating slave marriages, [a black
6 corporal in the U.S. Colored Troops] maintained: ‘The Marriage Covenant is
7 at the foundation of all our rights. In slavery we could not have legalised
8 marriage: now we have it . . . and we shall be established as a people.’”).
- 9 • Tr. 227:21-24 (Cott: Being able to marry is a sign that one has “basic civil
10 rights and ability to consent.”).
- 11 • Tr. 574:24-575:2 (Peplau: “Americans are very enthusiastic about marriage.
12 Most Americans view marriage as one of the most important relationships in
13 their life. Many people view getting married as a very important life goal.”).
- 14 • Tr. 580:9-25 (Peplau: “getting married reflects a change in identity” and, for
15 many people, it means: “Now I’m an adult. Now I really need to be a kind of
16 mature, responsible person.”).
- 17 • Tr. 2791:12-14 (Blankenhorn: Acknowledging that “[i]t is discriminatory and
18 . . . morally wrong in my view, morally wrong to refuse to call two things that
19 are the same by the same name.”).
- 20 • Tr. 1342:14-1343:12 (Badgett: Some same-sex couples who might marry
21 would not register as domestic partners because they see domestic partnership
22 as second class status, value marriage because it is socially validated by the
23 community and dislike domestic partnership because it sounds too clinical.).
- 24 • Tr. 1471:1-1472:8 (Badgett: Badgett’s interviews with same-sex couples
25 indicate that couples value the social recognition of marriage that and couples
26 see marriage as more valuable than an alternative status.).
- 27 • Tr. 82:9-83:1 (Zarrillo: “Domestic partnership would relegate me to a level of
28 second class citizenship It’s giving me part of the pie, but not the whole
thing. . . . [I]t doesn’t give due respect to the relationship that we have had for
almost nine years.”).
- Tr. 115:3-116:1 (Katami: Domestic partnerships “make[] you into a second,
third, and . . . fourth class citizen now that we actually recognize marriages
from other states. . . . None of our friends have ever said, ‘Hey, this is my
domestic partner.’”).
- Tr. 2003:17-2004:3 (Tam: Tam acknowledging he would be “very aggrieved”
if he “couldn’t marry the person he loved” because of racial restrictions on
marriage).

1 PFF 119. Marriage correlates with a variety of measurable health and protective benefits that
 2 extend to children, women, and men. And many same-sex couples would benefit both
 3 physically and psychologically from marriage just as their heterosexual counterparts
 4 do.

- 5 • PX0752 at 2 (Am. Psychoanalytic Ass’n, Position Statement: “[T]he denial of
 6 [marriage] benefits has been demonstrated to have significant psychological
 7 and social impact on gay and lesbian couples and their families” and “research
 8 is now substantiating the benefit that accrues to married same-sex couples and
 9 their children.”).
- 10 • PX0760 at 3, 4 (Am. Psychoanalytic Ass’n, Position Paper on Gay Marriage:
 11 Noting the benefits of marriage to psychological and physical well-being, and
 12 the various levels of stress that same-sex couples are subjected to due to the
 13 lack of legal recognition of their relationships).
- 14 • PX0708 at RFA No. 84 (Proponents admit “that opposite-sex couples who are
 15 married experience, on average, less anxiety and depression and greater
 16 happiness and satisfaction with life than do non-married opposite-sex couples
 17 or persons not involved in an intimate relationship”).
- 18 • Tr. 578:2-10 (Peplau: “[T]he very consistent findings from [a very large body
 19 of research on the impact of marriage on health] are that, on average, married
 20 individuals fare better. They are physically healthier. They tend to live longer.
 21 They engage in fewer risky behaviors. They look better on measures of
 22 psychological well-being.”).
- 23 • Tr. 578:11-579:9 (Peplau: A recent, large-scale study by the CDC found that
 24 married individuals, on average, fare better on “virtually every measure” of
 25 health compared to non-married individuals.).
- 26 • PX1043 at 1 (CDC Report by Charlotte A. Shoenborn: “Regardless of
 27 population subgroup (age, sex, race, Hispanic origin, education, income, or
 28 nativity) or health indicator (fair or poor health, limitations in activities, low
 back pain, headaches, serious psychological distress, smoking, or leisure-time
 physical inactivity), married adults were generally found to be healthier than
 adults in other marital status categories.”).
- PX0781, PX0913, PX0937, PX0964, PX1171, PX1173, PX1250, PX1254,
 PX1474 (Examples of studies and reports that are consistent with a well-
 established body of research showing that there are physical and psychological
 benefits associated with marriage for couples and their children).
- Tr. 594:13-20 (Peplau: “My opinion, based on the great similarities that have
 been documented between same-sex couples and heterosexual couples, is th[at]

1 if same-sex couples were permitted to marry, that they also would enjoy the
2 same benefits.”).

- 3 • PX0959 (Study by Christopher Ramos, Naomi G. Goldberg, and Lee Badgett:
4 Examines survey data collected by the Massachusetts Department of Health on
5 the effects of marriage equality in that state on couples and their children).
- 6 • Tr. 598:1-599:19 (Peplau: Married same-sex couples in Massachusetts have
7 reported various benefits from marriage including greater commitment to the
8 relationship, more acceptance from extended family, less worry over legal
9 problems, greater access to health benefits, and benefits for their children.).
- 10 • Tr. 688:10-12 (Egan: “[M]arried individuals are healthier, on average, and in
11 particular, behave themselves in healthier ways than single individuals.”).
- 12 • Tr. 691:24-692:1 (Egan: “[L]egalizing same-sex marriage would ultimately
13 increase the number of people who had health insurance in San Francisco.”).
- 14 • Tr. 697:21-25 (Egan: Explaining that companies typically will offer some
15 benefits to married partners but will not necessarily offer those benefits to
16 domestic partners).
- 17 • PX0803 (California Health Interview Survey data illustrating that married
18 individuals are less likely to have psychological distress than individuals who
19 are single and never married, divorced, separated, widowed or living with their
20 partner).
- 21 • PX0807 (U.S. Department of Health and Human Services Agency for
22 Healthcare Research and Quality report stating that marriage encourages
23 healthy behaviors).
- 24 • PX0809 (RAND report on relationship between marriage, assets and savings
25 outlining correlation between marriage and wealth accumulation).
- 26 • Tr. 2839:4-10 (Blankenhorn: Characterizing marriage as a “public good” that
27 “serves important public purposes, and marriage makes a distinctive
28 contribution to society.”); *see also* DIX0956 at 203 (Blankenhorn, *Future of
Marriage*).
- Tr. 2839:11-15 (Blankenhorn: Agreeing that “marriage is something that
benefits both the participants in the marriage, the couple that are married, as
well as any children that the couple may raise”); *see also* DIX0956 at 203
(Blankenhorn, *Future of Marriage*).
- PX2879 at 12 (Institute for American Values, “The Marriage Movement: A
Statement of Principles”: “Married adults live longer, healthier, happier, and
more affluent lives than adults who don’t marry or don’t stay married. This
phenomenon is not simply an artifact of selection; marriage itself makes adults

1 better off, by offering them greater emotional and financial support, wider and
2 more integrated social networks, important economies of scale, and productive
3 boosts in earnings, parenting capacity, and life management.”).

- 4 • Tr. 2849:6-11 (Blankenhorn: Agreeing that “Gay marriage would extend a
5 wide range of the natural and practical benefits of marriage to many lesbian
6 and gay couples and their children.”); *see also* DIX0956 at 203 (Blankenhorn,
7 *Future of Marriage*).
- 8 • Tr. 2849:12-17 (Blankenhorn: Agreeing that “Extending the right to marry to
9 same-sex couples would probably mean that a higher proportion of gays and
10 lesbians would choose to enter into committed relationships.”); *see also*
11 DIX0956 at 203 (Blankenhorn, *Future of Marriage*).
- 12 • Tr. 2849:18-23 (Blankenhorn: Agreeing that “Same-sex marriage would likely
13 contribute to more stability and to longer-lasting relationships for committed
14 same-sex couples.”); *see also* DIX0956 at 203 (Blankenhorn, *Future of*
15 *Marriage*).
- 16 • Tr. 2849:24-2850:3 (Blankenhorn: Agreeing that “Same-sex marriage might
17 lead to less sexual promiscuity among lesbians and (perhaps especially) gay
18 men.”); *see also* DIX0956 at 203 (Blankenhorn, *Future of Marriage*).
- 19 • Tr. 2850:4-9 (Blankenhorn: Agreeing that “Same-sex marriage would signify
20 greater social acceptance of homosexual love and the worth and validity of
21 same-sex intimate relationships.”); *see also* DIX0956 at 203 (Blankenhorn,
22 *Future of Marriage*).
- 23 • Tr. 2850:10-19 (Blankenhorn: Agreeing that “Gay marriage would be a
24 victory for the worthy ideas of tolerance and inclusion. It would likely
25 decrease the number of those in society who tend to viewed warily as ‘other’
26 and increase the number who are accepted as part of ‘us.’ In that respect, gay
27 marriage would be a victory for, and another key expansion of, the American
28 idea.”); *see also* DIX0956 at 203 (Blankenhorn, *Future of Marriage*).
- Tr. 2851:5-18 (Blankenhorn: Agreeing that “Because marriage is a wealth-
creating institution, extending marriage rights to same-sex couples would
probably increase wealth accumulation and lead to higher living standards for
these couples, as well as help reduce welfare costs (by promoting family
economic self-sufficiency) and decrease economic inequality.”); *see also*
DIX0956 at 203-04 (Blankenhorn, *Future of Marriage*).
- Tr. 2852:18-22 (Blankenhorn: Agreeing that “Adopting same-sex marriage
would likely be accompanied by a wide-ranging and potentially valuable
national discussion of marriage’s benefits, status and future.”); *see also*
DIX0956 at 205 (Blankenhorn, *Future of Marriage*).

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- Tr. 2921:6-8 (Blankenhorn: “[M]any scholarly associations, the leadership groups, as a policy matter have endorsed same-sex marriage.”).
- PX0787 at 1 (Am. Psychiatric Ass’n, Position Statement on Support of Legal Recognition of Same-Sex Civil Marriage: “In the interest of maintaining and promoting mental health, the American Psychiatric Association supports the legal recognition of same-sex civil marriage with all rights, benefits, and responsibilities conferred by civil marriage, and opposes restrictions to those same rights, benefits, and responsibilities.”).
- Tr. 1344:3-1348:13; PX1267 (Badgett: A study of same-sex couples that got married in Massachusetts, PX1267, indicated that 72% of respondents felt more committed to their partners as a result of marrying, almost 70% felt more accepted by their communities and 93% of respondents with children thought that their children were happier and better off as a result of their marriage.).
- Tr. 1332:19-1337:2 (Badgett: Marriage confers numerous economic benefits including greater specialization of labor, reduced transaction costs, health and insurance benefits, stronger statement of commitment, greater validation and social acceptance of the relationship and more positive workplace outcomes. Some costs are not quantifiable, but are nevertheless substantial.).
- Tr. 1350:3-9; PX0189 at 1 (Badgett: The American Medical Association concluded that denying the same-sex couples the right to marry reduces access to health insurance and creates healthcare disparities among children.).
- Tr. 2050:1-19 (Herek: A study conducted by the Massachusetts Department of Public Health asked questions of same-sex married couples regarding their experience and impressions of their marriage, and it found that in excess of 70% of couples said that as a result of getting married, they felt that their commitment to their relationship had strengthened.).

PFF 120. Laws are perhaps the strongest of social structures that uphold and enforce stigma.

Laws can be understood as a form of structural stigma.

- Tr. 819:10-12 (Meyer: Structural stigma refers to “the origins of the stigma and the mechanisms that maintain and enact stigma.”).
- Tr. 820:7-19 (Meyer: Structural stigmas determine the access that people have to resources and desired goals.).
- Tr. 972:14-17 (Meyer: “Laws are perhaps the strongest of social structures that uphold and enforce stigma.”).
- Tr. 2053:8-18 (Herek: Structural stigma provides the context and identifies which members of society are devalued. It also gives a level of permission to

1 denigrate or attack particular groups, or those who are perceived to be
2 members of certain groups in society.).

- 3 • Tr. 819:17-820:6 (Meyer: Laws play a major role in determining access of
4 citizens to resources—they may block or foster such access. For example, the
5 law has a role in determining who can access the institution of marriage.).
- 6 • Tr. 2051:9-2052:1 (Herek: Stigma is also manifested in the institutions of
7 society. And “a good example of structural stigma is the law, the legal
8 institutions that designate certain groups as lacking resources relative to
9 others.”).

10 PFF 121. Prop. 8 is a part of the structural stigma—it reflects and propagates the stigma that gay
11 and lesbian individuals do not have intimate relations similar to those that
12 heterosexual couples have. Prop. 8 conveys the State’s judgment that a same-sex
13 couple possesses an “undesired differentness” and is inherently less deserving of
14 society’s full recognition through the status of civil marriage than are heterosexual
15 couples. This according of disadvantaged status to the members of one group relative
16 to another is the crux of stigma, and the distinction between same-sex and different-
17 sex couples is stigmatizing even when same-sex couples are granted most of the legal
18 benefits and obligations conferred by marriage through domestic partnerships.
19 Irrespective of such benefits, the “differentness” of domestic partnerships, compared
20 to the historic and highly respected designation of “marriage,” is evident. And the
21 exclusion of gay and lesbian individuals from the institution of civil marriage
22 necessarily relegates them to second-class status—Prop. 8, in effect, communicates the
23 official view that same-sex couples’ committed relationships are of a lesser stature
24 than the comparable relationships of opposite-sex couples.

- 25 • Tr. 2054:7-11 (Herek: Prop. 8 is an instance of structural stigma by definition.
26 It is part of the legal system, and it differentiates people in same-sex
27 relationships from people in heterosexual relationships.).
- 28 • Tr. 825:25-826:20 (Meyer: Prop. 8 denies gay men and lesbians access to the
institution of marriage in California. It is a form of structural stigma. Indeed,
a Constitutional provision such as Prop. 8 is a very strong instance of the social
structures that define stigma in our society. It can be thought of as a gate that
blocks access to a particular institution or towards attaining a particular goal.

1 Prop. 8 tells gay men and lesbians that they cannot achieve this particular
2 goal—marriage.).

- 3 • PX0752 at 2 (Am. Psychoanalytic Ass’n, Position Statement: “[S]ame-sex
4 couples and their children are adversely affected by [existing] discriminatory
5 marriage laws.”).
- 6 • PX0760 at 1, 4 (Am. Psychoanalytic Ass’n, Position Paper on Gay Marriage:
7 Discriminatory marriage laws adversely affect the children of same-sex
8 couples by stigmatizing those children and making them less financially
9 secure).
- 10 • PX2876 at 381 (Levine, *Alternative Kinship, Marriage, and Reproduction*,
11 Annual Review of Anthropology (2008): “[I]t is already clear that many gay
12 men and lesbian women are seeking formal recognition of their relationships as
13 marriages, and not only for pragmatic reasons, such as access to employer-paid
14 health care, rights to inheritance, or designations as next of kin in case of an
15 emergency. Hull (2006) argued that same-sex couples do so because marriage
16 is a powerful relationship model in American culture and because of the power
17 of law in American society to validate relationships—and thus to offer
18 recognition and social legitimacy to homosexual relationships.”).
- 19 • Tr. 230:8-14 (Cott: In the history of our country, restrictive marriage laws
20 have been used to create “second class” relationships that stigmatize particular
21 groups.).
- 22 • Tr. 1342:14-1343:12 (Badgett: Some same-sex couples who might marry
23 would not register as domestic partners because individuals see domestic
24 partnership as second class status, view marriage as more socially validated by
25 the community and dislike domestic partnership because it sounds too
26 clinical.).
- 27 • Tr. 1471:1-1472:8 (Badgett: Badgett’s interviews with same-sex couples
28 indicate that couples value the social recognition of marriage, and believe that
the alternative status conveys a message of inferiority.).
- Tr. 854:5-22 (Meyer: This is demonstrated by Prop. 8, which “sends a
message that gay relationships are not to be respected; that they are of
secondary value, if of any value at all; that they are certainly not equal to those
of heterosexuals. . . . [So] in addition to achieving the literal aims of not
allowing gay people to marry, it also sends a strong message about the values
of the state; in this case, the Constitution itself. And it sends a message that
would, in [Dr. Meyer’s] mind, encourage or at least is consistent with holding
prejudicial attitudes. So that doesn’t add up to a very welcoming
environment.”).
- Tr. 846:22-847:12 (Meyer: Prop. 8 is certainly responsible for gay men and
lesbians not marrying. And when gay men and lesbians have to explain why

1 they are not married, they “have to explain, I’m really not seen as equal.
 2 I’m—my status is—is not respected by my state or by my country, by my
 3 fellow citizens.” Prop. 8 is a block in the way to achieving desirable goals in
 4 life.).

- 5 • PX0710 at RFA No. 40 (Attorney General admits “that the inability to marry
 6 relegates gay and lesbian relationships to second-class status”).
- 7 • PX0710 at RFA No. 37 (Attorney General admits “that establishing a separate
 8 legal institution for State recognition and support of lesbian and gay families,
 9 even if well-intentioned, marginalizes and stigmatizes gay families”).
- 10 • PX0710 at RFA No. 42 (Attorney General admits “that there has been a history
 11 of discrimination against gay and lesbian individuals. California’s creation of
 12 the alternative regime of domestic partnership was intended to, and may have,
 13 diminished anti-gay prejudice, but its continuation may reinforce anti-gay
 14 prejudice”).
- 15 • PX0728 at ¶ 27 (Attorney General’s Answer: “[A]dmits that the effect of
 16 passage of Proposition 8 was to overturn the decision of the California
 17 Supreme Court in *In re Marriage Cases*, by taking away the rights previously
 18 protected by the California Constitution to same-sex civil marriage in
 19 California . . . and admits that in doing so Proposition 8 imposed a special
 20 disability on gays and lesbians and their families on the basis of sexual
 21 orientation.”).
- 22 • PX0728 at ¶ 30 (Attorney General’s Answer: Admits “the inability to marry
 23 the person of their choice denies gays and lesbians, as well as their families,
 24 the personal and public affirmation that accompanies state-sanctioned civil
 25 marriage.”).
- 26 • Tr. 203:18-204:12 (Cott: In the infamous *Dred Scott* decision, Justice Taney
 27 relied on the fact that Dred Scott as a black man could not marry a white
 28 woman to support the Court’s view that Dred Scott was not a full citizen.).
- Tr. 236:17-237:8 (Cott: There are striking parallels between past marriage
 laws that prohibited certain inter-racial marriages and current laws that prohibit
 individuals from marrying a person of the same gender.).
- Tr. 1226:1-15 (Zia: To obtain a domestic partnership license, “[w]e came to
 City Hall. We went to a window that I would describe as a—it’s kind of all
 purpose postal window kind of thing, where I think they issued dog licenses as
 well as domestic partner licenses. . . . We walked away with a little certificate,
 the kind that a kid gets for perfect attendance that week. . . . [I]t didn’t feel
 like much at all.”).
- Tr. 1226:18-1227:7 (Zia: To obtain a California domestic partnership license,
 “we downloaded the form from the Internet, filled it out, got it notarized and

1 mailed it in. . . We got another form back in the mail. And it said ‘You are
2 now domestic partners in the State of California.’ “ According to Zia, it was
3 “not an occasion to write home about.”).

- 4 • Tr. 1280:24-1283:19 (Sanders: Describing how he learned of his daughter’s
5 domestic partnership when she texted him that “they had got the DP taken care
6 of” and how he had to ask her “What in the world is a DP?” He did not attend
7 because “I don’t think that’s really an exciting thing to do . . . to go to a state or
8 county building and watch someone fill out forms.” His daughter and her
9 partner did not send out announcements of their domestic partnership, and no
10 one congratulated him about it. When they later married in Vermont while on
11 a trip to the East Coast he felt bad that it could not be in front of family and
12 friends, but even the attorney who took his deposition in this case
13 congratulated him when he told him his daughter had married. Sanders
14 testified that he did not feel domestic partnership was sufficient for his
15 daughter because she “deserves the same opportunity to have a wedding in
16 front of family and friends and co-workers. I believe she has—she should
17 have the same opportunity to have that recognized lawfully.”).
- 18 • Tr. 1274:7-1275:7 (Sanders: Recounted the depth of feeling and hurt of
19 members of the lesbian and gay community when he told them that he was
20 planning to veto the ordinance supporting marriage rights of gay and lesbian
21 individuals because he thought that civil unions were a fair alternative.).
- 22 • PX0186 (YouTube Video of Sanders 2007 Press Conference stating he would
23 sign the resolution in support of Gay Marriage: “I just could not bring myself
24 to tell an entire group of people in our community they were less important,
25 less worthy or less deserving of the rights and responsibilities of marriage than
26 anyone else simply because of their sexual orientation.” “In the end I couldn’t
27 look any of them in the face and tell them that their relationships, their very
28 lives, were any less meaningful than the marriage I share with my wife,
Rana.”).
- Tr. 151:20-24 (Perry: Describing an experience in which a passenger on a
plane assumes that she can take the seat that Perry had been saving for Stier
because Perry refers to Stier as her “partner.”).
- Tr. 174:3-175:4 (Stier: Describing the difficulty of explaining her relationship
to Perry because they are not married.).
- Tr. 142:7-16 (Perry: Describing why she wants to be married to Stier and that
viewing marriage, as an outsider, “what it looks like is that you are honored
and respected by your family. Your children know what your relationship is.
And when you leave your home and you go to work or you go out in the world,
people know what your relationship means. And so then everyone can, in a
sense, join in supporting your relationship.”).

- 1 • Tr. 82:16-83:1 (Zarrillo: “Domestic partnership would relegate me to a level
2 of second class citizenship, maybe even third class citizenship. . . . And that’s
3 not enough. . . . [W]e hold marriage in such high regard . . . [and domestic
4 partnership] doesn’t give due respect to the relationship that we have had for
5 almost nine years. Only a marriage could do that.”).
- 6 • Tr. 115:3-116:1 (Katami: Domestic partnerships “creat[e] a separate category
7 for us.” They “make[] you into a second, third, and . . . fourth class citizen
8 now that we actually recognize marriages from other states. . . . And when
9 your state sanctions something that segregates you, it fortifies people’s biases. .
10 . . . [A]s long as that we are sanctioned by our state to be told that we’re
11 different, regardless of how proud we want to be, regardless of how happy we
12 are in our pursuits, we’re still lacking.”).
- 13 • Tr. 1251:8-1252:6 (Zia: Although her 2004 marriage to Lia had been
14 invalidated, Zia still believed that the marriage, as opposed to a domestic
15 partnership, was significant: “it was really the difference, night and day,
16 between being domestic partners and being married.” She explained that
17 “we—for a brief moment in time we experienced a feeling of . . . what equality
18 is, what—instead of having to go to the fountain that is just for gay and lesbian
19 people, here we could go to the fountain that formerly said heterosexuals only.
20 And we tasted the water that was sweeter there. And our families experienced
21 that.”).
- 22 • Tr. 2058:2-24 (Herek: Ms. Zia’s testimony highlights that there is this sense of
23 feeling different. And one of the leading writers in the area of stigma has
24 characterized it as an “undesired differentness.” Ms. Zia’s testimony is an
25 illustration of how someone who is in a stigmatized group has that feeling of
26 being different in an undesired way. What she seems to be experiencing here
27 is that there was a brief time, in 2004, when she felt that difference had been
28 removed.).
- Tr. 1960:1-9 (Tam: Knows that “domestic partnerships are the same as
marriage, except for the name,” but he still thinks that “just changing the name
of domestic partnerships to marriage will have this enormous moral decay.”).
- Tr. 1962:17-1963:8 (Tam: Tam gets “very very upset” about the idea of
children fantasizing about marrying people of the same sex, but he is reassured
by knowing that gay couples are not allowed to get married. This allows
parents to explain to their children that gay couples can enter domestic
partnerships, “but it is not ‘marriage.’” He is comforted because this
difference is “something that is very easy for our children to understand.”).
- Tr. 1964:17-1965:2 (Tam: It is important to children of same-sex couples that
their parents be able to marry).
- *See also* evidence cited in support of PFFs 191, 285-296.

1 PFF 122. Prop. 8 thus sends a message to gay and lesbian individuals that they are not welcome
2 in California, and it endorses society's rejection of gay and lesbian relationships.

- 3 • Tr. 854:5-14 (Meyer: "Proposition 8, in its social meaning, sends a message
4 that gay relationships are not to be respected; that they are of secondary value,
5 if of any value at all; that they are certainly not equal to those of
6 heterosexuals.").
- 7 • Tr. 863:1-6 (Meyer: Prop. 8 is "not just damaging to gay people because they
8 feel bad about their rejection. It also sends a message that it is okay to reject.
9 Not only that it is okay, that this is very highly valued by our Constitution to
10 reject gay people, to designate them a different class of people in terms of their
11 intimate relationships.").
- 12 • Tr. 846:22-847:12 (Meyer: Prop. 8 is certainly responsible for gay men and
13 lesbians not marrying. And when gay men and lesbians have to explain why
14 they are not married, they "have to explain, I'm really not seen as equal.
15 I'm—my status is—is not respected by my state or by my country, by my
16 fellow citizens." Prop. 8 is a block in the way to achieving desirable goals in
17 life.).
- 18 • Tr. 854:5-22 (Meyer: This is demonstrated by Prop. 8, which "sends a
19 message that gay relationships are not to be respected; that they are of
20 secondary value, if of any value at all; that they are certainly not equal to those
21 of heterosexuals. . . . [So] in addition to achieving the literal aims of not
22 allowing gay people to marry, it also sends a strong message about the values
23 of the state; in this case, the Constitution itself. And it sends a message that
24 would, in [Dr. Meyer's] mind, encourage or at least is consistent with holding
25 prejudicial attitudes. So that doesn't add up to a very welcoming
26 environment.").
- 27 • Tr. 879:18-880:19 (Meyer: Research has shown that when people are exposed
28 to more stress, they fare worse than when they are exposed to less stress. A
Constitutional amendment that says to gay people "you are not welcome here"
has an effect, and the opposite message—"You are welcome here. Your
relationships are valued. You are valued. . . . We don't approve rejection of
you as a gay person as a state"—has a very significant power that would
improve lives.).

24 PFF 123. The widespread prejudice, discrimination, and violence to which lesbians and gay men
25 are often subjected are significant health concerns. Sexual prejudice, sexual
26 orientation discrimination, and antigay violence are major sources of stress for lesbian,
27 gay, and bisexual people.

- 1 • Tr. 872:11-21 (Meyer: There have been pretty consistent findings in the
2 literature showing excess disorder in gay and lesbian populations as compared
3 to heterosexuals.).
- 4 • Tr. 873:21-874:9 (Meyer: Not all—or even most—gay men and lesbians
5 suffer from adverse mental health consequences. Most gay men and lesbians
6 are not disordered, but there is an excess in that population as compared to
7 heterosexuals.).
- 8 • Tr. 870:13-872:10 (Meyer: Stigma and minority stress have an impact or an
9 effect on mental health outcomes for gay men and lesbians. Research has
10 shown a strong relationship between those kinds of stressors and negative or
11 adverse health outcomes, such as anxiety disorders, mood disorders, substance
12 abuse disorders, and excess suicide attempts. Put another way, the excess
13 exposure or risk is associated with excess disease or disorder.).
- 14 • PX0767, at 6 (Am. Psychol. Ass’n, Professional Association Policies:
15 “[D]iscrimination and prejudice based on sexual orientation detrimentally
16 affect psychological, physical, social, and economic well-being.”).
- 17 • PX0752 at 3 (Am. Psychoanalytic Ass’n, Position Statement: “Years of
18 psychological research and experience have shown the extensive mental toll of
19 keeping one’s sexual orientation hidden.”).
- 20 • PX2547 (Nathanson 11/12/09 Dep. Tr. 82:09-82:23: Stating that studies of the
21 psychological effects of hostility on homosexuals have concluded uniformly
22 concluded that it has negative effects on gay and lesbian individuals).

17 PFF 124.

18 Stress can be defined as something that happens that requires a person to adapt to a
19 new situation, such as loss of a job. Minority stress, in turn, is the added or unique
20 stress to which gay, lesbian, and bisexual people are exposed. They are exposed to
21 this unique stress by virtue of their stigmatized status in society, and such exposure
22 increases the risk for mental disorders in gay and lesbian individuals as compared with
23 heterosexual individuals.

- 23 • Tr. 828:18-830:14 (Meyer: Stress refers to the kind of events and conditions
24 that happen to a person from the outside and that require the person to adapt or
25 adjust to the new situation. There are different types of stressors—they may be
26 acute or chronic, for example. There are also daily hassles and “nonevents.”).
- 27 • Tr. 832:3-9 (Meyer: Minority stress identifies sources of stress that stem from
28 social arrangements such as prejudice, stigma, and discrimination.).

- 1 • Tr. 834:6-20 (Meyer: The term “minority” in “minority stress” refers to sexual
2 minorities—gay men, lesbians, and bisexuals. Most of the processes are quite
3 specific to lesbians, gay men, and bisexuals.); *see also* Tr. 892:24-893:2.
- 4 • Tr. 870:13-872:10 (Meyer: Stigma and minority stress have an impact or an
5 effect on mental health outcomes for gay men and lesbians. Research has
6 shown a strong relationship between those kinds of stressors and negative or
7 adverse health outcomes, such as anxiety disorders, mood disorders, substance
8 abuse disorders, and excess suicide attempts. Put another way, the excess
9 exposure or risk is associated with excess disease or disorder.).
- 10 • Tr. 898:11-899:8 (Meyer: The lesbian, gay, and bisexual population has about
11 twice as many mental health disorders as heterosexuals, including mood,
12 anxiety, and substance use disorders. That population also suffers from a
13 higher prevalence of mood, anxiety, or substance abuse problems that do not
14 meet the criteria for a formal psychiatric disorder, but are nevertheless
15 indicative of stress. That population also has lower levels of well-being and
16 than heterosexuals, and there is a higher incidence of suicide attempts among
17 lesbian, gay, and bisexual individuals than among heterosexual individuals.)
- 18 • PX1003 (Article entitled “Prejudice, Social Stress, and Mental Health in
19 Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research
20 Evidence,” published in the Psychological Bulletin in 2003 by Dr. Meyer:
21 This article, published in a prestigious journal, best articulates Dr. Meyer’s
22 model of minority stress. It has been used by many other researchers as a
23 theoretical background for their own studies, and it has been used as a resource
24 for hundreds of other articles. The article reports a meta-analysis that Dr.
25 Meyer performed regarding the prevalence of mental disorders in lesbians, gay
26 men, and bisexuals, and it demonstrates that the prevalence of such disorders is
27 twice as high for lesbians, gay men, and bisexuals as it is for heterosexuals.
28 This article also sets forth the processes through which minority stress works,
including the experience of prejudice events, expectations of rejection, hiding
and concealing, and internalized homophobia.); *see also* Tr. 832:20-833:16.
- Tr. 975:9-981:13 (Meyer: That different rates of adverse mental health
outcomes may be seen for racial minorities, as opposed to sexual minorities,
has no bearing on the applicability of the minority stress theory to lesbians, gay
men, and bisexuals. This is true for many reasons, including that the
socialization process for racial minorities provides coping mechanisms that
sexual minorities do not obtain; that the minority stress theory is directed
towards sexual minorities, not racial minorities; and that many of the processes
through which the minority stress theory works are specific to sexual
minorities, such as concealment and internalized homophobia.).
- Tr. 982:18-983:17 (Meyer: Whether the minority stress theory applies to racial
minorities is interesting to study, but it does not lead Dr. Meyer to doubt its
applicability to sexual minorities.).

- Tr. 982:3-14 (Meyer: Though racism obviously still exists, racial minorities are not subjected to structural stigmas such as Prop. 8.).
- Tr. 700:23-701:7 (Egan: Explaining that the use of behavioral health services by gay and lesbian people in San Francisco is “disproportionately high” due in part to discrimination).

PFF 125. There are four pathways or processes through which minority stress manifests itself in the lives of sexual minorities (*i.e.*, gays, lesbians, and bisexuals): (1) prejudice events, (2) expectations of prejudice or rejection, (3) concealment, and (4) internalized homophobia.

- Tr. 834:21-835:24 (Meyer: The four types of minority stress processes are: (1) “prejudice events,” (2) “expectations of rejection and discrimination,” (3) “concealing,” and (4) “internalized homophobia.”).
- Tr. 834:6-20 (Meyer: The term “minority” in “minority stress” refers to sexual minorities—gay men, lesbians, and bisexuals. Most of the processes are quite specific to lesbians, gay men, and bisexuals.); *see also* Tr. 892:24-893:2.

PFF 126. The testimony of plaintiffs and other witnesses detailed many such prejudice events. Prejudice events include major incidents such as physical violence and abuse, but also include every day occurrences that might, in isolation, seem more minor, but can have significant negative effects when taken together and over time. For example, gay and lesbian individuals regularly are confronted with situations where it is embarrassing and difficult to explain their status or relationships, such as forms that they must complete where there is no “box” that reflects their status. Even jurors in litigation are regularly asked about their marital status, a question that might be difficult and awkward for gay men and lesbians to address.

- Tr. 836:11-837:15 (Meyer: Prejudice events are types of stressors that are related to prejudice. They include major acute events, chronic stress, daily hassles, and non-events. Examples include being fired due to discrimination and anti-gay violence. By definition, they are different from stressors that affect the general population because they are related to prejudice.).
- Tr. 840:9-22 (Meyer: For gay men and lesbians, prejudice events are also committed against them in many instances by members of their own family. This is distinct from other groups that experience prejudice.).

- 1 • Tr. 150:21-151:19 (Perry: Explaining that she feels the effects of
2 discrimination on the basis of her sexual orientation “every day” and detailing
3 many instances of discrimination she has faced.).
- 4 • Tr. 175:5-17 (Stier: Recounting the experience of filling out forms in doctor’s
5 offices that ask whether she is single, married, or divorced and explaining that
6 “I have to find myself, you know, scratching something out, putting a line
7 through it and saying “domestic partner” and making sure I explain to folks
8 what that is to make sure that our transaction can go smoothly.”).
- 9 • Tr. 841:17-844:11, 845:7-10 (Meyer: For lesbians and gay men, filling out a
10 form that requires one to designate their marital status can be a prejudice event
11 because the form-filler has no box to check. While correcting a form is
12 certainly a minor event, it is significant for the gay or lesbian person because
13 the form evokes something much larger for the person—a social disapproval
14 and rejection. “It’s about, I’m gay and I’m not accepted here.”).
- 15 • Tr. 850:10-851:14 (Meyer: Ms. Stier’s testimony about filling out forms
16 demonstrates that “the meaning of this incident is more important than . . .
17 what has actually happened.” The message is that the form echoes rejection
18 and says “I’m not equal to other people, to most people who fill [out] this
19 form.”).
- 20 • Tr. 91:20-93:13 (Katami: “[W]hen you are considered different from the
21 norm, you’re subject to all kinds of issues and situations that you want to avoid
22 . . . I had a girlfriend in high school because you needed to have one to go to
23 the prom or to go to the game.” “[I]n high school and college, being gay is
24 associated with something that’s undesirable. ‘Oh that’s gay.’ You know.
25 That’s me. So I’m in that category now. So it’s very difficult.”).
- 26 • Tr. 1513:6-14 (Kendall: On the stress of going through reversal therapy:
27 “During this whole thing, my life had kind of fallen apart. I didn’t have the
28 world that I grew up in; my faith, which was very important to me; my family,
which was even more important. Everything had just kind of stopped. And I
just couldn’t take any more. And I realized, at one point, that if I didn’t stop
going I wasn’t going to survive. . . . Uhm, I would have probably killed
myself.”).
- Tr. 1514:6-16 (Kendall: Following reversal therapy, for a period of four or
five years, Mr. Kendall was suicidal, depressed, and turned to drugs to escape
reality.).
- Tr. 1219:7-1221:9 (Zia: Describing various prejudice events she encountered
during the Prop. 8 campaign, including slurs.).
- Tr. 1212:15-1215:5 (Zia: While working as a community organizer in Asian
and African American communities, Zia was asked to attend a meeting where
she was confronted with her involvement with other groups that had many

1 lesbian members. Leaders from both the Asian and African American
 2 community were concerned that she was associating with lesbians because, so
 3 they claimed, there were no homosexuals in the Asian or African American
 4 community. They said that homosexuality is a symptom of “white petty
 5 bourgeois”).

- 6 • Tr. 1216:24-1217:18 (Zia: Notre Dame rescinded a speaking engagement
 7 because she might say something “about sexual orientation or being a
 8 lesbian.”)
- 9 • Tr. 1217:19-1218:8 (Zia: Her cousin cut off all contact with her after finding
 10 out she was a lesbian.).
- 11 • Tr. 839:5-15 (Meyer: Regardless of who perpetrates them, such crimes have
 12 different meanings when they are rooted in prejudice: A crime committed
 13 against someone who is gay because he or she is gay has a meaning for the
 14 victim that adds pain and makes it worse.).
- 15 • Tr. 841:8-16 (Meyer: Just as a hate crime is worse for the victim than a regular
 16 crime, a minor event could have a greater impact on the person than a similar
 17 event that had no such meaning. This is the difference between an event that
 18 constitutes a minor annoyance and an event that represents social
 19 disapproval.).
- 20 • Tr. 844:12-845:20 (Meyer: Similarly, the hassle of checking into a hotel and
 21 having the clerk question whether the gay or lesbian couple wants one king
 22 sized bed may seem minor, but for gay people, it is an area of great sensitivity
 23 because it reflects their rejection and the rejection of their family members.).
- 24 • Tr. 845:11-846:21 (Meyer: Not getting married can be seen as a “nonevent,”
 25 and it could be significant for a gay or lesbian person because there is an
 26 expectation that he or she will get married, but that is not permitted. This
 27 nonevent is “a representation of their position in society . . . of the kind of
 28 respect or, in this case, disrespect that they experience, of the stigma.”).
- Tr. 846:22-847:12 (Meyer: Prop. 8 is certainly responsible for gay men and
 lesbians not marrying. And when gay men and lesbians have to explain why
 they are not married, they “have to explain, I’m really not seen as equal.
 I’m—my status is—is not respected by my state or by my country, by my
 fellow citizens.” Prop. 8 is a block in the way to achieving desirable goals in
 life.).
- Tr. 93:14-96:25 (Katami: “We were struck by these rocks and eggs. And
 there were slurs . . . And it was a very sobering moment . . . [I]n that moment,
 being gay means I’m unequal. I’m less than. I am undesirable. I have been
 relegated to a corner.”).

- 1 • Tr. 846:16-850:5 (Meyer: Mr. Katami’s testimony about being struck by rocks
2 and eggs while at a gay bar or restaurant is a prejudice event. Mr. Katami’s
3 testimony demonstrates the realization that this was a meaningful moment:
4 “This is about who I am. This is something I have to get used to.” Indeed, one
5 of the main reasons this event is so memorable is because of the “sobering
6 moment” that Mr. Katami describes—”because of that recognition: I am not
7 the same as other people in society. Somebody can come and just thrown
8 stones, or whatever it was, and eggs on me, because they don’t like that I am
9 gay.”).
- Tr. 2765:3-6 (Blankenhorn: “I believe that homophobia is a real presence in
our society and, I’m pretty confident, in many, many other societies around the
world. And I regret and deplore it, and wish it to go away.”).

10 PFF 127. Similarly, there were many examples of expectations of prejudice and resulting
11 vigilance in the testimony of plaintiffs and other witnesses.

- 12 • Tr. 152:3-11 (Perry: “I have to decide every day if I want to come out
13 everywhere I go and take the chance that somebody will have a hostile reaction
14 to my sexuality or just go there and buy the microwave we went there to buy
15 without having to go through that again. And the decision every day to come
16 out or not come out at work, at home, at PTA, at music, at soccer, is
17 exhausting. So much of the time I just choose to do as much of that as I can
18 handle doing in any given day.”).
- Tr. 169:23-170:2 (Stier: Stier feared getting married in 2008 because she knew
about Prop. 8 and felt that the invalidation of their 2004 marriage “made a
circus out of [their] lives and [she doesn’t] want to be a party to that.”).
- Tr. 1218:9-1219:6 (Zia: “I feel constantly aware that my sexual orientation
could, for whatever reason, provoke violence toward me or toward my loved
ones.” As a result, she is very careful about how she and her wife act toward
each other in public.).
- Tr. 851:15-853:14 (Meyer: Expectations of rejection and discrimination
means exactly what it says. A person who knows that they might be rejected
or discriminated against needs to maintain a certain vigilance about their
interactions in society that ensures their safety. A gay or lesbian couple
walking down the street would have to monitor the kind of affection that they
display because of the reactions they might receive—for example, someone
might throw something at them. Notably, this reaction is not about the
individuals—it is about their presentation as gay. Regardless of whether the
expected prejudice or discrimination actually occurs, this constant vigilance is
stressful.).

- Tr. 853:15-23 (Meyer: Many times, people choose to avoid these situations or just swallow minor incidents of prejudice, such as slurs, and move on because they do not want to deal with it. But the anticipation itself is stressful.).
- Tr. 854:5-22 (Meyer: This is demonstrated by Prop. 8, which “sends a message that gay relationships are not to be respected; that they are of secondary value, if of any value at all; that they are certainly not equal to those of heterosexuals. . . . [So] in addition to achieving the literal aims of not allowing gay people to marry, it also sends a strong message about the values of the state; in this case, the Constitution itself. And it sends a message that would, in [Dr. Meyer’s] mind, encourage or at least is consistent with holding prejudicial attitudes. So that doesn’t add up to a very welcoming environment.”).

PFF 128. Many lesbians, gays, and bisexuals experience minority stress through concealing their sexual orientation, and there were multiple examples of this in the testimony of plaintiffs and other witnesses.

- Tr. 1506:1-19 (Kendall: When he first realized that he was gay, he knew that his family and community did not approve of homosexuality so he “kept this a secret,” and hid it as far away from everyone as he could.).
- Tr. 1215:7-1216:23 (Zia: After her lesbian trial, she “stepped into the closet and slammed the door shut.” She even burned her diaries to hide any evidence that she might be a lesbian.).
- Tr. 152:3-11 (Perry: “I have to decide every day if I want to come out everywhere I go and take the chance that somebody will have a hostile reaction to my sexuality or just go there and buy the microwave we went there to buy without having to go through that again. And the decision every day to come out or not come out at work, at home, at PTA, at music, at soccer, is exhausting. So much of the time I just choose to do as much of that as I can handle doing in any given day.”).
- Tr. 863:7-865:1 (Meyer: Ms. Perry’s testimony demonstrates many of the minority stress processes. The word “exhausting” also resonates because it demonstrates how much work is required to adapt.).
- Tr. 854:23-856:11 (Meyer: People conceal their stigmatizing identity as a coping effort, so that they can avoid discrimination or prejudice. For example, if you are gay or lesbian and in the United States military, you have to conceal in that you are not allowed to talk about your homosexuality or you will be fired. People may also conceal for personal safety.).

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- Tr. 861:8-10 (Meyer: “[T]he reason that you’re concealing [your identity] is because, again, of the significance of rejection [and] . . . disrespect that you would feel if you were to reveal this.”).
- Tr. 856:15-860:16 (Meyer: Concealment is stressful in at least three ways. First, concealing requires a very strong cognitive effort—there is stress involved because it is hard work. The effort of concealing has been described as “a private hell.” Concealing also prevents one from being able to express emotion, which is valuable. Similarly, concealing something “that is perceived as being such a core thing about who you are,” a “central identity” prevents one from being able to live an authentic life. Finally, concealing can prevent gays and lesbians from being able to access appropriate social or medical support or services.).
- Tr. 862:11-863:6 (Meyer: Prop. 8 is related to this—it “certainly doesn’t send a message that: It’s okay. You can be who you want to be. You know, we respect that. We welcome you as part of this community. It sends the opposite message . . . [it] add[s] to that pressure, to that social environment that encourages people, some people, to conceal. . . . [I]t’s not just damaging to gay people . . . It also sends a message that it is okay to reject. Not only that it is okay, that this is very highly valued by our Constitution to reject gay people, to designate them a different class of people.”).

PFF 129.

Plaintiffs’ own testimony also evidences the final minority stress process, internalized homophobia.

- Tr. 142:4-6 (Perry: “I have never really let myself want [marriage] until now. Growing up as a lesbian, you don’t let yourself want it, because everyone tells you you are never going to have it.”).
- Tr. 869:16-870:7 (Meyer: Ms. Perry’s testimony is a perfect example of someone who says that marriage, for example, does “not apply to me. I can’t hope for that. That is not part of my possible self.”).
- Tr. 146:15-147:14 (Perry: When the California Supreme Court invalidated her 2004 marriage to Stier, Perry’s response was: “when you’re gay, you think you don’t really deserve things. So it did have this sense of, well, you know, I really didn’t deserve to be married. . . . I’m not good enough to be married.”).
- Tr. 865:2- 866:23 (Meyer: Homophobia refers to the negative attitudes that are prevalent in society about gay men, lesbians, or homosexuality in general. And internalized homophobia refers to the process by which a gay or lesbian person internalizes or takes in these prevalent negative attitudes that she or he has learned through the socialization process. When one has internalized them, the natural thing to think is: this is what it means to be gay, so “that must be what I am.”).

- Tr. 866:24-868-7 (Meyer: The “possible self” is a concept whereby a person not only looks at where he or she is currently, but projects out into the future—into what he or she might become. This is an important construct because it helps one chart a life course and goals, and having a more optimistic notion of the future improves one’s current feeling about who he or she is. And on the other hand, the feeling that you will be blocked from achieving your goals is associated with a lower sense of well-being or negative feelings.).
- Tr. 868:8-25 (Meyer: Internalized homophobia relates to the possible self—if you internalize these negative attitudes, you think: “[T]his is who I’m going to be in the future. . . . Gay and lesbian youth had a harder time projecting into the future because they have learned those kind of negative attitudes.”).
- Tr. 78:4-79:14 (Zarrillo: Describing the effects of stereotypes and peer pressure when he was in school; explaining that “[I] really wanted to . . . go out for the football team, but I was afraid to—to be with men in the locker room”).

PFF 130. The exclusion of gay and lesbian individuals from the institution of civil marriage inflicts on them and their children humiliation, emotional distress, pain, suffering, psychological harm, and stigma.

- Tr. 960:7-22 (Meyer: Limiting marriage to opposite-sex couples causes minority stress for all gay men and lesbians.).
- Tr. 960:22-962:15 (Meyer: Minority stress results in a higher level of mental disorder and negative mental health outcomes in the gay and lesbian population.).
- Tr. 870:13-872:21 (Meyer: Studies consistently show that stigma and minority stress is linked to “excess disorder or higher level of disorder in gay and lesbians populations as compared to heterosexuals.”); *see also* PX0982 and PX1003.
- PX0962, PX0915, PX0974, PX0975, and PX0976 (Articles demonstrating that the enactment of laws that stigmatize gay men and lesbians—and, in particular, the enactment of laws prohibiting marriage by gay and lesbian couples—results in greater minority stress and leads to the greater prevalence of mental disorders in the gay and lesbian population).
- PX1471 (Herdt article entitled “I Do, but I Can’t: The Impact of Marriage Denial on the Mental Health and Sexual Citizenship of Lesbians and Gay Men in the United States: Demonstrating the impact of marriage denial on the mental health and well-being of gay men and lesbians.).
- PX0921 (Herek article entitled “Legal Recognition of Same-Sex Relationships in the United States: A Social Science Perspective,” published in the American

1 Psychologist in 2006: Explaining how same-sex couples and their children are
 2 disadvantaged by their lack of legal recognition, how they would benefit from
 3 such recognition, how quasi-marital institutions do not afford the same
 4 protections and benefits as marriage, and how restricting same-sex couples to a
 5 separate and inherently unequal status perpetuates antigay stigma).

- 6 • Tr. 879:18-880:18 (Meyer: If Proposition 8 was no longer the law of
 7 California, the mental health outcomes of gay men and lesbians would
 8 improve.).
- 9 • PX0710 at RFA No. 39 (Attorney General admits “that denying same-sex
 10 couples and their families access to the familiar and favorable official
 11 designation ‘marriage’ harms them by denying their family relationships . . .
 12 the same dignity and respect afforded to opposite-sex couples and their
 13 families”).
- 14 • PX0710 at RFA No. 43 (Attorney General admits “that the stigma associated
 15 with discrimination and second-class treatment takes a toll on the well-being of
 16 gay men and lesbians and their families”).
- 17 • Tr. 1346:17-1347:18 (Badgett: In a study on married same-sex couples in
 18 Massachusetts, respondents with children indicated that their children valued
 19 being part of a family that looked like other families and that it was easier for
 20 them to deal with important people in their children’s lives such as teachers
 21 and healthcare providers.).
- 22 • PX1267 at 1 (Report on a survey of the experiences and impact of marriage on
 23 same-sex couples in Massachusetts by Christopher Ramos, et al.: “Of those
 24 [respondents] with children, nearly all respondents (93%) agreed or somewhat
 25 agreed that their children are happier and better off as a result of their
 26 marriage.”).

27 PFF 131. The testimony of plaintiffs and other witnesses demonstrates the harm they suffered as
 28 a result of Prop. 8, the campaign, and not being able to be married.

- 29 • Tr. 159:2-11 (Perry: “[I]f I had grown up in a world where the most important
 30 decision I was going to make as an adult was treated the same way as
 31 everybody else’s decision . . . I would not have been treated the way I was
 32 growing up or as an adult. There’s something so humiliating about everybody
 33 knowing that you want to make that decision [to be married] and you don’t get
 34 to . . . it’s hard to face the people at work and the people even here right now.
 35 And many of you have this, but I don’t.”).
- 36 • Tr. 159:16-20 (Perry: On the other hand, “if Prop. 8 were undone and kids like
 37 me growing up in Bakersfield right now could never know what this felt like,
 38 then I assume that their entire lives would be on a higher arch. They would

1 live with a higher sense of themselves that would improve the quality of their
2 entire lives.”).

- 3 • Tr. 142:23-143:3 (Perry: Due to Prop. 8 and her inability to marry Stier, Perry
4 feels that the state “isn’t letting me feel happy. It’s not letting me experience
5 my full potential because I am not permitted to experience everything I might
6 feel if this barrier were removed.”).
- 7 • Tr. 147:20-148:13 (Perry: By 2008, when the *In re Marriages* decision issued,
8 Perry still had not recovered from her 2004 marriage to Stier being
9 invalidated.).
- 10 • Tr. 168:14-169:1 (Stier: When their 2004 marriage was invalidated, Stier felt
11 outraged and hurt and humiliated. She felt as though everyone who had come
12 to their 2004 wedding must feel a level of humiliation themselves, too. She
13 felt as though there are people who felt pity them.).
- 14 • Tr. 169:23-170:2 (Stier: Stier felt that the invalidation of their 2004 marriage
15 “made a circus out of [their] lives and [she doesn’t] want to be a party to
16 that.”).
- 17 • Tr. 179:5-16 (Stier: On the effects of being able to be married: “I would feel
18 more secure. I would feel more accepted. I would feel more pride. . . . [I]
19 think about that generation and the possibility of having grandchildren some
20 day and having them live in a world where they grow up and whoever they fall
21 in love with, it’s okay, because they can be honored and they can be true to
22 themselves and they can be accepted by society and protected by their
23 government And as somebody who is from one of those conservative
24 little pockets of the country . . . , having those legal protections is everything.”).
- 25 • Tr. 82:9-85:8 (Zarrillo: “Domestic partnership would relegate me to a level of
26 second class citizenship It’s giving me part of the pie, but not the whole
27 thing. . . . [I]t doesn’t give due respect to the relationship that we have had for
28 almost nine years.”).
- Tr. 115:3-116:1 (Katami: Domestic partnerships “make[] you into a second,
third, and . . . fourth class citizen now that we actually recognize marriages
from other states. . . . None of our friends have ever said, ‘Hey, this is my
domestic partner.’”).
- Tr. 99:23-100:9 (Katami: Describing the ProtectMarriage.com “It’s Already
Happened” video (PX0099) as “demonizing a group of people”).
- Tr. 113:12-115:2 (Katami: Discussing Proponents’ argument in favor of
Proposition 8 in the California Voter Information Guide for 2008. “It
absolutely puts me into a category that I do not belong in. It separates me from
the norm. It makes me into someone—a part of a community that is
perpetrating some sort of threat.”).

- Tr. 1274:7-1275:16 (Sanders: Recounted the depth of feeling and hurt of members of the lesbian and gay community when he told them that he was planning to veto the ordinance supporting marriage rights for gay and lesbian individuals because he thought that civil unions were a fair alternative).

PFF 132. Stigma has a serious impact on the health of gay and lesbian individuals in the United States by causing stress and disease. This has been recognized by public health authorities including Healthy People 2010, which sets health priorities for the United States.

- Tr. 875:15-876:20 (Meyer: Healthy People 2010 is a project of the federal government and led by the Department of Health and Human Services. It is the plan for the health of the nation for the decade that started in 2000.).
- Tr. 876:10-877:19 (Meyer: Healthy People 2010 reports that a main goal of the United States is to reduce health disparities. One goal of Healthy People 2010 is to reduce the health disparities between gay and lesbians, on the one hand, and heterosexuals, on the other hand: “Sexual Orientation. America’s gay and lesbian population comprises a diverse community with disparate health concerns. Major health issues for gay men are HIV/AIDS and other sexually transmitted diseases, substance abuse, depression, and suicide. Gay male adolescents are two to three times more likely than their peers to attempt suicide. Some evidence suggests lesbians have higher rates of smoking, overweight, alcohol abuse, and stress than heterosexual women. . . . The issues surrounding personal, family, and social acceptance of sexual orientation can place a significant burden on mental health and personal safety.”).
- Tr. 700:23-701:7 (Egan: Explaining that the use of behavioral health services by gay and lesbian people in San Francisco is “disproportionately high” due in part to discrimination).
- Tr. 703:21-23 (Egan: “[O]ver 200,000 students in California each year are bullied based on their actual or perceived sexual orientation.”).
- PX0810 at 1: (Safe Schools Research Brief concerning economic costs of bullying in school: “More than 200,000 students in California each year report being bullied based on actual or perceived sexual orientation based on the 2001-2002 California Healthy Kids Survey (CHKS) - that is 7.5% of students in the 7th, 9th, and 11th grades. This harassment is linked to risk behavior, poor grades, and emotional distress for students”).
- PX0810 at 4: (Safe Schools Research Brief concerning economic costs of bullying in school: “26.6% of students who were bullied because of actual or perceived sexual orientation during the past 12 months also reported that they missed school during the past 30 days because they felt unsafe.”).

- PX0760 at 1 (Am. Psychoanalytic Ass’n, Position Paper on Gay Marriage: “socially sanctioned discrimination adds to the burdens of both the children of same-sex couples as well as gay and lesbian youth (who have higher rates of suicide attempts than heterosexual youth.”).
- *See also* evidence cited in support of PFFs 123-124.

B. Economic Harm to Gay and Lesbian Individuals from Denial of Marriage to Same-Sex Couples

PFF 133. In addition to social and psychological harms, Prop. 8 imposes substantial economic harms on same-sex couples residing in California and their children.

- Tr. 692:4-25 (Egan: Explaining that individuals in same-sex partnerships may not be covered by their partners’ healthcare plan).
- PX2260 (Letter from National Elevator Industry Benefit Plans: Explaining that benefits coverage under the plan is available to a spouse only when legally married); *see also* Tr. 794:16-795:12 (Egan: Discussing same).
- Tr. 1330:14-16 (Badgett: Prop. 8 has “inflicted substantial economic harm on same-sex couples and their children who live here in California.”).
- Tr. 1331:12-1337:25 (Badgett: Marriage confers numerous economic benefits including greater specialization of labor, reduced transaction costs, health and insurance benefits, stronger statement of commitment, greater validation and social acceptance of the relationship and more positive workplace outcomes. Some costs are not quantifiable, but are nevertheless substantial.).
- Tr. 1341:2-1342:13 (Badgett: Couples that would marry but would not enter into a domestic partnership suffer tangible economic harm such as higher taxes and limited access to health insurance. Not all of these costs are quantifiable, but across the state there are millions of dollars of quantifiable costs to same-sex couples that cannot marry.).
- Tr. 1343:20-25 (Badgett: “If it’s costing couples thousands of dollars a year in additional costs because they can’t marry, then that’s thousands of dollars that will not be available to spend on children or to save for their college education or whatever parents might want to actually do with that, with that money.”).
- Tr. 1344:11-1348:13 (Badgett: A study of married same-sex couples in Massachusetts found that almost all of the parents who were raising children agreed that their children were better off after marriage.).
- Tr. 1350:6-9 (Badgett: The American Medical Association concluded that denying same-sex couples the right to marry reduces access to health insurance and creates healthcare disparities among children.).

- 1 • PX1259 at 1 (Badgett, *Unequal Taxes on Equal Benefits: The Taxation of*
2 *Domestic Partner Benefits*: “[W]orkers who have an unmarried domestic
3 partner are doubly burdened: Their employers typically do not provide
4 coverage for domestic partners; and even when partners are covered, the
5 partner’s coverage is taxed as income to the employee.”).
- 6 • PX2898 at 307 (Langbein and Yost, *Same Sex Marriage and Negative*
7 *Externalities*: “For example, the ban on gay marriage induces failures in
8 insurance and financial markets. Because spousal benefits do not transfer (in
9 most cases) to domestic partners, there are large portions of the population that
10 should be insured, but instead receive inequitable treatment and are not insured
11 properly. . . . This is equally true in the treatment of estates on the death of
12 individuals. In married relationships, it is clear to whom an estate reverts, but
13 in the cases of homosexual couples, there is no clear right of ownership,
14 resulting in higher transactions costs, widely regarded as socially inefficient.”).
- 15 • PX0188 at 9 (Report by the Council on Science and Public Health: “Survey
16 data confirm that same-sex households have less access to health insurance. If
17 they have health insurance, they pay more than married heterosexual workers,
18 and also lack other financial protections. . . . [C]hildren in same-sex
19 households lack the same protections afforded children in heterosexual
20 households.”).
- 21 • PX0189 at 1 (Am. Med. Ass’n Resolution: “[E]xclusion from civil marriage
22 contributes to health care disparities affecting same-sex households.”).
- 23 • PX1261 at 7 (Cal. Employer Health Benefits Survey: Only 56% of California
24 firms offered health insurance to unmarried same-sex couples in 2008.).
- 25 • PX1266 at 13 (Report on Cal. Domestic Partnership Law: Illustrating the
26 additional transactions costs associated with domestic partnership: “Despite
27 this automatic legal protection for children born to registered domestic
28 partners, [the National Center for Lesbian Rights] is strongly recommending
that *all* couples obtain a court judgment declaring both partners to be their
child’s legal parents, either an adoption or a parentage judgment.”).
- PX1269 at 1 (Report by Michael D. Steinberger: “Using data from several
government data sources, this report estimates the dollar value of the estate tax
disadvantage faced by same-sex couples. In 2009, the differential treatment of
same-sex and married couples in the estate tax code will affect an estimated 73
same-sex couples, costing each of them, on average, more than \$3.3 million.”).

PFF 134. Denying same-sex couples the right to marry and permitting them to only register as domestic partners imposes a substantial economic cost on gay and lesbian individuals.

1 Similarly, permitting same-sex couples to marry would lead to a substantial economic
 2 gain for individuals in same-sex couples.

- 3 • Tr. 685:25-686:2 (Egan: “[M]arried individuals tend to accumulate more
 4 wealth than single individuals.”).
- 5 • Tr. 712:5-8 (Egan: “If marriage for same-sex couples were permitted, that
 6 would put more revenue—would result in income tax savings for them.”).
- 7 • PX0809 (RAND report on relationship between marriage, assets and savings:
 8 Outlining correlation between marriage and wealth accumulation).
- 9 • *See also* evidence cited in support of PFF 133.

10 PFF 135.

11 Because domestic partnership is inferior to marriage and upholds and enforces the
 12 stigma attached to same-sex couples, it reduces the degree of commitment of partners
 13 and potential partners, and reduces the incentive to invest in surplus-enhancing
 14 behaviors.

- 15 • Tr. 80:14-81:6 (Zarrillo: “I think one’s capacity to be committed to another
 16 individual can absolutely expand. And I’m confident that that would happen
 17 with us [were we married].”).
- 18 • Tr. 88:22-89:12 (Katami: “Being able to call him my husband is so definitive,
 19 it changes our relationship . . . It’s something that you’ve dedicated yourself to
 20 and you’re committed to.”).
- 21 • Tr. 1342:14-1343:12 (Badgett: Some people would marry but would not
 22 register as domestic partners because they view domestic partnership as a
 23 second class status, value the social validation of marriage and dislike
 24 domestic partnerships because it sounds too clinical.).
- 25 • Tr. 1471:1-1472:8 (Badgett: “[I]ndividuals clearly not only see marriage as
 26 something that’s more valuable that comes with added characteristics over
 27 some alternative status, but the alternative status in and of itself is devalued
 28 because it’s seen as sending a message of inferiority.”).
- Tr. 1334:19-1335:9 (Badgett: Marriage is a strong signal of commitment “that
 is recognized and reinforced by people outside of the marriage.”).
- Tr. 1345:19-1346:5; PX1267 at 1 (Badgett: In a study on married same-sex
 couples in Massachusetts, PX1267, over 72% of respondents felt more
 committed to their partners as a result of marrying.).

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- Tr. 1331:15-1332:9, 1332:25-1334:17 (Badgett: Marriage incentivizes couples to divide up labor more efficiently, which enhances economic well-being by increasing family income and making more time available for the family. Marriage also reduces transaction costs.).

PFF 136.

Proponents’ expert, Mr. Blankenhorn, admitted that allowing gay and lesbian individual to marry would decrease promiscuity, increase stability of same sex couples’ relationships, and decrease “marriage-lite” regimes.

- DIX0956 at 202-05 (David Blankenhorn, *The Future of Marriage*: Listing 23 positive consequences of legalizing marriage by same-sex couples).
- *See also* evidence cited in support of PFFs 249, 258, 280.

PFF 137.

Compared to allowing same-sex couples to marry in California, domestic partnership results in the creation of a smaller surplus in the relationship.

- Tr. 1332:19-1337:25 (Badgett: Marriage confers numerous economic benefits, many of which are not provided by domestic partnership.).
- Tr. 1337:16-21 (Badgett: “[B]ut even those couples who do have a domestic partnership, in my opinion, are not getting the same kind of statement of commitment and social validation that would give rise to the full—the full effect of the other possible benefits, that would—that they would experience if they were allowed to marry.”).
- Tr. 1341:25-1342 (Badgett: “[I]t’s very hard to actually quantify some of these costs, but the ones that we can quantify, like the access to health insurance and the tax burdens, are very likely to be in the thousands of dollars per year for each couple who has to bear them. . . . [I]f you were to multiply those thousands of dollars by the thousands of couples, you’d have tens of millions of dollars in quantifiable costs for those couples.”).
- Tr. 1343:20-24 (Badgett: “If it’s costing couples thousands of dollars a year in additional costs because they can’t marry, then that’s thousands of dollars that will not be available to spend on children or to save for their college education or whatever parents might want to actually do with that, with that money.”).

PFF 138.

The reduced incentive associated with domestic partnership as compared to marriage is reflected in lower utilization of domestic partnership and in a lesser development of specialized skills in the relationship than would occur within marriage.

- Tr. 1331:15-1332:9, 1332:25-1334:17 (Badgett: Marriage incentivizes couples to divide up labor more efficiently, which enhances economic well-being by increasing family income and by making more time available for the family. Marriage also reduces transaction costs.).
- Tr. 1342:14-1343:12 (Badgett: Some same-sex couples who might marry would not register as domestic partners because they see domestic partnership as second class status, value marriage because it is socially validated and dislike domestic partnership because it sounds clinical.).
- Tr. 82:16-83:1 (Zarrillo: Domestic partnership is not comparable to marriage.).
- Tr. 1338:15-25; 1469:10-1470:6 (Badgett: During the six months when same-sex couples were permitted to marry in California, approximately 18,000 same-sex couples chose marriage whereas only 2,000 same-sex couples chose domestic partnerships.).
- Tr. 1339:9-1340:15; PX1263 (Badgett: A study of take-up rates in states that allow marriages by gay and lesbian couples, civil unions and domestic partnerships indicated that same-sex couples have a clear preference for marriage.).
- Tr. 1342:14-1343:12 (Badgett: Some same-sex couples who might marry would not register as domestic partners because they see domestic partnership as second class status, value marriage because it is socially validated and dislike domestic partnership because it sounds clinical.).
- Tr. 1472:4-8 (Badgett: “[I]ndividuals clearly not only see marriage as something that’s more valuable that comes with added characteristics over some alternative status, but the alternative status in and of itself is devalued because it’s seen as sending a message of inferiority.”).

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7 PFF 139.

8 That gay and lesbian individuals have continued to press for the right to marry in
9 jurisdictions in which some form of civil union of domestic partnership is already
10 available suggests that they do not see civil unions and domestic partnerships as
11 comparable to marriage.

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24 PFF 140.

25 The long-term nature of marriage encourages spouses to increase household efficiency
26 by dividing their labor in ways that increase the family’s productivity in producing
27 goods and services by family members.
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- PX0708 at RFA No. 88 (Proponents admit “that marriage between a man and a woman encourages spouses to increase household efficiency, including by dividing their labor in ways that increase the family’s productivity in producing goods and services for family members.”).
- Tr. 1331:15-1332:9, 1332:25-1334:17 (Badgett: Marriage incentivizes couples to divide up labor more efficiently, which enhances economic well-being by increasing family income and by making more time available for the family. Marriage also reduces transaction costs.).

PFF 141. Same-sex couples are economically interdependent in ways and to an extent similar to, not different from, different-sex couples.

- PX2096 at 1 (Census Snapshot by Adam P. Romero, et al.: “In many ways, the more than 107,000 same-sex couples living in California are similar to married couples. According to Census 2000, they . . . have partners who depend upon one another financially.”).
- *See also* evidence cited in support of PFFs 161, 163.

C. Harm to Children from Denial of Marriage to Same-Sex Couples

PFF 142. Marriage uniquely legitimizes children and provides them with a sense of security, stability, and increased well-being.

- PX0710 at RFA No. 7 (Attorney General admits “that under California law, marriage legitimizes children and provides them greater financial security, which may well give children a greater sense of security.”).
- Tr. 1964:17-1965:2 (Tam: It is important to children of same-sex couples that their parents be able to marry.).
- PX2852 (Human Rights Campaign, posting a Position Statement of the American Medical Association on Adoption by Same-Sex Couples: “Having two fully sanctioned and legally defined parents promotes a safe and nurturing environment for children, including psychological and legal security[.] . . . therefore, be it RESOLVED, That our American Medical Association support legislative and other efforts to allow the adoption of a child by the same-sex partner, or opposite sex non-married partner, who functions as a second parent or co-parent to that child.”).
- Tr. 2839:11-15 (Blankenhorn: Agreeing that “marriage is something that benefits both the participants in the marriage, the couple that are married, as well as any children that the couple may raise”); *see also* DIX0956 at 203 (Blankenhorn, *Future of Marriage*).

- Tr. 2849:6-11 (Blankenhorn: Agreeing that “Gay marriage would extend a wide range of the natural and practical benefits of marriage to many lesbian and gay couples and their children”); *see also* DIX0956 at 203 (Blankenhorn, *Future of Marriage*).
- Tr. 2803:13-15 (Blankenhorn: “I believe that adopting same-sex marriage would be likely to improve the well-being of gay and lesbian households and their children.”); *see also* Tr. 2839:22-24 (Blankenhorn: “I do believe it is almost certainly true that gay and lesbian couples and their children would benefit by having gay marriage.”); Tr. 2848:24-2849:5 (Blankenhorn: Agreeing that marriage “would improve the happiness and well-being of many gay and lesbian individuals, couples, and family members.”).
- Tr. 2852:11-17 (Blankenhorn: Agreeing that “[b]y increasing the number of married couples who might be interested in adoption and foster care, same-sex marriage might well lead to fewer children growing up in state institutions and more growing up in loving adoptive and foster families”); *see also* DIX0956 at 204 (Blankenhorn, *Future of Marriage*).
- Tr. 1042:12-1043:16 (Lamb: Prohibiting same-sex couples from marrying cannot be expected to improve the adjustment outcomes of any children. The ability of same-sex couples to get married can improve the likelihood that their child will achieve a good adjustment outcome.).
- PX1267 at 1 (Report on a survey of the experiences and impact of marriage on same-sex couples in Massachusetts by Christopher Ramos, et al.: “Of those [respondents] with children, nearly all respondents (93%) agreed or somewhat agreed that their children are happier and better off as a result of their marriage.”).

PFF 143. Marriage provides many tangible and intangible benefits to the married individuals. Certain tangible and intangible benefits of marriage flow to the married couple’s children.

- PX0739 at No. 6 (Proponents stipulated that “[t]he 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”).
- PX0767 at 2-4, 6 (Am. Psychol. Ass’n, Professional Association Policies: Discussing the deprivation of the benefits of marriage for children being raised by gay couples that cannot marry, and noting that “the institution of marriage confers a social status and important legal benefits, rights, and privileges[.]”).
- Tr. 2803:13-15 (Blankenhorn: “I believe that adopting same-sex marriage would be likely to improve the well-being of gay and lesbian households and

1 their children.”); *see also* Tr. 2839:22-24 (Blankenhorn: “I do believe it is
2 almost certainly true that gay and lesbian couples and their children would
3 benefit from gay marriage.”); Tr. 2848:15-2849:5 (Blankenhorn: Agreeing
4 that allowing them to marry “would improve the happiness and well-being of
5 many gay and lesbian individuals, couples and family members.”)

- 6 • Tr. 2849:6-11 (Blankenhorn: Agreeing that “Gay marriage would extend a
7 wide range of the natural and practical benefits of marriage to many lesbian
8 and gay couples and their children.”); *see also* DIX0956 at 203 (Blankenhorn,
9 *Future of Marriage*).
- 10 • Tr. 2790:5-9 (Blankenhorn: “When we say the word ‘marriage,’ it’s a big
11 institution that performs a very large contribution to society and it’s much
12 bigger, much more powerful and potent as a role in society than merely or only
13 the enumeration of its legal incidents.”).
- 14 • DIX0956 at 6 (Blankenhorn, *Future of Marriage*): “*Marriage matters*. It
15 significantly influences individual and societal well-being.”).
- 16 • PX2879 at 9 (*The Marriage Movement: A Statement of Principles* (2000):
17 “The public, legal side of marriage increases couples’ confidence that their
18 partnerships will last.”).
- 19 • PX2879 at 12 (*The Marriage Movement: A Statement of Principles* (2000):
20 “Married adults live longer, healthier, happier and more affluent lives than
21 adults who don’t marry or don’t stay married. This phenomenon is not simply
22 an artifact of selection; marriage itself makes adults better off, by offering
23 them greater emotional and financial support, wider and more integrated social
24 networks, important economies of scale, and productive boosts in earnings,
25 parenting capacity, and life management.”).
- 26 • PX2879 at 12 (*The Marriage Movement: A Statement of Principles* (2000):
27 “Marriage also helps to conserve wealth and expand social capital. At any
28 given level of income, married adults are less likely to experience financial
hardship. The longer people stay married, the more wealth they accumulate,
whereas length of cohabitation has no relationship to wealth accumulation.
Informal partners—who are not held by the wider society to be financially
responsible to one another—do not reap the same benefits as the legally
married.”).
- PX0886 (Am. Psychiatric Ass’n, Position Statement: noting the benefits of
marriage for married adults and their children).
- PX1397 at 1 (U.S. General Accounting Office Report, Jan. 23, 2004:
Identifies “a total of 1,138 federal statutory provisions classified in the United
States Code in which marital status is a factor in determining or receiving
benefits, rights, and privileges”).

- 1 • Tr. 235:19-236:16 (Cott: “[I]n the 20th century, the federal government has
2 tended to use the institution of marriage and the marriage-based family as the
3 conduit for benefits of many sorts.”).
- 4 • PX1746 throughout, including at 2 (Nancy Cott, *Public Vows*: “Marriage
5 prescribes duties and dispenses privileges.”).
- 6 • Tr. 581:23-582:2 (Peplau: “[M]arriage can also lead to various kinds of
7 supports from government, to beneficial laws or being eligible for programs or
8 for health insurance through an employer.”).
- 9 • PX1384 at 20 (Article by Charlotte J. Patterson, Megan Fulcher, & Jennifer
10 Wainright: Recommending that gay and lesbian individuals be allowed to
11 marry because of the tangible and intangible benefits to the children of lesbian
12 and gay parents, such as lessened stigmatization and access to health
13 insurance).
- 14 • Tr. 1343:13-1348:13 (Badgett: In a study of married same-sex couples in
15 Massachusetts almost all of the respondents who were raising children agreed
16 that their children were better off after marriage because of the value of having
17 a family that looks like other families and because it was easier to deal with
18 important people in their children’s lives such as healthcare providers and
19 teachers. If same-sex couples were permitted to marry in California, there
20 would likely be the same results because same-sex couples in Massachusetts
21 and California are demographically similar in terms of income and education
22 levels.).
- 23 • Tr. 1350:6-9; PX0189 at 1 (Badgett: The American Medical Association
24 concluded that denying the same-sex couples the right to marry reduces access
25 to health insurance and creates healthcare disparities among children.).
- 26 • Tr. 81:17-82:8 (Zarrillo: Explaining that it would be “easier for our children”
27 if he were able to marry and that “it would afford us additional protections for
28 our child”).
- Tr. 90:15-17 (Katami: Marriage creates a more stable home for children. “We
need to be married before we have kids.”).
- Tr. 1964:17-1965:2 (Tam: It is important to children of same-sex couples that
their parents be able to marry.).
- *See also* evidence cited in support of PFF 109.

PFF 144. Because same-sex couples cannot marry, they and their children do not enjoy all the social and other benefits that the title and stature of marriage bring.

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- Tr. 640:16-19 (Peplau: “[E]xcept in places like Massachusetts, all children born to lesbians or gay men or raised by lesbians or gay men are out of wedlock, because the government doesn’t permit their parents to marry.”).
- Tr. 599:12-19 (Peplau: Discussing the result of a survey of same-sex couples who married in Massachusetts showing that 95 percent of same-sex couples raising children thought that children had benefitted from the fact that their parents were able to marry).
- PX1267 at 1 (Report on a survey of the experiences and impact of marriage on same-sex couples in Massachusetts by Christopher Ramos, et al.: “Of those [respondents] with children, nearly all respondents (93%) agreed or somewhat agreed that their children are happier and better off as a result of their marriage.”).
- Tr. 1332:19-1337:25 (Badgett: Same-sex couples and their children are denied all of the economic benefits of marriage that are available to different-sex couples.).
- *See also* evidence cited in support of PFFs 145, 260, 269, and 277.

PFF 145. Prohibiting same-sex couples from marrying actually harms children, including the children of gay and lesbian couples.

- PX0787 at 1 (Am. Psychiatric Ass’n, Position Statement on Support of Legal Recognition of Same-Sex Civil Marriage: Finding that “[t]he children of unmarried gay and lesbian parents do not have the same protection that civil marriage affords the children of heterosexual couples”).
- PX2879 at 3 (Institute for American Values, “The Marriage Movement: A Statement of Principles”: “Children suffer when marriages between parents do not take place.” “We firmly believe that every family raising children deserves respect and support.”).
- PX2880 at 11 (Institute for American Values, “The Marriage Index: A Proposal to Establish Leading Marriage Indicators”: “Because cohabitation and single-parent families tend to be much less stable arrangements than marriage, children born outside of wedlock tend to be in a disadvantaged position.”).
- Tr. 1964:17-1965:2 (Tam: It is important to children of same-sex couples that their parents be able to marry.).

1 PFF 146. Creating a separate institution of domestic partnership stigmatizes same-sex couples
2 and sends a message of inferiority to these couples, their children, and lesbian and gay
3 men generally.

- 4 • Tr. 1277:5-1279:7 (Sanders: Governmental discrimination can foster private
5 discrimination. With respect to the history of and recent anti-gay hate crimes
6 in San Diego: “I think that when a city, when leadership talks in disparaging
7 terms about people, or denies the rights that everybody else have, the
8 fundamental rights, then I think some people in the community feel
9 empowered to take action in hate crimes and in other ways.”).
- Tr. 1964:17-1965:2 (Tam: It is important to children of same-sex couples that
their parents be able to marry.).
- *See also* evidence cited in support of PFFs 108, 110, 112, 142, 144.

11 PFF 147. Prop. 8 imposes substantial economic harms on same-sex couples residing in
12 California and their children.

- 13 • Tr. 1330:14-16 (Badgett: Proposition 8 has “inflicted substantial economic
14 harm on same-sex couples and their children who live here in California.”).
- 15 • *See also* evidence cited in support of PFF 133.

16 **D. Harm to State and Local Governments from Denial of Marriage to Same-Sex
17 Couples**

18 PFF 148. Local governments like San Francisco suffer a series of intangible injuries from Prop.
19 8’s prohibition on marriage between persons of the same sex. This marriage ban
20 limits the ability of local governments to ensure that their citizens are treated equally
21 regardless of sexual orientation, which in turn harms the community in general and
22 gay and lesbian citizens in particular.

- 23 • Tr. 720:1-12 (Egan: “What we’re really talking about in the nonquantifiable
24 impacts are the long-term advantages of marriage as an institution, and the
25 long-term costs of discrimination in a way that weakens people’s productivity
26 and integration into the labor force. Whether it’s weakening their education
27 because they’re discriminated against at school, or leading them to excessive
28 reliance on behavioral or other health services, these are impacts that are hard
to quantify, but they can wind up being extremely powerful. How much
healthier you are over your lifetime. How much wealth you generate because
you are in a partnership.”).

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- Tr. 1270:2-22, 1275:19-1278:7, 1278:22-1279:8 (Sanders: Recounted loss of talented police sergeant who was driven from police force because he was gay and experience with hate crimes against gay people in San Diego, including gay bashings and robberies. Explained that he signed resolution supporting marriage for same-sex couples because it was in the interest of government, that discrimination means lesbian and gay employees cannot talk about their families at work, and that when government and its leaders tolerate discrimination this invites the public to engage in discrimination of all kinds, including hate crimes. Described hate crimes against gay men and lesbians in San Diego, including violence resulting in death and serious bodily injury. Described how hard it was to be openly gay on the police force because of fears about career loss and being treated differently).
- Tr. 1330:23-25 (Badgett: “Proposition 8 has imposed some economic losses on the State of California and on counties and municipalities.”).
- Tr. 1364:16-1369:4 (Badgett: Denying same-sex couples the right to marry imposes costs on local governments such as loss of tax revenue, higher usage of means-tested programs, higher costs for healthcare of uninsured same-sex partners and loss of skilled workers.).

PFF 149. Prop. 8 requires local governments to violate the federal constitutional rights of lesbians and gay men by denying them the marriage licenses that it daily issues to heterosexual couples.

- PX0728 at 2 and ¶¶ 1, 7, 36-43 (Attorney General’s Answer: Admits that Prop. 8 violates the Fourteenth Amendment to the U.S. Constitution).
- *Lockyer v. City & County of San Francisco*, 95 P.3d 459, 472-73 (Cal. 2004) (describing the ministerial duties of county clerks and county recorders)
- *See also* evidence cited in support of PFFs 8, 12-17.

PFF 150. Notwithstanding California’s domestic partnership law, its denial of marriage to same-sex couples increases the likelihood that Plaintiff-Intervenor’s citizens will depend on local health and welfare programs, and imposes fiscal and economic costs on Plaintiff-Intervenor, such as through loss of tax revenues related to the denial of marriage.

- Tr. 685:10-14 (Egan: “[B]ecause of the ways in which marriage affects people’s patterns of wealth generation over their life, if same-sex marriage were legalized, San Francisco would see an increase in sales tax revenue and an increase in property tax revenue in the future.”).

- 1 • Tr. 689:4-10 (Egan: “Healthier behavior is also associated with less reliance
2 on the healthcare system, including the public healthcare system. And,
3 therefore, to the extent that the population of San Francisco adopts healthier
4 behaviors over time, due to marriage, the City’s public healthcare costs would
5 decline. And that would result in a cost savings for the City and County.”).
- 6 • Tr. 692:13-19 (Egan: “[A]t the moment, there are individuals in San Francisco
7 who are in same-sex partnerships, where their partner is covered and they are
8 not covered. Their partner is covered by employer healthcare, and they are
9 not. If that number of people was reduced, that would be less uninsured people
10 in San Francisco, and that would reduce the local burden on covering the
11 uninsured.”).
- 12 • Tr. 700:23-701:22 (Egan: Explaining that the use of behavioral health services
13 by gay and lesbian people in San Francisco is “disproportionately high” due in
14 part to discrimination).
- 15 • Tr. 712:5-12 (Egan: “If marriage for same-sex couples were permitted, that
16 would affect their federal income tax burden in a way that would put more
17 revenue—would result in income tax savings for them. They would have, as a
18 result, more money, some of which they would spend in San Francisco. And
19 that higher spending in San Francisco would generate more sales tax for the
20 City and County.”).
- 21 • Tr. 1367:5-1368:1 (Badgett: Denying same-sex couples the right to marry
22 tends to reduce same-sex couples’ income, which “will make them more likely
23 to need and be eligible for those means-tested programs that are paid for by the
24 state.” Similarly, to the extent that same-sex couples cannot obtain health
25 insurance for their partners and children, there will be more people who might
26 need to sign up for the state’s sponsored health programs.).
- 27 • Tr. 2851:5-18 (Blankenhorn: Agreeing that “Because marriage is a wealth-
28 creating institution, extending marriage rights to same-sex couples would
probably increase wealth accumulation and lead to higher living standards for
these couples, as well as help reduce welfare costs (by promoting family
economic self-sufficiency) and decrease economic inequality.”); *see also*
DIX0956 at 203-04 (Blankenhorn, *The Future of Marriage*).
- PX2898 at 307 (Langbein and Yost, *Same Sex Marriage and Negative
Externalities*: “For example, the ban on gay marriage induces failures in
insurance and financial markets. Because spousal benefits do not transfer (in
most cases) to domestic partners, there are large portions of the population that
should be insured, but instead receive inequitable treatment and are not insured
properly. Large insurance pools reduce costs for all.”).

PFF 151. Plaintiffs’ experts, Dr. Egan and Dr. Badgett, testified that Prop. 8 has had a negative economic impact on the City of San Francisco and the State of California.

- 1 • Tr. 718:22-25 (Egan: “[I]t’s clear to me that Proposition 8 has a negative
2 material economic impact on San Francisco. That is to say, the City is losing
3 more than \$10 million a year in economic activity.”).
- 4 • Tr. 1364:16-1366:14 (Badgett: Badgett estimated that by denying same-sex
5 couples the right to marry, the state of California loses about \$490 million in
6 increased spending over three years, and about \$40 million in sales tax and
7 hotel occupancy tax revenues.).
- 8 • Tr. 1426:11-24 (Badgett: Denying same-sex couples the right to marry is
likely to cost state businesses “hundreds of millions of dollars.” The economic
damages are “difficult to quantify very precisely, but I think we have a very,
very good idea of what the order of magnitude would be.”).

9 PFF 152. Prop. 8 deprives the State of California and its local governments of tax revenue
10 generated by consumer spending on the weddings and wedding-related events that
11 same-sex couples would hold if permitted to marry. For example, at least in the short
12 term, San Francisco loses an estimated \$35 million in total annual economic activity
13 and an estimated \$2.6 million in tax revenue from diminished wedding-related
14 spending. In the next three years, the State of California will lose an estimated \$491.2
15 million in direct spending and \$38.9 million in tax revenue from diminished wedding-
16 related spending.

- 17 • Tr. 1364:6-1366:14 (Badgett: Badgett estimated the number of same-sex
18 couples that would get married in California and how much they might spend
19 on weddings and tourism, and concluded that over three years California
20 would lose approximately \$490 million in increased spending and
approximately \$40 million in sale tax and hotel occupancy tax revenues.); *see*
also Tr. 1426:11-24.
- 21 • PX1260 at 8-9 (Badgett & R. Bradley Sears, *Putting A Price on Equality?*:
22 “We find that allowing same-sex couples to marry will have three positive
23 impacts on California’s budget: (1) expenditure savings in means-tested public
24 benefits programs; (2) increased sales tax revenues from tourism; and
(3) increased sales tax revenues from expenditures on weddings by California
resident same-sex couples.”).
- 25 • PX1268 at 1 (June 2008 Report by Brad Sears & Badgett: Finding that
26 “[e]xtending marriage to same-sex couples will boost California state and local
27 government revenues by over \$63.8 million”).

- 1 • Tr. 1226:6-17, 1226:18-1227:7 (Zia: When Zia obtained a domestic
2 partnership license she did not have a celebration because it was “not an
3 occasion to write home about.”); *cf.* Tr. 1229:22-1231:15, PX0600 (Zia: When
4 Zia got married, she had a “wedding reception like every other couple would
5 have, with a wedding banquet.” About 150 people attended from “all over the
6 United States.”).
- 7 • Tr. 146:4-20 (Perry: Perry and Stier had a wedding ceremony in August 2004,
8 after they were married in San Francisco. They invited 100 people and had a
9 large celebration.).
- 10 • Tr. 1280:24-1283:19 (Sanders: Describing how his daughter did not have a
11 ceremony to celebrate her domestic partnership and how he learned of the
12 occasion via text message. He also describes his daughter’s impromptu
13 wedding in Vermont (so that she could have a “marriage certificate from some
14 government”), which he was unable to attend.).
- 15 • Tr. 709:12-20, 710:23-711:1 (Egan: Estimating the lost economic activity for
16 San Francisco from the prohibition on marriage by same-sex couples “on the
17 order of 35 million. The hotel room revenue is on the order of 2-and-a-half-
18 million dollars. And the tax revenue we project at \$1.7 million a year for sales
19 tax, and about .9 million a year for hotel tax.”).

PFF 153.

Taken together, Prop. 8 and federal laws restricting marriage to different-sex couples impose federal income tax burdens on same-sex couples that are not borne by different-sex couples. Such laws also deprive same-sex couples of federal entitlements and benefits, such as Social Security survivor benefits. These burdens in turn negatively impact the State of California and its local governments because of the loss of state and local tax revenue that result from higher federal taxes and lower federal benefits as well as increased numbers of Californians qualifying for means-tested programs for low-income people.

- 22 • Tr. 712:5-12, 712:23-713:9 (Egan: Estimating that same-sex couples would
23 realize an income tax savings, on average, of \$440 a year, if allowed to marry.
24 A portion of that savings would be spent in San Francisco and would generate
25 more sales tax for the City and County.).
- 26 • Tr. 713:10-13 (Egan: Noting that because the State gets a larger percentage of
27 sales tax than the City does, California would see an increase in sales tax
28 revenue if same-sex couples were allowed to marry).

- 1 • Tr. 713:14-20 (Egan: Explaining that if same-sex couples could receive
- 2 benefits such as Social Security and survivor disability benefits, San Francisco
- 3 would receive additional tax revenue).
- 4 • Tr. 1332:4-9 (Badgett: “There are other specific benefits that sometimes come
- 5 from third parties, such as the state or employers who might offer specific
- 6 benefits . . . to people who are married, but are not provided to couples who are
- 7 not married.”).
- 8 • Tr. 1341:8-16 (Badgett: Same-sex couples are likely to be paying higher
- 9 taxes.).
- 10 • Tr. 1367:5-1368:1 (Badgett: Prohibiting marriage by same-sex couples tends
- 11 to reduce same-sex couples’ income, which “will make them more likely to
- 12 need and be eligible for those means-tested programs that are paid for by the
- 13 state.” Similarly, to the extent that same-sex couples cannot obtain health
- 14 insurance for their partners and children, there will be more people who might
- 15 need to sign up for the state’s sponsored health programs.).

12 PFF 154. As a general matter, institutional discrimination against gay and lesbian individuals

13 increases social service costs to governments that provide such services. Two

14 examples illustrate this point. First, the number of uninsured Californians is higher

15 than it would be if same-sex couples could marry, and this imposes a financial burden

16 on State and local governments that reimburse providers for uncompensated care.

17 Second, local governments like San Francisco are providers of health services and

18 incur higher health costs because of Prop. 8 in two regards. In providing health

19 benefits to uninsured residents, local governments are the insurer of last resort for

20 members of same-sex couples who do not receive insurance through their partners’

21 employers because they are not married. And because of the links between

22 institutional discrimination and greater consumption of health services by targets of

23 that discrimination, local governments like San Francisco expend disproportionate

24 amounts on specialized health services for gay and lesbian individuals.

- 25 • PX0711 at RFA No. 26 (Attorney General admits that in defending
- 26 California’s domestic partner statutes against legal challenges to their validity,
- 27 the California Department of Justice incurred at least \$148,065.45 in legal fees
- 28 and costs.).

- 1 • PX0711 at RFA No. 27 (Attorney General admits that the California Secretary
2 of State estimates that the Secretary of State’s Office has incurred
3 approximately \$242,981 to establish a domestic partner registry.).
- 4 • PX0711 at RFA No. 28 (Attorney General admits the California Secretary of
5 State estimates that the Secretary of State’s Office incurs a cost of \$70,000 per
6 year to administer California’s domestic partner registry.).
- 7 • PX0711 at RFA No. 29 (Attorney General admits that the California Secretary
8 of State estimates that the Secretary of State’s Office incurred approximately
9 \$118,000 to establish a domestic partner registry.).
- 10 • PX0711 at RFA No. 30 (Attorney General admits that the California Secretary
11 of State estimates that the Secretary of State’s Office has incurred an additional
12 cost of approximately \$118,000 to modify its domestic partner registry
13 procedures as required by Assembly Bill 205 (Statutes of 2003, chapter 421)
14 and Assembly Bill 102 (Statutes of 2007, chapter 567).).
- 15 • Tr. 698:21-699:1, 699:19-21 (Egan: Noting that “the City and County spends
16 about 175 million, 177 million a year on providing healthcare for the
17 uninsured” and that that amount would be reduced if more people had health
18 insurance).
- 19 • Tr. 700:6-9 (Egan: “I believe that if marriage among same-sex couples were
20 legalized, the City, over the long term, would see a reduction in its costs for
21 providing behavioral health services, and the physical health services that can
22 be allied to that.”).
- 23 • Tr. 700:23-701:22 (Egan: Explaining that the use of behavioral health services
24 by gay and lesbian people in San Francisco is “disproportionately high” due in
25 part to discrimination).
- 26 • Tr. 702:2-7 (Egan: Stating that he would expect other jurisdictions to see a
27 decrease in spending on specialized services like that estimated for San
28 Francisco).
- Tr. 704:20-705:8 (Egan: Noting that school districts expend resources
responding to bullying based on sexual orientation).
- Tr. 1513:17-1514:25 (Kendall: Following reversal therapy, Mr. Kendall was
unable to support himself for a period of four to five years; he relied on public
benefits including using emergency rooms to obtain medical treatment, and
getting counseling through state sponsored school programs.).
- Tr. 1367:5-1368:1 (Badgett: Prohibiting same-sex couples from marrying
tends to reduce same-sex couples’ income, which “will make them more likely
to need and be eligible for those means-tested programs that are paid for by the
state.” Similarly, to the extent that same-sex couples cannot obtain health

1 insurance for their partners and children, there will be more people who might
2 need to sign up for the state’s sponsored health programs.).

- 3 • PX0672, PX0673, PX0674, PX0675, PX0676 (JN)² (*Hate Crimes in*
4 *California, 2004-2008: Noting that sexual orientation hate crime offenses*
5 *have consistently been the second largest bias motivation category of hate*
6 *crimes since 1995 and detailing prosecution statistics of same).*
- 7 • Tr. 2302:11-22 (Herek: The relationship between Proposition 8 and hate
8 crimes is that structural stigma such as Proposition 8 is creating the atmosphere
9 in which individual enactments of stigma occur.).
- 10 • PX0915, PX0962, PX0974, PX0975, and PX0976 (Demonstrating that the
11 enactment of laws that stigmatize gay men and lesbians—and, in particular, the
12 enactment of laws prohibiting same-sex couples from marrying—results in
13 greater minority stress and leads to the greater prevalence of mental disorders
14 in the gay and lesbian population).
- 15 • *See also* evidence cited in support of PFFs 120-132 (Demonstrating that
16 Proposition 8 causes minority stress, which in turn leads to a higher level of
17 mental disorders and negative mental health outcomes in the gay and lesbian
18 population, and that allowing gay and lesbian couples to marry would likely
19 improve the mental health of gay men and lesbians).
- 20 • *See also* evidence cited in support of PFF 133.

21 PFF 155. To the extent that institutional discrimination against gay and lesbian individuals also
22 decreases their physical and economic well-being and productivity, it reduces
23 employees’ commitment to working in California. It also decreases state and local
24 government revenue because this revenue is tied to the productivity of their
25 workforces.

- 26 • Tr. 688:8-23 (Egan: Explaining that “married individuals are healthier, on
27 average” and that there is a “well-known connection in economics between
28 health of the work force and work force productivity”).
- Tr. 688:24-689:3 (Egan: “Higher productivity leads to higher wages. And
higher wages leads to higher payroll tax revenue for the City.”).
- Tr. 690:1-12 (Egan: Stating that many jurisdictions would obtain greater
revenue from their business tax if gay and lesbian couples were allowed to
marry).

² “(JN)” refers to exhibits that were judicially noticed.

- Tr. 805:1-6 (Egan: Agreeing that improvements among lesbian, gay, bisexual and transgendered individuals and among same-sex couples in health, healthy behaviors, wealth accumulation and productivity increase San Francisco’s payroll and property taxes).
- Tr. 1335:22-1336:15 (Badgett: Same-sex couples who are not allowed to marry “may feel in the workplace context that they are treated differently from their heterosexual coworkers who are allowed to marry . . . [and] that feeling of discrimination might have an adverse effect . . . on their work performance.”).
- Tr. 1366:23-1367:3 (Badgett: “[I]f gay and lesbian people or people in same-sex couples feel like they are being treated differently, they may not be as productive in the workplace and that has potential broad economic harms to the state that will filter down to harmful impacts on state governments[.]”).
- Tr. 1368:2-1369:4 (Badgett: Gay and lesbian individuals of the creative class, the drivers of economic growth, may move to jurisdictions that permit them to marry instead of California.).
- PX1284 at 1 (Study by Nancy E. Day & Patricia Schoenrade: “[W]ork attitude levels of gay and lesbian workers are predicted in part by the amount of communication about their sexual orientation in which these workers engage.”).
- PX1286 at 1191 (Study by Kristin H. Griffith & Michelle R. Hebl: “Disclosing at work and working for an organization perceived to be more gay supportive was related to higher job satisfaction and lower job anxiety.”).
- PX1291 at 75 (Study by Alan L. Ellis & Ellen D. B. Riggle: Finding a strong relationship between openness about one’s sexual orientation and satisfaction with co-workers).

19 PFF 156. Prop. 8 will likely make it more difficult for California to attract and retain highly
20 skilled workers.

- Tr. 1368:8-11 (Badgett: “People, gay or lesbian people, who either want to marry their current partner or want to have that option in the future might decide that California is not a good place for them to live and they may move elsewhere in order to have that right.”).
- PX1262 at 1 (Report by Gary J. Gates: “The evidence that marriage equality may enhance the ability of Massachusetts to attract highly-skilled creative class workers among those in same-sex couples offers some support that the policy has the potential to have a long-term positive economic impact.”).
- PX1289 at 1 (Report by Richard Florida & Gary Gates: “The five metropolitan areas with the highest concentration of gay residents were all

1 among the nation's top 15 high-technology areas: San Francisco, Washington
 2 D.C, Austin, Atlanta, and San Diego. Gays not only predict the concentration
 3 of high-tech industry, they are also a predictor of its growth.”).

4 PFF 157. In order to combat the discriminatory effects of California's ban on marriages of
 5 same-sex couples, the City and County of San Francisco mandates that its contractors
 6 and vendors must offer benefits to domestic partners of their employees that are equal
 7 to those benefits offered to employees' spouses. This ordinance was costly to defend
 8 from legal challenges and results in ongoing higher contracting and procurement costs
 9 for San Francisco.

- 10 • PX0811 at 9-17 (San Francisco Administrative Code Chapter 12B setting out
 11 text of Equal Benefits Ordinance and providing for Human Rights Commission
 12 to investigate discrimination complaints).
- 13 • Cal. Pub. Cont. Code § 10295.3 (California's Equal Benefits Ordinance).
- 14 • Tr. 715:3-6 (Egan: “The Equal Benefits Ordinance is intended—intended to
 15 redress discrimination and discourage discrimination by requiring contractors
 16 for the City to provide the same benefits to domestic partners that they provide
 17 to married couples.”).
- 18 • Tr. 715:9-10 (Egan: “[T]he annual administrative cost [to administer the Equal
 19 Benefits Ordinance] is in the order of a million dollars a year for the City.”).
- 20 • Tr. 715:16-18 (Egan: Noting that the City incurs costs from defending the
 21 Equal Benefits Ordinance from legal challenges).
- 22 • Tr. 771:7-13 (Egan: City's cost to defend Equal Benefits Ordinance was \$1.6
 23 million); *see also* PX0845 (*Hours and Expenses for Matters Involving the
 24 Equal Benefits Ordinance*: same).
- 25 • Tr. 716:2-4 (Egan: “I believe that if same-sex marriage were legalized, the
 26 City would see reduced contracting costs and lower bids on many of its RFPs
 27 and proposals.”).
- 28 • Tr. 716:6-19 (Egan: Stating that “if same-sex marriage were legalized, more
 companies would extend benefits to same-sex couples who were married” and
 because those companies would no longer view San Francisco's Equal
 Benefits Ordinance as a deterrent, San Francisco “would see an expanded
 competition among contractors for doing business with the City”).
- Tr. 717:1-4 (Egan: “Some of the companies that are either not eligible or are
 deterred [due to San Francisco's Equal Benefits Ordinance] may very well be

1 the lowest bidder or the preferred bidder. And consequently, that tends to
 2 inflate the City’s contracting costs.”).

- 3 • Tr. 717:18-24 (Egan: “[C]ontracting costs are a significant expense for the
 4 City, over \$2 billion a year. So even a very small reduction in costs due to a
 5 regulatory change regarding how easy it is to contract with the City could
 6 result in a significant savings . . . a 1 percent reduction in costs would result in
 7 \$21 million savings for the City.”).
- 8 • Tr. 718:2-8 (Egan: Noting that if there were no further discrimination based
 9 on sexual orientation in marriage and the Equal Benefits Ordinance were
 10 repealed, there would be no contracting costs associated with compliance with
 11 that Ordinance).
- 12 • Tr. 803:23-804:2 (Egan: Stating that San Francisco incurs costs associated with
 13 its office tasked with investigating discrimination “in proportion to the amount
 14 of discrimination”).
- 15 • Tr. 804:3-8 (Egan: Stating that San Francisco’s Equal Benefits Ordinance
 16 increases the City’s contracting costs to the extent that it limits the pool of
 17 available contractors).

18 PFF 158. Also in order to combat discrimination based on sexual orientation, the California
 19 Department of Fair Housing and Employment has incurred costs of approximately
 20 \$1.5 million since 2004 in investigating claims of discrimination in housing and
 21 employment.

- 22 • PX0722 at Rog. No. 10, PX0723 at Rog. No. 11 (From July 1, 2004 to the
 23 present the California Department of Fair Employment and Housing expended
 24 approximately \$114,041.52 to investigate complaints of sexual orientation
 25 discrimination in housing and approximately \$1,360,050.72 to investigate
 26 complaints of sexual orientation discrimination in employment.).

27 **V. Plaintiffs Are Similarly Situated to Those Benefitted by California’s Marriage Laws**

28 **A. Same-Sex Couples Form Lasting, Committed Relationships and Are Fundamentally Similar to Opposite-Sex Couples**

PFF 159. 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. Gay and lesbian individuals,
 including Plaintiffs Perry and Stier, also raise children together.

- 1 • PX0707 at RFA No. 65 (Proponents admit “that gay and lesbian individuals,
2 including Plaintiffs, have formed lasting, committed, and caring relationships
3 with persons of the same sex, and same-sex couples share their lives and
4 participate in their communities together.”).
- 5 • PX0710 at RFA No. 65 (Attorney General admits “that gay men and lesbians
6 have formed lasting, committed, and caring same-sex relationships, and that
7 same-sex couples share their lives and participate in their communities
8 together.”).
- 9 • PX0710 at RFA No. 58 (Attorney General admits that an individual’s capacity
10 to establish a loving and long-term committed relationship with another person
11 does not depend on the individual’s sexual orientation and that “this
12 proposition is implicitly recognized in the law in the State of California.”).
- 13 • Tr. 586:22-587:1 (Peplau: Reliable research shows that “a substantial
14 proportion of lesbians and gay men are in relationships, that many of those
15 relationships are long-term.”).
- 16 • Tr. 587:2-588:18 (Peplau: Discussing a study conducted by Christopher
17 Carpenter and Gary Gates that analyzed a representative sample of lesbians
18 and gay men in California. The researchers found that about 61% of lesbians
19 and 46% of gay men are in a cohabiting relationship with a same-sex partner
20 and that these relationships averaged 8 to 10 years in length.).
- 21 • PX0894 at 573 (Carpenter & Gates, “Gay and Lesbian Partnership: Evidence
22 from California”: Studies concluding that between 37% to 46% of gay men
23 and 51% to 62% of lesbians are in a cohabiting partnership).
- 24 • PX0765 at 2 (Am. Psychol. Ass’n, Policy Statement on Sexual Orientation and
25 Marriage: “[B]etween 18% and 28% of gay couples and between 8% and 21%
26 of lesbian couples have lived together 10 or more years.”).
- 27 • Tr. 79:16-80:1 (Zarrillo: Explaining that he is in a “committed relationship
28 with another gay man” who is the “love of [his life]”).
- Tr. 139:1-3 (Perry: “Sandy is the women I love, and we live together in
Berkeley.”).
- Tr. 167:3-9 (Stier: Stier has fallen in love one time in her life—with Perry.
Their love is a blend of many things. “It’s physical attraction. It’s romantic
attraction. It’s a strong commitment. It’s intellectual bonding and emotional
bonding.”).
- Tr. 2914:10-2915:16 (Blankenhorn: Agreeing that the “dimensions” of
marriage as described in *The Marriage Movement: A Statement of Principles*
(2000) [PX2879], including that marriage is a legal contract, financial

partnership, sacred promise, sexual union and a personal bond, apply equally to marriage between a heterosexual couple or a gay or lesbian couple).

- PX0707 at RFA No. 66 (Proponents admit “that gay and lesbian individuals, including Plaintiffs Perry and Stier, raise children together.”).
- Tr. 1085:14-1087:4 (Lamb: Many children are raised by parents who are not their genetic parents. For example, a “social mother” is sometimes distinguished from a “natural mother.” Regardless of whether a parent is genetically related to his or her child, that parent-child relationship “is a supremely important element in shaping the[] child’s development.”).
- Tr. 161:9-12 (Stier: Perry and Stier live with their four boys; two are Perry’s biological sons, and two are Stier’s biological sons.).
- Tr. 166:11-23 (Stier: After their relationship developed, Perry and Stier realized that they wanted to build a life together. They wanted to join their families and live as a family—to have that kind of commitment and stability that they both appreciated.).
- Tr. 1224:1-4 (Zia: On her relationship with her wife Lia: “I feel that Lia is my soulmate in life. I love her. I—she’s the person I want to spend the rest of my life with. She’s the most important person to me.”).

PFF 160. Gay and lesbian individuals possess the same potential and desire for sustained loving and lasting relationships as heterosexuals.

- PX0707 at RFA No. 58 (Proponents admit “that many gay men and lesbians have established loving and committed relationships.”).
- Tr. 583:12-585:21 (Peplau: Research that has compared the quality of same-sex and opposite-sex relationships and the processes that affect those relationships consistently shows “great similarity across couples, both same-sex and heterosexual.”).
- PX0765 at 1 (Am. Psychol. Ass’n, Policy Statement on Sexual Orientation and Marriage: “Research indicates that many gay men and lesbians want and have committed relationships. For example, survey data indicate that between 40% and 60% of gay men and between 45% and 80% of lesbians are currently involved in a romantic relationship.”).
- PX0760 at 3 (Am. Psychoanalytic Ass’n, Position Paper on Gay Marriage: “Numerous studies have shown that a significant number of gay men and lesbians are in committed long-term relationships . . . and that these couples derive increased life satisfaction, enhanced personal meaning and stability from their relationship Studies of same-sex relationships have provided persuasive evidence that lesbian and gay couples do not vary from

1 heterosexual couples on measures of relationship satisfaction, stability,
2 durability, and commitment.”).

- 3 • PX0752 at 1 (Am. Psychoanalytic Ass’n, Position Statement: “[G]ay men and
4 lesbians possess the same potential and desire for sustained loving and lasting
5 relationships as heterosexuals.”).
- 6 • PX 2545 (Young 11/13/09 Dep. Tr. 122:17-123:1: Agreeing with American
7 Psychoanalytic Association’s statement that “gay men and lesbians possess the
8 same potential and desire for sustained loving and lasting relationships as
9 heterosexuals”).
- 10 • PX 2545 (Young 11/13/09 Dep. Tr. 100:17-101:5: Agreeing that love and
11 commitment are the reasons both gay people and heterosexuals have for
12 wanting to marry).
- 13 • PX1245 at 407 (Review by Anne Peplau and Adam Fingerhut: “Regardless of
14 sexual orientation, most individuals value affection, dependability, shared
15 interests, and similarity of religious beliefs.”).
- 16 • Tr. 252:10-12 (Cott: “[C]ouples of the same sex have expressed many of the
17 same motivations as couples of different sex to marry to and to establish stable
18 households.”).
- 19 • Tr. 79:25-80:1 (Zarrillo: “I want nothing more than to marry [Katami].”).
- 20 • Tr. 107:24-25 (Katami: “I love Jeff Zarrillo. I want to get married to Jeff. I
21 want to start a family.”).
- 22 • Tr. 154:22 (Perry: Perry has been in love with Stier for 10 years.).
- 23 • *See also* evidence cited in support of PFF 159.

24 PFF 161. Social science research clearly establishes that same-sex couples closely resemble
25 heterosexual couples both in terms of the quality of their relationships and the
26 processes that affect their relationships. Similarly, studies have found same-sex and
27 heterosexual couples to be equivalent to each other on measures of relationship
28 satisfaction and commitment.

- Tr. 583:12-585:21 (Peplau: Research that has compared the quality of same-
sex and opposite-sex relationships and the processes that affect those
relationships consistently shows “great similarity across couples, both same-
sex and heterosexual.”).

- Tr. 592:4-593:9 (Peplau: The same processes at work in heterosexual relationships are also at work in same-sex relationships.).
- PX0765 at 1-2 (Am. Psychol. Ass’n, Policy Statement on Sexual Orientation and Marriage: “[S]tudies that have compared partners from same-sex couples to partners from heterosexual couples on standardized measures of relationship quality (such as satisfaction and commitment) have found partners from same-sex and heterosexual couples to be equivalent to each other.” Further, “research has found that the factors that predict relationship satisfaction, relationship commitment, and relationship stability are remarkably similar for both same-sex cohabiting couples and heterosexual married couples.”).
- PX0921, PX942, PX1050, PX1054, PX1130, PX1137, PX1142, PX1144, PX1150, PX1166, PX1231, PX1234, PX1236, PX1245 (Examples of studies and reviews of the literature that consistently and reliably show that same-sex couples are very similar to opposite-sex couples.).

11 PFF 162. Loving relationships between persons of the same sex are equal in worth and dignity
12 to loving relationships between persons of the opposite sex.

- PX0708 at RFA No. 106 (Proponents admit PFF 162 in its entirety).
- DIX0956 (Blankenhorn, *Future of Marriage*): “I believe that today the principle of equal human dignity must apply to gay and lesbian persons. In that sense, insofar as we are a nation founded on this principle, we would be *more* American on the day we permitted same-sex marriage than we were on the day before.”) (emphasis in original); *see also* Tr. 2805:8-20 (Blankenhorn).
- PX2547 (Nathanson 11/12/09 Dep. Tr. 29:3-19: Acknowledging that the American Anthropological Association, the American Psychoanalytic Association, the American Psychological Association, and the American Psychiatric Association all support the right of same-sex couples to marry).
- Tr. 585:22-586:8 (Peplau: There is no empirical support for the negative stereotypes that gay men and lesbians have trouble forming stable relationships or that those relationships are inferior to heterosexual relationships.).
- Tr. 79:16-80:3 (Zarrillo: Describing long-term relationship with Katami).
- Tr. 1280:18-23 (Sanders: Describing his lesbian daughter-in-law. “I love being with Meagan. She is like a third daughter. She is great to be around. She’s smart. She’s resourceful. She’s energetic. She’s hardworking. She has been an excellent partner for my daughter. And I love being around both of them. But Meagan is like another piece of the family, and has been.”).

1 PFF 163. Same-sex couples wish to marry for many of the same reasons that opposite-sex
2 couples marry, including the desire to raise, nurture, and protect children.

- 3 • Tr. 661:15-662:1 (Peplau: There is no evidence that same-sex couples place a
4 greater emphasis on individualism and personal fulfillment than opposite-sex
5 couples, or that they are less concerned with the well-being of their children
6 than opposite-sex couples.).
- 7 • PX0762 at 1 (JN) (Am. Acad. of Child & Adolescent Psychiatry, Policy
8 Statement: “There is no evidence to suggest or support that parents who are
9 lesbian, gay, bisexual, or transgender are per se different from or deficient in
10 parenting skills, child-centered concerns, and parent-child attachments when
11 compared with heterosexual parents.”).
- 12 • Tr. 1362:17-21 (Badgett: Same-sex couples wish to marry for many of the
13 same reasons that opposite-sex couples marry.).
- 14 • PX1273 at 41 (Badgett, *When Gay People Get Married: What Happens When
15 Societies Legalize Same-Sex Marriage*: “The 2006 survey of Dutch married
16 and registered partner couples by Boele-Woelki and colleagues also finds that
17 same-sex couples are motivated in similar ways as different-sex couples.
18 Roughly 60% of gay and heterosexual married couples report primarily
19 emotional reasons for choosing marriage, and about 40% of each group also
20 report that practical reasons encouraged them to consider formalizing their
21 relationships.”).

16 **B. Same-Sex Couples Contribute to Society in All the Ways That Opposite-Sex
17 Couples Do**

18 PFF 164. Same-sex sexual orientation does not result in any impairment in judgment or general
19 social and vocational capabilities and bears no relation to a person’s ability to perform
20 or contribute to society.

- 21 • PX0739 at No. 21 (Proponents stipulated that “[s]ame-sex sexual orientation
22 does not result in any impairment in judgment or general social and vocational
23 capabilities.”).
- 24 • PX0710 at RFA No. 19 (Attorney General admits “that sexual orientation
25 bears no relation to a person’s ability to perform or contribute to society.”).
- 26 • PX0605 at 2 (JN) (Report by R. Bradley Sears et. al.: “Courts and legal
27 scholars have concluded that sexual orientation is not related to an individual’s
28 ability to contribute to society or perform in the workplace.”).

- PX0609 at 4-4 (JN) (Williams Institute Report: Summarizes cases in which “courts and individual judges have found that sexual orientation bears no relation to an individual’s ability to contribute to society”).
- Tr. 2530:25-2532:25 (Miller: Agrees that “[c]ourts and legal scholars have concluded that sexual orientation is not related to an individual’s ability to contribute to society or perform in the workplace”).
- Tr. 2028:3-7 (Herek: There is no inherent relationship between a person’s sexual orientation and his or her ability to be a productive and contributing member of society—to be happy and lead a fulfilling life.).
- PX0752 at 1 (Am. Psychoanalytic Ass’n, Position Statement on Homosexuality: Psychoanalysts should be selected without regard to sexual orientation.).
- PX0752 at 2 (Am. Psychoanalytic Ass’n, Position Statement: “[S]exual orientation is not germane to any aspect of military effectiveness, including unit cohesion, morale, recruitment or retention.”); *see also* PX1410 (Am. Psychol. Ass’n, Policy Statement on Sexual Orientation & Military Service).

PFF 165. Same-sex couples contribute to society in the workplace and the economy, in the public sector, in the non-profit sector, and as citizens.

- PX0710 at RFA No. 21 (Attorney General admits “that a person’s sexual orientation is irrelevant in evaluating his or her judgment and social and vocational capabilities.”).
- PX0609 at 4-4 (JN) (Williams Institute Report: “Sexual orientation bears no relation to an individual’s ability to contribute to society.”).
- DIX1109 (Gates, *Same-Sex Spouses and Unmarried Partners in the American Community Survey, 2008*, Williams Institute (Oct. 2009): Describing similarities between income of same-sex and different-sex spousal couples).
- Tr. 138:6-22 (Perry: Perry has been working with children and in the field of child protection, child development, and family support for almost 25 years. She is currently the executive director of a state-wide agency that provides services and support to families with children from zero to five. She has spent her entire career working for the government.).
- Tr. 161:2-6 (Stier: Stier works for a county government as an information systems director in healthcare systems.).
- Tr. 76:21-77:1 (Zarrillo: Describing employment with same company for 21 years).

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- Tr. 87:11-23 (Katami: Describing educational and work background).
- Tr. 1209:23-1210:21 (Zia: Zia is a writer who has written two books. She has also been an Executive Editor for Ms. Magazine.).
- Tr. 1504:16-1505:2 (Kendall: Works for the Denver Police Department as a National Crime Information Center agent).
- Tr. 1279:2-8 (Sanders: Describing his Chief of Staff when he was Chief of Police coming out to him as a lesbian but stating she would not come out to others because it wasn't in her best interest, because people would only see her as a lesbian and not as his Chief of Staff.).
- Tr. 1270:2-13, 1278:16-21 (Sanders: Describing a gay Sergeant who worked for San Diego Police Department in 1970s who was respected as a good Sergeant and police officer).
- Tr. 1278:22-1279:1 (Sanders: Describing gay men and lesbians who served in the police department but would not come out of the closet because they felt their careers would be over and that they would be treated differently).
- *See also* evidence cited in support of PFF 164.

PFF 166.

Like heterosexuals, gay men and lesbians are racially and ethnically diverse; live throughout the State; have families similar to heterosexual families; are gainfully employed and thus contribute to the State's economy; accounting for education (and gender discrimination), have incomes similar to heterosexuals; pay proportionately more taxes than their heterosexual counterparts; and contribute in myriad ways to the communities in which they live.

- PX0710 at RFA No. 22 (Attorney General admits "that the laws of California recognize no relationship between a person's sexual orientation and his or her ability to raise children; to his or her capacity to enter into a relationship that is analogous to marriage; or to his or her ability to participate fully in all economic and social institutions, with the exception of civil marriage.").
- Tr. 1362:5-10 (Badgett: Same-sex couples have more similarities than differences with different-sex couples, and any differences are marginal.).
- PX2096 at 1 (The Williams Institute, UCLA, Census Snapshot on California: "In many ways, the more than 107,000 same-sex couples living in California are similar to married couples. According to Census 2000, they live throughout the state, are racially and ethnically diverse, have partners who depend upon one another financially, and actively participate in California's

1 economy. Census data also show that 18% of same-sex couples in California
2 are raising children.”).

- 3 • DIX1109 (Gates, *Same-Sex Spouses and Unmarried Partners in the American*
4 *Community Survey, 2008*, Williams Institute (Oct. 2009): Describing
5 similarities between age, education, income and home ownership of same-sex
6 and different-sex spousal couples).
- 7 • PX1271 at ii (Report by Gary J. Gates: “Same-sex and different-sex spouses
8 share many characteristics,” including income.).
- 9 • PX1269 at Executive Summary (Report by Michael D. Steinberger: “Using
10 data from several government data sources, this report estimates the dollar
11 value of the estate tax disadvantage faced by same-sex couples. In 2009, the
12 differential treatment of same-sex and married couples in the estate tax code
13 will affect an estimated 73 same-sex couples, costing them each, on average,
14 more than \$3.3 million.”).
- 15 • Tr. 1341:8-16 (Badgett: Same-sex couples are likely to be paying higher taxes
16 because they cannot file jointly, and in some cases they must pay income taxes
17 for unregistered domestic partnership benefits.).
- 18 • Tr. 1368:15-21 (Badgett: Many gay and lesbian individuals are part of creative
19 class, which includes drivers of economic growth such scientists, inventors and
20 artists.).
- 21 • *See also* evidence cited in support of PFFs 164-165.

22 **VI. Sexual Orientation Is a Fundamental Aspect of a Person’s Identity**

23 **A. Sexual Orientation Exists, Can Be Defined, and Is Not a Disorder**

24 PFF 167. Sexual orientation refers to an enduring pattern or disposition to experience sexual,
25 affectional, or romantic desires for and attractions to men, women, or both sexes. The
26 term is also used to refer to an individual’s sense of personal and social identity based
27 on those desires and attractions, behaviors expressing them, and membership in a
28 community of others who share them.

- Tr. 2025:3-12 (Herek: “Sexual orientation is a term that we use to describe an
enduring sexual, romantic, or intensely affectional attraction to men, to
women, or to both men and women. It’s also used to refer to an identity or a
sense of self that is based on one’s enduring patterns of attraction. And it’s
also sometimes used to describe an enduring pattern of behavior.”).

- Tr. 2060:7-11 (Herek: Most social science and behavioral research has assessed sexual orientation in terms of attraction, behavior, or identity, or some combination thereof.).
- Tr. 2060:11-2061:10 (Herek: An “enduring pattern” means that there is some consistency over a period of time. It is something that constitutes an important period of one’s life—these are feelings and attractions that endure over a significant portion of time.).

PFF 168.

Proponents’ assertions that sexual orientation cannot be defined is both contrary to the weight of the evidence, and also contrary to a common-sense and intuitive understanding of sexual orientation.

- Tr. 2026:7-24 (Herek: In his own research, Dr. Herek has asked ordinary people if they are heterosexual, straight, gay, lesbian, or bisexual, and that is a question that people generally are able to answer fairly easily.).
- Tr. 2309:11-2310:6 (Herek: Dr. Herek has asked thousands of people what their sexual orientation is in various studies, and based on that and other research he has read, it is Dr. Herek’s opinion that most people can answer that question intelligently.).
- Tr. 2324:8-13 (Herek: If two women wish to marry each other, it is reasonable to assume that they are lesbians. And if two men want to marry each other, it is reasonable to assume that they are gay.).
- Tr. 2324:2-5 (Herek: “I think it’s reasonable to expect that by the age of 45, when one is in a committed relationship, one probably does have a pretty good sense of the constancy of where their life is likely to go in the future.”).
- Tr. 2025:13-2026:4 (Herek: In the context of research, a researcher will use these different aspects of the definition in different contexts depending upon his or her focus in a particular research study. For example, in public health research, it is often the case that the focus is on sexually-transmitted diseases or other aspects of sexual behavior. In that context, sexual orientation is often defined in operational terms, according to patterns of sexual behavior. But in the context of looking at discrimination on people who are gay, lesbian, or bisexual, it would probably make sense to focus on identity. So it varies somewhat depending on the research context.); *see also* Tr. 958:22-23 (Meyer).
- Tr. 2304:13-2305:10 (Herek: One of the documents that Proponents used on cross examination, DIX1249, states: “So what is the correct definition of the LGB population? The answer depends on the purpose of the study. A researcher who is interested in risks for HIV/Aids among men who have sex with men, MSM’s, might focus on behavioral definitions because behavior

1 affects risk exposure regardless of personal identity. A researcher who is
 2 interested in developmental milestones of gay youth might focus on identity
 3 definitions, because development of a gay identity is a core task facing the
 4 youth. Thus, there is not one answer to the question. It is the researcher's
 5 intellectual responsibility to answer this question with reasoned justification.
 6 The researcher must define the population on the basis of the study's
 7 objectives and its underlying conceptual framework." And this is consistent
 8 with Dr. Herek's understanding.).

- 9 • Tr. 2107:6-2108:13 (Herek: Operationalizing a variable means to put it in
 10 measurable terms and define how it will be used in a particular study. For
 11 example, a study may use a definition of socioeconomic status, but to actually
 12 use it in a survey, one needs to develop questions to elicit that information,
 13 such as "What was your household income during the last year?" because you
 14 cannot simply ask "What is your socioeconomic status?").
- 15 • Tr. 2306:12-2308:14 (Herek: Sexual orientation is not the only area in which
 16 definitional issues arise in the context of studies—it also comes up with respect
 17 to racial or ethnic minorities. Over the past 100 years, many different terms
 18 have been used or have come into favor and gone out of favor for describing
 19 particular racial or ethnic groups. Indeed, some of the research on lesbian and
 20 gay identity has borrowed from previous research on racial and ethnic minority
 21 identities as a starting point.).
- 22 • Tr. 2078:10-12 (Herek: "[H]eterosexual and homosexual behaviors alike have
 23 been common throughout human history . . .").
- 24 • Tr. 531:25-533:24 (Chauncey: the categories of hetero and homosexual
 25 emerged in the late 19th century, but there were people at all time periods in
 26 American history whose primary erotic and emotional attractions were to
 27 people of the same sex, such as Nicholas Sension, an 18th century American
 28 Puritan known for his consistent erotic interest in men, Frances Willard, who
 founded the Women's Temperance Union in the 19th century and wrote in her
 diary of her deep and sustained passion for other women, and people in the
 early 20th century who identified themselves and were identified by others by
 their consistent attraction to people of the same sex.).
- PX0480 (Supporters of Prop. 8 were able to identify gay and lesbian
 individuals or couples); *see also* PX1867 at 42, 63, 64 and 81; PX1868 at 21,
 33, 48, 61, 72, 94, and 98; PX2153; PX2156; and PX2597.

PFF 169. The vast majority of people are consistent in their attraction, behavior, and identity.

- Tr. 2072:19-2073:4 (Herek: "[T]he vast majority of people are consistent in
 their behavior, their identity, and their attractions."); *see also* Tr. 2308:24-
 2309:1 (Herek: same).

- Tr. 2086:13-21 (Herek: The Laumann study indicates that 90% of people in his sample were consistently heterosexual in their behavior, identity, and attraction, and a core group of 1 to 2 % of the sample was consistently lesbian, gay, or bisexual in their attractions, behavior, and identity.); *see also* Tr. 2309:2-10; 2311:8-18.
- Tr. 2211:8-10 (Herek: “[I]f I were a betting person, I would say that you would do well to bet that their future sexual behavior will correspond to their current identity.”).

PFF 170. Although sexual orientation ranges along a continuum from exclusively heterosexual to exclusively homosexual, it is usually discussed in terms of three categories: heterosexual, homosexual, and bisexual.

- Tr. 2064:22-23 (Herek: In practice, we generally refer to three groups: homosexuals, heterosexuals, and bisexuals.).
- Tr. 2174:7-17 (Herek: DIX1266, an article by John Gonsiorek from 1995 that Proponents used on cross-examination with Dr. Herek, states: “Regardless of these philosophical debates, most present-day North Americans tend to label themselves as homosexual, heterosexual, or bisexual, despite the fact that these labels do not capture the full range of complexity of sexual orientation and sexual identity.”).
- Tr. 2310:12-17 (Herek: Regardless of the causes of sexual orientation, there is no doubt that some people are lesbian, some are gay, and some are bisexual.).

PFF 171. Sexual orientation is commonly discussed as a characteristic of the individual, like biological sex, gender identity, race, or age. Although this perspective is accurate insofar as it goes, it is incomplete because sexual orientation is always defined in relational terms and necessarily involves relationships with other individuals. Sexual acts and romantic attractions are characterized as homosexual or heterosexual according to the biological sex of the individuals involved in them, relative to each other. Indeed, it is by acting with another person—or expressing a desire to act—that individuals express their heterosexuality, homosexuality, or bisexuality.

- Tr. 2027:2-18 (Herek: Sexual orientation is a relational construct because it is all about a relationship between two people that is defined by the sex of the two persons involved. Whether we are talking about behavior, or attraction, or identity, it is really about the fundamental relationships that people form to

1 meet their needs for intimacy and attachment. These sorts of relationships, that
 2 need for intimacy and attachment is a very core part of the human experience
 and a very fundamental need that people have.).

3 PFF 172. Proponents' assertion that sexual orientation is distinct from race in that it is fluid and
 4 can be changed is contrary to the weight of the evidence, as explained by Dr. Herek,
 5 Dr. Meyer, and various professional organizations.

- 6 • Tr. 954:3-24 (Meyer: "African-American is an identity, so the identity part of
 7 it could vary and, in fact, it does vary. People who move into the United
 8 States, for example, who are by our definition African-Americans may not
 9 describe themselves as African-American or even black. And there are studies
 10 that show that people who come, for example, from the Caribbean who are
 11 dark colored, their parents don't describe themselves as black, but their
 12 offsprings after being educated in the United States and socialized do. So it—
 13 definitions always vary. Certainly, with African-Americans, the term itself is
 14 relatively recent. Black was used before that. And Negro was used even
 15 before that. Senator Reid got into trouble for using that term. So those
 16 identities change and they are responsive to the social context in many
 17 different ways, but—obviously, the population itself doesn't change, but how
 18 people refer to themselves might change.").
- 19 • Tr. 958:12-15 (Meyer: "If you wanted to . . . measure race by skin tone, you
 20 will find that you will have a large number of people who maybe have a darker
 21 skin tone, but are not identified as black.").
- 22 • PX1675 at 1 (JN) (Am. Anthropological Ass'n Statement on "Race": "In the
 23 United States both scholars and the general public have been conditioned to
 24 viewing human races as natural and separate divisions within the human
 25 species . . . however, it has become clear that human populations are not
 26 unambiguous, clearly demarcated, biologically distinct groups. Evidence from
 27 the analysis of genetics (e.g., DNA) indicates that most physical variation,
 28 about 94%, lies *within* so-called racial groups . . . These facts render any
 attempt to establish lines of division among biological populations both
 arbitrary and subjective.").
- PX1676 at 1, 2 (JN) (Am. Ass'n of Physical Anthropologists, Statement on
 Biological Aspects of Race: "Pure races, in the sense of genetically
 homogenous populations, do not exist in the human species today, nor is there
 any evidence that they have ever existed in the past. . . . There is no necessary
 concordance between biological characteristics and culturally defined
 groups.").
- Tr. 2176:23-2177:14 (Herek: "[Social constructionists] are talking about the
 construction of sexual orientation at the cultural level, in the same way that we
 have cultural constructions of race and ethnicity and social class. . . . [S]o, in a

1 sense, you can say there's nothing real about them in that these are not things
2 that might be argued to exist in nature except for society's creation of them.
3 But to say that there's no such thing as class or race or ethnicity or sexual
4 orientation is to, I think, minimize the importance of that. . . . And, again,
5 social constructionists . . . are not saying that this is a process of the
6 individual's construction of sexual orientation.”).

- 7 • Tr. 2178:2-16 (Herek: “[S]ocial constructionists would say race is an entirely
8 constructed category; although, it is based on some physical characteristics.
9 But the definition of which races are which, which ones are separate from each
10 other, what type of skin coloring or what type of ancestry involves a person
11 being of a particular race, all of those things are socially constructed. And I
12 think they [social constructionists] would say a similar thing about sexual
13 orientation. Again, it doesn't mean that that individual personally constructs
14 her or his racial identity or her or his sexual orientation in the sense of just
15 making it up and it has no reality and it could change tomorrow. But I think
16 that's . . . more consistent with what the social constructionists would argue.”).

17 PFF 173. Mainstream mental health professionals and researchers have long recognized that
18 homosexuality is a normal expression of human sexuality. Indeed, the American
19 Psychiatric Association removed homosexuality from the *DSM* in 1973, stating that
20 “homosexuality *per se* implies no impairment in judgment, stability, reliability, or
21 general social or vocational capabilities.” The American Psychological Association
22 adopted the same position in 1975, and urged all mental health professionals to help
23 dispel the stigma of mental illness that had long been associated with homosexual
24 orientation.

- 25 • Tr. 2027:19-2028:2 (Herek: Homosexuality is not considered a mental
26 disorder. The American Psychiatric association, the American Psychological
27 Association, and others of the major professional mental health associations
28 have all gone on record affirming that homosexuality is a normal expression of
sexuality and that it is not in any way a form of pathology.).
- Tr. 872:24-873:1 (Meyer: Being gay or lesbian is not, in and of itself, a mental
illness.).
- Tr. 2028:8-19 (Herek: In the past, homosexuality was seen as a mental
disorder. In 1952, the American Psychiatric Association created its first
official roster of mental illnesses, called the Diagnostic and Statistical Manual
of Mental Disorders, or the DSM for short. Homosexuality was included in
the first edition of the DSM.).

- 1 • PX0885 at 38-39 (Diagnostic and Statistical Manual of Mental Disorders, first
2 edition: Includes homosexuality as a disorder under the heading “Sexual
3 Deviation.”).
- 4 • Tr. 2028:19-25 (Herek: Over time, the inclusion of homosexuality in the DSM
5 was challenged. In 1973, the American Psychiatric Association removed
6 homosexuality from the DSM, and shortly thereafter the American
7 Psychological Association went on record strongly supporting that decision.).
- 8 • Tr. 2030:17-2032:11 (Herek: The original position that homosexuality was a
9 disorder was not supported by empirical research. One cause for the change in
10 positions was that this common wisdom was challenged by empirical data
11 showing people who were homosexual and very well-adjusted.).
- 12 • PX0764 (American Psychological Association Policy Statement—
13 Discrimination Against Homosexuals, 1975: “The American Psychological
14 Association supports the action taken on December 15, 1973, by the American
15 Psychiatric Association, removing homosexuality from that Association’s
16 official list of mental disorders. The American Psychological Association
17 therefore adopts the following resolution: Homosexuality per se implies no
18 impairment in judgement, stability, reliability, or general social and vocational
19 capabilities; Further, the American Psychological Association urges all mental
20 health professionals to take the lead in removing the stigma of mental illness
21 that has long been associated with homosexual orientations.”); *see also* Tr.
22 2030:11-15 (Herek: PX0764 is still the position of the American
23 Psychological Association. In fact, the APA has reaffirmed that position in
24 several subsequent resolutions.).
- 25 • PX0760 at 3 (Am. Psychoanalytic Ass’n, Position Paper on Gay Marriage:
26 “Same-gender sexual orientation cannot be assumed to represent a deficit in
27 personality development or the expression of psychopathology.”).
- 28 • PX 2545 (Young 11/13/09 Dep. Tr. 121:24-122:16 (agreeing with the
American Psychoanalytic Association’s statement that “homosexuality is a
normal variant of adult sexuality”).
- Tr. 1032:6-12 (Lamb: Gay and lesbian sexual orientations are “normal
variations and are considered to be aspects of well-adjusted behavior.”).
- Tr. 1937:13-25 (Tam: Homosexuality is no longer considered a medical
condition that needed to be treated and that it is “a part of normal behavior.”).
- PX0707 at RFA No. 20 (Proponents admit that “prominent medical and
psychiatric professional organizations no longer consider sexual orientation an
illness or a disorder.”).

- 1 • PX0710 at RFA No. 20 (Attorney General admits “that the medical and
2 psychiatric communities do not consider sexual orientation an illness or
3 disorder.”).
- 4 PFF 174. Sexual orientation is fundamental to a person’s identity and is the kind of
5 distinguishing characteristic that defines gay and lesbian individuals as a discrete
6 group.
- 7 • Tr. 858:24-859:5 (Meyer: Sexual orientation is perceived as “a core thing
8 about you are.” People say: “This is who I am. . . . [I]t is a central identity that
9 is important.”).
- 10 • Tr. 2027:14-18 (Herek: These sorts of relationships, that need for intimacy
11 and attachment is a very core part of the human experience and a very
12 fundamental need that people have.).
- 13 • Tr. 140:6, 141:14-19 (Perry: Perry is a lesbian and feels that she was born with
14 her sexual orientation. At 47 years old, she does not think that it might
15 somehow change.).
- 16 • Tr. 1510:4-8 (Kendall: “I knew I was gay just like I knew I’m short and I’m
17 half Hispanic. And I just never thought those factors would change.”).
- 18 • Tr. 77:4-5 (Zarrillo: Zarrillo is gay and has been as long as he can remember.).
- 19 • Tr. 91:15-17 (Katami: Katami is “a natural-born gay” and has been as long as
20 he can remember.).
- 21 • Tr. 1372:10-1374:7 (Badgett: DIX1108, titled Best Practices for Asking
22 Questions about Sexual Orientation on Surveys, reflects a discussion about
23 methods for conducting surveys; it does not conflict with the substantial
24 evidence demonstrating that sexual orientation is a distinguishing characteristic
25 that defines gay and lesbian individuals as a discrete group.).
- 26 • PX0021 (Supporters of Prop. 8 referred to homosexuals as a discrete and
27 identifiable group of people.); *see also* PX0480; PX0506 at 12 and 15; PX1868
28 at 56, 64, 71, 72; PX0577 at 45 and 46; PX2153; PX2156; PX 2589; and
 PX2655 at 4.
- PX2343A (Tam identifies homosexuals as a discrete group); *see also*
 PX2343B; PX0513; PX2185; PX2507; Tr.1914:22-24; Tr. 1923: 21-1924:16;
 Tr. 1928:6-13; Tr. 1937:13-25; Tr. 1962:17-1963:8; Tr. 1964:17-1965:2.
- PX0710 at RFA Nos. 23, 24, 28 (Attorney General admits PFF 100 in its
 entirety.).

1 **B. Sexual Orientation Is Highly Resistant to Change, and Attempting to Change**
 2 **Sexual Orientation Is Likely to Cause Harm**

3 PFF 175. People generally exercise little or no choice about their sexual orientation, and there is
 4 no credible evidence that sexual orientation can or should be changed.

- 5 • Tr. 2032:15-22 (Herek: Herek has conducted research in which he has found
 6 that the vast majority of lesbians and gay men, and most bisexuals as well,
 7 when asked how much choice they have about their sexual orientation say that
 8 they have “no choice” or “very little choice” about it.); *see also* Tr. 2312:7-21
 9 (Herek).
- 10 • PX0928 (Article by Dr. Herek entitled “Internalized Stigma Among Sexual
 11 Minority Adults: Insights From a Social Psychological Perspective,” which
 12 was published in the Journal of Counseling Psychology in 2009: Describes a
 13 social psychological framework for understanding sexual stigma, and it reports
 14 data on sexual minority individuals’ stigma-related experiences. It also
 15 contains data regarding the degree of perceived choice of sexual orientation
 16 among lesbians, gay men, and bisexuals.).
- 17 • Tr. 2054:12-2055:24 (Herek: Page 39 of PX0928 contains a table that reports
 18 data on approximately 2,200 people who responded to questions about how
 19 much choice they had about being lesbian, gay, or bisexual. Among the gay
 20 men, 87% said that they experienced no choice or only a little choice about
 21 their sexual orientation. Among lesbians, 70% said that they had no or very
 22 little choice about their sexual orientation.).
- 23 • PX0930 at 27 (Article by Dr. Herek entitled “Demographic, Psychological, and
 24 Social Characteristics of Self-Identified Lesbian, Gay, and Bisexual Adults in a
 25 U.S. Probability Sample,” accepted for publication in Sexuality Research and
 26 Social Policy: Based on a U.S. probability sample and reports percentages of
 27 gay men, lesbians, and bisexuals regarding the amount of choice they feel they
 28 have regarding their sexual orientation.).
- Tr. 2056:4-25 (Herek: PX0930 demonstrates that 88% of gay men reported
 that they had “no choice at all” about their sexual orientation, and 68% of
 lesbians said they had “no choice at all,” and another 15% reported a small
 amount of choice.).
- Tr. 2057:5-16 (Herek: Dr. Herek is not aware of any empirical studies
 regarding whether heterosexual men and women believe that their sexual
 orientation is a choice, but he believes it would be a reasonable hypothesis to
 say that most heterosexual men and women would probably report that they
 similarly did not make a choice to be heterosexual.).
- PX0710 at RFA No. 25 (Attorney General admits “that there is no credible
 evidence that sexual orientation can or should be changed.”).

1 PFF 176. Proponents' assertions that sexual orientation is fluid and can be changed are based on
 2 a selective reading of statements taken out of context, and are contrary to the weight of
 3 the current and historical evidence.

- 4 • Tr. 2252:1-10 (Herek: "It is certainly the case that there have been many
 5 people who, most likely because of societal stigma, wanted very much to
 6 change their sexual orientation and were not able to do so.").
- 7 • Tr. 2259:11-2260:5 (Herek: Freud's Letter to An American Mother says; "By
 8 asking me if I can help, you mean, I suppose, if I can abolish homosexuality
 9 and make normal heterosexuality take its place. The answer is, in a general
 10 way, we cannot promise to achieve it.").
- 11 • Tr. 2261:10-13 (Herek: "I believe that Freud [was] actually very pessimistic
 12 about the likelihood of psychoanalysis being able to change a person's sexual
 13 orientation.").
- 14 • Tr. 2245:6-2246:4 (Herek: Lisa Diamond's study (*see* DIX856) demonstrates
 15 that "on a whole . . . the patterns of sexual attraction reported by the women
 16 tended to remain fairly stable.").
- 17 • Tr. 2313:3-19 (Herek: Lisa Diamond's studies do not cast any doubt on Dr.
 18 Herek's opinions. "She also made it very clear in her book and in her various
 19 articles that this was not a representative sample; that you couldn't use these
 20 data to generalize about the entire population.").
- 21 • Tr. 2314:3-17 (Herek: Dr. Herek agrees with following quote from Dr. Peplau:
 22 "Claims about the potential erotic plasticity of women do not mean that most
 23 women will actually exhibit change over time. At a young age, many women
 24 adopt patterns of heterosexuality that re stable across their lifetime. Some
 25 women adopt enduring patterns of same-sex attractions and relationships.").
- 26 • Tr. 2202:8-22 (Herek: "[M]ost people are brought up in society assuming that
 27 they will be heterosexual. Little boys are taught that they will grow up and
 28 marry a girl. Little girls are taught they will grow up and marry a boy. And
 growing up with those expectations, it is not uncommon for people to engage
 in sexual behavior with someone of the other sex, possibly before they have
 developed their real sense of who they are, of what their sexual orientation is.
 And I think that's one of the reasons why . . . [gay men and lesbians have]
 experience[d] heterosexual intercourse. Although; it is not part of their
 identity. It's not part of who they are, and not indicative of their current
 attractions.").
- Tr. 2319:23-2320:10 (Herek: One of the documents that Proponents used on
 cross examination, DIX0912, states: "We suggested the term sexual
 preference is misleading, as it assumes conscious or deliberate choice and may

1 trivialize the depth of the psychological processes involved. We recommend
 2 the term sexual orientation because most of research findings indicate that
 3 homosexual feelings are a basic part of an individual's psyche and are
 4 established much earlier than conscious choice would indicate." Dr. Herek
 5 agrees with this.).

- 6 • Tr. 140:6, 141:14-19 (Perry: Perry is a lesbian and feels that she was born with
 7 her sexual orientation. At 47 years old, she does not think that it might
 8 somehow change.).
- 9 • Tr. 166:24-167:9 (Stier: Stier is 47 years old and has fallen in love one time in
 10 her life—with Perry.).
- 11 • Tr. 1509:24-1510:1 (Kendall: Neither reversal therapy Kendall tried was
 12 successful in changing him from gay to heterosexual.); *see also* Tr. 1521:3-18
 13 (Kendall: While in reversal therapy, Kendall met a man who was purportedly
 14 "cured of his homosexuality." When the doctor running the session left the
 15 room, the purportedly "cured" man admitted that he was going to a gay bar that
 16 evening, and he was "just pretending to be cured for the sake of his family.").
- 17 • Tr. 1210:22-25 (Zia: Zia is a lesbian and thinks she has been a lesbian all her
 18 life.).
- 19 • Tr. 77:4-5 (Zarrillo: Has been gay "as long as [he] can remember.").
- 20 • Tr. 91:15-17 (Katami: Has been a "natural-born gay" "as long as he can
 21 remember.").
- 22 • Tr. 398:12-399:3 (Chauncey: Earlier in the 20th century, doctors who were
 23 charged with curing people convicted of sex offenses complained that they
 24 could not "cure" homosexuals—they could not turn them into heterosexuals.);
 25 *see also* Tr. 493:22-25.

26 PFF 177. No major mental health professional organization has sanctioned efforts to change
 27 sexual orientation, and virtually all of them have adopted policy statements cautioning
 28 the profession and the public about treatments that purport to change sexual
 orientation. To date, there has been no scientifically adequate research to show that
 therapy aimed at changing sexual orientation (sometimes called reparative or
 conversion therapy) is safe or effective. Indeed, the scientifically adequate research
 indicates otherwise.

- Tr. 2032:23-2033:5 (Herek: The terms reparative therapy and sexual
 orientation change therapy refer to various types of interventions that are

1 intended to alter a person's sexual orientation, to change them from being
2 homosexual into being heterosexual.).

- 3 • Tr. 2033:6-19 (Herek: These therapies have not been found to be effective in
4 that they have not been shown to consistently produce the desired outcome
5 without causing harm to the individuals involved.).
- 6 • Tr. 2033:20-2034:9 (Herek: The American Psychological Association has
7 taken a stand on these types of therapies. It convened a Task Force in 2008 or
8 2009 to evaluate the current status of these therapies and to produce a report
9 advising the Association on their effectiveness, their safety, and whether they
10 should be used.).
- 11 • Tr. 2039:20-2049:3 (Herek: The underlying assumption of these therapies
12 tends to be that there is something wrong with homosexuality; that
13 homosexuality is a mental illness; that it is something to be cured or fixed or
14 repaired. That is completely inconsistent with the stance of the American
15 Psychological Association, the American Psychiatric Association, and other
16 professional organizations in this area.).
- 17 • Tr. 2039:1-3 (Herek: Dr. Herek is not aware of any major mental health
18 organizations that have endorsed the use of such therapies.).

14 PFF 178. The 2009 Report of the American Psychological Association Task Force on
15 Appropriate Therapeutic Responses to Sexual Orientation, the result of a thorough
16 review and analysis of the relevant literature, demonstrates, among other things, that
17 "enduring change to an individual's sexual orientation is uncommon."

- 18 • PX0888 at 2-3 (Report of the Am. Psychol. Ass'n Task Force on Appropriate
19 Therapeutic Responses to Sexual Orientation, 2009: "[E]nduring change to an
20 individual's sexual orientation is uncommon. The participants in this body of
21 research continued to experience same-sex attractions following SOCE [sexual
22 orientation change efforts] and did not report significant change to other-sex
23 attractions that could be empirically validated, though some showed lessened
24 physiological arousal to all sexual stimuli. Compelling evidence of decreased
25 same-sex sexual behavior and of engagement in sexual behavior with the other
26 sex was rare. Few studies provided strong evidence that any changes produced
27 in laboratory conditions translated to daily life. Thus, the results of
28 scientifically valid research indicate that it is unlikely that individuals will be
able to reduce same-sex attractions or increase other-sex sexual attractions
through SOCE."); *see also* Tr. 2035:15-2036:16 (Herek: These conclusions
are consistent with Dr. Herek's opinion.).
- PX0888 (Report of the Am. Psychol. Ass'n Task Force on Appropriate
Therapeutic Responses to Sexual Orientation, 2009: The list of references

1 considered or relied upon in this Task Force Report spans twenty-five pages.);
 2 *see also* Tr. 2034:10-16 (Herek: The Task Force did a very thorough review of
 the research literature.).

- 3
- 4 • PX0888 at 121 (Report of the Am. Psychol. Ass'n Task Force on Appropriate
 5 Therapeutic Responses to Sexual Orientation, 2009: "BE IT FURTHER
 6 RESOLVED, That the American Psychological Association reaffirms its
 position that homosexuality per se is not a mental disorder and opposes
 7 portrayals of sexual minority youths and adults as mentally ill due to their
 sexual orientation; BE IT FURTHER RESOLVED, That the American
 8 Psychological Association concludes that there is insufficient evidence to
 support the use of psychological interventions to change sexual orientation.");
 see also Tr. 2038:9-25 (Herek: This resolution is consistent with Dr. Herek's
 9 opinion.).
 - 10 • Tr. 2318:16-2319:9 (Herek: The members of the Spitzer sample were a very,
 very religious group who were very strongly involved in organizations that
 11 promote reparative therapy. Dr. Spitzer thought that that was an important
 qualification on his findings, suggesting that these same findings would not be
 12 observed for a group of people who didn't match his sample in terms of their
 religious beliefs and their activities related to reparative therapy.).
 - 13 • Tr. 2256:13-21 (Herek: The Spitzer study does not actually show that the
 14 interventions brought about the self-perceived change in sexual orientation.).

15 PFF 179. Many professional organizations have recognized that efforts to change sexual
 16 orientation of adolescents are cause for special concern.

- 17
- 18 • Tr. 2039:4-19 (Herek: There is concern when these therapies are used with
 anyone, but adolescents are a special case. There are concerns that they cannot
 19 provide true informed consent; that they may be coerced into undertaking such
 therapies; that they could be harmful to an adolescent.).
 - 20 • PX2338 (*Just the Facts About Sexual Orientation and Youth: A Primer for*
 21 *Principals, Educators, and School Personnel: A document that was created by*
 and cosponsored by a number of mental health associations, as well as some
 22 teacher and school professional associations.).
 - 23 • PX2338 at 1 and 6 (*Just the Facts About Sexual Orientation and Youth: A*
 24 *Primer for Principals, Educators, and School Personnel: Sponsored by:*
 "American Academy of Pediatrics, American Association of School
 25 Administrators, American Counseling Association, American Federation of
 Teachers, American Psychological Association, American School Counselor
 26 Association, American School Health Association, Interfaith Alliance
 Foundation, National Association of School Psychologists, National
 27 Association of Secondary School Principals, National Association of Social
 28

Workers, National Education Association, School Social Work Association of America,” which collectively represent 480,000 mental health professionals.).

- PX2338 at 5 (*Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel*: “Despite the general consensus of major medical, health, and mental health professions that both heterosexuality and homosexuality are normal expressions of human sexuality, efforts to change sexual orientation through therapy have been adopted by some political and religious organizations and aggressively promoted to the public. However, such efforts have serious potential to harm young people because they present the view that the sexual orientation of lesbian, gay, and bisexual youth is a mental illness or disorder, and they often frame the inability to change one’s sexual orientation as a personal and moral failure.”); *see also* Tr. 2041:18-2042:12 (Herek: These conclusions are consistent with Dr. Herek’s opinion.).
- Tr. 1509:24-1510:1 (Kendall: Neither reversal therapy Kendall tried was successful in changing him from gay to heterosexual.).
- Tr. 1509:10-16 (Kendall: His reversal therapist told him that homosexuality was inconsistent with Christian teaching, that his parents did not want him to be gay, that he needed to change, and that homosexuals were bad people.).
- Tr. 1511:1-16 (Kendall: During his time at reversal therapy, Mr. Kendall’s family told him he was repulsive and disgusting, and that being gay was worse than having Down Syndrome or being mentally retarded.).
- Tr. 1512:19-23 (Kendall: “At NARTH, I was being told that I had to reject who I was on the most fundamental level because what that was was dirty and bad.”).

PFF 180. Dr. Herek agrees with Proponents’ own (withdrawn) expert on “immutability,” who admitted, among other things, that homosexuality is “refractory” and that enduring change to one’s sexual orientation change is uncommon.

- Tr. 2315:20-2316:3 (Herek: Dr. Robinson testified in deposition as follows: “Question: Now, do you believe that sexual orientation is readily subject to change? Answer: No.” Dr. Herek would give the same response to that question.).
- Tr. 2317:5-13 (Herek: Dr. Robinson testified in deposition as follows: “Question: And you have not found enduring change as a result of therapy to be common? Answer: No, it’s not common. It’s not reported to be common.” This is consistent with Dr. Herek’s understanding.).

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- Tr. 2316:4-2316:21 (Herek: Dr. Robinson testified in deposition as follows: “Question: Were you aware at the time you did your report that the APA reached that conclusion? Answer: Yes. In fact, I have noted often the refractory nature of homosexuality to any kind of therapeutic intervention and, therefore, it wouldn’t be at all surprising that enduring changes would not be common.”).
- Tr. 2317:22-2318:14 (Herek: Dr. Robinson testified in deposition as follows: “Question: Okay. So when you make a statement, homosexuality is no more immutable than those identities one takes on in various walks and works of life, and you don’t limit that to a group where there’s 93 percent of people deeply religious and 78 percent of people who are on speaking engagements often at churches, is it appropriate in your view to take a finding in that one limited type of sample and apply it generally as you do in your report? Answer: If my statement about the immutability of homosexuality were tied exclusively to Spitzer’s research or anything like it, then, indeed, it would be an implausible inference.”).

PFF 181.

Sexual orientation and sexual identity are so fundamental to one’s identity that a person should not be required to abandon them. 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).

- Tr. 858:24-859:5 (Meyer: Sexual orientation is perceived as “a core thing about you are.” People say: “This is who I am. . . . [I]t is a central identity that is important.”).
- Tr. 2027:14-18 (Herek: These sorts of relationships, that need for intimacy and attachment is a very core part of the human experience and a very fundamental need that people have.).
- PX0710 at RFA Nos. 23, 27 (Attorney General admits PFF 181 in its entirety.).
- *See also* evidence cited in support of PFF 174.

PFF 182.

The promotion of change therapies reinforces stereotypes and contributes to a negative climate for lesbian, gay, and bisexual persons.

- Tr. 1509:10-16 (Kendall: His reversal therapist told him that homosexuality was inconsistent with Christian teaching, that his parents did not want him to be gay, that he needed to change, and that homosexuals were bad people.).

- Tr. 1511:1-16 (Kendall: During his time at reversal therapy, Mr. Kendall’s family told him he was repulsive and disgusting, and that being gay was worse than having Down Syndrome or being mentally retarded.).
- Tr. 1512:19-23 (Kendall: “At NARTH, I was being told that I had to reject who I was on the most fundamental level because what that was was dirty and bad.”).
- Tr. 1938:10-1939:6 (Tam: His belief that homosexuality “is a changeable sexual preference; that it is not genetically wired” comes from information he read on the NARTH website).
- PX0836 at 236 (Article by Donald P. Haider-Markel and Mark R. Joslyn: “[A]ttributing homosexuality to upbringing or the environment significantly increases the probability that a respondent will oppose same-sex marriage.”).

10 PFF 183. Further, it can be harmful to an individual to attempt to change his or her sexual
11 orientation.

- Tr. 2253:12-16 (Herek: “We do have some data from experimental studies showing harm to some of the participants, and we do have self-reports of people who believed or perceived that they were harmed as a result of going through one or more of these interventions.”).
- Tr. 2036:17-2037:3 (Herek: The Task Force pointed to anecdotal reports of individuals who felt that they had experienced harm related to these therapies. There were some instances in those rigorous experimental studies that did document individuals experiencing harm in the form of, for example, depression or anxiety problems.).
- Tr. 1513:6-14 (Kendall: “During this whole thing, my life had kind of fallen apart. I didn’t have the world that I grew up in; my faith, which was very important to me; my family, which was even more important. Everything had just kind of stopped. And I just couldn’t take any more. And I realized, at one point, that if I didn’t stop going I wasn’t going to survive.” Without intervention, he “would have probably killed [him]self.”).
- Tr. 1513:17-1514:13 (Kendall: “When I was 16, I separated myself from my family and surrendered myself to the Department of Human Services in Colorado Springs. . . . I went in, and I spoke with the case worker. And I told her what had been going on in my family, what had been going on with reversal therapy. And I told her that if I went back to that house, I was going to end up killing myself. And so they started a dependency and neglect proceeding to revoke my parents’ custody. . . . I was a 16-year-old kid who had just lost everything he ever knew. I didn’t really know what to do. I was very lost. And so the next few years I just wandered in and out of jobs. I wandered in and out of attempts at school. I was incredibly suicidal and

1 depressed. I hated my entire life. At one point, I turned to drugs as an escape
2 from reality and because I was, you know, trying to kill myself.”).

- 3 • PX0710 at RFA No. 26 (Attorney General admits PFF 183 in its entirety).
- 4 • *See also* evidence cited in support of PFFs 175-178.

5 **VII. There Is a Long History of Discrimination Against Gay and Lesbian Individuals, and**
6 **That Discrimination Persists Today**

7 PFF 184. Gay and lesbian individuals have experienced and continue to experience
8 discrimination in the United States. They have been executed for being homosexual,
9 classified as mental degenerates, targeted by police, discriminated against in the
10 workplace, censored, demonized as child molesters, excluded from the United States
11 military, arrested for engaging in private sexual relations, and have repeatedly had
12 their fundamental state constitutional rights stripped away by popular vote.

- 13 • Tr. 361:11-22 (Chauncey: “lesbians and gay men have experienced
14 widespread and acute discrimination from both public and private authorities
15 over the course of the 20th century. And that has continuing legacies and
16 effects. This has manifested in the criminalization of sexual intimacy and
17 association; the discrimination in public accommodations, in employment;
18 censorship of images about gay people and speech by gay activists;
19 stereotyping and demonization of lesbians and gay men. And that all this has
20 been drawn on and reinforced sustained patterns of prejudice and hostility.”).
- 21 • Tr. 390:8-16 (Chauncey: Discrimination against lesbians and gay men in
22 public employment has not ended, and employment discrimination by public
23 entities remains legally permissible in 20 states, and such discrimination by
24 private employers remains legally permissible in 28 states.).
- 25 • Tr. 537:25-538:14 (Chauncey: Like African Americans who historically
26 migrated away from the deep south, gay men and lesbians continue to migrate
27 to escape from extreme hostility and discrimination in some areas of the
28 country to places that are less hostile, and they do so because discrimination
and hostility still exist.).
- Tr. 539:4-23 (Chauncey: Since Chauncey published his book on marriage in
2004, a majority of the states have enacted legislation or constitutional
amendments to prohibit marriage, in many cases through popular referenda,
creating enormous roadblock to lesbian and gay men’s ability to seek equality
through the political process.).

- 1 • Tr. 548:23 (Chauncey: There is still significant discrimination against lesbians
- 2 and gay men in the United States.).
- 3 • PX0707 at RFA No. 14 (Proponents admit “that in the past gays and lesbians
- 4 experienced discrimination in the United States”).
- 5 • PX0707 at RFA No. 29 (Proponents admit “that gays and lesbians continue to
- 6 experience instances of discrimination”).
- 7 • PX0709 at RFA Nos. 14, 15 (Administration admits “that gay and lesbian
- 8 individuals have been subject to discrimination. The Administration further
- 9 admit[s] that in 2003, the California Legislature adopted AB 205, the Domestic
- 10 Partner Rights and Responsibilities Act of 2003 (Stats. 2003, ch. 421), which
- 11 stated in part that ‘The Legislature hereby finds and declares that despite
- 12 longstanding social and economic discrimination, many lesbian, gay, and
- 13 bisexual Californians have formed lasting, committed, and caring relationships
- 14 with persons of the same sex.’ The Administration further admit[s] that the
- 15 California Supreme Court has stated that sexual orientation ‘is a characteristic
- 16 that frequently has been the basis for biased and improperly stereotypical
- 17 treatment.’ *See In re Marriage Cases*, 43 Cal. 4th 757, 844 (2008).”).
- 18 • PX0710 at RFA No. 14 (Attorney General admits “that the persecution
- 19 suffered by gay and lesbian individuals in the United States has been severe.”).
- 20 • PX0710 at RFA No. 15 (Attorney General admits “that gay and lesbian
- 21 individuals have been subjected to and stigmatized by a long history of
- 22 purposeful and invidious discrimination that continues to this day.”).
- 23 • PX0715 at Rog No. 3 (The California Department of Fair Employment and
- 24 Housing received 3,863 complaints from members of the public alleging
- 25 employment discrimination on the basis of sexual orientation from fiscal year
- 26 2004-2005 through fiscal year 2008-2009.).
- 27 • PX0716 at Rog No. 4 (The California Department of Fair Employment and
- 28 Housing received 162 complaints from members of the public alleging housing
- discrimination on the basis of sexual orientation from fiscal year 2004-2005
- through 2008-2009.).
- PX0711 at RFA Nos. 3, 8, 13, 18, 23 (Attorney General admissions regarding
- the number of Sexual Orientation Hate Crime Events in 2004-2008).
- PX2547 (Nathanson 11/12/09 Dep. Tr. 81:17-81:25: Agreeing that religion
- and societies have been very hostile to homosexuality historically and that
- hostility has resulted in discrimination against and physical danger for,
- homosexuals); *see also id.* at 94:23-95:11; 95:15-96:11.
- PX2545 (Young 11/13/09 Dep. Tr. 43:7-12: Agreeing that gay people have
- historically been the subject of prejudice and discrimination).

- 1 • Tr. 1569:11-1571:5 (Segura: “[O]ver the last five years, there has actually
2 been an increase in violence directed toward gay men and lesbians”; “[G]ays
3 and lesbians are representing a larger and larger portion of the number of acts
4 of bias motivated violence” and “are far more likely to experience violence”;
5 “73 percent of all the hate crimes committed against gays and lesbians also
6 include an act of violence” “we are talking about the most extreme forms of
7 hate based violence”; they accounted for “71 percent of all hate-motivated
8 murders” and “[f]ifty-five percent of all hate-motivated rapes” in 2008; “There
9 is simply no other person in society who endures the likelihood of being
10 harmed as a consequence of their identity than a gay man or lesbian.”).
- 11 • PX0675 at 4, PX0834 at 8, 14 (Los Angeles Hate Crimes Reports 2007-2008).
- 12 • Tr. 1571:10-1573:12 (Segura: In Los Angeles County from 2007-08, there
13 was “an increase of 21 percent in bias-motivated crimes against gays and
14 lesbians,” while racial and ethnic hate crimes declined; there were “a fair
15 number of hate crimes specifically related to [] Proposition 8”; there were four
16 violent hate crimes against gays and lesbians.).
- 17 • Tr. 1577:10-1579:21 (Segura: Describing censorship and discrimination faced
18 by gays and lesbians and explaining anti-gay messages in Prop. 8 campaign).
- 19 • Tr. 2510:23-2535:7 (Miller: Agreeing that “there has been severe prejudice
20 and discrimination against gays and lesbians” and “widespread and persistent”
21 discrimination against gays and lesbians; stating that “there is ongoing
22 discrimination in the United States [against gays and lesbians]”).
- 23 • Tr. 2572:11-16 (Miller: Gays and lesbians are still the “object of prejudice and
24 stereotype.”).
- 25 • Tr. 2599:17-2604:7 (Miller: Agreeing that “there are some gays and lesbians
26 who are fired from their jobs, refused work, paid less, and otherwise
27 discriminated against in the workplace because of their sexual orientation”).
- 28 • Tr. 2598:12-2599:14 (Miller: “[U]ntold millions across this country, who
happen to be lesbian or gay, are not covered by federal law for employment
discrimination. That’s currently the case.”).
- PX0605 at 1 (JN) (Report by R. Bradley Sears et. al.: “There is a widespread
and persistent pattern of unconstitutional discrimination on the basis of sexual
orientation and gender identity against state government employees.”).
- PX0489 at 9; PX0490 at 9; PX0491 at 1, 19; PX0492 at 32; PX0493 at 2;
PX0494 at 1, 71 (table 4) (FBI Hate Crimes Reports 2003-2008).
- PX0604 at 3 (Testimony on H.R. 3017, The Employment Non-Discrimination
Act of 2009, by R. Bradley Sears: “[T]here has been a widespread and
persistent pattern of unconstitutional discrimination by state governments.”).

- 1 • PX0610 at 5-2 (JN), PX0611 (JN), PX0612 (JN), PX0613 (JN), PX0614 at 9-1
2 (JN), PX0615 at 10-1 to -2 (JN), PX0616 at 11-2 (JN), PX0617 (JN), PX0618
3 at 13-1 (JN), PX0620 (JN) (Williams Institute Reports recounting the history
4 of various of types of discrimination against gays and lesbians including by
5 ballot measure.).
- 6 • PX1869 at *1053, *1056-57 (Article by Proponents' expert Miller, arguing
7 that the ballot initiative process harms minorities: "In allowing proponents to
8 eschew compromise and accommodation of competing interests, the initiative
9 process fosters polarization rather than consensus building." "[T]he direct
10 initiative system, by bypassing checks and balances, is weighted heavily
11 towards majority rule at the expense of certain minorities. Racial minorities,
12 illegal immigrants, homosexuals, and criminal defendants have been exposed
13 to the electorate's momentary passions as Californians have adopted a large
14 number of initiatives that represent Populist backlash against representative
15 government's efforts to protect or promote the interests of racial or other
16 minorities.").
- 17 • PX0619 at 14-8 (JN) (Williams Institute Report: Summarizes and recounts
18 examples of statements made by legislators, judges, governors and other
19 officials in all 50 states, showing animus towards LGBT people, including a
20 1999 statement by California State Senator Richard Mountjoy that "being gay
21 'is a sickness . . . an uncontrolled passion similar to that which would cause
22 someone to rape'").
- 23 • PX2859 at 5, 7 (Human Rights Campaign report, documenting employment
24 discrimination against gays and lesbians across the country: [T]here is "no
25 protection under federal law." "Anti-gay discrimination often means enduring
26 daily harassment – including name-calling, humiliation and physical threats.").
- 27 • DIX1162 at 1 (Williams Institute study: "A popular stereotype paints lesbians
28 and gay men as an affluent elite . . . the misleading myth of affluence steers
policymakers, community organizations service providers, and the media away
from fully understanding poverty among LGBT people.").
- Tr. 1506:21 1507:19 (Kendall: Throughout his childhood, Kendall was
consistently teased about being gay. He was called names and even had his
glasses stolen by other children who were picking on him because of his sexual
orientation. Due to this harassment, his parents eventually removed him from
his grade school.).
- Tr. 1508:7-10 (Kendall: When his parents found out he was gay: "I remember
my mother looking at me and telling me that I was going to burn in hell.").
- Tr. 1511:12-16 (Kendall: "[M]y mother would tell me that she hated me, or
that I was disgusting, or that I was repulsive. Once she told me that she wished
she had had an abortion instead of a gay son. She told me that she wished I

1 had been born with Down Syndrome or I had been mentally retarded. Things
2 like that.”).

- 3 • Tr. 1512:7-9 (Kendall: “I recall Nicolosi (a reversal therapy doctor) saying
4 that, you know, ‘Homosexuality is incompatible with what God wants for you,
5 and your parents want you to change,’ and that this is a bad thing.”).
- 6 • Tr. 1212:15-1215:5 (Zia: While working as a community organizer in Asian
7 and African American communities, Zia was asked to attend a meeting where
8 she was confronted with her involvement with other groups that had many
9 lesbian members. Leaders from both the Asian and African American
10 community were concerned that she was associating with lesbians because, so
11 they claimed, there were no homosexuals in the Asian or African American
12 community. They said that homosexuality is a symptom of white petty
13 bourgeois.).
- 14 • Tr. 1217:1-1218:8 (Zia: Zia said she had experienced discrimination in the
15 workplace due to her sexual orientation. She once had an offer to speak at an
16 event rescinded because of her sexual orientation. She also experienced
17 discrimination from family members: One cousin, upon learning that she was a
18 lesbian, cut off all ties to Zia.).
- 19 • Tr. 1231:20-1232:5 (Zia: After being married in 2004, Zia’s marriage license
20 was invalidated about a week before she was to have a big wedding ceremony.
21 “Lia and I felt devastated. We felt sad. We . . . grieved. . . . We felt that we,
22 as human beings, had suddenly become invalidated.”).
- 23 • Tr. 1269:19-21 (Sanders: When his daughter came out as a lesbian, he told her
24 that he had concerns because “it was very tough on gay people in society.”).
- 25 • Tr. 1270:2-13, 1278:16-21 (Sanders: During his time serving as a police
26 officer, Sanders saw “what happened to people who came out, who had either a
27 gay or lesbian relationship.” He recounted the story of a sergeant who was
28 well respected, yet still was driven out of the squad after he came out as gay.).
- Tr. 1278:22-1279:8 (Sanders: Sanders worked with gay men and lesbians who
served in the police department but would not come out of the closet because
they felt their careers would be over and that they would be treated differently,
including his Chief of Staff when he was Chief of Police, who came out to him
as a lesbian but stated that she would not come out to others because it was not
in her best interest because people would only see her as a lesbian and not as
his Chief of Staff.).
- *See also* evidence cited in support of PFFs 285-296, 186-201.

PFF 185. Discrimination against gay and lesbian individuals in the United States has deep
historical roots, stretching back at least to colonial American times.

- 1 • PX2547 (Nathanson 11/12/09 Dep. Tr. 81:17-81:25: Agreeing that religion
2 and societies have been very hostile to homosexuality historically and that
3 hostility has resulted in discrimination against and physical danger for,
4 homosexuals); *see also id.* at 94:23-95:11; 95:15-96:11.
- 5 • PX2545 (Young 11/13/09 Dep. Tr. 55:15-55:20, 56:21-57:7: Agreeing that
6 there is a religious component to the bigotry and prejudice against gay and
7 lesbian individuals); *see also id.* at 61:18-22, 62:13-17 (Catholic Church views
8 homosexuality as “sinful”).
- 9 • Tr. 362:2-363:1 (Chauncey: Criminalization of homosexual conduct dates
10 back to colonial times.).
- 11 • Tr. 531:12-533:4 (Chauncey: While the categories of heterosexual and
12 homosexual emerged and became primary organizing categories of state
13 regular and personal identity in the late 19th century, there were people who
14 had a primary erotic and affectional interest in people of the same sex before
15 then. Nicholas Sension, for example, had developed a reputation over the
16 course of 30 years as someone who persistently indicated a sexual interest in
17 males, even though he was not called a homosexual because that term was not
18 available to him.).
- 19 • Tr. 471:18-20 (Chauncey: The hostility towards homosexuality can be seen in
20 the sodomy laws even though they didn’t apply just to homosexual conduct.).
- 21 • PX0610 at 5-2; PX0611 (JN) (Williams Institute Report: Discussing long
22 history of discrimination).

17 PFF 186.

18 Through much of the twentieth century, in particular, gay and lesbian individuals
19 suffered under the weight of medical theories that treated their desires as a disorder,
20 penal laws that condemned their consensual adult sexual behavior as a crime, and
21 federal policies and state regulations that discriminated against them on the basis of
22 their homosexual status. These state policies and ideological messages worked
23 together to create and reinforce the belief that gay and lesbian individuals were an
24 inferior class to be shunned by other Americans.

- 24 • PX0881 at 324-325; PX0879; PX0876 at 298-299; PX0857 at 105 (Chauncey
25 articles: Describing formal and informal prohibitions on gay
26 visibility/presence in public spaces such as bars, streets, theaters during the
27 20th century.).
- 28 • Tr. 361:23 -367:9 (Chauncey: Sodomy laws, disorderly conduct statutes, and
vagrancy laws are all examples of the criminalization of gay people. Their

1 enforcement resulted in people being exposed as gay, which led to much more
2 significant social consequences, such as the loss of a job, a home, social
3 respect, or family ties.).

- 4 • Tr. 376:20-377:25 (Chauncey: At the beginning of World War II, the military
5 decided to absolutely exclude all homosexuals and to institute screening
6 procedures that would keep homosexuals out. This regulation, in one form or
7 another, continues to the present day.).
- 8 • Tr. 378:1-379:10 (Chauncey: People would question men who were of a
9 certain age and not in the military or a critical defense industry, and this was
10 humiliating. In addition, men who could not serve were denied benefits under
11 the GI Bill. Also, men who had been discovered to be gay in the military and
12 who were discharged had a difficult time getting hired because people wanted
13 to see their discharge papers.).
- 14 • Tr. 379:11-380:3 (Chauncey: The war was such an important moment in
15 bringing people together in our country, and one of the effects of this
16 discrimination was the profound way in which gay people were being excluded
17 from the cultural image of the nation. This exclusion impressed upon people
18 that homosexuals were being denied their membership in the community, and
19 in a sense, they were being denied their citizenship.).
- 20 • Tr. 380:4-22, Tr. 381:2-13 (Chauncey: Under Don't Ask, Don't Tell—
21 President Clinton's compromise position that as long as gay people do not tell
22 that they are gay, the military will not ask if they are—approximately 9,500
23 people were discharged in the first decade. Under this policy, the country lost
24 the services of patriotic citizens who wanted to serve, and there was a financial
25 cost of recruiting and training people to take their place.).
- 26 • PX0872 at 1 (GAO 2005 Report to Congressional Requesters on Military
27 Personnel: Estimates that over the 10-year period, it could have cost DOD
28 about \$190 million in constant fiscal year 2004 dollars to recruit and train
replacements for servicemembers separated under the policy.).
- Tr. 395:19-25 (Chauncey: Doctors in the late 19th century assumed
homosexuality to be a pathology. They reinforced a range of stereotypes
associated with gay people—they were pathological, sick, and something was
wrong with them and their bodies.).
- Tr. 474:12-19 (Chauncey: Medical pronouncements that were hostile to gays
and lesbians provided a powerful source of legitimation to anti-homosexual
sentiment and were themselves a manifestation of discrimination against gays
and lesbians.).
- PX2566 at 2-4 (Letter from John W. Macy of the U.S. Civil Services Comm'n
to The Mattachine Society of Washington, Feb. 25, 1967 (*available at* The
Kameny Papers, www.kamenypapers.org): Letter denying the Society's

request to change the policy banning active homosexuals from Federal employment).

- PX2581, at 1, 4-5 (Letter from E. D. Coleman, Internal Revenue Service, to The Pride Foundation, Oct. 8, 1974 (*available at* The Kameny Papers, www.kamenypapers.org): Letter denying exemption under Internal Revenue Code § 501(c)(3) on the grounds that the organization’s goal of “advance[ing] the welfare of the homosexual community” was “perverted or deviate behavior” “contrary to public policy and are therefore, not ‘charitable[,]’” and the group’s “activities are not ‘educational’ because they are detrimental, rather than beneficial to the public.”).
- PX1384 at 5 (Article by Charlotte J. Patterson, Megan Fulcher, and Jennifer Wainwright: “Important underpinnings of discrimination against lesbian women and gay men in many states are provided by the so-called sodomy laws.”).
- Tr. 1954:9-1955:15 (Tam: To convince voters to support Prop. 8, he told them that if Prop. 8 did not pass there would be “social moral decay” and that “social moral decay” means “if same-sex marriage is legal, it would encourage children to explore same sex as their future marriage partner. And from the both Asian cultural and, also, from our Christian angle, we think this is social moral decay.”).
- Tr. 1921:19-21 (Tam: Tam believes homosexuals are 12 times more likely to molest children).
- Tr. 1918:19-24 (Tam: Tam believes homosexuality is linked to pedophilia).
- Tr. 1928:6-13 (Tam: Tam thought “permitting gays and lesbians to marry” would mean “one by one other states would fall into Satan’s hand.”).
- Tr. 1943:16-1944:1 (Tam: Tam wrote that “We hope to convince Asian Americans that gay marriage will encourage more children to experiment with the gay lifestyle, and that that lifestyle comes with all kinds of disease” to convince voters to adopt Prop. 8).
- Tr. 1960:1-9 (Tam: Tam knows that “domestic partnerships are the same as marriage, except for the name,” but he still thinks that “just changing the name of domestic partnerships to marriage will have this enormous moral decay.”).
- *See also* evidence cited in support of PFFs 184-185, 187-201.

PFF 187. Gay and lesbian individuals also continue to face violence motivated by anti-gay bias. The FBI reported 1,260 hate crime incidents based on perceived sexual orientation in 1998, and 1,265 in 2007. In 2008, a national coalition of anti-violence social service

1 agencies identified 29 murders motivated by the assailants' hatred of lesbian, gay,
2 bisexual, or transgender people.

- 3 • Tr. 408:15-23 (Chauncey: Many gay people face violence as a result of being
4 gay. While evidence of frequency is sketchy for earlier periods, the FBI has
5 been collecting hate crime statistics more recently. They show that hate crimes
6 against gays, lesbians, or people perceived to be gay or lesbian average around
7 1,500 per year.).
- 8 • Tr. 409:9-18 (Chauncey: Two famous examples of violent hate crimes are
9 Matthew Shepard, who was murdered in 1998 in Laramie, Wyoming, and
10 Larry King, a 15 year old junior high school student in California who was
11 murdered in 2008 by another student who later explained that Larry had said
12 he was attracted to him.).
- 13 • Tr. 409:19-410:5 (Chauncey: As a result of this hostility, the fear of vigilante
14 violence really affects the lives of many gay people. The scope of the violence
15 is one of the most powerful continuing effects of these campaigns of
16 generating prejudice and hostility.).
- 17 • Tr. 537:18-538:14 (Chauncey: Some people move to California to find a more
18 open society because they continue to face hostility and discrimination in the
19 places they live.).
- 20 • PX0708 at RFA No. 77 (Proponents admit “that according to the Federal
21 Bureau of Investigation, in the year 2007 law enforcement agencies reported
22 1,265 incidents motivated by bias based on sexual orientation.”).
- 23 • PX0709 at RFA No. 17 (Administration admits “that gay and lesbian
24 individuals have been subject to hate crimes”).
- 25 • PX0710 at RFA No. 29 (Attorney General admits “that discrimination against
26 gay and lesbian individuals, including through hate crimes, exists to this day”).
- 27 • PX0672-76 (JN) (*Hate Crimes in California 2004-8*: Noting that sexual
28 orientation hate crime offenses have consistently been the second largest bias
motivation category of hate crimes since 1995 and detailing prosecution
statistics of same).
- Tr.1569:11-17 (Segura: “The data that I observed show that over the last
decade, there has been no real improvement, no real decline; and over the last
five years, there has actually been an increase in violence directed towards gay
men and lesbians.” “There was a substantial increase” in hate crimes against
gays and lesbians between 2007 and 2008.).
- PX0873 at 5, 16 (FBI Hate Crime Statistics, 1998: “1,260 [motivated] by
sexual-orientation bias”).

- PX0489 at 9; PX0490 at 9; PX0491 at 1; PX0492 at 32; PX0493 at 2; PX0494 at 1, 71 (FBI Hate Crimes Reports 2003-08: Demonstrating increase from 16% to 17.7% in hate crimes reported against gays and lesbians from 2003-08).
- PX0834 (Los Angeles Hate Crimes Report 2008: Between 2007 and 2008 hate crimes motivated by race declined 16%, but hate crimes against gays and lesbians increased 21%; several hate crimes against gays and lesbians were prompted by Prop. 8, including four violent crimes.).
- PX0868 at 5 (National Coalition of Anti-Violence Programs, *Hate Violence against Lesbian, Gay, Bisexual, and Transgender People in the United States 2008*: “2008, with 29 total murders, has the highest number of deaths since 1999.”).
- PX0868 at 5, 9 (National Coalition of Anti-Violence Programs Report on Hate Violence: Provides national statistics on hate motivated violence against LGBT individuals and reports 29 murders in 2008 motivated by hatred of LGBT individuals—an increase of 28% from 2007.).
- Tr. 1218:9-1219:6 (Zia: Zia has felt physically threatened because of her sexual orientation. She constantly has to be aware of her surroundings and be alert and even has told her wife to be careful showing any physical affection in public for fear of violence.).
- Tr. 1277:17-1278:4 (Sanders: “In the early days there were a lot of hate crimes. There were gay bashings, where young men would go out and get drunk and feel no problem at all with bashing people who they thought were gay people, whether they were or not.” And after the 2006 pride celebration, an individual brought a baseball bat and beat many people, literally beating one man almost to death.).
- Tr. 1277:5-9 (Sanders: “I think that when a city, when leadership talks in disparaging terms about people, or denies the rights that everybody else have, the fundamental rights, then I think some people in the community feel empowered to take action in hate crimes and in other ways.”).
- Tr. 2302:7-22 (Herek: Hate crimes are illegal in California but still continue to occur. Structural stigmas such as Prop. 8 create the atmosphere in which individual enactments of stigma occur.).

PFF 188. Gay and lesbian individuals have been subject to more hate crimes motivated by bias against their sexual orientation in California since 2004 than women, who are members of a protected class, have been subjected to hate crimes motivated by their gender.

- PX0672 at 26; PX0673 at 28; PX0674 at 28; PX0675 at 26; PX0676 at 1, 20 (Hate Crime in California Reports, 2004-2008: Demonstrating that gays and lesbians have been subject to more hate crimes motivated by bias against their sexual orientation in California since 2004 than women have been subjected to hate crimes motivated by their gender).
- PX0711 at RFA Nos. 4, 5, 9, 10, 14, 15, 19, 20, 24, 25 (Attorney General admissions regarding Sexual Orientation Hate Crime Events in 2004-2008).
- PX0672-76 (JN) (*Hate Crimes in California* 2004-2008: Noting that sexual orientation hate crime offenses have consistently been the second largest bias motivation category of hate crimes since 1995 and detailing prosecution statistics of same).

PFF 189. As one of Proponents' experts, Dr. Miller, admitted, the persecution suffered by gay and lesbian individuals in the United States has been severe. Indeed, hostility towards gay and lesbian individuals has resulted not only in discrimination, but also physical danger.

- PX2547 (Nathanson 11/12/09 Dep. Tr. 81:17-81:25: Agreeing that religion and societies have been very hostile to homosexuality historically and that hostility has resulted in discrimination against and physical danger for, homosexuals); *see also id.* at 94:23-95:1195:15-96:11.
- Tr. 2765:3-5 (Blankenhorn: "I believe that homophobia is a real presence in our society and I'm pretty confident, in many, many other societies around the world.").
- Tr. 1571:3-5 (Segura: "There is simply no other person in society who endures the likelihood of being harmed as a consequence of their identity than a gay man or lesbian.").
- Tr. 2510:23-2535:7 (Miller: Agreeing that "there has been severe prejudice and discrimination against gays and lesbians" and "widespread and persistent" discrimination against gays and lesbians; stating that "there is ongoing discrimination in the United States [against gays and lesbians]").
- Tr. 361:11-15 (Chauncey: "lesbians and gay men have experienced widespread and acute discrimination from both public and private authorities over the course of the 20th century. And that has continuing legacies and effects.").
- Tr. 565:20-566:7, 566:15-25 (Chauncey: Chauncey was only the second person to get an academic position in a history department after writing a dissertation on lesbian and gay history; he is struck when he receives course evaluations with how many students have never heard about gay history or

1 discrimination before college. Given this, it is pretty clear to him that the
2 erasure of the history of discrimination and of gay life itself continues to be
3 very prevalent in our culture.).

- See also evidence cited in support of PFFs 184-188, 190-201.

4 PFF 190.

The medical establishment identified homosexuality as a “disease,” “mental defect,”
5 “disorder,” or “degeneration.” Until the American Psychiatric Association removed
6 homosexuality from its list of disorders in 1973, such hostile medical pronouncements
7 provided a powerful source of legitimization to anti-homosexual sentiment.

- Tr. 473:23-474:6 (Chauncey: In the early part of the 20th century, leading
8 physicians, medical researchers, and almost all medical literature claimed that
9 homosexuality was a pathological condition or a disease.).
- Tr. 396:1-7 (Chauncey: A lot of the medical literature in the 19th and early
10 20th century focused on gender nonconformity as an essential element of sex
11 perversion, describing mannish women and effeminate men as quintessential
12 emblems of homosexuals. Homosexuality was seen as one sign of a more
13 general gender inversion or reversal of one’s gender role.).
- Tr. 398:12-399:3 (Chauncey: Someone who was convicted of a range of sex
14 offenses and determined to be a sex psychopath could be committed for an
15 indeterminate sentence, and they would be kept in a prison/mental institution
16 until they had been cured of their pathology. But very quickly, doctors who
17 were charged with curing them complained that they could not “cure”
18 homosexuals—they could not turn them into heterosexuals.); see also Tr.
19 493:22-25.
- Tr. 474:12-19 (Chauncey: Medical pronouncements that were hostile to gays
20 and lesbians provided a powerful source of legitimation to anti-homosexual
21 sentiment and were themselves a manifestation of discrimination against gays
22 and lesbians.).
- PX0707 at RFA No. 21 (Proponents admit that “prominent medical and
23 psychiatric professional organizations no longer consider sexual orientation an
24 illness or a disorder”).
- PX0710 at RFA No. 20 (Attorney General admits “that the medical and
25 psychiatric communities do not consider sexual orientation an illness or
26 disorder”).
- Tr. 1937:13-25 (Tam: Homosexuality is no longer considered a medical
27 condition that needs to be treated and that it is “a part of normal behavior.”

1 Tam goes on to explain how NARTH taught him that homosexuality is not a
2 part of normal behavior).

- 3 • PX0856 at 103 (Estelle Freedman article on the “sexual psychopath”: Stating
4 that the American Psychiatric Association categorized homosexuality as a
5 mental disease until 1973.).
- 6 • *See also* evidence cited in support of PFF 173.

6 PFF 191.

The sexual orientation of gay and lesbian individuals has been associated with a
7 stigma of inferiority and second-class citizenship, manifested by the group’s history of
8 legal and social disabilities.

- 9 • Tr. 818:10-819:4 (Meyer: Stigma occurs when a group has an attribute that
10 has been identified as negative by society such that group members who share
11 the attribute are devalued by society.).
- 12 • Tr. 2050:20-2051:8 (Herek: Stigma is a kind of shared cultural knowledge
13 about particular characteristics or attributes of groups that are viewed
14 negatively by society, such that the members of those groups are devalued and
15 looked down upon. They are treated differently, such that they end up having
16 less control over the course of their own lives, less influence over others, less
17 access to the valued resources of society, all of which we think of as power.).
- 18 • Tr. 824:15-825:12 (Meyer: Stigmas affect all people in society because they
19 are social norms—they are something we all learn from a very young age.
20 Stigmas are especially impactful at younger ages for gays and lesbians because
21 that is a time when they are beginning to recognize that they are gay and are
22 beginning to try to understand what that means to them.).
- 23 • Tr. 820:20-25 (Meyer: Research has determined that there are stigmas
24 associated with gay men and lesbians that describe how gay and lesbian people
25 are perceived.).
- 26 • Tr. 820:23-822:5 (Meyer: One of the stereotypes that is part of the stigma
27 surrounding gay men and lesbians is that gay men and lesbians are incapable
28 of, uninterested in, and not successful at having intimate relationships. Gay
men and lesbians have been described as social isolates, as unconnected to
society, and people who do not participate in society the way everyone else
does – as “a pariah, so to speak.” This stigma is important because part of the
nature of being gay is who you choose to have an intimate relationship with.).
- PX1011 (Book entitled *Everything You Always Wanted to Know About Sex But
Were Afraid to Ask*: “What about all of the homosexuals who live together
happily for years? What about them? They are mighty rare birds among the
homosexual flock. Moreover, the ‘happy’ part remains to be seen. The

1 bitterest argument between husband and wife is a passionate love sonnet by
2 comparison with a dialogue between a butch and his queen. Live together?
3 Yes. Happily? Hardly.”).

- 4 • Tr. 822:12-824:14 (Meyer: PX1011 is an excerpt from the first edition (1969)
5 of a very popular book that contains different chapters that aim to educate the
6 public about different issues concerning sexuality. The chapter that is exhibit
7 PX1011 concerns male homosexuality. In the cited excerpt, the purportedly
8 educational reference is portraying a relationship between two men with great
9 disrespect, ridicule, and contempt. This demonstrates the stigma associated
10 with gay relationships.); cf. PFFs 159-160 (Demonstrating, *inter alia*, the long-
11 term commitment of Plaintiffs and their partners).
- 12 • Tr. 2052:2-2053:7 (Herek: There is a great deal of research showing that gay
13 men and lesbians are stigmatized today. For example, national survey data tell
14 us that there are large numbers of people who will say that they have negative
15 feelings towards lesbians and gay men; that they even feel disgusted by
16 lesbians and gay men. There are also instances of discrimination and violence
17 against people who are lesbian and gay. The FBI and State of California both
18 track hate crimes perpetrated against people because of their sexual orientation.
19 And in a national survey that Dr. Herek conducted, he found that roughly 1 in
20 5 people in the sample had experienced some sort of violence based on their
21 sexual orientation in the course of their lifetime. A slightly lower percentage
22 of lesbians and gay men had experienced some sort of discrimination, for
23 example, in employment. There are also instances of violence and
24 discrimination against children and youth who are perceived to be gay or
25 lesbian. And at an intuitive level, Dr. Herek believes that most people
26 understand that if two men were to walk down the street holding hands, in
27 many places that would elicit a great deal of negative reaction.).
- 28 • PX0710 at RFA No. 16 (Attorney General admits “that gay and lesbian
individuals are still among the most stigmatized groups in the country” and
cites *In re Marriage Cases*, 43 Cal.4th 757, 842 (2008) (quoting with approval
People v. Garcia, 77 Cal.App.4th 1269, 1276 (2000) (“Outside of racial and
religious minorities, we can think of no group which has suffered such
‘pernicious and sustained hostility’ [citation], and such ‘immediate and severe
opprobrium’ [citation], as homosexuals”)).
- Tr. 361:23-363:9 (Chauncey: Even though not all sodomy laws solely
penalized homosexual conduct, over the course of the 20th century, sodomy
laws came to symbolize the criminalization of homosexual sex in particular.
This was most striking in *Bowers v. Hardwick*, which reads as though the law
at issue simply bears on homosexual sex.).
- Tr. 363:10-14 (Chauncey: In the 1960s and 70s, as states decriminalized
sodomy, several states actually enacted new legislation that specified
homosexual conduct, such as the Texas statute.).

- Tr. 409:18-20 (Chauncey: Federal and local agencies in the past sought to curtail homosexuals’ freedom of speech.).
- Tr. 483:17-20 (Chauncey: In the 1950’s, no lawmaker would grant a hearing to homosexuals.).
- Tr. 484:24-485:5 (Chauncey: The federal government was slow to respond to the AIDS crisis, and this was in part because of the association of AIDS with a “despised group”).
- Tr. 490:23-25 (Chauncey: Homosexuals used to be barred from entry into the United States.).
- Tr. 537:10-17 (Chauncey: A heterosexual person can marry a non-U.S. citizen and bring him or her from abroad into this country, but a homosexual person cannot.).
- Tr. 564:22-25 (Chauncey: Chauncey is not aware of any movements that tried to deny an adulterer the right to marry.).
- Tr. 566:1-7 (Chauncey: Chauncey was personally advised not to write a dissertation in gay history; he was told that it would be professional suicide to do so. When he finally got a job at the University of Chicago in 1991, he was the second person in the country to get an academic position in the history department with a dissertation in lesbian or gay history.).
- Tr. 387:14-388:16 (Chauncey: One effect of discrimination is that most people realized that they had to be very careful to hide their homosexuality at the workplace, for fear of losing their jobs. Ultimately, it funneled gay men and lesbians into low-status jobs where people were less likely to care that they were gay, such as being waiters, hair dressers, or low-level clerical workers.).
- Tr. 585:22-586:8 (Peplau: There is no empirical support for the negative stereotypes that gay men and lesbians have trouble forming stable relationships or that those relationships are inferior to heterosexual relationships.).

PFF 192.

The social marginalization of gay and lesbian individuals gave the police and the public broader informal authority to harass them. The threat of violence and verbal harassment deterred many gay and lesbian individuals from doing anything that might reveal their homosexuality in public.

- Tr. 363:17-365:5 (Chauncey: In New York, the disorderly conduct statute began to be applied more and more to homosexuals. Indeed, police began to record “disorderly conduct (degenerate)” in their record books. This law was used to criminalize men picking up men, but also to arrest people found in a

1 bar or club, or even a private home. From 1924 to 1966, there were
2 approximately 50,000 arrests in New York under this charge. It was a
3 pervasive form of policing.).

- 4 • Tr. 365:6-11 (Chauncey: In California, a vagrancy law was similarly used in
5 these situations, and a variety of states tailored these sorts of laws to deal with
6 homosexuals.).
- 7 • Tr. 366:22-367:9 (Chauncey: People feared being arrested because it would
8 expose the person as being gay, which would lead to much more significant
9 social consequences, such as the loss of a job, a home, or ties with family.
10 And this did, in fact, happen sometimes.).
- 11 • Tr. 365:17-366:4 (Chauncey: There were three lasting effects of this
12 criminalization. First, it was used to justify forms of discrimination. For
13 example, openly-gay soldiers could not serve because what defines them as
14 being homosexual is a criminal offense. Second, it also stood as a sign of
15 disapproval of homosexuals. Third, it meant that a phenomenal number of
16 people ran across the law and knew that police were looking for them.).
- 17 • Tr. 367:10-368:16 (Chauncey: Starting in 1933, with the repeal of prohibition,
18 New York and then many other states issued regulations that prohibited any
19 place with a liquor license from serving drinks to lesbians and gay men, or
20 allowing them to congregate on the premises. This criminalization meant that
21 when people went to a bar or restaurant, they typically had to be very careful to
22 hide the fact that they were gay.); *see also* Tr. 472:24-473:2.
- 23 • Tr. 368:17-369:1 (Chauncey: To survive, some establishments had to pay
24 bribes to the police or to organized crime. Gay life thus became enmeshed
25 with criminality.).
- 26 • Tr. 369:4-21 (Chauncey: Establishments could tell patrons to leave the bar, or
27 they could post signs telling gays and lesbians to stay away, such as “It is
28 against the law to serve homosexuals.” This conveyed a very clear message to
both gay and straight customers that homosexuals were a despised category to
be excluded.).
- Tr. 371:7-372:3 (Chauncey: These laws were enforced in multiple ways. In
some instances, plainclothes policemen would strike up conversations with
customers, lead them on, and then arrest them when an invitation was issued.
In other instances, the police would point to stereotypical gender behavior or
cross-gender behavior that was associated with lesbians and gay men, and use
that as evidence that a bar was patronized by them.).
- Tr. 491:12-14 (Chauncey: Military police used to cooperate in anti-vice raids
against gay bars and other meeting places.).

- 1 • Tr. 373:19-374:24 (Chauncey: In San Francisco, Mayor Christopher launched
2 a two year campaign against gay life in the City. According to one historian's
3 account, this led to 40 to 60 arrests a week, and about a third of the bars being
4 shut down. This occurred *after* a California Supreme Court ruling outlawed
5 such discrimination.).
- 6 • Tr. 375:2-15 (Chauncey: In 1969, the police raided the Stonewall Bar in New
7 York *after* the courts had ruled that it was legitimate to serve lesbians and gay
8 men. And just last summer, in Fort Worth, Texas, the police went into a bar
9 and arrested seven of the patrons.); *see also* Tr. 473:18-20.
- 10 • Tr. 473:11-14 (Chauncey: “[I]n half the states there’s still no laws prohibiting
11 discrimination against them [gay or lesbians]. And so . . . they could still be
12 ejected in bars in, let’s say, half the states.”).
- 13 • Tr. 375:22-376:14 (Chauncey: There were many effects of shutting down
14 places where gay people gathered. First, it conveyed to gays and lesbians that
15 they were a despised class of people and a group of outlaws in the eyes of the
16 law. It also associated gay life with criminality, and it contributed to the
17 growing sense that gay people were dangerous and a part of the seedy and
18 violent underworld. It conveyed the message that gays and lesbians had to
19 take great care in keeping the fact that they were gay a secret.).
- 20 • PX0881 at 324-325; PX0879; PX0876 at 298-299; PX0857 at 105 (Chauncey
21 articles: Describing formal and informal prohibitions on gay
22 visibility/presence in public spaces such as bars, streets, theaters during the
23 20th century.).
- 24 • Tr. 1575:7-9 (Segura: “[S]elf-identification as a gay man or a lesbian can be
25 quite detrimental to one’s health, one’s income. There is still a profound
26 incentive to not self-identify.”).
- 27 • Tr. 1218:9-1219:6 (Zia: Zia has felt physically threatened because of her
28 sexual orientation. She constantly has to be aware of her surroundings and be
alert and even has told her wife to be careful showing any physical affection in
public for fear of violence.).
- Tr. 1277:5-9 (Sanders: “I think that when a city, when leadership talks in
disparaging terms about people, or denies the rights that everybody else have,
the fundamental rights, then I think some people in the community feel
empowered to take action in hate crimes and in other ways.”).
- Tr. 1278:22-12798 (Sanders: Sanders worked with gay men and lesbians who
served in the police department but would not come out of the closet because
they felt their careers would be over and that they would be treated differently,
including his Chief of Staff when he was Chief of Police, who came out to him
as a lesbian but stated that she would not come out to others because it was not

1 in her best interest because people would only see her as a lesbian and not as
2 his Chief of Staff.).

3 PFF 193. In 1950, following Senator Joseph McCarthy's denunciation of the employment of gay
4 persons in the State Department, the Senate conducted a special investigation into "the
5 employment of homosexuals and other sex perverts in government." The Senate
6 Committee recommended excluding gay men and lesbians from all government
7 service, civilian as well as military. The Senate investigation and report were only
8 part of a massive anti-homosexual campaign launched by the federal government after
9 the war.

- 10 • PX2337 at 4 (The 1950 Senate Report entitled "Employment of Homosexuals
11 and Other Sex Perverts in Government:" "Most of the authorities agree and
12 our investigation has shown that the presence of a sex pervert in a Government
13 agency tends to have a corrosive influence on his fellow employees. These
14 perverts will frequently attempt to entice normal individuals to engage in
15 perverted practices. This is particularly true in the case of young and
16 impressionable people who might come under the influence of a pervert.
17 Government officials have the responsibility of keeping this type of corrosive
18 influence out of the agencies under their control. It is particularly important
19 that the thousands of young men and women who are brought into Federal jobs
20 not be subjected to that type of influence while in the service of the
21 Government. One homosexual can pollute a Government office.").
- 22 • PX2337 at 9-10 (1950 Senate Report called "Employment of Homosexuals and
23 Other Sex Perverts in Government:" Finding that in the two and a half years
24 since 1947, 1,700 people had been prohibited from getting civil service jobs
25 because they were discovered to be homosexual and describing the reasons
26 why "homosexuals and other sex perverts" are "not proper persons" to be
27 employed by the government, and recommending preventing these individuals
28 from obtaining government employment, and removing individuals already
employed by the government.).
- Tr. 383:5-384:6 (Chauncey: A Congressional Committee in 1950, following
charges made by Senator McCarthy, produced a report finding that in the two
and a half years since 1947, 1,700 people had been prohibited from getting
civil service jobs because they were discovered to be homosexual. This was
determined to be inadequate, so the recommendation was made to tighten
procedures.); see also Tr. 482:13-15.
- Tr. 404:1-405:8 (Chauncey: This 1950 Senate Report gave the imprimatur of
senior government officials to these images of stereotypes of homosexuals.).

- 1 • PX2281 at 177 (Chauncey article: Describing firing of hundreds of gay
2 employees from the State Department during the 1950's.).
- 3 • PX2566 at 2-4 (Letter from John W. Macy of the U.S. Civil Services Comm'n
4 to The Mattachine Society of Washington, Feb. 25, 1967 (available at The
5 Kameny Papers, www.kamenypapers.org): Letter denying the Society's
6 request to change the policy banning active homosexuals from Federal
7 employment).
- 8 • PX0856 at 103 (Estelle Freedman article: Explaining that the federal
9 government launched a campaign to remove homosexuals form government
10 jobs in the 1950s.).
- 11 • Tr. 384:7-24 (Chauncey: One of President Eisenhower's first executive orders
12 decreed that homosexuals would be prohibited from civilian as well as military
13 employment in the federal government. It also required private companies
14 who had contracts with the government to ferret out and fire their homosexual
15 employees. The historian who has studied this most closely estimates that at
16 the height of the McCarthy period in the 1950s, the State Department actually
17 dismissed more suspected homosexuals than Communists.).
- 18 • Tr. 385:22-386:4 (Chauncey: This policy was in place for most federal
19 agencies until 1975, but it continued to be in effect for some of the highly-
20 sensitive intelligence agencies until the 1990s, when President Clinton ended
21 the policy bearing on intelligence agencies and also prohibited discrimination
22 in federal employment.).
- 23 • Tr. 537:2-4 (Chauncey: Employment discrimination on the basis of sexual
24 orientation still exists today in this country.); see also Tr. 390:6-16 (Chauncey:
25 Today, 20 states do not prohibit discrimination in public employment, and 28
26 states do not prohibit discrimination in private employment.).

19 PFF 194. Many state and local governments followed the federal government's lead in seeking
20 to ferret out and discharge their homosexual employees.

- 21 • Tr. 386:16-21 (Chauncey: In addition, across the country, state governments
22 tried in various ways to institutionalize employment discrimination against
23 lesbians and gay men.).
- 24 • Tr. 386:22-387:10 (Chauncey: One example of state discrimination in the late
25 1950s was a legislative investigation committee that launched an investigation
26 of homosexuals in the state university system. More than 300 people were
27 interrogated, and more than a dozen members of faculty and staff were fired.
28 At the city level, the Welfare Department in New York City, for example, had
to fire several of its welfare workers in the 1950s when they were discovered
to be gay.).

- PX0610 at 5-2 (JN) (Williams Institute Report: Recounts the history of public sector discrimination against gays and lesbians. “Between 1946 and 1969, witch hunts for LGBT public employees meant they were fired *en masse*, not on an individual basis.”).

PFF 195. Moreover, a series of press and police campaigns in the 1940s and 1950s fomented demonic stereotypes of homosexuals as child molesters out to recruit the young into their way of life. At the time, these demonic new stereotypes were used to justify draconian new legislation as well as stricter enforcement of existing laws.

- Tr. 390:3-5 (Chauncey: One effect of gays and lesbians being forced into hiding for fear of losing their jobs or being arrested was that it was easier for demonic stereotypes of gay people to develop.).
- Tr. 395:6-13 (Chauncey: Like most outsider groups, there have been stereotypes associated with gay people; indeed, a range of groups have worked in a coordinated way to develop stereotypical images of gay people.).
- Tr. 397:2-6 (Chauncey: “[I]n some ways, the most dangerous stereotypes for homosexuals really developed between the 1930s and ‘50s, when there were a series of press and police campaigns that identified homosexuals as child molesters.”).
- Tr. 397:25-398:5 (Chauncey: These press campaigns against assault on children focused on sex perverts or sex deviants. Through these campaigns, the homosexual emerged as the quintessential sex deviant.).
- PX2281 / PX0851 at 170-173 (“The Post War Sex Crime Panic,” an article written by George Chauncey: Describing postwar stereotype propagated by the media of homosexuals as dangerous child molesters and psychopaths and actions taken by psychiatrists and government officials to prevent sexual “nonconformity.”).
- PX2281 / PX0851 at 171 (“The Post War Sex Crime Panic,” an article written by George Chauncey: Contains excerpts from the popular Coronet Magazine in the fall of 1950: “Once a man assumes the role of homosexual, he often throws off all moral restraints. . . . Some male sex deviants do not stop with infecting their often-innocent partners: they descended through perversions to other forms of depravity, such as drug addiction, burglary, sadism, and even murder.”).
- Tr. 400:18-401:8 (Chauncey: This excerpt from Coronet Magazine depicts homosexuals as subjects of moral decay. In addition, there is a sense of homosexuality as a disease in which the carriers infect other people. And the

1 term “innocent” pretty clearly indicates that the authors are talking about
2 children.).

- 3 • PX2281 / PX0851 at 170-71 (The Post War Sex Crime Panic,” an article
4 written by George Chauncey: Contains a statement made by a Special
5 Assistant Attorney General of California in 1949: “The sex pervert, in his
6 more innocuous form, is too frequently regarded as merely a ‘queer’ individual
7 who never hurts anyone but himself. . . . All too often we lose sight of the fact
8 that the homosexual is an inveterate seducer of the young of both sexes . . . and
9 is ever seeking for younger victims.”).
- 10 • Tr. 402:21-24 (Chauncey: These articles were mostly addressed to adults who
11 were understandably concerned about the safety of their children, and who
12 were being taught to believe that homosexuals posed a threat to their
13 children.).
- 14 • Tr. 407:8-408:4 (Chauncey: One of the most enduring legacies of the
15 emergence of these demonic stereotypes is the creation and then re-
16 enforcement of a series of demonic images of homosexuals that stay with us
17 today. This fear of homosexuals as child molesters or as recruiters continues
18 to play a role in debates over gay rights, and with particular attention to gay
19 teachers, parents, and married couples—people who might have close contact
20 with children.).

21 PFF 196.

22 Throughout the early and mid-twentieth Century, gay and lesbian characters and
23 issues were censored from theatrical productions and movies. State and federal
24 officials banned gay and lesbian publications from the mail. Newspaper stand and
25 book store owners that carried gay and lesbian content risked being shut down or
26 arrested. Censorship, government suppression, and the fear of both curtailed gay
27 people’s freedom of speech and the freedom of all Americans to discuss gay issues.
28 These conditions made it difficult for gay and lesbian individuals to organize and
speak out on their own behalf. As a result, censorship stymied and delayed
democratic debate about homosexuality for more than a generation.

- Tr. 390:21-391:24 (Chauncey: Gays and lesbians have also experienced
censorship, including censorship of representation of homosexuality in the
movies. In 1934, the Production Code imposed rules regarding treatment of
certain delicate issues, such as crime and adultery. Under the Code, lesbian
and gay characters, the discussion of homosexuality, or even the inference of
“sex perversion” was prohibited. This meant that for a generation—until the

1 late '50s and early '60s—Hollywood films could not include gay characters or
2 explore gay lives.).

- 3 • Tr. 392:24:393:23 (Chauncey: The television networks were even more
4 constrained than Hollywood, so there were very few characters who could
5 even be hinted at as being gay in the first several decades of television. A
6 boycott in 1989 as a result of a scene in the show *Thirtysomething* put a
7 chilling effect on the inclusion of gay characters. Indeed, as recently as 1996,
8 Ellen Degeneres' coming out on national television was so astonishing that it
9 put her on the cover of *Time Magazine*.).
- 10 • Tr. 394:19-385:2 (Chauncey: This censorship meant that, for most people, gay
11 people were not a part of the media landscape or a part of the world that they
12 knew. This allowed more frightening stereotypes to develop.).
- 13 • Tr. 1574:24-1579:21 (Segura: Describing censorship and discrimination faced
14 by gays and lesbians, including “some states specifically forbid[ing] the
15 mentioning of homosexuality in health classes or actually instruct teachers to
16 tell students that it’s not acceptable lifestyle and it’s unhealthy” and “periods
17 of time when gays and lesbians weren’t allowed to use the mails” because “the
18 transmission of material through the U.S. mails related to gay and lesbians
19 political activity was considered to be obscene and, therefore, illegal”).
- 20 • Tr. 2298:20-24 (Herek: “[P]eople who grew up in the 1920’s and 1930’s and
21 the early part of twentieth century would have been growing up in a time
22 where there was very strong repression against people who were lesbian or gay
23 and, in fact, when there wasn’t much open discussion of sexuality at all.”).
- 24 • Tr. 1577:10-1579:21 (Segura: Describing censorship and discrimination faced
25 by gays and lesbians and explaining anti-gay messages in Prop. 8 campaign).
- 26 • PX0876 at 299 (Chauncey article: Explaining “[o]ther men I interviewed had
27 been contacted by the post office and warned about receiving gay publications
28 in the mail. They lived in a world in which the police sometimes shut down
whole newspaper stands on busy city corners because they dared to carry early
gay magazines like *ONE* or the *Ladder*.”).

22 PFF 197. In 1977, Anita Bryant’s “Save Our Children” campaign convinced a majority of
23 Miami voters to repeal a newly enacted gay rights ordinance in Dade County, Florida.
24 This campaign depended heavily on the use of the images of homosexuals as child
25 molesters so prevalent in the postwar years. Her organization published a full-page
26 advertisement the day before the vote warning that the “other side of the homosexual
27 coin is a hair-raising pattern of recruitment and outright seductions and molestation.”
28

1 This campaign’s victory inspired other such campaigns, and in the next three years,
2 gay rights laws were struck down in more than half a dozen referenda.

- 3 • Tr. 413:22-414:2 (Chauncey: The “Save Our Children” campaign in Dade
4 County, Florida in 1977 was led by Anita Bryant, a famous Baptist singer. It
5 sought to overturn an enactment that added sexual orientation to an anti-
6 discrimination law, and it drew on and revived these earlier stereotypes of
7 homosexuals as child molesters.).
- 8 • PX0864 at 303 (In *Out for Good*, a book by Dudley Clendinen and Adam
9 Nagourney, Anita Bryant is quoted as saying: “Some of the stories I can tell
10 you of child recruitment and child abuse by homosexuals would turn your
11 stomach.”).
- 12 • PX1621JN and PX0864 at 303 (A newspaper advertisement during the “Save
13 Our Children” campaign, signed by Anita Bryant: “This recruitment of our
14 children is absolutely necessary for the survival and growth of homosexuality
15 —for since homosexuals cannot reproduce, they must recruit, must freshen
16 their ranks. And who qualifies as likely recruit: a 35-year-old father or mother
17 of two. . .or a teenage boy or girl who is surging with sexual awareness?”).
- 18 • PX0864 at 304 (In *Out for Good*, a book by Dudley Clendinen and Adam
19 Nagourney, a Miami Herald advertisement states: “There is no human right to
20 corrupt our children. Many parents are confused, and don’t know the real
21 dangers posed by many homosexuals—and perceive them as all being gentle,
22 non-aggressive types. The other side of the homosexual coin is a hair-raising
23 pattern of recruitment and outright seduction and molestation, a growing
24 pattern that predictably will intensify if society approves laws granting
25 legitimacy to the sexually perverted.”).
- 26 • PX0864 at 309 (In *Out for Good*, a book by Dudley Clendinen and Adam
27 Nagourney, Anita Bryant is quoted as saying: “Homosexuality is a conduct, a
28 choice, a way of life. And if you choose to have a lifestyle as such, then
you’re going to have to live with the consequences. It’s not a sickness, but a
sin.”); (“Tonight the laws of God and the cultural values of man have been
vindicated. I thank God for the strength he has given me and I thank my
fellow citizens who join me in what at first was a walk through the
wilderness. The people of Dade County—the normal majority—have said,
‘Enough! Enough! Enough!’ They voted to repeal an obnoxious assault on
our moral values. . . despite our community’s reputation as one of the most
liberal areas in the country.”).
- Tr. 418:19-419:7 (Chauncey: One campaign argument was that simple
tolerance of gay people and allowing them to be openly gay would allow them
to serve as role models who would encourage children to become
homosexuals—the presumption was that sexual identity is unstable and that
children are easily swayed to homosexuality. Another was that homosexuals

1 were child molesters, so allowing the anti-discrimination ordinance to stand
2 would release homosexual predators onto the children of Miami.).

- 3 • Tr. 414:7-15 and 423:10-23 (Chauncey: The “Save Our Children” campaign
4 inspired a series of campaigns in the late ‘70s and early ‘80s and another in the
5 late ‘80s and early ‘90s. While figures vary, in the 20 years after the “Save
6 Our Children” campaign, there were at least 60 such campaigns, usually to
7 overturn existing gay rights ordinances, and about three-quarters of those were
8 successful.).
- PX0864 at 308, 312-330 (Describing victory of Anita Bryant’s “Save Our
Children” campaign and the subsequent successful anti-gay rights ballot
measures in 1977).

9 PFF 198. The themes and messages from the “Save Our Children” campaign were echoed by
10 Proponents’ Yes on 8 campaign.

- 11 • Tr. 429:15-430:8, 431:17-432:11, 436:25-437:15, 438:8-439:6, 529:25-531:11;
12 PX0015; PX0016; PX0029; PX0091; PX0099; PX1775; PX1775A (*see* Tr.
13 461:21-462:18); PX2288 (Chauncey: The campaign television and print ads
14 focused on protecting children and the concern that people of faith and
15 religious groups would somehow be harmed by the recognition of gay
16 marriage. They conveyed a message that gay people and relationships are
17 inferior, that homosexuality is undesirable, and that children need to be
18 protected from exposure to gay people and their relationships. The most
19 striking image, to Chauncey, is of the little girl who comes in to tell her mom
20 that she learned that a prince can marry a prince, which strongly echoes the
21 idea that the simple exposure to gay people and their relationships is going to
22 somehow lead a generation of young people to become gay. They conveyed a
23 message used in earlier campaigns that when gay people seek any recognition
24 this is an imposition on other people rather than a simply an extension of civil
25 rights to gay people.).
- Compare above with Tr. 412:23-413:13, 418:11-419:22, 420:3-20; PX1621;
PX0864 at 303 (Chauncey: Describing one of earliest anti-gay referenda
campaigns with more overt messaging of similar content).
- Tr. 553:23-554:14 (Chauncey: Dr. Tam’s “What If We Lose” letter is
consistent in its tone with a much longer history of anti-gay rhetoric. It
reproduces many of the major themes of the anti-gay rights campaigns of
previous decades and a longer history of anti-gay discrimination.).

26 PFF 199. Recent studies indicate that on a yearly basis, over 200,000 California students suffer
27 harassment based on actual or perceived sexual orientation. Many of those were
28 harassed several times.

- 1 • PX0810 at 1 (Safe Schools Research Brief concerning economic costs of
2 bullying in school: “More than 200,000 students in California each year report
3 being bullied based on actual or perceived sexual orientation based on the
4 2001-2002 California Healthy Kids Survey (CHKS) - that is 7.5% of students
5 in the 7th, 9th, and 11th grades. This harassment is linked to risk behavior,
6 poor grades, and emotional distress for students”); at 4 (“26.6% of students
7 who were bullied because of actual or perceived sexual orientation during the
8 past 12 months also reported that they missed school during the past 30 days
9 because they felt unsafe.”); *see also* Tr. 703:21-23 (Egan).
- 10 • PX0874 at 1 (Document entitled “Safe Place to Learn Consequences of
11 Harassment Based on Actual or Perceived Sexual Orientation and Gender
12 Non-Conformity and Steps for Making Schools Safer,” from the California
13 Safe Schools Coalition: Finding that “7.5 percent of California students
14 reported being harassed on the basis of actual or perceived sexual orientation:
15 that translates to over 200,000 middle school and high school students harassed
16 every year.”); *see also* Tr. 408:24-409:4 (Chauncey: In discussing PX0874,
17 Chauncey explained that “a good number of those were harassed several
18 times.”).

19 PFF 200. The approval of California’s Prop. 8, along with similar laws and constitutional
20 amendments in at least 33 other states indicates the enduring influence of anti-gay
21 hostility and the persistence of ideas about the inequality of gay people and their
22 relationships.

- 23 • PX2547 (Nathanson 11/12/09 Dep. Tr. 102:3-8: Agreeing that religions
24 teaching that homosexual relations are a sin contributes to gay bashing).
- 25 • PX2545 (Young 11/13/09 Dep. Tr. 55:15-55:20, 56:21-57:7: Agreeing that
26 there is a religious component to the bigotry and prejudice against gay and
27 lesbian individuals); *see also id.* at 61:18-22, 62:13-17 (Catholic Church views
28 homosexuality as “sinful”).
- Tr. 1554:14-19 (Segura: Ballot initiatives banning marriage equality have
been passed in 33 States.).
- Tr. 2608:16-18 (Miller: “My view is that at least some people voted for
Proposition 8 on the basis of anti-gay stereotypes and prejudice.”).
- PX0796 at 52 (Article by Proponents’ expert Dr. Miller: “In the decade
between 1998 and 2008, thirty states held statewide elections on state
constitutional amendments defining marriage as a union between a man and a
woman . . . Voters approved marriage amendments in all thirty states where
they were able to vote on the question, usually by large margins.”).

- Tr. 538:15-539:10 (Chauncey: Since 2004, when Chauncey wrote *Why Marriage? The History Shaping Today’s Debate over Gay Equality*, the majority of states have enacted legislation or constitutional amendments that would prohibit same-sex couples from marrying. Some have been enacted by legislative vote, but a tremendous number of popular referenda have enacted these discriminatory measures.).
- Tr. 424:18-23 (Chauncey: “[T]he wave of campaigns that we have seen against gay marriage rights in the last decade are, in effect, the latest stage and cycle of anti-gay rights campaigns of a sort that I have been describing; that they continue with a similar intent and use some of the same imagery.”).
- Tr. 412:20-412:1 (Chauncey: The series of referendum initiatives we have seen since the mid-to-late ‘70s over gay rights are another example of continuing prejudice and hostility.).
- Tr. 564:4-16 (Chauncey: The term “the gay agenda” was mobilized particularly effectively in the late ‘80s and early ‘90s in support of referendum initiatives designed to overturn gay rights laws. It tries to construct the idea of a unitary agenda and that picks up on long-standing stereotypes.).
- Tr. 1505:16-20 (Kendall: “I remember during the discussion about Amendment 2, during the Amendment 2 campaign, my parents would talk about homosexuals seeking special rights, and how they were essentially evil people; and how they felt threatened and how our family was threatened by homosexuals.”).
- Tr. 966:6-8 (Meyer: Domestic partnerships stigmatize gay and lesbian individuals.).
- *See also* evidence cited in support of PFFs 285-296.

PFF 201.

Groups that oppose gay rights continue to address homosexuality as a dangerous and inferior condition that threatens children and imperils the stability of the American family—a viewpoint at odds with the notion that gay and lesbian individuals and their relationships are fully equal to those of heterosexuals.

- PX2547 (Nathanson 11/12/09 Dep. Tr. 73:16-74:10, 74:23-75:21, 76:08-76:13: Agreeing that the Catholic Church and the Southern Baptist Convention teach that homosexual behavior is “a sin”); *see also id.* at 85:08-85:13.
- PX2547 (Nathanson 11/12/09 Dep. Tr. 102:3-8: Agreeing that religions teaching that homosexual relations are a sin contributes to gay bashing); *see also id.* at 102:24-103:5 (agreeing that the primary cause of culturally propagated hostility against homosexual behavior is religious teaching).

- 1 • Tr. 1579:5-1579:21 (Segura: Prop. 8 campaign advertisements reflect the
2 “very strong taboo about the portrayal of homosexuality as anything other than
3 pathological in the views of a lot of Americans. It’s never to be talked about;
4 not only not positively, but even neutrally.”).
- 5 • Tr. 1560:22-1591:9 (Segura: “[T]he role of prejudice is profound. . . . [I]f the
6 group is envisioned as being somehow . . . morally inferior, a threat to
7 children, a threat to freedom, if there’s these deeply-seated beliefs, then the
8 range of compromise is dramatically limited. It’s very difficult to engage in
9 the give-and-take of the legislative process when I think you are an inherently
10 bad person. That’s just not the basis for compromise and negotiation in the
11 political process.”).
- 12 • Tr. 1856:20-1857:5 (Segura: Testifying about “The Gathering Storm” video:
13 “It’s hard not to look at the video and not conclude that the message of the
14 video is that gays and lesbians are deeply threatening to individuals in
15 American society; the ominous music, the dark storm, on actor saying, “I’m
16 afraid,” suggest that homosexuals are to be feared. There is references to
17 children. There’s references to taking your religious liberty away. There’s
18 references to churches being discriminated against or facing some form of
19 government repression. It really does present gays and lesbians as a very
20 serious threat to all sorts of aspects of American life.”).
- 21 • *See also* evidence cited in support of PFFs 200 and 285-296.

22 **VIII. Gay and Lesbian Individuals Lack Political Power to Defend Their Basic Rights When 23 They Are Put Up for a Vote in a State-Sanctioned Plebiscite**

24 PFF 202. Gay and lesbian individuals have historically lacked the political power to ensure
25 protection through the political process, and they still lack the political power to fully
26 ensure that protection.

- 27 • PX0710 at RFA No. 18 (Attorney General admits “that although social
28 antipathy toward gay and lesbian individuals has moderated, these groups
suffer from continuing political disabilities and discrimination.”).
- Tr. 1646:12-21 (Segura: “[W]hen we take together the moments of legislative
victory, the moments of legislative defeat, the presence of ballot initiatives, the
absence of statutory or constitutional protection, the presence of statutory or
constitutional disadvantage, and a host of circumstances, including small
numbers, public hostility, hostility of elected officials, and a clearly well-
integrated, nationally prominent, organized opposition, I conclude that gays
and lesbians lack the sufficient power necessary to protect themselves in the
political system.”).

- Tr. 1538:10-18 (Segura: “[B]y any measure, gays and lesbians would have to be understood as a minority faction, in Madison’s terms. . . . [T]hey simply don’t have the numbers and the resources to be effective advocates in a lot of political arenas.”); Tr. 1560:14-19 (Same).
- Tr. 1546:11-1548:8 (Segura: Discussing historical discrimination against gays in federal employment and the early pro-gay movement, as evidence of “a lack of political power on the part of gay men and lesbians”).
- Tr. 1577:10-1578:7 (Segura: ”If we go back historically, of course, there were periods of time when gays and lesbians weren’t allowed to use the mails; that the transmission of material through the U.S. mails related to gay and lesbian political activity was considered obscene and, therefore, illegal.”).
- Tr. 1839:24-1840:2 (Segura: “[B]oycotts, protests, picketing are strategies used by people who are less powerful in the political systems, for whom traditional means of political action are less productive.”).
- Tr. 1318:22-25 (Sanders: Cannot think of a group of Americans that has faced stronger political opposition in recent years than the gay and lesbian community).
- DIX1105/PX0838 at 378-383 (Study by Jeffrey R. Lax and Justin H. Phillips: “[R]epresentative institutions do a poor job protecting minority rights even when the public supports the pro-minority position”; noncongruence between public opinion and policy is in the conservative direction, in part due to the “overrepresentation” of religious conservatives.).
- PX1869 at *1053, *1056-57 (Article by Miller: The ballot initiative process harms minorities.).
- PX2857 at 55 (Miller, *Dangerous Democracy*: The role of the courts in response to ballot initiatives is to “act as a filter to protect constitutional principles and minority rights,” because “it is easier for violations of minority rights or other constitutional norms to emerge from an otherwise unfiltered majoritarian process than one in which there are multiple checks and balances.”).
- DIX271 at 1-2 (USA Today/Gallup poll: 43% of Americans said that they would not vote for a generally qualified homosexual presidential candidate nominated by their party, versus 4% who would not vote for a woman and 11% who would not vote for a black person.).
- *See also* evidence cited in support of PFFs 203 to 228.

PFF 203. There are only three openly gay members of the U.S. House of Representatives and no openly gay Senators; there are no openly gay governors; and no openly gay person has

1 ever been appointed to a Cabinet Secretary position. Gay and lesbian individuals are
 2 thus underrepresented among elected political officials relative to their national
 3 population share.

- 4 • PX0707 at RFA No. 30 (Proponents admit “that there are only three openly
 5 gay members of the U.S. House of Representatives and no openly gay
 6 Senators.”).
- 7 • PX0707 at RFA No. 31 (Proponents admit “that there are no openly gay
 8 governors.”).
- 9 • PX0707 at RFA No. 32 (Proponents admit “that no openly gay person has ever
 10 been appointed to a Cabinet Secretary position.”).
- 11 • Tr. 1556:23-1557:9 (Segura: “At last count only six people have ever served
 12 in the House of Representatives who have been openly gay and only two of
 13 those were elected as openly gay. . . . [I]n the other four instances their
 14 sexuality became a matter of public record after their initial election. There
 15 has never been an openly gay senator or cabinet member or . . . president.
 16 There is only about one percent of the [states’] legislatures that are gay and an
 17 even smaller, much smaller percentage of local elected officials.” “I believe
 18 it’s five-hundredths of one percent.”).
- 19 • Tr. 1651:12-20 (Segura: The 69 persons of color serving in the House of
 20 Representatives “compares favorably to the six gay and lesbians who have ever
 21 served, and the three who currently serve in the House of Representatives.”).
- 22 • DIX271 at 1-2 (USA Today/Gallup poll: 43 percent of Americans said that
 23 they would not vote for a generally qualified homosexual presidential
 24 candidate nominated by their party versus 5 percent who would not vote for a
 25 similarly qualified black candidate and 11 percent who would not vote for a
 26 woman.).
- 27 • PX0841 at 575 (Study by Donald P. Haider-Markel, Mark R. Joslyn and Chad
 28 J. Kniss: Authors analyze 270 localities and conclude that “gay activists are
 more likely to be successful in the policy-making process if they elect openly
 gay officials.”).
- Tr. 1923:21-1924:16 (Tam: When pressed to identify “the homosexuals that
 San Francisco is under the rule of,” he could only identify one city
 supervisor.).

26 PFF 204. Gay and lesbian individuals have been unable to secure national legislation to protect
 27 themselves from discrimination in housing, employment, or public accommodations.
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- PX0707 at RFA Nos. 35, 36 (Proponents admit PFF 164 in its entirety.).
- PX0710 at RFA Nos. 35, 36 (Attorney General admits PFF 164 in its entirety.).
- Tr. 1546:15-1547:6 (Segura: “[T]here are also statutory disadvantages at the federal level. [T]here is no federal-level antidiscrimination protection for housing and employment. There’s no federal-level protection . . . on any level beyond the recently passed Hate Crimes Bill. There is federal legislation prohibiting gays and lesbians from receiving partner benefits in federal employment, as an incident of the Defense of Marriage Act. There is the exclusion of gays and lesbians from service in the military. And, historically, at one point, gays and lesbians were completely forbidden from working for the federal government. . . . [T]hat actually ended in the 1970s, but it started as far back as immediately in the post-war era, maybe President Eisenhower.”).
- Tr. 2598:12- 2599:14 (Miller: “[U]ntold millions across this country, who happen to lesbian or gay, are not covered by federal law for employment discrimination. That’s currently the case.”).
- PX2859 at 5 (Human Rights Campaign report: [T]here is “no protection under federal law.”).

PFF 205. Fewer than half of the states ban sexual orientation discrimination in employment, housing, and/or accommodations.

- PX0710 at RFA No. 34 (Attorney General admits PFF 165 in its entirety.).
- Tr. 1545:6-1546:6 (Segura: 29 States do not ban sexual orientation discrimination, including Wyoming, where the Matthew Shepard murder occurred and which also does not have a hate crimes law.).
- Tr. 1546:7-10 (Segura: Only three of the ten largest states in the U.S. have laws that provide protection against discrimination based on sexual orientation.).
- *Compare* Tr. 2492:19-2494:6 (Miller: Did not know how many states have no state law providing protection from discrimination on the basis of sexual orientation).

PFF 206. The President and Vice President of the United States do not support allowing same-sex couples to marry.

- PX0025 (Campaign ad: Quoting President Obama and Vice President Biden advising that they do not support allowing gay and lesbian couples to marry).

- DIX1061 at 2 (Human Rights Campaign 2008 Presidential Questionnaire: Then-Senator Obama advises “I do not support gay marriage.”).
- Tr. 1581:22-1582:3 (Segura: “The current President describes himself as a fierce advocate for gay and lesbian civil rights, but, yet, has actually taken no steps to overturn either [The Defense of Marriage Act or Don’t Ask, Don’t Tell], and actually, I understand has refused an order by the chief Judge of the Ninth Circuit to provide domestic partner benefits to his clerk.”).
- Tr. 1693:18-1694:5 (Segura: “President Obama is . . . the best illustration of an ally who cannot be counted upon, an ally whose rhetoric far exceeds his actions.” “[Obama] articulated repeatedly during the 2008 campaign that he was not in favor of same-sex marriage.”).

PFF 207. Nationwide, the initiative process has targeted gay and lesbian individuals more times than any other social group or political minority. Indeed, nationwide, voters have used initiatives or referenda to repeal or prohibit marriage rights for gay and lesbian individuals 33 times. Gays and lesbians have essentially lost 100 percent of the contests over marriage.

- Tr. 1551:25-1552:12 (Segura: “There is no group in American society who has been targeted by ballot initiatives more than gays and lesbians. The number of ballot initiative contests since the first one in the late 1970’s is probably at or above 200. . . . The initiative process nationalizes issues because money and activism crosses state lines. . . . [E]ven if there is a local legislative majority to enact something for the protection of gays and lesbians, participation of people around the country can play a role in shaping a ballot process that would reverse it.”).
- Tr. 1554:14-19 (Segura: 33 of 34 ballot initiatives banning marriage equality have been passed in the last decade; in Arizona the initiative failed the first time and was passed the second time.).
- Tr. 1553:22-1554:13 (Segura: Ballot initiatives disadvantage the gay and lesbian community in particular.).
- Tr. 2540:8-2564:10 (Miller: Initiatives foster polarization.).
- Tr. 2609:2-2644:12 (Miller: Has written that “initiatives that differentially affect minorities can easily tap into a strain of antiminority sentiment in the electorate,” and “Californians have adopted a large number of initiatives that represent Populist backlash against representative government’s efforts to protect or promote the interests of racial or other minorities”); PX2857 at 52 (Miller, *Dangerous Democracy*: “[I]nitiatives that differentially affect

1 minorities can easily tap into a strain of antiminority sentiment in the
2 electorate.”).

- 3 • Tr. 2708:17-21 (Miller: “There have been few initiatives in the . . . United
4 States that affect gays and lesbians, if you set aside the marriage initiatives,”
5 but the Williams Institute reports that “[s]ince 1992, initiatives to repeal or
6 block anti-discrimination laws have gone on the ballot in approximately 60 city
7 and county jurisdictions.” (PX0618 at 13-8)).
- 8 • PX1869 at *1053, *1056-57 (Miller article: Arguing that ballot initiatives
9 harm minorities).
- 10 • PX2857 at 55 (Miller, *Dangerous Democracy*: The role of the courts in
11 response to ballot initiatives is to “act as a filter to protect constitutional
12 principles and minority rights,” because “it is easier for violations of minority
13 rights or other constitutional norms to emerge from an otherwise unfiltered
14 majoritarian process”).
- 15 • PX0618 at 13-1 to 13-2 (JN) (Williams Institute Report: From 1974 to 2009,
16 58 ballot measures passed that sought to repeal or prevent prohibitions of
17 discrimination, or mandated discriminatory conduct or speech, against LGBT
18 people, whereas only four measures passed that provided protections for LGBT
19 people in the workplace; “(g)ay men and lesbians have seen their civil rights
20 put to a popular vote more often than any other group.” (quoting political
21 scientist Barbara S. Gamble)).
- 22 • DIX1105/PX0838 at 378-383 (Study by Jeffrey R. Lax and Justin H. Phillips:
23 “It may not be surprising that minority rights suffer when the majority is
24 opposed to them, but our results show that representative institutions do a poor
25 job protecting minority rights even when the public supports the pro-minority
26 position”; noncongruence between public opinion and policy is in the
27 conservative direction, in part due to the “overrepresentation” of religious
28 conservatives.).
- Tr. 1552:9-12 (Segura: “Gays and lesbians lose 70 percent of the contests over
other matters. They have essentially lost a hundred percent of the contests
over same-sex marriage and now on adoption.”).
- PX0840 (Study by Arthur Lupia et al.: Outcomes of state constitutional
amendments regarding gay marriage depend on procedural variations rather
than differences in attitudes across states.).

25 PFF 208. Gay and lesbian individuals constitute one of the least popular minorities in American
26 society, with the American public reporting significantly more negative feelings
27 toward them than to most other minority groups.

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- Tr. 1563:5-1564:21 (Segura: “[T]he American public is not very fond of gays and lesbians”; warmness scores for gays and lesbians are as much as 16 to 20 points below the average score for religious, racial, and ethnic groups; over 65 percent of respondents placed gays and lesbians below the midpoint, below the score of 50, whereas a third to 45 percent did the same for other groups; “when . . . 2/3 of all respondents are giving gays and lesbians a score below 50, that’s telling elected officials that they can say bad things about gays and lesbians, and that could be politically advantageous to them because . . . many parts of the electorate feel the same way”; “the initiative process could be fertile ground to try to mobilize some of these voters to the polls for that cause.”).
- DIX0469 2-3 (Public Opinion Pros article: Discussing “feeling thermometer” research: “Many Americans dislike gay people, and they aren’t reluctant to say so to survey researchers. As we shall see, any efforts by the gay rights movement to promote policies favorable to gay people are handicapped by this deep-seated antipathy, which is shared (to varying degrees) by Americans of all races, backgrounds, and ages.”).
- Tr. 1580:24-1581:21 (Segura: Allies of gays and lesbians are unreliable.).
- Tr. 1860:4-12 (Segura: “[T]here is at least one political party in the United States . . . and an awful lot of politicians. . . who think that there is electoral gain to be made from targeting gays and lesbians for disadvantage. . . it’s clear in many parts of the country and in many sub-electorates in all parts of the country, there is gain to be made from saying that you don’t like gays and lesbians or you are adverse to their interests.”).
- Tr. 1273:19-1274:6 (Sanders: Sanders’s lesbian daughter expressed concern that if he supported marriage rights for gay and lesbian couples, he might not be reelected.).
- Tr. 1316:5-13 (Sanders: The Republican Party was very unhappy with his decision to support marriage equality, and they said that they were considering withdrawing their endorsement for him, a sitting Republican Mayor.).
- Tr. 2608:16-18 (Miller: “[A]t least some people voted for Proposition 8 on the basis of anti-gay stereotypes and prejudice.”).

PFF 209. Forty-three percent of Americans said that they would not vote for a generally qualified homosexual presidential candidate nominated by their party, versus 4% who would not vote for a woman and 11% who would not vote for a black person.

- DIX271 at 1-2 (USA Today/Gallup poll).

1 PFF 210. In 2008, a majority of Americans believed that sex between two persons of the same
2 sex is always wrong.

- 3 • Tr. 1561:16-19 (Segura: “It is still the case, even today, that a majority of
4 Americans find sex between two persons of the same gender to be morally
5 unacceptable in most cases.”).

6 PFF 211. Political mobilization by gay and lesbian individuals is hampered because members of
7 the community are generally invisible unless they have “come out,” an act with social
8 costs.

- 9 • Tr. 1574:24-1576:21 (Segura: “[T]he psychology of the closet and the social
10 and economic pressures of the closet are still quite relentless and insidious. . . .
11 [I]f you are in the closet, you are unlikely to mobilize. . . . [Therefore,] the
12 public has a lower estimation of the total number of gays and lesbians. They
13 have a misinformed estimation of the socioeconomic status of gays and
14 lesbians. . . . and a misperception of the quality of life or the level of societal
15 treatment of gays and lesbians. . . . [And] people are likely to perceive gays
16 and lesbians as not having any political needs.”).
- 17 • Tr. 1215:8-1215:024 (Zia: To hide her sexual orientation from her co-workers,
18 Zia stepped into the closet and slammed the door shut. As a result, Zia also
19 stopped seeing her friends and cut off ties with women’s movement groups.).
- 20 • PX0835 (Article by Scott S. Gartner and Gary M. Segura: Invisible group
21 members mobilize at lower rates, and members of visible groups are more
22 likely to receive support from people outside the group.).
- 23 • PX0837 at 361 (Study by Jay Barth, L. Marvin Overby and Scott H. Huffmon:
24 “[K]nowing gays and lesbians has a statistically significant and substantially
25 important impact on support for the SSM proposal.”).

26 PFF 212. Elected officials and candidates for elected office have made public statements
27 expressing prejudice and hostility toward gay and lesbian individuals in a manner that
28 would be almost inconceivable against any other minority of Americans.

- Tr. 1558:24-1559:22 (Segura: “[U.S. Senators], in public speeches, have
compared same-sex marriage to marrying a box turtle. [A U.S. Senator] has a
hold on a judicial nomination because the nominee attended a lesbian
commitment ceremony. Senator Coburn has gone on record saying that the
gay and lesbian agenda is the greatest threat to freedom in the United States
today. And a [U.S.] Senator from South Carolina . . . said [in] his campaign
that gays and lesbians shouldn’t be allowed to teach in the public schools.”).

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- Tr. 1560:6-13 (Segura: Such statements “legitimize[] some of these hostile beliefs.”).
- Tr. 1297:17-24 (Sanders: Mayor Sanders believes that his prior opposition to marriage for same-sex couples was grounded in prejudice, even though he does not think that he felt hatred.).
- Tr. 1315:17-1316:1 (Sanders: As Mayor, Sanders has never made a decision based on fear of political repercussions from the gay community, has never seen any other policy maker in San Diego make a decision or cast a vote based on fear of political repercussions from the gay community, and thinks it is easier to make a decision against the gay and lesbian community than it is to make it for them.).
- PX0619 at 14-8 (JN) (Williams Institute Report: Summarizes examples of statements made by legislators, judges, governors and other officials in all 50 states showing animus towards LGBT people, including a 1999 statement by California State Senator Richard Mountjoy that “being gay ‘is a sickness . . . an uncontrolled passion similar to that which would cause someone to rape.’”).

PFF 213.

Gay and lesbian individuals are politically disadvantaged by the willingness of legislators and voters to support policies imposing disabilities on them based on religious teachings that homosexuality is sinful.

- Tr. 1565:2-1566:6 (Segura: “[R]eligion is the chief obstacle for gay and lesbian political progress, and it’s the chief obstacle for a couple of reasons. . . . [I]t’s difficult to think of a more powerful social entity in American society than the church. . . . [I]t’s a very powerful organization, and in large measure they are arrayed against the interests of gays and lesbians. . . . “[B]iblical condemnation of homosexuality and the teaching that gays are morally inferior on a regular basis to a huge percentage of the public makes the . . . political opportunity structure very hostile to gay interests. It’s very difficult to overcome that.”).
- Tr. 395:14-18 (Chauncey: Many clergy in churches considered homosexuality a sin, preached against it, and have led campaigns against gay rights.).
- Tr. 440:19-441:2 (Chauncey: The religious arguments that were mobilized in the 1950s to argue against interracial marriage and integration as against God’s will are mirrored by arguments that have been mobilized in this campaign and many of the campaigns since Anita Bryant’s “Save Our Children” campaign, which argue that homosexuality itself or gay people or the recognition of their equality is against God’s will.).
- Tr. 548:1-15 (Chauncey: People often hold deeply sincere religious convictions that seem timeless, but historians have shown how they change

1 over time and are shaped by the larger culture in which they live. For example,
2 many people in the South deeply believed that interracial marriage was against
3 God's will.).

- 4 • DIX1105/PX0838 at 383 (Study by Jeffrey R. Lax and Justin H. Phillips:
5 Noncongruence between public opinion and policy is in the conservative
6 direction, in part due to the "overrepresentation" of religious conservatives.).
- 7 • PX0843 (Essay by David C. Campbell and Carin Robinson: Discussing the
8 significant cooperation between religious groups in Ohio and California in the
9 movement against gay marriage).
- 10 • PX0844 at 174 (Essay by Sean Cahill: The anti-gay marriage movement
11 involves an alliance between Christian evangelicals and Roman Catholics and
12 it generally outspends groups promoting equal rights for gays and lesbians.).
- 13 • PX2853 at 8 (CNN Prop. 8 Exit Poll: 84% of people who attended church
14 weekly voted in favor of Prop. 8.).
- 15 • PX0831 (USA Today poll: Documenting the number of Americans who
16 claimed particular religious identities).
- 17 • PX0832 at 5 (American Religious Identity Survey 2008: 25.1% of Americans
18 identified as Catholic and 15.8% identified as Baptist.).
- 19 • PX0833 at 5 (The Pew Forum on Religion and Public Life U.S. Religious
20 Landscape Survey 2008: 26.3% of Americans self-identify as Christian
21 evangelicals.).
- 22 • PX2582 at 11-13 (2008 American National Election Study: 49.9% of Baptists,
23 28.5% of Catholics, and 89.53% of LDS members believe there should be no
24 gay marriage or civil unions.).
- 25 • PX0005 at 1 (Ten Declarations for Protecting Biblical Marriage: "The Bible
26 defines marriage as a covenantal union of one male and one female. . . . We
27 will avoid unproductive arguments with those who, through the use of
28 casuistry and rationalization, revise biblical passages in order to condone the
practice of homosexuality or other sexual sins.").
- PX0770 at 2 (Vatican document: "Sacred Scripture condemns homosexual
acts as 'a serious depravity.'").
- PX0301 (Document from Website of Catholics for the Common Good: There
are absolutely no grounds for considering homosexual unions to be "in any way
similar or even remotely analogous to God's plan for marriage and family";
"homosexual acts go against the natural moral law" and "[u]nder no
circumstances can . . . be approved"; "[t]he homosexual inclination is . . .
objectively disordered and homosexual practices are sins gravely contrary to

1 chastity”; “[a]llowing children to be adopted by persons living in such unions
 2 would actually mean doing violence to these children”; and “legal recognition
 of homosexual unions . . . would mean . . . the approval of deviant behavior.”).

- 3 • PX0168 at 1 (Southern Baptist Convention Resolution on same-sex marriage:
 4 “[L]egalizing ‘same-sex marriage’ would convey a societal approval of a
 homosexual lifestyle, which the Bible calls sinful and dangerous both to the
 5 individuals involved and to society at large.”); PX0771 at 1 (Southern Baptist
 Convention document: “The Bible clearly teaches that homosexual behavior is
 6 an abomination and shameful before God.”).
- 7 • PX2839 at 3 (Evangelical Presbyterian Church Position Paper on
 8 Homosexuality: “[H]omosexual practice is a distortion of the image of God as
 it is still reflected in fallen man, and a perversion of the sexual relationship as
 9 God intended it to be.”).
- 10 • PX2840 at 5 (Free Methodist Church Book of Discipline, Chapter 3:
 11 “Homosexual behavior, as all sexual deviation, is a perversion of God’s
 created order.”).
- 12 • PX2842 at 1 (Publication of The Lutheran Church Missouri Synod: “The Lord
 13 Teaches us through His Word that homosexuality is a sinful distortion of His
 desire that one man and one woman live together in marriage as husband and
 14 wife.”).
- 15 • PX2844 at 1 (Orthodox Church of America: “Homosexuality is to be
 16 approached as the result of humanity’s rebellion against God.”).

17 PFF 214.

Proponents’ expert Dr. Young admitted that religious hostility to gays and lesbians
 18 plays an important role in creating a social climate that is conducive to hateful acts, to
 19 opposition to their interest in the public sphere, and to prejudice and discrimination.
 20 In addition, their expert Dr. Miller has written that “[r]eligion was critical in
 21 determining voter attitudes towards Proposition 8.”

- 22 • Tr. 1566:18-22 (Segura: “[Proponents’ expert] Dr. Young freely admits that
 23 religious hostility to homosexuals is an important role in creating a social
 climate that’s conducive to hateful acts, to opposition to their interest in the
 24 public sphere, and to prejudice and discrimination.”).
- 25 • PX2545 (Young Nov. 13, 2009 Dep. Tr. 56:21-57:07: Admitting that bigotry
 26 and prejudice against gays and lesbians in the United States was in substantial
 part based on religious beliefs).
- 27 • PX0796 at 55-56 (Miller article: “Churches and religious organizations
 28 supplied most of Proposition 8’s institutional support.” “While Mormons are

1 only about 2% of California’s population, members of the church (both from
2 California and from other states) provided critical financial contributions and
3 volunteer support.” “Religion was critical in determining voter attitudes
4 towards Proposition 8.”).

- 5 • Tr. 2676:8-2678:24 (Miller: Agreeing with his former statement that “the
6 religious characteristics of California’s Democratic voters” explains why so
7 many Democrats voted for Barack Obama and also for Prop. 8; “[t]he apparent
8 contradiction can be explained by examining the religious characteristics of
9 California’s Democratic voters”).
- PX0796 at 47, 57-58 (Article by Miller: The “state’s Democratic coalition
divided along religious lines.”).
- *See also* evidence cited in support of PFF 225.

10 PFF 215. The gay community suffers from greater political disabilities today than women did in
11 the 1970s when they were afforded quasi-suspect status by the Supreme Court. Before
12 they were afforded quasi-suspect status by the Supreme Court, women had achieved
13 important victories in the political process, including coverage in the 1964 Civil
14 Rights Act and its subsequent amendments.

- 15 • Tr. 1646:22-1648:6 (Segura: “[R]elative to the position of women in the early
16 1970s, gay men and lesbians are more disadvantaged today than women were
17 in the 1970s . . . there was already statutory protection [through the] 1963
Equal Pay Act, [and] certain provisions of the 1964 Civil Rights Act.”).

18 PFF 216. When women were afforded quasi-suspect status by the Supreme Court, although
19 sexism existed and political activism could be costly, identity as a woman was not
20 socially controversial, did not attract familial scorn, and did not bar one from a large
21 range of social institutions, though some institutions were exclusively male. Women
22 could freely identify one another, gather, coordinate, and act largely free of fear of
23 repressive tactics.

- 24 • Tr. 1647:11-24 (Segura: “[W]omen constituted then [in the 1970s] and
25 constitute today a majority of the population. And were they so motivated,
26 they could determine most if not all political outcomes. . . . [W]hile there [was]
27 certainly sexism . . . being a woman is not inherently controversial. Families
don’t hate their daughters. . . . [And] there were women in public office.”).

1 PFF 217. In the last two decades, anti-gay referenda and initiatives have been widely used to
 2 challenge gay rights laws. Since 1992, initiatives to repeal or block anti-
 3 discrimination laws have gone on the ballots in approximately 60 city and county
 4 jurisdictions. In Oregon alone, there were sixteen local anti-gay initiatives in 1993
 5 and another eleven in 1994. Oregon's gay activists lost all but one.

- 6 • DIX1086/PX0847 at 46 (Chauncey, *Why Marriage?*: "In Oregon alone, there
 7 were sixteen local antigay initiatives in 1993 and another eleven in 1994; gay
 8 activists lost all but one. Nationwide, gay rights supporters lost almost three-
 9 quarters of them.").
- 10 • Tr. 2708:17-21 (Miller: "There have been few initiatives in the . . . United
 11 States that affect gays and lesbians, if you set aside the marriage initiatives,"
 12 but the Williams Institute reports that "[s]ince 1992, initiatives to repeal or
 13 block anti-discrimination laws have gone on the ballot in approximately 60 city
 14 and county jurisdictions." (PX0618 at 13-8)).
- 15 • See evidence cited in support of PFF 207.

16 PFF 218. Nationwide, there were 143 initiatives or referenda from the 1970s through 2005
 17 relating to gay civil rights, and gay rights supporters lost over 70% of them.

- 18 • PX0839 at 312 (Study by Donald P. Haider-Markel, Alana Querze and Kara
 19 Lindaman: "[B]etween 1972 and 2005, 71 percent of the 143 local and state
 20 gay civil rights initiatives and referenda resulted in losses for minority rights.
 21 The evidence clearly suggests that the homosexual minority tends to lose when
 22 the voters decide" in direct elections.).
- 23 • Tr. 1552:6-20 (Segura: "The number of ballot initiative contests since the first
 24 one in the late 1970's is probably at or above 200. Gays and lesbians lose 70
 25 percent of the contests over other matters.").
- 26 • Tr. 1543:9-12 (Segura: "[B]etween 1990 and the middle part of the 2000s,
 27 there's been probably like 150—not even counting the same-sex marriage
 28 votes, there's been like 150 votes on gay and lesbian—usually, on gay and
 lesbian antidiscrimination protections. And they lose about 70 percent of the
 time.").
- Tr. 1734:21-1735:25 (Segura: "[W]e have 150 or more instances in a decade
 and a half where anti-discrimination protections are voted on by the
 population, and overturned, even though the legislature or its city council or
 county board had granted them. We have uniform passage of constitutional
 amendments to exclude one group of citizens from a civil institution. And
 that's extraordinary in my view.").

1 PFF 219. In 1996, the United States Senate passed the Defense of Marriage Act (DOMA),
 2 which provided a federal definition of marriage as the union of one man and one
 3 woman and declared that no state needed to give “full faith and credit” to marriages of
 4 same-sex couples performed in another state. It also denied federal benefits to such
 5 married couples. And more than 20 states passed state-level DOMA statutes over the
 6 next two years.

- 7 • DIX1086/PX0847 at 125-27 (George Chauncey, *Why Marriage?:* “Fifteen
 8 legislatures enacted ‘State DOMAs’ in 1996.”).
- 9 • Alaska Stat. § 25.05.013 (May 7, 1996); Ariz. Rev. Stat. Ann. § 25-101 (May
 10 1, 1996); Del. Code Ann. tit. 13, § 101 (June 21, 1996); Ga. Code Ann. § 19-3-
 11 3.1 (Apr. 2, 1996); Idaho Code Ann. § 32-201 (Jan. 1, 1996); 750 Ill. Comp.
 12 Stat. Ann. § 5/212 (May 24, 1996); Kan. Stat. Ann. § 23-101 (Apr. 10, 1996);
 13 Mich. Comp. Laws Ann. §§ 551.1 (June 25, 1996); Mo. Rev. Stat. § 451.022
 14 (July 3, 1996); N.C. Gen. Stat. § 51-1.2 (June 20, 1996); Okla. Stat. Ann. tit.
 15 43, § 3.1 (Apr. 29, 1996); 23 Pa. Cons. Stat. Ann. § 1704 (Oct. 16, 1996); S.C.
 16 Code Ann. § 20-1-15 (May 20, 1996); S.D. Codified Laws §§ 25-1-1 (Feb. 21,
 17 1996); Tenn. Code Ann. § 36-3-113 (May 15, 1996); Ark. Code Ann. § 9-11-
 18 109 (Feb. 13, 1997); Fla. Stat. Ann. § 741.212 (May 29, 1997); Ind. Code §
 19 31-11-1-1 (May 13, 1997); Me. Rev. Stat. Ann. tit. 19A, § 701 (Mar. 28,
 20 1997); Minn. Stat. Ann. § 517.01 (June 2, 1997); Miss. Code Ann. § 93-1-1
 21 (Feb. 12, 1997); Mont. Code Ann. § 40-1-401 (Apr. 29, 1997); N. D. Cent.
 22 Code § 14-03-01 (Mar. 25, 1997); Va. Code Ann. § 20-45.2 (Mar. 15, 1997).

23 PFF 220. In 2004, when Massachusetts became the first state to permit gay couples to marry,
 24 thirteen states passed constitutional amendments banning such marriages.

- 25 • PX2856 at 22 (Miller: Table demonstrating thirteen state constitutional
 26 amendments in 2004 prohibiting marriage by same-sex couples).
- 27 • Ark. Const. amend. 83, § 1 (Nov. 2, 2004); Ga. Const. art. I, § 4, ¶ I (Nov. 2,
 28 2004); Ky. Const. § 233A (Nov. 2, 2004); La. Const. art. XII, § 15 (Sept. 18,
 2004); Mich. Const. art. I, § 25 (Nov. 2, 2004); Miss. Const. art. XIV, § 263A
 (Nov. 2, 2004); Mo. Const. art. I, § 33 (Aug. 3, 2004); Mont. Const. art. XIII, §
 7 (Nov. 2, 2004); N.D. Const. art. XI, § 28 (Nov. 2, 2004); Ohio Const. art.
 XV, § 11 (Nov. 2, 2004); Okla. Const. art. 2, § 35 (Nov. 2, 2004); Or. Const.
 art. XV, §5a (Nov. 2, 2004); Utah Const. art. I, § 29 (Nov. 2, 2004).
- Tr. 539:4-539:6 (Chauncey: “[T]he majority of states have enacted legislation
 or constitutional amendments that would prohibit same-sex couples from
 marrying.”).

1 PFF 221. Today, in at least 28 states, there is no statutory barrier to firing, refusing to hire, or
 2 demoting a person in private sector employment solely on the basis of their identity as
 3 a gay man or lesbian.

- 4 • Tr. 1545:6-18 (Segura: 29 states currently do not have laws prohibiting
 5 employment discrimination on the basis of sexual orientation.).
- 6 • Tr. 390:8-16 (Chauncey: Discrimination against lesbians and gay men in
 7 public employment has not ended, and employment discrimination by public
 8 entities remains legally permissible in 20 states, and such discrimination by
 9 private employers remains legally permissible in 28 states.).
- 10 • *Compare* Tr. 2492:19-2494:6 (Miller: Did not know how many states have no
 laws providing protection from discrimination on the basis of sexual
 orientation).

11 PFF 222. Proponents called Dr. Miller, and the Court permitted Dr. Miller to testify, as an
 12 expert on American and California politics generally and the political power of gays
 13 and lesbians. Dr. Miller disagreed with Dr. Segura and testified that, in his opinion,
 14 gays and lesbians have political power.

- 15 • Tr. 2427:10-2428:7 (Proponents' counsel: "[W]e would tender Professor
 16 Miller as an expert in the field of American politics and California politics,"
 17 and "[w]e think the political power of gays and lesbians is a subcomponent of
 American politics and California politics.").
- 18 • 2435:21-2436:25 (Court: Qualifying Miller on these topics).
- 19 • Tr. 2482:2-8 (Miller: "I believe that gays and lesbians do have power at the
 20 national level.").

21 PFF 223. Dr. Miller's opinion is undermined by the fact that he (i) has not focused on LGBT
 22 issues in his research or study, (ii) has not read many of the sources that would be
 23 relevant to forming an opinion regarding the political power of gays and lesbians, and
 24 (iii) could not confirm that he personally identified even 25 percent of the sources that
 25 he cited in his expert report.

- 26 • Tr. 2418:10-18 (Miller: Miller does not teach any course on gay and lesbian
 27 politics or political power.).

- 1 • PX0796 (Miller’s own scholarship on Prop. 8 does not address the issue of the
2 political power of gays and lesbians as a group.).
- 3 • Tr. 2428:19-2429:7 (Miller: Admitting he has not written any peer-reviewed
4 article analyzing the political power of gays and lesbians).
- 5 • Tr. 2432:7-19 (Miller: Admitting he has not written about the discrimination
6 experienced by gays and lesbians in the last 50 years; what he knows about the
7 subject he learned in preparation for his testimony in this case).
- 8 • Tr. 2435:3-19; 2518:15-2519:10; 2520:11-2521:9; 2522:11-25 (Miller:
9 Admitting he was unfamiliar with significant figures in LGBT history,
10 scholarship, or politics, and/or had not read their writings).
- 11 • Tr. 2513:9-18 (Miller: Unable to name any books or articles that dealt with
12 prejudice against minority groups, although he has acknowledged that
13 prejudice factors into political power).
- 14 • Tr. 2491:12-2494:14; 2501:18-2502:16; 2506:2-2507:1 (Miller: Admitting he
15 was unaware of how many or which states had failed to enact laws protecting
16 gays and lesbians from discrimination on the basis of sexual orientation, which
17 of the ten most populous states did not provide protections against
18 discrimination on the basis of sexual orientation for gays and lesbians, or
19 whether existing anti-discrimination protections for gays and lesbians were
20 more narrow than for other minority groups).
- 21 • Tr. 2512:5-2513-2 (Miller: Incorrectly defining “gay-bashing” as excluding
22 physical violence and being limited to “pejorative statements” and “ad
23 hominem attacks”).
- 24 • Tr. 2496:14-2499:4; 2684:9-2686:21 (Miller: Unable to confirm that he—
25 rather than Proponents’ attorneys—personally identified even 25 percent of the
26 materials listed in his expert report (PX794A) as sources on which he relied for
27 his opinion that gays and lesbians have political power.).
- 28 • PX794A (Index of materials to Miller’s expert report: Demonstrating that
Miller was unsure whether he or attorneys for Proponents had supplied the
majority of sources on which he relied).
- Tr. 1653:11-1656:24 (Segura: Miller’s analysis of the political power of gays
and lesbians is unreliable because he “doesn’t know anything about gay and
lesbian politics,” and he was not “familiar with some of the key pieces on—on
how political science would address gays and lesbians.” “To put it in starkest
terms, in 29 states, there is no anti-discrimination protection for gays and
lesbians. And Professor Miller concluded that gays and lesbians possessed
political power, without being aware of that fact.”).

1 PFF 224. Dr. Miller’s opinion is also undermined by his admissions that (i) he has no basis to
2 compare the political power of gays and lesbians to the power of minority groups that
3 are already entitled to heightened levels of scrutiny, including African-Americans and
4 women; (ii) African-Americans are also not politically powerless in his opinion; and
5 (iii) lesbians suffer from greater stereotyping and prejudice than women as a whole.

- 6 • Tr. 2572:17-2573:17 (Miller: Admitting that he had not investigated whether
7 gays and lesbians face more stereotyping than African-Americans or women:
8 “I haven’t done a comparative analysis.”).
- 9 • Tr. 2538:25-2539:8 (Miller: Could not compare African-American minority
10 with gay and lesbian minority).
- 11 • Tr. 2538:13-17 (Miller: African-Americans are not politically powerless).
- 12 • Tr. 2573:18-2574:3 (Miller: Admitting that lesbians would face greater
13 prejudice and stereotyping than heterosexual women).

14 PFF 225. Dr. Miller’s opinion is also undermined by the following: (1) his concession that
15 gays and lesbians have suffered severe discrimination that continues today; (2) his
16 concession that the extent of prejudice and discrimination faced by a minority group is
17 relevant to evaluating whether that minority group has political power; and (3) Mr.
18 Blankenhorn’s admission that “homophobia is a real presence in our society.”

- 19 • Tr. 2523:1-5 (Miller: Admitting discrimination is a factor in political power).
- 20 • Tr. 2510:23-2511:2 (Miller: Admitting that historically there has been severe
21 prejudice and discrimination against gays and lesbians).
- 22 • Tr. 2572:11-13 (Miller: Admitting gays and lesbians are still the object of
23 prejudice and stereotype).
- 24 • Tr. 2527:11-15 (Miller: Admitting that “there is ongoing discrimination in the
25 United States,” but that he has not tried to investigate the extent of it).
- 26 • Tr. 2765:3-6 (Blankenhorn: “I believe that homophobia is a real presence in
27 our society and, I’m pretty confident, in many, many other societies around the
28 world. And I regret and deplore it, and wish it to go away.”).
- *See also* evidence cited in Section VIII (regarding discrimination).

- 1 • Tr. 2437:7-14 (Miller: One of the “key determinants of political power” is
2 “the ability to attract allies and form coalitions.”).
- 3 • Tr. 2442:2-2443:12 (Miller: Identifying, among others, the Democratic Party,
4 organized labor, and churches and faith-based organizations as allies of gays
5 and lesbians).
- 6 • Tr. 2591:11-2592:17 (Miller: Despite his opinion that organized labor was an
7 ally of gays and lesbians, acknowledging that households with union members
8 were more likely to vote for Prop. 8).
- 9 • Tr. 2590:4-6 (Miller: Despite his opinion that churches and faith-based
10 organizations are allies of gays and lesbians, admitting that “frequent attenders
11 of religious services were more in favor of Prop. 8 than other people by a
12 considerable amount”).
- 13 • PX2853 at 8 (Exit polls showing that 32 percent of the population attended
14 church weekly, and that 84 percent of those frequent attendees voted yes on
15 Prop. 8).
- 16 • PX2853 at 4 (Exit polls showing that 36 percent of Democrats voted in favor
17 of Prop. 8 and that only 18 percent of Republicans voted against Prop. 8).

18 PFF 226. Dr. Miller’s credibility was further undermined by the fact that opinions he offered at
19 trial were inconsistent with opinions he expressed before he was retained as an expert,
20 including as recently as mid-2009.

- 21 • Tr. 2623:19-2624:2 (Miller: With respect to an article he had written in 2001
22 (PX1869), and his assertion that California’s Proposition 22 was an example of
23 the initiative system “bypassing checks and balances” at “the expense of
24 certain minorities” (in that case, gays and lesbians), Dr. Miller testified:
25 “That’s what I wrote at the time. I no longer believe that.”).
- 26 • *Compare* Tr. 2652:18-22 (Miller: “Q. And the reason it [Prop. 8] passed was
27 because of religion, correct, sir? A. I don’t know if I would agree with that.”)
28 *with* PX0796 at 56 (Miller article written in 2009: “Religion was critical in
determining voter attitudes towards Proposition 8.”).

PFF 227. Dr. Miller’s testimony was also contradicted by his previous writings that
homosexuals, like other minorities, are vulnerable and powerless in the initiative
process, which contradict his trial testimony that he disagrees with Dr. Segura’s
testimony that gays and lesbians are politically vulnerable with respect to the initiative
process. In fact, Dr. Miller has repeatedly written that minority groups, including gays

1 and lesbians, are vulnerable in the initiative process and that initiatives can easily tap
2 into a strain of anti-minority sentiment in the electorate.

- 3 • Tr. 2474:19-2475:20 (Miller: Disagreeing with Segura that gays and lesbians
4 are vulnerable to the initiative process); *compare* PX1869 at 8 (Miller article:
5 “Racial minorities, illegal immigrants, *homosexuals*, and criminal defendants
6 have been exposed to the electorate’s momentary passions as Californians have
7 adopted a large number of initiatives that represent Populist backlash against
8 representative governments’ efforts to protect or promote the interests of racial
9 and other minorities.” (emphasis added)).
- 10 • Tr. 2615:12-18; 2621:10-18; 2624:15-24 (Miller: Admitting that initiatives
11 can easily tap into a strain of anti-minority sentiment in the electorate, that this
12 has occurred, and that direct initiatives can be and have been used to
13 disadvantage minorities); PX1869 at *1056 (Miller article: Same).
- 14 • PX2857 at 52 (Miller article: “[I]nitiatives that directly and differentially
15 affect minorities, can easily tap into a strain of anti-minority sentiment in the
16 electorate. The initiatives from the three states in this category sought to ban
17 state efforts to prevent, quote, private, closed quote, racial discrimination in
18 housing, restrict busing to desegregate public schools, *restrict state efforts to*
19 *protect the rights of homosexuals*, establish English as the state’s official
20 language, restrict illegal immigration, ban state affirmative action for women
21 and minorities, and restrict bilingual education.”) (emphasis added).
- 22 • PX1869 at *1056 (Miller article: “With respect to the second substantive
23 concern, minority rights, it is clear that the direct initiative can be and has been
24 used to disadvantage minorities. . . . [T]he direct initiative system, by
25 bypassing checks and balances, is weighted heavily toward majority rule at the
26 expense of certain minorities.”).
- 27 • PX1869 at *1054 (Miller article: “In sum, it is ironic that initiatives have the
28 reputation of being a more pure form of democracy when the process
undermines democratic opportunities and violates procedural guarantees
observed by almost every freely elected legislature in the world.”).
- PX2865 at 138 (Miller article: “[T]he initiative process radically departs from
the Madisonian system of delegation and checks and balances by substituting
unfiltered direct democratic rule.”).
- PX2857 at 33, 41, 45 (Miller article: “We discuss how ironically direct
democracy can actually be less democratic than representative democracy in
that it fails to maximize democratic opportunities for refinement, informed
liberation, consensus building and compromise, and violates democratic norms
of openness, accountability, competence and fairness.” “Initiative
constitutional amendments (ICAs) most seriously undermine representative
government because they can only be altered by another constitutional

1 amendment.” “The actual operation of the initiative process violates a number
2 of norms that have evolved in advanced democracies.”).

3 PFF 228. The persuasiveness of Dr. Miller’s opinion is also undermined by his admission that
4 gays and lesbians continue to be subject to discrimination and prejudice at both the
5 federal and state level, and that this is reflected both in federal statutes and Prop. 8
6 itself. Indeed, Dr. Miller admitted that “at least some people voted for Proposition 8
7 on the basis of anti-gay stereotypes and prejudice.”

- 8 • Tr. 2508:2-8 (Miller: Admitting that no openly gay or lesbian person has ever
9 been elected to statewide office in California).
- 10 • Tr. 2509:12-2510:5; 2523:9-2524:22 (Miller: “Don’t Ask, Don’t Tell”
11 constitutes official discrimination by the federal government against gays and
12 lesbians; gays and lesbians are still being discharged from the military because
13 of their sexual orientation under “Don’t Ask, Don’t Tell”; no other minority is
14 discharged from the military despite performing well because their status as a
15 minority is discovered.).
- 16 • Tr. 2510:9-22; 2524:23-2525:4 (Miller: The Defense of Marriage Act
17 (“DOMA”) constitutes official discrimination by the federal government
18 against gays and lesbians; DOMA acts against the interests of the LGBT
19 community and has not been repealed.).
- 20 • Tr. 2608:11-18 (Miller: “[A]t least some people voted for Proposition 8 on the
21 basis of anti-gay stereotypes and prejudice.”).

18 **IX. Prop. 8 Does Not Promote Any Legitimate Governmental Interest**

19 **A. Proponents’ Proffered Interests**

20 PFF 229. Before trial, Proponents listed 23 governmental interests allegedly served by Prop. 8
21 and 23 “very likely” harms it would prevent. Doc #295 at 6-8, 9-11 (Proponents’ Trial
22 Mem.). All of those interests can be grouped into five general categories of interests
23 that have been articulated by Proponents throughout the proceedings: (1) promotion
24 of the formation or stability of “naturally procreative unions”; (2) preventing the
25 “deinstitutionalization” of marriage; (3) promoting achievement of good child
26 adjustment outcomes; (4) administrative convenience; and (5) protecting the First
27

1 Amendment rights of religious liberty and freedom of speech of groups that oppose
2 marriage by gay and lesbian individuals.

3 **B. Proponents' Purported Evidence**

4 PFF 230. Proponents elected not to have the majority of their designated witnesses testify at
5 trial. Proponents withdrew one of their designated experts before trial began and four
6 other designated experts on the first day of trial. Indeed, Proponents waited until the
7 morning of Monday, January 11, 2010—after the Supreme Court had already granted
8 a stay of this Court's order permitting broadcast of the proceedings—to announce in a
9 two sentence letter that they “no longer intend to call as witnesses Dr. Paul Nathanson,
10 Dr. Loren Marks, Dr. Daniel Robinson, and Dr. Katherine Young.” Although
11 Proponents' counsel stated in open court on Friday, January 15, 2010, that their
12 witnesses “were extremely concerned about their personal safety, and did not want to
13 appear with any recording of any sort, whatsoever,” this assertion was entirely
14 unsupported by any evidence at all and was not, on its face, credible. Proponents had
15 notice of the possibility that the proceedings would be publicly broadcast as early as
16 September 2009. In addition, the Court announced its decision to broadcast the
17 proceedings on January 6, 2010, but the Supreme Court issued a temporary stay of the
18 Court's order on January 11, 2010—*before* Proponents' counsel sent a letter to all
19 counsel withdrawing four of their experts. The Supreme Court issued its indefinite
20 stay on January 13, 2010, and then this Court on January 14 withdrew this case from
21 the Ninth Circuit's pilot program, well before Proponents had even called their first
22 witness. Thus, from at least January 14 on, Proponents and their witnesses knew for a
23 fact that these proceedings would not be broadcast to the public in any form.
24 Proponents made no effort to call any witnesses other than Mr. Blankenhorn and Dr.
25 Miller after the Court withdrew its request to broadcast the proceedings to other
26 federal courthouses and made clear that no such broadcast would take place.
27 Proponents' decision to withdraw any of their experts was therefore a tactical decision
28

1 unrelated to the Court’s decision to broadcast the proceedings to several other federal
 2 courthouses. Indeed, all of the experts withdrawn by Proponents made damaging
 3 admissions in their depositions, and Plaintiffs’ counsel predicted at the pre-trial
 4 hearing in December 2009 that Proponents would seek to withdraw their experts
 5 because of the vigorous cross-examination they had faced in deposition and would
 6 face at trial.

- 7 • Tr. 1352:23-1353:3 (Proponents’ Counsel (Cooper): Explaining that
- 8 Proponents withdrew Professor Douglas Allen before the trial commenced).
- 9 • Tr. 1094:18-19 (Proponents’ Counsel (Thompson): Claiming, without support,
- 10 that Proponents withdrew Dr. Loren Marks and other experts because of
- 11 concerns about video recording).
- 12 • Tr. 1125:22-24 (Plaintiffs’ Counsel (Boutros): “And we had predicted back at
- 13 the pretrial that they would be seeking to withdraw their expert witnesses
- 14 because of the cross-examination that had occurred and that would occur.”).
- 15 • Doc # 292 at 1-2 (Proponents’ Witness Statement, dated December 7, 2009:
- 16 Identifying six experts who Proponents “expect[ed] to present”).
- 17 • *See Hollingsworth v. Perry*, No. 09A648 (U.S. Jan. 11, 2010) (order granting
- 18 temporary stay).
- 19 • *See Hollingsworth v. Perry*, No. 09A648 (U.S. Jan. 13, 2010) (indefinite stay).

18 PFF 231. Proponents called two witnesses to testify at trial: Dr. Kenneth Miller and Mr. David
 19 Blankenhorn. The Court permitted Dr. Miller to testify as an expert on American and
 20 California politics generally and the political power of gays and lesbians, and Dr.
 21 Miller’s testimony did not concern purported governmental interests allegedly served
 22 by Prop. 8.

- 23 • Tr. 2427:10-2428:7 (Proponents’ Counsel); Tr. 2435:21-2436:25 (Court).
- 24 • Tr. 61:4-19; 63:18-64:11; 66:16-25; 68:20-69:6 (Proponents’ Counsel
- 25 (Cooper): Asserting that Mr. Blankenhorn will testify about the broad
- 26 consensus of leading scholars that agree that “across history and cultures
- 27 marriage is fundamentally a pro-child institution anchored in socially-approved
- 28 sexual intercourse between a man and a woman”; asserting that allowing same-
- sex couples to marry might deinstitutionalize marriage, and Mr. Blankenhorn
- will testify that deinstitutionalization is likely to lead to “very real social

1 harms, such as . . . lower marriage rates and higher rates of divorce and non-
 2 marital cohabitation, with more children raised outside of marriage and
 3 separated from at least one of their parents”; Mr. Blankenhorn will testify that
 4 “marriage is essentially the sexual embodiment of the man and the woman who
 5 form the marital union”).

- 6 • Tr. 65:3-21 (Proponents’ Counsel (Cooper): Claiming that the evidence will
 7 show that in the Netherlands, allowing same-sex couples to marry has caused
 8 the marital rate to decline and the rate of non-martial cohabitation of couples
 9 with children to increase).

10 PFF 232.

11 The Court permitted Mr. Blankenhorn to testify as an expert concerning the subjects
 12 of marriage, fatherhood, and family structures. Mr. Blankenhorn offered four
 13 opinions: (1) marriage has traditionally been defined as between a man and a woman
 14 and tied to sexual reproduction; (2) marriage as an institution “is not the creation of
 15 religion” or otherwise attributable to anti-homosexual prejudice; (3) the optimal
 16 environment for raising children is by two biological parents; and (4) permitting same-
 17 sex couples to marry would further deinstitutionalize marriage.

- 18 • Tr. 2732:5-7 (Proponents’ Counsel); Tr. 2741:21-2742:3 (Court: “With
 19 respect to Mr. Blankenhorn’s qualifications, were this a jury trial, I think the
 20 question might be a close one. But this being a court trial, I’m going to permit
 21 the witness to testify; and, as Mr. Cooper has suggested, to weigh that
 22 testimony in light of the witness’s qualifications, his background, training, and
 23 experience, and the reasons that he offers for his opinions.”).
- 24 • Tr. 2744:2-2745:20 (Blankenhorn: Marriage rests on the need to reproduce
 25 sexually and the need to create the biological, social, and legal dimensions of
 26 parenthood for children.).
- 27 • Tr. 2762:10-2763:13; 2764:25-2766:4 (Blankenhorn: Marriage is a natural
 28 human institution that is consistent across societies with a range of different
 religious beliefs. Blankenhorn has not found any evidence that the laws and
 customs surrounding marriage are attributable to anti-homosexual prejudice.).
- Tr. 2766:5-2768:23 (Blankenhorn: Children should be raised by their
 biological parents because “kin altruism” ensures that they will get better care
 from people who are closely related to them. Child outcome studies also
 indicate that it is optimal for children to be raised by their biological mother
 and father.).
- Tr. 2772:21-2777:15 (Blankenhorn: In the last five decades there has been a
 marked process of deinstitutionalization of marriage, and the process of

1 deinstitutionalization would be furthered and accelerated significantly by
2 allowing same-sex couples to marry.).

3 PFF 233. Mr. Blankenhorn's expertise with regard to the four opinions he advanced at trial is so
4 limited that these opinions are unreliable and entitled to relatively little weight.
5 Specifically, Mr. Blankenhorn conceded that (i) his purported expertise was based on
6 his study of the writings and analysis of others, (ii) he read relatively few of the
7 studies on which numerous professional organizations' support for marriage equality
8 are based, and (iii) he had no or limited expertise based on his education, training or
9 experience.

- 10 • DIX2693 (Blankenhorn CV: Three-page CV that does not identify any
11 relevant education or employment except with respect to his association with
12 the Institute for American Values).
- 13 • Tr. 2735:15-2736:3 (Blankenhorn: Testifying that the fields of psychology,
14 sociology, and anthropology are relevant to the subjects on which he was being
15 asked to testify, but he had no degrees in any of those subjects).
- 16 • DIX2693; Tr. 2732:16-25 (Blankenhorn: Blankenhorn has a master's degree
17 in comparative labor history and completed his thesis on the study of two
18 cabinetmakers' unions in 19th century Britain.).
- 19 • Tr. 2897:11-2899:13 (Blankenhorn: Testified that he was just "repeating"
20 things said by others and serving as a "transmitter" of findings by others).
- 21 • Tr. 2735:6-14; 2736:4-9 (Blankenhorn: Admitted that he had never taught any
22 course in any college or university on the three areas for which Proponents
23 sought to qualify him as an expert).
- 24 • Tr. 2734:12-2735:4 (Blankenhorn: Had not published any peer-reviewed
25 articles concerning the issues of allowing same-sex couples to marry).
- 26 • Tr. 2816:16-2817:24 (Blankenhorn: His expertise was based on twenty years
27 of reading and writing on the subject of marriage.).
- 28 • Tr. 2920:12-2922:20; 2922:21-2925:10 (Blankenhorn: Admitted that he had
 not read many of the materials that were relevant to the issue of marriage by
 same-sex couples, such as the materials cited by various associations,
 including (as to PX765) that he had only read "four or perhaps five of the 40 or
 41 references").

- Tr. 2916:20-2918:16 (Blankenhorn: Had not read an article, PX2898, that states: “The argument that same-sex marriage poses a negative externality on society cannot be rationally held.”).
- Tr. 2736:13-19 (Blankenhorn: With respect to whether there would be any adverse effects of permitting same-sex couples to marry, he testified that he had not undertaken any scientific study, and he has otherwise written that it would be impossible to prove that there are any such adverse effects (PX2936 at 1) (“Neither Kurtz nor anyone else can scientifically prove that allowing gay marriage causes the institution of marriage to get weaker. Correlation does not imply causation.”)).

PFF 234. Mr. Blankenhorn’s testimony is not credible. He was unable or unwilling to answer many questions directly, and he was defensive in many of his answers. This included questions concerning the materials that he had identified in his report and purported to rely upon to formulate his opinions. Mr. Blankenhorn’s demeanor and combativeness undermined his credibility as an expert and the reliability of his opinions concerning the purported governmental interests identified by Proponents and the purported harms of permitting same-sex couples to marry.

- Tr. 2737:11-2738:6; 2798:24-2799:12; 2800:25-2801:11; 2808:3-22; 2808:25-2809:25; 2815:13-25; 2822:15-25; 2825:4-2826:3; 2829:15-23; 2830:8-16; 2873:21-2876:13; 2878:2-20; 893:5-2895:2 (Blankenhorn: Repeated refusals to answer the question posed).
- Tr. 2827:25-2828:10 (Blankenhorn: “I don’t know whether in this particular writing [which Mr. Blankenhorn cited and relied upon in forming his opinions] [the author] deals with the process of deinstitutionalization of marriage.”).

PFF 235. With respect to the “rules” of marriage identified by Mr. Blankenhorn—the rule of opposites, the rule of two, and the rule of sex—the reasoning and historical support was strained to the point of breaking, revealing substantial variations in the forms and functions of marriage behind the seeming consistency offered by the term “rules.” This is consistent with the fact that marriage has never been a static institution.

- Tr. 2879:17-25 (Blankenhorn: Identifying three “rules” of marriage).
- Tr. 2881:5-2882:15 (Blankenhorn: Acknowledging that certain states and countries currently permit same-sex couples to marry and that there were “two

1 or three or four what I would call hard cases” that were also inconsistent with
2 the “rule of opposites”).

- 3 • Tr. 2890:8-2892:9 (Blankenhorn: “83 percent of societies permit polygamy,”
4 which would be inconsistent with Mr. Blankenhorn’s second rule but for his
5 clarification that the rule of two only means that there are no group marriages,
6 not that the marriage would only be between two people.).
- 7 • Tr. 2897:4-10 (Blankenhorn: “Q. Now it’s your testimony that that man with
8 five wives is consistent – that marriage is consistent with what you say is your
9 rule of two is that correct? That is a yes or no answer. A. Based on the
10 finding of the anthropologists who’ve actually studied this, yes, the answer to
11 your question is yes.”).
- 12 • Tr. 2907:20-2908:5 (Blankenhorn: “The law on this has changed in recent
13 decades. And now, in recent years, there has been a growing permission on the
14 part of courts to accept married couples who cannot have sexual intercourse.
15 For example, when one spouse is in prison.”).
- 16 • Tr. 2902:17-2903:24 (Blankenhorn: Blankenhorn was unaware that the
17 Supreme Court has ruled that prisoners have the right to marry.).

18 PFF 236. The sources cited and relied upon by Mr. Blankenhorn in forming his opinions—
19 largely writings by anthropologists and sociologists—generally do not consider the
20 issue of marriage by same-sex couples, and confirm that marriage is a flexible
21 institution that has been used in ways inconsistent with Mr. Blankenhorn’s purported
22 “rules” and that has changed over time.

- 23 • Tr. 2856:10-2857:21 (Blankenhorn: When asked to identify which articles
24 cited in his report “assert that permitting gay marriage will adversely affect
25 heterosexual marriage[,]” Mr. Blankenhorn testified “the overwhelming
26 majority of these materials were actually written before the gay marriage
27 debate even came up,” and he identified only six.).
- 28 • Tr. 2866:7-2868:2 (Blankenhorn: Blankenhorn later removed three articles
from this list because they did not actually assert that permitting gay marriage
will adversely affect heterosexual marriage, leaving just three.).
- DIX0956 (Frayser, *Varieties of Sexual Experience* at 8 (“I have excluded
several topics of interest because of insufficient information, e.g., homosexual
relations, specific means of contraception, and types of incestuous relations.”),
248 (“I emphasize the nature of the relationship between the couple, instead of
focusing on the possible consequences of the relationship, i.e., children.”),
271-72 (discussing a group in West Africa that recognizes same-sex marriage

1 between women, and concluding that “this type of marriage shows how
2 broadly the definition of marriage can extend”), 334-36 (discussing a group in
3 southern New Guinea that extensively uses adoption, and noting that
4 “conceiving or giving birth to a child is not sufficient reason to claim the right
5 of parenthood; people acquire this right by taking care of the child. Caretaking
6 overrides the physiological foundation for parenthood”).

- 7 • DIX0050 at 3-5 (Davis, *The Meaning and Significance of Marriage in Contemporary Society*: Raises the question “Can homosexuals ‘marry’ each other?,” but does not further discuss the question or reach a conclusion regarding it).
- 8 • DIX0079 at 3 (Quale, *A History of Marriage Systems*: Discussing use of polygyny in other cultures: “Among the Nayar the eldest brother who stayed home took all responsibility for the economic maintenance of the nonfighting women and children. That made it possible for the husband to take none, and for most men to be gone on military service most of the time. It also made it possible to accept the legitimacy of marriages between a woman and several husbands, each of whom might spend his military leave in her company, and each of whom might on his side be wed to several women.”).
- 9 • DIX0073 (A Committee of the Royal Anthropological Institute of Great Britain and Ireland, *Notes and Queries on Anthropology*, at 71 (making clear that in other cultures a marriage can be either monogamous or polygamous), 73 (pointing out that married parents are not always the biological parents of the children of the marriage, and that in some cultures, adoption is highly developed)).
- 10 • DIX0089 at 48 (Van Den Berghe, *Human Family Systems: An Evolutionary View*: “Until the spread of Christianity, prescriptively monogamous societies were exotic exceptions. . . . Statistically, monogamy is the most frequent arrangement in most societies, but the vast majority of societies allow and indeed encourage polygyny or have done so until recently, when they were conquered by monogamous societies.”).
- 11 • DIX0066 at 8-10 (Malinowski, *Sex, Culture and Myth*: Noting the practice of “wife-lending,” and that even where wife-lending persists and it is understood physiologically that the legal husband is not likely the biological father of the children, he remains the legal father of the children).
- 12 • DIX0063 at 42-43 (Levi-Strauss, *The View from Afar*: Noting cultures in which a chief who may marry sisters who then raise their *children* together without differentiating whose children are whose, or in which polyandry is practiced, and concluding “[i]t would thus be wrong to approach the study of family in a dogmatic spirit”).

1 PFF 237. Beyond Mr. Blankenhorn, who was Proponents' only witness who advanced any
 2 argument that Prop. 8 serves any purported government interests, Proponents'
 3 assertions that such interests exist are conclusory and not supported by any evidence.
 4 To the extent that documents offered by Proponents may themselves advance
 5 arguments as to certain purported government interests, the Court does not credit these
 6 arguments because (i) they were not tested by cross-examination, and (ii) they are not
 7 supported by any data or other evidence that shows there is any relationship between
 8 such interests and removing same-sex couples' right to marry. In fact, the evidence
 9 demonstrates that Prop. 8's actual motivation was moral disapproval of gay and
 10 lesbian individuals.

- 11 • See evidence cited in Section IX.F and in supporting PFFs 200 to 201
 12 (Demonstrating that Prop. 8's actual motivation was moral disapproval of gay
 and lesbian individuals).
- 13 • See evidence cited in support of PFFs 207, 218, 227-228 (Demonstrating that
 14 the initiative process is particularly vulnerable to measures that discriminate
 against minorities).
- 15 • Tr. 2608:11-18 (Miller: "[A]t least some people voted for Proposition 8 on the
 16 basis of anti-gay stereotypes and prejudice.").

17 **C. The Evidence Demonstrates That Prop. 8 Does Not Promote Any Legitimate**
 18 **Governmental Interest**

19 **1. Excluding Same-Sex Couples From Marriage Does Not Promote the**
 20 **Formation or Stability of "Naturally Procreative Unions"**

21 PFF 238. In their Trial Memorandum, Proponents claimed that the evidence will show that Prop.
 22 8 furthers the following interests: (1) "Promoting the formation of naturally
 23 procreative unions"; and (2) "Promoting stability and responsibility in naturally
 24 procreative relationships." Doc #295 at 7-8. Proponents further claimed that the
 25 evidence would show that Prop. 8 prevents related harm because allowing same-sex
 26 couples to marry would "[m]ove marriage further away from its grounding in
 27 reproduction and the intergenerational cycle." *Id.* at 10. Proponents presented no
 28 credible, reliable evidence that excluding same-sex couples from marriage would

1 promote these interests or prevent this alleged “harm.” Moreover, the evidence
2 presented at trial demonstrates that marriage is not tied to sexual reproduction.

- 3 • See evidence cited in support of PFFs 239-241.

4 PFF 239. Marriage is not now, and has never in this State been, limited to those who are capable
5 of procreating. The State has never established as a legal requirement for marriage
6 that the members of the couple be fertile, of child-bearing age, physically or mentally
7 healthy, or intent on having or raising children. California has permitted different-sex
8 couples to marry regardless of whether they in fact intend to have children, that
9 California for a time permitted same-sex couples to marry, and that other states and
10 countries have also permitted same-sex couples to marry. In short, procreation does
11 not require marriage, and marriage does not require procreation.

- 12 • PX0709 at RFA No. 52 (Administration admits “that California law does not
13 restrict heterosexual individuals with no children and/or no intent to have
14 children from marrying on the basis of their status as a heterosexual individual
15 with no children and/or no intent to have children.”).
- 16 • Tr. 347:20-23 (Cott: There is no reason to conclude that allowing individuals
17 of the same sex to marry would affect population growth.).
- 18 • See evidence cited in support of PFFs 10, 59, 60, 61, 93, and 247.

19 PFF 240. Mr. Blankenhorn’s opinion that marriage has traditionally been tied to sexual
20 reproduction is not credible, reliable, or entitled to substantial weight, particularly in
21 light of Mr. Blankenhorn’s other testimony. As Mr. Blankenhorn recognized, there
22 are and have been different views concerning the institution of marriage; marriage has
23 not always or uniformly been understood to be a procreation-centric institution.

- 24 • Tr. 2755:17-2756:1 (Blankenhorn: One “well-developed and opposing point
25 of view” asserts that “marriage is fundamentally a private adult
26 commitment.”); Tr. 2759:23-2760:14 (Same).

27 PFF 241. Mr. Blankenhorn testified that he recognized that numerous authors and sources that
28 have evaluated marriage by gay and lesbian couples have expressly recognized the
historical flexibility of marriage and the fact that it transcends the purported “rule” that

1 marriage is limited to promoting procreation and the relationship between children and
2 both of their biological parents.

- 3 • DIX0093 at 129 (Law Commission of Canada, *Beyond Conjuality: Recognizing And Supporting Close Personal Adult Relationships*: “A review
4 of the history of state regulation of marriage helps illuminate that the state
5 interest in marriage is not connected to the promotion of any particular
6 conception of appropriate gender roles. Nor is the state reserving marriage to
7 procreation and the raising of children.”).
- 8 • DIX0051 at 6-7 (Eskridge, *The Case for Same-Sex Marriage*: History is
9 replete with examples of marriages by same-sex couples in other times and
10 cultures; throughout human history people have raised children in same-sex
11 households.).
- 12 • Tr. 2913:8-2916:10 (Blankenhorn: Blankenhorn admitted that all six
13 “dimensions” of marriage—a legal contract, a financial partnership, a sacred
14 promise, a sexual union, a personal bond, and a family-making bond—apply
15 not only to different-sex couples but also to same-sex couples).

16 PFF 242. Moreover, Mr. Blankenhorn admitted that a couple who does not wish to have sex
17 may marry, and that an incarcerated man may marry even if he is not allowed to
18 consummate the relationship.

- 19 • Tr. 2902:7-16 (Blankenhorn: Acknowledging that a couple who does not wish
20 to have sex may marry).
- 21 • Tr. 2901:13-2902:6 (Blankenhorn: Acknowledging that an incarcerated man
22 may get married even if he is not allowed to consummate the relationship);
23 *see also* Tr. 2905:4-14; Tr. 2907:20-2908:5.

24 **2. Excluding Same-Sex Couples from Marriage Does Not Further Any
25 Interest in Preventing the “Deinstitutionalization” of Marriage**

26 PFF 243. In their Trial Memorandum, Proponents claimed that the evidence would show that
27 Prop. 8 furthers the following interests: (1) “Preserving the traditional institution of
28 marriage as the union of a man and a woman”; (2) “Preserving the traditional public,
social, and legal meaning and symbolism of marriage”; (3) “Preserving the traditional
social and legal purposes, functions, and structure of marriage”; (4) “Preserving the
traditional meaning of marriage as it has always been defined in the English
language”; (5) “Expressing support for the traditional institution of marriage”; (6)

1 “Acting incrementally and with caution when considering a radical transformation to
2 the fundamental nature of a bedrock social institution”; (7) “Decreasing the probability
3 of weakening the institution of marriage”; and (8) “Decreasing the probability of
4 adverse consequences that could result from weakening the institution of marriage.”
5 Doc #295 at 7. Proponents further claimed that the evidence would show that Prop. 8
6 prevents a number of related harms because allowing same-sex couples to marry
7 allegedly would: (1) “Entail the further, and in some respects full,
8 deinstitutionalization of marriage”; (2) “Change the legal and public meaning of
9 marriage from an institution with defined legal and social structure and purposes to a
10 right of personal expression”; (3) “Contribute over time to the further erosion of the
11 institution of marriage, as reflected primarily in lower marriage rates, higher rates of
12 divorce and non-marital cohabitation, and more children raised outside of marriage
13 and separated from at least one of their natural parents”; (4) “Increase the social
14 acceptability of other alternative forms of intimate relationships, such as polyamory
15 and polygamy”; (5) Increase the likelihood that the recognition as marriages of other
16 alternative forms of intimate relationships, such as polyamory and polygamy, will
17 become a judicially enforceable legal entitlement”; (6) “Legally enshrine the principle
18 that sexual orientation, as opposed to sexual embodiment, is a valid determinant of
19 marriage’s structure and meaning”; (7) “Increase the likelihood that bisexual
20 orientation could become a legitimate grounding for a legal entitlement to group
21 marriage”; (8) “Require all relevant branches and agencies of government formally to
22 replace the idea that marriage centers on opposite-sex bonding and male-female
23 procreation with the idea that marriage is a private relationship between consenting
24 adults”; (9) “Either end altogether, or significantly dilute, the public socialization of
25 heterosexual young people into a marriage culture”; (10) “Cause many Americans
26 opposed to same-sex marriage to abandon some or all of those public institutions that
27 promote the new definition of marriage, probably resulting in the weakening of those
28

1 institutions and a further rending of our common culture”; (11) “Contribute to the
 2 public belief that marriage in our society is now politicized”; (12) “Result in
 3 unmarried people increasingly, and logically, complaining that the legal and practical
 4 benefits currently attached to marriage properly belong to everyone”; (13) “Seriously
 5 threaten the functions and symbolism of marriage, thereby posing a risk to children
 6 and the demographic continuity of society”; and (14) “Lead to changes in the laws
 7 governing marriage and parallel institutions in a manner that undercuts the
 8 effectiveness of marriage in achieving its traditional purposes.” *Id.* at 9-11.

9 Proponents presented no credible, reliable evidence that excluding same-sex couples
 10 from marriage would promote these purported interests or prevent these alleged
 11 “harms,” and the evidence presented at trial demonstrates that allowing gay and
 12 lesbian individuals to marry will not harm the institution of marriage.

- 13 • See evidence cited in support of PFFs 244-258.

14 PFF 244. Permitting same-sex couples the right to marry does not meaningfully restrict options
 15 available to heterosexuals.

- 16 • PX0709 at RFA No. 54 (Administration “is not aware of any legal right or
 17 benefit existing under California law that heterosexual individuals would lose
 18 as a result of a hypothetical change in California law permitting gay and
 19 lesbian individuals to marry.”).
- 20 • Tr. 600:8-601:15 (Peplau: Discussing research on the reasons why people get
 21 married, and concluding that “there is nothing, that I am aware of, in the way
 22 of data or theory, that would suggest that same-sex civil marriage will lead
 23 fewer heterosexuals to marriage.”).
- 24 • Tr. 603:19-22 (Peplau: Explaining that institutions are generally stronger with
 25 more, rather than fewer, members: “[T]he idea that there’s a group of
 26 American citizens who want to enter the institution [of marriage], to keep it
 27 going, to keep it vibrant and alive, from my perspective, seems like a very
 28 good omen for the future of America.”).

PFF 245. There is no reputable evidence suggesting that the exclusion of same-sex couples from
 marriage increases the stability of opposite-sex marriage or that including same-sex
 couples destabilizes opposite-sex marriages.

- 1 • PX0710 at RFA No. 53 (Attorney General admits “that if same-sex couples
2 had access to civil marriage, their access to that legal status would not
3 destabilize the marriages of opposite-sex couples.”).
- 4 • Tr. 1283:20-1284:3 (Sanders: Sanders thinks that his daughter’s marriage to
5 another woman has not harmed his marriage. In fact, it has made him and his
6 wife stronger. It has not harmed anybody in his family’s marriage, and he does
7 not believe it has harmed anybody in the world. “I think Lisa and Meagan
8 have been an excellent example for us of persevering, loving each other, and
9 being will to go to great lengths to show that.”).
- 10 • Tr. 156:4-10 (Perry: Describing how she feels that their heterosexual friends
11 would feel better about their own marriages if Perry and Stier also could get
12 married).
- 13 • Tr. 249:3-13 (Cott: From a historical perspective, there is no empirical basis
14 for concluding that allowing gay and lesbian couples to marry would increase
15 the divorce rate.).
- 16 • Tr. 601:18-602:1 (Peplau: “[I]t is very hard for me to imagine that you would
17 have a happily-married couple who would say, ‘Gertrude, we’ve been married
18 for 30 years, but I think we have to throw in the towel because Adam and
19 Stuart down the block got married.”).
- 20 • PX2810 at 23:10-16; 24:5-8; 29:14-18 (Proponents’ lead counsel admitted that
21 Proponents “don’t know” whether allowing same-sex couples to marry would
22 harm heterosexual relationships. He further admits that whether any harm
23 exists “can’t possibly be known now It may well be that there are no
24 harms.”).
- 25 • Tr. 2912:18-2913:5 (Blankenhorn: Acknowledging that PX2879 (*The
26 Marriage Movement: A Statement of Principles* (2000)), published in part by
27 his organization, The Institute for American Values, did not include
28 homosexuality or marriage by same-sex couples as one of the reasons the
institution of marriage was “weakening”).
- Tr. 2780:16-17 (Blankenhorn: Acknowledging that “[i]t’s impossible to be
completely sure about a prediction of future events. I don’t think anyone can”
with respect to whether allowing gay and lesbian couples to marry would
further the deinstitutionalization of marriage).
- PX2936 at 1 (Blankenhorn, *Defining Marriage Down . . .*, Weekly
Standard.com (Apr. 2, 2007): “Neither Kurtz nor anyone else can
scientifically prove that allowing gay marriage causes the institution of
marriage to get weaker. Correlation does not imply causation.”).
- PX0767 at 3 (Am. Anthropological Ass’n, Professional Association Policies:
“The results of more than a century of anthropological research on households,

1 kinship relationships, and families, across cultures and through time, provide
2 no support whatsoever for the view that either civilization or viable social
3 orders depend upon marriage as an exclusively heterosexual institution.
4 Rather, anthropological research supports the conclusion that a vast array of
5 family types, including families built upon same-sex partnerships, can
6 contribute to stable and humane societies.”).

- Tr. 652:5-654:12 (Peplau: Discussing the factors that family researchers, historians, and sociologists have identified as contributing to the divorce rate in the U.S. and concluding that “the increase in the divorce rate was independent of the push for marriage equality for same-sex couples.”).

- *See also* evidence cited in support of PFFs 246-251.

9 PFF 246. Excluding same-sex couples from marriage does not optimize the child-rearing
10 environment of married opposite-sex couples.

- Tr. 1042:12-19 (Lamb: Prohibiting same-sex couples from marrying cannot reasonably be expected to improve the adjustment outcomes of any child.).
- Tr. 590:20-23 (Peplau: “[G]ay men and lesbians don’t have the benefits of marriage, and . . . marriage is for many relationships a stabilizing influence.”).
- Tr. 640:16-19 (Peplau: “[E]xcept in places like Massachusetts, all children born to lesbians or gay men or raised by lesbians or gay men are out of wedlock, because the government doesn’t permit their parents to marry.”).
- *See also* evidence cited in support of PFFs 247-251.

18 PFF 247. There is no support for the notion that allowing same-sex couples to marry would
19 harm heterosexual relationships. There is similarly no scientific basis for asserting
20 that legalizing marriage for same-sex couples would affect the underlying processes
21 that foster stability in heterosexual marriages. Allowing same-sex couples to marry
22 will not lead heterosexuals to abandon the institution of marriage.

- PX2866 (Netherlands data regarding non-marital cohabitation) (Consistent with Badgett’s opinion that permitting same-sex couples to marry will not adversely affect the institution of marriage or different-sex couples (Tr. 1330:17-19), data from the Netherlands shows that permitting same-sex couples to marry did not lead to any increase in the rate of non-marital cohabitation in the Netherlands. PX2866 contains data reflecting non-marital cohabitation in the Netherlands, 1995 to 2009, and shows no impact from permitting same-sex couples to marry beginning in 2001. The average percent of cohabitating couples in the Netherlands who are not married, as calculated

1 from the data in PX2866, is as follows: 13.49 percent for 1995-1996; 15.32
2 percent for 1997-2000; 17.41 percent for 2002-2005; and 19.00 percent for
3 2006-2009. The data reflects that the pre-existing trend of increasing
4 cohabitation in the Netherlands, and it does not reflect any increasing rate of
5 cohabitation after 2001. In fact, there was a decrease in the percent change
6 after 2001.)

- 7 • DIX2639 (Netherlands data regarding unmarried couples with children)
8 (Consistent with Badgett’s opinion that permitting same-sex couples to marry
9 will not adversely affect the institution of marriage or different-sex couples
10 (Tr. 1330:17-19), data from the Netherlands shows that permitting same-sex
11 couples to marry did not cause any increase in the number or percent of
12 unmarried couples with children in the Netherlands. Badgett testified that,
13 with respect to the number of unmarried couples with children in the
14 Netherlands as reflected in the demonstrative at Tab 4 of the binder prepared
15 by Proponents and DIX2639, the data confirmed the absence of any adverse
16 impact of permitting same-sex couples to marry: “This is just like the earlier
17 slide that you showed. . . . [T]here was a trend of increasing—the increasing
18 numbers of unmarried couples with children. . . . But there was a—there was a
19 trend before and a trend after. I think, if you took that red line out there and
20 showed it to everyone in this courtroom, nobody would be able to tell where
21 same-sex couples got married.” (Tr. 1446:3-1447:2.) Badgett also testified
22 that, with respect to the number of unmarried couples with children as a
23 percent of all families in the Netherlands as reflected in the demonstratives at
24 Tabs 5, 6, and 7 of the binder prepared by Proponents and DIX2639 and
25 DIX2426, Badgett similarly testified that “the rate of change over the years is
26 exactly the same. It’s quite clear. It’s pretty much a straight line. There was a
27 trend of the increase before, that is exactly equal to the trend of the -- of the
28 increase afterwards. . . . [T]here’s no break, whatsoever, to suggest that
anything happened of importance in 2001.” (Tr. 1447:3-1448:1.) More
generally, Badgett testified that “these kinds of differences are very sensitive to
the years that you happen to pick to start and end the calculation” and therefore
any small increases do not necessarily reflect any impact, let alone any change
corresponding to marriage by same-sex couples. (Tr. 1448:23-25.) Further,
Badgett testified that one confounding factor that needed to be accounted for
was that, in 2001, there was a change that “increased the parental
responsibilities of people who were in registered partnerships” (Tr. 1357:25-
1358:2), which likely would have impacted this particular trend, separate and
apart from any changes with respect to the law governing the rights of same-
sex couples.).
- DIX2426 (Netherlands data regarding single parent families) (Consistent with
Badgett’s opinion that permitting same-sex couples to marry will not adversely
affect the institution of marriage or different-sex couples (Tr. 1330:17-19),
data from the Netherlands does not show that permitting same-sex couples to
marry increased the number or percent of single parent families in the
Netherlands. Badgett testified that, with respect to the number of single parent

1 families and the number of single parents as a percent of all families in the
 2 Netherlands as reflected in the demonstratives at Tabs 8, 9, 10, and 11 of the
 3 binder prepared by Proponents and DIX2426, “you have to look at data in the
 4 larger context of other kinds of things that are changing and earlier trends.”
 5 (Tr. 1449:6-1451:5.) Further, Badgett testified that one confounding factor
 6 that needed to be accounted for was that, in 2001, there was a change that
 7 “increased the parental responsibilities of people who were in registered
 8 partnerships” (Tr. 1357:25-1358:2), which likely would have also impacted
 9 this particular trend, separate and apart from any changes with respect to the
 10 law as applied to same-sex couples. Badgett did not analyze this data in depth
 11 to determine whether there were other confounding factors, and Proponents did
 12 not call any other expert to offer opinions on this data. Thus, there was no
 13 testimony reflecting that this data in any way reflected an adverse impact of
 14 permitting same-sex couples to marry, and there is no way to reach that finding
 15 without expert testimony given the existence of various confounding factors.).

- 16 • DIX2627 (Belgium marriage rates, 1997-2008: Showing a decrease in the
 17 marriage rate before 2003, when same-sex couples were first permitted to
 18 marry in Belgium, and an increase in the marriage rate after 2003, which
 19 undermines any claim that permitting same-sex couples to marry caused any
 20 harm to different-sex couples).
- 21 • DIX1836 (Belgium divorce rates, 1997-2008: Showing an increase in the
 22 divorce rate before 2003, when same-sex couples were first permitted to marry
 23 in Belgium, and a decrease in the divorce rate after 2003, which undermines
 24 any claim that permitting same-sex couples to marry caused any harm to
 25 different-sex couples).
- 26 • PX0767 at 3 (Am. Anthropological Ass’n, Professional Association Policies:
 27 “The results of more than a century of anthropological research on households,
 28 kinship relationships, and families, across cultures and through time, provide
 no support whatsoever for the view that either civilization or viable social
 orders depend upon marriage as an exclusively heterosexual institution.
 Rather, anthropological research supports the conclusion that a vast array of
 family types, including families built upon same-sex partnerships, can
 contribute to stable and humane societies.”).
- PX2810 at 23:10-16; 24:5-8; 29:14-18 (Proponents’ lead counsel admitted that
 Proponents “don’t know” whether allowing same-sex couples to marry would
 harm heterosexual relationships. He further admitted that whether any harm
 exists “can’t possibly be known now It may well be that there are no
 harms.”).
- PX0710 at RFA No. 54 (Attorney General admits “that allowing gay and
 lesbian individuals to marry will not deprive heterosexual individuals of any
 rights or benefits they currently enjoy.”).

- 1 • PX2879 (The Marriage Movement: A Statement of Principles (2000)); Tr.
2 2912:18-2913:5 (Blankenhorn: Acknowledging that this publication,
3 published in part by his organization, The Institute for American Values, did
4 not include homosexuality or marriage by same-sex couples as one of the
5 reasons the institution of marriage was “weakening”).
- 6 • Tr. 2780:16-17 (Blankenhorn: Acknowledging that “[i]t’s impossible to be
7 completely sure about a prediction of future events. I don’t think anyone can”
8 with respect to whether allowing same-sex couples to marry would further the
9 deinstitutionalization of marriage).
- 10 • Tr. 2775:24-2776:6 (Blankenhorn: Acknowledging that “if we go back and
11 look at the trends I described, it’s very clear that this . . . deinstitutionalization
12 is not something that just cropped up a few years ago whenever we began
13 discussing the possibility of extending equal marriage rights to gay and lesbian
14 people. It predates all that.”).
- 15 • Tr. 2866:3-2867:5 (Blankenhorn: Acknowledging that many of the scholars
16 cited in his expert report have not stated that permitting gay and lesbian
17 marriage would harm heterosexual marriage).
- 18 • PX2936 at 1 (Blankenhorn, Defining Marriage Down . . . , Weekly
19 Standard.com (Apr. 2, 2007): “Neither Kurtz nor anyone else can
20 scientifically prove that allowing gay marriage causes the institution of
21 marriage to get weaker. Correlation does not imply causation.”).
- 22 • DIX0060 at 28 (Article by Norval Glenn: “Legitimizing of same-sex marriage
23 would have a small effect, at most, on the percentage of fatherless children and
24 there is no precedent for prohibiting a family arrangement because it creates
25 less than ideal conditions for children.”).
- 26 • PX2899 at 8 (Badgett, Will Providing Marriage Rights to Same-Sex Couples
27 Undermine Heterosexual Marriage?, Sexuality Research & Social Policy (Sept.
28 2004): “Overall, there is no evidence that giving partnership rights to same-
sex couples had any impact on heterosexual marriage in Scandinavian
countries and the Netherlands.”).
- Tr. 601:16-602:15 (Peplau: Discussing the factors that lead relationships to
fall apart, and concluding that “nothing that we know about all of these kinds
of factors that lead to divorce has anything to do with civil rights for same-sex
couples”).
- Tr. 601:18-602:1 (Peplau: “[I]t is very hard for me to imagine that you would
have a happily-married couple who would say, ‘Gertrude, we’ve been married
for 30 years, but I think we have to throw in the towel because Adam and
Stuart down the block got married.”).

- 1 • Tr. 600:8-601:15 (Peplau: Discussing research on the reasons why people get
2 married, and concluding that “there is nothing, that I am aware of, in the way
3 of data or theory, that would suggest that same-sex civil marriage will lead
4 fewer heterosexuals to marriage”).
- 5 • Tr. 602:22-603:3 (Peplau: Explaining that if gays and lesbians were permitted
6 to marry they would constitute a very small percentage – approximately 1-3%
7 – of all married couples in the nation.).
- 8 • Tr. 603:19-22 (Peplau: Explaining that institutions are generally stronger with
9 more, rather than fewer, members. “[T]he idea that there’s a group of
10 American citizens who want to enter the institution [of marriage], to keep it
11 going, to keep it vibrant and alive, from my perspective, seems like a very
12 good omen for the future of America.”).
- 13 • Tr. 574:24-25 (Peplau: “Americans are very enthusiastic about marriage.”).
- 14 • Tr. 652:5-654:12 (Peplau: Discussing the factors that family researchers,
15 historians, and sociologists have identified as contributing to the divorce rate in
16 the U.S. and concluding that “the increase in the divorce rate was independent
17 of the push for marriage equality for same-sex couples”).
- 18 • PX1151 (Article by Stephanie Coontz: Discussing the origins of modern
19 divorce including the personal psychological characteristics of one or both
20 spouses, the stresses of economic hardship and community disintegration, and
21 the modern emphasis placed on finding personal fulfillment and mutual love in
22 a marriage).
- 23 • Tr. 658:11-22 (Peplau: There is no scientific theory or data that suggest
24 Americans would be harmed if gays and lesbians are allowed to marry.).
- 25 • Tr. 596:13-597:3 (Peplau: In Massachusetts there has been no significant
26 change in the rates of marriage and divorce since civil marriage was opened to
27 gay and lesbian couples in 2004.).
- 28 • Tr. 1330:17-19 (Badgett: “I have the opinion that letting same-sex couples
marry would not have any adverse effect on . . . different-sex couples.”).
- Tr. 1476:7-13 (Badgett: There is no evidence that allowing gay and lesbian
couples to marry would harm heterosexual relationships.).
- Tr. 1350:10-1351:1 (Badgett: After looking at demographic data from places
where gay and lesbian couples are allowed to marry and the behavior of
heterosexual individuals before and after gay and lesbian couples were allowed
to marry, Badgett did not find any evidence of any adverse effects of allowing
gay and lesbian couples to marry on the marriages of heterosexual couples.).

- 1 • PX1273 at 202, 204, 206 (Badgett: *When Gay People Get Married: What*
2 *Happens When Societies Legalize Same-Sex Marriage*: “My answer to the big
3 question guiding this book [will gay people change marriage?] is ‘No’—gay
4 people will not change marriage in any significant way on their own.”;
5 “Contrary to fears expressed by opponents of marriage equality, the marriage
6 patterns of heterosexuals have not been knocked off course once gay couples
7 have the same or similar rights.”; “Heterosexual reactions in the Netherlands
8 also reveal how easily gay people have been integrated into marriage as an
9 institution.”).
- 10 • PX1273 at 68, 70, 72-77 (Badgett, *When Gay People Get Married: What*
11 *Happens When Societies Legalize Same-Sex Marriage*: There has been no
12 obvious change in marriage behavior, non-marital cohabitation rates or divorce
13 rates in Denmark, Norway, Sweden, Iceland and the Netherlands once gay
14 couples got partnership or marriage rights. Any “trends [in these statistics]
15 were well established in the 1970s and 1980s, and no adverse changes have
16 occurred since these countries recognized rights for same-sex couples:
17 marriage rates are up, divorce rates are down, and (mostly) nonmarital birth
18 rates are not rising in comparison to rates for the years before gay couples
19 could register.”).
- 20 • Tr. 251:13-252:23 (Cott: Denying gays and lesbians the right to marry
21 undermines society’s interest in creating stable households and social order).
- 22 • Tr. 348:14-20 (Cott: Given how the movement in favor of marriage for gays
23 and lesbians has advocated for the importance of marriage, allowing gays and
24 lesbians to marry would likely be very beneficial to the institution.).
- 25 • PX2547 (Nathanson 11/12/09 Dep. Tr. 29:3-19: Acknowledging that
26 American Psychoanalytic Association, American Psychological Association
27 and American Psychiatric Association all support allowing gay and lesbian
28 couples to marry).
- PX0754 at 1 (Am. Anthropological Ass’n, Policy Statement on Marriage and
the Family: “The results of more than a century of anthropological research on
households, kinship relationships, and families, across cultures and through
time, provide no support whatsoever for the view that either civilization or
viable social orders depend upon marriage as an exclusively heterosexual
institution. Rather, anthropological research supports the conclusion that a
vast array of family types, including families built upon same-sex partnerships,
can contribute to stable and humane societies.”).
- PX0769 (Natl. Ass’n of Social Workers Same-Sex Marriage Position
Statement).
- *See also* evidence cited in support of PFFs 245, 248-251, 163.

1 PFF 248. Proponents have set forth no evidence that permitting same-sex couples to marry
 2 would transform marriage as an institution. Proponents' expert, Mr. Blankenhorn,
 3 conceded that he could not prove that permitting same-sex couples to marry would
 4 have any actual impact on the institution of marriage. And Proponents' counsel
 5 admitted that Proponents "don't know" whether allowing same-sex couples to marry
 6 would harm heterosexual relationships.

- 7 • PX2936 at 1 (Blankenhorn, *Defining Marriage Down . . .*, Weekly
 8 Standard.com (Apr. 2, 2007): "Neither Kurtz nor anyone else can
 9 scientifically prove that allowing gay marriage causes the institution of
 10 marriage to get weaker. Correlation does not imply causation.").
- 11 • PX2545 (Young 11/13/09 Dep. Tr. 94:20-24: Acknowledging that the number
 12 of children being raised by married biological parents was decreasing before
 13 there was gay marriage in the United States).
- 14 • PX2545 (Young 11/13/09 Dep. Tr. 102:15-24: Acknowledging that divorce
 15 rates went up with a decline in arranged marriages and increased female
 16 literacy).
- 17 • Tr. 2912:18-2913:5 (Blankenhorn: Acknowledging that PX2879 (*The
 18 Marriage Movement: A Statement of Principles* (2000)), published in part by
 19 his organization, The Institute for American Values, did not include
 20 homosexuality or marriage by same-sex couples as one of the reasons the
 21 institution of marriage was "weakening").
- 22 • Tr. 2780:16-17 (Blankenhorn: Acknowledging that "[i]t's impossible to be
 23 completely sure about a prediction of future events. I don't think anyone can"
 24 with respect to whether allowing same-sex couples to marry would further the
 25 deinstitutionalization of marriage).
- 26 • Tr. 334:21-337:11 (Cott: Discussing Mr. Blankenhorn's opinion about the
 27 "deinstitutionalization" of marriage and concluding that the changes in
 28 heterosexual mores about love and sex outside of marriage" and are separate
 from the "question of same-sex couples wanting to enter the marriage
 institution and gain its stability and its formal imprimatur").
- Tr. 658:11-22 (Peplau: There is no scientific theory or data that suggest
 Americans would be harmed if gays and lesbians are allowed to marry.).
- PX2899 at 8 (Badgett, *Will Providing Marriage Rights to Same-Sex Couples
 Undermine Heterosexual Marriage?*, *Sexuality Research & Social Policy* (Sept.
 2004): "Overall, there is no evidence that giving partnership rights to same-

1 sex couples had any impact on heterosexual marriage in Scandinavian
2 countries and the Netherlands.”).

- 3 • Tr. 1476:7-13 (Badgett: After Proponents’ examination, and a review of the
4 data and charts presented by Proponents, Badgett testified that she still had not
5 seen any evidence that there would be any harm or change to the institution of
6 marriage or to heterosexual relationships as a result of permitting same-sex
7 couples to marry.).
- 8 • PX2810 at 23:10-24:8; 29:17-18 (Proponents’ lead counsel (Cooper):
9 Admitting that Proponents “don’t know” whether allowing same-sex couples
10 to marry would harm heterosexual relationships; further admitting that whether
11 any harm exists “can’t possibly be known now. . . . It may well be that there
12 are no harms.”).
- 13 • PX0506 at 10 (The only direct change that would affect heterosexual couples
14 that any speaker at any of the Simulcasts could identify was that couples could
15 no longer fill out forms asking for the name of the “bride” and the “groom.”
16 Rather they would be forced to use forms asking for the name of “Party A” and
17 “Party B.”); *see also* PX1867 at 12:20-13:4; PX 1868 at 44:5-45:1; PX0505.
- 18 • *See also* evidence cited in support of PFFs 245, 247, 250-251.

14 PFF 249. Mr. Blankenhorn admitted and agreed that “today the principle of equal human dignity
15 must apply to gay and lesbian persons,” and “[i]n that sense, insofar as we are a nation
16 founded on this principle, we would be more American on the day we permitted same-
17 sex marriage than we were on the day before.” (Emphasis added.) He also admitted
18 that permitting marriage by same-sex couples would be a “victory for the worthy ideas
19 of tolerance and inclusion” and a “victory for . . . the American idea.”

- 20 • DIX0956 at 2 (Blankenhorn, *Future of Marriage*: “I believe that today the
21 principle of equal human dignity must apply to gay and lesbian persons. In
22 that sense, insofar as we are a nation founded on this principle, we would be
23 more American on the day we permitted same-sex marriage than we were on
24 the day before.”) (emphasis in original); *see also* Tr. 2805:8-20 (Blankenhorn).
- 25 • Tr. 2850:10-2852:24 (Blankenhorn: Agreeing that allowing same-sex couples
26 to marry would be “a victory for the worthy ideas of tolerance and inclusion,”
27 and “a victory for, and another key expansion of, the American idea,” and that
28 it would lead to a decline in anti-gay prejudice and hate-crimes, and a valuable
national discussion of marriage’s benefits); *see also* DIX0956 at 203 & 205
(Blankenhorn, *The Future of Marriage*).

1 PFF 250. There is no evidence that there has been any harm to the institution of marriage as a
 2 result of allowing same-sex couples to marry. Evidence from the Netherlands
 3 suggests that the marriage rate, divorce rate, and nonmarital birth rate were not
 4 affected by permitting same-sex couples to marry beginning in 2001.

- 5 • PX2898 (JN) at 292 (Article by Laura Langbein and Mark A. Yost: Evaluating
 6 data from 1990 to 2004 from various U.S. states to determine whether allowing
 7 same-sex couples to marry will have negative impacts on marriage, divorce,
 8 abortion rates, the proportion of children born to single women, and the
 9 percent of children in female-headed households and concluding that the
 10 “argument that same-sex marriage poses a negative externality on society
 11 cannot be rationally held”), at 293 (“The results show that allowing gay
 12 marriage has no significant adverse impact on the family values variables.”), at
 13 295 (“Badgett (2004) has shown that giving marriage rights to same-sex
 14 couples in Europe has had no a[d]verse effect on marriage, divorces, or
 15 children.”), at 296-98 (describing data analysis for study), at 301 (“permitting
 16 gay marriage does not reduce the marriage rate and may even raise it”), at 302
 17 (“Legalization of gay marriage has no effect on divorces.”), at 302
 18 (“[L]egalization of gay marriage clearly does not raise abortion rates and may
 19 even reduce them.”), at 303 (“[L]aws regulating gay marriage, either
 20 permitting it or forbidding it, have no impact on the percentage of children
 21 born out of wedlock.”), at 305-06 (“The results above show that laws
 22 permitting same-sex marriage or civil unions have no adverse effect on
 23 marriage, divorce, and abortion rates, the percent of children born out of
 24 wedlock, or the percent of households with children under 18 headed by
 25 women. . . . Permitting gay marriage does no harm, and making it legal may
 26 even be beneficial, since it seems to raise marriage rates, reduce abortions, and
 27 reduce the chance that children grow up in single-headed households.”).
- 28 • Tr. 601:16-602:15 (Peplau: Discussing the factors that lead relationships to
 fall apart, and concluding that “nothing that we know about all of these kinds
 of factors that lead to divorce has anything to do with civil rights for same-sex
 couples”).
- Tr. 601:18-602:1 (Peplau: “[I]t is very hard for me to imagine that you would
 have a happily-married couple who would say, ‘Gertrude, we’ve been married
 for 30 years, but I think we have to throw in the towel because Adam and
 Stuart down the block got married.”).
- Tr. 600:8-601:15 (Peplau: Discussing research on the reasons why people get
 married, and concluding that “there is nothing, that I am aware of, in the way
 of data or theory, that would suggest that same-sex civil marriage will lead
 fewer heterosexuals to marriage”).

- 1 • Tr. 602:22-603:3 (Peplau: Explaining that if gays and lesbians were permitted
2 to marry they would constitute a very small percentage – approximately 1-3%
3 – of all married couples in the nation).
- 4 • Tr. 603:19-22 (Peplau: Explaining that institutions are generally stronger with
5 more, rather than fewer, members. “[T]he idea that there’s a group of
6 American citizens who want to enter the institution [of marriage], to keep it
7 going, to keep it vibrant and alive, from my perspective, seems like a very
8 good omen for the future of America.”).
- 9 • Tr. 574:24-25 (Peplau: “Americans are very enthusiastic about marriage.”).
- 10 • Tr. 652:5-654:12 (Peplau: Discussing the factors that family researchers,
11 historians, and sociologists have identified as contributing to the divorce rate in
12 the U.S. and concluding that “the increase in the divorce rate was independent
13 of the push for marriage equality for same-sex couples”).
- 14 • PX1151 (Article by Stephanie Coontz: Discussing the origins of modern
15 divorce including the personal psychological characteristics of one or both
16 spouses, the stresses of economic hardship and community disintegration, and
17 the modern emphasis placed on finding personal fulfillment and mutual love in
18 a marriage).
- 19 • Tr. 658:11-22 (Peplau: There is no scientific theory or data that suggest
20 Americans would be harmed if gays and lesbians are allowed to marry.).
- 21 • Tr. 596:13-597:3 (Peplau: In Massachusetts there has been no significant
22 change in the rates of marriage and divorce since civil marriage was opened to
23 gay and lesbian couples in 2004.).
- 24 • Tr. 1330:17-19 (Badgett: “I have the opinion that letting same-sex couples
25 marry would not have any adverse effect on the institution of marriage.”).
- 26 • Tr. 1476:7-13 (Badgett: There is no evidence that allowing same-sex couples
27 to marry would cause harm to the institution of marriage.).
- 28 • Tr. 1350:10-1351:1 (Badgett: After looking at demographic data from places
where marriage by gay and lesbian couples is allowed and the behavior of
heterosexual individuals before and after gay and lesbian couples were allowed
to marry, Badgett did not find any evidence of any adverse effects of allowing
gay and lesbian couples to marry on the institution of marriage.).
- Tr. 1347:19-1348:13; 1358:7-17; 1361:14-1362:4 (Badgett: Cultural and
demographic similarities between California and Massachusetts make
Massachusetts an appropriate benchmark for the likely impact of allowing gay
and lesbian couples to marry; “In my opinion, it would be more appropriate to
look at Massachusetts [than the Netherlands or other countries] because of the
similarities, cultural similarities between different states here in the U.S.”;

1 There was no evidence of adverse effects on the institution of marriage in
 2 Massachusetts, and Badgett believes that there would similarly be no adverse
 effects in California if same-sex couples were allowed to marry.).

- 3
- 4 • PX2346 (Massachusetts data reflecting the marriage rate) (Consistent with
 5 Badgett’s opinion that permitting same-sex couples to marry will not adversely
 6 affect the institution of marriage or different-sex couples (Tr. 1330:17-19),
 7 data from Massachusetts shows that permitting same-sex couples to marry did
 8 not lead to a decline in the marriage rate in Massachusetts. Badgett testified
 9 that, with respect to the marriage rate for just different-sex couples in
 10 Massachusetts, the rate declined prior to 2004 but *increased* after 2004, when
 11 same-sex couples were first permitted to marry. (Tr. 1465:6-1466:3.)
 12 Badgett’s testimony was based on an adjustment to exclude marriages between
 13 same-sex couples, which would mean that the overall increase in the marriage
 14 rate was even greater after 2004 if you include those marriages. In either case,
 15 the Massachusetts data is supports Badgett’s opinion that there will be no
 16 adverse impact on marriage rates in California.).
 - 17 • PX2823 and 2824 (Netherlands data reflecting the marriage rate) (Consistent
 18 with Badgett’s opinion that permitting same-sex couples to marry will not
 19 adversely affect the institution of marriage or different-sex couples (Tr.
 20 1330:17-19), data from the Netherlands shows that permitting same-sex
 21 couples to marry did not lead to a decline in the marriage rate in the
 22 Netherlands. Badgett testified that, with respect to the marriage rate in the
 23 Netherlands, as reflected in PX2824, the trend after 2001 was no different than
 24 the trend before 2001, when same-sex couples were first permitted to marry.
 25 (Tr. 1460:9-23.) The data reflects a long-term decline in the marriage rate in
 26 the Netherlands and no adverse impact related to permitting same-sex couples
 27 to marry beginning in 2001. Proponents showed Badgett three charts, Tabs 1,
 28 2, and 3 in the binder prepared by Proponents, reflecting the marriage rate in
 the Netherlands from 1994 to 2008 and the average yearly rate of change from
 1994 to 2000 compared to 2001 to 2008, derived from DIX1887, and Badgett
 testified that the rate “has not declined significantly from the rates that we
 would expect” and she otherwise testified that the Netherlands marriage rate
 data does not reflect any adverse impact of permitting same-sex couples to
 marry. (Tr. 1443:6-1446:2.) There was no conflicting expert testimony on this
 point, or with respect to any of the other data in the record. Badgett agreed
 with Proponents’ withdrawn-expert that the declining marriage rate “is no
 doubt part of a larger secular trend.” (Tr. 1351:16-1354:3.) With respect to
 the combined number of new marriages and new partnership registrations, as
 reflected in PX2823, the data similarly shows a long-term decline in the
 combined number of marriages and new partnership registrations and the rate,
 as calculated using the population totals included in PX2826, with no adverse
 impact related to permitting same-sex couples to marry beginning in 2001).)
 - PX 2826, 2827, and 2828 (Netherlands data reflecting the divorce rate)
 (Consistent with Badgett’s opinion that permitting same-sex couples to marry

1 will not adversely affect the institution of marriage or different-sex couples
 2 (Tr. 1330:17-19), data from the Netherlands shows that permitting same-sex
 3 couples to marry did not lead to a higher divorce rate in the Netherlands.
 4 Badgett testified that the divorce rate in the Netherlands, as reflected in
 5 PX2827, *decreased* after 2001. (Tr. 1461:5-12.) Notably, Proponents did not
 6 question Badgett at all about divorce rates in the Netherlands. This was
 7 because this data confirms the absence of any adverse consequences. One
 8 confounding factor with respect to divorce rates was that in 2001 there was a
 9 change in the law that “allowed people who were in marriages to convert their
 10 marriages into registered partnerships” instead of filing for divorce. (Tr.
 11 1357:19-24.) To account for this confounding factor, Badgett considered the
 12 combined divorce and conversion rate, as derived from PX2826, PX2827, and
 13 PX2828. The combined divorce and conversion rate also decreased after 2001,
 14 confirming that allowing same-sex couples to marry did not lead to any
 15 increase in the divorce rate. *See* Tr. 1461:18-1463:4.).

- 16 • PX 2829 (Netherlands data reflecting the non-marital birth rate) (Consistent
 17 with Badgett’s opinion that permitting same-sex couples to marry will not
 18 adversely affect the institution of marriage or different-sex couples (Tr.
 19 1330:17-19), data from the Netherlands shows that permitting same-sex
 20 couples to marry did not lead to any increase in the non-marital birth rate in the
 21 Netherlands. The data in PX2829 reflects the number of non-marital birth rate
 22 in the Netherlands, 1950 to 2008, and shows a long-term increase in the rate of
 23 non-marital live born children, with no impact related to permitting same-sex
 24 couples to marry beginning in 2001.).
- 25 • PX2899 at 1, 8 (Badgett, *Will Providing Marriage Rights to Same-Sex Couples*
 26 *Undermine Heterosexual Marriage?*, Sexuality Research & Social Policy
 27 (Sept. 2004): “This paper analyzes data regarding the impact on heterosexual
 28 marriages of laws in five European countries that provide marriage or
 marriage-like rights to same-sex couples. The data provide no evidence that
 giving partnership rights to same-sex couples had any impact on heterosexual
 marriage.”; “Overall, there is no evidence that giving partnership rights to
 same-sex couples had any impact on heterosexual marriage in Scandinavian
 countries and the Netherlands.”).
- PX1273 at 202, 204, 206 (Badgett, *When Gay People Get Married: What*
Happens When Societies Legalize Same-Sex Marriage: “My answer to the big
 question guiding this book [*will gay people change marriage?*] is ‘No’—gay
 people will not change marriage in any significant way on their own.”;
 “Contrary to fears expressed by opponents of marriage equality, the marriage
 patterns of heterosexuals have not been knocked off course once gay couples
 have the same or similar rights.”; “Heterosexual reactions in the Netherlands
 also reveal how easily gay people have been integrated into marriage as an
 institution.”).

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- PX1273 at 68, 70, 72-77 (Badgett, *When Gay People Get Married: What Happens When Societies Legalize Same-Sex Marriage*: There has been no obvious change in marriage behavior, non-marital cohabitation rates or divorce rates in Denmark, Norway, Sweden, Iceland and the Netherlands once gay couples got partnership or marriage rights. Any “trends [in these statistics] were well established in the 1970s and 1980s, and no adverse changes have occurred since these countries recognized rights for same-sex couples: marriage rates are up, divorce rates are down, and (mostly) nonmarital birth rates are not rising in comparison to rates for the years before gay couples could register.”).
- PX1273 at 84 (Badgett, *When Gay People Get Married: What Happens When Societies Legalize Same-Sex Marriage*: Reviewing the data from the World Values Survey: Between 1990 and 1999, “the belief that marriage is outdated was becoming relatively *less* common in countries that recognized same-sex partners than in other European countries that did not. This finding contradicts the prediction that recognizing same-sex couples will somehow undermine marriage in the minds of heterosexual people.”).
- PX1273 at 85 (Badgett, *When Gay People Get Married: What Happens When Societies Legalize Same-Sex Marriage*: “Overall, whether we look at marriage behavior or marriage beliefs, none of the data convincingly link the recognition of same-sex partners to either fewer marriages or a declining belief in the current relevance of marriage. The findings from survey data, demographic trends, and logical analysis in this chapter all fail to support the idea that policy change led to cultural change in the meaning of marriage.”).
- *See also* evidence cited in support of PFFs 245, 247-249, 251, 163.

PFF 251.

In the five years that marriage has been open to couples of the same sex in Massachusetts, the divorce rate has not increased; in fact, the Massachusetts divorce rate is the lowest in the nation.

- Tr. 250:25-251:11 (Cott: “Massachusetts has the lowest divorce rate in the nation.” Its divorce rate has not increased following the legalization of marriage by same-sex couples.).
- Tr. 596:13-597:3 (Peplau: There has been no significant change in the rates of marriage and divorce in Massachusetts since civil marriage was opened to gay and lesbian couples in 2004.).
- Tr. 656:20-657:9 (Peplau: The average divorce rate in Massachusetts was slightly lower in the four years after the legalization of marriage by same-sex couples than in the four preceding years.).

- PX1309 (Division of Vital Statistics, National Center for Health Statistics, CDC: The divorce rate in Massachusetts was lower in 2007 than before the gay and lesbian couples were allowed to marry, and is nearly the lowest in the nation, second only to the District of Columbia.).
- Tr. 1466:7-23 (Badgett: After legalizing marriage by same-sex couples, the divorce rate in Massachusetts has declined faster than the divorce rate in the rest of the United States.).
- PX1309 (Division of Vital Statistics, National Center for Health Statistics, CDC: Divorce rates fell from 2.5 percent in 2000 to 2.3 percent in 2007.).
- PX2345 (National Marriage and Divorce Rate Trends, CDC: Data reflecting divorce rates in the U.S. for 2000-2007, which fell at a rate less than for Massachusetts).

PFF 252. During the same time period in which voters in numerous states have acted to exclude gay and lesbian individuals from marriage, those same voters have failed to undertake similar initiatives targeted at other issues that far more directly affect the institution, such as divorce or infidelity, where those initiatives would affect not only gay and lesbian individuals, but the heterosexual majority as well.

- Tr. 564:22-25 (Chauncey: He is unaware of any recent or historical movement that tried to deny adulterers the right to marry.).

PFF 253. Mr. Blankenhorn’s opinion that permitting same-sex couples to marry would further deinstitutionalize marriage is not credible, reliable, or entitled to substantial weight. Mr. Blankenhorn’s opinion lacks any actual basis, is inconsistent with Mr. Blankenhorn’s writings, and is contrary to the opinions of other experts who testified, whose opinions are credible and reliable. Mr. Blankenhorn cited no evidence either of the potential for or the implications of “deinstitutionalization” as a result of allowing same-sex couples to marry, and he admitted that he had not conducted any scientific studies to support any of his opinions.

- Tr. 2736:13-19 (Blankenhorn: He had not undertaken any scientific study regarding whether there would be any adverse effects of permitting same-sex couples to marry.).

- Tr. 2736:13-19, Tr. 2739:14-20 (Blankenhorn: When asked what jurisdictions he had studied, Blankenhorn identified the “Scandinavian countries” (which do not include the Netherlands) and Massachusetts, for neither of which he provided any evidence of “deinstitutionalization” or any adverse effects from allowing same-sex couples to marry.).
- Tr. 2775:25 (Blankenhorn: “[H]eterosexuals, you know, did the deinstitutionalizing.”).

PFF 254.

As Mr. Blankenhorn admitted during cross examination, most of the articles cited by him at trial say nothing about deinstitutionalization, and the two that do refer to deinstitutionalization as a concept do not suggest either that deinstitutionalization has occurred elsewhere as a result of allowing same-sex couples to marry, that it will occur in the future, or that if it does occur it will have adverse effects.

- Tr. 2818:20-2820:16 (Blankenhorn: Admitting that most of the articles offered say nothing about deinstitutionalization).
- DIX0049 at 849, 853ff (Andrew Cherlin, “The Deinstitutionalization of American Marriage”: Describing deinstitutionalization as a long-term phenomenon that was underway no later than the 1970s, rather than as a result of allowing same-sex couples to marry anywhere; asserting that notwithstanding the trend towards deinstitutionalization, positive attitudes towards the importance of marriage have remained constant, and not advancing any opinion as to whether deinstitutionalization is a positive or negative trend).
- DIX0060 at 28 (Norval Glenn, “The Struggle for Same-Sex Marriage”: “Legitimizing of same-sex marriage would have a small effect, at most, on the percentage of fatherless children, and there is no precedent for prohibiting a family arrangement because it creates less than ideal conditions for children. Having two parents of the same gender may not be ideal for children, but it should be better than having only one parent, and children with one parent are much more numerous than children with same-sex parents are ever likely to be.”).

PFF 255.

Moreover, neither Mr. Blankenhorn, nor any other witness or document advanced by Proponents addressed or rebutted the substantial evidence put forth by Dr. Cott and Dr. Badgett specific to Massachusetts, the Netherlands, and elsewhere, that allowing same-sex couples to marry has not caused any adverse effects, whether associated with “deinstitutionalization” or otherwise. Mr. Blankenhorn testified that the increased

1 deinstitutionalization caused by allowing same-sex couples to marry would be
 2 reflected in “higher rates of non-participation in marriage, higher rates of fragility of
 3 one-parent homes, divorce [and] divorced non-marital cohabitation or children outside
 4 of charge and so forth.” Dr. Cott and Dr. Badgett offered opinions on those same
 5 topics, based on data. The opinion expressed by both Dr. Cott and Dr. Badgett—that
 6 there will be no adverse consequences—is credible and reliable, and the
 7 unsubstantiated and uninformed opinion of Mr. Blankenhorn is neither credible, nor
 8 reliable. Accordingly, even if Mr. Blankenhorn’s purported concerns about the
 9 importance of marriage and the institution of marriage were well-founded, there is no
 10 evidence that Prop. 8’s withdrawal of the right of same-sex couples to marry bears any
 11 relationship to these concerns.

- 12 • Tr. 2782:7-20 (Blankenhorn’s testimony regarding the consequences of
 13 deinstitutionalization, as quoted above).
- 14 • See evidence cited in support of PFFs 244-252.

15 PFF 256. Further, consistent with Dr. Cott’s credible testimony and reliable opinion, Mr.
 16 Blankenhorn acknowledged in his testimony that the institution of marriage has
 17 changed over time.

- 18 • Tr. 190:23-191:1; 331:3-17; 349:10-353:1 (Cott).
- 19 • Tr. 2745:10-12 (Blankenhorn: “So marriage does numerous things. There are
 20 numerous dimensions to it, of course. And it changes historically, and it
 21 evolves over time, and there’s great diversity.”); Tr. 2746:1-2 (Blankenhorn:
 22 “[M]arriage can look very different in different places and different times.”).
- 23 • See also evidence cited in Section II.B (Demonstrating the changing institution
 24 of marriage).

25 PFF 257. Mr. Blankenhorn’s opinion that allowing same-sex couples to marry would otherwise
 26 harm the institution of marriage is also undermined by his own prior writings.

- 27 • PX2936 at 1 (Blankenhorn: “Neither Kurtz nor anyone else can scientifically
 28 prove that allowing gay marriage causes the institution of marriage to get
 weaker. Correlation does not imply causation.”).

- 1 • See evidence cited in support of PFF 258 (Blankenhorn: Listing benefits to
2 opposite-sex couples and to society as a result of allowing same-sex couples to
3 marry).
- 4 PFF 258. Mr. Blankenhorn admitted that allowing gays and lesbian individuals to marry “would
5 be likely to improve the well-being of gay and lesbian households and their children”
6 and would benefit opposite-sex couples, children, and society in general in many
7 ways.
- 8 • DIX0956 at 2 (Blankenhorn, *The Future of Marriage*: “I believe that today the
9 principle of equal human dignity must apply to gay and lesbian persons. In
10 that sense insofar as we are a nation founded on this principle, we would be
11 *more* American on the day we permitted same-sex marriage than we were on
12 the day before.”)
- 13 • Tr. 2795:1-5 (Blankenhorn: “The studies show that adoptive parents, because
14 of the rigorous screening process that they undertake before becoming
15 adoptive parents, actually on some outcomes outstrip the biological parents in
16 terms of providing protective care for their children.”).
- 17 • Tr. 2803:13-15 (Blankenhorn: “I believe that adopting same-sex marriage
18 would be likely to improve the well-being of gay and lesbian households and
19 their children.”).
- 20 • Tr. 2839:22-24 (Blankenhorn: “[I]t is almost certainly true that gay and
21 lesbian couples and their children would benefit by having gay marriage.”).
- 22 • Tr. 2843:11-2853:12 (Blankenhorn: Agreeing that allowing same-sex couples
23 to marry is likely to have at least 13 of the 23 possible positive consequences
24 identified in his book, *The Future of Marriage* (DIX 0956): (1) meeting the
25 stated needs and desires of gays and lesbians, (2) extending the benefits of
26 marriage to gays and lesbians, (3) more gay and lesbian people choosing to
27 enter committed relationships, (4) more stability and longer-lasting
28 relationships for same-sex couples, (5) less sexual promiscuity, (6) greater
acceptance of homosexual love and intimacy, (7) “a victory for the worthy
ideas of tolerance and inclusion,” and “a victory for, and another key
expansion of, the American idea,” (8) decline in anti-gay prejudice and hate-
crimes, (9) increased wealth-accumulation and higher living standards for gays
and lesbians, (10) reduced number of gays and lesbians unhappily marrying
people of the opposite sex, (11) more children growing up in loving adoptive
foster-families, (12) valuable national discussion of marriage’s benefits, and
(13) new scholarly research on a variety of topics related to marriage and
parenting).

- DIX0956 at 202-05 (Blankenhorn, *The Future of Marriage*: A seminar co-convened and chaired by Blankenhorn assembled a list of 23 “Positive Consequences” of allowing same-sex couples to marry: (1) meeting the stated needs and desires of gays and lesbians, (2) extending the benefits of marriage to gays and lesbians, (3) more gay and lesbian people choosing to enter committed relationships, (4) more stability and longer-lasting relationships for same-sex couples, (5) less sexual promiscuity, (6) greater acceptance of homosexual love and intimacy, (7) “a victory for the worthy ideas of tolerance and inclusion,” and “a victory for, and another key expansion of, the American idea,” (8) reaffirmation of society’s commitment to social justice, (9) expanding the concept of human rights, (10) decline in anti-gay prejudice and hate-crimes, (11) increased wealth-accumulation and higher living standards for gays and lesbians, (12) making marriage more universally accessible, (13) demonstration that marriage can be an adaptive social form, (14) decline of “marriage lite” schemes such as civil unions, which can harmfully blur the distinction between marriage and non-marriage, (15) reduced number of gays and lesbians unhappily marrying people of the opposite sex, (16) reduced number of younger Americans who believe that marriage is an outdated and discriminatory institution, (17) increased birth rate, (18) more children growing up in loving adoptive foster-families, (19) valuable national discussion of marriage’s benefits, (20) end to today’s socially divisive and distracting debate over gay marriage, (21) reduction in gender stereotypes, (22) new scholarly research on a variety of topics related to marriage and parenting, and (23) valuable local experimentation in matters of marriage and marriage law).

3. **Excluding Same-Sex Couples from Marriage Does Not Promote Achievement of Good Child Adjustment Outcomes**

PFF 259. In their Trial Memorandum, Proponents claimed that the evidence would show that Prop. 8 furthers the following interests: (1) “Promoting enduring and stable family structures for the responsible raising and care of children by their biological parents”; (2) “Increasing the probability that natural procreation will occur within stable, enduring, and supporting family structures”; (3) “Promoting the natural and mutually beneficial bond between parents and their biological children”; (4) “Increasing the probability that each child will be raised by both of his or her biological parents”; and (5) “Increasing the probability that each child will be raised by both a father and a mother.” Doc # 295 at 7-8. Proponents further claimed that the evidence would show that Prop. 8 prevents a number of related harms because allowing same-sex couples to marry allegedly would: (1) “Require explicit public endorsement of the idea that a

1 child does not really need both a mother and a father, likely resulting in fewer children
 2 growing up with fathers”; (2) “Eradicate in law, and weaken further in culture the idea
 3 that what society favors—that what is typically best for the child, the parents, and the
 4 community—is the natural mother married to the natural father, together raising their
 5 children, likely resulting over time in smaller proportions of children being raised by
 6 their own, married mothers and fathers”; (3) “Publicly replace the idea that parenting
 7 is largely gendered, ideally involving both a mother and a father, with the idea that
 8 parenting is largely unisex, likely resulting in fewer men believing it is important for
 9 them to be active, hands-on parents of their children”; (4) “Contribute to replacing the
 10 norm of the natural parent with the norm of the legal parent, likely resulting in a
 11 growing disjuncture between the biological and legal-social dimensions of parenthood
 12 and a significant expansion of the power of the state to determine who is entitled to
 13 parental rights”; and (5) “Send a message to men that they have no significant place in
 14 family life, weakening the connection of fathers to their children.” *Id.* at 9-10.

15 Proponents presented no credible, reliable evidence that excluding same-sex couples
 16 from marriage would promote these alleged interests or prevent these purported
 17 “harms,” and the evidence presented at trial demonstrates that prohibiting gay and
 18 lesbian individuals to marry will not promote the achievement of good child
 19 adjustment outcomes.

- 20 • *See* evidence cited in support of PFFs 260-280.

21 PFF 260. Same-sex couples are raising children and have the same potential and desire as
 22 heterosexual couples to love and parent children.

- 23 • PX0752 at 2 (Am. Psychoanalytic Ass’n, Position Statement: “[S]ame-sex
 24 couples are raising children and have the same potential and desire as
 25 heterosexual couples to love and parent children.”); *see also* PX 2545 (Young
 11/13/09 Dep. Tr. 123:2-11: Agreeing with this statement).
- 26 • Tr. 1120:10-25 (Lamb: Approximately 30% of lesbian same-sex couples and
 27 20% of male same-sex couples in the U.S. are raising children.).

- 1 • PX2096 at 1 (Adam P. Romero, et al., Census Snapshot: “In many ways, the
2 more than 107,000 same-sex couples living in California are similar to married
3 couples. . . . Census data also show that 18% of same-sex couples in California
4 are raising children.”).
- 5 • PX0710 at RFA No. 59 (Attorney General admits that an individual’s capacity
6 to raise children does not depend on the individual’s sexual orientation and that
7 “this proposition is implicitly recognized in the law in the State of
8 California.”).
- 9 • PX0753 at 339 (JN) (Am. Academy of Pediatrics statement: “The American
10 Academy of Pediatrics recognizes that a considerable body of professional
11 literature provides evidence that children with parents who are homosexual can
12 have the same advantages and the same expectations for health, adjustment,
13 and development as can children whose parents are heterosexual.”).
- 14 • PX1055 at 45 (Study by Henny M. W. Bos, Frank van Balen & Dymphna C.
15 van den Boom: Finding that lesbian biological and social mothers had a
16 stronger desire to have a child than heterosexual parents and that lesbian social
17 mothers were more effective and more committed than heterosexual fathers).
- 18 • Tr. 2795:1-5 (Blankenhorn: “The studies show that adoptive parents, because
19 of the rigorous screening process that they undertake before becoming
20 adoptive parents, actually on some outcomes outstrip the biological parents in
21 terms of providing protective care for their children.”).
- 22 • Tr. 1362:15-1363:21 (Badgett: Same-sex couples wish to marry for the same
23 reasons as opposite-sex couples. Same-sex couples are raising children and are
24 engaged in positive assertive matching.).
- 25 • Tr. 161:9-12 (Stier: Plaintiffs Perry and Stier live with their four boys; two are
26 Perry’s biological sons, and two are Stier’s biological sons.).
- 27 • *See also* evidence cited in Section III.B.2.

28 PFF 261. Social science has shown that the concerns often raised about children of lesbian and
gay parents are generally grounded in unfounded prejudice and stereotypes. Indeed,
there is no scientific basis for concluding that the outcomes for children raised by gay
and lesbian parents are any different from their counterparts.

- PX2565 at 5 (Am. Psychol. Ass’n brochure: “[S]ocial science has shown that
the concerns often raised about children of lesbian and gay parents—concerns
that are generally grounded in prejudice against and stereotypes about gay
people—are unfounded.”).

- 1 • PX0766 (JN) (Am. Psychol. Ass’n, Policy Statement on Sexual Orientation,
2 Parents and Children: “There is no scientific basis for concluding that lesbian
3 mothers or gay fathers are unfit parents on the basis of their sexual
4 orientation.”).
- 5 • PX0767 at 1, 8 (Am. Psychol. Ass’n, Professional Association Policies: “There
6 is no evidence to suggest or support that parents with a gay, lesbian, or
7 bisexual orientation are per se different from or deficient in parenting skills,
8 child-centered concerns and parent-child attachments, when compared to
9 parents with a heterosexual orientation”; “[T]here is no scientific evidence that
10 parenting effectiveness is related to parental sexual orientation.”).
- 11 • Tr. 1027:3-1028:2 (Lamb: Research indicates that there is not a marked
12 difference between the effects of gay and lesbian and heterosexual parenting
13 on child adjustment.); *see also* Tr. 1201:21-1202:23 (Lamb: Children of same-
14 sex parents adjust just as well as children of heterosexual parents.).
- 15 • Tr. 1038:13-17 (Lamb: There is no evidence that children raised by
16 homosexuals are traumatized emotionally or socially.).
- 17 • PX1372 at 946 (Article by Falk, *Lesbian Mothers: Psychosocial Assumptions*
18 *in Family Law*, American Psychologist (June 1989): “[N]o research has
19 identified significant differences between lesbian mothers and their
20 heterosexual counterparts or the children raised by these groups. Researchers
21 have been unable to establish empirically that detriment results to children
22 from being raised by lesbian mothers.”).
- 23 • PX1055 at 45 (Study by Henny M. W. Bos, Frank van Balen & Dymphna C.
24 van den Boom: “In general, our findings support the ‘no difference’ consensus
25 in empirical research on planned lesbian-parent families. That is, children in
26 planned lesbian-parent families do not differ in well-being or child adjustment
27 compared with their counterparts in heterosexual-parent families based on
28 parental reports of the [Child Behavior Checklist]. These findings contradict
what is maintained by opponents of lesbian-parent families, namely that
children of lesbian parents run the risk of developing a variety of behavior
problems because they were raised fatherless, lack a biological tie with one of
the mothers, and are stigmatized by their peers.”).
- PX2878 at 17 (Article by Biblarz and Stacey, *How Does the Gender of Parents*
Matter?: “Current claims that children need both a mother and father are
spurious because they attribute to the gender of parents benefits that correlate
primarily with the number and marital status of a child’s parents since infancy.
At this point, no research supports the widely held conviction that the gender
of parents matters for child well-being.”).

PFF 262. Proponents’ experts do not dispute that professional organizations with expertise in
this area have concluded that neither gender nor sexual orientation is relevant to one’s

1 ability to be a good parent.

- 2 • PX2547 (Nathanson 11/12/09 Dep. Tr. 49:05-49:19: Stating that sociological
3 and psychological peer-reviewed studies conclude that permitting gay and
4 lesbian individuals to marry does not cause any problems for children); *see*
5 *also* PX2547 (*id.* at 32:03-05: Noting that American Academy of Pediatrics
6 supports allowing same-sex couples to marry because “they see no problem for
7 children”).
- 8 • Tr. 2797:24-2798:3 (Blankenhorn: He is not aware of any studies showing that
9 children raised from birth by a gay or lesbian couple have worse outcomes than
10 children raised from birth by two biological parents.); *see also* Tr. 2794:12-15
11 (Blankenhorn: Biological parents are not better parents than adoptive
12 parents.).

13 PFF 263. Children and adolescents raised by same-sex parents are as likely to be well-adjusted
14 as children and adolescents raised by heterosexual parents.

- 15 • Tr. 1025:4-23 (Lamb: Studies have demonstrated “very conclusively that
16 children who are raised by gay and lesbian parents are just as likely to be well-
17 adjusted as children raised by heterosexual parents.” These results are
18 “completely consistent with our broader understanding of the factors that affect
19 children’s adjustment.”).
- 20 • PX1093 at 238 (Study by Fiona Tasker: “Findings from the existing research
21 studies indicate that while there is obviously variation among children with
22 lesbian and gay parents, they are as a group just as likely as children with
23 heterosexual parents to show typical adjustment on the various developmental
24 outcomes assessed. Seldom have reports dissented from this general
25 conclusion.”).
- 26 • PX1116 at 1895 (Study by Jennifer Wainright, Stephen T. Russell and
27 Charlotte J. Patterson: “The results of the present study, which is the first
28 based on a large national sample of adolescents living with same-sex couples,
revealed that on nearly all of a large array of variables related to school and
personal adjustment, adolescents with same-sex parents did not differ
significantly from a matched group of adolescents living with opposite-sex
parents.”).
- PX0753 (JN), PX0757 (JN), PX0762 (JN), PX0763 (JN), PX0766 (JN),
PX0768 (JN), PX1025 (JN), PX1032 (JN) (Examples of policy statements
from professional organizations concerned with child development that
uniformly conclude that children and adolescents of same-sex parents adjust
just as well as children of heterosexual parents).
- PX1066 at 29 (Study by Susan Golombok, Beth Perry, Amanda Burston, Clare
Murray, Julie Mooney-Somers, Madeleine Stevens, & Jean Golding: “The

1 findings of the present investigation are largely in line with those of earlier
 2 studies of lesbian-mother families that pointed to positive mother-child
 3 relationships and well-adjusted children. No significant differences were
 4 identified between lesbian mothers and heterosexual mothers for most of the
 5 parenting variables, although lesbian mothers reported smacking their children
 6 less and engaged more frequently in imaginative and domestic play with their
 7 children than did heterosexual mothers.”).

- 8 • PX2299 at Abstract (Study by Michael J. Rosenfeld: The first ever nationally
 9 representative tests of outcomes for children raised by same-sex couples
 10 showing “that children of same-sex couples are as likely to make normal
 11 progress through school as the children of most other family structures.”).
- 12 • Tr. 1118:9-1120:6, 1189:7-1190:6 (Lamb: Discussing a recent, important
 13 study conducted by Michael Rosenfeld that analyzes U.S. census data on all
 14 the gay and lesbian couples in the U.S. who are raising children. This study of
 15 the entire population of children of gay and lesbian parents is consistent with
 16 the findings of other studies showing that there are no significant differences
 17 between the children of same-sex and the children of opposite-sex couples.).
- 18 • PX0778, PX1066, PX1111, PX1116 (Examples of studies that examine the
 19 adjustment of children of same-sex parents through the use of representative
 20 sampling techniques. These studies consistently and reliably show that the
 21 children of same-sex couples are, on average, just as well adjusted as the
 22 children of opposite-sex couples.).
- 23 • PX1055, PX1101, PX1115, PX1396 (Examples of studies that examine the
 24 adjustment of children of same-sex parents through the use of convenience
 25 sampling techniques. These studies consistently and reliably show that the
 26 children of same-sex couples are, on average, just as well adjusted as the
 27 children of opposite-sex couples.).
- 28 • PX1088, PX1101, PX1396 (Examples of studies that examine the adjustment
 of children of same-sex parents through the use of longitudinal designs. These
 studies consistently and reliably show that the children of same-sex couples
 are, on average, just as well adjusted as the children of opposite-sex couples.).
- PX1066, PX1072, PX1116 (Examples of studies that examine the adjustment
 of children of same-sex parents through the use of cross-sectional designs.
 These studies consistently and reliably show that the children of same-sex
 couples are, on average, just as well adjusted as the children of opposite-sex
 couples).
- PX1093, PX1384, DIX2424 (Several literature reviews that summarize the
 high quality and substantial research that has been conducted on the adjustment
 of children of same-sex parents.).
- *See also* evidence cited in support of PFFs 261-262, 264-268.

- 1 PFF 264. Dr. Lamb's uncontroverted testimony establishes that it is the quality of the parenting,
2 not the gender of the parents, that matters for child adjustment and well-being.
- 3 • Tr. 1039:9-12 (Lamb: "[W]hat's important for children's development and
4 adjustment is the quality of the parenting that they obtained from the people
5 who are raising them. . . . [G]ender is not one of those important
6 dimensions."); *see also* Tr. 1075:4-11 (Lamb: The absence of a father does not
7 in and of itself cause problems in child development. Research demonstrates
8 that the most important factors in explaining differences in child development
9 are processes within the household.).
 - 10 • PX1066 at 31 (Study by Susan Golombok, Beth Perry, Amanda Burston, Clare
11 Murray, Julie Mooney-Somers, Madeleine Stevens, and Jean Golding: "[T]he
12 findings of the present investigation suggest that the presence of two parents
13 irrespective of their gender, rather than the presence of a parent of each sex, is
14 associated with more positive outcomes for children's psychological well-
15 being than is rearing by a single mother. That is, it may be the involvement of
16 a second parent rather than the involvement of a male parent that makes a
17 difference.").
 - 18 • PX2266 at 6-7 (Michael Lamb, *The role of the father in child development*:
19 "In sum, the evidence suggests that father absence may be harmful not
20 necessarily because a sex-role model is absent but because many paternal
21 roles- economic, social, emotional- go unfilled or inappropriately filled in
22 these families.").

- 16 PFF 265. Indeed, it is well established that both men and women have the capacity to be good
17 parents, and that having parents of both genders does not enhance child or adolescent
18 adjustment. Similarly, there is no empirical support for the notion that the presence of
19 both male and female role models in the home promotes children's adjustment or well-
20 being.
- 21 • Tr. 1014:25-1015:19 (Lamb: "[W]hat makes for an effective parent is the
22 same whether or not you are talking about a mother or a father. . . . [C]hildren
23 do not need to have a masculine-behaving parent figure, a father, in order to be
24 well adjusted." Children similarly do not need a female parent to be well
25 adjusted. The overwhelming consensus in the field is that family structure is
26 not the factor that most affects child adjustment.).
 - 27 • Tr. 1039:18-1040:17 (Lamb: There is no social science research that supports
28 the contention that a parent's failure to observe traditional gender roles will
harm a child.).

- 1 • PX2878 at 5 (Article by Timothy J. Biblarz and Judith Stacey, *How Does the*
2 *Gender of Parents Matter?*: Discussing how some advocates of gender-
3 differentiated parenting have misrepresented the research in order to support
4 their claims by failing to note that the research does not compare children in
5 married-couple homes with children raised by same-sex couples); *see also id.*
6 at 17 (“Current claims that children need both a mother and father are spurious
7 because they attribute to the gender of parents benefits that correlate primarily
8 with the number and marital status of a child’s parents since infancy. At this
9 point, no research supports the widely held conviction that the gender of
10 parents matters for child well-being.”).
- 11 • PX2878 at 16 (Article by Biblarz and Stacey, *How Does the Gender of Parents*
12 *Matter?*: “Research has not identified any gender-exclusive parenting abilities
13 (with the partial exception of lactation).”).
- 14 • PX1372 at 946 (Falk, *Lesbian Mothers: Psychosocial Assumptions in Family*
15 *Law*, American Psychologist (June 1989): “[N]o research has identified
16 significant differences between lesbian mothers and their heterosexual
17 counterparts or the children raised by these groups. Researchers have been
18 unable to establish empirically that detriment results to children from being
19 raised by lesbian mothers.”).
- 20 • PX 2545 (Young 11/13/09 Dep. Tr. 195:6-195:13: It does not make a
21 difference if a single parent is male or female, gay or straight.).
- 22 • Tr. 1083:5-1084:1 (Lamb: Children learn about sex roles from role models
23 from inside and outside their home.).
- 24 • Tr. 1185:19-21 (Lamb: Fathers are important figures in children’s
25 development and when children have father figures, those relationships are
26 very significant ones. However, the argument that the presence of a father is
27 itself determinative of child outcomes is not empirically supported.); *see also*
28 PX1088 at 19 (Longitudinal study by Susan Golombok and Shirlene Badger:
concluding that presence of father is not determinative of child outcomes).
- DIX0792 (Susan Golombok, *Parenting, What Really Counts*: Family structure
is not one of the primary factors that affect child development.).
- PX1055 at 45 (Study by Henny M. W. Bos, Frank van Balen & Dymphna C.
van den Boom: Finding that children in planned lesbian-parent families do not
run the risk of developing a variety of behavior problems because they were
raised without fathers).
- *See also* evidence cited in support of PFFs 261-264, 266-267.

PFF 266. There is no difference between the ability of a same-sex couple to provide a healthy,
positive child-rearing environment and the ability of an opposite-sex couple to provide

1 such an environment. The well-being of children is not contingent on the parents'
2 sexual orientation.

- 3 • PX0752 at 2 (Am. Psychoanalytic Ass'n, Position Statement: "Gay and
4 lesbian individuals and couples are capable of meeting the best interest of the
5 child and should be afforded the same rights and should accept the same
6 responsibilities as heterosexual parents.").
- 7 • PX0757 at 1 (JN) (Am. Psychiatric Ass'n, Position Statement on Adoption and
8 Co-parenting of Children by Same-sex Couples: "Numerous studies over the
9 last three decades consistently demonstrate that children raised by gay or
10 lesbian parents exhibit the same level of emotional, cognitive, social, and
11 sexual functioning as children raised by heterosexual parents. This research
12 indicates that optimal development for children is based not on the sexual
13 orientation of the parents, but on stable attachments to committed and
14 nurturing adults. The research also shows that children who have two parents,
15 regardless of the parents' sexual orientations, do better than children with only
16 one parent.").
- 17 • PX0766 at 1-2 (JN) (Am. Psychol. Ass'n, Policy Statement on Sexual
18 Orientation, Parents and Children: "There is no scientific basis for concluding
19 that lesbian mothers and gay fathers are unfit parents on the basis of their
20 sexual orientation. On the contrary, results of research suggest that lesbian and
21 gay parents are as likely as heterosexual parents to provide supportive and
22 healthy environments for their children . . . Overall, results of research
23 suggest that the development, adjustment, and well-being of children with
24 lesbian and gay parents do not differ markedly from that of children with
25 heterosexual parents.").
- 26 • Tr. 1010:13-1011:13 (Lamb: A "substantial consensus has developed over the
27 last 30 or 40 years of research" that the factors that affect children's
28 development have to do with the quality of the parent-child relationship, the
quality of the relationships between the parents or parent figures, and the social
and economic resources available to the child.); *see also* PX2266, DIX0792
(Books discussing the factors that affect child development including processes
within the household. Family structure per se is not one of the central factors
that affects child adjustment.); PX1245 at 414 (Review by Anne Peplau and
Adam Fingerhut: "[R]esearch has documented that [the children of same-sex
couples] are comparable to children of heterosexual parents on measures of
psychological well-being, self-esteem, cognitive abilities, and peer relations.").
- PX0921 (Article by Gregory M. Herek: "The data indicate . . . that a parent's
sexual orientation is unrelated to her or his ability to provide a healthy and
nurturing family environment.").
- PX1372 at 947 (Falk, *Lesbian Mothers: Psychosocial Assumptions in Family
Law*, American Psychologist (June 1989): "The majority of researchers

1 recommend that legal decision makers should focus less or not at all on the
 2 sexual orientation of a potential custodian and more on the quality of the
 3 relationship between the parent and the child. [internal citation omitted] Basile
 4 (1974) commented, ‘[t]he best interests of the child lay with a loving parent,
 5 not with a heterosexual parent or a homosexual parent.’”).

- 6 • Tr. 177:19-178:3 (Stier: “[T]he best thing children can have is parents who
 7 love them. That’s the most important thing. And I know I love my children
 8 with all my heart. Kris loves our children with all her heart. And that’s what I
 9 believe to be the best thing for them, to be loved.”).
- 10 • *See also* evidence cited in support of PFFs 261-265.

11 PFF 267.

12 Studies of personality, self-concept, and behavior problems show few differences
 13 between children of lesbian mothers and children of heterosexual parents. Evidence
 14 indicates that children of lesbian and gay parents have normal social relationships with
 15 their peers and adults. The picture that emerges from this research shows that children
 16 of gay and lesbian parents enjoy a social life that is typical of their age group in terms
 17 of involvement with peers, parents, family members, and friends.

- 18 • Tr. 1037:5-8 (Lamb: “[S]tudies conclude that whether or not children are
 19 raised by heterosexual or same-sex parents, there were no differences in their
 20 ability to establish appropriate social relationships with peers, either as
 21 children or as adolescents.”).
- 22 • Tr. 1037:13-24 (Lamb: “[W]hile children with gay or lesbian parents are more
 23 likely to be teased about their family configuration, they aren’t more likely to
 24 be teased in general.”).
- 25 • Tr. 1038:13-17 (Lamb: There is no social science evidence that supports the
 26 notion that kids raised by homosexuals are traumatized emotionally and
 27 socially.).
- 28 • *See also* evidence cited in support of PFFs 261-266, 268.

PFF 268.

There is no scientific support for fears about children of lesbian or gay parents being
 sexually abused by their parents or their parents’ gay, lesbian, or bisexual friends or
 acquaintances.

- Tr. 1034:24-1036:19 (Lamb: “It is clearly established that children are at no
 greater risk of abuse when being raised by gay and lesbian parents. . . . [T]here
 is no evidence that gays or lesbians are more likely to sexually abuse children.”

1 There is no social science research that supports the notion that children need
2 to be protected from gay men or lesbians.).

- 3 • PX1384 at 14 (Article by Charlotte J. Patterson, Megan Fulcher, & Jennifer
4 Wainright: “Fears that children in custody of gay or lesbian parents might be
5 at heightened risk for sexual abuse are thus without empirical foundation.”).
- 6 • PX2259 at 44 (Article by Jenny, et al., *Are Children at Risk for Sexual Abuse*
7 *by Homosexuals?*: “[N]o evidence is available from this data that children are
8 at greater risk to be molested by identifiable homosexuals than by other adults.
9 There is no support for the claim to this effect by groups advocating legislation
10 limiting rights of homosexuals.”).
- 11 • PX2258 at 181 (Article by Groth, et al., *Adult Sexual Orientation and*
12 *Attraction to Underage Persons*: “[T]he adult heterosexual male constitutes a
13 greater sexual risk to underage children than does the adult homosexual
14 male.”).

15 PFF 269. Excluding same-sex couples from marriage actually harms the objective of providing
16 an optimal child-rearing environment for all children, including the children of gay
17 and lesbian couples who have been denied the rights and status attendant to civil
18 marriage.

- 19 • PX0787 at 1 (Am. Psychiatric Ass’n, Position Statement on Support of Legal
20 Recognition of Same-Sex Civil Marriage: Finding that “[t]he children of
21 unmarried gay and lesbian parents do not have the same protection that civil
22 marriage affords the children of heterosexual couples”).
- 23 • PX2879 at 3 (Institute for American Values, “The Marriage Movement: A
24 Statement of Principles”: “Children suffer when marriages between parents do
25 not take place.” “We firmly believe that every family raising children deserves
26 respect and support.”).
- 27 • PX2880 at 11 (Institute for American Values, “The Marriage Index: A
28 Proposal to Establish Leading Marriage Indicators”: “Because cohabitation
and single-parent families tend to be much less stable arrangements than
marriage, children born outside of wedlock tend to be in a disadvantaged
position.”).
- PX0752 at 2 (Am. Psychoanalytic Ass’n, Position Statement: “[S]ame-sex
couples and their children are adversely affected by [existing] discriminatory
marriage laws.”).
- PX0760 at 1, 4 (Am. Psychoanalytic Ass’n, Position Paper on Gay Marriage:
Discriminatory marriage laws adversely affect the children of same-sex

1 couples by stigmatizing those children and making them less financially
2 secure.).

3 PFF 270. Marriage uniquely legitimizes children and provides them with a sense of security,
4 stability and increased well-being.

- 5 • PX0710 at RFA No. 7 (Attorney General admits “that under California law,
6 marriage legitimizes children and provides them greater financial security,
7 which may well give children a greater sense of security.”).
- 8 • Tr. 1964:17-1965:2 (Tam: It is important to children of same-sex couples that
9 their parents be able to marry.).
- 10 • PX2852 (Human Rights Campaign, posting a Position Statement of the
11 American Medical Association on Adoption by Same-Sex Couples: “Having
12 two fully sanctioned and legally defined parents promotes a safe and nurturing
13 environment for children, including psychological and legal security[.] . . .
14 therefore, be it RESOLVED, That our American Medical Association support
15 legislative and other efforts to allow the adoption of a child by the same-sex
16 partner, or opposite sex non-married partner, who functions as a second parent
17 or co-parent to that child.”).
- 18 • Tr. 2839:11-15 (Blankenhorn: Agreeing that “marriage is something that
19 benefits both the participants in the marriage, the couple that are married, as
20 well as any children that the couple may raise”); *see also* DIX0956 at 203
21 (Blankenhorn, *Future of Marriage*).
- 22 • Tr. 2849:6-11 (Blankenhorn: Agreeing that “Gay marriage would extend a
23 wide range of the natural and practical benefits of marriage to many lesbian
24 and gay couples and their children”); *see also* DIX0956 at 203 (Blankenhorn,
25 *Future of Marriage*).
- 26 • Tr. 2803:13-15 (Blankenhorn: “I believe that adopting same-sex marriage
27 would be likely to improve the well-being of gay and lesbian households and
28 their children.”); *see also* Tr. 2839:22-24 (Blankenhorn: “I do believe it is
almost certainly true that gay and lesbian couples and their children would
benefit by having gay marriage.”); Tr. 2848:24-2849:5 (Blankenhorn:
Agreeing that allowing gay and lesbian couples to marry “would improve the
happiness and well-being of many gay and lesbian individuals, couples, and
family members.”).
- Tr. 2852:11-17 (Blankenhorn: Agreeing that “[b]y increasing the number of
married couples who might be interested in adoption and foster care, same-sex
marriage might well lead to fewer children growing up in state institutions and
more growing up in loving adoptive and foster families”); *see also* DIX0956 at
204 (Blankenhorn, *Future of Marriage*).

- Tr. 1042:12-1043:16 (Lamb: Prohibiting same-sex couples from marrying cannot be expected to improve the adjustment outcomes of any children. The ability of same-sex couples to get married can improve the likelihood that their child will achieve a good adjustment outcome.).
- PX1267 at 1 (Report on a survey of the experiences and impact of marriage on same-sex couples in Massachusetts by Christopher Ramos, et al.: “Of those [respondents] with children, nearly all respondents (93%) agreed or somewhat agreed that their children are happier and better off as a result of their marriage.”).

PFF 271. Social science research has found that having a gay or lesbian parent does not affect the development of a child’s sexual and gender identities (including gender identity, gender-role behavior, and sexual orientation).

- Tr. 1030:8-11 (Lamb: “Gender identity disorders . . . are extremely rare. And there is no evidence that they are more common when children are being raised by gay and lesbian parents.”).
- PX1372 at 945 (Article by Falk, *Lesbian Mothers: Psychosocial Assumptions in Family Law*, American Psychologist (June 1989): “Thus, taking even the most conservative view of this relatively well-developed area of research, it is apparent that lesbian mothers do not exert a detrimental influence on their children’s gender role development.”).
- Tr. 1032:18-21 (Lamb: “[S]tudies have shown that there is no significant increase in the proportion of children who become gay or lesbian themselves when they are raised by gay or lesbian parents.”).
- PX1093 at 233 (Article by Fiona Tasker: “Having a lesbian or gay parent does not seem to influence gender role development, and the large majority of sons and daughters of lesbian or gay parents grow up to identify as heterosexual.”).
- PX1088 at 17-18 (Longitudinal study by Susan Golombok & Shirlene Badger: Finding that children raised in lesbian families are not more likely to identify as homosexual in their young adulthood).
- Tr. 1034:2-16 (Lamb: “There have been a number of studies that have, for example, shown that in some cases children raised by gay and lesbian parents have less sex stereotyped attitudes than those being raised by heterosexual parents[,]” but this is “viewed as an aspect of normal variation.”).
- PX1384 at 11 (Article by Charlotte J. Patterson, Megan Fulcher & Jennifer Wainright: “In general, research has failed to reveal any differences in the development of children’s gender identity or gender role behavior as a function of parents’ sexual orientation.”).

- PX1066 at 31 (Study by Susan Golombok, Beth Perry, Amanda Burston, Clare Murray, Julie Moone-Somers, Madeleine Stevens & Jean Golding: Concluding that maternal sexual orientation is not a major influence on children’s gender development).

PFF 272. Beliefs that lesbian and gay adults are not fit parents have no empirical foundation.

- *See* evidence cited in support of PFFs 261-268.

PFF 273. Mr. Blankenhorn’s opinion that the optimal environment for raising children is by two biological parents is not credible, reliable, or entitled to substantial weight because (i) his purported expertise is based on his study of the writings and analysis of others; (ii) he had no or limited expertise based on his education, training, and experience; and (iii) he could offer no evidence contrary to Dr. Lamb’s conclusion that children of same-sex parents are as well-adjusted as children of heterosexual parents. Indeed, Mr. Blankenhorn’s opinion is contradicted by other, more credible, evidence and his own testimony. Dr. Lamb’s opinion was that children and adolescents raised by same-sex parents are as likely to be well-adjusted as children and adolescents raised by heterosexual parents, and that opinion is credible and reliable.

- Tr. 2766:5-2768:23 (Blankenhorn: Children should be raised by their biological parents because “kin altruism” ensures that they will get better care from people who are closely related to them. Child outcome studies also indicate that it is optimal for children to be raised by their biological mother and father.).
- Tr. 2767:22-2768:1 (Blankenhorn: The “accumulating weight of evidence [shows] that the optimal environment for children is if they are raised from birth by their own natural mother who is married to their own natural father.”).
- DIX2693 (Blankenhorn CV: Three-page CV that does not identify any relevant education or employment except with respect to his association with the Institute for American Values).
- Tr. 2735:15-2736:3 (Blankenhorn: Testifying that the fields of psychology, sociology, and anthropology are relevant to the subjects on which he was being asked to testify, but he had no degrees in any of those subjects).

- 1 • DIX2693, Tr. 2732:5-7, 2732:16-25 (Blankenhorn: Has a master’s degree in
2 comparative labor history and completed his thesis on the study of two
3 cabinetmakers’ unions in 19th century Britain.).
- 4 • Tr. 2897:11-2899:13 (Blankenhorn: Testified that he was just “repeating”
5 things said by others and serving as a “transmitter” of findings by others).
- 6 • Tr. 2797:24-2798:3 (Blankenhorn: “Q. Are you aware of any studies showing
7 that children raised from birth by a gay or lesbian couple have worse outcomes
8 than children raised from birth by two biological parents? A. No, sir.”).
- 9 • Tr. 2931:25-2933:5 (Blankenhorn: Blankenhorn was aware of multiple peer-
10 reviewed articles that had reached the conclusion that “children with lesbian or
11 gay parents are comparable with children with heterosexual parents on key
12 psychosocial developmental outcomes.”).
- 13 • *See* evidence cited in support of PFFs 260-271, 274-280.
- 14 • Tr. 2797:24-2798:3 (Blankenhorn: “Q. Are you aware of any studies showing
15 that children raised from birth by a gay or lesbian couple have worse outcomes
16 than children raised from birth by two biological parents? A. No, sir.”).
- 17 • Tr. 2931:25-2933:5 (Blankenhorn: Blankenhorn was aware of multiple peer-
18 reviewed articles that had reached the conclusion that “children with lesbian or
19 gay parents are comparable with children with heterosexual parents on key
20 psychosocial developmental outcomes.”).
- 21 • Tr. 2803:6-15 (Blankenhorn: “[A]dopting same-sex marriage would be likely
22 to improve the well-being of gay and lesbian households and their children.”).
- 23 • Tr. 2839:11-24 (Blankenhorn: “[I]t is almost certainly true that gay and
24 lesbian couples and their children would benefit by having gay marriage.”).

25 PFF 274. The evidence introduced by Proponents does not support Mr. Blankenhorn’s
26 conclusion that there is a large body of scholarship stating that the optimal child
27 outcome occurs when children are raised by their natural mothers and fathers.

- 28 • Tr. 2797:24-2798:3 (Blankenhorn: “Q. Are you aware of any studies showing
that children raised from birth by a gay or lesbian couple have worse outcomes
than children raised from birth by two biological parents? A. No, sir.”).
- Tr. 2767:16-2768:1 (Blankenhorn: Asserting that the “accumulating weight of
evidence [shows] that the optimal environment for children is if they are raised
from birth by their own natural mother who is married to their own natural
father.”).

- DIX0002 at 83, 86 n.63 (Study by Paul Amato, Professor of Family Sociology and Demography, Department of Sociology & Crime, Law and Justice, Pennsylvania State University: Including the conclusions that “I considered adoptive parents to be the same as biological parents” and that “[r]egardless of family structure, the quality of parenting is one of the best predictors of children’s emotional and social well-being”).
- DIX0026 at 6 (*Child Trends* report: Discussing the importance of two biological parents, as compared to “Children in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships,” but not analyzing marriages by same-sex couples).
- DIX0124 at 2 (Study by McLanahan and Sandefur: Concluding that children who grow up with only one biological parent are worse off than those who grow up with two, but not evaluating or comparing biological to adoptive parents or heterosexual to homosexual parents, acknowledging that the processes within households (rather than the biology or gender of the parent) account for child outcomes, and noting: “But are single motherhood and father absence therefore the root cause of child poverty, school failure and juvenile delinquency? Our findings lead us to say no.”).
- DIX0108 at 229 (Blankenhorn, *Fatherless America*: Blankenhorn previously proposed “encouraging unmarried girls to give up their babies for adoption by married couples” to increase male responsibility.).
- See evidence cited in support of PFFs 275-276.

PFF 275. The research that opponents of allowing gay and lesbian couples to marry use to support their contention that gay and lesbian individuals are not fit parents is not based on studies involving same-sex parents.

- Tr. 1012:5-1014:7 (Lamb: Statistics that compare child adjustment outcomes in single-parent versus two-parent families are not drawn from studies on the children of same-sex parents. These studies are consistent with the broader body of research on the factors that account for child development and do not demonstrate that the absence of a father in and of itself causes children to be more likely to have poor child adjustment outcomes.).
- Tr. 1186:8-14 (Lamb: Research on father absence is usually used to describe “heterosexual families in which single heterosexual women are raising their children, either by choice or as a result of a family dissolution.”).
- Tr. 1187:13-1189:6 (Lamb: Research on father absent-, divorced-, and step-families does not tell us anything about the adjustment of children with gay or lesbian parents. Gay and lesbian parents should be studied as a discrete category when studying the adjustment of their children.).

- Tr. 1190:7-17 (Lamb: The most appropriate control group when studying children raised by same-sex couples is to compare that group of children to children being raised by heterosexual couples because there are unmarried parents in both of those groups. This methodology is consistent with how research in this area has been conducted.).
- Tr. 1198:7-1201:20 (Lamb: There is only one study that finds that children raised by gay and lesbian parents have problems, and most people in the field of studying children’s adjustment share concerns about the study’s reliability. In contrast, Lamb relied on hundreds of studies that make it “clear that having a gay or lesbian parent does not make children more likely to be maladjusted than if those children were raised by heterosexual parents.”).

PFF 276. Indeed, the research on “intact families” treats the biological link as irrelevant by considering adoptive and biological parents as part of the same cohort.

- Tr. 1190:18-1194:21 (Lamb: In the field of developmental psychology, the phrase “biological parent” is often used to refer to both adoptive and genetic parents who have raised a child continuously from birth.).
- PX1040 at 6 fn. 3 (Study by Robert A. Johnson, John P. Hoffmann, and Dean R. Gerstein: “[M]ost studies do not distinguish biological parents from adoptive parents since the latter is a rare family form in virtually all studies. Presumably, though, families in which both parents have adopted the child are to be considered intact.”).
- DIX2 at 83, 96 (Review by Paul R. Amato: “Regardless of family structure, the quality of parenting is one of the best predictors of children’s emotional and social well-being”; “I considered adoptive parents to be the same as biological parents.”).
- PX0779, PX1100, PX1108 (Examples of studies on adoption and the use of assisted reproductive technologies. These studies demonstrate that children who are not biologically related to one or both of their parents are just as likely to be well adjusted as children being raised by their biological parents.).
- Tr. 1194:14-21 (Lamb: Stating that Proponents’ withdrawn expert, Dr. Loren Marks, was correct to withdraw his emphasis on the word “biological” with respect to his conclusions about the characteristics of an ideal child-rearing environment, because the research does not treat the biological link as determinative of child outcomes.).

PFF 277. Children are advantaged by increasing the durability of the relationship of the people raising them, and the durability of the relationship of a gay couple is enhanced by permitting the gay couple to marry.

- 1 • PX0753 at 339 (JN) (Am. Acad. of Pediatrics, Statement: “Children deserve to
2 know that their relationships with both of their parents are stable and legally
3 recognized. This applies to all children, whether their parents are of the same
4 or opposite sex.”).
- 5 • Tr. 1042:20-1043:16 (Lamb: The ability of same-sex couples to get married
6 can improve the likelihood that their child will achieve a good adjustment
7 outcome. “[B]eing able to consider themselves part of a well-recognized
8 institution, can be beneficial for. . . children.”).
- 9 • Tr. 1105:14-1106:3 (Lamb: Being raised in an intact two-parent family is
10 generally good for children.).
- 11 • DIX2 at 79 (Review by Paul R. Amato: “The risk of relationship dissolution
12 also is substantially higher for cohabiting couples with children than for
13 married couples with children. . . . To the extent that marriage increases union
14 stability and binds fathers more strongly to their children, marriage among
15 cohabiting parents may improve children’s long-term well-being.”).
- 16 • Tr. 343:6-10 (Cott: “[I]t’s clear that couples of the same sex are going to form
17 intimate relationships and rear children of their own or adopted. And it seems
18 to me to the public’s interest for them to be able to do that in marital units that
19 are recognized as such and honored as such.”).
- 20 • PX2545 (Young 11/13/09 Dep. Tr. 82:4-82:12, 86:1-8: Agreeing that children
21 of gay and lesbian couples would be advantaged if their parents were allowed
22 to marry because it would increase the “durability” of their relationship).
- 23 • PX2547 (Nathanson 11/12/09 Dep. Tr. 38:19-39:09: Agreeing that permitting
24 gay and lesbian individuals to marry increases the stability in commitment of
25 their relationship, as well as their happiness, sense of security and well-being).
- 26 • Tr. 2849:12-17 (Blankenhorn: Agreeing that “[e]xtending the right to marry to
27 same-sex couples would probably mean that a higher proportion of gays and
28 lesbians would choose to enter into committed relationships”); *see also*
DIX0956 at 203 (Blankenhorn, *Future of Marriage*).
- PX0787 at 1 (Am. Psychiatric Ass’n, Position Statement on Support of Legal
Recognition of Same-Sex Civil Marriage: Noting the benefits of marriage for
married adults and their children and stating that “[t]he children of unmarried
gay and lesbian parents do not have the same protection that civil marriage
affords the children of heterosexual couples.”).
- PX0752 at 2 (Am. Psychoanalytic Ass’n, Position Statement: “[S]ame-sex
couples and their children are adversely affected by [existing] discriminatory
marriage laws.”).

1 • PX0760 at 1, 4 (Am. Psychoanalytic Ass’n, Position Paper on Gay Marriage:
2 Discriminatory marriage laws adversely affect the children of same-sex
3 couples by stigmatizing those children and making them less financially
4 secure.).

• See also evidence cited in support of PFFs 142-145, 278.

5 PFF 278. Marriage increases the commitment in and stability of a relationship regardless of
6 whether it is a gay, lesbian, or heterosexual relationship.

7 • Tr. 2849:18-23 (Blankenhorn: Agreeing that “[s]ame-sex marriage would
8 likely contribute to more stability and to longer-lasting relationships for
9 committed same-sex couples”); see also DIX0956 at 203 (Blankenhorn, *Future
of Marriage*).

10 • Tr. 590:20-23 (Peplau: “[G]ay men and lesbians don’t have the benefits of
11 marriage, and . . . marriage is for many relationships a stabilizing influence.”).

12 • Tr. 612:19-613:8 (Peplau: Access to civil marriage would further stabilize,
13 legitimate, and validate same-sex relationships.).

14 • Tr. 659:16-22 (Peplau: There are greater social barriers preventing a couple
15 from exiting a marriage than a domestic partnership.).

16 • Tr. 1345:19-1348:13 (Badgett: A study of married same-sex couples in
17 Massachusetts indicated that 72% of respondents felt more committed to their
18 partners as a result of marrying. Badgett expects that she would see similar
19 results in California if same-sex couples could marry.).

• PX1267 at 1 (Report on a survey of the experiences and impact of marriage on
20 same-sex couples in Massachusetts by Christopher Ramos, et al.: “As a result
21 of marrying . . . [o]ver 72% felt more committed to their partners.”).

22 PFF 279. Prop. 8 does not change California’s laws and policies that permit gay and lesbian
23 individuals to have, adopt, or raise children.

24 • PX0001 (California Voter Information Guide for Proposition 8: Noting that a
25 “Yes” vote on Prop. 8 means that only marriage between a man and a woman
26 will be valid in California, but containing no mention of any effort to prevent
27 gay and lesbian individuals from having, adopting or raising children); see also
28 Cal. Const. Art. I, § 7.5 (same).

• PX0709 at RFA No. 22 (Administration admits “that California law does not
prohibit individuals from raising children on the basis of sexual orientation”
and cites California Welf. & Inst. Code § 16013(a), Cal. Fam. Code § 297.5(d),
and *Elisa B. v. Superior Court*, 37 Cal. 4th 108, 113 (2005).).

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- PX0710 at RFA No. 57 (Attorney General admits “that the law of the State of California protects the right of gay men and lesbians in same sex relationships to be foster parents and to adopt children by forbidding discrimination on the basis of sexual orientation.”).
- PX0710 at RFA No. 60 (Attorney General admits “that in determining who shall raise a child and what is in the best interest of a child, the law of the State of California prohibits discrimination on the basis of sexual orientation.”).
- PX0739 at No. 57 (Proponents stipulate that “the State of California allows gay men and lesbians in same-sex relationships to serve as foster parents and to adopt children.”).

PFF 280.

Mr. Blankenhorn admitted that allowing gay and lesbian couples to marry would be likely to “improve the well-being of gay and lesbian households and their children.” He testified allowing same-sex couples to marry would result in fewer children growing up in state institutions and more children being raised by loving parents, and would in fact reduce the divorce rate, reduce promiscuity, improve the stability of couples’ relationships, increase wealth for families and lead to a decline in “anti-gay prejudice” and “anti-gay hate crimes.”

- Tr. 2803:13-15 (Blankenhorn: “I believe that adopting same-sex marriage would be likely to improve the well-being of gay and lesbian households and their children.”).
- Tr. 2839:22-24 (Blankenhorn: “[I]t is almost certainly true that gay and lesbian couples and their children would benefit by having gay marriage.”).
- Tr. 2843:11-2853:12 (Blankenhorn: Agreeing that allowing same-sex couples to marry is likely to have at least 13 of the 23 possible positive consequences identified in his book, *The Future of Marriage* (DIX 0956)).
- DIX0956 at 202-05 (David Blankenhorn, *The Future of Marriage*: A seminar co-convened and chaired by Blankenhorn assembled a list of 23 “Positive Consequences” of allowing same-sex couples to marry: (1) meeting the stated needs and desires of gays and lesbians, (2) extending the benefits of marriage to gays and lesbians, (3) more gay and lesbian people choosing to enter committed relationships, (4) more stability and longer-lasting relationships for same-sex couples, (5) less sexual promiscuity, (6) greater acceptance of homosexual love and intimacy, (7) “a victory for the worthy ideas of tolerance and inclusion,” and “a victory for, and another key expansion of, the American idea,” (8) reaffirmation of society’s commitment to social justice, (9) expanding the concept of human rights, (10) decline in anti-gay prejudice and

1 hate-crimes, (11) increased wealth-accumulation and higher living standards
 2 for gays and lesbians, (12) making marriage more universally accessible, (13)
 3 demonstration that marriage can be an adaptive social form, (14) decline of
 4 “marriage lite” schemes such as civil unions, which can harmfully blur the
 5 distinction between marriage and non-marriage, (15) reduced number of gays
 6 and lesbians unhappily marrying people of the opposite sex, (16) reduced
 7 number of younger Americans who believe that marriage is an outdated and
 8 discriminatory institution, (17) increased birth rate, (18) more children growing
 9 up in loving adoptive foster-families, (19) valuable national discussion of
 10 marriage’s benefits, (20) end to today’s socially divisive and distracting debate
 11 over gay marriage, (21) reduction in gender stereotypes, (22) new scholarly
 12 research on a variety of topics related to marriage and parenting, and (23)
 13 valuable local experimentation in matters of marriage and marriage law).

9 **D. There Is No Evidence That Excluding Gay and Lesbian Individuals From**
 10 **Marriage Promotes Administrative Convenience**

11 PFF 281. In their Trial Memorandum, Proponents claimed that the evidence will show that Prop.
 12 8 furthers the following interests: (1) “Using different names for different things”; (2)
 13 “Maintaining the flexibility to separately address the needs of different types of
 14 relationships”; (3) “Ensuring that California marriages are recognized in other
 15 jurisdictions”; and (4) “Conforming California’s definition of marriage to federal
 16 law.” Doc # 295 at 7-8. Proponents presented no credible, reliable evidence that
 17 excluding same-sex couples from marriage would further these purported interests,
 18 and the evidence presented at trial demonstrates that Prop. 8 does not further them.

- 19 • See evidence cited in PFFs 282 and 283.

20 PFF 282. Relationships of same-sex couples are not “different” from relationships between
 21 opposite-sex couples in any meaningful or relevant way. In fact, same-sex couples
 22 form lasting, committed relationships and are fundamentally similar to opposite-sex
 23 couples.

- 24 • See evidence cited in Section V.

25 PFF 283. Prop. 8 does not further any purported state interest in administrative convenience
 26 because it has resulted in a crazy quilt of marriage regulations in the State that
 27 involves five categories of citizens: (1) Those in opposite-sex couples, who are
 28

1 permitted to marry, and to remarry upon divorce; (2) those who comprise the 18,000
 2 same-sex couples who were married after the California Supreme Court's decision in
 3 the *Marriage Cases* but before the enactment of Prop. 8, whose marriages remain
 4 valid but who are not permitted to remarry upon divorce; (3) those who are in
 5 unmarried same-sex couples, who are prohibited by Prop. 8 from marrying and
 6 restricted to the status of domestic partnership; (4) those same-sex couples who
 7 entered into a valid marriage outside of California *before* November 5, 2008 are
 8 treated as married under California law, but are not permitted to remarry within the
 9 state upon divorce; and (5) those same-sex couples who entered into a valid marriage
 10 outside of California *on or after* November 5, 2008 are granted the rights and
 11 responsibilities of marriage, but not the designation of "marriage" itself.

- 12 • See evidence cited in support of PFF 101.

13 **E. Excluding Same-Sex Couples from Marriage Does Not Further Any Alleged**
 14 **Interest in Protecting the First Amendment Rights of Those Who Oppose**
 15 **Allowing Them to Marry**

16 PFF 284. In their Trial Memorandum, Proponents claimed that the evidence would show that
 17 Prop. 8 furthers the following interests: (1) "Preserving the prerogative and
 18 responsibility of parents to provide for the ethical and moral development and
 19 education of their own children"; and (2) "Accommodating the First Amendment
 20 rights of individuals and institutions that oppose same-sex marriage on religious or
 21 moral grounds." Doc # 295 at 7-8. Proponents further claimed that the evidence
 22 would show that Prop. 8 prevents a number of related harms because allowing same-
 23 sex couples to marry would: (1) "Render the traditional definition of marriage
 24 embraced by millions of Christian, Jewish, and Muslim Americans no longer legally
 25 or socially acceptable, thereby probably forcing many of these Americans to choose
 26 between being a believer and being a good citizen"; (2) "Lead to new state-imposed
 27 restrictions of First Amendment freedoms"; and (3) "Force some religious
 28 organizations now receiving public support to cease providing charitable services to

1 the poor and to others.” *Id.* at 10. Proponents presented no credible, reliable evidence
 2 that excluding same-sex couples from marriage would promote these purported
 3 interests or prevent these alleged “harms.” Indeed, Proponents presented no evidence
 4 whatsoever that permitting gay and lesbian individuals to marry would alter existing
 5 First Amendment freedoms.

6 **F. Not Only Do No Rational or Legitimate Justifications Support Prop. 8, But the**
 7 **Evidence Demonstrates That Prop. 8 Was Driven by Animus Towards, and**
 8 **Moral Disapproval of, Gay and Lesbian Individuals**

9 PFF 285. The express and stated purpose of Prop. 8 was to strip gay and lesbian individuals of
 10 constitutional rights afforded to them by the California Constitution and to impose a
 11 special disability on gay and lesbian individuals alone by denying them state
 12 constitutional protections that apply to all other citizens.

- 13 • PX0001 at 9 (California Voter Information Guide: “Changes California
 14 Constitution to eliminate the right of same-sex couples to marry.”).
- 15 • PX2864 at 7 (JN) (Amicus brief in *Strauss v. Horton*, by Professors Eskridge
 16 and Cain: “In contrast to Proposition 115, which applied to all citizens who
 17 might in the future be charged with a crime, Proposition 8 takes away a
 18 fundamental constitutional right from just a minority. In contrast to
 19 Proposition 14, where the discrimination was found in the motivations of
 20 proponents, discrimination is on the face of Proposition 8.”).
- 21 • Tr. 1962:17-1963:8 (Tam: Tam gets “very very upset” about the idea of
 22 children thinking about marrying people of the same sex, but he is reassured by
 23 knowing that gay couples are not allowed to get married so that parents can
 24 explain to their children that gay couples can enter domestic partnerships, “‘but
 25 it is not ‘marriage.’” He is comforted because this difference is “something
 26 that is very easy for our children to understand.”).
- 27 • PX2343A at 5-6 (Pro-Prop. 8 fliers translated from Chinese: “[l]egal marriage
 28 must meet moral standards and consider posterity. It cannot use equality as its
 standard” (at 5); “Using ‘demanding equal treatment’ as a reason to obtain
 rights is an argument often used by homosexuals. It is also a scary reason.
 Demanding equal treatment at work is acceptable but not so for marriage.”(at
 5-6)).
- PX1867 at 29:17-30:2 (Transcript of the simulcast entitled “ABCs of
 Protecting Marriage” held 15 days before the election: Ms. Ana Samuel, a
 lecturer at Princeton University explained that “Laws can have a tremendous

1 effect on the way we view marriage and if we have same-sex marriage
 2 legalized, it's really giving implicitly our political blessing to this thing. It's
 3 not just kind of an it's okay. It's an affirmation that it's just as good. And then
 4 we're going to have this society that eventually is going to come to believe it
 5 over generations."); *see also* PX0503 (video of same).

- 6 • PX2150 (Mailer "Paid for by ProtectMarriage.com—Yes on 8:" "four activist
 7 judges on the Supreme Court in San Francisco ignored four million voters and
 8 imposed same-sex marriage on California. Their ruling means it is no longer
 9 about 'tolerance.' Acceptance of Gay Marriage is Now Mandatory [sic].").

10 PFF 286. The adoption of Prop. 8 was motivated by an intent to discriminate against, and
 11 animus towards, gay and lesbian individuals.

- 12 • PX0001 at 9 (California Voter Information Guide: "Changes California
 13 Constitution to eliminate the right of same-sex couples to marry.").
- 14 • PX0001 at 128 (California Voter Information Guide stating the text of
 15 Proposition 8: "Only marriage between a man and a woman is valid or
 16 recognized in California.").
- 17 • PX2864 at 7 (JN) (Amicus brief in *Strauss v. Horton*, by Professors Eskridge
 18 and Cain: "In contrast to Proposition 115, which applied to all citizens who
 19 might in the future be charged with a crime, Proposition 8 takes away a
 20 fundamental constitutional right from just a minority. In contrast to
 21 Proposition 14, where the discrimination was found in the motivations of
 22 proponents, discrimination is on the face of Proposition 8.").
- 23 • PX2864 at 17 (JN) (Amicus brief in *Strauss v. Horton*, by Professors Eskridge
 24 and Cain: "[M]any prejudiced voters favor any measure that harms or
 25 excludes lesbians, gay men, bisexuals, or transgendered persons, and even
 26 moderate voters are reluctant because of the anti-gay stereotypes . . . that the
 27 state long built into its public education and state policy.").
- 28 • Tr. 424:24-429:6 (Chauncey: Prop. 8 Official Voter Guide evoked fears about
 and contained stereotyped images of gay people.).
- PX0710 at RFA No. 51 (Attorney General admits "that some of the advertising
 in favor of Proposition 8 was based on fear of and prejudice against
 homosexual men and women.").
- Tr. 2608:16-18 (Miller: "My view is that at least some people voted for
 Proposition 8 on the basis of anti-gay stereotypes and prejudice.").
- PX0577 (Article by Frank Schubert and Jeff Flint in *Politics* magazine:
 "[P]assing Proposition 8 would depend on our ability to convince voters that
 same-sex marriage had broader implications for Californians and was not only

1 about the two individuals involved in a committed gay relationship.” (at 44);
 2 “We strongly believed that a campaign in favor of traditional marriage would
 3 not be enough to prevail.” (at 45); “We probed long and hard in countless
 4 focus groups and surveys to explore reactions to a variety of consequences our
 5 issue experts identified.” (at 45); they decided to create campaign messaging
 6 focusing on “how this new ‘fundamental right’ would be inculcated in young
 7 children through public schools.” (at 45); “there were limits to the degree of
 8 tolerance Californians would afford the gay community. They would entertain
 9 allowing gay marriage, but not if doing so had significant implications for the
 10 rest of society.” (at 45); “The Prop. 8 victory proves something that readers of
 11 *Politics* magazine know very well: campaigns matter.” (at 47).)

- 12 • Tr. 548:1-15 (Chauncey: People often hold deeply sincerely religious
 13 convictions that seem timeless, but historians have shown and have seen how
 14 they, in fact, change over time and are naturally shaped by the larger culture in
 15 which they live. Indeed, many people in the South deeply believed that
 16 interracial marriage was against God’s will. These are sincere beliefs, but they
 17 “reflect the larger system of prejudices that had shaped [the belief-holder’s]
 18 understanding of the world.”).

- 19 • *See also* evidence cited in support of PFFs 287-296.

20 PFF 287. Campaign messages supporting Prop. 8 and Yes On 8 proponents stated and implied
 21 that same-sex relationships are immoral.

- 22 • PX1868 at 51:15-24 (Transcript of the Sept. 25, 2008 simulcast entitled “Love,
 23 Power and a Sound Mind”: Reverend Dwight McKissic, Senior Pastor of
 24 Cornerstone Baptist Church in Arlington, Texas stated: “To compare
 25 homosexuality to civil rights is to compare my skin with their sin. That’s
 26 insulting, demeaning and offensive. I believe it’s even racist to compare my
 27 complexion to somebody else’s sin. Homosexuality is a choice and skin color
 28 is not a choice.”); *see also* PX0504 (video of same).
- PX1868 at 77:12-15 (Transcript of the Sept. 25, 2008 simulcast entitled “Love,
 Power and a Sound Mind”: Pastor Miles McPherson stated: “And right now
 kids in kindergarten are being taught what we would call as perversion, and we
 sit around and let it happen.”); *see also* PX0504 (video of same).
- PX1867 at 2:19-20 (Transcript of the simulcast entitled “ABCs of Protecting
 Marriage” held 15 days before the election: Pastor Jim Garlow, creator of the
 Simulcasts promoting Prop. 8, explained that he is working to pass Prop. 8 “to
 turn back the tides of evil”); *see also* PX0503 (video of same).
- PX0401 (“Stand up for Righteousness. Vote Yes on Proposition 8” video,
 featuring Ron Prentice, Tony Perkins and Miles McPherson: An oncoming
 train rushes towards the viewer; “The devil wants to blur the lines between
 right and wrong when it comes to family structure”; “If Prop. 8 fails, it opens

1 up the door for all the other laws that the homosexual agenda wants to enforce
 2 on other people”; “We will see a further demise of the family”; “Our children
 3 are confused about what marriage is”; God is “giving America a second
 4 chance”; and imploring voters to not deny Jesus like Peter did).

- 5 • PX2403 (Email from Kenyn Cureton, Vice President for Church Ministries
 6 with the Family Research Council, to Ron Prentice, Chairman of
 7 ProtectMarriage.com—Yes on 8, in August, 2008: Attaching Stand for
 8 Marriage materials describing homosexuality as a “sin” and “poor misguided
 9 lost people trapped in Satan’s snare” and asserting that “[p]ublic schools will
 10 teach the fully equal status of homosexual and heterosexual conduct based, in
 11 substantial part, on state marriage law. Those who object may find themselves
 12 on the wrong side of the law” in advocating for support of Prop. 8.).
- 13 • Tr. 1960:1-9 (Tam: Tam knows that “domestic partnerships are the same as
 14 marriage, except for the name,” but he still thinks that “just changing the name
 15 of domestic partnerships to marriage will have this enormous moral decay.”).
- 16 • Tr. 1928:6-13 (Tam: Tam thought “permitting gays and lesbians to marry”
 17 would mean “one by one other states would fall into Satan’s hand.”).
- 18 • PX2187 (Flyer promoting an Oct. 19, 2008 rally to “Restore Marriage Protect
 19 Children” sponsored by Traditional Family Coalition and co-sponsored by
 20 ProtectMarriage.com: “It is time the church rise up against the forces of evil
 21 that are destroying families and young souls.”).
- 22 • Tr. 540:5-11 (Chauncey: The Catholic Church and the Baptists strongly
 23 supported Prop. 8.).
- 24 • PX0170 (Website with the Southern Baptist Convention Resolution On The
 25 California Supreme Court Decision To Allow Same-Sex Marriage:
 26 “WHEREAS, Any action giving homosexual unions the legal status of
 27 marriage denies the fundamental Immorality of homosexual behavior
 28 (Leviticus 18:22; Romans 1:26-27; 1 Corinthians 6:9-11). . . . RESOLVED,
 That we encourage all Christian pastors in California and in every other state to
 speak strongly, prophetically, and redemptively concerning the sinful nature of
 homosexuality and the urgent need to protect biblical marriage in accordance
 with God’s Word; and be it further RESOLVED, That we call on all Southern
 Baptists and believers from all denominations everywhere to pray for the
 people of California as they seek to right this terrible wrong that has been
 forced upon them by the California Supreme Court’s overturning of the vote of
 the people and to pray for the people of every state where biblical marriage is
 under attack.”).
- PX0168 (Website with the Resolution from the Southern Baptist Convention:
 “WHEREAS, Legalizing same-sex ‘marriage’ would convey a societal
 approval of a homosexual lifestyle, which the Bible calls sinful and dangerous
 both to the individuals involved and to society at large (Romans 1:24-27; 1

1 Corinthians 6:9-10; Leviticus 18:22); now, therefore, be it . . . RESOLVED, That we oppose all efforts by media and entertainment outlets and public schools to mainstream homosexual unions in the eyes of our children . . . RESOLVED, That we call on Southern Baptists not only to stand against same-sex unions, but to demonstrate our love for those practicing homosexuality by sharing with them the forgiving and transforming power of the gospel of Jesus Christ (1 Corinthians 6:9-11).”).

6 PFF 288. Campaign messages supporting Prop. 8 and Yes On 8 proponents portrayed same-sex relationships and families as inferior. Campaign messages discussing the protection of children were predicated on a belief that same-sex relationships are morally and socially inferior and undesirable, while opposite-sex relationships are superior and life-giving. For example, they indicated that allowing gay people to do what they want in “private” is one thing, while accepting their relationships as equal is another.

- 12 • Tr. 427:16-428:22 (Chauncey: The official Yes on 8 voter arguments are premised on the notion of the inferiority of gay people and their relationships. To argue that the best situation for a child is to be with a married mother and father is to argue that the married heterosexual couple is superior.).
- 15 • PX0027; PX0052; PX0082; PX0093; PX0097; PX0101; PX0119; PX0138; PX0562; PX1556; DIX1374; DIX1412 (Campaign materials: Suggesting that the ideal situation for children is to be raised by a mother and father, implying that homosexual parents would not be able to provide a comparable loving environment).
- 18 • PX0027; PX0090; PX0093; PX0097; PX0119; PX0138; PX0562; DIX1374; DIX1412; DIX1502; DIX1503; DIX1504 (Campaign materials: Suggesting that children need both a mother and a father to ensure a loving environment for children).
- 21 • PX0082 (California Republican Assembly Newsletter: Asserting that different-sex marriage is best for society and for children).
- 23 • PX0097 (Campaign ad: Stating that marriage involves a complex web of social, legal, and spiritual commitments that bind men and women for the purpose of procreation and to create a loving environment for children).
- 25 • PX0090; DIX1503; DIX1504; DIX2460 (Spanish campaign ads: Emphasizing that a mother and a father are essential for children).
- 27 • PX0097 (Campaign ad: Stating that marriage involves a complex web of social, legal and spiritual commitments that bind men and women for the purpose of procreation and to create a loving environment for children).

- 1 • PX1868 at 43:22-24 (Transcript of the Sept. 25, 2008 simulcast entitled “Love,
2 Power and a Sound Mind,” one speaker stated that presenting marriage of gay
3 and lesbian couples as equal to marriage of heterosexual couples “is a radically
4 anti-human thing to say.”); *see also* PX0504 (video of same).
- 5 • PX1867 at 29:17-30:2 (Transcript of the simulcast entitled “ABCs of
6 Protecting Marriage” held 15 days before the election: Ms. Ana Samuel, a
7 lecturer at Princeton University explained that “Laws can have a tremendous
8 effect on the way we view marriage and if we have same-sex marriage
9 legalized, it’s really giving implicitly our political blessing to this thing. It’s
10 not just kind of an it’s okay. It’s an affirmation that it’s just as good. And then
11 we’re going to have this society that eventually is going to come to believe it
12 over generations.”); *see also* PX0503 (video of same).
- 13 • PX0480 at 8:47-48 (Video posted on the American Family Association’s
14 website entitled “Proposition 8 and the Case for Traditional Marriage”: Chuck
15 Colson, founder of the Prison Fellowship Ministries and leader of the Christian
16 conservative movement, refers to heterosexual couples as “the natural moral
17 order of things.”).
- 18 • PX0480 at 12:16-22 (Video posted on the American Family Association’s
19 website entitled “Proposition 8 and the Case for Traditional Marriage”: One
20 commentator states that “[h]omosexuals can only imitate what a man and a
21 woman do by natural design.”).
- 22 • Tr. 1943:16-1944:1 (Tam: Tam wrote that “We hope to convince Asian
23 Americans that gay marriage will encourage more children to experiment with
24 the gay lifestyle, and that that lifestyle comes with all kinds of disease” to
25 convince voters to adopt Prop. 8.).
- 26 • PX2341 (Script and Powerpoint from June 25, 2008 Project Marriage meeting
27 with Pastors and Christian leaders: Arguing that Christians must assist those
28 “struggling with same sex attraction” and preserve traditional, Biblical
marriage between a man and a woman).
- PX2341 at 40 (Email from Bill May of Catholics for the Common Good to
Ned Dolejsi, a member of the ProtectMarriage.com—Yes on 8 executive
committee, in June 2008: Attaching a document written by Jim Garlow
entitled “The Ten Declarations Protecting Biblical Marriage” and presented at
a “Protect Marriage Meeting For Pastors and Christian Leaders” that states:
“[M]aximal sexual fulfillment occurs within one man-one woman
monogamous, covenantal relationships”; “the sustaining of the human race,
occurs exclusively within male-female union.”).
- PX2589 (Email from Ron Prentice, Chairman of ProtectMarriage.com—Yes
on 8: Explaining that he attached “the messages that have come from the
research” and attaching a document entitled “Top Proposition 8 Arguments.”
They include: “1. I do not want public schools to teach elementary school

1 children that gay marriage is okay 3 the ideal situation is for a child
 2 to be raised by a married mother and father in the bond of marriage 5
 3 every child desires to have a mother and a father who are married to each
 4 other. . . . 10. What gays do in their private lives does not bother me, but I do
 5 not want children exposed to it.”).

- 6 • PX0052 (Aug. 4, 2008 e-mail blast from ProtectMarriage.com enclosing “A
 7 Statement of Catholic Bishops of California in support of Proposition 8”:
 8 Explaining that its support of Prop. 8 was based in part on the belief that “[t]he
 9 ideal for the well being of children is born into a traditional marriage and to be
 10 raised by both a mother and a father.”).
- 11 • Tr. 1954:9-1955:15 (Tam: To convince voters to support Prop. 8, he told them
 12 that if Prop. 8 did not pass there would be “social moral decay” and that
 13 “social moral decay” means “if same-sex marriage is legal, it would encourage
 14 children to explore same sex as their future marriage partner. And from the
 15 both Asian cultural and, also, from our Christian angle, we think this is social
 16 moral decay.”).
- 17 • PX0029 (Official Yes on 8 television ad entitled “Whether You Like It Or
 18 Not”: Warning that gay marriage has been imposed on others by the Court,
 19 and alleges that forced acceptance of gays will be detrimental to children, to
 20 churches, and to people who can purportedly be sued for personal beliefs if
 21 Prop. 8 does not pass.).

22 PFF 289. Campaign messages supporting Prop. 8 and Yes On 8 proponents played on the
 23 public’s fear that children would be taught that gay and lesbian individuals and their
 24 relationships are equal to those of heterosexual individuals and were premised on the
 25 idea that same-sex relationships and homosexuality are immoral and wrong.

- 26 • PX0001 (Prop. 8 ballot arguments in the Voter Information Guide:
 27 “*It protects our children* from being taught in public schools that ‘same-sex
 28 marriage’ is the same as traditional marriage.
 Proposition 8 protects marriage as an essential institution of society. While
 death, divorce, or other circumstances may prevent the ideal, the best situation
 for a child is to be raised by a married mother and father
 We should not accept a court decision that may result in public schools
 teaching our kids that gay marriage is okay. That is an issue for parents to
 discuss with their children according to their own values and beliefs. *It
 shouldn’t be forced on us against our will*
 Proposition 8 DOES NOT take away any of those rights and does not interfere
 with gays living the lifestyle they choose.
 However, while gays have the right to their private lives, *they do not have the
 right to redefine marriage* for everyone else.” (emphases in original)).

- 1 • Tr. 427:16-429:6 (Chauncey: The voter arguments in favor of Prop. 8 are
2 premised on the notion of the inferiority of gay people and their relationships.
3 These arguments also focus on children—while they do not refer to gays as
4 child molesters, they do warn that we should not teach our children that gay
5 marriage is okay; that it should not be forced on us against our will. For
6 Chauncey, the statement “protects our children” evokes the question: Protects
7 them against what? It evokes the language of “saving our children;” the need
8 to protect children from exposure to homosexuality; not just from exposure to
9 homosexuals as presumed child molesters, but the need to protect them from
10 the idea of openly gay people.).
- 11 • Tr. 529:9-20 (Chauncey: The language of Prop. 8 itself does not say anything
12 about when sex education takes place, what parents can teach their children,
13 what schools or parents should discuss with children and when, or what parents
14 can object to in terms of school’s teachings.).
- 15 • Tr. 436:12-437:15 (Chauncey: PX1775A is Photograph of a Yes on 8
16 campaign ad depicting a presumably married couple with their child. There is
17 an indication of protecting marriage and of protecting the child, which begs the
18 question: What are we protecting the children from?).
- 19 • Tr. 438:6-439:6 (Chauncey: PX1763 is a Yes on 8 official campaign flyer that
20 reiterates the theme of protecting California’s children from exposure to gay
21 people, the idea of gay equality, the full recognition of gay relationships, and
22 the equality of gay relationships.).
- 23 • Tr. 431:14-432:11 (Chauncey: These Yes on 8 television ads convey a number
24 of themes, including the inequality of gay people and their relationships; the
25 fear that something is being forced on people. To Chauncey, the most striking
26 theme is the idea that people have to protect their children from two things—
27 exposure to the idea of gay marriage, which is a sign of the full equality of gay
28 people, and also exposure to gay people that could lead children who have
unstable sexual identities to become gay. The underlying message is about the
undesirability of homosexuality—“that we do not want our children to become
this way.”).
- PX0012; PX0027; PX0049; PX0075; PX0093; PX0119; PX0126; PX0138;
PX1551; PX2151; DIX1374; DIX1412 (Campaign materials: Asserting that
unless Prop. 8 passes public schools will be compelled to teach children that
there is no difference between marriages of gay and lesbian couples and
marriages of heterosexual couples, implying that marriages of same-sex
couples are lesser than marriages of opposite-sex couples).
- PX0098 (Campaign television ad: Asking viewers to think about why
marriage by gay and lesbian couples “was forced on us” and what the
consequences are to children).

- 1 • PX0099 (“It’s Already Happened” video paid for by ProtectMarriage.com:
2 “Teaching children about gay marriage will happen here unless we pass
3 Proposition 8”; “Protect our children; restore marriage.”).
- 4 • PX0008; PX0095; PX0096; PX0098; PX0100; PX0116; DIX1494; DIX1495;
5 DIX1497 (English and Spanish campaign television and radio ads: Warning
6 that children are already starting to be taught about gay marriage in schools,
7 that public schools will be compelled to teach about marriages by gay and
8 lesbian couples unless Prop. 8 passes, and that parents will not have the right to
9 remove their children from the classroom or a right to prior notice when
10 teachers discuss the fact that gay and lesbian couples are allowed to marry).
- 11 • PX0008; PX0080; PX0138; DIX1495 (Campaign materials: Asserting that
12 Prop. 8 ensures that parents will have control over when and how their children
13 are taught about marriages by gay and lesbian couples).
- 14 • PX0080 (Asian American Community Newsletter & Voter Guide: “If Prop. 8
15 is not passed, schools will be able to tell children that same-sex marriage is
16 ok.”).
- 17 • PX0390 at 7:56-8:23 (ProtectMarriage.com—Yes on 8 Chairman, Ron
18 Prentice, tells people at a religious rally that in early 2005 explains that “If we
19 don’t protect it than every public school child will be indoctrinated. . . . If we
20 don’t protect traditional marriage, if we don’t restore it, then every child in
21 public school will be taught that there is no difference between same sex
22 marriage and traditional marriage.”).
- 23 • PX0390 at 9:07-9:32 (ProtectMarriage.com—Yes on 8 Chairman, Ron
24 Prentice, “And all it took when we asked someone, do you plan to vote yes,
25 plan to vote no, or are you somewhere in the mushy middle, if they weren’t a
26 solid yes, 80% of the time all it took was to tell them did you know that every
27 public school child will be taught this? ‘Oh!’ And they would flip. And that’s
28 the role that we have to play with our family, with our friends, and our
neighbors.”).
- PX0514 (Article concerning Prop. 8 debate: “Pro-prop. 8 panelists argued that
‘common sense’ dictated that the historic nature of marriage as an institution
between a man and a woman could not be expanded to include same-sex
couples. They also insisted that children would be harmed because they would
be subjected to education on homosexuality in public schools if Prop. 8 failed
to pass. ‘Asian parents feel the government is taking away their right to teach
their children what is right or wrong,’ said Bill Tam, executive director of the
Traditional Family Council. ‘[State Superintendent of Public Instruction, Jack]
O’Connell claims that schools aren’t going to teach same-sex marriage in
schools but that’s an insult to our intelligence—it’s already happening.’ . . .
Tam insisted that interracial marriage couldn’t be compared to gay marriage
because it was still between a man and woman and included the potential for

1 having biological children. Further, Tam said, race and sexual orientation
2 were not comparable.”).

- 3 • PX0563; DIX1376 (Campaign materials: Arguing that voters should not
4 accept a court decision that results in “public school teachers teaching our kids
5 that gay marriage is acceptable”).
- 6 • PX1868 at 22:16-24 (At a Sept. 25, 2008 simulcast entitled “Love, Power and
7 a Sound Mind,” Tony Perkins, President of the Family Research Council,
8 states that “We know that families find themselves in some very awkward
9 situations when even their elementary age children come home from school
10 having been read a book about same sex marriage that affirms it. If same sex
11 marriage is legalized, then it must be taught as normal, acceptable and moral
12 behavior in every public school.”); *see also* PX0504 (video of same).
- 13 • PX1868 at 25:16-26:2 (At a Sept. 25, 2008 simulcast entitled “Love, Power
14 and a Sound Mind,” a parent of a child attending a Massachusetts public
15 school that was given a book about families that included families of same-sex
16 couples, worried when his child’s public school told him that “same sex
17 marriage is legal in Massachusetts. Therefore, we can broach it anytime with
18 your child. And when they are putting forward that it’s equal, they’re putting
19 forward that it’s a morally equal alternative and affirming it in the minds of
20 children.”); *see also* PX0504 (video of same).
- 21 • PX2150 (Mailer “Paid for by ProtectMarriage.com—Yes on 8:” “It protects
22 our children from being taught in public schools that ‘same-sex marriage’ is
23 the same as traditional marriage.”; “Same-sex marriage threatens the education
24 of our children. . . . since California law already provides children as young as
25 kindergarten be taught about marriage, gay marriage will be taught in our
26 schools too!”).
- 27 • PX2150 (Mailer “Paid for by ProtectMarriage.com—Yes on 8:” Stating: “Will
28 gay marriage really be taught in public schools unless Prop. 8 is adopted? Yes.
The subject is required to be taught in 96% of California public schools. . . .
We should not accept a court decision that forces gay marriage on young
children in California school just as it is in Massachusetts.”); *see also* PX2156
(a flier entitled “Myths and Facts about Proposition 8” containing nearly
identical language).

PFF 290. Campaign messages supporting Prop. 8 and Yes On 8 proponents echoed fears that
children must be “protected” from gay and lesbian people and exposure to them and
their relationships, and that permitting same-sex couples to marry might encourage
children to become homosexual themselves.

- 1 • PX0015, PX0016, and PX0091 (Official Yes on 8 television ads entitled,
2 respectively, “Finally The Truth,” “Have You Thought About It?,” and
3 “Everything To Do With Schools”: Each ad threatens potential consequences
4 to children if Prop. 8 does not pass.).
- 5 • PX0513 (“What If We Lose” letter from Bill Tam concerning Prop. 8:
6 “This November, San Francisco voters will vote on a ballot to ‘legalize
7 prostitution’. This is put forth by the SF city government, which is under the
8 rule of homosexuals. They lose no time in pushing the gay agenda—after
9 legalizing same-sex marriage, they want to legalize prostitution. What will be
10 next? On their agenda list is: legalize having sex with children
11 We can’t lose this critical battle. If we lose, this will very likely happen
12 1. Same-Sex marriage will be a permanent law in California. One by one,
13 other states would fall into Satan’s hand.
14 2. Every child, when growing up, would fantasize marrying someone of the
15 same sex. More children would become homosexuals. Even if our children is
16 safe, our grandchildren may not. What about our children’s grandchildren?
17 3. Gay activists would target the big churches and request to be married by
18 their pastors. If the church refuse, they would sue the church.”); *see also*
19 PX2507.
- 20 • Tr. 553:23-554:14 (Chauncey: Dr. Tam’s “What If We Lose” letter is
21 consistent in its tone with a much longer history of anti-gay rhetoric. It
22 reproduces many of the major themes of the anti-gay rights campaigns of
23 previous decades and a longer history of anti-gay discrimination.).
- 24 • PX0116 (Campaign ad featuring the Wirthlins: Warning that redefining
25 marriage has an impact on every level of society, especially on children, and
26 claiming that in Massachusetts homosexuality and gay marriage will soon be
27 taught and promoted in every subject, including math, reading, social studies,
28 and spelling).
- Tr. 530:24-531:11 (Chauncey: The Wirthlins’ long ad also implies that the
very exposure to the idea of homosexuality somehow threatens children and
threatens their sexual identity, as if homosexuality is a choice. In addition, it
suggests that the fact that gay people are being asked to be recognized and
have their relationships be recognized is an imposition on other people, as
opposed to an extension of fundamental civil rights to gay and lesbian people.).
- Tr. 1579:5-21 (Segura: “[O]ne of the enduring . . . tropes of anti-gay
argumentation has been that gays are a threat to children. . . . [I]n the Prop. 8
campaign [there] was a campaign advertisement saying, . . . ‘At school today, I
was told that I could marry a princess too.’ And the underlying message of
that is that . . . if Prop. 8 failed, the public schools are going to turn my
daughter into a lesbian.”).

- 1 • PX0015, PX0099, PX0116, PX0350, PX0401 (ProtectMarriage.com videos
2 focusing on the need to protect children).
- 3 • PX0079; PX0097; DIX2460 (Campaign materials: Suggesting that children
4 need “protection” from gays and lesbians).
- 5 • PX0052; PX0101 (Campaign press releases: Announcing that religious
6 organizations endorse Prop. 8 because the ideal situation for a child is to be
7 raised by a mother and father).
- 8 • PX0090; DIX1503; DIX1504; DIX2460 (Spanish campaign ads: Emphasizing
9 that a mother and a father are essential for children).
- 10 • PX0097 (Campaign ad: Stating that marriage involves a complex web of
11 social, legal, and spiritual commitments that bind men and women for the
12 purpose of procreation and to create a loving environment for children).
- 13 • PX0037 (Campaign ad: Explaining that allowing gay and lesbians individuals
14 to marry has “profound implications for all of society—particularly children”).
- 15 • PX1529 (Campaign ad: Showing a series of fallen dominos stating that the
16 “[m]andated acceptance of same-sex ‘marriage’ triggers a series of
17 consequences that affect all Californians, especially our children.”).
- 18 • PX0100 (“It’s Already Happened” campaign television ad (Spanish version):
19 Showing a little girl telling her mother that she learned how she can marry a
20 prince or a princess and explaining that if Prop. 8 fails gay marriage will
21 continue to be taught in California schools).
- 22 • PX0009; PX0012; PX0025; PX0075; PX0080; PX0082; PX0093; PX0102;
23 PX0119; PX0126; PX0136; PX0138; PX0562; PX0563 ; PX2151; DIX1374;
24 DIX1412 (Campaign materials: Warning that children will be taught about
25 marriages by gay and lesbian couples in schools).
- 26 • PX0025 (Campaign ad: Quoting a pastor explaining that “the institution of
27 marriage . . . has always been reserved for a man, the father and a woman, the
28 mother”).
- Tr. 1913:17-1914:12 (Tam: Tam supported Prop. 8 because he thinks “it’s
very important for the next generation to understand the historical meaning of
marriage. It is very important that our children won’t grow up to fantasize or
think about, Should I marry Jane or John when I grow up? Because this is very
important for Asian families, the cultural issues, the stability of the family.”).
- Tr. 1962:17-1963:8 (Tam: Tam gets “very very upset” about the idea of
children thinking about marrying people of the same sex, but that he is
reassured by knowing that gay couples are not allowed to get married so that
parents can explain to their children that gay couples can enter domestic

1 partnerships, “but it is not ‘marriage.’” He is comforted because this
2 difference is “something that is very easy for our children to understand.”).

- 3 • PX2185 at 3-4 (Traditional Family Coalition Newsletter: “One of the worries
4 haunting parents is that their children have been ‘brainwashed’ by the public
5 school and the media into believing that being gay is a fashionable lifestyle”;
6 and that “gay activists are aiming at our young children.”).
- 7 • PX2343A at 3-6 (Pro-Prop. 8 fliers translated from Chinese: “science proves
8 that homosexuality is a changeable ‘sexual preference’. [sic] If ‘sexual
9 preference’ can be listed as a civil right, then ‘pedophilia,’ ‘incest,’ and
10 ‘polygamy’ can also be listed as civil rights” (at 3); “Legalization of same sex
11 marriage would cause more young people to try homosexuality” (at 3); “Facts
12 prove same sex marriage causes society’s ethics to decline and is harmful to
13 children” (at 3); “Studies show that the chance of children growing up in same
14 sex families becoming homosexuals is 4-10 times greater than those growing
15 up in the average family” (at 4); “If homosexuals are allowed to legalize
16 marriage, one day, incest offenders may also use the equal treatment argument
17 to demand for marriage certificates. Social relationships would be in chaos”
18 (at 6); “If homosexuality was a normal behavior, deadly diseases such as
19 AIDS, hepatitis and pneumonia would not exist” (at 6); “homosexuality is an
20 abnormal behavior against nature” (at 6).).
- 21 • PX2343B at 1-4 (Essay by Tam entitled “The Harm to Children from Same
22 Sex Marriage” included in a Chinese language advertisement “supported by . .
23 . ProtectMarriage.com—Yes on 8, a Project of California Renewal”: “The
24 general public does not realize that same sex marriage is only a ‘smoke-screen
25 ploy’ of the homosexual movement. Since most of them lead an indulgent life,
26 many gay men die because of AIDS and other serious illnesses. They need to
27 recruit new blood to become homosexuals. Also, the objects of play for many
28 homosexuals are youth and children, which attracts children to become
homosexuals and is the main method to maintain homosexual numbers and a
sense of freshness. If same sex marriage were legalized, it would be much
easier than it is now to attract children. . . . Furthermore, television, movies,
toys and entertainment media, because of the new market, would produce large
quantities of homosexual products. Feminine men or masculine women would
become fashionable. Can our children resist the temptation of such a trend?”
(at 1); “Another demand following same sex marriage would be the lowering
of the legal age for intercourse. In Europe, when a country lowered the legal
age for intercourse, most of those celebrating and dancing on the streets were
homosexuals.” (at 1); “Furthermore, legalizing drugs, prostitution and
polygamy are also the ultimate goals of the homosexual movement” (at 2); “In
Denmark, same sex marriage was legalized in the early nineties. Now, sex
education CDs produced with the permission of the Education Ministry of
Denmark include pictures of ‘man-and-animal intercourse’ and ‘man eating
feces’ (note: eating feces is an example of one type of homosexual
intercourse.) . . . Recently in Quebec, Canada, almost all cases of venereal

1 disease are from homosexuals. Yet, the Canadian government still wants to
2 legalize same sex marriage” (at 2); “If Proposition 8 is Not Passed . . . Young
3 people’s idea of sexual morality will be twisted. . . . The possibility of our
4 posterity becoming homosexuals will definitely increase.”(at 3)).

- 5 • Tr. 558:16-560:12 (Chauncey: Dr. Tam’s deposition testimony displays the
6 deep fear about the idea that simple exposure to homosexuality or to marriages
7 of gay and lesbian couples would lead children to become gay. And the issue
8 is not just marriage equality itself—it is sympathy to homosexuality. They
9 oppose the idea that children could be introduced in school to the idea that
10 there are gay people in the world. It is also consistent with the idea that
11 homosexuality is a choice and there is an association between homosexuality
12 with disease.).
- 13 • PX0480 at 15:45-58 (In a video posted on the American Family Association’s
14 website entitled “Proposition 8 and the Case for Traditional Marriage,” Ron
15 Prentice, Chairman of ProtectMarriage.com—Yes on 8, states: “If traditional
16 marriage goes by the wayside, then in every public school, children will be
17 indoctrinated with a message that is absolutely contrary to the values that their
18 family is attempting to teach them at home.”).
- 19 • PX1867 at 15:18-21 (At a simulcast entitled “ABCs of Protecting Marriage”
20 held 15 days before the election, Pastor Jim Garlow states: “Children in public
21 schools are being impacted enormously; even un-church people realize how
22 inappropriate it is for schools to be teaching on this topic.”); *see also* PX0503
23 (video of same).
- 24 • PX1867 at 16:23-17:19 (At a simulcast entitled “ABCs of Protecting
25 Marriage” held 15 days before the election, a parent of a child in
26 Massachusetts explained to the audience that he “went into the schools and
27 found out that they have books like this all throughout the school in every
28 classroom and that there’s going to be teacher-initiated discussions with the
children to affirm, embrace and even celebrate gay marriage and homosexual
relationships. We asked for parental notification before they do it, uh, to let us
know so we can talk to our children first or have the option to opt out. They
said amazingly, no, you do not have that right.”); *see also* PX0503 (video of
same).
- PX1867 at 20:3-14 (At a simulcast entitled “ABCs of Protecting Marriage”
held 15 days before the election, a parent of a child in Massachusetts explained
to the audience that he worries about “people forcing their will and forcing
their worldview and beliefs not only on you as citizens but now on the
youngest, most impressionable children who they know very well are very
easy to manipulate and—and indoctrinate into their belief system, behind your
back and against their will. . . . Parental rights are at stake here and the rights
of—to defend the childrens’ [sic] innocence.”); *see also* PX0503 (video of
same).

- 1 • PX0506 at 10 (Transcript of Simulcast conducted by Miles McPherson called
2 “The Fine Line” and directed at younger voters: “We’ll see indoctrination in
3 schools. For example in 2007 the only other state that allowed same sex
4 marriage besides California is Massachusetts. In 2007 a judge passed a ruling
5 that said every young person in Massachusetts will be taught the homosexual
6 lifestyle. Even Christian kids in a public school.”); *see also* PX0505 (video of
7 same).
- 8 • PX2150 (Mailer “Paid for by ProtectMarriage.com—Yes on 8:” “four activist
9 judges on the Supreme Court in San Francisco ignored four million voters and
10 imposed same-sex marriage on California. Their ruling means it is no longer
11 about ‘tolerance.’ Acceptance of Gay Marriage is Now Mandatory [sic].”).
- 12 • PX0560 (Memorandum created by ProtectMarriage.com entitled “Media
13 Advisory: New YouTube Video Clarifies Yes on 8 Proponents’ Concerns:
14 Education and Protection of Children is at Risk:” “Since the California
15 Supreme Court narrowly overturned the will of the voters and allowed gay
16 marriage, children as young as kindergarten have been exposed to
17 indoctrination on gay lifestyles . . . Should Proposition 8 fail, gay activists will
18 be able to force gay marriage to be taught as part of our school health
19 curriculum and other matters of sexual orientation.”).
- 20 • PX2595 (Flier urging voters to “Vote Yes on Prop. 8” included the following
21 reasons for supporting Prop. 8: “Proposition 8 protects children from being
22 taught in schools that same sex marriage = traditional marriage;” “Proposition
23 8 protects the right of children to have both father and mother as role models;”
24 “Proposition 8 protects against social moral decay;” “If a ‘sexual orientation’ is
25 categorized as a civil right, then so would pedophilia, polygamy and incest;”
26 “children need parents of both genders;” and “Countries that legalized same
27 sex marriage saw alarming moral decline”).
- 28 • PX1556 (Campaign update: Describing an op-ed by David Blankenhorn in the
Los Angeles Times about the alleged detrimental effects on children of
allowing gay and lesbian couples to marry).
- Tr. 560:6-561:3; PX0515 (Chauncey: Tam’s comments to press during Prop. 8
campaign that “We hope to convince Asian-Americans that gay marriage will
encourage more children to experiment with the gay lifestyle and that the
lifestyle comes with all kinds of disease” is consistent with the messaging in
earlier campaigns, the persistent theme that homosexuality is a choice, that
children who are exposed to homosexuality in any form are likely to become
homosexuals, and the association of homosexuality with disease, and that any
measure that grants equality in any form to gay people would “legitimize
homosexuality and gay life as a legitimate equal part of our society.”
- Tr. 1954:9-1955:15 (Tam: To convince voters to support Prop. 8, he told them
that if Prop. 8 did not pass there would be “social moral decay” and that

1 “social moral decay” means “if same-sex marriage is legal, it would encourage
2 children to explore same sex as their future marriage partner. And from the
3 both Asian cultural and, also, from our Christian angle, we think this is social
4 moral decay.”).

5 PFF 291. Campaign messages supporting Prop. 8 and Yes On 8 proponents employed some of
6 the most enduring anti-gay stereotypes—many of which reflect messages from prior
7 anti-gay campaigns—to heighten public apprehension, including messages that
8 homosexuals recruit and molest children, that gay and lesbian relationships are
9 immoral or bad and should be kept “private” and not flaunted or made public, and that
10 there is a powerful homosexual “lobby” or “agenda” intent on destroying heterosexual
11 families and denying religious freedom.

- 12 • Tr. 429:15-430:8, 431:17-432:11, 436:25-437:15, 438:8-439:6, 529:25-531:11;
13 PX0015; PX0016; PX0029; PX0091; PX0099; PX1775; PX1775A (*see* Tr.
14 461:21-462:18); PX1763 (Chauncey: The campaign television and print ads
15 focused on protecting children and the concern that people of faith and
16 religious groups would somehow be harmed by the recognition of gay
17 marriage. They conveyed a message that gay people and relationships are
18 inferior, that homosexuality is undesirable, and that children need to be
19 protected from exposure to gay people and their relationships. The most
20 striking image, to Chauncey, is of the little girl who comes in to tell her mom
21 that she learned that a prince can marry a prince, which strongly echoes the
22 idea that the simple exposure to gay people and their relationships is going to
23 somehow lead a generation of young people to become gay. They conveyed a
24 message used in earlier campaigns that when gay people seek any recognition
25 this is an imposition on other people rather than a simply an extension of civil
26 rights to gay people.).
- 27 • Compare above with Tr. 412:23-413:1, 418:11-419:22, 420:3-20; PX1621,
28 PX0864 at 303 (Chauncey: Describing one of earliest anti-gay referenda
campaigns with more overt messaging of similar content).
- PX0008; PX0025; PX1565 (Campaign materials: Warning that unless Prop. 8
passes children will be exposed to indoctrination on gay lifestyles, invoking
fears about the gay agenda).
- PX0516 (“A Message from Bill Tam:” “[e]ducation such as this is used to
brainwash children so that one day they’ll vote for same-sex marriage.”).
- Tr. 556:15-22 (Chauncey: PX0516 reflects a continuing concern about
homosexuals putting themselves forward and having an “agenda.”).

1 PFF 292. Campaign messages supporting Prop. 8 and Yes On 8 proponents portrayed marriage
 2 by same-sex couples and those who support that right as destroying marriage and
 3 society.

- 4 • PX2403 at 2-11 (Email from Kenyn Cureton, Vice President for Church
 5 Ministries with the Family Research Council, to Ron Prentice, Chairman of
 6 ProtectMarriage.com—Yes on 8, in August of 2008: Attaching a kit to be
 7 distributed to Christian voters through churches to better help them promote
 8 Prop. 8: Stating that “[h]omosexual activists and their allies have been very
 9 effective in promoting their extreme makeover of the American family and are
 10 pushing for recognition of same-sex relationships in our laws, schools, culture,
 11 and even in the church” (at 2); “homosexual activists won’t stop at recognition,
 12 their aim is domination” (at 7); “Let’s stand against this destructive program
 13 that threatens all that we hold dear, and protect our children from this ungodly
 14 agenda” (at 11); “What are the goals of the radical homosexual agenda? They
 15 include universal acceptance of the gay and lesbian lifestyle, gaining special
 16 privileges and rights in the laws, [and] ‘sensitivity training’ of our children
 17 through public education” (at 5); “Bible-believing Christians have been
 18 shocked to witness same-sex weddings all over California and repulsed by men
 19 kissing men and women kissing women for the cameras” (at 2); “The welfare
 20 of children, the propagation of the faith, the wellbeing of society, and the
 21 orderliness of civilization are all dependent upon the stability of marriage
 22 according to the divine pattern. When this God-given pattern is undermined,
 23 the whole superstructure of society becomes unstable. Any deviation from the
 24 divine pattern invites disaster” (at 3); “With this recent Supreme Court ruling,
 25 homosexual indoctrination in public schools will go into hyper-drive” (at 6);
 26 “Aren’t you glad God created Adam and Eve, and not just Adam and Steve?”
 27 (at 3); “Thank God for the difference between men and women. In fact, the
 28 two genders were meant to complete each other physically, emotionally, and in
 every other way. Also, both genders are needed for a healthy home. As Dr.
 James Dobson notes, ‘More than ten thousand studies have concluded that kids
 do best when they are raised by mothers and fathers.’” (at 3); “School children
 as young as kindergarten-age can now be forced to learn about and support
 homosexuality, bisexuality, and trans-sexuality. School-sponsored activities,
 textbooks, and instructional material could require a positive portrayal of
 homosexual ‘marriages,’ cross-dressing, sex-change operations, and all aspects
 of homosexuality and bisexuality” (at 6); “Public schools will teach the fully
 equal status of homosexual and heterosexual conduct based, in substantial part,
 on state marriage law” (at 7).).
- PX0506 at 10 (Transcript of Simulcast conducted by Miles McPherson called
 “The Fine Line” and directed at younger voters comparing the impact if Prop.
 8 does not pass to the impact of the terrorist attacks of September 11, 2001);
see also PX0505 (video of same).

- 1 • PX2403 (DEFINT_PM_005385-005446: Stand for Marriage materials
2 describing homosexuality as a “sin” and “poor misguided lost people trapped
3 in Satan’s snare” in advocating for support of Prop. 8).
- 4 • PX0008; PX0080; PX0138; DIX1495 (Campaign materials: Asserting that
5 Prop. 8 ensures that parents will have control over when and how their children
6 are taught about marriages by gay and lesbian couples).
- 7 • PX0082; PX1529; DIX1494 (Campaign ads: Warning that if Prop. 8 fails,
8 acceptance of gay marriage will be mandatory).
- 9 • PX0082; DIX1494 (Campaign ads: Warning that unless Prop. 8 passes, an
10 individual will not be able to refuse to offer services to gay couples without
11 incurring legal liability).
- 12 • PX0562 (Campaign ad: Stating that “98% of Californians who are not gay
13 should not have their religious freedoms and freedom of expression be
14 compromised to afford special legal rights for the 2% of Californians who are
15 gay”).
- 16 • PX0027; PX0093; DIX1503; DIX1504 (Campaign materials: Warning that
17 allowing gay and lesbian couples to marry destroys the sanctity of marriage,
18 implying that their marriage is not as sacred as different-sex marriage).
- 19 • PX0069 (Press release from Ron Prentice: Stating that the California Supreme
20 Court “effectively rendered marriage meaningless” when it recognized the
21 right of gay and lesbian couples to marry).
- 22 • PX2343B at 3 and 5 (Tam wrote an essay titled “The Harm to Children from
23 Same Sex Marriage” included in a Chinese language advertisement “supported
24 by . . . ProtectMarriage.com—Yes on 8, a Project of California Renewal” in
25 which he explains that if Prop. 8 does not pass, “[t]he meaning and status of
26 marriage will be completely lost and family relationships will degenerate” (at
27 3). He also implores his readers to “[s]ave marriage, save posterity, defend
28 reasonable human rights” (at 5).).
- Tr. 1579:5-1579:21 (Segura: Prop. 8 campaign advertisements reflect the
“very strong taboo about the portrayal of homosexuality as anything other than
pathological in the views of a lot of Americans. It’s never to be talked about;
not only not positively, but even neutrally.”).
- Tr. 529:21-530:23 (Chauncey: The Wirthlins’ long ad implies that there is
something wrong with homosexuality. It suggests that the focus for
homosexuality is only on sexuality, not love or relationships. But the book at
issue—*King & King*—is about two princes falling in love. It does not talk
about sex; it’s an age-appropriate fairy tale. There are plenty of fairy tales
about men and women falling in love, and children are encouraged to
participate in heterosexual marriages by being flower girls or ring bearers.).

- 1 • PX0037; PX0116 (Campaign materials: Warning that allowing gay and
2 lesbian couples to marry has profound consequences on every level of society).
- 3 • PX0098 (Campaign television ad: Asking viewers to think about what the
4 consequences will be when marriage rights for gay and lesbian individuals
5 conflict with religious freedoms, and how their marriages will affect parental
6 rights).
- 7 • Tr. 556:15-22 (Chauncey: PX0516 reflects a continuing concern about
8 homosexuals putting themselves forward and having an “agenda.”).
- 9 • PX0139 (Campaign signs: Suggesting that Prop. 8 promotes less government,
10 parental rights, religious freedom and free speech).
- 11 • Tr. 1856:20-1857:5 (Segura: Testifying about “The Gathering Storm” video:
12 “It’s hard not to look at the video and not conclude that the message of the
13 video is that gays and lesbians are deeply threatening to individuals in
14 American society; the ominous music, the dark storm, on actor saying, “I’m
15 afraid,” suggest that homosexuals are to be feared. There is references to
16 children. There’s references to taking your religious liberty away. There’s
17 references to churches being discriminated against or facing some form of
18 government repression. It really does present gays and lesbians as a very
19 serious threat to all sorts of aspects of American life.”).
- 20 • PX0577 at 47 (Article written by ProtectMarriage.com—Yes on 8 campaign
21 managers Schubert and Flint: “There were multiple skirmishes in the press
22 over the education issue during the final days of the campaign. The other side
23 claimed the wedding episode wasn’t really as we described it, while we
24 defended the ad as accurate and highlighted other examples where gays had
25 forced their agenda into the public schools”).
- 26 • Tr. 1975:15-17 (Tam: Schubert Flint served as campaign managers for
27 ProtectMarriage.com—Yes on 8).
- 28 • Tr. 1954:9-1955:15 (Tam: To convince voters to support Prop. 8, he told them
that if Prop. 8 did not pass there would be “social moral decay” and that
“social moral decay” means “if same-sex marriage is legal, it would encourage
children to explore same sex as their future marriage partner. And from the
both Asian cultural and, also, from our Christian angle, we think this is social
moral decay.”).

PFF 293. Campaign messages supporting Prop. 8 and Yes On 8 proponents also sought to invoke a sense of general crisis by linking marriage rights for same-sex couples to social peril caused by the supposed eradication of gender roles and the family

1 structure, as well as moral downfall through suggesting that the failure to pass Prop. 8
2 would inevitably lead to the legalization of incest, bestiality, and polyamory.

- 3 • PX0513 (“What If We Lose” letter from Bill Tam concerning Prop. 8:
4 “This November, San Francisco voters will vote on a ballot to ‘legalize
5 prostitution’. This is put forth by the SF city government, which is under the
6 rule of homosexuals. They lose no time in pushing the gay agenda—after
7 legalizing same-sex marriage, they want to legalize prostitution. What will be
8 next? On their agenda list is: legalize having sex with children
9 We can’t lose this critical battle. If we lose, this will very likely happen
10 1. Same-Sex marriage will be a permanent law in California. One by one,
11 other states would fall into Satan’s hand.
12 2. Every child, when growing up, would fantasize marrying someone of the
13 same sex. More children would become homosexuals. Even if our children is
14 safe, our grandchildren may not. What about our children’s grandchildren?
15 3. Gay activists would target the big churches and request to be married by
16 their pastors. If the church refuse, they would sue the church.”); *see also*
17 PX2507.
- 18 • PX0506 at 12 (Transcript of Simulcast conducted by Miles McPherson called
19 “The Fine Line” and directed at younger voters: “[L]et’s say sexual
20 orientation or sexual attractions were the basis upon which we were allowed to
21 marry. Then pedophiles would have to be allowed to marry 6-7-8 year olds.
22 The man from Massachusetts who petitioned to marry his horse after marriage
23 was instituted in Massachusetts. He’d have to be allowed to do so. Mothers
24 and sons, sisters and brothers, any, any combination would have to be
25 allowed.”); *see also* PX0505 (video of same).
- 26 • PX2595 (Flier urging voters to “Vote Yes on Prop. 8” included the following
27 reasons for supporting Prop. 8: “Proposition 8 protects children from being
28 taught in schools that same sex marriage = traditional marriage”; “Proposition
8 protects the right of children to have both father and mother as role models”;
“Proposition 8 protects against social moral decay”; “If a ‘sexual orientation’ is
categorized as a civil right, then so would pedophilia, polygamy and incest”;
“children need parents of both genders”; and “Countries that legalized same
sex marriage saw alarming moral decline.”).
- Tr. 1925:22-1926:9 (Tam: To convince voters to support Prop. 8, Tam had
told them that homosexual activists have an agenda that includes legalizing
prostitution and having sex with children).
- Tr. 1955:21-1956:7 (Tam: Tam wrote that “If sexual orientation is
characterized as a civil right, then so would pedophilia, polygamy and incest”
to convince voters to adopt Prop. 8).
- Tr. 1960:14-21 (Tam: “I believe that if the term ‘marriage’ can be used
beyond one man and one woman, then any two person of any age or of any

1 relationships can use the same argument and come and ask for the term
2 ‘marriage.’ That would lead to incest. That would lead to polygamy. I mean,
3 if—if this is a—if this is a civil right, what would prevent the other groups not
4 to use the same argument and come and ask for the name ‘marriage’?”).

- 5 • Tr. 1220:4-13 (Zia: During the Prop. 8 campaign, Zia read materials stating
6 that same sex marriage would lead to bestiality, polygamy, and harm to
7 children—including molestation and the “end of the human race.”).
- 8 • Tr. 1921:19-21 (Tam: Tam believes homosexuals are 12 times more likely to
9 molest children.).
- 10 • Tr. 1918:19-24 (Tam: Tam believes homosexuality is linked to pedophilia.).
- 11 • PX2199 (Page from Dr. Tam’s website, 1man1woman.net: Suggesting that
12 homosexuals engage in pedophilia and that gay politicians and doctors molest
13 boys.).
- 14 • Tr. 1222:2-1223:3; PX2199 (Zia: Zia saw PX2199—which claimed that
15 homosexuality is linked to pedophilia—during the Prop. 8 campaign).
- 16 • PX1868 at 9:19-10:8 (Transcript of the Sept. 25, 2008 simulcast entitled
17 “Love, Power and a Sound Mind”: A reverend explained that “the polygamist
18 are waiting in the wings because if a man can marry a man and a woman can
19 marry a woman based on the fact that you have the right to marry whoever you
20 want to marry, then the polygamists are going to use that exact same argument
21 and they’re probably going to win. And then I think about the damage done to
22 our children and our children are going to be taught in the schools that gay
23 marriage is not just a different type of a marriage; they’re going to be taught
24 that it’s a good thing. And, of course, we’re destroying the pillar of our
25 society.”); *see also* PX0504 (video of same).
- 26 • Tr. 1926:19-1927:2 (Tam: “Because when I look at liberal countries in
27 Europe, which have—or even look north, at Canada, at that time, they have
28 their legal age of consent down to like 14 years old. Some are even down to 13
years old. To me, those is very unacceptable. And that is having sex with
children. Or older child having sex with another child. And—and Canada was
a country that legalize same-sex marriage. So the liberal trend, that’s what I’m
afraid of.”).

24 PFF 294. Campaign messages supporting Prop. 8 and Yes On 8 proponents also played on
25 gender role stereotypes, suggesting that men and women should play different and
26 gender-based roles in marriage and child rearing.

- 27 • PX0480 at 16:58-17:20 (Video posted on the American Family Association’s
28 website entitled “Proposition 8 and the Case for Traditional Marriage”: Ron

1 Prentice, Chairman of ProtectMarriage.com—Yes on 8, states that “Children
2 need the chance to have both mother love and father love. And that moms and
3 dads, male and female, complement each other. They don’t bring to a
4 marriage and to a family the same natural set of skills and talents and abilities.
5 They bring to children the blessing of both masculinity and femininity.”).

- 6 • PX0480 at 16:58-17:20 (In a video posted on the American Family
7 Association’s website entitled “Proposition 8 and the Case for Traditional
8 Marriage,” a Dr. Melson “can only imagine the confusion with two moms or
9 two dads. I mean, who do you go to when you need to learn how to change the
10 oil if you’re a guy? Who is there—I mean, God’s giving, given moms a natural
11 instinct to mother and love. . . . If you have a boy with two moms, who’s going
12 to teach him all the dad stuff? Dads have instinctual differences. They do. They
13 don’t, they, there’s just appropriateness on when to cry, when to be emotional,
14 when to not—when to stand up, when to be the leader.”).
- 15 • PX0504A (Excerpts from simulcast video paid for by ProtectMarriage.com:
16 “In kindergarten they are being taught that if a little boy thinks he’s a little girl
17 in the state of California, he’s a little girl.”).
- 18 • *See also* evidence cited in support of PFF 56.

19 PFF 295. In an article written for Politics Magazine, Frank Schubert and Jeff Flint, the campaign
20 managers for “Yes on 8,” stated that the success of the campaign “would depend on
21 our ability to convince voters that same-sex marriage had broader implications for
22 Californians and was not only about the two individuals involved in a committed gay
23 relationship.” The campaign sought to convince voters that while “[t]olerance is one
24 thing; forced acceptance of something you personally oppose is a very different
25 matter.” Schubert and Flint decided to play on the fears and distastes of voters,
26 framing the issue of marriage between same-sex individuals as one involving a
27 conflict between the rights of a gay couple and “other rights[.]” Schubert and Flint
28 “settled on three broad areas where this conflict of rights was most likely to occur: in
the area of religious freedom, in the area of individual freedom of expression, and in
how this new ‘fundamental right’ would be inculcated in young children through the
public schools.”

- 1 • PX0577 at 45 (Frank Schubert & Jeff Flint, “Passing Prop 8: Smart Timing
2 and Messaging Convinced California Voters to Support Traditional Marriage,”
3 *Politics*, Feb. 2009.).
- 4 • Tr. 1975:15-17 (Tam: Schubert Flint served as campaign managers for
5 ProtectMarriage.com—Yes on 8).
- 6 • PX0082; PX1529; DIX1494 (Campaign ads: Warning that if Prop. 8 fails,
7 acceptance of gay marriage will be mandatory).
- 8 • PX0082; DIX1494 (Campaign ads: Warning that unless Prop. 8 passes, an
9 individual will not be able to refuse to offer services to gay couples without
10 incurring legal liability).
- 11 • PX1529 (Campaign ad: Showing a series of fallen dominos, warning that
12 “[m]andated acceptance of same-sex ‘marriage’ triggers a series of
13 consequences that affect all Californians, especially our children”).
- 14 • PX0037; PX0116 (Campaign materials: Warning that allowing gay and
15 lesbian individuals to marry has profound consequences on every level of
16 society).
- 17 • PX0098 (Campaign television ad: Asking viewers to think about what the
18 consequences will be when marriage rights of gay and lesbian individuals
19 conflict with religious freedoms, and how their marriages will affect parental
20 rights).
- 21 • PX0562 (Campaign ad: Stating that “98% of Californians who are not gay
22 should not have their religious freedoms and freedom of expression be
23 compromised to afford special legal rights for the 2% of Californians who are
24 gay”).
- 25 • PX0139 (Campaign signs: Suggesting that Prop. 8 promotes less government,
26 parental rights, religious freedom and free speech).
- 27 • PX0095; PX0096; PX0116 (English and Spanish campaign television ads:
28 Warning that parents will not have the right to remove their children from the
classroom or a right to prior notice when teachers discuss marriage by gay and
lesbian couples).
- PX0008; PX0080; PX0138; DIX1495 (Campaign materials: Asserting that
Prop. 8 ensures that parents will have control over when and how their children
are taught about marriages by gay and lesbian couples).
- PX0029 (Official Yes on 8 television ad entitled “Whether You Like It Or
Not” warns that gay marriage has been imposed on others by the Court, and
alleges that forced acceptance of gays will be detrimental to children, to

1 churches, and to people who can purportedly be sued for personal beliefs if
2 Prop. 8 does not pass.).

- 3 • See also evidence cited in support of PFF 49.

4 PFF 296. The discriminatory and animus-filled messages in the Yes on 8 campaign materials
5 harmed plaintiffs and other Californians who saw them.

- 6 • Tr. 99:23-100:9 (Katami: Discussing ads that stated “Protect our children.”:
7 “What are you protecting your children from? . . . [T]he threat that’s implied
8 is insulting. . . . [T]here are ways to convey a message without potentially
9 demonizing a group of people or creating fear around a group of people.”).
- 10 • Tr. 107:4-108:16 (Katami: Discussing campaign ad and explaining that “[t]o
11 categorize [gays and lesbians] as people of the devil or even put them in the
12 same category,” in that they are “likened to the devil blurring the lines between
13 right and wrong,” is to “talk[] about things that are bad in nature, that harm
14 people and society”; “an ad like this . . . demeans you [and] makes you feel
15 like people are putting efforts into discriminating against you” and portrayed
16 gays and lesbians as “a class of citizen or category of people that need to be
17 stood up against”).
- 18 • Tr. 113:12-114:25 (Katami: Discussing official ballot material statement that
19 “Voting YES protects our children” and explaining “[t]hat language is
20 indicative of some kind of perpetration against a child. . . . [I]t’s
21 discriminatory. It absolutely puts me into a category that I do not belong in. It
22 separates me from the norm. It makes me into someone . . . part of a
23 community that is perpetrating some sort of threat.”).
- 24 • Tr. 149:11-150:20 (Perry: Perry recalls a pro-Prop. 8 ad that mentioned the
25 California Education Code and discussed needing to “protect your children”
26 from learning about gay marriage in school. Perry felt that the ad suggested
27 that she, as a lesbian, was in a group of people who would not be protective of
28 children, which did not match how she feels about her children or reflect that
she works on behalf of children and has for years. In addition, Perry felt as
though the ad mocked something that she cannot change about herself—her
sexual orientation.).
- Tr. 176:17-177:18 (Stier: Explained that the campaign’s focus on protecting
children implied “that you need to be protected from gay marriage because it
must be, apparently, bad or you wouldn’t have to protect anybody from it. I
felt like the constant reference to children . . . felt manipulative and it felt very
harmful to me, as an individual, to us, as a couple, and our children, our
family, our community. I felt like there was great harm being done and I felt
like it was used to sort of educate people or convince people that there was a
great evil to be feared and that evil must be stopped and that evil is us, I guess.
. . . [T]he very notion that I [am] part of what other need to protect their

1 children from was just—it was more than upsetting. It was sickening, truly. I
2 felt sickened by that campaign.”).

- 3 • Tr. 1284:4-19 (Sanders: When confronted with Prop. 8 advertisements
4 implying that children would be harmed by same-sex marriage, Sanders could
5 not imagine why anyone would think that children would be harmed by
6 marriage. He could not imagine how Lisa and Meagan could harm anybody
7 else and could not imagine why children would have to be protected from his
8 daughter, one of the kindest and most compassionate people that he knows.).
- 9 • Tr. 1317:23-1318:4 (Sanders: Describing experience during campaign where
10 “somebody wrote on chalk, in front of my house, because we had a No On 8
11 sign out. That said ‘God’s law. Vote Yes On’” and observing similar writings
12 on houses of other No On 8 households.).
- 13 • Tr. 1219:7-17 (Zia: During the Prop. 8 campaign, Zia felt discriminated by a
14 campaign to “degrade and devalue the marriage that I have with my wife.”
15 She felt that the misinformation put out by the pro-Prop. 8 campaign was
16 discriminatory.).
- 17 • Tr. 1219:18- 1220:3 (Zia: During the Prop. 8 campaign, people came up to Zia
18 and called her “You fucking dike (sic)” or told her “You’re going to die and
19 burn in hell.”).
- 20 • Tr. 1220:14-20 (Zia: While she was handing out fliers during the Prop. 8
21 campaign, dozens of people would come up to her and say, “‘No more people.
22 With this, no more people. No more human race.’”).
- 23 • Tr. 1220:3-1221:9 (Zia: “And, to me, these were all highly discriminatory
24 because, in essence, they’re saying that we are so offensive that we are so not
25 worthy of being human beings, of having the full rights and equality that every
26 other human being, heterosexual human being, can enjoy to just be married to
27 each other, that we would cause the end of the human race.”).
- 28 • *See also* evidence cited in support of PFFs 108-132.

PFF 297.

Mr. Blankenhorn’s opinion that marriage has not been defined by religion or anti-homosexual prejudice is unsupported, unreliable, not credible, and irrelevant. Mr. Blankenhorn testified only that he could not find any evidence of prejudice, and he failed to provide any explanation regarding how the debate about extending the right of marriage to same-sex couples could not be affected by the pervasive prejudice faced by gays and lesbians in the United States. Even if marriage as a general matter has been shaped by forces other than prejudice, Mr. Blankenhorn offered no opinion to

1 counter the evidence that Prop. 8 was enacted based on such prejudice. The
2 prevalence of this evidence undermines the credibility of Mr. Blankenhorn’s opinion.

- 3 • Tr. 2766:1-4 (Blankenhorn: Stating that he could not find any evidence that
4 the laws and customs of marriage are based on anti-homosexual prejudice.
5 “Now, I am not saying that no such evidence exists. And if evidence—such
6 evidence exists, I would welcome—I would—I want to know it. But I’m
7 telling you that I have looked for it, and I cannot find it.”).
- See evidence cited in support of PFFs 285 to 296.

8 X. Proposed Conclusions of Law

9 A. Claim One: Due Process

10 1. Prop. 8 Infringes On Plaintiffs’ Right To Marry And Fails Strict Scrutiny.

11 PCL 1. The right to marry is a fundamental right guaranteed by the Due Process Clause of the
12 Fourteenth Amendment. See *Lawrence v. Texas*, 539 U.S. 558, 573-74 (2003) (“our
13 laws and tradition afford constitutional protection to personal decisions relating to
14 marriage,” “family relationships,” and “child rearing”); *M.L.B. v. S.L.J.*, 519 U.S. 102,
15 116 (1996) (“[c]hoices about marriage” are “sheltered by the Fourteenth Amendment
16 against the State’s unwarranted usurpation, disregard, or disrespect”); *Zablocki v.*
17 *Redhail*, 434 U.S. 374, 384 (1978) (“the right to marry is of fundamental importance
18 for all individuals”); *Turner v. Safley*, 482 U.S. 78, 95 (1987) (“the decision to marry
19 is a fundamental right”); *id.* (marriage is an “expression[] of emotional support and
20 public commitment” whose importance transcends simple reproduction); *Cleveland*
21 *Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639-40 (1974) (“[t]his Court has long
22 recognized that freedom of personal choice in matters of marriage and family life is
23 one of the liberties protected by the Due Process Clause of the Fourteenth
24 Amendment”); *Boddie v. Connecticut*, 401 U.S. 371, 376 (1971) (“marriage involves
25 interests of basic importance in our society”); *Loving v. Virginia*, 388 U.S. 1, 12
26 (1967) (the “freedom to marry has long been recognized as one of the vital personal
27 rights essential to the orderly pursuit of happiness by free men”); see also *id.*

1 (“Marriage is one of the ‘basic civil rights of man,’ fundamental to our very existence
 2 and survival.”) (quoting *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541
 3 (1942)); *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965) (“Marriage is a coming
 4 together for better or for worse, hopefully enduring, and intimate to the degree of
 5 being sacred. It is an association that promotes a way of life, not causes; a harmony in
 6 living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it
 7 is an association for as noble a purpose as any involved in our prior decisions.”);
 8 *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (the right “to marry, establish a home
 9 and bring up children” is a central part of the liberty protected by the Due Process
 10 Clause); *Maynard v. Hill*, 125 U.S. 190, 205, 211 (1888) (marriage is “the most
 11 important relation in life” and “the foundation of the family and of society, without
 12 which there would be neither civilization nor progress”).

13 PCL 2. Prop. 8 infringes on Plaintiffs’ fundamental right to marry.

14 PCL 2(a). A State cannot confer separate and unequal rights on socially disfavored groups
 15 because excluding a disfavored group from the rights enjoyed by all other members of
 16 society brands the disfavored group with an indelible mark of inferiority and that
 17 stigmatic harm is itself a judicially cognizable and remediable injury. *See United*
 18 *States v. Virginia*, 518 U.S. 515, 554 (1996); *Brown v. Bd. of Educ.*, 347 U.S. 483, 494
 19 (1954); *McLaurin v. Okla. State Regents for Higher Educ.*, 339 U.S. 637, 641 (1950);
 20 *Sweatt v. Painter*, 339 U.S. 629, 634-35 (1950); *see also Heckler v. Mathews*, 465
 21 U.S. 728, 739-40 (1984) (“discrimination itself, by perpetuating ‘archaic and
 22 stereotypic notions’ or by stigmatizing members of the disfavored group as ‘innately
 23 inferior’ and therefore as less worthy participants in the political community, can
 24 cause serious noneconomic injuries to those persons who are personally denied equal
 25 treatment”); *Plessy v. Ferguson*, 163 U.S. 537, 562 (1896) (Harlan, J., dissenting)
 26 (laws creating “separate but equal” accommodations “put[] the brand of . . .
 27 degradation upon a large class of our fellow-citizens”).
 28

1 PCL 2(b). Prop. 8 infringes on Plaintiffs’ fundamental right to marry by relegating gay men and
2 lesbians to the separate-and-inherently-unequal status of domestic partnership. *See*
3 *Lawrence*, 539 U.S. at 574 (“our laws and tradition afford constitutional protection to
4 personal decisions relating to marriage” and “[p]ersons in a homosexual relationship
5 may seek autonomy for th[is] purpose[], just as heterosexual persons do”); *In re*
6 *Marriage Cases*, 183 P.3d 384, 434 (Cal. 2008) (one of the “core elements of th[e]
7 fundamental right [to marry] is the right of same-sex couples to have their official
8 family relationship accorded the same dignity, respect, and stature as that accorded to
9 all other officially recognized family relationships”); *id.* at 402, 434, 445 (by
10 “reserving the historic and highly respected designation of ‘marriage’ exclusively to
11 opposite-sex couples while offering same-sex couples only the new and unfamiliar
12 designation of domestic partnership,” the State communicates the “official view that
13 [same-sex couples’] committed relationships are of lesser stature than the comparable
14 relationships of opposite-sex couples” and impermissibly stamps gay and lesbian
15 individuals—and their children—with a “mark of second-class citizenship”); *Kerrigan*
16 *v. Comm’r of Pub. Health*, 957 A.2d 407, 417 (Conn. 2008) (“the legislature, in
17 establishing a statutory scheme consigning same sex couples to civil unions, has
18 relegated them to an inferior status, in essence, declaring them to be unworthy of the
19 institution of marriage”); *Opinions of the Justices to the Senate*, 802 N.E.2d 565, 570
20 (Mass. 2004) (“The dissimilitude between the terms ‘civil marriage’ and ‘civil union’
21 is not innocuous; it is a considered choice of language that reflects a demonstrable
22 assigning of same-sex, largely homosexual, couples to second-class status.”); *see also*
23 PFF § IV.A (harms from denial of marriage to same-sex couples); *cf. Marriage Cases*,
24 183 P.3d at 421 (plaintiffs “are not seeking to create a new constitutional right—the
25 right to ‘same-sex marriage’ Instead, plaintiffs contend that, properly interpreted,
26 the state constitutional right to marry affords same-sex couples the same rights and
27 benefits . . . as this constitutional right affords to opposite-sex couples”).
28

1 PCL 3. Proponents cannot meet their burden of establishing that Prop. 8 is narrowly tailored
2 to further a compelling state interest. *See P.O.P.S. v. Gardner*, 998 F.2d 764, 767-68
3 (9th Cir. 1993) (“Statutes that directly and substantially impair [the right to marry]
4 require strict scrutiny.”); *see also Carey v. Population Control Servs. Int’l*, 431 U.S.
5 678, 686 (1977); PFF § IX.C-E (absence of governmental interests supporting Prop.
6 8). Indeed, Proponents cannot even show that Prop. 8 is substantially related to an
7 important state interest or rationally related to a legitimate state interest.

8 PCL 3(a). Prop. 8 cannot be upheld on the basis of a purported interest in promoting procreation.

9 PCL 3(a)(i). The promotion of procreation is not a constitutionally sufficient ground for preventing
10 a couple from marrying. *See Marriage Cases*, 183 P.3d at 431 (if a State could limit
11 marriage based on procreative ability, “it would follow that in instances in which the
12 state is able to make a determination of an individual’s fertility . . . , it would be
13 constitutionally permissible for the state to preclude an individual who is incapable of
14 bearing children from entering into marriage” with even a partner of the opposite sex);
15 *see also Turner*, 482 U.S. at 99 (an almost-complete prohibition on inmate marriages
16 was unconstitutional because it was not “reasonably related to legitimate penological
17 objectives”); *Griswold*, 381 U.S. at 485 (upholding the right of married individuals to
18 use contraception to prevent procreation).

19 PCL 3(a)(ii). Prop. 8’s prohibition of marriage by individuals of the same sex does nothing to
20 promote procreation. *See PFF § IX.C.2* (no effect on opposite-sex relationships from
21 excluding same-sex couples from marriage).

22 PCL 3(a)(iii). In any event, Prop. 8 is a fatally underinclusive means of promoting procreation
23 because it permits individuals of the opposite sex who are unable to bear children, or
24 who simply have no desire for children, to marry. *See Fla. Star v. B.J.F.*, 491 U.S.
25 524, 540-41 (1989) (holding that a statute prohibiting the publication of particular
26 information in certain media but not in others was unconstitutionally underinclusive).
27
28

1 PCL 3(b). Prop. 8 cannot be upheld on the basis of a purported interest in ensuring that children
2 are raised by their biological parents or by an adoptive mother and father.

3 PCL3(b)(i). Ensuring that children are raised by a mother and a father, as opposed to a same-sex
4 couple, is not a legitimate state interest because children of same-sex couples are as
5 well-adjusted as children of opposite-sex couples. *See Varnum v. Brien*, 763 N.W. 2d
6 862, 899 n.26 (Iowa 2009) (“The research appears to strongly support the conclusion
7 that same-sex couples foster the same wholesome environment as opposite-sex
8 couples and suggests that the traditional notion that children need a mother and a
9 father to be raised into healthy, well-adjusted adults is based more on stereotype than
10 anything else.”); *see also* PFF § IX.C.3.

11 PCL3(b)(ii). Prop. 8 does not advance this purported state interest because California law expressly
12 authorizes adoption by unmarried same-sex couples and does not otherwise restrict the
13 ability of same-sex couples to raise children. *See Marriage Cases*, 183 P.3d at 452
14 n.72. (“the governing California statutes permit same-sex couples to adopt and raise
15 children and additionally draw no distinction between married couples and domestic
16 partners with regard to the legal rights and responsibilities relating to children raised
17 within each of these family relationships”); Cal. Fam. Code §§ 297.5(d), 7601, 7602,
18 7650, 9000(b); *Elisa B. v. Superior Ct.*, 117 P.3d 660, 670 (Cal. 2005); *Sharon S. v.*
19 *Sup. Ct.*, 73 P.3d 554, 569 (Cal. 2003); PFF § III.B.2 (gay men and lesbians can adopt
20 and parent children).

21 PCL 3(c). Prop. 8 does not advance a purported interest in “responsible procreation,” which
22 Proponents define as “directing the inherent procreative capacity of sexual intercourse
23 between men and women into stable, legally bound relationships” (Doc # 36 at 22),
24 because the State’s refusal to permit *gay and lesbian* individuals to marry will not
25 encourage *heterosexual* individuals to marry when their relationships result in
26 “unintended children.” *Id.* at 13; *see also* PFF § IX.C.2 (no effect on opposite-sex
27 relationships from excluding same-sex couples from marriage).
28

- 1 PCL 3(d). Prop. 8 does not further a purported interest in ensuring that California marriages are
 2 recognized by other States because it preserves 18,000 marriages between same-sex
 3 couples that may not be recognized in those States that prohibit marriage by
 4 individuals of the same sex. *See Strauss v. Horton*, 207 P.3d 48, 122 (Cal. 2009)
 5 (upholding the 18,000 marriages between same-sex couples performed in California
 6 prior to the enactment of Prop. 8); *see also* Oct. 14, 2009 Tr. 89:14 (Court: This
 7 claimed interest is “insubstantial.”).
- 8 PCL 3(e). Prop. 8 does not further purported interests in “administrative ease” or conforming
 9 California’s definition of “marriage” to federal law.
- 10 PCL 3(e)(i). “[A]dministrative ease and convenience” are constitutionally illegitimate grounds for
 11 discrimination. *Craig v. Boren*, 429 U.S. 190, 198 (1976).
- 12 PCL 3(e)(ii). Even if California had a valid interest in easing its administrative burden in
 13 differentiating between same-sex and opposite-sex unions, Prop. 8 leaves 18,000
 14 marriages of gay and lesbian couples on the books and thus does not ease the State’s
 15 purported “burden.” *See Strauss*, 207 P.3d at 122.
- 16 PCL 3(f). Neither tradition nor moral disapproval is a sufficient basis for a State to impair a
 17 person’s constitutionally protected right to marry. *See Lawrence*, 539 U.S. at 557 (the
 18 “fact that the governing majority in a State has traditionally viewed a particular
 19 practice as immoral is not a sufficient reason for upholding a law prohibiting the
 20 practice”); *id.* at 579 (“times can blind us to certain truths and later generations can see
 21 that laws once thought necessary and proper in fact serve only to oppress”); *id.* at 582
 22 (“[m]oral disapproval” of gay men and lesbians, “like a bare desire to harm the group,
 23 is an interest that is insufficient to satisfy” even rational basis review); *Romer v.*
 24 *Evans*, 517 U.S. 620, 634 (1996) (a “bare . . . desire to harm a politically unpopular
 25 group, cannot constitute a *legitimate* governmental interest”) (internal quotation marks
 26 omitted; emphasis in original); *id.* at 635 (a state practice of restricting citizens’
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1 constitutional rights cannot be perpetuated merely “for its own sake”); *Palmore v.*
 2 *Sidoti*, 466 U.S. 429, 433 (1984) (while “[p]rivate biases may be outside the reach of
 3 the law,” the “law cannot, directly or indirectly, give them effect” at the expense of a
 4 disfavored group’s fundamental constitutional rights); *Williams v. Illinois*, 399 U.S.
 5 235, 239 (1970) (“neither the antiquity of a practice nor the fact of steadfast legislative
 6 and judicial adherence to it through the centuries insulates it from constitutional
 7 attack”); *see also* Oct. 14, 2009 Tr. 86:25-87:3 (Court: “Tradition alone is not enough
 8 because the constitutional imperatives of the Equal Protection clause must have
 9 priority over the comfortable convenience of the status quo.”).

10 PCL 3(g). Prop. 8 cannot be upheld on the basis of a purported interest in “acting incrementally
 11 and with caution” because caution and incrementalism are constitutionally illegitimate
 12 grounds for perpetuating discrimination. *See Cooper v. Aaron*, 358 U.S. 1, 16 (1958)
 13 (“the preservation of the public peace . . . cannot be accomplished by laws or
 14 ordinances which deny rights created or protected by the federal Constitution”).

15 PCL 3(h). Prop. 8 does not advance a purported interest in preventing the weakening or
 16 deinstitutionalization of marriage because permitting marriage by individuals of the
 17 same sex strengthens the institution of marriage for both same-sex couples and
 18 opposite-sex couples (and certainly does not weaken marriage for opposite-sex
 19 couples). *See* PFF IX.C.2.

20 PCL 3(i). Prop. 8 does not advance a purported interest in preserving “the responsibility of
 21 parents to provide for the ethical and moral development and education of their
 22 children” because permitting same-sex couples to marry in no way diminishes that
 23 parental responsibility and because Prop. 8 did not alter any law or regulation that
 24 places limits on parental prerogatives.
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1 PCL 3(j). Prop. 8 does not further a purported interest in accommodating the First Amendment
2 rights of individuals who oppose allowing gay and lesbian couples to marry on
3 religious grounds.

4 PCL 3(j)(i). The First Amendment preserves the right of religious groups to prescribe their own
5 rules regarding religious marriage. *See Marriage Cases*, 183 P.3d at 451-52
6 (“affording same-sex couples the opportunity to obtain the designation of marriage
7 will not impinge upon the religious freedom of any religious organization, official, or
8 any other person; no religion will be required to change its religious policies or
9 practices with regard to same-sex couples, and no religious officiant will be required
10 to solemnize a marriage in contravention of his or her religious beliefs”).

11 PCL 3(j)(ii). Prop. 8 does not advance the religious freedom of groups that discriminate against gay
12 men and lesbians for religious reasons because it does not alter generally applicable
13 state laws that prohibit discrimination based on sexual orientation. *See Cal. Civ. Code*
14 § 51(b); *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983) (holding that
15 schools that enforce racially discriminatory admissions standards on the basis of
16 religious doctrine do not qualify as tax-exempt organizations under the Internal
17 Revenue Code).

18 PCL 3(k). Prop. 8 does not further purported interests in using different names for different
19 things or maintaining the flexibility to separately address the needs of different types
20 of relationships.

21 PCL 3(k)(i). “[A]dministrative ease and convenience” are constitutionally illegitimate grounds for
22 discrimination. *Craig*, 429 U.S. at 198.

23 PCL 3(k)(ii). Even if California had valid interests in using different names and different
24 administrative classifications for same-sex and opposite-sex unions, Prop. 8 leaves
25 18,000 marriages of gay and lesbian couples on the books and thus does not promote
26 the distinction underlying these purported interests. *See Strauss*, 207 P.3d at 122.
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1 PCL 3(l). Prop. 8 does not further a purported interest in retaliating against persons who engaged
2 in boycotts, protests, and picketing in opposition to Prop. 8 because the State does not
3 have a constitutionally legitimate interest in retaliating against the exercise of core
4 First Amendment freedoms. *See NAACP v. Claiborne Hardware Co.*, 458 U.S. 886,
5 909, 911 (1982) (a “boycott” designed to “bring about political, social, and economic
6 change” “clearly involve[s] constitutionally protected activity” and “does not lose its
7 protected character . . . simply because it may embarrass others or coerce them into
8 action”).

9 PCL 4. *Baker v. Nelson*, 409 U.S. 810 (1972), does not foreclose Plaintiffs’ due process
10 challenge. *See Mandel v. Bradley*, 432 U.S. 173, 176 (1977) (per curiam) (the
11 Supreme Court’s summary dismissals are binding on lower courts only “on the precise
12 issues presented and necessarily decided”); *Hicks v. Miranda*, 422 U.S. 332, 344
13 (1975) (summary dismissals are binding only to the extent that they have not been
14 undermined by subsequent “doctrinal developments” in the Supreme Court’s case
15 law).

16 PCL 4(a). The issue in *Baker*—the constitutionality of an outright refusal by a State to afford any
17 recognition to same-sex relationships—is different from the issue presented by
18 Plaintiffs’ constitutional challenge, which asks this Court to determine whether it is
19 constitutional for California voters to use the initiative process to strip gay and lesbian
20 individuals of their fundamental right to marry and to relegate same-sex couples to the
21 separate-and-inherently-unequal institution of domestic partnership.

22 PCL 4(b). The Supreme Court’s subsequent decisions in *Lawrence*—which invalidated a state
23 prohibition on same-sex intimate conduct on due process grounds—and *Romer*—
24 which struck down on equal protection grounds a state constitutional amendment
25 prohibiting governmental action to protect gay and lesbian individuals against
26 discrimination—have fatally weakened *Baker*. *See Smelt v. County of Orange*, 374 F.
27 Supp. 2d 861, 873 (C.D. Cal. 2005) (“Doctrinal developments show it is not
28

reasonable to conclude the questions presented in the *Baker* jurisdictional statement would still be viewed by the Supreme Court as ‘unsubstantial.’”), *rev’d in part on other grounds*, 447 F.3d 673 (9th Cir. 2006); *see also Turner*, 482 U.S. at 99 (invalidating an almost-complete prohibition on inmate marriages); *Zablocki*, 434 U.S. at 384 (“the right to marry is of fundamental importance for *all* individuals”) (emphasis added).

2. Prop. 8 Infringes On Plaintiffs’ Right To Marry And Fails Intermediate Scrutiny.

PCL 5. The right to marry is a significant liberty interest. *See Witt v. Dep’t of the Air Force*, 527 F.3d 806, 819 (9th Cir. 2008); PCL 1.

PCL 6. Prop. 8 infringes on Plaintiffs’ right to marry. *See* PCL 2.

PCL 7. Proponents cannot meet their burden of establishing that Prop. 8 is substantially related to an important state interest. *See Witt*, 527 F.3d at 819; PCL 3.³

3. Prop. 8 Infringes On Plaintiffs’ Right To Marry And Fails Rational Basis Review.

PCL 8. Prop. 8 infringes on Plaintiffs’ right to marry. *See* PCL 1.

PCL 9. Prop. 8 is not rationally related to a legitimate state interest. *See Romer*, 517 U.S. at 632-33; PCL 3.

4. Prop. 8 Infringes On Plaintiffs’ Right To Privacy And Personal Autonomy And Fails Strict Scrutiny.

PCL 10. The right to privacy and personal autonomy is a fundamental right. *See Lawrence*, 539 U.S. at 578.

PCL 11. Prop. 8 infringes on Plaintiffs’ fundamental right to privacy and personal autonomy. *See Zablocki*, 434 U.S. at 384 (“the right to marry is part of the fundamental ‘right of

³ Rather than repeat the reasons why Proponents’ proffered state interests fail under each level of scrutiny, Plaintiffs include a cross-reference to PCL 3, which demonstrates that Prop. 8 fails to satisfy any level of scrutiny.

1 privacy’ implicit in the Fourteenth Amendment’s Due Process Clause”); *Carey*, 431
2 U.S. at 684-85 (“[w]hile the outer limits of [the right of personal privacy] have not
3 been marked by the Court, it is clear that among the decisions that an individual may
4 make without unjustified government interference are personal decisions relating to
5 marriage”) (internal quotation marks omitted).

6 PCL 12. Proponents cannot meet their burden of establishing that Prop. 8 is narrowly tailored
7 to further a compelling state interest. *See P.O.P.S.*, 998 F.2d at 767-68; PCL 3.

8 **5. Prop. 8 Infringes On Plaintiffs’ Right To Privacy And Personal Autonomy**
9 **And Fails Intermediate Scrutiny.**

10 PCL 13. The right to privacy and personal autonomy is a significant liberty interest. *See Witt*,
11 527 F.3d at 819.

12 PCL 14. Prop. 8 infringes on Plaintiffs’ right to privacy and personal autonomy. *See* PCL 11.

13 PCL 15. Proponents cannot meet their burden of establishing that Prop. 8 is substantially
14 related to an important state interest. *See Witt*, 527 F.3d at 819 (“when the
15 government attempts to intrude upon the personal and private lives of homosexuals, in
16 a manner that implicates the rights identified in *Lawrence*, the government must
17 advance an important governmental interest, the intrusion must significantly further
18 that interest, and the intrusion must be necessary to further that interest”); PCL 3.

19 **6. Prop. 8 Infringes On Plaintiffs’ Right To Privacy And Personal Autonomy**
20 **And Fails Rational Basis Review.**

21 PCL 16. Prop. 8 infringes on Plaintiffs’ right to privacy and personal autonomy. *See* PCL 11.

22 PCL 17. Prop. 8 is not rationally related to a legitimate state interest. *See Romer*, 517 U.S. at
23 632-33; PCL 3.
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1 **B. Claim Two: Equal Protection**

2 **1. Prop. 8 Discriminates On The Basis Of Sexual Orientation And Fails**
3 **Strict Scrutiny.**

4 PCL 18. Gay men and lesbians are a suspect class.

5 PCL 18(a). A classification is suspect where it targets a group that has been subject to a history of
6 discrimination and that is defined by a “characteristic” that “frequently bears no
7 relation to ability to perform or contribute to society.” *City of Cleburne v. Cleburne*
8 *Living Ctr., Inc.*, 473 U.S. 432, 440-41 (1985) (internal quotation marks omitted); *see*
9 *also Bowen v. Gilliard*, 483 U.S. 587, 602 (1987); *Mass. Bd. of Ret. v. Murgia*, 427
10 U.S. 307, 313 (1976) (persons “who have been discriminated against on the basis of
11 race or national origin” are a suspect class because they have “experienced a history of
12 purposeful unequal treatment” and “been subjected to unique disabilities on the basis
13 of stereotyped characteristics not truly indicative of their abilities”); *cf. Christian Sci.*
14 *Reading Room Jointly Maintained v. City & County of San Francisco*, 784 F.2d 1010,
15 1012 (9th Cir. 1986) (holding that “an individual religion meets the requirements for
16 treatment as a suspect class,” even though religion is not immutable).

17 PCL 18(a)(i). Gay men and lesbians have been subject to a history of discrimination. *See Lawrence*,
18 539 U.S. at 571 (“for centuries there have been powerful voices to condemn
19 homosexual conduct as immoral”); *Kerrigan*, 957 A.2d at 432 (“gay persons
20 historically have been, and continue to be, the target of purposeful and pernicious
21 discrimination due solely to their sexual orientation”); *id.* at 446 (“the bigotry and
22 hatred that gay persons have faced are akin to, and, in certain respects, perhaps even
23 more severe than, those confronted by some groups that have been accorded
24 heightened judicial protection”); *Varnum*, 763 N.W.2d at 889 (there has been a “long
25 and painful history of discrimination against gay and lesbian persons”); PFF § VII
26 (history of discrimination against gay men and lesbians).

1 PCL 18(a)(ii). Sexual orientation is irrelevant to whether someone can make a meaningful
2 contribution to society. *See, e.g., Marriage Cases*, 183 P.3d at 442 (“sexual
3 orientation is a characteristic . . . that bears no relation to a person’s ability to perform
4 or contribute to society”); *Kerrigan*, 957 A.2d at 435 (“gay persons stand in stark
5 contrast to other groups that have been denied suspect or quasi-suspect class
6 recognition, despite a history of discrimination, because the distinguishing
7 characteristics of those groups adversely affect their ability or capacity to perform
8 certain functions or to discharge certain responsibilities in society”); PFF § V.B (gay
9 men and lesbians contribute to society in the same ways as heterosexual individuals).

10 PCL 18(b). In determining whether a class is “suspect” for equal-protection purposes, it may also
11 be relevant whether the group exhibits “obvious, immutable, or distinguishing
12 characteristics that define them as a discrete group” and whether they are “politically
13 powerless.” *Bowen*, 483 U.S. at 602.

14 PCL 18(b)(i). Sexual orientation is a fundamental aspect of a person’s identity and is immutable in
15 the sense that it is not typically the subject of personal choice and is highly resistant to
16 change; the sexual orientation of gay men and lesbians defines them as a discrete
17 group. *See Hernandez-Montiel v. INS*, 225 F.3d 1084, 1093 (9th Cir. 2000) (“[s]exual
18 orientation and sexual identity are immutable”); *id.* (“[h]omosexuality is as deeply
19 ingrained as heterosexuality”) (quoting *Gay Rights Coalition of Georgetown Law Ctr.*
20 *v. Georgetown Univ.*, 536 A.2d 1, 34 (D.C. 1987)); *Varnum*, 763 N.W.2d at 893
21 (“sexual orientation forms a significant part of a person’s identity,” and “influences
22 the formation of personal relationships between all people—heterosexual, gay, or
23 lesbian—to fulfill each person’s fundamental needs for love and attachment”) (internal
24 quotation marks omitted); *id.* (“sexual orientation is central to personal identity and
25 ‘may be altered [if at all] only at the expense of significant damage to the individual’s
26 sense of self’”) (alteration in original); PFF § VI.B (sexual orientation is highly
27 resistant to change).

28

1 PCL 18(b)(ii). Gay and lesbian individuals possess less political power than other groups that are
 2 afforded the protection of suspect or quasi-suspect status under the Equal Protection
 3 Clause. *See Kerrigan*, 957 A.2d at 446 (“Insofar as gay persons play a role in the
 4 political process, it is apparent that their numbers reflect their status as a small and
 5 insular minority.”); *see also id.* at 452 (“With respect to the comparative political
 6 power of gay persons, they presently have no greater political power—in fact, they
 7 undoubtedly have a good deal less such influence—than women did in 1973, when the
 8 United States Supreme Court, in *Frontiero [v. Richardson]*, 411 U.S. 677 (1973)
 9 (plurality opinion), held that women are entitled to heightened judicial protection.”);
 10 PFF § VIII (the relative political power of gay men and lesbians); *cf. Adarand*
 11 *Constructors, Inc. v. Pena*, 515 U.S. 200, 235 (1995) (holding that all racial
 12 classifications are inherently suspect, even though many racial groups exercise
 13 substantial political power).

14 PCL 19. Prop. 8 discriminates against gay men and lesbians on the basis of their sexual
 15 orientation.

16 PCL 19(a)(i). Voter-enacted measures that strip disfavored individuals of rights that they had
 17 previously possessed under state law and that are possessed by other members of
 18 society discriminate against the targeted group. *See Romer*, 517 U.S. at 635
 19 (invalidating a voter-enacted state constitutional provision that stripped gay men and
 20 lesbians of antidiscrimination protections that they had previously possessed under
 21 state law because the measure “classifie[d] homosexuals not to further a proper
 22 legislative end but to make them unequal to everyone else”); *id.* at 627, 631 (holding
 23 that the voter-enacted amendment was unconstitutional because it “impose[d] a special
 24 disability upon [gay and lesbian individuals] alone” and “withdr[e]w[] from” them,
 25 “but, no others, specific legal protection” that they had previously enjoyed under the
 26 state constitution); *Reitman v. Mulkey*, 387 U.S. 369, 381 (1967) (invalidating a voter-
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1 enacted California constitutional provision that extinguished state-law protections that
2 minorities had previously possessed against housing discrimination).

3 PCL 19(a)(ii). Plaintiffs are similarly situated to heterosexual individuals for purposes of marriage
4 because, like individuals in a relationship with a person of the opposite sex, they are in
5 loving, committed relationships and wish to enter into a formal, legally binding and
6 officially recognized, long-term family relationship. *See Marriage Cases*, 183 P.3d at
7 435 n.54; *see also Kerrigan*, 957 A.2d at 424 (same-sex couples are similarly situated
8 to opposite-sex couples for purposes of marriage because they “share the same interest
9 in a committed and loving relationship as heterosexual persons who wish to marry,
10 and they share the same interest in having a family and raising their children in a
11 loving and supportive environment”); *Varnum*, 763 N.W.2d at 883 (“plaintiffs are
12 similarly situated compared to heterosexual persons” because “[p]laintiffs are in
13 committed and loving relationships, many raising families, just like heterosexual
14 couples”); PFF § V.A (fundamental similarities between same-sex couples and
15 opposite-sex couples).

16 PCL 19(a)(iii). Prop. 8 strips gay men and lesbians of the right to marry that they had previously
17 possessed under the California Constitution as written since its ratification in 1849.
18 *See Marriage Cases*, 183 P.3d at 452; *Strauss*, 207 P.3d at 77 (Prop. 8 “[c]hange[d]
19 the California Constitution to eliminate the right of same-sex couples to marry in
20 California”) (internal quotation marks omitted); *see also James B. Beam Distilling Co.*
21 *v. Georgia*, 501 U.S. 529, 549 (1991) (Scalia, J., concurring in judgment) (“the
22 judicial power as understood by our common-law tradition . . . is the power ‘to say
23 what the law is,’ not the power to change it”); *Newman v. Emerson Radio Corp.*, 772
24 P.2d 1059, 1062 (Cal. 1989) (“The general rule that judicial decisions are given
25 retroactive effect is basic in our legal tradition.”).

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27 PCL 19(b). Prop. 8 relegates gay men and lesbians to the separate-and-inherently-unequal status
28 of domestic partnership. *See Marriage Cases*, 183 P.3d at 402 (prohibitions on

1 marriage between individuals of the same sex “perpetuat[e]” the “general premise . . .
 2 that gay individuals and same-sex couples are in some respects ‘second-class citizens’
 3 who may, under the law, be treated differently from, and less favorably than,
 4 heterosexual individuals or opposite-sex couples”); *Kerrigan*, 957 A.2d at 417 (“the
 5 legislature, in establishing a statutory scheme consigning same sex couples to civil
 6 unions, has relegated them to an inferior status, in essence, declaring them to be
 7 unworthy of the institution of marriage”); *Opinions of the Justices*, 802 N.E.2d at 570;
 8 PCL 2; PFF § IV.A (harms from denial of marriage to same-sex couples); *see also*
 9 PX0728 at 2 and ¶¶ 1, 7, 36-43 (Attorney General’s Answer: Admits that Prop. 8
 10 violates the Fourteenth Amendment to the U.S. Constitution: “Taking from same-sex
 11 couples the right to civil marriage that they had previously possessed under
 12 California’s Constitution cannot be squared with guarantees of the Fourteenth
 13 Amendment.”).

14 PCL 20. Even if Prop. 8 did not discriminate against gay men and lesbians on its face—which
 15 it does—it indisputably was designed to strip gay men and lesbians of their right to
 16 marry and has the purpose and effect of according disparate treatment to gay men and
 17 lesbians with regard to the right to marry. *See, e.g., Washington v. Seattle Sch. Dist.*
 18 *No. 1*, 458 U.S. 457, 484-85 (1982) (“when facially neutral legislation is subjected to
 19 equal protection attack, an inquiry into intent is necessary to determine whether the
 20 legislation in some sense was designed to accord disparate treatment on the basis of racial
 21 considerations”); PFF § IX.F (evidence of Prop. 8’s purpose and effect).

22 PCL 21. Proponents cannot meet their burden of establishing that Prop. 8 is narrowly tailored to
 23 further a compelling state interest. *Palmore*, 466 U.S. at 432-33.

24 PCL 21(a). Prop. 8 is not even rationally related to a legitimate state interest. *See* PCL 3.

25 PCL 21(b). Prop. 8 irrationally creates at least four categories of couples in California: Opposite-
 26 sex couples, who are permitted to marry, and to remarry upon divorce; the 18,000
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1 same-sex couples who were married after the California Supreme Court’s decision in
2 the *Marriage Cases* but before the enactment of Prop. 8, whose marriages remain
3 valid but who are not permitted to remarry upon divorce; same-sex couples who were
4 married in other States before the enactment of Prop. 8, whose marriages are valid and
5 recognized in California; and unmarried same-sex couples, who are prohibited by
6 Prop. 8 from marrying and restricted to the separate-and-inherently-unequal status of
7 domestic partnership. *See Romer*, 517 U.S. at 632-33; Cal. Fam. Code § 308(b).

8 PCL 22. *Baker* does not foreclose Plaintiffs’ equal protection challenge because, among other
9 reasons, *Baker* presented an equal protection challenge based only on sex
10 discrimination. *See* Jurisdictional Statement at 16, *Baker* (No. 71-1027) (“The
11 discrimination in this case is one of gender.”); *see also* PCL 4.

12 PCL 23. *High Tech Gays v. Defense Industrial Security Clearance Office*, 895 F.2d 563 (9th
13 Cir. 1990), does not foreclose the availability of heightened scrutiny.

14 PCL 23(a). *High Tech Gays* is no longer controlling because it was premised on the Supreme
15 Court’s since-overruled decision in *Bowers v. Hardwick*, 478 U.S. 186 (1986). *See*
16 *High Tech Gays*, 895 F.2d at 571 (“by the *Hardwick* majority holding that the
17 Constitution confers no fundamental right upon homosexuals to engage in sodomy,
18 and because homosexual conduct can thus be criminalized, homosexuals cannot
19 constitute a suspect or quasi-suspect class entitled to greater than rational basis review
20 for equal protection purposes”); *see also Lawrence*, 539 U.S. at 578 (overruling
21 *Bowers*).

22 PCL 23(b). *High-Tech Gays* found that gay men and lesbians “are not without political power”
23 (895 F.2d at 574), but, since *High-Tech Gays* was decided, the factual bases for that
24 finding have been undermined by the widespread use of state ballot initiatives to target
25 gay men and lesbians for disfavored treatment and strip them of their rights under
26 federal and state law. *See* PFF § VIII.
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1 PCL 23(c). *High-Tech Gays* found that “homosexuality . . . is behavioral” (895 F.2d at 573), but
2 the factual bases for that finding have been undermined by recent empirical research
3 demonstrating that sexual orientation is not a personal choice and is highly resistant to
4 change. PFF § VI.B.

5 **2. Prop. 8 Discriminates On The Basis Of Sexual Orientation And Fails**
6 **Intermediate Scrutiny.**

7 PCL 24. Gay and lesbian individuals are a quasi-suspect class. *See* PCL 18.

8 PCL 25. Prop. 8 discriminates against gay men and lesbians on the basis of their sexual
9 orientation. *See* PCL 19.

10 PCL 26. Even if Prop. 8 did not discriminate against gay men and lesbians on its face—which
11 it does—it has the purpose and effect of according disparate treatment to gay men and
12 lesbians with regard to the right to marry. *See* PCL 20.

13 PCL 27. Proponents cannot meet their burden of establishing that Prop. 8 is substantially
14 related to an important state interest. *Virginia*, 518 U.S. at 524; PCL 3; PCL 21.

15 **3. Prop. 8 Discriminates On The Basis of Sexual Orientation And Fails**
16 **Rational Basis Review.**

17 PCL 28. Prop. 8 discriminates against gay men and lesbians on the basis of their sexual
18 orientation. *See* PCL 19.

19 PCL 29. Even if Prop. 8 did not discriminate against gay men and lesbians on its face—which
20 it does—it has the purpose and effect of according disparate treatment to gay men and
21 lesbians with regard to the right to marry. *See* PCL 20.

22 PCL 30. Prop. 8’s discrimination based on sexual orientation is not rationally related to a
23 legitimate state interest. *See Romer*, 517 U.S. at 632-33; PCL 3; PCL 21.
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1 **4. Prop. 8 Discriminates On The Basis Of Sex And Fails Intermediate**
2 **Scrutiny.**

3 PCL 31. Prop. 8 discriminates against Plaintiffs on the basis of their sex because the male
4 Plaintiffs would be able to marry their partner if one of those Plaintiffs were female,
5 and the female Plaintiffs would be able to marry their partner if one of them were
6 male. *See Virginia*, 518 U.S. at 532-33 (the Equal Protection Clause prohibits
7 “differential treatment or denial of opportunity” based on a person’s sex); *cf. Loving*,
8 388 U.S. at 9 (holding that Virginia’s anti-miscegenation law constituted unlawful
9 racial discrimination even though it applied with equal force to blacks and whites).

10 PCL 32. Proponents cannot meet their burden of establishing that Prop. 8 is substantially
11 related to an important state interest. *See Virginia*, 518 U.S. at 524; *see also id.* at
12 532-33 (the Equal Protection Clause prohibits discrimination based on sex in the
13 absence of an “exceedingly persuasive” justification); PCL 3; PCL 21.

14 PCL 33. *Baker* does not foreclose Plaintiffs’ sex-discrimination challenge because it was
15 decided before the U.S. Supreme Court recognized that sex is a quasi-suspect
16 classification. *See Frontiero*, 411 U.S. 677; *Craig*, 429 U.S. 190, 197.

17 **5. Prop. 8 Infringes On Plaintiffs’ Fundamental Right To Marry And Fails**
18 **Strict Scrutiny.**

19 PCL 34. The right to marry is a fundamental right guaranteed by the Equal Protection Clause of
20 the Fourteenth Amendment. *See PCL 1.*

21 PCL 35. Prop. 8 infringes on Plaintiffs’ constitutional right to marry. *See PCL 2.*

22 PCL 36. Proponents cannot meet their burden of establishing that Prop. 8 is narrowly tailored
23 to further a compelling state interest. *See United States v. Hancock*, 231 F.3d 557, 565
24 (9th Cir. 2000) (under the Equal Protection Clause, a “law is subject to strict scrutiny
25 if it targets a suspect class or burdens the exercise of a fundamental right”); *see also*
26 *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942) (applying strict
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1 equal protection scrutiny to a state law that burdened the fundamental right to
2 procreate); PCL 3; PCL 21.

3 **C. Claim III: Violation of 42 U.S.C. § 1983**

4 **1. Enforcement Of Prop. 8 Violates 42 U.S.C. § 1983.**

5 PCL 37. Defendants are acting under color of state law. *See* § I.C.

6 PCL 38. Prop. 8 violates Plaintiffs’ rights under the Due Process and Equal Protection Clauses
7 of the Fourteenth Amendment. *See generally* PCL 1-36.
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9 PCL 39. Defendants are depriving Plaintiffs of their rights, privileges, or immunities secured by
10 the Constitution and laws of the United States. *See generally* PCL 1-36

11 DATED: February 26, 2010

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18 By: _____ /s/
19 Theodore B. Olson

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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.

By: _____ /s/
Theodore B. Olson

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