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PROJECT OF CALIFORNIA RENEWAL

16 * Admitted *pro hac vice*

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

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

21 Plaintiffs,

22 v.

23 ARNOLD SCHWARZENEGGER, in his official
capacity as Governor of California; EDMUND G.
24 BROWN, JR., in his official capacity as Attorney
General of California; MARK B. HORTON, in his
25 official capacity as Director of the California
Department of Public Health and State Registrar of
26 Vital Statistics; LINETTE SCOTT, in her official
capacity as Deputy Director of Health Information
27 & Strategic Planning for the California Department
of Public Health; PATRICK O'CONNELL, in his
28

CASE NO. 09-CV-2292 VRW

**DEFENDANTS-INTERVENORS
PROPOSITION 8 PROPONENTS
AND PROTECTMARRIAGE.COM'S
OPPOSITION TO MOTION FOR
INTERVENTION BY CAMPAIGN
FOR CALIFORNIA FAMILIES**

Date: August 19, 2009
Time: 10:00 a.m.
Judge: Chief Judge Vaughn R. Walker
Location: Courtroom 6, 17th Floor

1 official capacity as Clerk-Recorder for the County
2 of Alameda; and DEAN C. LOGAN, in his official
3 capacity as Registrar-Recorder/County Clerk for
the County of Los Angeles,

4 Defendants,

5 and

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

10 Defendants-Intervenors.

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES i

INTRODUCTION 1

BACKGROUND 1

ARGUMENT 5

I. CCF HAS NOT SATISFIED THE REQUIREMENTS FOR INTERVENTION AS OF RIGHT 5

 A. CCF Does Not Have A Significantly Protectable Interest In Proposition 8 5

 1. CCF’s Vague Interest Based On Its Alleged Support For Proposition 8 Does Not Constitute A Significantly Protectable Interest. 6

 2. CCF’s Generalized Ideological Interests Are Not Significantly Protectable Interests 7

 B. CCF’s Asserted Interests Will Not Be Significantly Impaired By The Outcome Of This Proceeding 8

 C. CCF Has Not Satisfied Its Burden Of Showing That The Existing Parties Will Not Adequately Represent Its Vague, Nondescript Interest In Proposition 8 9

II. THE COURT SHOULD, IN ITS DISCRETION, DENY CCF’S REQUEST FOR PERMISSIVE INTERVENTION 14

CONCLUSION 15

TABLE OF AUTHORITIES

CASES

American Ass’n of People with Disabilities v. Herrera, No. 08-0702,
2009 U.S. Dist. LEXIS 47156, at *40 (D.N.M Apr. 20, 2009). 7

Arakaki v. Cayetano, 324 F.3d 1078 (9th Cir. 2003) 5, 6, 8, 10, 12, 13

Bates v. Jones, 127 F.3d 870 (9th Cir. 1997) 13

Bates v. Jones, 904 F. Supp. 1080 (N.D. Cal. 1995) 7, 13

Beckman Indus., Inc. v. International Ins. Co., 966 F.2d 470 (9th Cir. 1992) 11

Bennett v. Bowen, No. S164520 (Cal. July 16, 2008) 3, 4

California ex rel. Lockyer v. United States, 450 F.3d 436 (9th Cir. 2006) 11

California ex rel. Van de Kamp v. Tahoe Reg’l Planning Agency,
792 F.2d 779 (9th Cir. 1986) 7, 10, 11, 12

Californians for Safe & Competitive Dump Truck Transp. v. Mendonca,
152 F.3d 1184 (9th Cir. 1998) 11

California v. Tahoe Reg’l Planning Agency, 792 F.2d 775 (9th Cir. 1986) 9

League of United Latin Am. Citizens v. Wilson, 131 F.3d 1297 (9th Cir. 1997) 9

Massachusetts v. Microsoft Corp., 373 F.3d 1199 (D.C. Cir. 2004) 14

Northwest Forest Res. Council v. Glickman, 82 F.3d 825 (9th Cir. 1996) 5, 8, 9

Smelt v. United States, No. 09-0286 (C.D. Cal. July 15, 2009)..... 4

Southern Cal. Edison Co. v. Lynch, 307 F.3d 794 (9th Cir. 2002)..... 6, 7, 8

Southwest Ctr. for Biological Diversity v. Berg, 268 F.3d 810 (9th Cir. 2001) 5, 10

Spangler v. Pasadena City Bd. of Educ., 552 F.2d 1326 (9th Cir. 1977) 14

Strauss v. Horton, 207 P.3d 48 (Cal. 2009)..... 4, 8, 9

United States v. Alisal Water Corp., 370 F.3d 915 (9th Cir. 2004)..... 5, 6, 7, 8

United States v. Oregon, 913 F.2d 576 (9th Cir. 1990)..... 5

Westlands v. Water Dist. V. United States, 700 F.2d 561 (9th Cir. 1983)..... 7

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

CAL. ELEC. CODE § 342 2, 6

CAL. ELEC. CODE § 9004 3

1 CAL. ELEC. CODE § 9032 3
2 CAL. GOV. CODE § 82047.5(b) 2, 6
3 FED. R. EVID. 201..... 14
4 FED. R. CIV. P. 24 5, 11, 14
5
6
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8
9
10
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INTRODUCTION

The Campaign for California Families (“CCF”) filed a motion to intervene in this case. The Official Proposition 8 Proponents and the Official Proposition 8 Campaign Committee, ProtectMarriage.com, oppose that motion, contending that CCF has not satisfied the requirements for intervention as of right or the requirements for permissive intervention, and ask the Court to deny CCF’s request to intervene.

CCF primarily bases its intervention request on its alleged status as a “supporter” of Proposition 8. (See Doc. # 91 at 5-6.) But it has not introduced any evidence of its purported support for Proposition 8. In fact, far from being a steadfast supporter of the amendment, CCF was actually an outspoken critic of Proposition 8 for most of its history. The evidence thus contradicts CCF’s asserted basis for intervention, and this Court should deny its motion.

Moreover, CCF’s generalized interest in this litigation arising from its alleged support for Proposition 8 is adequately represented by the Proponents and ProtectMarriage.com—the official, legally recognized supporters of Proposition 8. CCF, the Proponents, and ProtectMarriage.com all share the same ultimate objective—to defend Proposition 8 against Plaintiffs’ constitutional attacks. This shared objective raises a presumption of adequate representation. CCF has done nothing to rebut that presumption. Consequently, CCF is not entitled to intervene in defense of Proposition 8.

On two prior occasions, CCF attempted to intervene in cases challenging Proposition 8. In both instances, its requests were denied. This case should be no different, as CCF has once again failed to satisfy the requirements for intervention.

BACKGROUND

CCF is a special-interest lobbying organization, which its Executive Director describes as an “organization [that] represents fathers, mothers, grandparents and concerned individuals who believe the sacred institutions of life, marriage and family deserve utmost protection and respect by government and society.” (Doc. # 92 at 1 ¶ 2.) In furthering its mission, CCF pursues many broad political interests, which, according to its Executive Director, include: (1) “promot[ing] family-friendly values” (*id.* at 1 ¶ 3); (2) “protect[ing] the institution of marriage” (*id.* at 1 ¶ 3); (3) educating the public about the significance of marriage (*id.* at 1 ¶ 3); and (4) “protect[ing] . . . the

1 people’s right to amend the Constitution” via the initiative process (*id.* at 4 ¶ 24).

2 While CCF is a supporter of these generalized ideological interests, it had minimal
3 involvement in the subject matter of this litigation—the enactment of Proposition 8. Its own motion
4 and supporting papers offer little more than one nondescript, conclusory assertion—that it
5 participated “in supporting and activating voters to pass Proposition 8” (*id.* at 1 ¶ 4)—and the
6 unremarkable fact that its “members were among the 7,001,084 voters who approved Proposition
7 8” (*id.* at 2 ¶ 10). Aside from these generalities, CCF does not provide any particulars about the
8 ways in which it allegedly supported Proposition 8’s enactment.

9 The absence of particulars about its purported “support” for Proposition 8 is not surprising
10 because, throughout most of Proposition 8’s history, CCF and its Executive Director actively
11 opposed it. Before Proposition 8 qualified for the ballot, CCF publicly supported a different
12 constitutional amendment, while actively opposing Proposition 8. (*See* VoteYesMarriage.com
13 Amendment Comparison at 1 (attached as Exhibit B).) During that time, CCF’s Executive Director
14 sharply criticized Proposition 8, characterizing it as a “hastily- and poorly-drafted initiative” (Ex. B
15 at 3), and stressing that “citizens in good conscience” could not support that measure (Ex. B at 5).
16 (*See also* Ex. B at 3 (describing Proposition 8 as a “flawed initiative”); Ex. B at 7 (claiming that
17 Proposition 8 contains “ineffective language”).) CCF maintained its antagonism to Proposition 8
18 for many years; it was not until quite some time after the Proposition 8 campaign began, and just a
19 short period of time before the November 2008 election, that CCF first indicated any support for
20 that measure. Indeed, CCF presents no evidence that it registered as a campaign committee or even
21 spent any funds to get Proposition 8 passed. Thus, CCF’s alleged “support” for Proposition 8 is
22 equivocal at best.

23 In contrast, the Proposition 8 Proponents and ProtectMarriage.com are *legally recognized*
24 and steadfast supporters of Proposition 8. *See* CAL. ELEC. CODE § 342 (discussing official
25 proponents); CAL. GOV. CODE § 82047.5(b) (discussing “primarily formed committees” for ballot
26 measures). (*See also* Doc. # 8-2 at 4 ¶ 7; Doc. # 8-6 4 ¶ 3-4.) As a result of their unique status
27 under state law, the Proponents and ProtectMarriage.com have been granted exclusive legal rights
28 and duties in connection with Proposition 8—rights and duties not shared by anyone (including

1 CCF). (*See* Doc. # 8-2 at 5 ¶ 11); *see e.g.*, CAL. ELEC. CODE § 9032 (“The right to file the petition
2 shall be reserved to its proponents”); CAL. ELEC. CODE § 9004 (indicating that proponents are
3 authorized to submit amendments to the initiative).¹

4 In furtherance of their unique legal roles, the Proponents and ProtectMarriage.com have
5 labored tirelessly in support of Proposition 8, successfully placing it on the ballot and campaigning
6 for its enactment. Among other things (1) they submitted the requisite legal forms prompting the
7 initiative and signature-collection process (*see* Doc. # 8-1 at 4 ¶ 6); (2) they obtained more than 1.2
8 million petition signatures in a five-month period (*see id.* at 4 ¶ 6, 6 ¶ 19); (3) they designated the
9 official voter-guide arguments in favor of Proposition 8 (*see id.* at 6 ¶ 22); and (4) they dedicated
10 substantial time, effort, reputation, personal resources, and money (more than \$37 million) to
11 achieve Proposition 8’s enactment (*See id.* at 7 ¶ 27; Doc. # 8-4 at 7 ¶ 27; Doc. # 8-5 at 7 ¶ 27; Doc.
12 # 8-6 at 5 ¶ 11). In short, CCF’s belated and unofficial efforts to support Proposition 8—whatever
13 they might be—pale in comparison to the determined commitment shown by the Proponents and
14 ProtectMarriage.com.

15 Similarly, the Proponents and ProtectMarriage.com—not CCF—have unfailingly defended
16 Proposition 8 whenever it has faced legal challenge. This case is the fourth time Proposition 8 has
17 been challenged in court. Either the Proponents standing alone or the Proponents in conjunction
18 with ProtectMarriage.com have successfully defended Proposition 8 in each of the three prior suits.

19 First, the Proponents were named as “real parties in interest” in *Bennett v. Bowen*, No.
20 S164520 (Cal. July 16, 2008), a pre-election challenge to Proposition 8 filed in the California
21 Supreme Court. (*See* Doc. # 8-8 at 2.) Because CCF and its officers lack any legal connection to
22 Proposition 8, they were not named as “real parties in interest.” (*See* Doc. # 8-8 at 2.) When CCF
23 attempted to intervene, the Proponents opposed that motion because CCF had “actively campaigned
24 *against* [Proponents’] efforts to qualify [Proposition 8] for the ballot” and the Proponents were
25 “concern[ed] that the presence of [CCF] . . . [would] substantially interfere with [the Proponents’]

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¹ The Proponents’ unique legal rights and duties are discussed in greater detail in their
Memorandum of Points and Authorities in Support of their Motion to Intervene (as well as
the supporting declarations). (*See* Doc. # 8 at 2-6; *see also* Doc. # 8-1; Doc. # 8-2; Doc. #
8-3; Doc. # 8-4; Doc. # 8-5; Doc. # 8-6.)

1 ability to effectively defend Proposition 8 as its Official Proponents.” (See Opposition of Real
2 Parties in Interest to Motion by Campaign for California Families, Randy Thomasson, and Larry
3 Bowler to Intervene as Real Parties in Interest, *Bennett v. Bowen*, No. S164520, at 2 (attached as
4 Exhibit C).) Ultimately, the California Supreme Court denied CCF’s request to intervene. (See
5 Doc. # 8-8 at 2; Doc. # 92 at 3 ¶ 19.)

6 Second, the Proponents and ProtectMarriage.com successfully intervened and defended
7 Proposition 8 in *Strauss v. Horton*, 207 P.3d 48 (Cal. 2009), a post-election challenge filed in the
8 California Supreme Court. Soon after the filing of that lawsuit, the Proponents and
9 ProtectMarriage.com filed a motion to intervene, which was granted by the Court. (See Doc. # 8-10
10 at 2.) CCF also attempted to intervene in that case, but the Proponents again opposed its
11 intervention, emphasizing that CCF had a merely “philosophical and political” interest in a legal
12 challenge to Proposition 8—one which was “indistinguishable from the interests of millions of
13 Californians who supported and campaigned for passage of Proposition 8.” (See November 18,
14 2008, Letter Brief to the California Supreme Court at 1 (attached as Exhibit D).) The California
15 Supreme Court denied CCF’s motion without analysis. (See Doc. # 8-10 at 2.)

16 Third, the Proponents and ProtectMarriage.com successfully intervened and defended
17 Proposition 8 in *Smelt v. United States*, a post-election federal-law challenge to Proposition 8 that
18 was recently dismissed by the United States District Court for the Central District of California.²
19 Again, soon after that case was filed, the Proponents and ProtectMarriage.com filed a motion to
20 intervene, which was granted by the Court. (See Doc. # 8-12 at 2.) Notably, CCF did not attempt
21 to intervene in that case.

22 Simply put, despite contrary assertions in its intervention motion and supporting declaration,
23 CCF has not “participated as an intervenor, alongside the Official Proposition 8 Proponents, at all
24 three levels of the state and federal courts of California” in defense of Proposition 8. (See Doc. #
25 92 at 4 ¶ 21.) In fact, CCF has never participated as an intervenor to defend Proposition 8 in court.
26 The Proponents and ProtectMarriage.com alone have shouldered that burden, and they have done so

27
28 ² That case also involves a challenge to the federal Defense of Marriage Act (“DOMA”),
which remains pending before the court.

1 zealously and successfully to date.

2 ARGUMENT

3 I. CCF HAS NOT SATISFIED THE REQUIREMENTS FOR INTERVENTION AS OF RIGHT.

4 Four requirements must be satisfied to intervene as a matter of right under Fed. R. Civ. P.
 5 24(a)(2): (1) the intervention motion must be timely filed; (2) the applicant must have a “
 6 ‘significantly protectable’ interest” relating to the subject of the action; (3) the applicant must show
 7 that the disposition of the action might impair its ability to protect its interest in the subject of the
 8 action; and (4) the applicant must show that its interest is inadequately represented by the existing
 9 parties. *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 817-18 (9th Cir. 2001)
 10 (citing *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996)). CCF has not
 11 satisfied the last three requirements for intervention as of right; thus, this Court should deny its
 12 motion.³

13 A. CCF Does Not Have A Significantly Protectable Interest In Proposition 8.

14 “An applicant for intervention has a significantly protectable interest if [1] the interest is
 15 protected by law and [2] there is a relationship between the legally protected interest and the
 16 plaintiff’s claims.” *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004); *accord*
 17 *Glickman*, 82 F.3d at 837. The applicant must satisfy both (1) the legally protected requirement and
 18 (2) the relationship requirement. *Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9th Cir. 2003).

19 CCF asserts two categories of interests: (1) its vague interest in Proposition 8 deriving from
 20 its alleged, but unspecified support for that amendment; and (2) its generalized ideological interests,
 21 which include promoting family-friendly values, educating the public about the benefits of those
 22 values, and protecting Californians’ right to amend their Constitution through the initiative process.
 23 These categories of interests will be analyzed separately, and as will be demonstrated herein, none
 24 amount to a significantly protectable interest supporting intervention as of right.

25
 26 ³ While the Proponents and ProtectMarriage.com do not dispute the timeliness
 27 requirement, they note that the legal authority cited by CCF in support of its timeliness
 28 argument, *United States v. Oregon*, 913 F.2d 576, 588 (9th Cir. 1990), does not support its
 position. In the *Oregon* case, the Ninth Circuit affirmed the district court’s conclusion that
 the intervenor did not satisfy the timeliness requirement. *Id.* at 589. Thus, CCF’s reliance
 on that case is inapposite.

1 **1. CCF’s Vague Interest Based On Its Alleged Support For Proposition 8**
2 **Does Not Constitute A Significantly Protectable Interest.**

3 CCF asserts that its alleged and unidentified support for Proposition 8 creates a significantly
4 protectable interest in this litigation. (*See* Doc. # 91 at 5 (“[I]nterests groups, such as [CCF], which
5 have supported initiatives have been held to have sufficient interest to intervene”).) But aside from
6 one cryptic statement in an affidavit (*see* Doc. # 92 at 1 ¶ 4), CCF has not produced any evidence of
7 its alleged support for Proposition 8, and thus cannot demonstrate a significantly protectable interest
8 on that basis. In fact, the evidence shows that CCF’s Executive Director publicly opposed it. (*See*
9 Ex. B at 1-7.) Thus, CCF has not demonstrated a significantly protectable interest based on its
10 alleged and unidentified support for Proposition 8.

11 Neither has CCF shown, as it must, that its asserted interest based on its purported support
12 for Proposition 8 is “protected by law.” *See Alisal Water Corp.*, 370 F.3d at 919; *Arakaki*, 324 F.3d
13 at 1084. Its only interest in supporting Proposition 8 is an ideological one, indistinguishable from
14 the interest of a concerned citizen, which is not protected by law. Such an ethereal interest is
15 wholly unlike the Proponents’ and ProtectMarriage.com’s legally protected interests in Proposition
16 8. *See, e.g.*, CAL. ELEC. CODE § 342 (discussing official proponents); CAL. GOV. CODE §
17 82047.5(b) (discussing “primarily formed committees” for ballot measures).⁴ Because CCF, unlike
18 the Proponents and ProtectMarriage.com, has not shown that its alleged support for Proposition 8
19 resulted in a legally protected interest, it cannot establish a significantly protectable interest on that
20 basis. *See Alisal Water Corp.*, 370 F.3d at 919; *Arakaki*, 324 F.3d at 1084.

21 In addition to lacking legal protection, CCF’s alleged interest in Proposition 8 is indistinct
22 and generalized. CCF shares its purported interest in Proposition 8’s continued validity with the
23 more than 7 million California citizens who voted in favor of that constitutional amendment. “[A]n
24 undifferentiated, generalized interest in the outcome of an ongoing action is too porous a foundation
25 on which to premise intervention as of right.” *Southern Cal. Edison Co. v. Lynch*, 307 F.3d 794,
26 803 (9th Cir. 2002) (quotation marks and citation omitted); *accord Alisal Water Corp.*, 370 F.3d at
27 920. A public-interest group does not have a significantly protectable interest where it merely has

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⁴ *See* footnote 1.

1 “a general interest in [the subject matter of the lawsuit] shared by a substantial portion of the
 2 population.” *California ex rel. Van de Kamp v. Tahoe Reg’l Planning Agency*, 792 F.2d 779, 781-
 3 82 (9th Cir. 1986) (discussing *Westlands Water Dist. v. United States*, 700 F.2d 561 (9th Cir.
 4 1983)); accord *Bates v. Jones*, 904 F. Supp. 1080, 1086 (N.D. Cal. 1995) (“A generalized public
 5 policy interest shared by a substantial portion of the population does not confer a right to
 6 intervene.”). CCF asserts nothing more than a generalized public-policy interest in Proposition 8’s
 7 continued validity, which does not amount to a significantly protectable interest in this case.⁵

8 Finally, CCF’s open antagonism to Proposition 8 also demonstrates that it does not have a
 9 significantly protectable interest in defending the amendment. Not surprisingly, no legal authority
 10 cited by CCF (or discovered by the Proponents) supports intervention by an organization that
 11 publicly opposed a measure for most of its history simply because the organization purports to have
 12 offered some unidentified support just before its enactment. Indeed, logic suggests a contrary rule,
 13 and this Court should thus conclude that an organization that primarily opposes a challenged
 14 constitutional amendment does not have a significantly protectable interest in defending it.

15 **2. CCF’s Generalized Ideological Interests Are Not Significantly** 16 **Protectable Interests.**

17 CCF’s generalized ideological interests—which include promoting family-friendly values,
 18 educating the public about the benefits of those values, and protecting Californians’ right to amend
 19 their Constitution through the initiative process—fall far short of qualifying as significantly
 20 protectable interests for purposes of this litigation. As mentioned, “an undifferentiated, generalized
 21 interest in the outcome of an ongoing action is too porous a foundation on which to premise
 22 intervention as of right.” *Lynch*, 307 F.3d at 803; accord *Alisal Water Corp.*, 370 F.3d at 920. All
 23 of CCF’s generalized ideological interests, much like its vague interest as an alleged supporter of
 24 Proposition 8, are too ethereal to constitute significantly protectable interests.

25 Moreover, those generalized ideological interests are not adequately related to Plaintiffs’

26 ⁵ Neither can CCF rely on its members’ votes for Proposition 8 as a basis for its
 27 intervention request. A person’s interest as a voter, like an organization’s interest as a
 28 group of voters, is “not one[] that can be recognized as the basis of a rule 24(a)
 intervention” as of right. See *American Ass’n of People with Disabilities v. Herrera*, No.
 08-0702, 2009 U.S. Dist. LEXIS 47156, at *40 (D.N.M. Apr. 20, 2009).

1 claims. Binding precedent requires that the “interest[s] must be related to the underlying subject
2 matter of the litigation.” *Alisal Water Corp.*, 370 F.3d at 920. “An applicant generally satisfies the
3 ‘relationship’ requirement only if the resolution of the plaintiff’s claims actually will affect the
4 applicant.” *Arakaki*, 324 F.3d at 1084 (quotation marks and citation omitted); *see also Lynch*, 307
5 F.3d at 803. But CCF cannot satisfy that requirement.

6 Plaintiffs’ claims will not prevent CCF from continuing to promote family-friendly values,
7 educate the public about the benefits of those values, and protect Californians’ right to amend their
8 Constitution through the initiative process. Plaintiffs’ claims do not seek to suppress or limit CCF’s
9 ability to promote or educate the public about certain issues. Regardless of the outcome of this
10 lawsuit, CCF will still be able to educate the public on any topics and issues it chooses. Neither do
11 Plaintiffs’ claims involve the scope of Californians’ right to amend their Constitution via initiative.
12 The California Supreme Court already decided that question in *Strauss*, 207 P.3d at 114, holding
13 that Proposition 8 was properly enacted through the initiative process. *Id.* This case, in contrast,
14 does not challenge the people’s initiative power, but instead questions California’s authority to
15 constitutionally define marriage as the union of one man and one woman (regardless of whether it
16 does so through initiative or through some other means). In short, CCF has not demonstrated an
17 adequate relationship between its generalized ideological interests and Plaintiffs’ claims. *See*
18 *Arakaki*, 324 F.3d at 1085 (finding that the intervention applicant did not “adequately demonstrate a
19 relationship between its [stated] interest and the claims raised by Plaintiffs”).

20 In sum, neither CCF’s vague interest based on its alleged support for Proposition 8 nor its
21 generalized ideological interests in promoting family values, educating the public, or preserving the
22 initiative process amount to significantly protectable interests justifying CCF’s intervention in this
23 lawsuit.

24 **B. CCF’s Asserted Interests Will Not Be Significantly Impaired By The Outcome
25 Of This Proceeding.**

26 “The [impairment] factor presupposes that the prospective intervenor has a [significantly]
27 protectable interest”; thus, an intervention applicant that lacks such an interest cannot satisfy the
28 impairment requirement. *Glickman*, 82 F.3d at 838. Because CCF has not shown a significantly

1 protectable interest in this suit, it cannot satisfy the impairment requirement.

2 Additionally, CCF's generalized ideological interests will not be impaired by the resolution
3 of this proceeding. As discussed above, regardless of the outcome of this lawsuit, CCF will still
4 have the right and ability to promote and educate the public regarding the benefits of family-
5 friendly values. Neither will this litigation impair CCF's right or ability to advocate for
6 Californians' broad initiative power, which, as mentioned, was recently affirmed by the California
7 Supreme Court in *Strauss*, 207 P.3d at 114. Those generalized interests will not be impaired by the
8 resolution of Plaintiffs' claims.

9 **C. CCF Has Not Satisfied Its Burden Of Showing That The Existing Parties Will
10 Not Adequately Represent Its Vague, Nondescript Interest In Proposition 8.**

11 "The prospective intervenor bears the burden of demonstrating that existing parties do not
12 adequately represent its interests." *Glickman*, 82 F.3d at 838. An intervention applicant "must
13 produce something more than speculation as to the purported inadequacy" of representation to
14 justify intervention as of right. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1307
15 (9th Cir. 1997) (quotation marks omitted). A court evaluating the adequacy of representation does
16 not look only to the representation provided by the government defendant, but to the "cumulative
17 effect of the representation of all existing parties." *California v. Tahoe Reg'l Planning Agency*, 792
18 F.2d 775, 779 (9th Cir. 1986). Here, the Proponents and ProtectMarriage.com—the only legally
19 recognized, official supporters of Proposition 8—will adequately represent CCF's generalized
20 interests in defending Proposition 8's validity. Thus, CCF's intervention request should be denied.

21 "[W]here an applicant for intervention and an existing party have the same *ultimate*
22 *objective*, a presumption of adequacy of representation arises." *League of United Latin Am.*
23 *Citizens*, 131 F.3d at 1305 (quotation marks omitted). The Proponents and ProtectMarriage.com
24 have the ultimate objective of defeating Plaintiffs' claims and affirming the constitutionality of
25 Proposition 8. CCF also purports to have the ultimate goal of affirming the constitutionality of
26 Proposition 8. Thus, a presumption of adequate representation arises, and CCF faces an even
27 greater burden in attempting to demonstrate inadequacy.

28 When evaluating whether a proposed intervenor's interests are adequately represented by

1 existing parties, the court considers three factors: (1) whether the interests of a present party are
2 sufficiently similar to those of the proposed intervenor “such that [the party] will undoubtedly make
3 all the intervenor’s arguments”; (2) “whether the present party is capable and willing to make such
4 arguments”; and (3) “whether the [proposed] intervenor would offer any necessary elements to the
5 proceedings that other parties would neglect.” *Tahoe Reg’l Planning Agency*, 792 F.2d at 778.

6 “The most important factor in determining the adequacy of representation is how the
7 [proposed intervenor’s] interest compares with the interests of existing parties.” *Arakaki*, 324 F.3d
8 at 1086. In fact, the presumption of adequate representation is generally rebutted only if the
9 intervention applicant shows that it and the existing defendants “do not have sufficiently congruent
10 interests.” *Berg*, 268 F.3d at 823; *see also Arakaki*, 324 F.3d at 1086 (“If the applicant’s interest is
11 identical to that of one of the present parties, a compelling showing should be required to
12 demonstrate inadequate representation.”). But CCF cannot satisfy that requirement here. CCF’s
13 nondescript interest as an alleged supporter of Proposition 8 is fully subsumed within the
14 Proponents’ and ProtectMarriage.com’s legally recognized interests in defending the measure that
15 they labored unwaveringly (and spent more than \$37 million) to support. In other words, while
16 CCF’s asserted interest as an alleged supporter of Proposition 8 does not amount to the specifically
17 defined, legally protected, and financially backed interests of the Proponents and
18 ProtectMarriage.com, CCF’s weak interest falls squarely within the stronger interests possessed by
19 those parties. Thus, CCF’s asserted interest as an alleged supporter of Proposition 8 is sufficiently
20 congruent with the Proponents’ and ProtectMarriage.com’s interests in this case. As a result, CCF
21 cannot rebut the presumption of adequate representation.⁶

22 To differentiate its interests in this case from the interests possessed by existing parties,
23 CCF relies on its generalized ideological interests in promoting and educating the public about the
24 benefits of family-friendly values and in protecting the broad scope of California’s initiative power.

25
26 ⁶ CCF’s public opposition to Proposition 8 also undermines its adequacy-of-representation
27 argument. An organization and a small group of individuals, like the Proponents and
28 ProtectMarriage.com, who ardently supported, financed, and advocated for Proposition 8
will defend that amendment with greater zeal than an organization, like CCF, that publicly
opposed it for years.

1 But CCF's reliance on these generalized ideological interests does not support its attempts to
 2 demonstrate inadequate representation. As previously discussed, these interests are not sufficiently
 3 at issue in this case. Plaintiffs' claims do not seek to stifle CCF's ability to educate the public about
 4 the benefits of family-friendly values. Neither does this case directly challenge the scope of
 5 Californians' right to amend their Constitution via initiative. Because these generalized ideological
 6 interests are not at issue here, it is irrelevant whether those interests are adequately represented by
 7 existing parties.⁷

8 The second factor under the inadequate-representation analysis asks whether an existing
 9 party is willing and able to make the arguments raised by the proposed intervenor. *Tahoe Reg'l*
 10 *Planning Agency*, 792 F.2d at 778. It is difficult to analyze this factor because, despite the mandate
 11 that intervention motions "be accompanied by a pleading that sets out the . . . defense for which
 12 intervention is sought," Fed. R. Civ. P. 24(c), CCF has not filed an answer with its motion to
 13 intervene. *See Beckman Indus., Inc. v. International Ins. Co.*, 966 F.2d 470, 474-75 (9th Cir. 1992)
 14 (acknowledging that while a proposed intervenor's failure to file a pleading is not automatic
 15 grounds for denying the motion, the movant must still "describe[] the basis for intervention with
 16 sufficient specificity to allow the district court to rule"). But the Proponents and
 17 ProtectMarriage.com intend and are able to make every meritorious argument in defense of
 18 Proposition 8; thus, any relevant, meritorious argument that CCF would assert will already be raised
 19 by the Proponents and ProtectMarriage.com.

20 CCF provides only a cursory mention of its intended arguments, stating as follows: "[CCF]
 21 will argue . . . for the right of the people of California to enact constitutional amendments through
 22

23 ⁷ In its desperate attempt to identify any basis for distinguishing its interests in this case
 24 from those of the Proponents and ProtectMarriage.com, CCF has asserted an argument that
 25 inverts Ninth Circuit precedent concerning inadequate representation. Often the Ninth
 26 Circuit has found that representation might be inadequate where the proposed intervenor
 27 has "more narrow, parochial interests" than the existing defendants. *California ex rel.*
 28 *Lockyer v. United States*, 450 F.3d 436, 445 (9th Cir. 2006) (quotation marks omitted); *see*
 also *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d
 1184, 1190 (9th Cir. 1998). But here, CCF alleges that they have broader, more
 generalized interests than the existing parties. They do not cite (and neither have the
 Proponents discovered) any legal authority indicating that inadequate representation exists
 under those circumstances.

1 initiative and for the protection of California families from the significant negative ramifications of
2 overturning Proposition 8.” (Doc. # 91 at 10.) But neither of these proffered arguments supports
3 CCF’s attempts to demonstrate inadequate representation. First, as previously mentioned, the
4 initiative power is not at issue in this case; thus, CCF’s arguments about the “right of the people of
5 California to enact constitutional amendments through initiative” are irrelevant and do not
6 demonstrate inadequacy of representation. Second, to the extent that “the negative ramifications of
7 overturning Proposition 8” are relevant to determining its constitutionality, the Proponents and
8 ProtectMarriage.com will present those arguments to the Court. Thus, CCF cannot establish
9 inadequate representation on that basis.

10 Notably, CCF has not demonstrated that the existing parties are unable to raise any
11 argument that it is capable of asserting. *See Tahoe Reg’l Planning Agency*, 792 F.2d at 778 (asking
12 “whether the present party is capable” of presenting an argument that the proposed intervenor
13 intends to raise). In fact, quite the opposite exists here, where the Proponents and
14 ProtectMarriage.com, given their intimate involvement in the Proposition 8 campaign, are well
15 positioned to assert arguments that CCF cannot. Moreover, the Proponents and
16 ProjectMarriage.com have already proven to be adequate representatives of CCF’s interests in this
17 litigation. Plaintiffs filed their complaint on May 22, 2009, and moved for preliminary injunction
18 on May 27. (*See* Doc. # 1-1; Doc. # 7.) The Proponents and ProjectMarriage.com filed a timely
19 opposition to Plaintiffs’ preliminary injunction motion. (*See* Doc. # 36.) CCF was content to rely
20 on the Proponents’ representation during this important phase of the litigation. CCF has not pointed
21 to any reason to question the wisdom of their initial judgment that the Proponents would adequately
22 represent their interests.

23 The third factor under the inadequate-representation analysis asks whether the proposed
24 intervenor “would offer any necessary elements to the proceedings that other parties would
25 neglect.” *Tahoe Reg’l Planning Agency*, 792 F.2d at 778. CCF has not even attempted “to
26 demonstrate [that] it would offer any necessary elements to the proceeding that other parties would
27 neglect.” *See Arakaki*, 324 F.3d at 1087. It has thus failed to show that its presence as an
28 intervenor will contribute something vital and unique to these proceedings, which will aid the Court

1 in resolving the issues before it.

2 The Ninth Circuit's decision in *Arakaki*, 324 F.3d at 1086-88, particularly its inadequate-
3 representation analysis, is instructive here. In that case, the court upheld the district court's denial
4 of a motion for intervention as of right. A group of individuals sought to intervene even though an
5 organization with the same ultimate objective and similar interests had already successfully
6 intervened as a party to the litigation. The Ninth Circuit was satisfied that the already-admitted
7 intervenor would adequately represent the interests of the intervention applicant, and the court
8 remarked that "[n]ot every [interested] group could or should be entitled to intervene." *Id.* at 1087.
9 The court thus held that "[t]he presence of . . . a similarly situated intervenor . . . distinguishe[d]
10 [that] case from [others] in which [the Ninth Circuit had] permitted intervention on the
11 government's side." *Id.* at 1087-88, *as amended by Arakaki v. Cayetano*, No. 02-16269, 2003 U.S.
12 App. LEXIS 9156 (9th Cir. May 13, 2003). As a result, the court upheld the district court's denial
13 of the intervention motion. Likewise here, the presence of the Proponents and ProtectMarriage.com
14 shows that CCF's vague interest as an alleged supporter of Proposition 8 is adequately represented
15 by the existing parties. Moreover, it would be impractical and unnecessary to permit intervention
16 by every group that has a generalized interest in the Court's upholding Proposition 8.

17 The Ninth Circuit's decision in *Bates v. Jones*, 127 F.3d 870, 874 (9th Cir. 1997), is also on
18 point. There, the district court permitted the official proponents of a challenged California ballot
19 measure, Proposition 140, to intervene in the case. *Bates*, 904 F. Supp. at 1086. But the district
20 court denied an intervention request by a public-interest group that also wanted to defend
21 Proposition 140 against legal attack. *See Bates*, 127 F.3d at 874. On appeal, the public-interest
22 group argued that the lower court should have granted its request to intervene. The Ninth Circuit
23 rejected that argument, concluding that "[u]nlike the other[] intervenors on the state's side, [the
24 public-interest group] was not an official sponsor of the initiative, and we see no reason to grant it
25 intervenor status." *Id.* The court then stated: "[The public-interest group] offers no reason why it
26 cannot sufficiently protect its interest as an advocate for [the challenged proposition] by its filing of
27 amicus briefs, and we can conceive of none." *Id.* Similarly, here, CCF can sufficiently protect its
28 generalized interests by filing an *amicus* brief. Indeed, given the legislative nature of the facts at

1 issue, and the Court's corresponding ability to consider facts from a wide range of sources, *see* Fed.
2 R. Evid. 201; *id.*, Advisory Committee Note, an *amicus* brief could be particularly effective in this
3 case. Thus, CCF's intervention motion should be denied.

4 In sum, CCF has not satisfied the requirements for intervention as of right; thus, its motion
5 should be dismissed.

6 **II. THE COURT SHOULD, IN ITS DISCRETION, DENY CCF'S REQUEST FOR PERMISSIVE**
7 **INTERVENTION.**

8 Although we do not challenge CCF's ability to meet the threshold requirements for
9 permissive intervention, the Court should nevertheless deny its request to intervene. "If the trial
10 court determines that the initial conditions for permissive intervention . . . are met, it is then entitled
11 to consider other factors in making its discretionary decision on the issue of permissive
12 intervention." *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977).
13 Among these factors are "the nature and extent of the intervenors' interest . . . [and] whether the
14 intervenors' interests are adequately represented by other parties." *Id.* As previously demonstrated,
15 these factors weigh against granting CCF's intervention request. Thus, for all the reasons expressed
16 under the intervention-as-of-right analysis, the Court should also deny CCF's request for permissive
17 intervention.

18 Moreover, "[i]n exercising its discretion [to allow permissive intervention] the court must
19 consider whether the intervention will unduly delay or prejudice the adjudication of the original
20 parties' rights." FED. R. CIV. P. 24(b)(3). "The 'delay or prejudice' standard . . . captures all the
21 possible drawbacks of piling on parties; the concomitant issue proliferation and confusion will
22 result in delay as parties and court expend resources trying to overcome the centrifugal forces
23 springing from intervention, and prejudice will take the form not only of the extra cost but also of
24 an increased risk of error." *Massachusetts v. Microsoft Corp.*, 373 F.3d 1199, 1235 (D.C. Cir.
25 2004) (quotation marks omitted). The official, legally recognized supporters of Proposition 8 are
26 already parties to this litigation. CCF, as an unofficial, equivocal supporter of Proposition 8, will
27 not contribute any necessary element to Proposition 8's defense. Thus, its intervention will serve
28 only to prejudice all existing parties by unnecessarily "piling on parties" to this litigation.

1 CCF's intervention will particularly prejudice the Proponents and ProtectMarriage.com.
2 CCF and its Executive Director spent years publicly opposing Proposition 8, its Proponents, and its
3 campaign committee. Now, however, CCF seeks to join in defense of the measure that it
4 vociferously opposed. Permitting CCF's intervention would unnecessarily prejudice the
5 Proponents' and ProtecteMarriage.com's legally recognized rights and interests in defending
6 Proposition 8. This Court should therefore deny CCF's request for permissive intervention.

7 **CONCLUSION**

8 For the foregoing reasons, this Court should deny CCF's motion to intervene in this case.

9
10 Dated: August 7, 2009

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